Select Committee on Communications

INQUIRY INTO MEDIA PLURALITY

Written and corrected oral evidence

Contents

Avaaz – written evidence................................................................. 4
Avaaz and Media Reform Coalition – oral evidence (QQ 322-338) .................................................. 23
Professor Steven Barnett – written evidence................................................................. 44
Professor Steven Barnett – oral evidence (QQ 62-107).................................................. 53
BBC – written evidence................................................................................................. 69
BBC – oral evidence (QQ 215–233)................................................................. 77
BBC Trust – oral evidence (QQ 410-421)......................................................................... 95
Professor Robert Beveridge – oral evidence (QQ 353-363)............................................. 109
British Film Institute – written evidence ........................................................................ 122
British Sky Broadcasting – written evidence ................................................................. 130
British Sky Broadcasting – oral evidence (QQ 182-198).................................................. 133
Campaign for Press and Broadcasting Freedom – written evidence.............................. 150
Campaign for Press and Broadcasting Freedom and Enders Analysis – oral evidence (QQ 108-125) ........................................................................................................................................ 163
Professor Martin Cave OBE (Imperial College) and Professor Richard Collins (City University London) – written evidence .................................................................................. 181
Professor Martin Cave OBE – oral evidence (QQ 286-297).................................................. 189
Channel 4, Channel 5 and ITV – oral evidence (QQ 234-247)......................................... 204
Channel 5, Channel 4 and ITV – oral evidence (QQ 234-247)......................................... 221
Professor Richard Collins and Professor Martin Cave – written evidence ....................... 222
Professor Richard Collins – oral evidence (QQ 29-61)..................................................... 223
Professor Richard Collins – supplementary written evidence ........................................ 234
Commercial Broadcasters Association – written evidence ............................................. 235
Competition Commission – written evidence.................................................................... 241
Dr Rachael Craufurd Smith and Dr Damian Tambini – oral evidence (QQ 1-14) ............. 253
Department for Culture, Media and Sport – written evidence ........................................ 269
Department for Culture, Media and Sport – oral evidence (QQ 422-430) ....................... 271
DMG Media – written evidence.......................................................................................... 282
David Elstein – written evidence..................................................................................... 287
David Elstein – oral evidence (QQ 248-260)..................................................................... 315
David Elstein – supplementary written evidence .................................................................. 333
Enders Analysis – written evidence.................................................................342
Enders Analysis and Campaign for Press and Broadcasting Freedom – oral evidence (QQ 108-125).................................................................350
European Initiative for Media Pluralism – written evidence..........................351
Sir Harold Evans – oral evidence (QQ 312-321).............................................357
Facebook and Google – oral evidence (QQ 381-393)....................................371
Robin Foster – written evidence....................................................................385
Mr Robin Foster and Professor Robert Picard – oral evidence (QQ 15-28)......400
Lord Fowler and Lord Puttnam – oral evidence (QQ 140-159).......................415
Helen Goodman MP and Harriet Harman QC MP – oral evidence (QQ 298-311)436
Google and Facebook – oral evidence (QQ 381-393)....................................437
Professor Roy Greenslade and Steve Hewlett – oral evidence (QQ 261-275)....438
Guardian Media Group – written evidence.....................................................456
Guardian Media Group – oral evidence (QQ 160-181).....................................494
Harriet Harman QC MP and Helen Goodman MP – oral evidence (QQ 298-311)515
Steve Hewlett and Professor Roy Greenslade – oral evidence (QQ 261-275)....531
Mr Will Hutton – oral evidence (QQ 126-139)................................................532
International Broadcasting Trust – written evidence.....................................546
ITN and the Press Association – oral evidence (QQ 276-285).........................554
ITV – written evidence...................................................................................568
ITV, Channel 4 and Channel 5 – oral evidence (QQ 234-247).......................576
ITV Scotland – written evidence....................................................................577
ITV Wales – written evidence.......................................................................578
Johnston Press – written evidence.................................................................579
Robert Kenny – written evidence....................................................................581
Professor Justin Lewis and Dr Colm Murphy – oral evidence (QQ 364-380)....589
Media Reform Coalition – written evidence..................................................608
Media Reform Coalition and Avaaz – oral evidence (QQ 322-338)...............619
Media Standards Trust – written evidence.....................................................620
Max Mosley – written evidence......................................................................625
Chris Mullin – written evidence......................................................................632
Dr Colm Murphy and Professor Justin Lewis – oral evidence (QQ 364-380)....638
National Union of Journalists – written evidence..........................................639
National Union of Journalists – oral evidence (QQ 199-214).........................646
News Corporation – written evidence.............................................................662
The Newspaper Society – written evidence...................................................674
The Newspaper Society – oral evidence (QQ 339-352)..................................678
Ofcom – written evidence............................................................................694
Ofcom – oral evidence (QQ 394-409)..............................................................732
Dr Chris Paterson – written evidence.............................................................751
Press Association and ITN – oral evidence (QQ 276-285).............................755
<table>
<thead>
<tr>
<th>Witness/Group</th>
<th>Page Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professor Robert G. Picard – written evidence</td>
<td>756</td>
</tr>
<tr>
<td>Professor Robert Picard and Mr Robin Foster – oral evidence (QQ 15-28)</td>
<td>762</td>
</tr>
<tr>
<td>Lord Puttnam – written evidence</td>
<td>763</td>
</tr>
<tr>
<td>Lord Puttnam and Lord Fowler – oral evidence (QQ 140-159)</td>
<td>767</td>
</tr>
<tr>
<td>RadioCentre – written evidence</td>
<td>768</td>
</tr>
<tr>
<td>Suzanne Rab and Dr Alison Sprague – written evidence</td>
<td>774</td>
</tr>
<tr>
<td>Suzanne Rab and Dr Alison Sprague – supplementary written evidence</td>
<td>783</td>
</tr>
<tr>
<td>Dr Alison Sprague and Suzanne Rab – written evidence</td>
<td>793</td>
</tr>
<tr>
<td>Dr Alison Sprague and Suzanne Rab – supplementary written evidence</td>
<td>794</td>
</tr>
<tr>
<td>Dr Damian Tambini – written evidence</td>
<td>795</td>
</tr>
<tr>
<td>Dr Damian Tambini and Dr Rachael Craufurd Smith – oral evidence (QQ 1-14)</td>
<td>799</td>
</tr>
<tr>
<td>Telegraph Media Group – written evidence</td>
<td>800</td>
</tr>
<tr>
<td>This is Global – written evidence</td>
<td>803</td>
</tr>
<tr>
<td>Voice of the Listener and Viewer – written evidence</td>
<td>808</td>
</tr>
<tr>
<td>The Welsh Language Commissioner – written evidence</td>
<td>814</td>
</tr>
</tbody>
</table>
Avaaz – written evidence

Avaaz has prepared this submission in support of the 52,278 UK citizens who signed an Avaaz petition calling for 20% sector-by-sector caps on media ownership.

Avaaz — meaning "voice" in several languages — launched in 2007 with a simple democratic mission: organise citizens of all nations to close the gap between the world we have and the world most people everywhere want. Avaaz empowers its 21 million members, including over 900,000 in the UK, to take action on pressing global, regional and national issues, from corruption and poverty to conflict and climate change to democratic empowerment and healthy media.

Around the world and in the UK in particular, Avaaz members have expressed their commitment to reforming our media to better serve the public. Over half a million Avaaz members have called on their governments to protect media plurality, submitting hundreds of thousands of comments to government officials and media inquiries in the UK, US and Australia, placing thousands of phone calls to policymakers, and contributing over £200,000 in small donations to support efforts to bring about the media that our democracies deserve.

Avaaz has also made expert submissions to media inquiries in both the UK and Australia, echoing our members' calls for a 20 per cent limit on the amount of media any one person or corporation can control.

The Fundamental Problem: Media Behemoths

There has been much talk in recent years about financial institutions that are “too big to fail,” but when it comes to size, our media may be even more of a concern. As one commentator has recently pointed out “just as British banking is still dominated by the ‘Big 5’ retail banks, we have three news organisations in the UK that control 75 per cent of daily circulation, two groups which account for over 50 per cent of commercial radio listening hours and a single operator, BSkyB, by far the largest broadcaster in the country, with an effective monopoly over pay television.”

This is a dangerous trend. In a democracy, the media has a fundamental role to play in holding power to account. But in doing so, media also wields great power and, if unchecked, it too can be abused.

That is what Britain has experienced in recent years – unchecked media power that has run roughshod over the rights of individuals and has cowed our government into serving the interests of some parts of the media over the public interest.

The company at the heart of the recent spate of hacking scandals, News Corp, was the largest owner of media in the UK, with control of almost 30 per cent of the national newspaper market by audience and significant assets in other media sectors. 

---

surprising that as a result of this influence and reach, Prime Minister David Cameron acknowledged that, "I think hand on heart, we all did a bit too much cosying up to Rupert Murdoch."³

The reason why is clear. The Leveson Report is rife with examples of News Corp hacking the phones of politicians and trying to bully them. A number of sitting MPs, including front bench members and senior party figures such as ex-deputy prime minister Lord Prescott and Liberal Democrat deputy leader Simon Hughes were victims of phone hacking by News Corporation.⁴

When officials sought to investigate or exercise proper government oversight, they too became targets. One witness to Leveson confirmed that he was instructed to place Tom Watson MP under watch to dig up dirt on an affair that was not in fact taking place in order to drive Watson off the phone-hacking issue.⁵ And Chris Bryant MP told Leveson that he received a call from a friend in early 2011 who said that two people close to Rupert Murdoch had warned him that it would be wise for the MP to drop the phone-hacking investigations, or Murdoch would "get him, in time." Private lawyers bringing claims against News Corp were subjected to ongoing surveillance in an attempt to force them to abandon litigation against Rupert Murdoch.⁶

Regulation of how the media operates cannot is not sufficient to solve this problem. Phone hacking, bribery, obtaining private medical records – the tales of press misconduct reported to Leveson are all already illegal under British law. What allowed these transgressions to take place was not a lack of rules against them, but a media empire that had grown so large as to feel immune from them.

That sense of special privilege that size confers wasn’t just felt by News Corp itself, it was recognized by politicians. Rupert Murdoch described being instructed by Downing Street to enter by the back door when visiting both David Cameron and Gordon Brown to avoid photographers at the front entrance.⁷ The fact that leaders of both parties felt the need to hide their private meetings with the UK’s biggest media baron underscores the significance of the problem we face.

One of the primary checks we have against the misuse of media power is to ensure it is divided among numerous owners. By dividing media power in that way each outlet serves to check the others, and no one outlet can grow so dominant as to wield unaccountable power. Our law recognizes and embraces this system of checks and balances and enshrines it in plurality policy. Yet the mere fact that we have something we call plurality policy, as Lord Justice Leveson concluded in his report, “does not mean that the current process is satisfactory: clearly it is not.”⁸

³ http://www.guardian.co.uk/politics/blog/2012/apr/25/pmqs-jeremy-hunt-murdoch-politics-live
⁴ http://www.bbc.co.uk/news/uk-14187122
⁵ http://www.guardian.co.uk/media/2012/may/22/leveson-inquiry-tom-watson-live
⁶ http://www.bbc.co.uk/news/uk-15636826
1. Does a clearer objective to plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

Right now, although the broad objective of plurality policy laid out in the Communications Act of 2003 remains largely correct, it is insufficient to achieve its goals. In order to have not just a plurality policy in concept that makes sense, but also to have plurality in practice, there should be a statutory limit of 20 per cent on the amount of media in any sector that any one person or entity may control.

The Current Regime

Section 375 of the Communications Act states that there is a public interest need for a “sufficient plurality of views in newspapers in each market for newspapers” and that there is also a public interest need for “there to be a sufficient plurality of persons with control of the media enterprises serving [every] audience [in the UK].” These principles reflect what Lord Justice Leveson called in his report the widely agreed upon view that “control of the media should not be concentrated in too few hands” because of its “central importance for a healthy, well-informed democracy.”

These public interest principles remain correct. A plurality of views is important to ensure that the public is exposed to a robust debate that spans the full marketplace of ideas. And ensuring that no one owner or entity exercises disproportionate control over the media helps to ensure two goals. First, that one view is not given undue prominence and that no one person or entity – or small group of people or entities – are able to play a gatekeeper function and prevent the free flow of ideas by censoring entry. Second, that no one owner is able to grow large enough to use that size to exercise undue influence over the political process.

Why The Current Regime is Insufficient

The key problem with the current regime is that determining what constitutes a sufficient plurality of views or what would constitute a plurality of persons controlling the media is not clearly defined in statute. Although Ofcom has laid out principles to help clarify those terms, these additional principles are themselves lacking in the specificity required to clarify the law. Furthermore, because the application of those principles is so ill-defined and therefore subjective, they leave themselves open to widely divergent applications, heightening the potential for powerful industry forces to shape outcomes in their favour, undermining the very purpose of the statute.

Indeed, that is exactly what has happened. Had News Corp. successfully completed its bid to take over BSkyB, it would have controlled not just 43 per cent of national newspaper revenues, but 39 per cent of the total television market as well. Absent the emergence of the phone hacking scandal, it is likely that News Corp would have been able to proceed with their full acquisition bid.

---

9 The Rt Hon Lord Justice Leveson, “An Inquiry Into the Culture, Practices and Ethics of the Press (November 2012), p.180 [Hereinafter “Leveson 2012”]; see also ibid, p. 1461 (“This approach to both the diversity of views available and the influence wielded seems to be generally accepted”).

10 [http://www.endersanalysis.com/content/uk-media-ownership](http://www.endersanalysis.com/content/uk-media-ownership)
Significant evidence has emerged which suggests the Culture Secretary’s approval of the bid in June 2011 was heavily swayed by the influence and lobbying of News Corporation. There were 1,056 texts, 191 phone calls and 158 emails between News Corp executives and the Culture Department during the BskyB transaction approval process. In addition, there were more than 60 meetings involving News Corp executives and government ministers between May 2010 and July 2011 (an average of one meeting per week). Of the 79 meetings that Prime Minister David Cameron’s senior advisers held with media companies between April 2010 and June 2011, 25 were with News Corp (by contrast only 4 meetings were held with people connected to the Independent).

This is not to say all lobbying by private interests is improper. Lobbying is itself a part of democratic governance. But in the context of a quasi-judicial proceeding, in which some meetings were recorded and on the record and others were not, and especially involving a company whose Chair regularly enters Downing Street by the back door, as Lord Justice Leveson concluded, “The dangers of bias, or the perception of bias, are all too obvious.”

The fact that but for the emergence of the hacking scandal the largest media entity in the UK was poised to take over the largest pay TV network under a cloud of cosy influence peddling suggests the existing statutory plurality requirement is insufficient to guard against dramatic contractions in media plurality. This was possible because the plurality requirement is insufficiently robust and open to the broad discretion of politicians who themselves have a vested interest in how they are portrayed by precisely the people they’re expected to regulate: the largest media companies in the land.

The failure of the current regime is not just conceptual; it has had devastating consequences in practice. The examples of abusive media practices previously referenced in this document and throughout the Leveson Report highlight a critical truth: outsized media companies lead to improper relations between media and government.

Without action, the problem is likely to only get worse. The problems we have identified speak to the critical need for more well-defined rules about plurality that can be applied consistently and even-handedly and mitigate as much as possible the danger of agency capture. Only clearer rules that can be more easily applied to serve as a proper checking function on the size and influence of any media company will ensure that any new regulations are not as brazenly ignored and unenforced as the rules that previously existed but that large media entities broke with impunity.

**Why a 20 per cent Ownership Limit is the Solution**

Imposing a 20 per cent limit on the total amount of news media that any one person or entity can own in any given sector would ensure the achievement of the plurality goals Britain has already endorsed.

---

11 http://www.guardian.co.uk/media/2011/jun/30/news-corp-bskyb-bis-jeremy-hunt-approval
13 Rogers & Sedghi, 2011.
14 Leveson 2012, p. 1322-23 (discussing Mr. Jeremy Hunt MP’s view that in some meetings with James Murdoch News Corp’s bid for full ownership of BSkyB was discussed but minutes were not taken).
To determine the right measure for plurality, one must begin with what “plurality” means. Professor Charlotte Brewer has written on this subject that in the context of mass media “plurality” means “a large number.” So on the one hand, plurality should seek to ensure a large number of providers. On the other hand, a regime that is too restrictive might unduly penalise success or constrain a company’s ability to provide a quality product.

Therefore, finding a numerical proxy for plurality must balance these interests. British law has sought to strike this balance before and in many of those cases has adopted a number that was either exactly or close to 20 per cent (or a minimum of at least five owners). To list just a few:

- When The Broadcasting Act 1990 allowed for the ITC to nominate news providers who would be eligible to provide news programmes for holders of Regional Channel 3 licences (“nominated news providers”), it was only possible to hold 20 per cent of one nominated news provider.
- When the same 1990 Act placed ownership restrictions on DBS satellite services, national newspapers could not hold more than a 20 per cent stake in a DBS broadcasting satellite channel.
- The 1990 Act also included provisions to ensure that there were at least seven owners of analogue local radio licenses across the UK.
- The 1990 Act also limited national newspapers in their holdings of terrestrial TV and radio, and in domestic satellite broadcasters. Within each category they could hold up to 20 per cent of one licence, and then up to 5 per cent of any others.

It is worth noting that the media scandals that have gripped our nation have come on the heels of a massive deregulation of these specific plurality rules. For example:

- Rules limiting the amount of digital television licenses that any one owner could hold were repealed in 2003.
- Rules prohibiting anyone from owning more than one of the three national analogue radio licenses were repealed in 2003.
- And even when the Communications Act 2003 did impost some plurality requirements, they were normally far more lenient than the earlier limits that often converged around 20 per cent or five owners. For example, the 2003 Act started by requiring that there be at least three local analogue radio owners in any area in addition to the BBC, but subsequently dropped the requirement to two before eliminating it entirely.

Following this deregulation, media entities grew larger and less diverse. The top 20 regional press publishers now account for 87 per cent of all regional and local newspaper titles in the UK, and 97% of the total weekly audited circulation. The top five companies’ share of the weekly and free-sheet market soared from 27 per cent to 70 per cent and from 38 per cent to 75 per cent respectively between 1989 and 2002. In commercial radio, four companies control almost 80 per cent of the market.

---

16 http://blogs.lse.ac.uk/mediapolicyproject/2011/03/02/guest-blog-what-does-the-word-plurality-mean/
18 Ibid at 76 (citing Curran and Seaton 2003).
19 Ibid (citing NUJ, 2009).
Avaaz – written evidence

This deregulation was not driven by prudent policy concerns, but to satisfy the demands of large media owners. Lord Mandleson, in discussing media regulation more broadly, explains the considerations of government in approaching media policy: “The truth is, no issue of priority or principle was involved. We simply chose to be cowed because we were too fearful to do otherwise. And David Cameron took up where Tony Blair and Gordon Brown left off.”

Nonetheless, in the few places where the 2003 Act does retain explicit numerical limits on ownership and control, 20 per cent remains the figure of choice. For example:

- No one controlling more than 20 per cent of the national newspaper market may hold any licence for Channel 3.
- No one controlling more than 20 per cent of the national newspaper market may hold more than a 20 per cent stake in any Channel 3 service.
- No one owning a regional Channel 3 licence may own more than 20 per cent of the local/regional newspaper market in the same region.

This is because 20 per cent is a logical line to draw – and, at root, it is the role of legislators to draw lines. Deputy Prime Minister Nick Clegg testified to Leveson that he would be open to a percentage cap and numerous experts testified about what those caps might be, with these proposals roughly surrounding a 20 per cent number. Media analyst Allison Enders testified to Leveson that no media company should be allowed to control more than 15 per cent of the media market by revenue. The Rt Hon Harriet Harman MP testified to Leveson that 30 per cent should potentially be the limit on the share of newspapers circulation that any one company could control, and that anything between 20 per cent and 30 per cent should be subject to Ofcom approval and possible conditions. The Secretary of State for Business Vince Cable agreed in testimony to Leveson with our conclusion that the current plurality rules are too imprecise, and that something like a 25 per cent limit on combined media markets might be appropriate before stricter regulations kick in.

The only entity that pushed back against fixed limits in the Leveson Inquiry was Ofcom itself. The only substantive reason Ofcom provided for not imposing clear limits is a fear that limits “leave no room for flexibility and give rise to the risk that it is not possible to address issues of commercial sustainability and innovation in an appropriate manner.” However, Ofcom provides no data to support the claim that any reasonable ownership limit would impair commercial sustainability. This concern is addressed in detail below in answer to question 10 but given the vital importance to democracy of curtailing unaccountable media power, the burden of proof must rest with those arguing that ownership limits will make quality news provision impossible. To date, that has not been made in a compelling way.

2. In the absence of a definition of plurality in statute, Ofcom have provided a working formulation. Is this the best definition, or should it be improved?

---

21 Leveson 2012, at p. 1467.
22 Leveson 2012, at p. 1466.
23 Leveson 2012, at p. 1467.
24 Leveson 2012, at p. 1467.
Ofcom’s definition – that there should be “a diversity of viewpoints available and consumed across and within media enterprise” and that plurality policy should “prevent any one media owner or voice having too much influence over public opinion and the political process/agenda” – is a sound place to start but suffers from the same defects discussed above.\(^{26}\) On the positive side, it captures the twin threat to democracy posed by media concentration: the potential for political owners or editors to exercise inappropriate influence the political process, and the absence of a diversity of viewpoints in the supply of news and information with its attendant impact on agenda setting and the exercise of citizenship.

However, this definition alone is not sufficient to ensure a plural media. As stated in response to question 1, it is important to ground a clear numerical limit on ownership in statute in order to: (1) guarantee sufficient plurality; (2) protect against the potential for the regulator or politicians to be captured by industry and water down its application or enforcement; and (3) provide certainty and predictability to the marketplace.

3. **What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?**

The touchstone for determining what media should be subject to ownership limits should be: is that media so central to the underpinnings of our democracy that the public interest in regulation outweighs the interests of proprietors? It is clear and widely accepted that news and current affairs media are indeed crucial to the ability of citizens to participate effectively in democracy. Without access to that media, citizens cannot render the informed judgments necessary for self-governance, and the lack of media plurality can therefore have a severely detrimental effect on democracy.

For that reason, Lord Leveson was correct to conclude that media plurality policy should focus on news and current affairs.\(^{27}\)

Existing media ownership rules apply to newspapers, analogue radio and analogue television. Because the media landscape has changed and growing numbers of citizens get their news from digital sources on radio, television and the Internet, those sources should be brought within the scope of plurality rules.

This is not to say that cultural programming does not have an impact on public knowledge and debate on issues of serious importance. It does. But when balancing the need to ensure the media meets citizens’ need for information with countervailing interests, cultural programming weighs in slightly differently than news and current affairs programming. Should the development of the media result in a change to that balance, government should be prepared to respond appropriately.

4. **What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?**

\(^{26}\) Ibid., p. 8.

\(^{27}\) Leveson 2012, p. 1464.
As Lord Leveson concluded, the need for plurality reviews that take into account both changes in market participants and organic growth is “unarguable.”

To maintain a 20 per cent limit on the amount of media in a given sector that any one person or entity can control, both periodic and ‘triggered’ plurality reviews are required. Triggered reviews are necessary, for example, in a case of market exit as the result of the closure of a media outlet. Triggered reviews are also needed in the cases of mergers or acquisitions, in order to ensure that a proposed merger or acquisition will not give one entity such an outsized share of the relevant market as to breach such a limit and pose the kind of threats we have outlined above. It is important that these cases trigger a plurality review by Ofcom automatically and without recourse to the Secretary of State. The discretion afforded to ministers under the current Public Interest Test has been a key factor in undermining the existing regime (see answer to question 11 for further details).

But this alone is not sufficient. The organic growth of an entity can also result in the same threats to those interests, where it grows above an agreed level. The only way to address the threats that size poses is to ensure that all means through which a given entity might reach disproportionate size – through organic growth, market entry, market exit or market consolidation – are covered by some form of review.

Ofcom has recognised this need and has recently proposed regular plurality reviews irrespective of merger activity, due to the fact that organic growth has been a significant driver of concentration in recent years.

Finally, because the media landscape is always evolving, in addition to reviewing the industry to ensure that caps are not being breached, it is essential for Ofcom to review media plurality as a whole on a periodic basis and recommend any changes to statute that may be required as a result of changes in the industry.

5. For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in section 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?

As stated in response to question 1, sufficient plurality can best be achieved with 20 per cent ownership caps in each sector. The key sectors for applying these limits are those through which news and current events are most commonly consumed: newspapers, online news, television and radio.

Defining the limits of “online news” is a more contested and complex area than newspaper, television and radio news. It is clear that producers of online news content must be covered. News aggregators can also hold powerful sway over the distribution and consumption of news and information about public affairs. To the extent they exercise strong editorial control, there is a powerful argument for including them as well. However, a careful inquiry must be undertaken to determine whether distinctions should be drawn within the class of...
entities that might be considered distributors of online news in order to determine which to cover.

6. How should ‘sufficient plurality’ be measured?

It is important that sufficient plurality is measured within each media sector: newspapers, television, radio and online. That is because limits on cross media holdings would not stop an entity from building dominance in a single market. Such dominance can result in an agenda-setting power over others, with or without cross media holdings. For example, Ofcom highlights that “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.”

Meaningful plurality also necessitates a number of providers within each medium because the different media fulfil different roles. Ofcom set these out in the 2012 report “Measuring Media Plurality.” For example, TV’s immersive nature shows consumers the news as it unfolds while radio news is extremely convenient.

An open question remains regarding how to measure size within sectors. There are two commonly used metrics: audience size and revenue. There are advantages and disadvantages with each metric, but ultimately either choice, clearly set out in statute and applied, would achieve the desired outcome of ensuring media plurality.

7. Should the BBC’s output be included in a review of it?

The BBC should be included when calculating the size of the market, in order to accurately understand each player’s market share, but it should not be subject to the ownership caps for several reasons. First, the BBC does not have an owner able to exercise editorial control, and editorial control is central to plurality’s concerns. Ofcom acknowledges this unique position, describing the BBC as “fundamentally different from other media enterprises … which typically have a controlling proprietor.”

Second, the BBC is subject to a substantial range of public interest regulation that make it exceedingly difficult for it to threaten democracy in the ways privately-owned entities do, to whom these regulations do not apply. Aside from requirements to maintain balance, impartiality and offer the right of reply in all its news programmes, the BBC is also subject to a range of quotas and governance requirements designed to ensure its accountability, internal plurality and diversity of output.

Finally, the BBC is operated with a stated mission of serving the public interest. The BBC Trust is held publically accountable for meeting the “public interest, particularly the interest of licence fee payers.” This is not the case for privately-owned media providers.

---

31 Ofcom, 2012, at p. 12
32 Ibid.
BBC Royal Charter 2006
http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/royalcharterssealed_sept06.txt
8. **How can internal plurality be sensibly measured against external plurality?**

Achieving external plurality is the key measure for ensuring that ownership concentration does not undermine democracy. There are several reasons for this. First, ownership can influence editorial content even when internal plurality is desired, and it is thus imperative that there be diversity in ownership – that is, external diversity.

Second, the main concern with excessive concentration of ownership is the political power that comes with excessive size. Internal plurality can do nothing to mitigate this concern. If anything, too much of a focus on internal plurality can distract from the more important plurality concern. This is because it is the power that comes with scale that media owners and editors have been able to exploit in building excessively close relationships with politicians.

9. **What structural and/or behavioural remedies are appropriate if insufficient plurality is found?**

In the context of merger reviews, the remedy is simple: in the event a merger would give the resulting entity greater than 20 per cent of the audience market share in a given sector, the merger should not be allowed.

In the context of periodic reviews of organic growth, if an entity is determined to have exceeded 20 per cent of the market in a given sector, it should be required to divest itself of sufficient holdings to bring each resulting entity back within the 20 per cent cap.

In the event that is not possible because, for example, an single entity exceeds the cap without any discrete products to divest (e.g., a single newspaper), another menu of remedial options should be available to mitigate the negative impacts that entity will pose to the goals of plurality policy. Those options could include requiring the construction of a firewall between ownership and editorial control, or requiring some regime of shareholder dilution to ensure no owner exercises effective control over more than 20 per cent of the entity.

10. **How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?**

This Inquiry comes at a time when revenue models for newspapers are collapsing to the point that the death of printed papers is being discussed. The press is facing a particularly acute challenge, but other segments of news media are also in flux. News provision plays a vital, positive role in democracy, so it is important to consider how 20 per cent sector-by-sector limits will interact with the viability of news provision.

In order to explore this issue, it is necessary to look first at what has happened in news provision. There is little question that there has been a steady decline in original newsgathering over many years that has impacted on the ability of the news to effectively scrutinise power and hold it to account. For example, in a recent survey of local newspaper editors conducted by the Press Association, more than half claimed not to scrutinise local
authorities as much as they did ten years ago.\textsuperscript{35} Another example comes from television: spending on current affairs programming by terrestrial broadcasters fell by over a quarter between 2006 and 2011,\textsuperscript{36} a figure which fits a general pattern of spending decline in the sector observed since the early 1990s.\textsuperscript{37} Cuts in operational journalism have also resulted in a growing proportion of ‘recycled’ news and ‘cut and paste’ journalism with press releases published as articles and a growing reliance on agency-produced content.\textsuperscript{38}

But so far economies of scale have not been shown to solve this problem by allowing media companies to invest more in journalism. This was highlighted in this Committee’s 2007-2008 report on the Ownership of the News: “Consolidation brings savings and in theory those savings can be invested in improved journalism. In practice, this does not always seem to have been the result.”\textsuperscript{39} In fact, none of the witnesses who gave oral evidence about costs savings spoke about how the savings had been invested in investigative journalism, local news, or any other journalistic activity. In contrast, as the Committee pointed out, several witnesses from the US including Darius Walker, New York bureau chief of CNN, and Leonard Downie Jr of the Washington Post, made the point that “consolidation has been bad for diversity and quality” and that “news and research were sacrificed, reducing quality and the number of voices available.”

Even absent market pressures, large media companies can decide to reduce investment in journalism. For example, in 2006 the Times reported that the Trinity Mirror Group, one of the largest owners of local news titles in the UK, had axed 300 jobs in spite of a ‘buoyant’ market.\textsuperscript{40} Similar cuts were made to the Group’s newly acquired Manchester Evening News outlet in 2010. The paper had reported significant profits and was well on the way to paying off the group’s investment. According to one representative of the National Union of Journalists there:

\begin{quote}
Over the past few years, journalists at the Manchester Evening News and weekly newspapers have seen that when business is good, management cuts our jobs, when business is bad, management cuts our jobs and then when business is improving, management cuts our jobs. Different management, same philosophy.\textsuperscript{41}
\end{quote}

In particular, it is important to highlight that cuts to operational journalism have often followed waves of consolidation in the local news sector, and these trends long pre-date the Internet.\textsuperscript{42} \textit{In the UK, a study on local news audiences commissioned by the Media Trust (2010) found that cuts which followed mergers and acquisitions left local news consumers with the perception that where they still exist, local news outlets are no longer ‘local’ in terms of the physical presence of journalists, and in terms of addressing the kind of issues that really matter to the community in question.\textsuperscript{43}}
In view of the evidence presented above, it seems highly unlikely that further consolidation can help deliver the kind of news that underpins a well-functioning democracy.

It is up to media companies to make a compelling case if they disagree. If such a case can be proven, then it is still necessary to have extremely robust policy to stop the exercise of unaccountable media power. Such a policy would take the form of strong test to determine if any merger that would breach the 20 per cent limit was in the public interest. Similarly any entity that already has now or in the future achieved more than 20 per cent of a sector would undergo a public interest test that could result in either forced divestment or special regulatory measures to ensure it operated in ways that promote rather than undermine democracy.

These tests and regulations would need to allow for significant input by citizens and must be designed in a way that has the minimum amount of political discretion to avoid the problems highlighted in question 11. Addressing the potential for politically motivated decisions will be very difficult given the natural desire for politicians to seek favourable coverage and the financial incentives for media owners to trade such coverage for decisions that allow them to grow.

It considering the potential objection that size may be necessary for news provision, it is important to remember media companies are not disinterested in this debate. It is not uncommon for regulated industries to argue that they cannot survive if proposed regulations are enacted. History has also shown that often once those regulations are enacted, they become the new baseline from which the market seeks innovations and rewards those who invent them. For something as central to our democracy as the provision of news and information, we should first agree upon the ground rules and requirements that must be met to ensure a vibrant public discussion, and then let the market respond to that – rather than the other way around.

Innovation is the best way for media outlets to rise to the financial challenges they face. Companies are already moving in this direction, testing everything from different approaches to paywalls to membership models and new ways to make money by better serving local communities.

Clear regulations based on ownership limits can actually contribute to this process in two ways. First, innovation innovates within the rules it is given. By setting ownership limits now, while innovation is still in its early stages, we would ensure that new revenue models are created explicitly to thrive within these rules.

Second, innovators require certainty and predictability. Ofcom itself recognises that structural remedies like a clear cap “offer clarity and certainty” – and at a time of market flux, this is a clear requirement for allowing our media to respond with confidence and continue to thrive. The current amorphous definitions of plurality, the fact that regulators and politicians alike can be bullied by large media entities to bend the rules in their favour, and the fact that our national media regulatory debate is on-going, all make it less likely that innovators will invest sufficiently in solutions that address our media problems.

---

44 Ofcom, 2012.
On the other hand, were we to leave the regulatory landscape as open as it is now, then current trends are likely to continue: consolidating, cutting investment in public interest journalism, bullying and capturing regulators and government, and declaring all along that only by giving them more leeway can we possibly save the hostage of our free press.

11. With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

The central problem with concentration of media ownership is the way it can encourage a reciprocal relationship between proprietors and politicians. Allowing politicians to decide how ownership limit rules are applied gives them the power to influence something of direct material interest to a proprietor seeking exception. This situation can lead to the trading of favourable coverage for favourable policy outcome. Even absent any impropriety it can lead to public perception of impropriety.

Lord Justice Leveson highlighted the way in which this has already led to a “lessening of public confidence in the conduct of public affairs, by giving rise to legitimate perceptions and concerns that politicians and the press have traded power and influence in ways which are contrary to the public interest and out of public sight. These perceptions and concerns are inevitably particularly acute in relation to the conduct by politicians of public policy issues in relation to the press itself.”

Two examples highlight this public concern. News Corp’s bid for full control of BSkyB is a recent example of ministerial discretion. Culture Secretary Jeremy Hunt proposed to approve the merger in lieu of a full referral to the Competition Commission. The close contact between a News Corporation employee and Secretary Hunt’s Special Advisor Adam Smith during this process was found to fall well outside the bounds of best practice and led to Mr. Smith’s resignation. It seems clear that but for the revelations of the phone hacking scandal, the merger would have been approved notwithstanding what independent observers considered to be its clear threat to plurality goals.

The full details of an older example came to light only last year. In 1981, when seeking to buy the Times and Sunday Times, Rupert Murdoch met Prime Minister Margaret Thatcher in a meeting that had been secret until her private files were released. This meeting was held three weeks before the first Cabinet level discussion of the takeover, where Thatcher opened the discussion by highlighting how one might avoid referring the bid to the Monopolies and Mergers Commission.

The decision not to refer the bid allowed Murdoch, who already owned the Sun and the News of the World, to build the largest newspaper group in Britain. At the time, its market share was about 28 per cent, but it now accounts for 37 per cent of all newspaper copies sold in the UK. The Labour governments between 1997 and 2010 proved equally deferential to the lobbying power of big media. For instance, in 2002 and 2009, the Labour government repealed conditions imposed by the Conservative government relating to DMGT’s acquisition of regional newspaper assets in 1994.

---

46 http://www.guardian.co.uk/media/2012/mar/17/rupert-murdoch-margaret-thatcher
In both cases, the ability of politicians to influence the outcome of a major commercial investment, combined with the secretive nature of high-level contacts, has led to a widespread public impression of impropriety and undermined public trust in both the media and politicians. It is therefore essential to make sure that the power to regulate ownership concentration is not wielded in a way that allows for too much discretion on the part of politicians.

Bureaucrats acting under clear guidelines that minimise room for discretion should instead be responsible for enforcing plurality policy. Imposing numerical ownership caps in statute helps achieve this objective. Because of its specialist knowledge and function, Ofcom is best placed to deploy these remedies.

12. To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

We welcome recommendations made by the EU High Level Working Group for Media Plurality but we believe the UK Parliament is in a unique position to lead by example in reforming of media plurality rules. The Leveson Inquiry has provided extensive proof of the problems relating to concentration of media ownership. Unfortunately, its remit was set such that it has much less to say about how to correct this problem – but it did come up with a clear recommendation that more investigation is required. We appreciate that this Select Committee is taking Lord Leveson up on that recommendation.

As this Committee likely knows all too well, reform must be achieved swiftly lest the public focus drift and the powerful media lobby wrest full control over the debate – a risk which is clearly playing out in the response to Leveson’s recommendations on regulation of the press.

The critical role this Committee can play is in helping to forge the emerging political consensus around 20 per cent ownership limits. The government is yet to bring forward the White Paper on Communications and there is a potential space in the legislative agenda for a Communications Bill. This Committee can help build a cross party parliamentary consensus that would speed the government’s work significantly.

The potential for consensus exists. Deputy Prime Minister Nick Clegg told the Leveson Inquiry he is open to a numerical cap. Labour leader Ed Miliband has indicated that a cap of somewhere in the range of 20-30 per cent could be appropriate. If all parties unite around a common figure, the media will not be able to single one party out for negative coverage. The aftermath of the Leveson Inquiry shows how vitriolic the media can become when powerful interests of some media outlets are threatened. We therefore urge you to coalesce around a clear limit to the amount of media any one person or entity can own for the good of the country.

13. What should the UK learn from international approaches to these areas?

49 Leveson 2012, at p. 1467.
There is much to be learned from international approaches to plurality policy. First, it is worth noting that many countries impose numerical ownership limits on media for the same reasons currently under consideration in the UK. It is also worth noting that while many other countries have problems with their media as well, it was here, where our ownership limits have undergone repeated and extensive recent deregulation, that we are experiencing a crisis in our media culture.

Perhaps one thing that can be learned from foreign examples is that it is more effective to impose limits on a sector-by-sector basis than on a cross-media landscape.

For example, in the US and Germany, cross-media rules have been hampered by complex and controversial systems of weighting according to the size and considered influence of each market which has done little to prevent some companies from accumulating vast shares of the media across markets.\(^{51}\) In the US, the number of companies controlling a majority of US media (including all publishing, broadcasting and entertainment services) decreased from 50 in 1983 to just 5 in 2004.\(^{52}\) In Germany, the Commission on Concentration in the Media Industry (KEK) was introduced in the early 1990s with an emphasis on cross-media regulation but this did not prevent just three companies amassing over 90 per cent of the television market by 2004.\(^{53}\)

The Italian example also shows another potential pitfall to cross-media ownership limits. Italy has long had in place a system that prevents any single entity controlling more than 20 per cent of the total media market. But the definition of the media market is so broad as to include book publishing and online advertising, and the 20 per cent threshold has been sufficiently high to ensure that no corporate entity has been subject to intervention since the rules were introduced in 2004. It is worth noting that Italy’s cross media ownership rules were a product of Silvio Berlusconi’s government. Berlusconi retains a controlling share of Mediaset, the largest commercial broadcaster Italy, and also owns the largest magazine publisher and the largest advertising company. According to a Freedom House report, Berlusconi’s return to office in 2008 “gave him indirect control over up to 90 per cent of the country’s broadcast media through the state-owned outlets and his own private media holdings.”\(^{54}\)

Regulating each sector independently removes these difficulties. If we ensure that no single entity has undue influence and control within any key media market, then the threat of undue cross-media power will be mitigated by default.

**Conclusion**

We recognize that the very nature of the problem we have identified makes the task of this Committee all the more challenging. What you do will undoubtedly be covered by the press and, if the press is displeased, covered in a negative light. The biggest media, with the most to lose from ownership limits, should be expected to be the most vocal and negative in their

---

\(^{51}\) Just, 2009.

\(^{52}\) Bagdikian, 2004.


coverage. If this Committee allows that coverage and pressure to scuttle this once-in-a-generation chance for reform, it will do a terrible disservice to our democracy.

Having seen the strong outpouring of support from the public for media ownership limits – not only the tens of thousands who have participated in Avaaz campaigns but the nearly three out of four who have favoured ownership limits in public polls\(^5^5\) – we are confident that if you lead, the public will support you. Indeed, they and their children who inherit the democracy we leave them will thank you. We are confident in your ability to lead on this issue, and our members stand ready to assist.

\(^{55}\) [http://www.guardian.co.uk/media/greenslade/2012/may/24/pcc-polls](http://www.guardian.co.uk/media/greenslade/2012/may/24/pcc-polls)
References


Enders & Goodall (2012) “UK Media Ownership”. Available at: http://www.endersanalysis.com/content/uk-media-ownership


Avaaz – written evidence


Rogers & Sedghi (2011) “David Cameron’s meetings with the media and Chequers guests: get the full list”. Guardian Online. Available at: http://www.guardian.co.uk/news/datablog/2011/jul/15/cameron-meetings-media-list-guests-chequers#data


Sparrow, Andrew (2012) “PMQs and Jeremy Hunt’s statement to the Commons: Politics Live Blog”. Guardian Online. Available at:
Avaaz – written evidence

http://www.guardian.co.uk/politics/blog/2012/apr/25/pmqs-jeremy-hunt-murdoch-politics-live


14 May 2013
TUESDAY 22 OCTOBER 2013

Members present

Lord Inglewood (Chairman)
Baroness Bakewell
Baroness Deech
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Bishop of Norwich
Lord Razzall
Lord St John of Bletso
Earl of Selborne

Examination of Witnesses

Ms Meredith Alexander, Campaigns Director, Avaaz, Professor Des Freedman, Department of Media and Communications, Goldsmiths, University of London, and Dr Justin Schlosberg, Department of Media and Cultural Studies, Birkbeck, University of London, the Media Reform Coalition

Q322 The Chairman: Can I then extend a warm welcome to our second panel of witnesses this afternoon? They are respectively Meredith Alexander from Avaaz, Des Freedman from the Media Reform Coalition and Justin Schlosberg, also from the Media Reform Coalition. I think you know what we are doing here and we are very grateful to you from what we have heard from you already. Perhaps, because we are being televised, if each of you just tell us who you are so that then it is on the record, then we can move into the hearing proper and hear what you have to tell us. Over to whoever wishes to start.

Professor Freedman: I am Des Freedman. I teach at Goldsmiths, University of London. I am the Chair of the Media Reform Coalition.

Ms Alexander: I am Meredith Alexander. I am a campaigns director at Avaaz, which is a civic movement of 27 million members worldwide that works to ensure that the views and values of the world’s people shape global decision-making.

The Chairman: The world’s people? That is an ambitious title.

Ms Alexander: 27 million members; it is pretty big.

The Chairman: Well, still. Justin Schlosberg.
Dr Schlosberg: I am a lecturer at Birkbeck, University of London, a co-founder of the Media Reform Coalition and I have had a particular role in co-ordinating research and policy recommendations in relation to plurality.

The Chairman: Thank you very much. Given there are three of you, you are not all coming from quite the same place, and so if we ask one person a question, if anybody else wishes to answer, please free to do so. Equally, if you do not think there is anything useful to add, I do not see any point in just speaking—if you will forgive me for putting it this way—just for the sake of it. But perhaps a good general starting point is to ask each of you how you see the context and level of media plurality in this country, both in respect of the national and regional media and any thoughts you have about it. Who would like to start?

Professor Freedman: I think there is a problem. This has been bothering me for many years and I think it has been intensified by what we have seen in the last couple of years with the Leveson inquiry and all the revelations from that inquiry. In many ways, I think of it as a bit like the 2008 moments for the banks: we are having a similar moment for the problem of the lack of pluralism and the concentration of ownership. I am delighted this Committee is taking place because I think it is crucial that we are discussing both the problems—how we measure pluralism and the problems both at a national level and at a local level—but also that we take very seriously discussions around the particular remedies that are needed to address the problem.

The Chairman: Meredith Alexander, do you want to—

Ms Alexander: I would say that the context is incredibly clear. The media is broken. If you look at recent pollings, only three out of 10 people trust the press. If you look at what we saw with Leveson—the hacking, the corruption, all of those scandals—it is clear that the situation is not acceptable as it stands. The statistics are also—

The Chairman: Can I just interrupt there? Do you think this is any better or any worse than it has ever been before?

Ms Alexander: I would say it has been heading in a negative direction, because if you look at the history of the last 30 years, it is a history of deregulation. Controls on foreign ownership, on cross-media ownership, on the amount of digital TV that one owner is able to hold—all of these have been dismantled and so you are now in a situation where three organisations control 75% of daily national circulation of newspapers. You have two organisations holding 50% of commercial radio listening hours and you have an effective monopoly on pay television. We have seen the problem, the scale of the consequences, through Leveson himself, and what Avaaz feels very strongly is that the best way to address this problem is to bring in a 20% cap to how much of our media anyone can own, because we see a clear correlation between the size of certain industry players and the outcomes in terms of illegal activities that have been brought to light by Leveson. We feel that if you ensure that no one person, no one entity, is able to own more than a fifth of any of the key markets—so that is digital, radio, TV and print—you will be able to ensure that you have sufficient diversity of voice for strong democracy and also that you prevent the concentration of power that we have seen growing since basically the early 1980s.

What you have been able to see, if you look at a series of sitting prime ministers, is that the level of influence that the largest news corporation in this country has had has been, quite frankly, shocking, particularly with regard to media policy, but also on other policies. That sense of a reciprocal relationship between the media and the politicians is the central problem that we feel needs to be addressed.
I say this not just as myself. I speak as Avaaz: I speak on behalf of 1 million members here in the UK, 88% of whom, when polled recently on this issue, want to see a cap on how much of our media any one person or any one entity can own. It is also a view shared by the general public. A recent poll shows that 73% of the UK public want caps.

Now, Avaaz members over the last several years have written into official consultations, we have made phone calls to decision-makers, and all of this has been absolutely about the fundamental problem of the size of a media empire allowing over-dominant access and control to our political sphere.

**Q323 The Chairman:** Do you want to add anything?

**Dr Schlosberg:** Just to say, following on from Meredith, that the real reason I think why we are here is that there could not have been more compelling evidence of the endurance of press power than that which was revealed both in testimony inside and outside of the Leveson hearings over the last couple of years, whether that is editors boasting about influencing Government policy, whether that is owners declaring that they expect their investment in newspapers to pay off in access to politicians, or whether it is politicians themselves—indeed, former prime ministers—who acknowledged that their views, in the words of Tony Blair, are bound to be affected by how they are treated by the media. I do not think it is an exaggeration to say that the intimacy between political and media elites that was exposed at the Leveson hearings is fundamentally undermining the fabric of British democracy. Indeed, I think it is a view that is quite widely held across the political spectrum and it is an indication that the existing plurality regime is unfit for purpose.

**Baroness Deech:** Can I just unpack that slightly? Are you saying that a newspaper with a very small readership—let us say the *Times*; it is not that great—is more influential than the *Daily Mail*, with millions and millions of readers? When you say that there is this influence, are you saying it is because of the extent of the readership or what?

**Dr Schlosberg:** It is a number of things. I think that there is a general misconception that press power has been in decline. Newspaper circulation has been in decline since the early 1950s. The fact is that most newspapers now, particularly the *Daily Mail*, are reaching far more people than they ever did prior to the internet, for instance; and as was mentioned in the previous session, television, which is still by far the dominant medium for news and information in this country, is still very much influenced by a press-led agenda.

**Baroness Deech:** I am still not sure quite where you think that political inference lies: in the size of membership or what? In size of readership?

**Dr Schlosberg:** It is definitely in reach, in terms of numbers and combining both online and circulation, but perhaps more importantly the influence is in the access that media owners seem to have, particularly the informal access, to prime ministers and politicians.

**The Chairman:** Just following on from that, is the relationship between the politicians and the media one that is bad for the media and/or bad for the politicians? Or is it a relationship that is bad for the wider public? Just so we are clear, what is the nature of the mischief you are pointing at?

**Dr Schlosberg:** It is quite simply an undermining of democratic processes. If policy-makers are being unduly influenced through essentially back channels of influence by media owners, of which there is a significant amount of anecdotal evidence to suggest from Leveson, then that is a fundamental undermining of democratic processes, in my view.
Q324 Earl of Selborne: But you are linking concentration of ownership with the lack of pluralism and yet you have accepted—or we all accept, perhaps—that the BBC, in all its manifestations, all its different outlets, has a very large share of news and current affairs. Does that lack of diversity of voice worry you?

Professor Freedman: I think the BBC is a very different body. As a public service organisation, you would think that by and large the British public would be delighted that the BBC is so popular. It seems to me if you read some of the leading newspapers of this country that they are fairly obsessed with the fact that the BBC’s popularity is a big problem. Of course, if the BBC’s ratings dipped, those people would be saying, “Why are we paying a licence fee in the first place? This is an outrage”. The BBC is regulated in many, many different ways. It has a form of internal pluralism because of the range of audiences, the range of platforms, the range of genres. It is held to account, I admit, not always that successfully and there are many, many problems with the way in which that self-regulatory mechanism is enforced, but nevertheless, formally speaking, the structures are there. That is very different to the kinds of accumulations of private press power, which we believe are less accountable.

If I may, Baroness Deech seemed slightly less than impressed with the answer to her first question, which seemed to be, “Do circulation and ratings account for everything?” The answer is no, it does not count for everything. It is clear that the Financial Times, with a tiny circulation, is extremely important, and the Times as well, because the Times is very prominent. I think that is what Sir Harold was saying just before: in every newsroom and broadcast newsroom, it is there. It is very important, despite not having a bigger circulation. But when it is part of an organisation that has 39%, for example, of the leading satellite broadcaster, when it is able to speak to many different audiences from the BBC to all the different demographics, then we have a problem. I think that one of the ways of dealing with it is to say—and this is exactly what Justin was saying—size is therefore a problem. It does not deliver us into nirvana and then we have lots of things to say about the range of measures we need, but if you do not tackle that then I think we are throwing away a giant opportunity.

Baroness Deech: The reason it came to mind was because Avaaz is here and it bases its standing on 25 million members, so implicitly in yourself, you are saying, “We 25 million, we are important”. Therefore size must matter to you or you must feel that just signing up loads of people is terribly important and should be influential, if it is not already.

Ms Alexander: I think the difference is that we are coming to sit in front of you and give evidence that will be on the record. Our members submit things. For example, we had hundreds of people writing in to the DCMS consultation just this week, giving their views on media ownership. Those will be a matter of public record. We are very happy to represent and support UK citizens in speaking to power. Rupert Murdoch, on the other hand, is on record in Leveson saying that he used to go into No. 10 by the back door. That was under both the recent parties who were under single control of Parliament. So I think there is a significant difference about size being represented in the public domain and size being built to have a power that is exercised in private, in the shadows.

Going back to my Lord Chairman’s question, you asked, “What is the problem? Is it a problem for the press or the media more generally; is it a problem for politicians or is it a problem for the public?” I think this is where the Ofcom definition speaks so powerfully. Ofcom says that the purpose of plurality is to ensure a variety of voices, a diversity of viewpoints and to ensure that no one media owner or voice is able to have too much influence over public opinion or over the political process and the political agenda. So that
definition for me speaks very powerfully to the public interest. I think it is the public interest that is most important here. Obviously it has negative consequences for politicians. I think particularly, for example, Gordon Brown has spoken very eloquently about his personal experiences at the hands of the press. I would imagine as political figures yourselves you may also have been exposed to or have colleagues who have been exposed to some of the less pleasant elements of the UK media. But there is also a negative consequence for the media.

As I said in my opening, three out of 10 people do not trust the press. That is not a great state to be in as an industry.

So I would say you have all three of those coming together, but the most important is the public interest. That is why we recommend a cap on how much of the media anyone any own.

Q325 Lord Razzall: Can I just come on to the cap, because if you have, as you probably have, followed the evidence we have had, we have had a number of people who have come and given an articulate defence of the cap—not quite as articulate as yours, but nevertheless articulate. We did not just shut up and say, “Oh, that is fine then. Let us just do the 20%, and that is the end of our inquiry” because we also had a huge amount of evidence that is saying the last thing we should have is a cap. That did not come from people who were interested in preserving a restriction on plurality; it came from people who had a number of reasons. I will mention three: first of all, the development of the new technologies that mean it is very difficult to know how things will develop. Secondly, there are problems with an organisation like ITN, for example. If you exclude the BCC, ITN probably already has more than 20% of the news in the UK. Thirdly, we have had arguments about the problems of success. Why penalise success? If somebody does not do anything—it simply becomes more successful and goes across the 20% threshold—it does not make sense to have a cap. So we have had a lot of conflicting points of view and unfortunately we have not been able to develop your certainty that the cap is the right thing to go for—not that we have necessarily decided but we have heard all sorts of arguments to the contrary.

Dr Schlosberg: If I might say, I think all three of those objections can be answered with a single response, which is that an ownership cap does not have to be a cap on growth. An ownership cap should be a trigger for intervention that prevents a single individual or entity from having excessive power or influence over a dominant media organisation or group of media organisations. So I think once you accept that principle each of those objections can be met. Certainly in terms of media reform proposals, the caps are designed to trigger public interest obligations; or if for instance—because we have advocated a structural ceiling on caps—say an organisation like ITN or the Daily Mail or any other media group should breach that threshold, it does not mean that we have to close down the entity in question, it means that we have to stop any single interest from having a controlling interest in that outlet; and also to protect journalist and editorial autonomy from owners. That is the most important thing from our perspective.

Ms Alexander: Our proposal is slightly different in that for us 20% is a hard cap. If you own multiple entities and you are above that 20% threshold in your market, you should sell. If you are a single entity and it is impossible to sell yourself, as it were, then you should be subjected to some of the kinds of controls that Justin talks about.

I would like to speak more directly to the specific points that you raised. The first is new technology. I would say if the last little bit of testimony from the previous witness highlighted how new technology and size do not necessarily go hand in hand. Those printers sounded fairly cheap to me. For some of the new players that are coming in, it is easier to enter a
market that is a vibrant market than it is to enter a market where there are monopolistic powers. So it is true you need to be concerned about the cost of new technology but it cuts both ways, whether you have large players or smaller players in the market, which would be more advantageous for new technology to arise.

The second question about ITN brings me back to the point about if you are able to sell you should do so. My grasp of the figures is not as correct as Justin’s, so I may turn to you on this one, but as I understand it most of the different franchises of ITV are owned by a single operator, but are couple are not. So it would be possible to look at a forced sale of one or two of those channels.

**Lord Razzall:** No, it is not the channel. ITN has to contract to provide the news for channel 3, Channel 4 and Channel 5. So if you exclude the BBC, of the UK terrestrial broadcasters they clearly have a monopoly.

**Ms Alexander:** Apologies, I misunderstood your question. In that case we would not exclude the BBC. We do not believe that the BBC should be subject to a 20% cap because, as Des very clearly pointed out, the BBC is subject to a range of controls. But we do think it should be considered for measuring the market because it is a massive element in terms of news provision and it is not fair to look at other news providers in its absence. So in that case ITN would not hit that threshold for us.

The final point that you made was about punishing success. I would say we are offering an incentive to grow to 20%. We are offering an incentive to stay at 20%. But we firmly believe that being above 20% of the market is contrary to the public interest. If it is contrary to the public interest it is not appropriate to incentivise it. This is the same kind of activity that you see when regulators act to prevent monopolies. It is in the public interest to step forward and intervene in that market despite what one or two proprietors might like in terms of their ability to grow. We would say that the case is the same here.

**Lord Razzall:** No, the regulator will only intervene in a monopoly if the monopoly abuses its dominant position. They do not per se intervene.

**Ms Alexander:** Yes, that is true, but we would say so far the evidence suggests that anyone who has built up this kind of size has abused their position.

**The Chairman:** Lord Dubs, I know, is anxious to come in.

**Q326 Lord Dubs:** Just picking up the points you made, there are different sorts of constraints on the television companies, ITV, Channel 4 and so on, than there are on newspapers. What you are saying, does it apply equally to say the television companies as it does to newspapers because we know that ITV, Channel 4 and Channel 5 are under much more severe constraints than any of the print media? Yet you seem to be talking as if they are equivalent.

**Dr Schlosberg:** From the media reform perspective, in our proposals we are quite clear that we need a distinct regime according to the particular sector. Clearly public service obligations extend beyond the BBC and broadcasting and that may well be a point that needs to be taken into consideration when devising specific remedies for concentration in television or broadcasting markets. But the underlying point is the same, which is that if you have a single group or entity that controls more than say 20% of an audience then we have to look at that. In particular, we have to look at who owns that entity, not at the entity itself. So if we are talking about ITN, we need to think about who has the dominant voice in ITN—who has a controlling share. At the moment both ITV and the Daily Mail General
Trust have what could be considered considerable shareholder influence at least over ITN. But I absolutely agree that remedies should be tailored according to the sector because they are very different.

**Lord Dubs:** There would be a world of a difference, would there not, if Murdoch were to convert Sky News into Fox News? That would be a sea change in the way television news is presented.

**Dr Schlosberg:** Absolutely, but he would not be able to under the current broadcasting code.

**Lord Dubs:** No, but assuming that it was legally possible, then there would be a massive change, would there not?

**Dr Schlosberg:** We are certainly not suggesting that there should be deregulation of broadcasting in terms of the broadcast code, or that there should be a complete harmonisation of the sectors. I think that there is still a very strong case, convergence aside, to say that there are distinct sectors that should be subject to distinct regulatory controls, particularly in terms of ownership.

**Lord Dubs:** Just as a little aside, your 30% of the British public, was it not trusting the press?

**Ms Alexander:** Yes, the press.

**Lord Dubs:** I would shudder to think what would happen if you applied that question to politicians, for example. I would put it to you that maybe it is not such a bad figure. Maybe a lot of the British public do not trust any of the institutions at the moment, whether it is politicians or Government or whatever.

**Professor Freedman:** This is an awkward thing to say in these surroundings but the least trusted institutions at the moment are estate agents, at the bottom sadly, followed by journalists and politicians. But our proposals here are designed to restore credibility to the media, which will be good. This goes back to Meredith’s point.

**The Chairman:** Is it a bad thing not trust people? To treat people with a degree of scepticism is probably quite a sensible approach to life.

**Baroness Bakewell:** I would have thought, Meredith, you could trade on the fact that people do not trust the press. We come to you to represent the other voices. I think a healthy and informed suspicion of what you read in the papers is good for democracy, is it not?

**Ms Alexander:** If you look at the smearing of the politician’s dead father, or the horrific chase for topless photos of an MP, or the examples that came out in terms of phone hacking, I do not think we are talking about a healthy mistrust here. When we say that only three in 10 trust the press, I think that is a pretty fundamental level of mistrust—not just with regard to the statistic but what they mean when they say “mistrust”.

**Q327 Earl of Selborne:** I wonder if we can just go back to the whole principle that you are trying to enunciate of the purpose of plurality policy. I think we have established that the purpose is to ensure a variety of diverse views. You said that if a single group or entity controls more than 20%, alarm bells ring, you look at caps and you look at everything else, unless it is the BBC. The BBC is an entity that controls more than 20%—it controls a lot more—but that is all right because that is regulated by a different procedure that you are satisfied with. So then the question to my mind is: what would owners have to do in order
to be regulated in such a way that they were also exempt from this concern that you have for an entity with more than 20%? What is it in the regulation of the BBC that makes it acceptable?

**Professor Freedman:** First of all I did not say I was satisfied with the way in which that regulation inside the BBC has been taking place. That is fairly self-evident given the number of crises that are taking place. So something has broken down there. But if you look at the different ways in which the BBC has been held to account—I think it partly explains why the degree of trust and credibility in the BBC is something like 50% of the public—it has gone down a lot, but that is noticeably different from the figures that are applied to the press because I think there is a degree of some kind of perception of ownership and influence over the BBC. But there are different ways in which they can be held to account, which at the moment we are deeply concerned cannot be applied in any kind of transparent or systematic way.

I do not know at what stage we should be wanting to talk about our, as we call them, behavioural obligations that we placed on some of these companies to start to improve—there are all sorts of questions of protection of editorial autonomy—which I think would do wonders to the credibility and trust that ordinary readers would have in those newspapers.

**Ms Alexander:** I would just come back to what you said about the purpose of plurality. There are two purposes. One is the diversity of viewpoints, and the second is ensuring that there is not excessive influence. Avaaz very strongly believes that that second one is the one that is most broken in Britain today.

If you look at the role of the BBC, there are a number of controls that it is subject to with regard to plurality of voice, which as Des says may or may not be as effective as we would like. The kinds of scandals that you see in terms in trading political influence for positive coverage are much less evident with the BBC, and in fact in general the history has been the other way—the BBC has been trying to be as unbiased as possible. So for us it is that second piece of plurality that is so important and that is one of the reasons why we are less concerned about the BBC.

**Earl of Selborne:** I really would just like you to explain what it is, therefore, owners, in order to demonstrate that they do not have undue influence, would need to do in order to get into the same category as the BBC?

**Dr Schlosberg:** Firstly, there is an important point to be made here, which is we do not believe that public service obligations, like the ones imposed on the BBC, should be imposed on, for instance, newspapers. We believe that there still is a strong case for saying that newspapers and online publishers should be free of any form of direct content regulation, which the BBC is subject to, but as a result of having that protection for publishers we need to have some kind of insurance that owners do not have excessive influence over the editorial content of their outlets. This, again, comes back to the principle of protecting journalists and editorial autonomy. How do you do that? There are a number of measures. One is to place controls in terms of editorial boards, and there are a number of precedents in regard to this, which can have veto power over the appointment and dismissal of editors. There is also a structural measure, which can ensure that the voting power of individual shareholders is diluted.

**Professor Freedman:** When you ask “What can be done?”—this is discussion that is ongoing—there needs to be more effective systems of transparency so that, for example, individuals like Mr Murdoch cannot just go through the back door. Those meetings should be logged. That seems to me to be one of the things that is coming out of the post-Leveson
environment, but for us that is not enough. What we are trying to suggest through our proposals is a series of predictable mechanisms, of clear white lines, that will allow media organisations to know where they stand and what they need to do, and that could be enforced by an effective regulator who had the will to regulate on those. We need a range of mechanisms. Transparency is crucial in terms of monitoring those relationships but in terms of the market caps, which are so often dismissed—and I never understand this; they are dismissed as unworkable and as a constraint on innovation all the time in the media—it seems to be that the media must be this special case, that they cannot work in the media, but they seem to be working in other areas. We have all sorts of obligations imposed by competition authorities, on supermarkets, on the banks, yet the media are pleading a special case. I think the media should be more important because of their impact on our ability to be citizens. Of course we understand that there needs to be some kind of clarity for media businesses, but there needs to be also some kind of accountability for citizens.

Q328 Baroness Fookes: I want to be absolutely clear about your proposal. As I understand it both organisations want to see a 20% cap, but MRC has an additional point underneath that where there are public interest obligations. I wonder if you could clarify that for me.

Dr Schlosberg: Yes. This is recognition of the fact that the problem is not just with Murdoch or with News UK or indeed with Daily Mail. There is a point where a newspaper or a news provider broadcaster on television or radio can have a share of an audience or a market such that it has what we would consider to be a significant power of voice—the power to influence, even dominate, public conversation. At that point we need to ensure that there are certain obligations attached to that power. The reason why we have a lower threshold at 15% is in recognition of the fact that there is a point where we need to intervene to ensure journalist and editorial autonomy in the day-to-day running of news organisations and a 20% cap because there is a point where we need to recognise that external controls, such as that, can only go so far. Behavioural remedies in practice can only go so far and there needs to be a structural remedy that ensures that the actual ownership interest of particular individuals is diluted or limited.

Baroness Fookes: I am not quite clear how this would be done. It sounds desirable but it sounds a bit like the old story of belling the cat.

Dr Schlosberg: There are a number of measures and we have based our proposals on what we think are the most reasonable and sensible measurements to rely on, which are the regular industry audits of the particular sectors, whether that is the Audit Bureau of Circulations for newspapers, RAJAR for radio and BARB for television. Each of those metrics is tailored in a particular way to suit the particular sector but they are independent, they are independently audited and they provide a regular and reliable picture of market power.

Baroness Fookes: Let us assume then that we have a clear indication of that: who arranges for the public interest obligations?

Dr Schlosberg: We believe that as far as possible both thresholds, the 15% or 20%, as well as the remedies that will be triggered by those thresholds, should be inscribed in statute. We should leave as little room for manoeuvre as possible—that is to say, discretionary power in the hands of either Ministers or regulators. We believe that it is the discretionary power that has been left in the hands of Ministers under the current regime that has been its most debilitating deficit.
It is important to have clear white lines inscribed in statute so that whoever is in charge of it, whether it is a plurality commission or whether it is Ofcom, does not have that much room to manoeuvre because at the end of the day what we are trying to do is prevent capture, which is the particular problem that was exposed in the Leveson hearings, and also politicisation. The problem you have when you have discretionary power in the hands of regulators and ministers is, on the one hand they could be captured by commercial media groups. On the other hand you can also have a situation where certain political or regulatory decisions unfairly advantage or disadvantage particular media groups. The only way to avoid that is to have clear bright lines in law.

Q329 Baroness Bakewell: I want to go back to this business of these caps because we have had quite a number of people come before us and say that the whole threshold business is unworkable, and I want to press you on that. They are not necessarily my views but I want to have the answer to them. They say that it is just unsuitable for the market dynamic of the media and that the exit or decline of one company obviously automatically increases the market share of another unwittingly. It does not have to do anything to do that, it is simply triggered and so its behaviour—its role—can suddenly become just arbitrary. So it can trip over a threshold simply because the market out there has worked in a particular way.

Dr Schlosberg: There is nothing particular about the media markets; it is just markets in general. When you have one player exiting, the shares of others necessarily go up.

Baroness Bakewell: Yes, I know but if you want 20% and somebody has a set 19% and there is an exit in the market and they suddenly have 21%, you are putting obligations on them that would not have existed before that they have neither earned nor deserved.

Dr Schlosberg: On the principle that because of the exit they have crossed the threshold that measures their influence over the market. I do not see that is—

Baroness Bakewell: As experienced by them that is pretty arbitrary. They did not do anything. They did not change their policy. They were not expansionist. They were not—

Dr Schlosberg: It has to be arbitrary.

Ms Alexander: I would argue it is not arbitrary. The key point is it is not punitive. We are not doing this to punish success. We are not doing this to limit people’s ability to earn money. We are doing this to protect democracy. Yes, it is difficult and challenging to draw lines in the sand but that is what legislators often have to do. The 20% figure has standing in UK law already. It has been used several times in the 1990 Broadcasting Act and in the 2003 Communications Act, so picking that 20% figure comes firstly from the UK law. It also comes from looking at the range of proposals that are out there made by politicians and experts alike. 20% feels like a good number and 20% is chosen to protect our democracy. It is not an arbitrary number and it is not a punitive thing for the company that grows above that threshold.

Baroness Bakewell: If you require them to divest, it is, is it not?

Ms Alexander: It is not punitive in intent. Its intent is to—

Baroness Bakewell: But it is in effect.

Ms Alexander: Yes, it is true that that is not something that that company is necessarily going to like. The argument that we are putting forward is that the public interest is sufficiently strong that it is appropriate to intervene in the market in that way.
Professor Freedman: I would love to hear the evidence provided by those people who have put those objections to this Committee, because we are surrounded by numbers. We are surrounded by these so-called arbitrary caps across the world. There is the famous 39%, which does sound slightly arbitrary, which dominates the American broadcast environment. There are huge arguments about whether that should have been increased 10 years ago. We have caps of 30% in France. I think it is triggered at 25% in Germany, 25% in Spain and we have the 20/20 rule in this country so numbers are everywhere. I do not know if this is a semantic difference or not. Chris Goodall put it to you that, “Well, maybe it is arbitrary and so what?” Somewhere in order for there to be certainty there has to be a number. I think for us it is not arbitrary in a sense that we just dreamt these things. There is something that feels, according to competition law as well as the public interest, that roundabout six organisations in a market is a good starting point. We would not say that is enough because you may have six newspapers all supporting the Labour Party or the Liberal Democrats or the Conservatives so it does not in itself produce the solution, but unless you say, “This is the white line that we are going to start from”, I think you are bowing down to objections that are bound to come because many people do not like their turfs to be encroached upon.

Baroness Bakewell: You say you would like to know the arguments of the people who have given us such evidence. You know what they are because you have mentioned them.

Professor Freedman: The evidence, not the arguments.

Baroness Bakewell: They do feel that it would constraint originality. If you are going well and your company is booming you do want to expand. It is a sort of creative urge as well as a financial one.

Dr Schlosberg: There are two things to say here. One is that it is not about punishing in the sense that one media group could be pushed over the threshold by the exit of another just as they could reach the threshold by doing very good journalism that helps them sell more papers or get more viewers or whatever, but that is not the point. The point is that we need to ensure that when you have that dominant share of a market in media, and given the concerns surrounding plurality, there are proper controls in place such that individuals do not have a disproportionate influence on output. That is the principle. It is not about penalising success. It is not about setting arbitrary limits. It is just about enforcing a principle that I think is pretty consensual, certainly judging by the written testimony provided to this inquiry.

Q330 Baroness Healy of Primrose Hill: You have all argued very strongly for the caps, which the Committee understands, but some have argued that setting a share of designated markets above which obligations begin to be introduced, or indeed divestment or carve-out is required, penalises success—I know you have argued about that already but I would like you to go into it a bit more—and intervenes in the incentives that media enterprises face to gain popularity through better serving their customers. How do you respond to this view, because should we not encourage media enterprise to serve their customers better and the whole issue of freedom of the press?

Dr Schlosberg: This is one area where the media markets are unique in so far as the incentive simply to accrue profits by gaining popularity is not the exclusive incentive for most media proprietors. Indeed I would say that most media proprietors would argue that there are all sorts of incentives for what they do, not least in contributing to public debate and informing people in terms of the citizens at the ballot box. In respect of the issue to do with penalising, again coming back to this issue of penalising success, it is absolutely limited to reducing the influence of particular individual interests. You can look at that as a form of
punishment or you can look at it as simply a protection for plurality. I think that is certainly where we stand and I think a lot of people share that.

Professor Freedman: If you take an example, chosen randomly: let us take Mr Murdoch's growth of the *Sun* from 1969 up to today and the huge increase in circulation that he has presided over. Would our proposals put an end to that? They would not, but in recognition of the powerful role that the *Sun* exerts on the national conversation there should be some kind of obligation to have the sorts of obligations that we have said, or to say that beyond a certain point there becomes a problem. Now I do not think that is just penalising success at the expense of all kinds of innovation. You would have thought that anyone that has that kind of power would welcome the opportunity to enforce a sense of responsibility towards the readers and also towards their own journalists as well. It is worth bearing in mind that from memory the last three titles that have been shut down in this country have not been shut down because of the proposals of Avaaz and the Media Reform Coalition. They have been shut down because of very basic market considerations. The *News of the World*—well, that was not basic market consideration; that was as a result of many of the things that we are aware of—but *Today* and the *News Chronicle* in the 1960s, these were market considerations. In terms of going back to the problem—the lack of credibility that newspapers and to a certain extent parts of the media more generally have—I think this is a means of restoring that credibility and energising some of these companies. It is not just penalising success.

The Chairman: You wanted to say something?

Ms Alexander: I just wanted to come in on one particular point on that, which is Avaaz, perhaps contrary to what you seem to suggest, really, really believes that a vibrant media is essential for democracy. If you cannot share views, hold debates and hold politicians to account in a public forum, democracy is always going to struggle. So we looked at this question from a different perspective. We thought about not so much what does it do for success, because we have already covered this, but also what about market failure? We all know that circulation numbers in print are declining for the industry as a whole as well as for individual titles. It is a problem that we are all very concerned about. One of things that we wanted to do when we considered caps was think about how caps would play into this. Would caps be something that would make it harder to maintain viable titles? If so that would undermine the healthy press that we need for an effective democracy. So we commissioned Enders Analysis to do a piece of research on this, which is going to be forthcoming shortly. They went through the different scenarios: if you consolidate by buying a paper to close it; if you consolidate by buying a paper to run two titles with a single newsroom; or if you consolidate by buying a paper to run it as an additional paper, as was done for example with the *Times* and the *Sun*. What they did when they went through all of these is to recognise that in none of these cases will consolidation provide relief to the financial troubles the newspaper industry is facing. So we were concerned not just about what does this do for success, but what does this do in a market that may be failing. What we found is that really caps are not going to cause a problem. That was one of the things that made us feel particularly comfortable about caps as a way forward.

Dr Schlosberg: One very quick, but I think important, point: even if we discount the issues to do with democracy and pluralism more generally, on the question of simple growth and innovation, surely growth and innovation are not served by allowing unchecked concentrations in market power. Surely they are not served by having a plurality regime that is, as it is now, very uncertain and left to the arbitrary decisions of policy makers.

The Chairman: Bishop, I know you want to come in.
Q331 Bishop of Norwich: I am very clear, and I am grateful for the clarity with which you have talked about thresholds and caps. But what I am less clear about is what sorts of public interest obligations you would propose on those who, say, have 18% of market share and how such obligations would be applied.

Dr Schlosberg: Yes, to be fair we have been deliberately not as explicit in those terms because we acknowledge that there is room for debate about the range of measures that could be included. One of the things that we have emphasised is the need to have measures in place that protect editorial and journalistic freedom. There are precedents for this, not least what was going to be the undertakings of News Corp in respect of their proposed bid for BSkyB and having a kind of enforced distance between News Corp and Sky News in particular. Also, at the regional level, since 1994 the Nottingham Evening Post has had an independent editorial board that has power of veto over the appointment and dismissal of editors. We have talked about the possibility of having staff panels of journalists that have this power, who by vote can essentially veto a proprietor’s appointment or dismissal of editor. So I think that is a starting point but there are potentially a whole range of measures that could be in place that do not intervene in the content of the media organisation such that public service broadcasting regulation does, but do ensure that there is that gap between those who own in the media organisation, those who pull the purse strings, and those who produce its content.

Professor Freedman: That independent editorial board was called for by what was the Monopolies and Mergers Commission and we do not see any reason why an Ofcom, or an Ofcom-type regulator, could not in the 21st century start to imagine some very effective obligations in partnership with the organisations.

Bishop of Norwich: I imagine if Sir Harold Evans was still here he might be a bit sceptical of what you have just said, because he did tell us that he did not think internal freedom could be acquired by external rules. What is your commentary on his experience?

Professor Freedman: He has famously said that, but I think my short response would be that you cannot write off the obligations; you can write off the enforcement of those obligations. I think that when it came to some of the undertakings promised by News Corp over the Wall Street Journal, they simply were not strong enough. But often it is a question of enforcement. I think there has to be political will on the part of those organisations that are charged with doing this, otherwise of course there will be a lot of wriggle room. What we are trying to is reduce wriggle room. We want to make these rules transparent in their creation and in the way in which they are enforced.

Bishop of Norwich: Going forward, in relation to the printed media, do you share Harold Evans’s analysis of the continuing significance of the print media and that there will be lots of people there who want to own newspapers even though they will lose them loads of money? There is no point in carrying on talking about this unless there is a whole host of people there who do not mind losing vast amounts of money in supporting print media.

Professor Freedman: There are many people in the US in particular who are buying newspapers for political influence, as he said. There is a famous example of an academic book that has dated the publication of the last newspaper—I cannot remember—it is June the something, 2044. I think that is a rhetorical way of suggesting some of these problems. But our research does not show that. Of course there is going to be huge and dynamic change inside the media industries but the need for news that is relevant to people and that is produced on a platform that is relevant to them will long continue. Whether that is the newspaper as we know it, I would not want to swear to. What I would swear to is that
research we have done shows there is a tremendous appetite, partly for the national news and certainly for local news. That is why we are so concerned that that is a hole that is not being filled and, as many of you on this Committee know better than I do, the crisis inside the local news has real ramifications for democracy.

Q332 Lord St John of Bletso: A central theme of discussion today has been the lack of pluralism, and a lot of the discussion has been around caps: the MRC recommends 15% and I think, Ms Alexander, you were saying you wanted to see a hard 20% cap. Does the MRC 15% cap refer to revenue or converted audience share metrics?

Dr Schlosberg: Our proposals are based on a kind of two sides of the coin model. One is that we agree with people like Enders Analysis that there should be a cap on the share of the total media market that any one organisation can control, and that the only practical way of measuring and enforcing that is to base it on revenue and the total media market definition which Enders have come up with. We believe that is a necessary but insufficient measure and that we need alongside that caps within individual markets, and that the most effective way of measuring those caps is based on audience metrics. First, as I said earlier, that is because we have these reliable independent industry audits, at least for the press and broadcasting sectors. Secondly, it is because we need some kind of recognition in plurality policy that it is not just about market power in an economic sense, but is about market power in the sense of having the power of voice and the power to influence and dominate public conversation, and we think that audience metrics are the best means of measuring that.

Lord St John of Bletso: On the issue of enforcement, you were talking earlier on about trying to eradicate wriggle room. Is it realistic to create rules to eradicate wriggle room?

Ms Alexander: Yes. I think for us that the current default is a deregulatory one and we would like to see the default to be a clear, bright 20% line.

Just to answer the question you were asking previously: Avaaz does not yet take a view as to whether that should be by revenue or audience share. They both have advantages and disadvantages.

What is important is having a clear regime to reduce first of all the possibility of industry capture—and this is a common feature with regulators, that they are captured by the industry that they work with—and particularly in this case the political threat of the reciprocal relationship between politicians and the media. So that is why we would recommend first of all having this 20% cap, as something that is very clear and easy to understand whether it is being met or not.

Second, we would place the enforcement power within the hands of the regulator rather than giving it to the minister. That is because the minister is always going to have much more reliance on the press. Their chances for re-election; their position within their party; their future career path, as it were, has a lot more to do with how they are covered in the media whereas civil servants obviously sometimes are subject to press interest, but there is much less possibility for that reciprocal relationship to arise.

Q333 The Chairman: Can I come in here? There is a thing that has been puzzling me for a bit, which is on the one hand there is quite a lot of talk about strict caps and on the other you mention discretion and judgment as to what happens once the cap is superseded. Are you not getting into a disjunction because you may have a very strict rule up to which certain things happen, but then if what happens next is very vague, perhaps you are just eroding and muddling the issue?
Ms Alexander: I think the proposal for caps is quite clear. If you are a proprietor who owns multiple entities, whether that is multiple radio stations or multiple print titles, you need to sell to get within the 20% cap.

If you are a single entity who cannot sell yourself, probably an equity carve-out is the most appropriate. But there are other potential options such as Justin talked about with regard to things like having readers’ editors or having editorial control boards. So I think that one is pretty clear cut.

The Chairman: So you basically would like to see a system that does not have much discretion in it.

Ms Alexander: That is correct, yes.

The Chairman: Are you all agreed that in terms of what happens when you get to a certain point, bang: that is the rule; it happens.

Dr Schlosberg: I think as far as possible. I think we need to recognise that in the real world there will have to be some room for discretionary power, which is the reason why it would need either an Ofcom or a plurality commission to oversee it as well as to enforce it. But I think there is a difference between saying that we need, for instance, tailored remedies for different sectors to acknowledge the differences in different sectors and saying we want to minimise discretion. Just because we are having essentially a lot of definitions, if you like, that we want to have put into statute, that is just a recognition that ultimately this is a complex business and there is no way of getting around it. If you want it to be effective it has to be complex. But yes, there will always be some necessary room for discretion just as there is in the current regime, but we think it should be a lot less.

Professor Freedman: I would say there should be discretion in the discussions but clarity in the enforcement.

The Chairman: Fine. I just want to be clear in my mind. That is a clear point you have made.

Ms Alexander: I think there is a little bit of distinction on this one in particular between us. Our general analysis of the problem is absolutely the same and our commitment to 20% caps also is something that we share. But the structural remedies that would be applied between the 15% and 20% is something that is more particular for Media Reform Coalition.

The Chairman: I am not trying to drive wedges between you.

Dr Schlosberg: I think a useful analogy would be something like the broadcast licensing regime, whereby Ofcom are subject to quite clearly defined restraints in statute, for instance, as to what can be licensed when—the distinct regimes for community licensing versus commercial radio licensing for instance. Of course, when it comes to deciding on who gets a licence then there is an element of decisionary power there. I think a similar situation would pertain in a plurality regime where there will be a range of options, or a limited range of options, that perhaps are applicable in a certain case and a regulator may then have to decide which is the particular best option in that case.

Q334 The Chairman: If I asked you what you were thinking about cross-media things I think you would say to me that exactly what you measured and how you measured it might be things that you could not go into in that much detail about now, because it would depend on the circumstances of the case and the rules that are set up to deal with the way the market pertained at the time. Is that right?
Dr Schlosberg: Well, we have relied on the Enders proposal in this respect, because we think it is the most practical and reasonable solution, which is to come up with a total media market definition.

The Chairman: Can I just stop you there? When you say, “total media market” is that the total revenue of a company that might describe itself as a media company? Or is it the total revenue of any organisation that may be doing various other things and you would chop off the bits that were to do with providing fridges or cars, whatever it would happen to be?

Dr Schlosberg: The Enders proposal looks purely at what they consider to be in effect media activities. But they include a very broad spectrum, from social media to news and current affairs.

The Chairman: Things like ISPs or even aggregators’ advertising revenue might be a bit different from revenue derived from subscriptions to newspapers.

Dr Schlosberg: Yes, but they total everything.

The Chairman: Yes. You are using a very wide definition from which you would work.

Dr Schlosberg: Yes.

The Chairman: That is what I am trying to discover.

Dr Schlosberg: Yes, and the importance of that is to recognise that while news and current affairs have a special responsibility, in terms of informing citizens in a democracy, there are other types of media that have a wider contribution to plurality, and indeed have some kind of gate-keeping power. I am thinking particularly here of online intermediaries. We do need a holistic plurality policy that deals with both ends of that spectrum.

Professor Freedman: That is something that again puzzles me, because the people that make objections towards market caps and so on say that it is not appropriate, given convergence. Well, this is our response, which is to recognise convergence and say that it would be foolish at the cross-media level to separate out those innovations.

The Chairman: Without wishing to go into the detail—because I do not think we possibly could now—you are quite satisfied by the techniques for equating viewing of a website to viewing on a television or reading a newspaper, because you have to convert it all into single currency at some point.

Professor Freedman: I think no one is satisfied with it but many people have said that the best way of moving forward is to recognise that these things are very hard to measure, but for the purposes of the Enders proposal it is worth putting them under the same umbrella.

Dr Schlosberg: That is why they concentrate on revenue, precisely because audience metrics would be much more complicated to aggregate in that way. They just take the total money that comes in from media activities.

The Chairman: It may be simpler to do the arithmetic, but it may give you a distorted picture in that, for example, it may be much easier to earn a pound in television than it is to earn a pound off a website, just to give random hypothetical examples.

Ms Alexander: This takes us back to one of the reasons why we support sector by sector caps, that you are not therefore comparing apples to carrots, essentially.

Q335 Bishop of Norwich: I am still anxious about this in the sense that your real concern is related to democracy and to influence. One of the very striking things—I think it was in David Elstein’s statistics that he gave us—was this discovery that 60% of the news and
current affairs that people hear, listen to and read all comes from the BBC. If you look at thresholds there, News International has something down around 7%. It is how you judge influence, is it not? It is influence more than finance that is at the heart of your concern.

**Ms Alexander:** It is, but I think that the role of the media acting as a gate-keeper, and to a degree an opinion-former, for the voters and that link between the voters, the people and the politicians is the piece of the puzzle that we are particularly concerned about. What we want to see is the media absolutely being able to be a stick to beat politicians with when they do something wrong, but fundamentally for the media to act as that link between politicians and the people, not a lever of control for proprietors to operate political influence. That is what has been happening now.

Back to the question about how would we create a regime in which a commercial operator would be subject to the same sort of thing as the BBC: the ethos behind the choice of being a media proprietor is genuinely quite different from the ethos overall behind working at a high level at the BBC. Numerous people have gone on record talking about how proprietorship is about control. At the end of the day the thing a proprietor likes, the things that excite them about their ownership of the media entity, is the control. As Des said, if you look at the United States there have been people who have been coming out with very explicit political agendas. The Koch brothers who have been trying to buy a series of papers in the United States have a very explicit political agenda that they are trying to use that set of papers for. It is that piece that we are concerned about.

**Bishop of Norwich:** Yes, but it might just be that the public are more intelligent than the politicians in relation to media proprietors and do not assume that they have a power that they do not possess.

**Ms Alexander:** The key here is that the politician is the one who is making the decision. If the politician thinks that the paper has the ability to make or break their political career they will take that into consideration when they make decisions. If you look at some of the testimony in front of Lord Leveson you have David Cameron saying, hand on heart, “I think all of us did too much cosying up to Rupert Murdoch”. You have Lord Mandelson speaking with regard to media reform, “There was no question of principle. We were scared.” These are the sort of things that they say. Whether they are right or wrong, that power is being exercised over them because they believe it to be the case.

**The Chairman:** Was the power being exercised over them, or had they persuaded themselves of something that was not true?

**Dr Schlosberg:** Either way.

**Ms Alexander:** Yes, a little bit either way.

**Dr Schlosberg:** Either way, it is a problem.

**The Chairman:** Well, no, they are slightly different, because one is possibly susceptible to people doing it: the other one is rather more different.

**Bishop of Norwich:** It was not the Sun wot won it, after all.

**The Chairman:** Yes.

**Dr Schlosberg:** Well, the point is these are things that are very difficult to substantiate empirically. What we certainly know from anecdotal evidence, as has been said both in the previous session and this one, is that the BBC is very influenced by a press-led agenda. If you walk into any broadcasting newsroom, very often the first thing you see is a big table...
splashed with a copy of the morning papers. It is slightly misleading, with the greatest respect to David Elstein, simply to quote a distinct share of readerships in relation to influence because there is clearly a degree of cross-media influence.

The second point to emphasise, as Sir Harold said previously, is that there is a completely different context, in terms of the influence of, say, newspapers compared to the BBC in that the newspapers are very strongly editorialised—indeed, they campaign. It is one thing to say that the BBC has 60% share of news references, but it is another thing to say that 20% or 30% of the rest of those references come from newspapers that are peddling particular agendas. I think that is why we need a distinct regime.

**Professor Freedman**: The BBC has been charged with reaching the majority of the British population. If it does not do so there is a problem. I do find this slightly baffling, as long as the way in which it does that is subject to effective oversight, which brings us back to a different problem. As Justin says, this is very different from what we would see as the corrupting influence—not necessarily on the public; that is a slightly different discussion—but certainly on politicians themselves. Having studied it we do not know whether it was the Sun wot won it or not, but many politicians do not want to take the chance.

**Dr Schlosberg**: I would submit to you that if Rupert Murdoch or the like or Richard Desmond was to be offered the kinds of regulation that the BBC is submitted to, in order to have the freedom to have however much proportion of whatever market that they want, they would not accept it, and I think for good reason. I think we need those differences in how we regulate different sectors.

**Q336 The Chairman**: Time is moving on and we are not quite finished, sorry. We would be interested to know your views and I do not know whether you want to ask it, Graham, or me, but it is a question of: when you have these important decisions to be taken, should it be a regulator who takes it, a Minister, a plurality commission or some sort of hybrid? We kept on coming back to talking about important decisions, and it is quite important that an important decision is taken in the right way. Do you have any thoughts you would like to share with us about that, please?

**Professor Freedman**: I think you have to start from principles, which is that the decision has to be taken in a way that is as exempt as possible from capture and political interference. I would start from that and then design the most effective structure around that. That leads me to the conclusion that it would be highly unlikely or undesirable for a Minister to have complete control over this.

**The Chairman**: Complete control or some input?

**Professor Freedman**: Well, it is going to be hard to stop them having any input, but their input needs to be into a structure that is already there, which is transparent and clear. That seems to me the starting point. It should be overseen. Whether it is overseen by an Ofcom or an Ofcom-type structure, I am not that bothered about, as long as it is a structure that is able to reflect some kind of public input into it and to follow up on what happens afterwards. Too much within the Monopolies and Mergers Commission they may have laid down certain obligations, but then it seems to me they disappear. It is the teeth of the regulator and their willingness to pursue and make sure that the caps are adhered to—that the obligations from the MRC perspectives are followed up.

**Ms Alexander**: As I was saying earlier, I think really this should absolutely be in the hands of the regulator, because a Minister is much more likely to be in a position where the influence
of media has a vast influence on their future career, whereas for civil servants that is less the case.

**The Chairman:** The objection to that—I am not saying whether I subscribe to it or not—of course is that it is not very democratic in a society where things go back to the ballot box.

**Ms Alexander:** Not necessarily. If your regulator is applying clear limits as put forth in statute, the accountability goes through the voters to Parliament who put down that law. If you have clear bright lines, it is still extremely democratically accountable.

**Q337 The Chairman:** We spent a bit of time talking about the fact that you probably need to have a degree of discretion at various points in the process—not necessarily massive discretion, but nevertheless discretion there to deal with the precise way that circumstances respond to thresholds or what have you. Of course then it is less democratic, is it not?

**Ms Alexander:** The other trade-off is that you are working with experts who are applying a legislative framework that is accountable to the public, rather than working with somebody who can be subject to backroom dealings and influence. If you look at the history of the BSkyB bid, the number of text messages and some of the inappropriate comments and all kinds of stuff that went on around that, you cannot guarantee that that will not happen when you have a regulator, but I think the chances are less than if you have a minister in charge of the process.

**The Chairman:** Fine.

**Dr Schlosberg:** A lot of this is about opting for the lesser of two evils. There can be nothing less democratic than the way in which certain politicians, as we have seen, have been unduly influenced in their decision-making. I think there is nothing worse for democracy than that, in that sense.

**The Chairman:** Although you could say that the great thing about democracy is that if one of these politicians takes some very venal decision he will get chucked out by the electorate, which would not happen to a regulator necessarily.

**Dr Schlosberg:** That is not necessarily the case, if the means by which a decision was arrived at were not adequately transparent, and this comes back to the point of clear bright lines. The only way to guarantee accountability in the process is to have those clear bright lines so it is clear to see why a decision was taken, because the rules and the definitions already exist in statute.

**Professor Freedman:** Also, we can do so much better than that. Why set up a system where we wait for the person to fall and then say there might be some kind of justice in the future? Why not set up a system in discussion with a range of stakeholders, but one that firmly tackles the problems that we have seen so visibly in the last few years of accumulated press power, put into practice these very clear lines and make sure that you have a regulator with the teeth to want to do this? That seems to be much more democratic and effective than just saying, “Well, we may be able to deal with this in the future”.

**The Chairman:** That is a fair point.

**Professor Freedman:** I know we are running out of time. We must seem so negative, and in fact we are very optimistic people. We have not had a chance to deal with the positive aspects, which are all about promoting diversity. We have talked about stopping the problems. We could speak for hours, I am sure. It would seem a shame if you thought that
that was all we had to say. In our proposals we are certainly very interested, and looking around the world as well, in the wonderful initiatives that are taking place, to support new forms of diversity.

**Q338 The Chairman:** Do you have any thoughts about what I might call new and alternative ways of bringing material to the consumer? I am using the words of the marketplace—bringing the media to the public. Do you have some views about ProPublica and things?

**Dr Schlosberg:** Yes. I think that is exactly the kind of thing that we are thinking about. Indeed as this Committee’s final report and the recent inquiry into media ownership talked about, any plurality policy has to, as Des said, address the two sides of the problem, which speaks to Ofcom’s definition of the problem: one that we have talked about so far, in terms of media power in general, and the other in terms of promoting diversity of output. I just want to make one point here, which is in response to Sir Harold’s comments on the issue of public subsidies for the media. I think that there is quite a commonly held misconception that public subsidies necessarily compromise the independence of beneficiaries. Certainly that may be the case in countries where there is not a history of democracy in general, but if you look at the actual examples of measures like Freedom House and Reporters without Borders and the freest media systems in the world, they all have much more in the way of direct public subsidies for the media than we have, including countries like Finland, Norway, the Netherlands and indeed our closest neighbours, France, as well. We are very much behind the curve on this.

**The Chairman:** Right. You feel this is a development you would like to see.

**Dr Schlosberg:** Absolutely, yes.

**The Chairman:** Just thinking about what you have been saying, you talked about these clear lines. Presumably from time to time they would have to be reviewed, because the world is changing all the time. Ofcom has talked about plurality reviews and so on; do you have any particular thoughts about them?

**Professor Freedman:** Ofcom has a wonderful research department. I think that is one of the things that they should be entrusted with. In fact I do not think we have enough data about all sorts of aspects of this, and that needs to be done much more regularly and thoroughly. The problem is that that should not be done at the expense of the action itself. I am all for plurality reviews, but if that is the final objective it is not enough. The problem is too big for that. We need the caps, and for us we need the obligation.

**The Chairman:** You need the caps to be triggered as well as possible ongoing plurality oversight?

**Professor Freedman:** Absolutely. They have to be working together and it worries me that the way in which the reviews have been suggested is often at the expense of the remedies.

**Ms Alexander:** Absolutely. We would say that market review should be something that is ongoing, not just triggered by a merger or an exit. We would see the purpose of that review to be showing that the 20% caps are being adhered to.

**Dr Schlosberg:** If anything I think that both of our proposals will make those reviews more effective in so far as they offer some very clear definitions of what to look for in those reviews. Again, I think that is what would enhance the accountability of the process as a whole.
The Chairman: Fine. Well, thank you. We have overrun and I have to draw the hearing to a conclusion now. So thank you—unless you have something burning that you want to just let tumble out now.

Ms Alexander: One point that I have not had a chance to say so far is it is incredibly powerful that this is a conversation that is happening in the House of Lords. This is a difficult issue for your colleagues in the other place to deal with. The media influence on their career is stunning and their fear of media influence, whether justified or not, is extreme. The chance for media regulation does not come along very often; you need the public onside and right now you have it. You have 73% of the public wanting these caps. You need clear evidence; you need experts coming in behind you. With the Leveson inquiry you have that support. You also need the courage to act. The thing that I would love to leave you with is that you have in your hands the future of the democracy. You have in your hands the hopes of people right now to see a better system for our media. You also have the capacity to take this forward, so I am looking forward to seeing what comes out of this review.

The Chairman: Thank you.
Professor Steven Barnett – written evidence

Introduction and personal background

1. Over the last 20 years I have published a number of articles, papers and book chapters on media concentration, ownership and plurality, and have particularly focussed on this area over the last five years. In 2007/8, I was specialist adviser to this committee for its inquiry on News and Media Ownership, which made several recommendations that proved to be prescient. In 2009 I was commissioned by Ofcom to write a working paper on media plurality and democracy, looking in particular at the implications for local journalism. During 2009-10 I was awarded a grant from the Arts and Humanities Research Council (AHRC) for a study on media ownership, journalism and diversity. I have just started an 18 month study for the AHRC which will examine new policy approaches to media power and plurality for the 21st century. My latest book discusses both the limitations of relying on new media and convergence to solve the plurality conundrum, and the importance of maintaining an impartiality regime for broadcast journalism.

2. This submission looks first at problems with the current plurality regime, then proposes a number of policy initiatives that the committee might explore. It then addresses issues of measurement, the BBC, impartiality rules and finally other structural and funding initiatives. In the course of my oral evidence to the Leveson Inquiry for module 3 (on plurality), I was asked by the judge to draft a possible statute on media plurality which might deal with some of the problems I raised. I have submitted this separately.

Problems with the existing plurality regime

3. The Leveson Inquiry heard abundant evidence from serving and former government ministers about the political damage of concentrated media ownership. A significant reason why systematic breaches of ethics and culpable — even criminal — behaviour were neither properly investigated nor adequately penalised was a deep-seated fear within the political classes of the power wielded by media conglomerates whose expansion went unchecked. It is therefore essential not just in terms of fostering a multiplicity of voices in a democracy, but also in terms of the dispersal of unaccountable power that media ownership issues are tackled and an effective and robust policy regime is established.

4. There are three further reasons for ensuring that adequate structural and legislative mechanisms are put in place to promote the maximum possible plurality of media enterprises.

i. Plurality goes beyond the narrowly political and embraces the wider cultural environment. A corporate culture can determine editorial direction across a range of media outputs (including, for example, drama and comedy), thus helping to shape the ideas that circulate within the public sphere. There is a strong argument to think beyond news and current affairs to the ways in which a small oligopoly of media organisations can define the national conversation.

ii. All media conglomerates will exploit their own media outlets to promote their own products and ignore or disparage those of their rivals, thus entrenching a competitive advantage and potentially further reducing the number of significant voices. There are therefore economic as well as democratic arguments for intervention.

iii. Beyond their influence over editorial content, media conglomerates can further consolidate their power through undue pressure on regulators. Lengthy and costly litigation drains the resources of regulator and competitor parties. Unchecked dominance thus confers an unfair economic advantage in the competition for rights and for talent which, again, can have serious cultural and editorial consequences in closing down the number of voices.

5. Existing legislation is not founded on any proper understanding of the democratic principles behind legislative action, nor does it provide for a credible and workable process by which these principles can be protected. The current framework emerged as a last minute “fix” to the 2003 Communications Act, introducing a new clause into the 2002 Enterprise Act which is now known as the “Public Interest Plurality Test”. It can only be triggered through merger or acquisition activity, and employs different tests for newspaper mergers (“sufficient plurality of views”) and cross-media mergers (“sufficient plurality of owners”) which make little sense in a world where ownership extends increasingly across different platforms.

6. It further takes no account of the so-called “digital intermediaries” such as Google and Facebook, which can have a material influence on the distribution – if not the creation – of relevant material. It cannot be applied to organic growth of media enterprises, and is even of limited value when intervention is permitted through mergers and acquisitions. It proved to be wholly ineffectual in the case of BSkyB’s

---

58 This issue is well covered in “News Plurality in a Digital World” by Robin Foster, Reuters Institute, July 2012.
purchase of a 17.9% stake in ITV\textsuperscript{59}, and would not have prevented the full takeover of Sky by News Corp had the phone-hacking scandal not intervened. The nature of the "public interest" requirements which must be satisfied are vague and inchoate, and the whole process is much too vulnerable to corporate and political machination.

7. In sum, the current policy tool-kit is not fit for purpose and should be replaced by a new legislative framework designed to implement clearly articulated high level principles rooted in an understanding that corporate decisions made by large media conglomerates will have a material impact on the knowledge, ideas, information and opinions circulating within civil society. Key decisions should be made through a transparent, accountable, and independent regulatory process, free from government pressure or interference.

8. Finally, while acknowledging the wider definition of plurality, there needs to be recognition of the vital role of professional newsgathering and original journalism. This principle should accommodate the needs of media businesses to mitigate their economic difficulties and, where appropriate, to allow a measure of consolidation while balancing this with the need for a diversity of original editorial sources. This delicate balance is particularly acute at the local level where the decline of the local press and inadequacy of other local media to fill a growing lacuna is producing a severe democratic deficit within local communities.

**New policy initiatives**

9. I believe at least six key policy changes are required to strengthen current mechanisms and prevent the kinds of circumvention which the law currently permits:

i. Discretion for initiating an inquiry should be shared by both the Secretary of State and by Ofcom rather than being vested solely in the Secretary of State. This was recommended by this committee in 2008 on the basis that it would "sit more comfortably with Ofcom's duty to promote the interests of the citizen".\textsuperscript{60}

ii. Greater flexibility is required in the circumstances which might trigger such an investigation, including organic growth to a point which is deemed to threaten diversity of voice.

iii. Share of market and share of audience should be monitored on a regular basis by Ofcom to provide the data for making any necessary public interest interventions (as Ofcom itself recommended in its report to the Secretary of State\textsuperscript{61}). As part

---

\textsuperscript{59} Although Sky was eventually forced to sell down its shareholding at a considerable capital loss, this was not before it had achieved its aim of preventing a Virgin-ITV merger by forcing up the price of ITV shares.


\textsuperscript{61} “Measuring media plurality: Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport”, 19 June 2012, par 5.121.
of this process, Ofcom must be given authority by Parliament to demand all relevant information from media enterprises.

iv. Regulatory overlap in media plurality investigations must be eliminated. Currently, both Ofcom and the Competition Commission (from April 2014, the Competition and Markets Authority) have a role in determining whether there are plurality grounds for refusing a merger or acquisition, and came to opposite conclusions during the inquiry into BSkyB’s 17.9% stake in ITV.62 Ofcom - again, by virtue of its obligation to promote the interests of citizens and consumers – should have ultimate authority.

v. Final decisions on divestments, conditions, and mitigations when contemplating greater media consolidation should not be left to government ministers. Authority should be delegated to Ofcom with appropriate accountability measures introduced - perhaps an obligation to report to a mandatory meeting of the Culture Media and Sport select committee.

vi. A more explicit recognition of why pluralism is integral to democracy - and in particular the impact on newsgathering and original journalism - is required, as previously recognised by both the OFT and this committee.63

10. There is legitimate concern about the "nuclear option" of forced divestment should an inquiry conclude that too much power or influence is vested in a single media enterprise. Especially in a challenging economic environment, plurality may not be best served by requiring a "fire sale" or a closure of an otherwise sustainable news outlet. This problem can be mitigated through a range of public interest obligations that might be placed on media enterprises in return for continued ownership. These might include:

- clear evidence of increased investment in high quality journalism.
- setting up new - or improving on existing - journalism training schemes.
- subsidising non-profit media initiatives elsewhere (see below).
- agreeing to transparent auditing of editorial decision-making processes to prevent undue corporate pressure on editorial output.
- appointment of an independent ombudsman, answerable to an independent editorial board
- full participation in whatever regulatory system replaces the PCC.

Measuring media concentration

11. At what point or threshold a media enterprise might be deemed to have an unhealthy share is a hugely complex area, and there is a growing assumption that the

---

62 Because the CC ruled against the shareholding on competition grounds, this difference of opinion did not affect the outcome.
rise of online and converged media will inevitably require some kind of cross-media measurement commonly referred to as “share of voice”. In an ideal world, it should be both desirable and possible to assess, from the variety of different news and information sources available, whether any particular media organisation commands a disproportionate or democratically undesirable share. There are three problems with this approach.

12. First, it is extremely difficult to distinguish between media in terms of their relative power to exercise influence on audiences. Most calculations implicitly equate the impact of television programmes with that of newspaper or online articles, thus diluting the manifest influence of those who are permitted to express an opinion. Part of the attraction of newspapers and their online platforms is that they can be as biased and passionate as they want in furtherance of their views, and most are. By contrast, broadcasters are bound by law to be impartial and to ensure that any expressions of opinion are balanced. It is at least a fair working hypothesis that a newspaper will have more influence over its readers’ opinions than a television news bulletin over its viewers.

13. Second, even if it were possible to assess accurately the impact of any individual medium on audience opinions or attitudes, there remains the question of how news agendas are constructed and their impact on opinion leaders and policy makers. Anecdotal evidence suggests that newspapers are influential in driving broadcasting agendas (television newsrooms are invariably immersed in mountains of newsprint), and that our national press can play a decisive role in moulding Britain’s domestic and foreign policies. A meticulously researched account of some case studies which demonstrate how this influence operates has recently been published.

14. Third, we should be very careful about assuming that plurality considerations are vitiated by the proliferation of online, social networking and other news sources which is sometimes interpreted as an “explosion” in new outlets of news and information. Research by Goldsmiths College has demonstrated that the vast majority of online news is aggregated material which originates from the main newspaper and broadcast news operations. The real “heavy lifting” of journalism – which holds power to account and provide citizens with original, factual and verified information – is virtually all conducted by mainstream news organisations. While online blogging and Twitter may be a wonderful addition to the panoply of opinion and invective which can invigorate public life, their audiences are diffuse and they do

---

64 A concerted effort was made in the 1990s by a group of news organisations, collectively known as the British Media Industry Group, in advance of the 1996 Broadcasting Act. By analysing newspaper circulation, television viewing and radio listening - and after down-weighting radio by an arbitrary 50 per cent – they produced a league table of share of "national voice". This entirely unproven assumption about radio’s relative lack of power rendered the table useless.


not carry the authority or influence of mainstream, well-resourced and high-reach mass media organisations.

15. It therefore remains important, at least for the time being, to provide for a sufficient plurality of media organisations through structural measures, either through limits of total share on revenue or through limits on circulation, viewing or online access that any one organisation is permitted to command. Since our main concern in a democracy is to ensure that power and influence are properly dispersed – as well as providing for well-resourced original journalism – I would endorse the proposals advanced by Enders Analysis for limits on total revenue shares as the most reliable proxy measurement of plurality.67

**Should the BBC be included?**

16. There are four reasons for caution in assessing whether and how the BBC should be included in any plurality considerations. First, because of its public ownership, there are no proprietorial or corporate influences which guide its output. This is not just a matter of the application of impartiality rules, but the absence of any overarching corporate pressure which can dictate agendas.68

17. Second, because the BBC cannot express views, either explicitly or implicitly, it can have little impact in determining (as opposed to informing) the formation of attitudes and opinions. The ability to be impassioned and to infuse not just commentary and opinion pages but news pages (and their online equivalents) with one-sided argumentation is an integral and powerful element of a free press. We do not know – and cannot measure – to what extent such editorialising drives popular opinion, but intuitively a one-sided approach will carry more weight than a balanced approach.

18. Third, the BBC is accountable to its licence payers and to Parliament through transparent reporting and structural mechanisms – in particular the BBC Trust – which ensure that its output complies with detailed editorial guidelines, in turn derived from constitutional obligations. The BBC cannot be captured for private gain, operates transparently in the public interest, and is universally available. To include it in any plurality calculations, and thereby artificially diminish the potential influence of corporate owners willing and able to promote a single viewpoint, would distort attempts to reflect real editorial influence.

19. Fourth, the BBC itself pursues a policy of internal plurality, whereby individual services and programmes are encouraged to develop their own editorial “voices” within an impartiality framework. Both in the way stories are covered and in terms of

---


68 There are, of course, regular allegations of bias levelled at the BBC from all sides of the political spectrum, but none based on rigorous empirical evidence.
story selection, there will be different editorial agendas between, say, Radio 4’s Today programme and Radio 1’s Newsbeat or even between two news bulletins on the same channel scheduled at different times. This theme is developed further in the BBC’s own submission to Ofcom’s media plurality review.69 While some consideration should therefore be given to the presence and consumption of BBC services in overall calculations, it is important to recognise that the BBC’s ability to editorialise and set agendas is severely circumscribed.

Impartiality

20. It is sometimes argued that privately owned broadcast services could be exempt from any plurality calculation because of their obligations to be non-partisan. However, while impartiality rules militate against blatant promotion of partisan political views, corporate influence can still be exercised in myriad ways so that news agendas reflect the worldview of an interventionist owner. Moreover, this can be achieved not solely through news, but through documentaries, drama and even comedy. It is quite possible for political satire, for example, to follow a corporate or proprietorial agenda without overtly breaching impartiality rules.

21. These limitations of impartiality rules have been recognised by Ofcom. In its Report to the Secretary of State on BSkyB’s acquisition of ITV shares, Ofcom wrote: “These regulatory provisions, while they represent important controls on impartiality and quality, are not directly concerned with or a substitute for regulatory provisions aimed at ensuring sufficient plurality. They are not designed to remove the ability of broadcasters to set the agenda by selecting the issues and events that are covered in news broadcasting or by determining the relevant importance that are given to each of these”.70

Other structural initiatives

22. Beyond measures to prevent excess concentration, serious consideration should be given to new ownership and funding models which could add to the plurality of voices, particularly at the local and regional level where investment in journalism is becoming increasingly parlous and monopolistic. Some creative options around charitable and non-profit enterprises were explored by this committee in its report on Investigative Journalism, and are equally relevant to debates about reinvigorating a pluralistic media environment. Perhaps thought could be given to ways of incentivising or rewarding enterprises which resist the lure of chain ownership and therefore sustain journalism with its roots in local communities. The proprietor and editor of the weekly New Milton Advertiser and Lymington Times (circulation

---

69 BBC Response to Ofcom’s Invitation to Comment on Measuring Media Plurality, March 2012.
70 Ofcom, Report for the Secretary of State pursuant to Section 44A of the Enterprise Act 2002 of British Sky Broadcasting plc’s acquisition of 17.9% shareholding in ITV plc, 27 April 2007, p19, Par 4.39

50
c.21,000) has written about his paper’s ability to withstand the recession because it was not subject to the corporate buffeting of chain ownership, and was therefore able to sustain its commitment to training and apprenticeships, as well as keeping in touch with issues relevant to its local community.71

23. Since 2004, the not-for-profit model has been applied with some success to local and community radio, providing an ownership model with clearly stated journalistic outcomes rooted in the community. The Community Radio Order of 2004 gave Ofcom the power to license not-for-profit community radio stations according to strictly defined criteria relating to “social gain” and funded in part by very small grants made available through DCMS and administered by Ofcom. Such stations, enabled through regulatory fiat and public subsidies, can provide new conduits for original community-based informational journalism. Similarly, a number of community based online initiatives have been launched in different parts of the UK. But these all tend to be precarious, shoestring operations, often sustained by a few dogged enthusiasts without the resources or the training to conduct investigative journalism, to provide specialist reporting across a range of local issues, or to scrutinise local elites. New platforms do offer the potential for increasing plurality, but realistically require structural and financial support to be both viable and effective additions to the editorial mix.

24. Serious attention must therefore be paid to finding new funding sources and new organisational models. In 2009, Ofcom promoted the idea of Independently Funded News Consortia (IFNCs), subsequently embraced and embellished by the Labour Government as a means of rescuing regional television news while shoring up the local press and other forms of local journalism. It was, however, to be funded by top-slicing the licence fee and was abandoned by the incoming Coalition government which preferred to invest in a so far ill-fated local television experiment.72

25. Taking money from licence-payers – who are paying for broadcasting – and thereby impoverishing and diminishing the BBC is a poor substitute for serious, original thought about how to new revenues. Other funding sources are available, have a successful track record in Europe, and contain an unimpeachable logic about asking for contributions from those who profit from the original content creation of others: small levies on recording devices such as Virgin Plus and Sky Plus, on the profits of news aggregators such as Google, or on the profits of ISPs whose heavy traffic is dominated by the distribution of news and original content, could all contribute to a substantial fund which might then be used to subsidise creativity and innovation on new (and old) media platforms. Levies such as these were floated in this committee’s report on the Film and Television Industries, and I would urge a more detailed

---

consideration of how such mechanisms might be constructively employed to promote greater plurality at both local and national levels.

14 May 2013
Q62  The Chairman: Thank you very much for coming and welcome to you, Steven Barnett, our second ex-special adviser of the afternoon. It is good of you to come along. We obviously know you and we have a pen portrait of your experiences and so on. Would you like to make an introductory statement or shall we just go straight into the questions?

Professor Barnett: I will say one thing, Chairman, if you do not mind. First of all, thank you very much for the invitation; it is quite strange being on this side of the table. Just a bit of historical context, if I may? I first wrote about media ownership in 1986, so I have been looking at this issue for getting on for 30 years. Virtually every policy initiative in this area in that time has seen a big and a widening disconnect between the principle and the practice. If you go back to the White Paper of 1988, Competition, Choice and Quality, there are lots of good things about the importance of plurality for democracy. The 1990 Broadcasting Act deregulated. Media ownership proposals in May 1995—which you will remember Chairman—followed by again some very nice passages, which you may indeed have drafted, on the importance of plurality for democracy. This was followed by a semi-deregulatory Bill in 1996 and another consultation in 2001, echoing a lot of the words in the 1995 document, again followed by a very deregulatory Bill in 2003. Whichever party has been in power, while lots of nice and very apple pie things have been said about media plurality, they have not been followed up in practice.

It is interesting to analyse why. I think it is partly because of the deregulatory narrative that comes out of what used to be DTI, now BIS; I think it is partly lobbying from major media companies; and I think it is partly fear. I have now either read or heard three evidence sessions and I do not think the words “Rupert Murdoch” have come up once. It is partly fear of Rupert Murdoch. One of the most gripping parts of the Leveson evidence for me was to
watch four successive Prime Ministers effectively conceding in various ways that they failed to stand up to the burgeoning power of one media empire. Much of the phone hacking scandal evolved out of that.

That is part of the background. There is a lot more to say about what positively can be done, and I will echo a lot of Richard’s comments there. We are at a unique moment in British political history. The political parties have worked together for reform of press regulation in the public interest. The same model of cross-party co-operation can work before the next election, not just to prevent the growth of excessive media power again, but actively to promote diversity of ownership and pluralism at national and local level. This Committee’s role is going to be extremely important in kick-starting that process.

Q63 The Chairman: Thank you. Can I just draw what I think was one of the themes from what you were saying, that when push comes to shove Governments do not stand up to media moguls?

Professor Barnett: Absolutely right. Had it not been for the Leveson inquiry, we would not have heard it in such black and white terms. But we did, most graphically for me from Sir John Major. The current Prime Minister, David Cameron, made no bones about the fact that he thought that they had got too close; neither did Tony Blair. There is no question. It is not just about the Murdoch empire; there has been a fearfulness about the power of media empires and media moguls which has inhibited governments from implementing the best possible policies in the public interest.

Q64 The Chairman: You may not think that this question has been phrased in the right way: do you think that it is because of lack of self-confidence on the part of the political leaders or genuine power in the hands of the media people?

Professor Barnett: I think it is the apprehension of power by the political leaders. That was certainly true for Labour, as they have admitted themselves, in the 1990s. The perception of power invested in newspaper barons to be able to influence public opinion is something that has concentrated the minds of political leaders.

Q65 Baroness Deech: Is that not just a myth? I am really interested in how much influence the owners have and how much that influences the voting patterns of the public? It may all just be a myth.

Professor Barnett: That is quite possibly true. I was absolutely clear that it is the perception of that influence that concentrates the minds of political leaders. Whether that influence is actually in the hands of newspaper editors and proprietors, it may well have been in the 1980s and 1990s, but I think it is rapidly declining now, if it ever was there. The evidence from the 1992 general election is conflicting: there are some academics who say there was manifest evidence of anti-Labour press influence in that election; there are others who say it made very little difference.

The Chairman: What you are saying is that politicians believe “It's the Sun Wot Won It”?

Professor Barnett: And act accordingly.

Q66 Lord Razzall: That is the point is it not? I agree with Ruth’s view and I take the second view about the 1992 election. There is a lot of academic evidence that that is the case, but the Lord Chairman’s point is the serious one: there can be no doubt that politicians have been influenced in policy by media moguls.
**Professor Barnett:** I think that is exactly right. They have been influenced in terms of media policy and there is an excellent book out now, which I thoroughly commend to everybody, by Malcolm Dean, demonstrating the influence that some of the more influential media moguls have had on other areas of social policy. Clearly, media policy is the area where there is greatest self-interest and greatest fear from political leaders about the consequences of acting in any way that might counter the interests of proprietors and editors.

**Lord Razzall:** And European policy.

**Q67 Baroness Deech:** Is it not equally important, if Leveson succeeds, that our media—no matter who owns them—are more accurate and better behaved? Is that not more important? Secondly, although the political leaders are in awe of the media moguls, they are also in the hands of donors, unions, all sorts of influences. This is just one among many, and maybe we have blown it all out of proportion.

**Professor Barnett:** That would bring us back to the theme of the Committee, which is: how do we ensure that there are as many as possible different ownership regimes and structures, in order to ensure that whatever ownership criteria are driving the output of different media they will be diverse, different and transparent? That is the other thing. Not only will they be diverse but we will know where they are coming from or know who is behind them.

**Q68 Baroness Bakewell:** It is a self-fulfilling circle is it not? The moment that politicians believe that the moguls will determine their political future and act on that, the moguls feel that they have exerted their power and they say, “It’s the Sun wot won it”, and we have the circle complete.

**Professor Barnett:** When you read Rupert Murdoch’s evidence, he says exactly the opposite. He says, “I don’t think we had that much impact.”

**Baroness Bakewell:** He would say that.

**Professor Barnett:** He was the one who instructed his editors to remove the headline “It’s the Sun Wot Won It”, because he did not want that to enter into the public narrative.

**Q69 Baroness Bakewell:** But there is a circular enterprise going on here between them, and I wonder how we are going to break into it and at what point we break in.

**Professor Barnett:** At what point: I really think the answer is now. Partly because of the context of phone hacking, but partly because of this unique constitutional moment with a coalition Government and an all-party consensus on other aspects of media reform, which is unique in political history as far as I can remember. Those elements of the political environment make it possible precisely to break that circle now and to say this is the moment at which Parliament can act in the public interest, even if that means in some cases—and it may not necessarily mean it in all cases—acting against the interest of some major media owners.

**Q70 Earl of Selborne:** I want to follow up to what extent we have a window of opportunity here, and just to recap what you said as a consequence of phone hacking, coalition Government, Leveson, there is a climate abroad that makes for a window of opportunity. Equally, this is against a backdrop of business pressures that are clearly going to reduce the prospects for plurality, looking at the failure of the advertising business model and many would also say some of the digital media initiatives are going to reduce rather than
increase plurality. Would you like to comment on how you see these overall threats and opportunities for plurality?

**Professor Barnett:** There is no doubt that there is a problem in terms of the traditional business model of newspapers in the sense that advertising is migrating to online, and in the famous phrase of someone—I think quoted in this Committee’s first Report on news ownership—it is pennies for pounds. You are substituting online pennies for hard copy pounds and the economics do not add up. That is clearly an issue and that increases the pressure towards greater consolidation and concentration. We need to bear that in mind—and I have said this in my evidence—when trying to come to some kind of compromise recommendations about how far is far enough. I do not think that should prevent us from saying, in the public interest, that at some point it has to be far enough. In return for allowing certain kinds of consolidation there are obligations that can and should be imposed on those media organisations.

It comes back to these issues of accuracy and transparency and accountability. It is perfectly appropriate to say we might allow a certain amount of consolidation, but that in return we are going to ensure that the public interest is served through a number of different obligations. For example, signing up to a recognised self-regulator could be one of them; more investment in news gathering, which this Committee recommended in its first Report; greater transparency. There are a number of ways in which I think you can ensure that the quid pro quo of greater consolidation is going to be public interest journalism or public interest news gathering.

**Q71 Earl of Selborne:** But whether we like it or not, in certain areas of the media—I am thinking particularly of the regional print for example—plurality is not going to be an option. There are pressures that are irresistible to ensure that the plurality, which we may have had in the past, is simply not going to be there.

**Professor Barnett:** That is right. The question then becomes—let us distinguish between the local and regional level and the national level—what can we do at the local and regional level? There are a number of potentially creative opportunities that are available. I do not know if you want me to go into those kinds of detail now. There are two different approaches. One is to say at certain levels, at the national level, there has got to be some kind of cap, some kind of criteria that says you cannot get any bigger than this. At the local level, I think the criteria have to be different, which is, “How do we shore up the kinds of media enterprises that we want and need?” Not necessarily just for plurality, but just so that there are some local news information sources that exist. I was very struck by the evidence from the Media Standards Trust where they identified five separate areas in the UK—like Port Talbot, for example—which have no local news facility whatever. We are not just talking about plurality there; we are talking about somehow finding a way of providing news and information where none exists. That is the point at which we have to start thinking about new ideas for funding, new ideas for structures, new ideas for helping to generate certain kinds of news organisations.

You have just been talking about Ofcom’s idea of the PSP. That was superseded in my view by a far superior model, which was the Independently Funded News Consortia—it is a horrible mouthful, but IFNCs—which were finally passed in the wash-up under the old Labour Government and then dismantled by the coalition Government. I believe they offered at least a sort of model for allowing local media platforms—TV, radio, online, newspapers—to come together, partly with some help from public funding, to ensure that
something existed at that local level. I was sad that that idea was dismantled, but there are other creative ideas that could be encouraged at local level.

Q72 Earl of Selborne: Did that funding for these independently funded news consortia have to be public funds? Could there not have been an option for making it feasible for other funding streams?

Professor Barnett: It was a combination of the two. I was going to come to this later, but in that particular proposal the money was to come from top-slicing the BBC. I do not know if you want to get into this now, but I think that is a profoundly bad idea and this is one area where I profoundly disagree with the previous witness. Punishing the BBC by taking money away from an organisation that is not just world-renowned but deeply trusted in this country to give that money to other start-up operations that may or may not be successful is frankly a daft idea. It is counterproductive and counterintuitive. The funding model for those IFNCs was wrong, but there are other potential sources of public funding through levies on the news aggregators, or on ISPs. There were various proposals made in the TV and Film Industries report of this Committee, proposed by Steve Morrison, which are still out there and are still very valid as a means of generating income from those who exploit the original content of others and ploughing it back into more original content.

Q73 Earl of Selborne: But do you think it is hopelessly naive to suggest that there might just be non-statutory, non-public funding sources? There might be voluntary arrangements, in other words, from some of these new digital sources—we are talking about news aggregators and the like—where they might be persuaded as a form of self-protection to help fund this?

Professor Barnett: That is an entirely plausible recommendation. Obviously, it would be better to have it done voluntarily. It is interesting that Google has just given a substantial sum of money to research on child porn on the internet.

Q74 The Chairman: It has given a lot of money in France, has it not? Or was it Amazon?

Professor Barnett: I think you are right, in France. Whether it has been given or it is under threat of legislation—

The Chairman: It may be the same thing.

Professor Barnett: It might be. That is an entirely plausible approach. If Parliament could say to the ISPs, to the news aggregators, to these big digital intermediaries—Google commands 85% of online advertising—“We are not doing anything about that, but we do expect certain kinds of quid pro quo. Here is a seed funding pot that is available for you to put money into and that will go to different local, regional online or other kinds of news operations.”

Q75 The Chairman: Is there a jurisdiction problem? Google is in America. It may just say, “Thank you very much”.

Professor Barnett: In terms of ISPs, there would not be.

The Chairman: I was just thinking it through because we have this new world of open jurisdictions—

Professor Barnett: And global tax havens. I am sure it is not beyond the wit of man, woman and taxman to find a way of ensuring that those who are profiting from the exploitation of other peoples’ copyright material are able to return some of the value of that copyright.
**Q76 Baroness Bakewell:** That is the issue—just to take that point about copyright—that is being tackled by the copyright legislation currently under consideration, so it will not be used inappropriately for profit. The regulations are going to tighten up, are they not?

**Professor Barnett:** I do not want to send us down a different alleyway, but there are two different issues there. The new copyright laws are designed to prevent piracy. What I am saying is: “You, BT or Google, are legitimately profiting from the way in which people are using digital intermediaries to access original information or films or whatever, but you are not paying anything towards it.” I have Virgin; I use my V+ hard drive all the time because there are lots of programmes I want to record. I am paying Virgin for that privilege; I am not paying the BBC or Channel 4 or Sky, who are originating the programmes that I want to watch. That is the logic behind some kind of levies on those who profit from that use.

**Q77 Baroness Bakewell:** I have joined this Committee since you were last of power in the land here. I am interested to know how you perceive things to have changed and what problems are current? I know about the moving of advertising to the net. I was thinking more of structural changes, just the change in the climate, the perception that it is a matter of examining news and current affairs and the control of it and so on, the scope of the BBC and how that has shifted. What is your own narrative?

**Professor Barnett:** If we are talking about what we measure in terms of media plurality, as I say in my evidence—I am swimming a bit against the tide here—it is very difficult simply to eliminate all those areas of culture that have an effect on what people think and say, on what I call the national conversation. To exclude factual programmes or documentaries, to exclude even satirical programmes, like “Have I got News for You”, “Mock the Week”, or drama. If you think about “Homeland”, it had a narrative to it—I know it is American, but there was a narrative to it about terrorism, about homeland security et cetera, all of which sends messages. I find it difficult simply to say we should only be thinking about news and current affairs. The things that affect us culturally, the kind of society we are, the kinds of things that matter to us and the views that we then come to are much more broadly based than that. That is why I am—bringing it back to the measurement issue—attracted to the Enders revenue proposal, because it takes into account that much bigger cultural environment.

**Q78 Baroness Bakewell:** I tend to agree with you about that cultural conversation, but people to whom we have put that question say, “We accept that as an ideology but it is impractical.” You can segregate news and current affairs and you know what you are measuring and you can be clear about it. If you start talking about the effects of “Mock the Week” and comedies, it vanishes. It becomes very hard to measure and judge.

**Professor Barnett:** I really do not think that is true. News and current affairs are by no means easy; we talk about newspapers as if time spent reading the newspaper is time spent absorbing news and current affairs. A lot of it is time spent reading the horse racing columns and doing the crossword or looking at the weather forecast. Similarly with online: how many people who access the BBC online actually read the news and current affairs? It is a trade-off. There are no hard and fast rules. I do think that in terms of consumption metrics—and we can come on to cross-media versus sectoral considerations—if we are talking about a cross-media view of the world, I do not see anything wrong in taking a much broader view and saying we are talking about power. We are talking about the power in the hands of these organisations to shape attitudes and opinions and the kind of society we are. The best proxy for that is revenue, and I do not have a problem with that. I do think that within individual market sectors, so within newspapers, within TV, within online et cetera, there
should be individual caps. In particular, there is an issue about newspaper power. Maybe we can come on to that. The Enders notion of a cross-media 15% cap, which gives you six or seven major players, seems to me to be entirely appropriate. The rationale behind it seems to me to be entirely appropriate.

**Q79 Lord Razzall:** Do you think your fundamental point that we should look more widely is really just about issues on the margin? Clearly you have a point regarding “Homeland”; you would have a point regarding “The West Wing”. The BBC traditionally—I do not know if it still does—used to have “Any Questions?” in its entertainment division, not in its news and current affairs division. Therefore, on the margin, clearly you are right that there is stuff that could be bracketed, but do you think it is more a fundamental question or is it just a marginal one as to what you include in news and current affairs and what you do not? Clearly sport is not within news and current affairs.

**Professor Barnett:** You are saying is it marginal in terms of including it within a broader definition?

**Q80 Lord Razzall:** Yes, you are rather criticising the evidence that we have had, that our inquiry should really be focused on news and current affairs and saying we should be going more widely. Your example of “Homeland” was a very good one; you could do “The West Wing”. As to “Any Questions?”, I do not know whether it is still entertainment, not news and current affairs, but are these marginal questions or do you think it is more fundamental?

**Professor Barnett:** I do not think they are marginal; I think they are fundamental. Let me give you two more examples, which I gave in my evidence to Leveson. One is about an independent producer who was speaking a seminar a few years ago. He made programmes for ABC in America. He said, “When I pitch programmes to ABC I have to be conscious of the fact that it is owned by Disney and therefore wants family-oriented, family-friendly shows. That is what ABC is looking for because of its ownership.” Similarly, if you read Nick Davies’s book about the press in this country, there is a fascinating chapter on the culture of the *Daily Mail*. He says, “Every journalist at the *Daily Mail*”—I am sure Associated News will dispute this—“will tell you that we know what will get into the paper and what will not. That is why you will not see a black face in the *Daily Mail*.” That is in his book; I am not making that up. That is what Nick Davies says was said to him by one of the *Daily Mail* journalists. These are a number of examples of the same thing. All these organisations start from some kind of world view and that world view is imparted through their media outlets in different ways.

**Q81 Baroness Bakewell:** I have to interject, because there is another very vivid example. News and current affairs as we know it, transmitted on every channel that we watch, includes sport as part of the culture. It is my own particular bind about this, but it does not include arts. Is art less part of the culture than sport? Sport is mainstream news. I think that is a telling point.

**Professor Barnett:** Could I just add to that? The other thing that you have reminded me of is that when we are talking about the notion of media power, we tend to think of plurality in terms of the media’s influence on what people think and what sort of society we are. As I say in my evidence, there are two other aspects to it. One is pure commercial self-promotion. If you are an organisation that holds sports rights—it could be Sky or the BBC—you are much more likely to play news about those sports in your bulletins. There is research that demonstrates that. Also, by virtue of your commercial power, you will have influence over the regulator, and that has been demonstrated by News Corp and BSkyB in
the leverage they have had over Ofcom by virtue of their economic power. It is important to remember that there are other aspects to plurality beyond the influence on citizens and the public, which are all about the nature of exercising power in a democracy.

Q82 The Chairman: What you are saying then is alarming to the extent—and it may be a commonplace proposition—that there are certain players in all sectors of life out there who, in the real world, have deeper pockets than the Government and will string them along through the courts.

Professor Barnett: That is a fact of political life, to some extent. It is true in banking; you could argue it is true to some extent in transport. There are various sectors in which that is true but it is particularly true in the media, partly because of the tendency towards consolidation and the arguments that are used to justify further consolidation, and partly because, as we have discussed, media owners have inordinate power to influence the political debate.

Q83 Baroness Fookes: I suppose you would regard something like the development of the docudrama as indicating the difficulty of separating out current affairs and the wider culture?

Professor Barnett: Yes, I think that is right. You would have to look, to some extent, at whether docudrama is being commissioned according to a certain pattern or a certain ownership template. In many cases it may well not be, but it is just something we need to be aware of.

Q84 The Chairman: We have been talking about newspapers, television and so on. How far should any review of plurality extend? You have all kinds of digital intermediaries and that sort of thing. How do you handle them? They are not quite the same as television channels or a newspaper.

Professor Barnett: No, they are not the same. I know Robin Foster gave evidence last week and his report for Reuters is terrific. As he points out, there is the potential for major bottlenecks and therefore some of these intermediaries are strangling certain kinds of content, but allowing only other types of content.

Q85 The Chairman: Can you give examples, generically, where that might be happening?

Professor Barnett: This is very relevant to the current debate about the EU-US trade talks. Amazon, as I understand it, now accounts for over 70% of all e-books in the EU. Its list is predominantly American; it is very dominated by American titles and American authors. I am not suggesting it will prevent any other authors from access, but there is the potential there, when you have such a powerful player, for that player to skew the availability of content by virtue of its own algorithms or what it thinks is most appropriate or whatever. These are speculative; that is why I am talking in terms of potential rather than actual. I do not think those are the major problems now. The major problems we need to attend to now are the traditional media conglomerates. I still think that radio, TV and online are essentially those areas that we should be concentrating on.

Q86 The Chairman: Just to go back briefly to the Amazon example, you talked about algorithms. Do you think there is any mileage—in the same way that Governments approach various intermediaries about pornography—in saying there should be global rules about impartiality in algorithms? You could have an algorithm on a search engine, which for example would give you only right-wing news or only left-wing news.
Professor Barnett: The answer to that is: as long as there is transparency. Ideally, yes, you want neutrality, but then you are back to the question of “What is neutral?” If it is simply done on the basis of demand, if it is simply, “These are the stories that people are trying to access, therefore that is what lifts them up the order”, then fair enough. If there are algorithms applied then, clearly, there must be transparency about the bases on which they are being applied.

The Chairman: The ground rules on which the algorithm works.

Professor Barnett: Absolutely.

Q87 Lord Razzall: There is a quite difficult area about what a review of plurality should measure and how it should be triggered. You are suggesting that it should be a combination of the Secretary of State and Ofcom, not just the Secretary of State. I do not know if you would like to expand a little on that. How do you think those reviews would sit alongside the periodic monitoring you are envisaging for Ofcom? We have quantitative and qualitative issues of measurement here—what would you exclude? How should sufficiency be defined? If you want to speak for an hour and a half, that would be appropriate.

Professor Barnett: I think people may want to get away. First, on who should trigger a review, it seems clear to me that an independent regulator that has concerns about the way the media market is going must surely have discretion to say, “I am worried about this”, and take appropriate action.

Q88 Lord Razzall: There was an overall political dimension here. The Conservative-led element of the coalition, in particular, wanted to cut the wings of Ofcom when they came in. Has that been watered down or not?

Professor Barnett: That has been watered down. There were lots of warmongering noises in advance about Ofcom shortly after an equivalent speech by James Murdoch, which was unfortunate. That, I think, has gone away, but it is partly why an independent regulator needs to be insulated from political influence and political control. The more levers that are put at their disposal that are not simply at the discretion of the Secretary of State, the better. I also think the same is true at the other end. I do not know if this is what you want to talk about now, but if there is a recommendation to be made about divestment or additional obligations to be placed on a media organisation, I would be much more comfortable seeing those coming from an independent regulator than from the Secretary of State. Though of course, there are arguments about political accountability.

Q89 Lord Razzall: But in the BSkyB case, it was a decision by the Secretary of State but in the light of recommendations from Ofcom, was it not? They never got there, because of what happened.

Professor Barnett: That followed a very lengthy process, but again, I think Jeremy Hunt in his own evidence to Leveson said he was uncomfortable about being put in that position. He felt that it would be much better if it were removed from the political sphere. For the reasons that he gave, I think that is entirely right. You asked some other questions about—

Lord Razzall: The qualitative and quantitative and what is in what is out.

Professor Barnett: I have talked about the share revenues. I am very much against cross-media shares as a means of measurement. I think you talked in the previous session about the HHI index, which came out of America. It was, I think I am right in saying, struck down
by an American court under a case called Prometheus because it did not take into account the differential impact that different media can have.

Q90 The Chairman: In other words, it assumed everything was in the same money, but they were talking about different kinds of money.

Professor Barnett: Exactly. It seems to me that an opinionated, passionate column in a national newspaper and a news item on a television news bulletin are entirely different in the way they might impact on public opinion. Therefore, I do not see any way in which cross-media measurements by share can come to terms with those equivalences. I just do not think it is possible and all the work I have seen on it does not square that circle—another reason why I like the revenues approach. However, within media sectors it is entirely appropriate to say you could look at circulation within national newspapers, you could look at overall share of TV viewing or radio listening within TV and radio and have sectoral caps within those markets. I think 30% has been mentioned in the national newspaper market. That seems to me to be appropriate. That can be adjusted in different ways so I would have share measurements within sectors and then the revenue measurements across the media.

Q91 Lord Razzall: You have the interplay with the competition rules there. How would sufficiency be defined in your view?

Professor Barnett: That is something that in the end should be down to the regulator. What I would like to see is, on the face of the Act, a firm commitment to principles of democratic accountability—the kinds of things we have seen in White Papers, actually on the face of the Act. Then the regulator would be obliged by statute to act with regard to those democratic principles, but at the same time taking into account the business environment. Therefore, to come to reasonable conclusions, but putting the interests of citizens first: that is the main priority.

Q92 Lord Skelmersdale: So you do not see any involvement for the Secretary of State in all this?

Professor Barnett: I can see the involvement of the Secretary of State in kick-starting the process along with Ofcom. They should each have the trigger possibility.

Lord Skelmersdale: Are you suggesting that the Secretary of State could refer the matter to Ofcom, or that Ofcom could do it off its own bat?

Professor Barnett: Yes, both. However, I think I am right in saying that, as with the Competition Commission—any conclusion or recommendation by the CC is binding on the Secretary of State—I see no reason why that should not be true with Ofcom. As I put in my evidence there are various types of accountability you should build in, but for me the prime issues are independence and transparency.

Q93 The Chairman: Presumably, again, there would be an appeal to the equivalent of the Competition Appeals Tribunal. Then you might even have judicial review surrounding the whole thing.

Lord Razzall: They would have a judicial review.

Professor Barnett: Certainly you would have to, yes.
Q94 Baroness Fookes: I wanted to ask you about the remedies you have proposed. You have touched on this quite a lot. Could you summarise for us what you believe is the right approach, which I believe you described at one point as hybrid?

Professor Barnett: It is called hybrid. The hybrid approach would be both structural and behavioural. I would not want to get rid of the structural limits we have at the moment. I was very much against the removal of the 20/20 limit on channel 5 and newspaper ownership in the 2003 Communications Act. Potentially, a powerful newspaper proprietor could—and you could argue now does—own channel 5. I am not even sure that is appropriate; it is certainly inappropriate for ITV. Although it is not possible at the moment for Channel 4, it would obviously be inappropriate. The notion of separating what are still the most powerful forms of mass communication is entirely appropriate. I would keep that rule.

At the same time, I would propose imposing the caps we have talked about on cross-media revenue and on share within sectors but having—again, this is something that Enders have talked about and Harriet Harman talked about it in her speech at the Charles Wheeler Lecture—two bright lines. The first would be a trigger where you would say, “you have gone above that level, but that is that point at which you are going to be obliged to commit to certain”—I do not know if I would call them behavioural remedies—“certain obligations”. We have talked about some of them, and I have mentioned them in my evidence. There is another bright white line that says “thus far and no further”. At that point it is becoming too uncomfortable for democracy to allow someone with that much circulation of national newspapers or that much share of the national television audience to be in one person’s hands or one private company’s hands. At that point we are saying, “We are going to have to ask you to divest”. It is important to have that rule and that cap. Some people have argued that it is potentially perverse to ask people to divest themselves. I do not think it is any more perverse than asking someone who owns too many airports to have to sell off an airport, which is what happened with British Airports Authority. In any other market we apply the same rules; I do not see why it should be any different and it is arguably more important in the media market.

Q95 Baroness Fookes: How would this work with the BBC, which is not a private organisation? It is a public one.

Professor Barnett: Absolutely. We have to be very careful in how we deal with the BBC. I mentioned a number of areas in my evidence: the fact that it is publicly owned, the fact that it has very transparent methods of accountability—I think there are 27 service licences and the BBC Trust—and the fact that there is very clear evidence of internal plurality. It makes an effort to have—certainly in news and current affairs—different approaches to news and different kinds of agendas for different kinds of audiences. I would want to be very, very careful in putting the BBC into the same pot. I know there are various allegations of BBC bias by left and by right, none of which have any kind of empirical basis at all that I have seen. It is fair to say there is no kind of corporate agenda that the BBC is trying to promote. I would put it to one side. It is complicated as you cannot exclude it altogether. We have to accept, as I keep saying to my students, that the BBC is both part of the market, part of the state and independent from both. How you cope with that within a plurality regime is very difficult.

Baroness Fookes: Could it not be open to criticism if you leave it aside?
Professor Barnett: If you ignored it entirely, absolutely, particularly in terms of its contribution to TV viewing and radio listening. You certainly have to take it into account, but should not be putting it on a par with private ownership and in particular with private newspaper ownership or those media platforms where people are entitled to express strong, passionate opinions—which we all want and we all want to promote, but are not the same as an organisation that is publicly owned, publicly accountable and must be impartial.

Q96 The Chairman: On behavioural remedies, perhaps the most obvious one we have is that the Times newspaper has some rules about independent directors and they have certain functions. Some people have suggested it has not worked terribly well.

Professor Barnett: I think that is absolutely right. We are in the absurd position now where there are independent directors, but we have an acting editor of the Times and an acting editor of the Sunday Times because the independent editors will not sanction the proprietor’s choices. It is a stand-off and it is clearly not healthy. There has to be greater clout in the hands of the independent regulator to say—

The Chairman: Ofcom, as it were?

Professor Barnett: Absolutely—to say, “This has to happen. We insist.”

The Chairman: They have to be given the power then to ensure it does happen.

Professor Barnett: And to monitor. One of the recommendations of this Committee’s first ownership report was that there should be monitoring of investment and quality of broadcast news. It may be worth revisiting that because that is something, particularly with ITV, which some people have argued is diminishing in quality.

Q97 Baroness Bakewell: Who guards the guardians? Who will guard the appointees, appointed by the Secretary of State, in power for a certain time and no longer?

Professor Barnett: Of Ofcom, are we talking about?

Baroness Bakewell: Yes, but whoever the guardian body is.

Professor Barnett: Shades here of the proposed Recognition Body and the argument around that. You are right. I really like the model that was recommended by Leveson, which is now in the parliamentary royal charter, about an independent appointments body—it sounds quite clumsy but it works—where you have an appointments body that is itself appointed by the independent Commissioner for Public Appointments. You have an independent appointments body which then appoints the members of the independent regulator, in this case the Recognition Body. That seems to me to be a much more powerful, independent, accountable approach than what we have at the moment. If this Committee can take that on board, then this would be a great time to look at that. You are right; there is the tendency to say that Ofcom is effectively in political hands.

Baroness Bakewell: None the less, if you have all these different set-ups, you are going to have a band of brothers who appoint each other, if we are not careful. You need guards of that, even. It is mirrors, is it not? Each appointment body will have to assert its own independence.

Professor Barnett: I think that is right, but I do have faith. If you go back to the way in which our judges are appointed, we have a statutory Judicial Appointments Commission. Their job, entirely independent of any political involvement, is to appoint our judges. We do
not worry about our judges being politically appointed. We have faith in them. We may worry about the great and the good et cetera, but most of the newspapers keep them honest, so I would have faith in that sort of system of checks and balances.

**Q98 Lord St John of Bletso:** On the question of who should intervene in the public interest, you clearly agree with Professor Collins that Ofcom and the Secretary of State should intervene in these cases. You do not see the need for a special plurality commissioner. In your words, you used the word “obligation” for the regulator “to report to a mandatory meeting of the Culture Media and Sport Select Committee”. Do you believe that Ofcom has the right mix of accountability, competence and ethos?

**Professor Barnett:** I absolutely do. I would qualify it a little bit in terms of our previous conversation, in that we need to assure ourselves of the political independence of Ofcom. But as I said before, I think you are right to talk about competence and ethos; I think Ofcom are absolutely the right organisation, but I would argue again that independence and transparency are equally important qualities. That is why I am reluctant to see that power remain in the hands of the Secretary of State. There are ways in which those decisions by Ofcom can be interrogated: they can be held to account through the Select Committee process, whether it is in the Commons or whether it is in the Lords or both. It seems to me to work perfectly well with the BBC annual report or Channel 4 annual report or Ofcom’s annual report. The same mechanism can be applied here.

**Q99 Lord St John of Bletso:** You responded to the Earl of Selborne that public interest journalism and news gathering could be enhanced with the signing up of—I think you used the word—a “self-regulator”. Could you elaborate on this? You stress several times in your evidence about the need for independence and transparency.

**Professor Barnett:** I was talking about that in the context of potential behavioural remedies. If a particular media organisation was deemed to be in breach of either sectoral limits or cross-media revenue limits, one of the obligations that could be imposed in lieu of saying “You must divest” would be, “You must belong to one of the self-regulatory regimes that is recognised by the independent regulator”. I was trying to fuse this issue of plurality with the issue of independent press regulation.

**Q100 Baroness Healy of Primrose Hill:** Some have argued that there is an increasing role for Europe to take on matters of public interest in media plurality. You have lots of radical proposals that you put to this Committee, but how far should European competence in this area go and how should it marry with national responsibilities for protecting the public interest?

**Professor Barnett:** I can see why there is a growing sense within Europe that media freedom and plurality are interrelated. It is very interesting. When I give papers in other countries, I am afraid to say that in the same breath people talk about Italy and the UK as being examples of where there have been political interference and therefore terrible breaches of journalistic ethics.

**Q101 The Chairman:** Can you elaborate on that? I am sure it is useful to put it on the record.

**Professor Barnett:** I am invited to give keynote speeches in various countries and I have spoken at the European Commission. Certainly around the time that the phone hacking story broke, and in the months and the couple of years since, they have been excessively worried about the influence of Berlusconi in Italy, for obvious reasons: the fact that while he
was Prime Minister he was able, not only to ensure that his own Fininvest companies were in prime position, but also that he had political control of the public service broadcaster, RAI. That goes hand in hand in many people’s minds in other countries with the excessive power and media concentration that were in the hands of News Corp in this country. The phone hacking scandal and apparent police corruption that were part of that process were, in their eyes, an inevitable consequence of the political establishment cosying up to a major media organisation.

They have been seen as part of a package. Other countries look at these two countries and they say, “Here are examples of the kinds of excessive concentration of media power that we should all be worried about in our different countries. We should be worried about it across Europe and we should be worried about it on a nation state basis. What can we do within the EU, within Europe, to try and ensure that no nation state is afflicted in the same way as Italy and the UK?” It might offend us that we are mentioned in the same breath as Italy, but I can assure you—and I did lots of interviews with foreign journalists when the phone hacking scandal broke—that the sense of how appalled they were by what was going on was tangible. That is partly what has prompted it, and also what is going on in Hungary: the fact that an elected government has taken over the powers of the regulator and essentially tried to impose its own views on both the media regulator and the public service broadcaster.

Q102 The Chairman: Is it the case, which I believe it to be, that the system in Hungary is, on paper, not dissimilar to what we have here?

Professor Barnett: The system on paper may be the same, but the culture is very different. I think that is important. There is not the same culture in Hungary of independence from political interference. Politically in the UK, if a Government so chooses, the next Government could come in and take control of the BBC. There are no constitutional reasons preventing it. There are many, many cultural reasons why it might choose not to do so. Going back to the original question, I can understand the momentum within the EU to say—Neelie Kroes has been explicit about this—that perhaps we should be looking at the way in which media pluralism intersects with something we in Europe care about, which is media freedom. What can we do? What should we do? It is worth reading the high-level group’s reports, rather than reading the newspaper reports of the report, which are very different, because it has very interesting reflections on how Europe might encourage independent regulation and independent self-regulation. I see no harm in that and it is quite good for everyone, particularly for the aspirant nation states—the aspiring EU members and eastern European emerging democracies—to have that conversation about how we can accelerate and promote more media pluralism.

Q103 Lord Skelmersdale: Although I would not go quite as far to say that something stinks in the state of Denmark, from all we have heard, the status quo will not do. Is there anything that you would keep in the current arrangements?

Professor Barnett: Nothing. As I say in my evidence, our current regime is a quick political fix, thanks to the intervention of this House, otherwise we would now have one media corporation of immense power owning both BSkyB and 34% of newspaper circulation. But it is not good enough. It was a fix and as I say we need a plurality regime that is rooted in democratic accountability. I look to this Committee to provide the blueprint for it.

Q104 Lord Skelmersdale: We could always get rid of Ofcom and rely on the Competition Commission.
Professor Barnett: The Competition Commission will become the Competition Markets Authority. I read the Competition Commission’s evidence and I understand its reasons for believing it should have jurisdiction in this area. I just think we need an organisation that is both mandated to, and has the culture of, looking to the interests of citizens.

Q105 The Chairman: Before we finally wrap it up, there are two or three things that just occurred to me as we have gone through that we have not quite touched on. I think everybody would agree that when you are measuring plurality in any country, you probably have to have your public service broadcaster included. How should the consequences of that measurement be handled? Do you think it is essentially a matter for the BBC Trust or Ofcom? How would you take that a step further?

Professor Barnett: It depends on what the conclusion is.

The Chairman: Once you have measured it. Given that probably, whatever system you have, the BBC will be by definition—because it is a public service broadcaster with impartiality rules—outside the rest of the system in one sense, in another sense it has to be part of the whole. How do you see the result of that sort of relationship sitting?

Professor Barnett: If there is any concern about the BBC’s share, or the way in which it is using its £3.5 billion, or the way in which it is investing in news and current affairs, those must be concerns for the BBC Trust to deal with. I am thinking in particular about its evidence to Ofcom about internal plurality and I would like to see the BBC Trust being a bit more active in asking for evidence about how you define that. When you say that Radio 1 is very different from the “News at Ten”, that is clear if you listen to one and watch the other, but how do you implement that internal plurality regime in terms of resources, journalists et cetera. I would not want to see any kind of instruction or conclusion that the BBC needs to divest itself or to spend less money on, in particular, news and current affairs. That would be entirely counter-productive. If there were any constructive proposals that could be made they should go to BBC Trust.

May I make one more point about funding? Coming back to this question about where money might come from and how we account for money that goes into news and current affairs and subsidies in particular. We often talk about the £3.5 billion invested in the BBC. We very rarely talk about the money that is invested through exemption from VAT on all newspapers, or indeed the statutory notices at the local newspaper level: the fact that local councils have to spend money on statutory notices on traffic, on planning, alcohol licensing et cetera. By my calculation, looking at the Newspaper Society website, that could come to £45 million to £50 million a year. The Reuters Institute put the VAT subsidy at about £600 million at 2008 prices, so £650 million to £700 million worth of public subsidy is being invested in newspapers. At the local level, it is mandated that councils place their statutory advertisements in newspapers. Should that continue to be the case? If we are worried about investment at the local level, should we be thinking about other online initiatives? There are other ways in which you can merge different platforms, ways in which that mandatory expenditure of local councils could be spread in a slightly different way to encourage different local media enterprises. Let us think about different ways of both generating more income and spending the income we have, but let us also be aware of what hidden subsidies there are and what the accountability mechanisms currently are for those.

Q106 The Chairman: This is half way to being a kind of policy thing rather than a regulatory matter really, is it not? You are talking here about policy that emanates from central government. It has nothing to do with the regulator.
Professor Barnett: Nothing at all; it is for central government to think about. It would need to be done across departments, because some of these are mandated in DCMS, some of them are mandated in BIS et cetera. It would need to be a central government policy initiative.

Q107 The Chairman: One final thought: no one has talked much in evidence about the public interest test for owners of newspapers and media companies. Do you think they are a good idea and are they correctly drawn?

Professor Barnett: The current public interest tests?

The Chairman: Yes; you would stick with it?

Professor Barnett: Get rid of it. That was the quick fix I was talking about. A way was found at the end of the Communications Bill to use the existing Enterprise Act to insert a public interest test. We need something better, more sophisticated and more thought through.

The Chairman: You are saying get rid of it but do not abandon the concept?

Professor Barnett: Absolutely not, but please let us have a more sophisticated, more thought-through concept that is rooted in democratic principles.

The Chairman: Sort of platonic virtue.

Professor Barnett: Yes; some way of translating the ideal types that we have had in all these wonderful White Papers but then fall apart when they come to legislation.

The Chairman: Fine. That seems a very good way of concluding your evidence, thank you very much indeed.

Professor Barnett: Thank you very much.
Overview

1. The BBC welcomes the opportunity to submit evidence to the Committee’s Inquiry on media plurality. The BBC set out a detailed position on media plurality in its submissions to Ofcom’s Measuring Media Plurality report, supported by analysis of international comparisons and a substantial body of audience research. Since then, Ofcom and the Leveson Inquiry have suggested that a number of issues be considered further by Parliament. We believe the Committee’s Inquiry to be an important part of such consideration, and therefore wish to recap the BBC’s position before expanding upon a number of the specific questions raised in the Call for Evidence.

2. Our starting point is to consider the broader policy objectives relevant to plurality. It is widely recognised that a healthy news sector must ensure a plurality of supply offering a diverse range of views. However, it should also demonstrate other characteristics: high levels of news consumption and reach, accurate and well-funded journalism, competition between providers and a variety of ownership and governance structures. Policy-makers should adopt a balanced approach, taking care not to penalise success or harm innovation while acting to address plurality concerns.

3. In our view, the UK sector fits this model in many ways. It is highly competitive with world leading journalism and a wide range of providers and editorial voices. Choice has expanded with the growth of digital media, and consumers are increasingly multi-sourcing their news. At the same time, it faces challenges – above all, the erosion of traditional business models by the fragmentation of audiences and revenues. The UK’s plurality regime was designed to help sustain the health of the sector and prevent any one player having undue influence. Interventions to regulate content and support public service broadcasting also contribute substantially towards this goal.

4. In this context, reviews of media plurality are an important but complex regulatory tool. Difficult judgements are required regarding triggers for such reviews, the measurement and sufficiency of plurality, and remedies to any perceived insufficiency.

5. The BBC believes there are strong arguments for mergers and acquisitions to remain, as at present, the primary trigger for plurality reviews, as is the case in most other countries. If reviews were to be conducted in the absence of a merger or acquisition, the BBC sees merit in periodic reviews (that could look at the impact on plurality of...

---

73 Ofcom’s Invitation to Comment on Measuring Media Plurality, BBC Response, Annex 1 to response with international case studies, Annex 2 with quantitative evidence

74 Kantar Media research for Ofcom indicates that UK adults now use on average 3.3 retail providers (Kantar Media, 2,244 UK news users, February-March 2012). Online and connected devices are becoming increasingly important: according to Oliver & Ohlbaum’s 2011 Annual Media Survey, the average online news consumer in the UK visits 5.2 sites, compared with the average newspaper reader who reads two newspapers.
organic growth and wider market development) rather than trigger-based reviews, due to the impact the latter could have on market certainty.

6. Any review of plurality would need to begin by establishing the analytical framework for measuring plurality. The BBC has argued that measuring media plurality cannot be confined to any single measure, such as market share, but should reflect a ‘basket’ of measures. These should include available voices, concentration of market (e.g. share of revenues and of news consumption including reach and share), “multi-sourcing”, and internal (as well as external) plurality. The metrics proposed by the BBC are broadly comparable with those found in Ofcom’s conclusions in its June 2012 report to the Secretary of State. Once measurable, a review of plurality would need to establish what level of plurality is “sufficient”.

7. Instead of a single ‘bright line’, the BBC has argued instead that sufficiency is best approached by considering:

- whether current plurality is sufficient, and whether amply so, or marginally
- ranges against the chosen metrics, within which plurality would be presumed to be sufficient, or marginal, or insufficient.

Ofcom identified several categories of remedies to address insufficient plurality and suggested that should any remedy be required, it be chosen as part of a plurality review. The BBC supports this approach. Consideration of remedies will be highly specific to the circumstances of any review. While structural remedies (e.g. divestment) may be appropriate in some cases of merger and acquisition, behavioural remedies have historically contributed towards plurality in TV news, for example via the rules on “due accuracy and impartiality”. The contribution of PSB news towards plurality has also been supported via positive interventions such as EPG prominence and ‘must carry’ obligations.

8. We welcome the recognition in the Committee’s recent convergence Inquiry that PSBs have an important role in “ensuring (internal and external) plurality” (para 152) and its proposal that Government considers future-proofing measures on PSB prominence and ‘must carry’ on platforms (para 165-6).

9. Among PSBs and the wider media sector, the BBC is a leading provider of news. This is a deliberate, positive intervention contributing towards, rather than detracting from, media plurality. Commercial news providers in the UK and around the world face structural challenges to their business models. In this context, public intervention – through the BBC and commercial public service broadcasters – will continue to make a significant contribution to a well-resourced and plural media market. This is a view which is consistent with the final Leveson Report which, in summarising Ofcom’s plurality work, concluded that, due to BBC governance around internal plurality and impartiality, “[the BBC’s] size gave rise to no plurality concerns”.

---

75 As described in s.3 and s.375 of the Communications Act 2003
76 Ofcom’s supplementary evidence to the Secretary of State 2012
77 Lords Communications Committee’s Report on Media Convergence 2013
78 As acknowledged by Ofcom in its report: “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.”
10. The BBC is fundamentally different from other news providers: publicly funded\(^{79}\); constitutionally insulated from commercial and political imperatives; uniquely governed to maximise accountability to licence fee payers; and subject to the rigorous editorial standards and scrutiny.\(^{80}\) While any plurality reviews may need to take into account consumption of BBC news, the BBC should not itself be the trigger or subject of any new plurality regulation. Instead, Parliament established the public interest safeguards for the BBC at the time of the last Charter in 2006. The appropriate time for reviewing them is at the time of each Charter review. The special nature of the BBC’s Charter process was recognised by Ofcom as “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”.\(^{81}\)

11. The BBC’s strong performance in news is not due to its scale – the BBC accounts for 25% of TV news minutes broadcast, but 73% of TV news viewing.\(^{82}\) Nor does the popularity of BBC news result from ‘economic dominance’: the BBC today takes a smaller share of UK broadcast revenues than at any other time in its history – and it is a share that is all but certain to fall over coming years. Rather, it is an exercise of choice based on trustworthiness, accuracy and being up-to-date – demonstrated to be the top factors that govern choice of news provider. BBC News maintains a significant lead on other news providers in trustworthiness – when asked which one news provider they trusted the most in February 2013, 58% of the UK public chose the BBC, compared to 14% for the next nearest provider. When asked which one news source they are most likely to turn to for accurate news coverage, 58% chose the BBC compared to 13% for the next nearest provider.\(^{83}\)

12. The BBC’s submission to Ofcom’s report of June 2012 highlighted the very high levels of public trust in the BBC overall. Following news of the appalling crimes of Jimmy Savile, the decision not to broadcast the Newsnight investigation and the subsequent failings in relation to the McAlpine Newsnight, trust in the BBC dipped from historically high levels of 6.8 in September 2012 to a low point of 6.0 in November 2012.\(^{84}\) Trust levels nonetheless remained higher by historical standards than any point before 2010. In December 2012, the BBC Trust published the Pollard Review – a detailed and independent inquiry. This concluded that Newsnight’s Editor was not put under inappropriate managerial pressure. This was a crucial finding: serious allegations had been made that the BBC had attempted to suppress knowledge of Jimmy Savile’s wrongdoing for its own corporate benefit. However,

\(^{79}\) As highlighted in the Committee’s Inquiry into the Future of Investigation, the licence fee provides a level of certainty in funding that allows it to plan long-term, high risk, public interest investigative journalism: “Not all investigations will bear fruit, but the BBC is able to afford to back programmes that may, in the end, not reach air. In contrast, the market is not always able to fund such output”\(^{80}\).

\(^{80}\) See answer to the question ‘Should it include the BBC?’ for more detail below.

\(^{81}\) Paragraph 5.146, Measuring Media Plurality, Ofcom 2012.

\(^{82}\) All BARB-measured news provision (ie the PSB channels including BBC News Channel, Sky News, Euronews and Fox News) for H1 2012. If you exclude the smallest of these in 2010, Fox News and Euronews, the BBC accounts for 52% of TV news minutes broadcast (but 72% of viewing).

\(^{83}\) The next nearest provider was ITV in both cases. Ipsos MORI for the BBC, UK adults 16+ who follow the news (1,873) interviewed face-to-face.

\(^{84}\) Kantar Media for the BBC, 1,000 UK adults per month, mean score out of 10 for ‘I trust the BBC’ (10 = strongly agree; 1 = strongly disagree).
Pollard did identify serious failings in editorial oversight and managerial control, which the BBC accepted and committed to act upon, as set out in the BBC Trust and Executive’s response to its findings. Since November 2012, trust has been recovering and was at 6.4 in February 2013. While the BBC has already introduce a series of measures in response to Pollard’s recommendations, restoring trust to previous peak levels remains a top priority.

**BBC answers to specific questions where further detail required**

**How should the growing role played by digital intermediaries acting as gateways to content be taken into account?**

13. The BBC agrees that digital intermediaries (broadly categorised as news aggregators, search engines, social media and digital stores/devices) will play an increasingly significant role in the news ecology, with trends indicating that their impact is being scaled up with increasing rapidity: whilst it took television 13 years to reach 50m households, Facebook took just a year to hit 50m users and Twitter just nine months.

14. While traditional media of TV and newspapers are likely to remain the primary source for news for some time, ‘digital’ news services are of increasing importance particularly for younger audiences. Ofcom’s plurality report observes that ‘newspapers, online and radio are perceived by consumers to be broadly similar in terms of importance’, with use of online news steadily growing from 15% who ‘ever used’ it in 2002, to 27% in 2007, to 41% of UK adults who use the internet for news in 2012.

15. The digital transition has presented well-documented challenges to newspapers in developing their revenues models online, with markedly similar challenges faced in the United States, including broadly parallel trends in declining print circulation over the past three decades. However, there are also opportunities, such as the rising penetration of tablets, forecast to reach 50% by 2015, and their ability to deliver innovative, high-quality experiences for news consumers. The opportunities afforded by tablets combined with the high cost of print as a distribution platform are making digital-only news providers more viable (see for example Newsweek).

16. Intermediaries are a key way of accessing online news. 30% of online news users use search engines as one of the main ways they access news, 22% use news aggregators, and 20% use social media. As outlined in a recent Reuters Institute report this activity could potentially have an impact on plurality in four key areas: (1) control over what might be considered distribution bottlenecks through which users access news; (2) the editorial-like judgements they make about the news content they link

---

85 BBC Response to Pollard Review
86 Kantar Media for the BBC, 1,000 UK adults per month, mean score out of 10 for ‘I trust the BBC’ (10 = strongly agree; 1 = strongly disagree)
87 Gartner, Enders, Screen Digest 2012
88 Enders estimate that paper, printing and distribution costs total 45% compared to 27% for editorial, Presentation to Leveson Inquiry by Claire Enders on competitive pressures on the press, 2012
89 News Plurality in a Digital World, Reuters Institute for the Study of Journalism 2012
90 Ibid.
to or carry; (3) their role in shaping future economic models for news provision; (4) their inclination and ability to influence the political agenda. Equally, there may also be a positive impact on plurality provided by digital intermediaries such as driving increased multi-sourcing and improved access to a wider variety of news.

A framework for measuring media plurality would need to capture these areas of impact and monitor the evolution of digital intermediaries. The Reuters Institute proposed a broader dialogue with digital intermediaries to establish and promote best practice. The focus was to be on the four key areas of impact outlined above, and to aim to secure standards such as open and universal access to a diversity of news and transparency on the criteria for access decisions (for example, the principles search engines use in designing search algorithms). The report also argued that there may need to be consideration of possible regulatory measures, particularly in the area of access, should digital intermediaries prove to be a threat to plurality in future. The BBC believes there is merit in government and Ofcom exploring these proposals and their ability to support the longer-term public interest in plurality.

17. The BBC also agrees with Ofcom’s recommendation that online should be included within measurements of plurality, with careful consideration of definition and scope.91

What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?

18. In our submission to Ofcom, we considered that there may be a case to look at genres beyond news – at least initially. For example, satire from *Spitting Image* to *10 O’Clock Live*, and from *Private Eye* to *The Daily Mash* form an important backdrop to how we think about business and politics and hold powerful interests to account. More broadly, drama, comedy and factual formats can play a role, alongside news and current affairs, in helping condition political discourse. Nonetheless, our view is that news and current affairs are substantially more important in driving the news agenda and developing public debate, and so therefore should be the primary genres to be considered across TV, radio, press and online. We agree with Ofcom’s recommendation that any plurality reviews should be limited to news and current affairs.

To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

19. We note that there have been discussions by Member States about how to safeguard media freedom within specific Member States, as well as the role that international institutions might play. In the BBC’s view, media freedom is a separate concept from pluralism.

20. Member States have argued in the past that (except in extremis)92) media freedom and particularly media plurality remain a Member State competence. On plurality,
arguments included the level of diversity within the European Union — ranging from technology to electoral systems, culture to demographics, language to devolved nations, and economics to consumption. These arguments appear as relevant today as previously.

**What should the UK learn from international approaches to media plurality?**

21. For the BBC’s submission to Ofcom, we commissioned an initial examination of the current practice in a selection of countries in Europe, North America, and Australasia (chosen for their scale and relevance). Key conclusions included:

- In the countries examined, there are typically two main approaches: first, restricting ownership/control of multiple media outlets (e.g. the number of TV channels, radio stations or newspapers that can be owned by any single entity) to ensure a range of “voices” is available in any defined market; second, preventing large media enterprises from having excessive influence, usually with reference to an audience share limit. Sometimes a combination of these approaches is used.

- In most countries examined however, regulatory intervention is only considered in the event of a merger/acquisition which might affect plurality. It is much less common for regulators to intervene in the event of some pre-determined market share threshold being breached by a media enterprise e.g. through organic growth. Periodic reviews of media plurality do take place in some countries – although these seem to be intended to inform decisions about future ownership rules, rather than to make immediate interventions to address plurality concerns.

- In Europe, Canada and Australia, public service broadcasters are seen to play an important role in supporting cultural diversity and providing broadcasting space for minority interests and viewpoints, contributing to rather than threatening plurality. A substantial amount of European legislation exists to underpin the special role of PSBs and their contribution to promoting diversity and pluralism, especially through the provision of independent news and analysis. They are typically not affected by restrictions on ownership/control, and are not subject to market share constraints. In France for example, the Constitutional Council upheld the exemption of France Télévision in 2000 “having regard to the special obligations” of the broadcaster. Their existence is often taken into account, however, when determining levels of plurality acceptable in the rest of the media market.

**Should the BBC’s output be included in a review of it?**

22. As outlined in the overview above, our view is that the BBC should not itself be the trigger or subject of any new plurality regulation.

---

92 Article 7 TFEU provides that the European Council can decide to suspend certain rights of a Member State found in serious and persistent breach of EU values enshrined in Article 2 of the Treaty (which includes pluralism).

93 Annex 1 to response with international case studies.
23. This was broadly recognised by Ofcom in its report: “The BBC’s leading position in TV, radio and online news means it should be included in any plurality review; but the BBC’s position itself should not trigger a review”. The Leveson Report recognised “governance controls in place to ensure internal plurality within the BBC, and the effect of the impartiality requirements meant that its size gave rise to no plurality concerns”.

24. Ofcom recommended that the BBC Trust “assesses the BBC’s contribution to plurality, both internal and external”. The Trust’s priorities are for a BBC news service that seeks universal reach (through a range of different services); that is of the highest possible quality and that constantly pursues the goal of impartiality. In a period of cost-cutting, caution will be needed to ensure that planned efficiency savings, for example in newsgathering, are made without compromising these objectives. Sustaining quality and impartiality in BBC news requires a variety of different programmes for different audiences and the broadest possible range of voices and opinions. The Trust’s current impartiality review of the breadth of opinion in BBC News, and the forthcoming general performance review of BBC News, should provide very clear evidence about how well the BBC is delivering on those aims. Those reviews will therefore help the Trust to decide whether any more regular evaluation of the BBC’s contribution to plurality is required in future.

25. The BBC’s contribution to external plurality is already the subject of detailed regulation on market and competitive impact. These Charter-enshrined checks have led to significant changes to proposals from BBC management, including the rejection in a public value test of the BBC’s proposals for a new online ‘local video’ news service. They have also encouraged the BBC to consider partnership proposals which support the wider market, including syndication of its news content and driving traffic to other online news providers through links on bbc.co.uk.

26. Internal plurality is encouraged via several aspects of the BBC’s governance framework, editorial standards and culture — as recognised by the Leveson Report. Structurally, this is set out in the service licence of each outlet with its relevant target audience (with service licences subject to regular public consultation). Culturally, it is evident in the key role that individual programme editors play in story selection, running orders and editorial treatment. In terms of governance and editorial standards, the detailed requirements for ‘due impartiality’ are particularly important - not just to internal plurality but to the wider positive role BBC news plays alongside the more opinionated news in other parts of the news market.

27. Owing to the importance of ‘due impartiality’, the Trust seeks to monitor performance and hold the Executive to account in a public and proactive way. A key tool is the system of impartial reviews (such as the breadth of voice review mentioned above). These involve in-depth analysis and research focused on an

---

94 The Leveson Report reads that “governance provisions of the BBC require a high degree of editorial independence within the Corporation, which, when working effectively, ensure a diversity of voices and viewpoints from the different channels and programmes. This, perhaps, provides a model that would help to ensure plurality in relation to other large players in the media market”

95 The range of analytical tools includes:
individual editorial theme and led by a respected expert. Previous Chairs have included Sir Alan Budd on business (a founder member of the Bank of England’s Monetary Policy Committee and former Chief Economic Adviser to HM Treasury), Edward Mortimer on the Arab Spring (a respected Middle East specialist of The Financial Times and The Times and international affairs author), and the celebrated geneticist Professor Steve Jones, who led the science review.

28. Each review has published a series of recommendations, and the BBC Executive is required to respond to those. Progress against issues identified is then followed up on by the Trust. For example, with the Four Nations impartiality review, its 2007 analysis indicated that the BBC compared favourably against other broadcasters, but could be improved. The 2009 analysis found strong improvement in the BBC’s weight and accuracy of news coverage of the devolved nations, whilst the performance of other media outlets—without the pressure of the Trust to implement improvements—had remained static or declined.

29. As part of the Trust’s Governance Review in July 2011, the frequency of impartiality reviews is to be increased alongside the introduction of impartiality seminars: a format for looking ahead to how the BBC may consider coverage of upcoming and emerging issues.

30. While always room for improvement, audiences appear to choose the BBC not only for impartial news coverage (several times more so than the next nearest provider) but also for breadth of views. Audience research suggests the BBC has a clear lead over other news providers in terms of the proportion of the UK public who think it shows a range of perspectives in its news reporting—with 79% net agreement vs. an equivalent of 69% and 45% for the next nearest news providers, ITV and Channel 4 respectively.

13 May 2013

- **Content analysis:** Academic bodies with a strong reputation for their analysis of media content are commissioned to produce this research, and are published in full for each impartiality review.
- **Consultation:** Each of the impartiality reviews has made extensive effort to gather reflections from informed and interested groups and individuals both internal and external of the BBC. For example, the Science review held interviews with 70 individuals involved in production, group meetings with experts such as the House of Commons Science Committee and DECC, meetings with BBC Audience Councils and scientists, and written submissions from organisations such as the Royal Society, Rolls-Royce, and the Department of Health.
- **Quantitative and qualitative research:** Audience perceptions are gathered on subject of review’s focus.

96 Review of BBC Governance, BBC Trust, July 2011

97 Ipsos MORI for the BBC, 1,873 sample, Feb 2013. “Which one source are you most likely to turn to if you want impartial news coverage?” 49% would choose the BBC vs. 14% who cited the next nearest news provider (ITV)

98 ICM for BBC, 1,003 GB adults 18+, November 2011. See Figure 6 in BBC Response to Invitation to Comment
Q215 The Chairman: Can I welcome you to the evidence session we are having with representatives of the BBC? We have James Heath and Daniel Wilson. Your CVs have been circulated so we know your roles at the BBC. We are grateful to you for coming to talk to us to supplement the written evidence we have already had. Just so you are clear, the meeting is being broadcast and a transcript will be made and taken. I would be very grateful if, before you start, you could just identify yourselves so that all ties together. Once you have explained who you are, please feel free to make an opening statement if you would like to do so. Equally, either of you and/or both of you can respond to the questions given; it is entirely up to you how you do it. Also if there are points that you think are important that we do not cover, please bring them in. We are here to listen to what you have to tell us. Shall I start with James Heath? Could you just explain who you are?

Mr Heath: I am James Heath, Director of Policy at the BCC. I would like to say a few things as an opening statement, probably just a few things about how the BBC views plurality before a little bit on the BBC’s contribution to it.

As we said in our submission, and quite commonly agree with Ofcom on the subject, we regard plurality primarily, although not exclusively, as about the provision of news and information analysis. We think that is the core part of broadcasting that links to the democratic process and to public debate. Why media plurality is important is because it is about ensuring that there are a range of suppliers in the market and a range of views in the market and that no one player has undue influence. We think that is quite an important
public policy objective. For me, the competition objective is around choice and around price to consumers but plurality is talking to citizenship and wider social objectives about the range and provision of news in a society.

The second point I would like to make is that the public interest test and the media plurality regime is clearly an important safeguard for media plurality, but it is only one of the safeguards. Probably as arguably important, we believe, is a series of positive public policy interventions in the news market, whether it is the BBC, whether it is a broader PSB ecology, whether it is the broadcast standards around impartiality. They are as important in terms of the toolkit, along with the public interest test.

I suppose the final point on plurality is that, yes, it is important, it is complex in terms of how you get it here and measure it, but it is only one feature of what a good news system should be. For me, equally important is that there are high levels of consumption of news, that there are high levels of investment in a range of journalism, whether that is investigations or international. They are all equally important as plurality and it could be argued that the two are sometimes intentional, there could be trade-offs in terms of public policy framework.

I see the role of the BBC as being pro-plurality in terms of its effects rather than reducing it. Our mission, our public funding, our journalistic approach mean that we add choice in the news market and offer a distinctive and arguably unique contribution in the news market. That is not to say we are not part of it. We clearly are part of the news market, we have effects, but we are also qualitatively and fundamentally different to other parts of the news ecology, I would argue. If the BBC collapsed tomorrow and you were rebuilding it, where would you start? You would start with the irreducible core, which is news and current affairs. That is my view. That is reflected in our investment priorities and that is what the charter and agreement says. The number one priority and purpose, is around citizenship and civil society. So it is fundamental to the organisation.

When I look at the news portfolio, how do we deliver news, what in essence is it about? I think it is about impartial, accurate, trusted journalism that provides the analysis and information for citizens to be able to make choices in their lives and to understand public policy and democratic discourse. That is the absolute heart of it. We do it through breaking news and accurate news coverage, we do it through analysis, explanation and context, and we do it through arguably more costly and time-consuming investigative journalism as well. I will stop there, Chair.

The Chairman: Daniel Wilson, do you want to say anything as an opening?

Mr Wilson: No, just to introduce myself as the Head of International Policy for the BBC, but also in my previous role I worked on media plurality issues and our response to Ofcom with James.

Q216 The Chairman: Thank you. I noticed in your opening remarks you did not touch on newspapers at all. Is there anything you would like to say about the relationship between particularly the BBC and newspapers but broadcasters more generally and broadcast news and the role of newspapers?

Mr Heath: I think if I had elaborated on the ecology point, that what you have here is a BBC with a set of values around impartiality, independence and commercial interests and obviously enough about the ecology, it is far more opinionated about the ecology. That is what it is there to do, to challenge and to be opinionated, and the two complement each other. That is how I see the news ecology; there are different parts with different players playing different roles. The overall UK news market on most metrics is fairly successful. If
you look at consumption, investment levels or reach, it is a fairly successful news market across a whole range of measures, not just plurality.

**The Chairman:** In your experience, do you think that some of the web operators, particularly those that do not have either a newspaper or a broadcaster behind them, are bringing something different to the party and, if so, what?

**Mr Heath:** Definitely. I suppose one of the things that online has done with lower barriers to entry is to enable a richer mix of commentary in news online. That is why online has been very effective. The numbers of consumption compared to traditional media are still small but it has definitely added a new dimension and one that is to be welcomed in broad terms.

**The Chairman:** Do you, from your perspective, see any particular characteristic from the online section? We talked about the partisan newspapers, the impartial—I am just trying to identify how you—

**Mr Heath:** If you look at online news, it seems to me that the vast majority of consumption of online news is usually to news that has been created from the incumbent players, in terms of breaking news and analysis. It may be got to through news aggregators or search engines or all the rest of it, but the majority of news is consumed from about three or four core sources, the BBC being one. So there is definitely a lot of opinion, a lot of commentary online. With few exceptions, are there sufficient levels of investment and money so far to do the expensive and difficult stuff in terms of investigative journalism and international news gathering and analysis? There certainly are some examples of it, particularly in the US market, perhaps less so in the UK.

**Q217 Baroness Bakewell:** Television broadcast news used to be king absolutely across the board. It is not so any more; the whole ecology has changed. What have you been able to learn about the patterns of use and how much they have been changed by the media habits of your audience? Is your role diminished or has it shifted? How do you adapt to the changing pattern?

**Mr Heath:** Overall the numbers are that around 85% of the UK population still consume the BBC for news per week. Even younger audiences, where there is a challenge, which we can come on to—

**Baroness Bakewell:** Can I just ask you what you mean by consumption? They tune in for one programme?

**Mr Heath:** Yes, it is a basic measure of reach that is around at least 15 minutes or half an hour a week. That is still in the mid-80s, which, given the range of choice, is still quite a strong performance. Even on younger audiences, the 16 to 34s, the percentage is still in the low 70s or high 60s. I think we are probably seeing an increased polarisation between particularly young audiences and their consumption habits, consuming more news, less traditional media; that is definitely there despite those headline numbers. We are also seeing probably a growth in news promiscuity, if I can use that term. People are consuming a range of different sources of news. I think the average consumer consumes about four or five different sources of news. Promiscuity is even greater online. I think the average there is probably five or six. So people have fairly varied and rich news diets across the board.

**Baroness Bakewell:** Do you see yourself in competition with all these other sources of news that they are using?
Mr Heath: In terms of competition for quality I suppose we are, but we are offering a complementary service here that is a particular brand of BBC news which is trustworthy, impartial, accurate; I think that still gives us a USP, particularly in the online space.

Baroness Bakewell: Some might say that the BBC has traditionally always been trusted but it has also been seen to be rather stuffy, traditional and uncluttered with larks and entertainment. Is that part of the BBC philosophy, to stay the most solemn and the most serious?

Mr Heath: I think being authoritative in your news coverage is absolutely core to the BBC, but when you are dealing with different audience groups, particularly younger audience groups, the style has to be accessible. The story selection still needs to be serious, in my view, but the style and the way you approach news has to be tailored to your audience group. I suppose across our portfolio that is what we try to do. The obvious example is 5 Live versus the Today programme, but even looking at other examples of where we try to target younger audiences with Radio 1 Newsbeat or—

Baroness Bakewell: Does your research tell you anything about the degree to which people listen over a long period of time and the degree to which they can concentrate? Obviously that is quite sophisticated research, but do you have any profile of your different audiences for different programmes?

Mr Heath: We probably do. We do a hell of a lot of analysis in this area. The average person still consumes about 20 minutes of TV news a day. Online it is around a minute, one minute 20 seconds. That gives you a sense of the relative scale of TV broadcast news versus online. Certainly we will go away and look at our analysis and find some more information.

Baroness Bakewell: Is that what you are saying, things have changed less than you might imagine?

Mr Heath: I think that is the case. The stats are still telling us that for the vast majority of people traditional forms of news are the primary source of consumption and, critically, the most trusted source of consumption, even though patterns are changing, particularly among young people.

Q218 The Chairman: Do you think that if you spend a minute looking at an online news service it equates to listening to the radio and watching television for a minute? It strikes me you would probably absorb stuff quicker in a kind of superficial way online.

Mr Heath: I would hesitate from giving you a sample size of one, Chairman.

The Chairman: Fair enough. You have not done any work on that? No.

Lord Dubs: Just broadening this point a bit, even if the traditional news is still the main thing, your electronic news is obviously expanding, at least I take it it is expanding. It is also bringing you head-to-head in competition with other providers of electronic news like newspapers. Do you see any problem in that? After all, you are competing, they have to earn the money.

Mr Heath: Absolutely, and without doubt, the BBC is the leading online news site in the UK by a significant margin. But what also strikes me is that two of the three largest newspaper websites in the world are both British—I think they are about to become the top two, overtaking the New York Times—the Mail and the Guardian. I suppose from where the BBC sits it is almost inevitable that as audiences start to consume online news and mobile news, in order to deliver our public purposes we will follow the audience and deliver a rich online
propose and try to develop an online proposition that is true to our values but is different to and distinctive from the online news provision that is supplied elsewhere.

In terms of the impact of that, I suppose you are absolutely right that newspapers are trying to transition from physical to digital and some of them are doing better than others, but they seem to be a structural factor in the market, independent of the role of the BBC. It is happening around the world. All newspapers are facing the same issue of transitioning from physical to online and what they are finding is they cannot command the same advertising rates online that they can command in their physical.

Lord Dubs: But there is no BBC in other countries. The newspapers here have a tougher competitor.

Mr Heath: But they are facing common problems across the world where in a number of countries they do not have the BBC. If you look at our online proposition, the products are differentiated. Compare the BBC’s online proposition to the Mail online, the second largest news website in the UK. It is a different proposition. Again looking at the stats, only 11% of the people who consume BBC news do not consume another online news provider. So people multisource and the BBC is complementary. It is not crowding out that other consumption, would be my view on the subject.

Q219 Bishop of Norwich: Can we move on to funding and its impact or potential impact on plurality? The BBC has had to face a frozen licence fee and the use of the licence fee for things like the broadband programme and World Service and so on, and are delivering quality first of course. It was said that the savings would be in non-core news and current affairs programming but Ofcom, in its advice document to the Secretary of State, did say, “The BBC faces pressures to further centralise its news-gathering activities”—I notice a split infinitive there—and that “such moves help reduce expenditure but they may reduce internal plurality”. How serious are those concerns and do you recognise that as being a problem?

Mr Heath: If I start from the start, the licensing settlement was tough but it was a fair settlement. It has meant that the BBC across the period up to 2016-2017 will have to take around 16% of the cost base out of the business. So there are going to have to be some tough choices across the BBC. It will be challenging. How we are approaching it in news, I think the average news has been relatively protected versus lots of other areas, given the priority we ascribe to it. We are looking to do it through a mix of efficiencies, which hopefully if they are managed carefully and effectively will not have an impact on quality and impact. But there are also some doing less; there are some scope reductions. Again, we have tried to target areas that will have least impact on screen.

The proof of the pudding will be in the eating and we will carefully monitor the impact of those cost reductions and see the extent to which they do affect the BBC’s news objectives around reach and impact as well as internal plurality. I think internal plurality is only part of it. I would regard our reach, our impact, our trustworthiness with audiences as the top of the list before we get to internal plurality.

Bishop of Norwich: But there was a concern on the part of the trust, was there not, for example, that regional news and current affairs was more likely to be hit and that should be more greatly protected but you cannot protect—

Mr Heath: Exactly. Through decisions of the trust, I think the original proposition was significantly reduced in terms of cuts to local radio, down to about 6% of the local radio budget, which is about £150 million. I think we understood and listened to people about the sort of lifeline service that local radio is. So the cuts there are around £8 million. Again, we
will try to focus on more efficiencies and we will try to focus them in those parts of the schedule that have least impact. In local radio I think about 80% of listening happens at breakfast, drive time and morning. What we are trying to do is share content across local radio stations outside of those core listening areas to hopefully minimise impact. But you are right—cuts need to be made.

**Q220 Baroness Bakewell:** Surely the massive upheaval in the local radio that absolutely savaged all the real local radio areas flew in the face of popular demand. In fact you did not stand firm and hold to what the audience wanted; you yielded to the economies of the situation.

**Mr Heath:** In what sense?

**Baroness Bakewell:** You bundled all of the west country together and had Bristol reporting on Cornwall, you bundled all the north-east together and had Newcastle reporting on Yorkshire. There was huge opposition to that among your audience.

**Mr Heath:** There was definitely opposition to the initial set of proposals, but through the process of scrutiny that the trust led the final set of proposals reduced the cuts significantly to local radio, down to about 6% of its overall budget. So again, compared to the average cut the BBC is facing, it has been significantly protected.

**Bishop of Norwich:** What about protecting your international news and current affairs? One of the things that I think people often value in the BBC is the international character of the news. I notice, for example, on the World Service quite a number of strands have disappeared. In my own particular interest, *Reporting Religion*, which was very impressive—reflections by BBC correspondents from around the world about religion and politics and the relationship between the two—has gone. If you look at the World Service, this idea that there is a great deal of centralisation taking place in news gathering does seem to hold water and I cannot see where else you would find that sort of plural voice in the media at large.

**Mr Heath:** That is absolutely right. One of our absolute central roles is around impartial and trusted international news. Again, the World Service comes into the licence fee funding from next year, the significant cuts that were imposed on the World Service as a result of the comprehensive spending review. The hope is, the commitment has been made, that when the World Service comes into licence fee funding that we will increase the funding. You are right, there will still be pressures but the hope is that, with all BBC news funded from the same source under one roof, you can start to develop a more integrated news operation where the domestic benefits from the international and the international benefits from the domestic. That is the ambition, but I agree it will be challenging.

**The Chairman:** If you stand back from the particular and see what the BBC is delivering for plurality, do you think that the financial pressures you are under are going to materially impact badly on plurality in the UK media as a whole?

**Mr Heath:** No. That is my initial assessment from what we have seen from the impact of the cuts so far. Even post the efficiencies we are seeing, the BBC as a news operation will be a significant force in TV, radio and online.

**Lord Dubs:** I hope I am not hearing that the local radio and local television stations are not going to survive. There is something in what you have said that seems—

**Mr Heath:** I certainly hope I am not giving that impression. Local radio is one of the services in the BBC that—this awful word—delivers a unique reach. There are about 2 million people who consume local radio and do not consume any other BBC service. It is absolutely core
to have the BBC deliver to local communities but also scrutinise local politics. Certainly if I have given that impression, I should quickly backtrack.

**Mr Wilson**: If I might add, one of the parts of the Delivering Quality First plans, the saving plans, was to find some extra savings to reinvest in core priorities. Part of our recent priorities has been investing in political correspondents working at a local level. We have employed 28 new political journalists working at a local level, dedicated to public policy issues, local politics and scrutiny of local institutions. So there have certainly been cuts but there are also some reprioritisations within local radio.

**Lord Dubs**: In fairness, you did not actually say that but I just wanted, for the avoidance of doubt, to hear you rebut it.

**Q221 Baroness Fookes**: I would like to pursue the issue of internal plurality. I think you suggest in your evidence that the different service licences help to achieve this, but Ofcom has shown some doubt about whether this is possible. Would you like to expand?

**Mr Heath**: I will have a quick opening and then I will hand over to Daniel who has done some thinking in this area. If you look at the evidence on this, and we have analysed it, it is not just that there are structurally separate services with different missions and different approaches and service licences. Consumers tend to consume a range of different BBC news outlets. The vast majority of people consume a number of different outlets and a number of different platforms. So there is definitely internal plurality there in terms of the audience perception as well as a top-down BBC management view. I will hand over to Daniel.

**Mr Wilson**: The other thing just as context, before turning to the service licence regime, is when we ask audiences why they choose a news provider the top answers they give are around impartiality, accuracy, trustworthiness and being up-to-date. For us, those have to be the priority. So, while internal plurality is important, it is not the top audience priority. But audiences also tell us that they do want a range of views from the BBC. About 90% of audiences say they think it is important and, by and large, they feel they get it from us.

So one part of that is around the service licences and if you take any one day of BBC coverage for a big event, say the Budget, you will see on BBC2 the expert analysis with correspondents on the market floor, out talking to businesses in the Midlands in the last budget and talking to politicians on College Green. On Radio 1 you will get something very different that is more appropriate for the average Radio 1 audience. But within each of those outputs we try to give a range of views also, so that one programme has a diversity of views in itself.

**Baroness Fookes**: Could you give an example from Radio 1, which is not something I personally listen to?

**Mr Wilson**: I think I have slipped out of its demographic too. For instance, Radio 1’s budget coverage had not just the presenter but it had a tax expert who they interviewed. Its focus was more on the consumer issues, but what we know about the audiences who consume Radio 1 is that they tend also to consume content from the BBC’s website and content from BBC3 and content from BBC1. One of our strongest innovations in news recently for young audiences has been a three-minute news slot that we have introduced at 8 pm during weeknights to run off the back of *EastEnders*. That sort of scheduling has helped reach out to 12% or so of 16 to 34-year-olds, many of whom would not have looked out for news on BBC1. So we hope in that Radio 1 programme to have provided a range of views but also expect that a Radio 1 listener is likely to have caught that coverage elsewhere on the BBC and elsewhere in the broader media market.
Q222 Baroness Deech: In your evidence to us you say that part of the way in which you achieve internal plurality is culturally, that individual programme editors are all doing their own thing, choosing their running orders, editorial treatment, leading stories and so on. That may be the case, but how can you at one and the same time give the editors their freedom and yet, if you look across the whole organisation, also make sure that there is diversity and plurality of views? If you send hundreds of journalists, for example, to cover a particular important event, is it not very tempting to get your money’s worth by making sure that is the lead story absolutely everywhere?

Mr Heath: I think that is a fair tension. I worked for a while in BBC News, not as a journalist but worked there, and the thing that hit me is it really is not a command and control news model, which may be more akin to a newspaper. The level of freedom and autonomy for editors is quite significant. They are not controlled in terms of story selection programmes. They submit to a set of editorial guidelines, almost like a common editorial framework and values but the editorial decisions sit with the editor. The editor of the Ten decide what is on the Ten, the editor of Newsnight decides what is on Newsnight. There is not some overall editorial line coming down from somewhere in BBC News. That is quite an important point because it perhaps helps to distinguish the BBC again from some other parts of the news market.

But absolutely on big days big stories will predominate across a range of outlets. Daniel has mentioned the budget and there are some other areas. Big stories will tend to cluster along a range of outlets. I suppose a question for those outlets is how are they treating the story for their particular audience and how are they approaching the breadth of opinion and range of views in the treatment of that story. That is one of the things that impacts the BBC editorial policy guidelines, the section on impartiality. The key section in it is impartiality equals a breadth and range of opinion. It is not some sort of left or right seesaw, it is how you get a range of opinion. It is due weight to different strands of opinion in society but it is how you deliver that within your coverage of big news stories. It is something that editors will approach differently and therefore you will get a different treatment of stories on different news bulletins.

Baroness Deech: You are painting a picture of editors, fortunately, all taking different approaches, but how would you ensure that they did without at the same time being too controlling from the top?

Mr Heath: Again, I do not think there is any central diktat on it. I think it is in the DNA and the journalistic culture of the BBC. That is how editors are encouraged to behave and that is how, in the large, they do behave. They have a framework, a policy guide that places a premium on breadth and range, but that is in their culture.

The Chairman: We have to go away in a moment to vote, but can you finish this?

Mr Heath: The other thing is the BBC subjects itself to massive amounts of self-examination—some would argue too much self-examination—in the way in which the trust looks at the coverage of stories and tests the extent to which they have been delivering a range and breadth of opinion. We have had the most recent one with Stuart Prebble looking at a range of BBC themes and how we have treated them. It is subject to quite a significant amount of monitoring and assessment and often critiqued that the BBC has got it wrong.

Baroness Deech: But if you are viewer, especially if you go abroad and watch BBC World, you see the same thing over and over and over again, or at home if you move from BBC to the News 80 channel and any others it does seem to be very much the same thing. Certain omissions are never there, certain things always get top billing.
The Chairman: You can think of your reply while we go away and vote.

Mr Heath: I think it is a fair point on the news channel. It is something that we are to look at in terms of its overall fundamental approach.

Sitting suspended for a Division in the House.

Q223 The Chairman: Thank you, James. I think there was something you were saying when we went that was slightly lost in the cacophony of the noise.

Mr Heath: I think just to acknowledge that the quality of our world news channel is something that we are conscious of and can hopefully do something about. I agree.

Baroness Deech: Thank you.

Lord Dubs: Can we turn to impartiality and plurality and the relationship between the two. What do you see as the interplay between diversity and breadth of views on the one hand and due impartiality on the other? Ofcom said the two were not synonymous, in their advice to the Secretary of State. In the light of that, let me add this: how far can the due impartiality requirement go towards supporting diversity?

Mr Wilson: Perhaps I could answer this one. I think we would agree with Ofcom that they are not synonymous. For example, the BBC would never need the kind of editorial campaigns over a sustained period of time that you might see on public policy issues from newspapers. That is not our role. But we do think that due impartiality can take you a very long way. The way that we apply it, as James described, is not just about a seesaw between left or right but bringing a broad range of views to bear on something, but also through making sure that challenging views are brought to bear. We can go a fair amount of the way there. It is a topic we look at very regularly, so the report by Stuart Prebble looked at it very recently. Prebble also referred frequently to the Bridcut reports that we commissioned in 2007, which made it very clear that impartiality is not about insipid journalism, it should be something more than that.

If I can make a final point, the way that the trust scrutinises our due impartiality is proactive and is very public in a way that means that that commitment to a breadth of voice alongside impartiality is fulfilled in the eyes of audiences but also through expert analysis. To take just one example, the review by Sir Anthony King in 2007 of our coverage of the four nations identified some areas where it thought we fell short in the expertise of our journalists in referring to stories in clarifying when public policy issues applied only to England or to individual devolved nations. Following that report, the trust required the BBC Executive to come back with a plan of action to train its journalists better and to improve the location of its stories, so to have more people reporting from out in the nations. When we turn back to see how those recommendations have been implemented, we have seen that the BBC’s accuracy has increased significantly in its coverage of the four nations, while at the same time the levels for other broadcasters have broadly stayed stable or fallen. So that process of self-analysis helps contribute to the breadth of views that the BBC can bring to bear on individual issues.

Baroness Fookes: Does that breadth of view have to be in one programme or could you have a series of programmes with one set of views one week and another the next?

Mr Wilson: The latter, exactly. Our editorial guidelines are very clear that due impartiality and breadth of voice applies not just to individual programmes but can apply across a series or season. In some programmes, say Question Time, you could arguably say that Question Time has more diversity of opinion in it than many publications, but in other programmes like
Panorama, some of our investigative journalism, you can see the route that they go down. In the season on welfare recently, the route each individual programme goes down is different but across the broad range of output we achieve due impartiality, or aim to.

Q224 Lord Dubs: In your impartiality review, the BBC was encouraged to do more to address opinion that had not emerged through Parliament or other formal institutions. I wonder what you are doing about that. I know occasionally on Any Questions? and Question Time you do have a non-parliamentarian, but on the whole it is the standard sort of people you get and very few people from Brussels or the European Parliament and all that.

Mr Wilson: Yes. I think we have accepted that criticism. For instance, on issues such as the European Union—which in my job title is something that I look at a reasonable amount, media issues and media policy internationally—we have recognised that we were too slow to reflect the views of eurosceptics and those who wanted to leave the European Union, but the views we portrayed were those at a time when all the major political parties were supportive of remaining in the European Union. In that instance, we were very clear that the range of views we presented was reflected through the Westminster prism and we are seeking to rectify that. In our European programmes in particular we have a new programme, Politics Europe, which is bringing our coverage of the European Parliament and other institutions to a much broader audience than previously.

Lord Dubs: When is that on?

Mr Wilson: It is on for every plenary session. It is repeated across the schedule at various times on BBC2. That is where it gets the majority of its audiences from, but it is bringing in a much broader audience to the BBC’s coverage of Europe than was the case previously.

The Chairman: I am an ex-MEP. Have you had any success in making people more interested in what goes on in the European Parliament?

Mr Wilson: I think the fact that more people are watching is a good start. I have not seen the audience appreciation figures there, but I suspect if the issue remains in the spotlight over the coming years, as looks likely, then it is likely that that extra political interest but audience interest will be reflected in the BBC’s coverage.

The Chairman: Sorry, I interrupted.

Lord Dubs: When you cover sport and you cover the UK’s sporting successes, I think impartiality has just gone out of the window. Maybe that is what the British public want, they want total bias and partiality in your commentaries, but my God, you really do lay it on to the point that it is somewhat embarrassing sometimes.

Mr Heath: I suppose I, certainly in theory if not actually in practice, try to make a distinction between commentary and punditry, that the commentary should be accurate and appropriate and balanced and the punditry often does reflect the passion in the nation. In terms of the BBC’s role in reflecting expectations of audiences, that is probably largely what audiences want. Do we go too far on occasion? That is probably for others to answer rather than me.

Lord Dubs: Do not get me wrong, I am delighted we are doing so well as a country. It makes such a change, right from the Olympics onwards, but I do think some of the commentators are pundits in the middle of the race.

Q225 Baroness Deech: If you are going to ensure a diversity of views, your journalists have to have the appropriate education and information. Where do they get it from? I hope
they are not all graduates of media studies. If you are going to have people presenting two sides of Europe, you need a great deal of background knowledge. How do they get educated?

Mr Heath: I am guessing that the vast majority of journalists in the BBC, certainly at the network level, are not media studies graduates. I have not seen the numbers, but I am guessing they are not. Obviously they are educated about the job, and what the BBC has is a very major resource called the BBC College of Journalism, which it set up post-Hutton. That is both an online but also physical resource within the BBC that develops modules on areas of analysis and difficult areas. We have the big one on devolution. There is going to be one on religion. It is helping to keep the level of information up for journalists.

Baroness Deech: I had a look and there are two problems. I did not think it was terribly deep, and also if everyone is getting the same module you are not exactly going to get a diversity of views, are you?

Mr Heath: I would probably make a distinction between people understanding the facts on the ground, such as devolution, what is devolved, what is not. That is absolutely important and we had problems with that in the past. The journalists need to understand the facts on the ground and the constitutional realities. There is then also a question about the extent to which journalists have been exposed to a range of different sources and different opinion. Part of that is location. One would hope that one of the benefits of the BBC opening up in MediaCity, in terms of 5 Live and Breakfast news, you would imagine that the complexion and tone of some of our news coverage becomes more reflective of the UK as a whole. That is partly the reason why we made the move. You are right. I make a distinction between understanding the facts on the ground as well as journalists being part of communities and understanding the range and depth of opinion. I think the two are slightly different and I take your point that the College of Journalism may not necessarily address the second.

Baroness Deech: If we are living in Salford we will get a different perspective on the news. Is that right?

Mr Heath: Well, certainly a different range of voices on the sofa and a different set of perspectives on the sofa, I would imagine, on lots of issues.

Baroness Deech: If they only commute Monday to Friday then—sorry.

Q226 Baroness Scotland of Asthal: Do you do the same sort of thing in relation to race and gender as well?

Mr Heath: I am not sure. I am speaking from recent experience in terms of response to Prebble, not on race and gender but on immigration and religion, where there seemed to be gaps in understanding. We acknowledge there were gaps in understanding and they are areas that we are going to address through looking at additional training and awareness on those two subjects, particularly on religion where it was felt that there were gaps in the understanding about the diverse nature of religion in the UK among some practitioners, which clearly is not good enough. That is one area where we have identified a gap and we are going to do something about it.

The Chairman: We are all agreed that diversity and plurality are not the same, but if you look across the whole media sector, not restricting your vision to yourselves, would you agree that a diversity of people doing their business in this sector contributes to rather than diminishes plurality and that in many ways that has an effect of meaning that any effort to rely on internal plurality is reinforced? Internal plurality is a good thing for the BBC but if
you have a sector where you have a number of completely separate businesses operating, which are diverse, that is probably an even better driver of plurality of output.

**Mr Heath:** Correct. I would probably share Ofcom’s view on that, that internal plurality is one part, one dimension of looking at plurality but you would also, when you are looking at a market, want to look at the number of separate providers, market concentration, level of multi-sourcing and so on, along with internal plurality. It would be one part of the equation, absolutely.

**The Chairman:** No, I did not think you would disagree with it but I just wanted to put it on the record if that was the case.

**Mr Heath:** Yes.

**Q227  Earl of Selborne:** You have explained to us how you are achieving internal plurality, whether structurally, culturally or as standards of impartiality, but there is no specific duty or public purpose in the charter to promote plurality. Do you think there is a case for rethinking the role played by the public sector broadcasters, and the BBC in particular, as not only providers of trustworthy impartial news but also gateways to diverse opinions in news and current affairs?

**Mr Heath:** It is a very good question. I think on the first part of it you are absolutely right that the public purpose around citizenship and society is fairly high level in the charter. That feels appropriate in terms of the level of prescription in the charter and agreement for how the BBC should perform its news function. I suppose my response would be the extent to which that additional guidance would be necessary or how it would change the BBC tomorrow versus today. I think there is a reasonable level of internal plurality within the BBC. Although I do not necessarily disagree with the premise, in terms of the execution I am not quite sure what it would look like and if it is necessary.

**Earl of Selborne:** Why do you not for a start give the trust an explicit requirement to positively promote plurality and to check whether you are doing it?

**Mr Heath:** Well, the trust regularly checks whether we are doing it. I think there has been about six—

**Earl of Selborne:** Unless I am wrong, it does not have an explicit requirement to do so.

**Mr Heath:** It does not have a specific requirement but despite not having that specific requirement, the trust regards that as a major requirement of the BBC and it is a key part of our editorial policy guidelines. It is infused structurally and culturally in the organisation. You are right, there is not something in the charter and agreement that says we must do it, and that may be something that Government and Parliament want to look at. I would be slightly nervous about overly prescribing how the BBC conducts its news affairs within the charter and agreement, but it is certainly an interesting idea.

**Earl of Selborne:** In so far as putting it in the charter does give a very clear and explicit requirement, which you may or may not be achieving adequately, it does at least put a benchmark on the ground.

**Mr Heath:** Yes. I suppose on the second, if I understand the question correctly, the extent to which the BBC could play a broader role in enhancing external plurality, I agree that the BBC, given its scale in the market, should think hard about how it uses that scale and presence to support other parts of the market. An obvious way in which it does this is around online. Effectively, online news gives you the shelf space to do far more in-depth analysis and detailed treatment and background and context on stories, and what you can do
there is effectively push consumers to a range of other suppliers in the market, whether that is to other newspaper websites or other sources of news. That is something the BBC does and the stats are quite significant on the amount of traffic it pushes outside BBC Online. They could be stronger. We could be more sophisticated in how we link out to websites, both local websites and national websites, but that is one obvious example.

We would be up for a conversation, dialogue, with newspaper groups about how the BBC can use its position in the market in a positive way, something that we have tried to do in the past with the way we syndicate our news content. It is something we did in the Olympics whereby we shared Olympics audio-visual footage with newspapers. There are also other things we are up for an active discussion on with newspaper organisations.

Q228 The Chairman: Can I take this on a little bit further? Is this something that the BBC are positively embracing, that you are as a matter of policy pushing your audience towards the sources of the information that you are using to produce the material you bring forward as news to enable them, if they so wish, to get a greater in-depth understanding of the topics?

Mr Heath: Yes. Online effectively allows a situation where we can be far more porous. We can say, “This is the BBC take on a particular story. This is our context of analysis, but there are different opinions, different treatments, different views elsewhere on the web, and here are a range of links”. It is up to the individual whether they want to pursue that journey.

The Chairman: It is quite an interesting evolution of the concept of plurality, is it not? Instead of simply having a number of different voices saying A, B and C, you bring forward proposition A and then you say to the wider world, “If you come here you can then find out much more about it and the different perspectives that other people have”. Thereby you are positively, it would seem to me, enhancing the underlying proposition behind which you are working.

Mr Heath: It is something you can do in the online space that you cannot do in respect of the other.

The Chairman: Indeed, and link the online space to the broadcast space and so on.

Mr Heath: Yes.

Baroness Scotland of Asthal: Can I take it then that as part of your modus operandi you are regularly doing a gap analysis as to what is not there as well as to what is there?

Mr Heath: I am not sure we are as systematic as that, but certainly again part of the approach of our online journalists, when they are writing stories and preparing subject analysis on particular subjects, is to provide a range and breadth of views to be linked out to as part of what they are looking at.

Baroness Scotland of Asthal: I was just thinking about what you said in relation to policy development, the focus of the BBC. If you are having to maintain this pluralistic approach, is it not incumbent upon you then to have an analysis of what is out there so that you can identify the gaps that need to be filled by public service broadcasting?

Mr Heath: Absolutely. On the online linking we certainly have some targets, but I think you are right.

Baroness Scotland of Asthal: It is a mapping exercise, is it not?

Mr Heath: When we are thinking strategically about the BBC news, the way we are thinking about it at the moment, we probably think about two things—where can the BBC most add
value in terms of what citizen consumers are telling us they want, but also where are the parts of the news ecology where the market may be failing to deliver—and try to put those two together and develop a BBC news proposition.

**Baroness Scotland of Asthal:** There is a tension, is there not, about just giving people what they believe they want as opposed to what they may need to enable them to come to a properly informed decision?

**Mr Heath:** Yes. I totally agree. There is this tension in the BBC between the paternalistic Reith intention of educate, inform, entertain, giving things that people may not know they want but they need, as well as being consumer-driven and meeting the expectations of modern consumers. It is really difficult.

**Baroness Scotland of Asthal:** Do you think it would be a realistic thing for there to be an aspiration that the BBC should be able to do that mapping exercise, the gap analysis, and then produce some sort of delivery plan as to how they were doing it?

**Mr Heath:** I think the problem with that would be where it could take you, and what would concern me is that effectively the BBC becomes a market failure broadcaster, that we are filling in the gaps that the market will not provide. That has not been the tradition of the BBC so far.

**Baroness Scotland of Asthal:** No, I am not suggesting that that would be the focus, but being able to identify what is not there so as to make a considered assessment as to whether it is in the public interest for that gap to be addressed.

**Mr Heath:** Yes, I think it is a fair point. When we are developing our online mobile news strategies we are cognisant of both what the audience want but also what our competitors are providing, absolutely.

**Q229 Baroness Scotland of Asthal:** While I am on, if I may, because I should have asked you earlier, I should say that I was interested in what you said about the international nature of the broadcasting. The broadcasting that the BBC used to do through the World Service, through the Caribbean for instance, has been dramatically changed. The population of Caribbean people in this country has expanded. Can you say how you are going to address that issue, if at all?

**Mr Heath:** On the BBC and the World Service's role, as a result of a funding constraint some hard choices had to be made about the countries in which the World Service was broadcasting. It is not to say that we cannot revise and reconsider things, but some harsh decisions had to be made, given the comprehensive spending review funding was about 25% cut. In terms of in the UK—

**Baroness Scotland of Asthal:** But when we are looking at the nature of the people in this country, it is quite an interesting decision to have made, is it not?

**Mr Heath:** The question for our domestic news is the extent to which we are accurately and appropriately reflecting the nation in our news coverage and, as you say, the nation, culturally, socially, ethnically, is changing. In many ways, the impartiality review I was involved in when I was in BBC News was the Tony King one about the London-centric nature of BBC News versus covering a broad swathe of the UK, and we got hammered. We got hammered and one would hope that over the last three or four years the complexion of BBC News, both the story selection and the accuracy, the range of voices on BBC News and big stories, is significantly better in terms of overall coverage of the UK than it was three or four years ago.
The Chairman: Is there not an argument—I speak as somebody who comes from the other end of Britain—that there is only one thing worse than a London-centric news service and that is a news service that is over-centred on somewhere completely different in the country? Where I live, without wishing to be too disparaging, we seem to get stories about murders in Middlesbrough on the BBC local television news every evening. It is a long way from home in every sense. It is all right, I do not want—

Mr Heath: I suppose the BBC could become more local in its news coverage.

The Chairman: The problem is this is in theory in our catchment area, but it is actually of less interest to most people who live in rural Cumbria than what happens in London, so it is a much more sophisticated paradigm you have to play with, is it not?

Mr Heath: Yes, it absolutely is and how we balance that portfolio between our network nations and regional and local but stopping—

The Chairman: Sorry, I am just getting the bee out of my bonnet.

Q230 Baroness Healy of Primrose Hill: We have had a very wide-ranging discussion already and you have spoken about the BBC impartiality and trustworthiness and its unique selling point. Could you say what you see the BBC’s abiding philosophy of news and current affairs provision is and perhaps should be? Is it to be a news provider of record, a benchmark against which others can be compared, or also to act as a trusted gateway to diverse opinions? You have spoken about that already, so I am interested, perhaps you can do it all.

Mr Heath: I think it fulfils both and that those two are not in conflict. As I said at the start, in a nutshell the BBC’s journalistic mission is around serving all audiences, universal, free at the point of use, with information and analysis that allows them to make decisions about their lives and make decisions about public policy. I think that in a nutshell is what the BBC is about. Luckily, through its public funding and its remit, it can do that globally at the national level and at the local level and it can do it across radio, TV and online. That is a unique position in the news ecology and with it comes massive responsibilities.

The Chairman: If you are acting as a provider of record—and you mentioned earlier when we were talking about the online in response to some questions from me about what you do in respect of your online operation when you draw the audience towards the sources you use—there is an awful lot of very unreliable stuff out there online. How do you manage to verify that you are drawing people towards things that are basically pukka?

Mr Heath: Things included in the BBC’s News website, News Online, we would certainly verify and check. Where we are sometimes linking out to external sources there will be a clear user journey and a signposting that you are leaving the BBC space and you are going to space X. It is for the consumer then to make an informed decision about the content on that space.

The Chairman: You said you do not think there is any conflict between a news provider of record and due impartiality. Is that invariably the case or do you think there can be circumstances where you could find there was tension?

Mr Heath: I do not think so. I think that the BBC is clearly there to report news accurately and impartially, to report breaking news with authority. It is clearly there to do that, but equally it is there to provide clarity, context, explanation around the big stories of the day. It is equally there to provide more investigative, long-form journalism. They seem to me all
equally important parts of the BBC portfolio and philosophy and they are not in conflict. They seem to be mutually reinforcing.

**Q231 The Chairman:** That is so to the extent that there is a kind of—and I am not criticising you, I am just trying to explore this. The BBC is by definition part of the establishment in the same way, I suppose, membership of the House of Lords is part of the establishment. Despite your different political views privately, you are starting on roughly the same place on the map. Sometimes things crop up in completely different parts of the map that are very important. Is there not a risk that you perhaps miss them?

**Mr Heath:** I think that absolutely is a risk and the aspiration and the requirement is there around breadth of opinion, diversity of voice, impartiality. There is always an execution risk and that is where the BBC cannot be complacent. It has to be on its toes and that is why the culture of self-examination and scrutiny, which is inbuilt into the BBC model, is so important. In the latest example of Stuart Prebble’s report into breadth of voice he did criticise us as being slow on immigration and having some gaps on religion. It is that constant process of self-examination and self-challenge that no other news organisation goes through. The level of regulation and governance of the BBC in this area is second to none. There is no other organisation that subjects itself to this level of self-analysis and public scrutiny.

**The Chairman:** Do you think then that perhaps in the context of taking the whole media landscape in Britain as a single entity, to some extent the very fact that you do the things the way you do means that the role of a partisan newspaper traditionally is particularly important, is it not, because it is coming at a lot of this from a very different perspective?

**Mr Heath:** Yes, absolutely.

**The Chairman:** In terms of the civic significance, if I can use that, of the provision of news in-country, the two arms of the way we do it are actually very important, complementing each other?

**Mr Heath:** I think that is fair. If I can caricature, basically BBC is often the platform in which national and local conversations take place, but we are not part of the conversation seeking to influence the conversation like other parts of the news ecology are.

**Mr Wilson:** In fact, I might add we are banned by our charter from doing so—

**Mr Heath:** From doing so, yes.

**Mr Wilson:** —and taking positions on issues of public policy, with the narrow exception of broadcasting policy where obviously we have a—

**Mr Heath:** Where we are allowed to come and talk.

**The Chairman:** From the perspective that we are coming to the inquiry, we are looking much more widely than simply the public service broadcasters and trying to analyse the entire news and current affairs media landscape, trying to identify the relationship between the different bits, which are quite different to each other, and see how they collectively serve the public good. It does seem to me that this tension that exists between the traditions of broadcasting and the traditions of newspapers are quite important for the well-being of society as a whole.

**Mr Wilson:** Indeed, and I would just add that PSB news generally plays a very important role in raising and sustaining high levels of trust in TV news. When you look at audience perceptions of TV news compared to other platforms, interestingly what you see is that online news is only scored more highly for gossip. That is the only area in which it scores
more highly above television news. That is not to say that there are not some excellent online news providers—James has already mentioned the *Mail* and the *Guardian* being number one and three in the world—or that there is not impartial news presented by the public service broadcasters and others in traditional media, but it does just show you that people turn to different platforms for different things and opinion is probably a bigger driver of use for newspapers than the impartiality that people turn to broadcasters for.

**The Chairman:** I shall resist the temptation to ask you whether you think gossip is a legitimate part of news and current affairs and I will move on to Lady Scotland.

**Q232 Baroness Scotland of Asthal:** I would like to take a number of the conversations we have been having a little further. You have talked about the importance of the news ecology, the way in which the BBC plays its role and the importance of public service broadcasting. We are now living in a really fast-moving era. Manufacturers are coming out with new devices. The medium that we use to get our news changes almost daily. How do you think we can make sure that public service broadcasting and the ethos of public service broadcasting maintains an appropriately high degree of prominence?

**Mr Heath:** It is one of the things that I suppose the BBC or any successful institution is constantly thinking about. We have a set of values and mission that are timeless, but it is how you imbue new technologies and markets with those values in the public interest. It is something that we are constantly thinking about and we are thinking about at the moment in terms of our strategy review. That is certainly one important thing for the BBC.

You are right that the regulatory framework is important. If decision-makers and politicians still regard the access to and prominence of public service content as important, then how you modernise a regulatory framework from a world of television platforms to a world of new on-demand gateways is absolutely critical, because in many ways there is a virtuous circle here. The high level of investment in public service content, including news, is inexplicably linked to access to and ability to consume that content, and the two go together. It is a virtuous circle that is challenged by new technologies and new approaches. The question is that even although the execution challenges are hard, if we still believe in the policy objectives then I think it is worth looking at how you modernise the regulatory structure for the new world.

**Baroness Scotland of Asthal:** Well, this is your opportunity because, of course, the Select Committee’s whole purpose is to think about what is happening, what recommendations we can make. If someone could give you a magic wand and say, “Okay, I now have the ability to enhance, to preserve and to support public service broadcasting, making sure it does not disappear by making certain recommendations that would better preserve, better encourage, better enable those principles to be not only enunciated but actually imbibed by others”, what would they be?

**Mr Heath:** I would probably go for one on prominence, and it is a recommendation that your Committee put forward in its previous report on converged media: absolutely critical about ensuring that the accessibility and prominence of TV channels like BBC1, BBC2 and BBC3 in the world of three, four TV platforms is transposed into the new world of multiple access routes to that content, that public service content that delivers these objectives is still given an opportunity to be consumed. We cannot guarantee the consumption by consumers, but we can give it an opportunity to be consumed and have impact by giving it a prominent position in new types of gateways and access points for content.
Baroness Scotland of Asthal: Is there anything else you would suggest that we might want to think about?

Mr Wilson: If I could just add to that point, it is about the channels but it is also about the on-demand services as well. Although catch-up television and radio represents a small amount of consumption of BBC services and broadcast consumption at the moment, it is undoubtedly growing quickly. That should also be looked at in how you bring that into scope to ensure those plurality themes.

Q233 The Chairman: Lady Scotland enabled you to give a very easy answer, I thought. If she did not have the magic wand and you were trying to bring that about, what particular policy device do you think might be workable in the real world to bring about what you have just described?

Mr Heath: It could be done through legislation. It could be done through amendments to current legislation.

The Chairman: Then if you get outside the world of our own jurisdiction, how would you approach that?

Mr Heath: There are jurisdictional challenges but you can do a hell of a lot in terms of the major platforms and gateways that are based in the UK to resolve this problem. You can also look at the concurrent work that the commission and Parliament are doing on the same regulatory framework at a European level, which is going along parallel lines.

The Chairman: Do you think this is basically a competition law problem or a media policy?

Mr Heath: No, this is about an ex-ante intervention for public policy reasons in order to secure prominence for what we regard as valuable content. It is not an issue of competition policy.

The Chairman: We are drawing towards a conclusion. I will ask the Members the same question I will ask you. Is there anything more you would like to say?

Mr Heath: No.

The Chairman: Would any Member of the Committee like to add anything? Thank you very much indeed and apologies for the Division in the middle.
TUESDAY 26 NOVEMBER 2013

Members present

Lord Inglewood (Chairman)
Lord Clement-Jones
Baroness Deech
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Lord St John of Bletso
Baroness Scotland of Asthal
Earl of Selborne
Lord Skelmersdale

Examination of Witnesses

Ms Diane Coyle, Vice Chairman, BBC Trust, and Mr Alex Towers, Deputy Director, Trust Unit, BBC Trust

Q410 The Chairman: Welcome to Diane Coyle and Alex Towers from the BBC Trust. We are very interested in what you have to tell us. Before we start I will ask you to introduce yourselves for the purpose of the recording so we have on record who each of you is. Then, if you have any form of introductory statement, please start that, but if not there is no compulsion. We will just go straight into our questions. As far as responding to us is concerned, please do not feel both of you have to reply. You can decide between yourselves exactly how you do it. Over to you on that count.

Ms Coyle: I am Diane Coyle. I am the Vice Chairman of the BBC Trust.

Mr Towers: I am Alex Towers. I am the Deputy Director of the Trust Unit, the staff that advises the trustees.

Ms Coyle: I have no opening statement but first of all perhaps one or two sentences. Thank you very much for inviting us to join you in what has been a very thoughtful deliberation about this subject. It is a very important subject, alongside other things we worry about like quality and investment. I must say it is not absolutely clear there is a problem. This is a very successful market. It is changing. It has new entrants. The average person uses four or five different news sources, so perhaps one of the things we might come back to is, how do we measure, how do we assess whether or not there is a problem? I think the one thing you would expect me to say is that we think the BBC makes a contribution to plurality because of the very distinctive nature of its public service broadcasts.
The Chairman: Thank you very much. It is interesting you said there may not be a problem. That is one of the things we have been thinking about, so we are all looking at roughly the same set of exam questions. I would like to begin with a general question. Do you think there is a reasonable set of recommendations that we might be able to come up with or do you think it is absolutely inevitable we are going to be attacked, whatever conclusion we reach, some way or other?

Ms Coyle: That is a good question. The answer to that depends on how open a mind you think people bring to this in the first place. Having said that it is not clear there is a problem, I am completely open-minded about whether there is or not. I just think we need to think very carefully about what kind of evidence we want to look at and what we think the nature of the problem might be and how to assess that.

Mr Towers: I guess in some ways this is a topic where every media organisation has a degree of vested interest. I suppose you have to aim off a little bit for the fact that we sit here as representatives of the BBC Trust, believing in the long-term importance of the BBC and the contribution it makes to plurality. But that is why it seems to us a very useful thing that you, as a cross-party committee, are taking a step back and a thoughtful look at this in a proper way.

The Chairman: When you look at plurality, is it the right thing to look beyond the genres of news and current affairs, or do you think it is probably right to focus on that? We have had diverging views about that.

Ms Coyle: My view is that focusing on news and current affairs is the right thing. I think there is clearly a greater diversity or plurality in other genres. The UK has a very healthy programme-producing sector and it is a sector we always want to see in very good health. As far as the BBC is concerned, the issue of diversity and plurality outside news and current affairs is covered by that public purpose that we need to represent all the UK in its different dimensions, and we have very adequate tools for doing that. We have the window of creative competition; we have service reviews and all the other tools we have at our disposal. I do think news and current affairs is the right focus.

The Chairman: In your case, with the charter renewal coming up, that is something that might or might not impinge on that debate.

Ms Coyle: That would be the right time to look at it, and we are going to have that opportunity all too soon.

Q411 Lord Clement-Jones: Focusing on news and current affairs, we have already taken evidence from—I do not know whether they can be described as colleagues—BBC management, James Heath and Daniel Wilson. They made it clear that the BBC does seek to achieve internal plurality in a variety of ways: structurally, through the different approaches across services enshrined in their individual service licences; culturally, through the different approaches taken by individual editors; and, thirdly, through your obligation to due impartiality, and I am thinking obviously of the editorials guidelines. Do you have anything to add to that list and are there other ways of seeking to achieve internal plurality, or can you tell us a bit more about how one would unpack those three elements and demonstrate that does deliver internal plurality?

Ms Coyle: It might be worth running through the tools we have at our disposal in the Trust to make those work. Do you want to run through some of those, Alex?
**Mr Towers:** Yes. What makes the BBC different is, first of all, the charter. Under the charter we have an obligation not to put forward any corporate agenda on behalf of the BBC through its journalistic output, which is something we take very seriously and something that is fairly obvious to the average viewer when you see BBC in trouble. There is the BBC reporting all the troubles in great depth.

But we also have, as Diane says, various tools we use in the Trust that all impinge on internal priorities to some extent. There is a system of service licences for every different BBC service, many that specify the number of hours of news or current affairs that are being broadcast, and we come back and review those services periodically, at least once every five years.

**Lord Clement-Jones:** Is that specifically in news and current affairs?

**Mr Towers:** The service reviews cover all the output of a given service and one of the things we noticed, having gone through the first round of reviewing every service, was that we had not taken a step back and looked at news in its entirety. So we are currently doing a service review process on network news output to look at, across all the different services, the levels of quality, range, depth and so on. One of the focuses is looking to see if the BBC is reaching all the different audiences with its different types of news services in the right kind of way, effectively enough. That is a dimension of internal plurality.

**Lord Clement-Jones:** When you do your service review, what are the criteria by which you judge it—those in the editorial guidelines or the charter?

**Mr Towers:** The service reviews are a quite well set-out process. We do look at data, obviously, on how the audience is using the services, particularly around share and reach and splitting out by demographics and so on. At a very top level, for instance, you can see BBC News overall is reaching 80% of people every week, but then it is interesting to look beneath that level at how many people does “Newsbeat” on Radio 1 or “Newsnight”, or whatever it is, get to.

There is the data. There are the submissions we get from the BBC itself about how well it thinks it is doing. There is a process of public consultation, so we run trailers on the network services advertising the fact we are doing this review and asking people for their opinions in response to questions, and then we do more in-depth representative audience research as well. We try to take a thorough look at all the sources of evidence for how well each given service is performing. We are doing the same for news. It is testing the service usually against the service licence and, in this instance, against the different parts of different service licences that mention news. I do not think it is meant to be in particular an assessment of, is the BBC meeting its editorial guidelines? We have a separate way of doing that when people have complaints and appeals they bring to us in individual cases. That is the service licence system.

We also have the public value test, a way of testing and assessing new ideas the BBC has for either completely new services or major changes to existing services. This is less about internal plurality and to some extent about external plurality. One relevant example was when the BBC was preparing to launch a new local video news service. We ultimately said no to that proposal, partly because Ofcom, which was doing the market impact work on that for us, said there was a potential issue with the impact on the local newspaper industry and plans they had. Also we were concerned about whether or not it was quite the right level of public value. That is another part of the regulatory system.
Lord Clement-Jones: You took quite a hard line on that, did you not, at the end of the day?

Mr Towers: Yes. We said no.

Ms Coyle: We said no. That is quite a hard line.

Mr Towers: In other cases we said, “Yes, but on the following four or five conditions”. In this case we said no, which is fairly clear.

The other area is the editorial, where regulation is ongoing. That takes a path both of responding to individual complaints and appeals about impartiality and accuracy, where obviously we just look at the individual issue in its particular context. But also we take a step back every now and then and look at impartiality in a given area across the piece. Recently, Stuart Prebble, who is a former ITV senior executive—we always get an independent person in to help us with these reviews—conducted a review of breadth of opinion in three separate areas: immigration, the EU and religion. We look across all the output and think about, in broader terms, is the right balance being achieved or are there improvements to be made? It is a major process of self-examination and assessment. Again, if you are looking at breadth of opinion, the key question is are there ways the BBC can improve the diversity of the different voices, opinions and people that are on the airways, and in that way increase its internal pluralities. That is another really central element of the question you are asking.

There are all those different ways of looking at the question. Then, of course, every 10 years or so there is the fundamental process of charter review, looking at the whole scale of this remit of the BBC and giving the Government the chance to think about this stuff as well.

Lord Clement-Jones: This casts a very interesting light on the nature of the relatively new governance by the Trust, because all this is so much more formal than it ever would have been under the old structure.

Ms Coyle: I think it has been worth listing it because there is quite a lot of machinery there we can use. I know there has been some discussion recently about whether the changes in the newsroom, that are in large part or partly driven by the need to take out some costs and value for money, have been reducing internal plurality. It is a perfectly logical question to ask. But if anything, in addition to all this machinery we have, it has increased the range of voices being heard inside the newsroom and in the news because the World Service journalists are all there, and that seems to be, if you are looking at cultural change, increasing internal plurality.

One last point is that we quite like to more local and regional voices on network news to have that similar kind of effect from around the UK.

Q412 Baroness Deech: I understand the tensions you are under because if you send lots of reporters to cover an event people say, “You are wasting money”. But if you just have one reporting system then people say there is not enough plurality. Do you ever think about clearing out and refreshing some of the very dominant voices you have in news and current affairs, “Today” programme, “Newsnight” and so on? Some voices go on for decades without change.

Ms Coyle: You and I might have our opinions about some of those voices but those are decisions for the BBC management to make ultimately. It is not for the Trust to interfere in that kind of thing. What I would say about it is that we would definitely like to see the diversity of the UK properly reflected and we have said so, in terms, when we are talking about women’s voices on radio and television.
The Chairman: Just one general point, taken in the round do you think your monitoring arrangements and what is being achieved through them is generically and systemically working?

Ms Coyle: I think so. I would never relax about this because I do not think this is a state of nirvana that you achieve and you stay there. It is a process and it has to be done constantly. But we have a lot of tools, as Alex has been describing, and we put a lot of time and effort into making sure that we use them properly.

Mr Towers: I would add as well that there is inevitably a tension between the value of having internal plurality and a range of voices and independence of different editorial parts of the organisation and the value, at the same time, of some co-ordination, because of value for money, as Baroness Deech mentioned, and also because there is obviously editorial value in some places of joining up the different bits of the organisation. In fact, one of the conclusions when we did an impartiality review looking at the Arab Spring was that there could have been additional value to the viewers and listeners had there been a little more co-ordination of the different outlets and use of in-house expertise—people like Jeremy Bowen—just to make sure that aspects of that overall story were not being missed in the collective output. It is always a balancing act and we will never perfect it. It is a constant work in progress.

Q413 Lord Dubs: Can I follow on by asking a little bit more about impartiality? Clearly from time to time there are allegations made that the BBC is politically biased one way or the other. Could you say a little bit more about the extent to which the BBC meets its obligations to due impartiality and how effectively it does it?

Ms Coyle: As I was saying, it is something we would never relax about and we have a number of ways of trying to assess that. Obviously, when you are talking about polarised subjects you get people complaining from both sides of the debate about a lack of impartiality. One way to assess it is to look at the kind of complaints that come in, and our colleagues who look at the editorial complaints and appeals would be able to spot if there were any particular trends. The Middle East usually dominates the complaints process but there are other subjects too that crop up from time to time. We have that kind of warning signal.

If you are asking me does it in the end involve some exercise of judgment, then obviously it does, ultimately. But it is not something we ever relax our vigilance about because we take this as one of our most serious responsibilities.

Lord Dubs: Would you say due impartiality is perhaps too flexible a concept? In other words, how would you compare your approach to impartiality with Al Jazeera, which would also claim impartiality? Heaven help us, even Fox News might claim impartiality. How would you compare these?

Ms Coyle: It is not for me to comment on how other organisations assess their own impartiality. The key point is that the BBC does not have any corporate agenda. In fact, as Alex said earlier, it is written into the charter agreement that corporate interests and opinions cannot be expressed, and that filters right through to the editorial guidelines. We police the application of those through the complaints and appeals process.

Mr Towers: Obviously it is for Ofcom to comment on Al Jazeera and Fox News. I guess we do take a slightly broader view of impartiality than Ofcom does because we have this particular way of applying it to the BBC. Also we apply that to online content as well as TV and radio, and Ofcom does not have online content. We review impartiality in this rather
bespoke way, which is something they would not do proactively. They tend to respond just to complaints.

**Lord Dubs:** What about if one of your leading national figures makes a comment, such as was made recently about, “I do not believe in voting”, implying politicians are not worth voting for? Where does impartiality come in on that?

**Ms Coyle:** I do not know who it was. I did not spot that one.

**Lord Dubs:** What, Paxman?

**Mr Towers:** I spotted that one, but we may still get complaints and appeals about particular cases where it is probably rather difficult for us to comment on any individual.

**Lord Dubs:** There is nothing impartial about a leading person, who appears on a number of television programmes, being contemptuous of politicians. It is not an impartial position.

**Ms Coyle:** BBC journalists from time to time express opinions because they do have opinions and the management would deal with that on their side. Our side for dealing with that is through the complaints process, and on this particular one, that I am afraid I did not know about, as Alex said we might yet get a complaint about it so we cannot comment.

**The Chairman:** Would it not be different if he had said he did vote every time?

**Ms Coyle:** That is a good question. I do not know.

**Mr Towers:** No. It is very difficult just targeting someone.

**The Chairman:** I am not sure we can take that much further.

Q414 **Baroness Healy of Primrose Hill:** You will be aware of David Elstein’s critique of BBC News as an institution. In evidence to this inquiry he told us that the then head of NCA, Tony Hall, merged the news and current affairs operations inside the BBC. David suggests, however, that the only real way to achieve internal plurality in the BBC is to reverse this process, in other words to allow BBC Radio, BBC News channel, BBC World Service and BBC Online to be independent editorially. Do you recognise his analysis and how do you respond to his proposal? I know you talked about the need for more co-ordination to ensure that stories are given out through all, but what do you think of that?

**Ms Coyle:** As I was saying, there is no official line. There is no corporate agenda. I do not recognise that monolithic BBC that he is describing. Nobody dictates an editorial line to BBC journalists and if they tried I think it would backfire on them. The services and programmes serve different audiences and they are very different in character. Individual editors and reporters know very well what will appeal to their particular audiences.

If you, as I do, listen to the “Today” programme and maybe “World at One” and the “Ten O’Clock News” you will get one character of BBC News. But it is completely different if you watch “Breakfast” and then listen to “5 Live” and “Drivetime” or if you listen to “Newsbeat” and look at BBC Three current affairs. That kind of range of output, serving very different audiences, means that, although we have to look for the efficiencies and the sensible editorial co-ordination on the production side, I do not think it is as monolithic as he describes it.

**Mr Towers:** This is something we can have a think about as we are looking at the review of network news but we know that audiences do like that they can see and hear from Robert Peston or Nick Robinson across different outlets and they have come to expect that. I am not sure whether or not you could ever completely separate all these different outlets so they exist in their own universe entirely.
For us, the issues we look at are not so much about the exact internal wiring of how the BBC News is structured and managed. That has to be James Harding’s job. But if we see in the output, through some process like our news review, that there is some concern about homogeneity or lack of range, we could have a look at that and act on that. But I think we always try to be evidence-based.

Ms Coyle: We would expect quite a large response to the consultation. There are typically some thousands of people who respond to them.

The Chairman: It is right then, is it not, that basically you do not accept David Elstein’s critique?

Ms Coyle: I think that is right.

Baroness Fookes: No doubt you will take the same view about Roger Mosey who has suggested that whatever the start is, in the end it leads to homogeneity, if I have that pronunciation correct. But you would not agree with that either.

Ms Coyle: I would, for the same kind of reason. I think it is very odd to characterise it as homogeneous when you are serving, on the one hand, Radio 1 listeners and, on the other, people who watch “Newsnight”, and I think they are quite different.

Baroness Fookes: He has made the point that there is an agreed approach, as he puts it, to the science of climate change, the correct terminology for the Middle East, and so forth, which I think he reckons leads to this conformity.

Ms Coyle: I did not recognise the way he described it at all because I think he was talking about the Trust issuing edicts. We absolutely do not issue edicts. My colleagues on the editorial standards committee look at specific cases and the only requirement is that the language used is absolutely accurate in every specific case, but they are not blanket edicts about how people should talk.

Baroness Fookes: Presumably, in that case, there are certain expressions that do have a meaning attached to them, which is convenient to keep, to stick to?

Ms Coyle: That is use of language in very sensitive areas, like the Middle East for example. That would be driven by lengthy debates on the BBC management side of the table. It is not something that we would try to influence. It only comes to us when it is the process of complaint and appeal.

Q415 Baroness Deech: I appreciate the Trust oversees and does not interfere, but the Trust can of course call for changes in voice or express a wish about terminology. I am sure I remember—unless I have it wrong—that there was an edict about not using the word “terrorist”. I think it changed very recently. People are watching this closely. No matter how many bombs went off killing babies or whatever, the word “terrorist” was never to be used. Do I have that wrong?

Ms Coyle: If there was such an edict—I do not know whether there was—it was not ours. It would have been on the management side. Do you recall that?

Mr Towers: I do not recall that.

Baroness Deech: I do. There was a lot of fuss about it. I am surprised that the Trust does not see into this or call for it.

Ms Coyle: Our role would be to say on any of these issues, where there is debate about impartiality, “Is the right range of voices being heard?” So we might say, for example, that on
one issue there had been views that we thought had not been reflected and that might come out of a complaint. The issue might arise through the complaints process and we might then say something more generally about getting the right breadth of voice, but we would never try to say editorially, “This is the line and this is what you have to do”.

Baroness Deech: When the Trust commissions a report on impartiality and there are recommendations, does it not try to make sure that those recommendations are carried out?

Ms Coyle: There is a process of interaction with the management about that.

Mr Towers: We absolutely do. Those reviews do not go down to the level of bits of terminology, generally speaking. They tend to be across a particular subject. One of the most well known—and one of the first I think—was when Professor Tony King looked at the way the BBC was reporting the realities of devolution across the UK. It became clear from the evidence that there was not a sufficient level of accuracy or sufficient recognition of the fact that things had changed in the political makeup. Since that report, you can see in here many more references to the extent to which policy issues are differently applied in England, as opposed to Wales, Scotland and Northern Ireland.

It is at that kind of level that we look at these things rather than the issue about a particular piece of wording, but where there are complaints about particular bits of wording then we would look at, say, an appeal in the very specific context of the piece in question and the way in which the words were being used.

Ms Coyle: I think Anthony King’s report on reporting the devolved UK is quite a good example. The recommendations were, for example, being clear in reports that a proposal or a piece of legislation applied to England only, if it did, or if there were areas where the experience of the different jurisdictions cast light on a policy, then to make sure that that was properly reflected in the reporting.

Baroness Deech: Can I go back to this word “terrorist”? As you can see, I have had a quick look on the internet. The BBC code guidelines say, “We try to avoid the use of the term ‘terrorist’. The BBC is under mounting pressure to end an effective ban on the use of the word ‘terrorist’.” It is very widely appreciated outside the BBC that there are words that are apparently prohibited right across the BBC. I am surprised the Trust does not get to grips with this.

Ms Coyle: Our locus on it would be if people were complaining about the language and it came to an appeal, but it is not for those of us sitting around the Trust table who are not involved in news day to day to start telling BBC reporters what language they can and cannot use. I do not know whether you want to describe them as edicts or not, but that is what the BBC news management discuss among themselves.

The Chairman: Can I be clear then that, in a sense, there are two slightly separate principles? One is whether or not there are lots of complaints, and that triggers an interest from the Trust partner perspective. Secondly, you apply what we might describe in this context as the principle of subsidiarity, that, in terms of dealing with programmes, there are certain things you have to leave to the people who actually do it. Is that right?

Ms Coyle: Yes. That is right. So, in just the same way that we never watch programmes before they are aired, and we do not interfere editorially, this is an area where we would not interfere in advance.
**Mr Towers:** We do approve the BBC’s editorial guidelines, which are then applied by the BBC across all the different areas of programme making but are fairly high level, including, for instance, the principle that the BBC’s version of impartiality includes the concept that there must be breadth of opinion across all of the output of any given subjects. That gives people the ability to come to us and complain if they think that a subject or area is being completely missed or completely misrepresented across the BBC’s output. So we have that kind of function too. But having approved the guidelines at that high level, it is important that the BBC has the space to then decide how it is going to apply them and manage the journalistic operations so that we can take a step back and deal with complaints and appeals as they come to us.

**Q416 Baroness Fookes:** How do you deal with a situation where the weight of opinion is on one side, let us say on climate change there is a general agreement that it exists against perhaps relatively few voices that say vociferously the other? How in policy terms do you weigh the difference between them?

**Ms Coyle:** The principle there is to make sure that that situation is reflected in the way that it is covered, so that the reports will talk about the scientific results that are reported—whatever it happens to be—and also reflects the fact that there are people who disagree with it. It is obviously a very tricky area for the BBC news management to navigate their way through. It may well be that we get complaints about it and we will look at them if and when they come. I do not know if there are any in the pipeline already.

**Mr Towers:** This is one area where again we did an impartiality review. Steve Jones looked at reporting of science across the BBC on behalf of the Trust. One of his conclusions was this exact point about whether due weight was being given to different parts of an argument, given his view that there was a consensus of scientific opinion over here and some different opinions as well. Trying to distinguish what weight to give to those different opinions was important, rather than suggesting that they had necessarily equal weight. In fact, that was something that we worked up and became part of the editorial guidelines when they were revised in 2010. So the concept of giving due weight to different opinion is now part of those guidelines.

**Ms Coyle:** What we absolutely do not want is the kind of reporting that says, “The earth is round; some people disagree”. There is obviously a judgment involved in it and there inevitably will be.

**Earl of Selborne:** Is not the truth ultimately that you must rely on the evidence base, in so far as there is an evidence base that is provided by national academies of science and the like? Otherwise you will get into this argument about whether the world is round or not. You will not be able to do a programme on Darwin because there are fundamentalists who do not believe in evolution. So surely you must ultimately take a line and not be too worried about impartiality?

**Ms Coyle:** Of course. Part of the judgment is what is true.

**Q417 Baroness Scotland of Asthal:** We have talked quite a lot about how the BBC promotes its internal plurality. I want to ask about external plurality. You have probably both seen what James Heath, the Director of Policy for the BBC, told us. He said that the BBC—to use his words—were up for a conversation with newspaper groups about how the BBC can use its position in the market in a positive way. Online effectively allows the situation to be far more porous. I want to ask you about your views about that. Do you think there is a
case for the BBC to rethink its philosophy in relation to news, at least in its online incarnation?

Ms Coyle: I think we would very strongly support those kinds of external links that he was talking about, and I believe the executive is looking to discuss ways of enhancing that with local newspaper groups and increasing traffic that goes to them.

I am not sure how much it is a change in philosophy and how much it is taking advantage of the opportunities that exist online now and making that work better. I think for us the issues are about the clarity of transition, so that people know when they are not on the BBC website, and also clarity about the criteria for linking and making sure that that works fairly, but definitely encouraging that kind of linking, yes.

Baroness Scotland of Asthal: Could I take advantage of the fact you are here and ask you whether you have views about what the fundamental principles are that should be applied in making these judgments? How should we approach the principles behind—

Ms Coyle: Of partnership and linking?

Baroness Scotland of Asthal: Yes.

Ms Coyle: I think the key principle is the clarity so that people know when they are in the public service space and the BBC world and when they are moving out of it. That would be absolutely fundamental to us. The criteria I think are essentially about fairness because, as I was hinting at right at the start, this is a changing market and there are all kinds of new entrants as well. The principles, a lot of which will be about practicalities, would need to leave it open to new entrants to come along as well. Licence fee payers having access through the BBC website to that even broader range of views I think is a very good service and one that I warmly welcome.

The Chairman: On that topic, you raise the point, which I think is an important one, that if a BBC journalist, for example, gets some information about what is going on in, shall we say, Syria from some kind of Hezbollah website, there is a real risk that if you are simply a portal that in a while those viewers at the BBC will be looking at something of a rather more partisan nature than they are used to.

Ms Coyle: Yes.

The Chairman: Do you, as the Trust, have any thoughts about how you might deal with that?

Ms Coyle: I think there would probably be limits. There are some very clear limits in areas like would we want to link to a website that had some news but also access to pornography or any of the other types of content that we would definitely rule out.

The Chairman: I can see pornography is an absolute clear no-go area. It is reasonably defined. But when you get some of these extreme political events, it might be rather more difficult if you are trying to allow people to get in-depth understanding of what is going on.

Ms Coyle: We have mainly been talking about, in the first instance, UK-based sites, and I think UK legislation would look after quite a lot of that for us.

The Chairman: I think it would, but not everything in the world happens in the UK and a lot of interesting things happen outside it. That is where you have the biggest challenges, is it not?
Ms Coyle: If you are talking about exactly that kind of site, then I would not regard it as an automatic must for the website to link to it. It is something where the BBC management would have to exercise their editorial judgment about whether or not it was a good idea.

Earl of Selborne: Going along this line of thought as to how the BBC’s role as a gateway to external views and a range of diverse views available externally could be promoted, clearly this is something that is more easily done online than in most other media. Indeed, I think during the Olympics you say that you did promote in quite an original way the idea of putting BBC material into a form that could be used around the world by local media and the like. It was your own material that was being reused. Are there any other ideas that come to mind as to how you might promote this concept of promoting external plurality?

Ms Coyle: I think over the past few years the BBC has become a less inward-looking organisation anyway, and obviously the changes in online technology make this kind of thing much easier. But I think what is really driving it is that there are many more sources of news around the world, and audiences have become much more aware of all the things that are happening and the different perspectives that there are. So it is a combination of supply side, that it is becoming possible and there are probably technological innovations that you and I have not even dreamt about that will make it even more possible, and demand side, that audiences want to know more about what is going on and they are aware that there is a wider canvas available for them.

Earl of Selborne: If this is a concept that should be promoted, does it require guidelines to be amended or, when the charter comes to be reviewed, should this be taken into account as a responsibility of the BBC to promote external plurality?

Ms Coyle: I think in a sense it is already covered under the public purposes of the BBC. There is the digital purpose and there is the purpose about promoting the world to the UK and the UK to the world. In that sort of headline sense I think they are already there. A lot of this is being driven by responding to changing audience needs and technological possibilities. The problem with trying to write it on to the piece of paper or on to the document is that it limits your flexibility, and I do not want to predict exactly how these markets and these technologies are going to change. I am perfectly open to it, but I would not want us to box ourselves in.

Earl of Selborne: Would you accept the fact that the BBC is criticised sometimes for unfair competition with local print media, for example, where you inevitably have the ability to provide local news in a way that is difficult for them to compete against? Anything you can do to help them reuse this material in a way that is friendly to them is going to take some of the flack away from you.

Ms Coyle: I am very supportive of doing anything that we can to help ensure a vibrant local news market. That is not quite the same thing as ensuring that the incumbents are doing well, and their problem is the change in technology and the impact that is having on their advertising revenue. That is very well known. I think it is equally important to make sure that the same helping hand is offered to new entrants to the market.

Mr Towers: It is certainly possible to add to the charter in this area. I do not know, as Diane has been saying, whether it is necessary or essential. One point about the local newspaper market is, if you look internationally and not just at the UK, it is clear that there are issues and problems financially for regional newspapers—indeed, all newspapers—in every different market, even when there is nothing comparable to the BBC. So we do not completely buy the argument sometimes made that it is because of the BBC that they are
having problems with their business model. But certainly through the PVT mechanism we said no to a proposal for a more local online media service, and indeed extended that to a principle where we said that the BBC was not going to extend any further into more local services within the terms of this Charter. So we already have an eye on exactly this issue. If there are things we can do more positively to link or where, for instance, we invested in YouView as an IPTV new type of platform that might in time be able to provide different access to different types of news provider, or the investment we put into local television as part of licence fee settlement, we certainly ought to be carrying on thinking about that.

Q419 Lord Skelmersdale: Following on from that last supplementary, both of you were probably at the Society of Editors annual conference, were you?

Ms Coyle: I am afraid not, no.

Lord Skelmersdale: You were not, neither of you?

Mr Towers: No.

Ms Coyle: One of our colleagues was.

Lord Skelmersdale: One of your colleagues was. But you will know surely about the Home Secretary’s remarks about competition between yourselves and local papers?

Ms Coyle: Yes.

Lord Skelmersdale: Would you like to comment further on that? It is a slightly provocative statement from the Home Secretary.

Ms Coyle: We obviously understand the market sensitivities and have been aware of them for some years. We have talked to the newspaper groups about them. As Alex has said, we turned down a BBC proposal to do more local news on BBC websites, but the problem is a common one. If you look around the UK market you see the BBC and it is natural, I suppose, to assume that that is a problem. But if you look equally at France or at the United States, local newspapers are in trouble there too. In all cases the common factor is that the technology, the internet, has taken away attention from local newspapers and taken away advertising revenues as well, and it is a challenge to their business model. To the extent that the BBC can help, we are very pleased for it to do so and we take these market impact questions very seriously, but I do not think it is at all reasonable to say that it is the fault of the BBC.

Lord Skelmersdale: You do not think there should be any sort of guidance from either Ofcom or the Secretary of State on this, what was referred to in evidence earlier as “parking tanks on their lawn”?

Ms Coyle: I do not think there is any need for anything beyond the machinery that we have for looking at it already, which is quite extensive, and we pay careful attention to what is happening in the market and the BBC’s impact on the market.

The Chairman: I take it that just because the Home Secretary says it, it does not affect the decision that the BBC takes. What affects the decision that the BBC takes is the considerations of Ofcom and so on.

Ms Coyle: It is to be an evidence-based market impact assessment.

Q420 Lord St John of Bletso: Clearly the communications industry and the media landscape has changed beyond all recognition as the result of digital technologies and social media. Ofcom’s advice to the Secretary of State was that media priorities should be assessed
on a periodic base, possibly once a year, with the BBC included in this assessment. They recommended, in their words, “The BBC Trust assess the BBC’s contribution to plurality, both internal and external, and considers establishing a framework for measuring and evaluating this periodically”. Were Ofcom to be given this duty to conduct periodic plurality reviews, do you accept that the BBC should be included in these assessments, and should the conclusions of such a review be left to the BBC Trust?

**Mr Towers:** Yes, we definitely think that if you are measuring plurality you ought to include the BBC in your measurement because that just takes into account the way people use their media. To ignore the BBC would be odd. It is hard to comment on the specifics of it, because everything is slightly up in the air as to exactly how often these reviews will take place and what their conclusions ought to be. On internal plurality, as we have been saying, I think we have some mechanisms already where we look quite closely at some of the key dimensions of internal plurality, so that we would know whether there were signs of a problem in that area. We have not so far done a bespoke assessment of internal plurality in itself, and I am not entirely sure that everyone is always referring to the same thing when they are talking about internal plurality. We are focused on measuring impartiality on the one hand and the quality range and reach of the news services on the other hand. That is something we will keep under review and, if it became obvious as the result of a wider process that this was something that we should look at more carefully, we would think about that. But we are waiting, as everyone is, to see what the outcome of this lengthy policy process is first.

**Ms Coyle:** We definitely think that the BBC would be included in a review of this kind and are very happy to discuss any problems that seem to emerge from such a review. I think we would be very concerned if the Government or Ofcom were claiming powers to intervene themselves in editorial areas, and that is the kind of line for us.

**Lord St John of Bletso:** I suppose as a supplementary, should the Trust produce a response to such an Ofcom periodic plurality review or should the BBC Trust conduct its own independent assessment and take action on that basis?

**Ms Coyle:** As we were describing earlier, we have lots of opportunities to look at this. Right now in the news service review, it is exactly such an opportunity. I do not feel that we would need extra reviews to do it. We already do quite a lot of reviewing.

**Mr Towers:** I think we would argue as well that the BBC absolutely ought to be part of what is measured in a plurality review. When you get on to the question of remedies and interventions, at that point I think we would say there are a whole load of regulatory structures already applying to the BBC, and a very clear moment in the charter review, with a full drains up on: is the BBC the right size and scale? Does it have the right remit, the right purposes? Is it properly governed and regulated? All of that is looked at in great depth and there is already a mechanism that allows that to be looked at independently, so we do not necessarily think an Ofcom review ought to trigger Ofcom intervention in the BBC.

I suppose a broader philosophical point is that we are not completely clear what Ofcom would consider to be a problem. Back to where we started: is there a problem to be addressed here or not? Is purely consumption the right measure of whether you have a problem or not? Whether it is the BBC or whether it is a large newspaper company, if that organisation is successful in attracting a lot of people to its services, is that automatically a problem and a problem that needs to be addressed and resolved? I think in the BBC’s case we would say it was rather a good thing. We encourage them to try to get the service out to as many people as possible, and it would be a little bit perverse if the result of that were
for it to be cut back in some way, especially where it is providing a service that might be different and distinctive from whatever it is that the market is providing, whether it is local radio or “Newsbeat” on Radio 1 or whatever it is.

**Q421 The Chairman:** You have been talking about plurality throughout. In terms of output, do you as the Trust spend any material time thinking about where the plurality is gaining the information that it then synthesises into its news comes from?

**Ms Coyle:** We do. That takes you to questions about the makeup of the BBC’s journalists, of the workforce and the diversity there. That is something that we do monitor. As I was saying at one point earlier, I think the combination of the World Service and the newsroom has been very positive in that way because it brings in people with a whole different range of experiences and backgrounds. I think that BBC North, and the fact that there are now quite a lot of journalists in Salford too has contributed a different kind of perspective. We would be very keen to see that enhanced by the BBC making more use of its correspondents and reporters around the country, because the experiences somebody has, the people they go and talk to if they live in Boston or Belfast, are very different from those of reporters living in London. That is the kind of thing that we would look at there.

**The Chairman:** I know that you, like me, hail from the north, but I am sometimes a bit anxious when people refer to Manchester as the north. I remember there was a proposal that our local news should come from Manchester—I live in Cumbria—and I pointed out that if in London you got your local news from Amiens, that would not be very plausible.

**Ms Coyle:** I think the Scots would make the same point.

**The Chairman:** Do you have anything else that either of you would like to say to us that you think might be helpful, because it is approaching the time when we stop?

**Ms Coyle:** No. It is a very interesting debate and I am really grateful we have had this chance to talk to you about it. We will be looking forward to your report with interest.

**The Chairman:** Thank you very much indeed.
Q353  The Chairman: May I extend a very warm welcome to Robert Beveridge?

Professor Beveridge: Thank you, my Lord.

The Chairman: Thank you very much for coming and for waiting so patiently at the back of the room. I hope it will not cause you any inconvenience. You are, I think I am right in saying, visiting professor at the University of Sassari and a senior tutor at the Nottingham University at Ningbo in China.

Professor Beveridge: That is correct, my Lord.

The Chairman: I have been there briefly once, not as a student but I visited it. We have asked you here particularly to concentrate our minds on the issues that are specifically Scottish or how Scottish issues might affect the United Kingdom. I know you have kindly produced a paper that touched on some of that, and Alan has been in touch with you about the kind of things that we are interested in. Before we start, can you just tell us who you are? Then if you have an opening statement, we will be very pleased to hear it.

Professor Beveridge: Thank you. I am Robert Beveridge. I am a professor at the University of Sassari in Sardinia, currently a senior tutor at the University of Nottingham, Ningbo in China, and I undertake some tutoring work at the Scottish Media Academy.

My opening statement is brief but it is really to say thank you for the invitation. You are a House of Lords Committee that makes a report and recommendations, so your powers may be said to be limited, but please do not underestimate it. I referred in my statement to the
importance of the arguments advanced by Lords Puttnam and McNally during the passage of the Communications Act 2003, and the House of Lords did an excellent job at that time. As my paper makes clear, I also wish to commend this Parliament, which set up the BBC and Channel 4. In some ways, the BBC and Channel 4 addressed and partly solved problems of media plurality, at least in television. As Tony Judt said, the best future entails recovering good pasts and I commend this to you.

The Chairman: Thank you very much. Can I begin by reminding the Committee—I daresay you do not need it—that the Ofcom Advisory Committee for Scotland said in their evidence into the Ofcom inquiry on media plurality that, “The Scottish public has a dual relationship to news. It consumes news that is specifically Scottish and that is relevant to the conduct of the Scottish political institutions and the Scottish public domain more widely. The Scottish public also consumes news that has a wider UK focus and that is relevant to Scots as citizens of the United Kingdom”. Is that an analysis you would accept? Could you perhaps tell us a little about the way and where Scots turn when they are looking for news, particularly on those two levels?

Professor Beveridge: Despite reports of its demise, linear television is still dominant, but the balance between Scottish and UK news remains a problem. I will try to give an example of this. When Chris Hoy wins his gold medals at the Olympics, it is all over the UK main network, and then “Reporting Scotland” begins at 6.30pm and we get exactly the same thing again. That kind of duplication or a double dose is irritating to viewers and listeners in Scotland.

Secondly, news about health or education policy in England is interesting but it is not strictly relevant to the interests of citizens in Scotland. Although it is now better labelled, particularly as a result of the BBC Trust King report on impartiality a few years ago, it is still a problem.

Thirdly, when stories about Scotland appear in the UK news, they do not always get it right because it is coming from south of the border and they do not always understand the nuances of the Scottish context. Obviously the referendum may be changing this but afterwards my belief is that it will sink back. Therefore, I believe the problem is structural and needs to be addressed by having a Scottish Six and/or a Scottish digital network or, if we go back to the idea that Ofcom put forward some years ago, a public service publisher.

Q354 Lord Skelmersdale: To change the subject, Professor, Ofcom’s definition of plurality is to bring about two desired outcomes: first, ensuring that a diversity of viewpoints is available and consumed across and within media enterprises and, secondly, preventing any one media owner or voice having too much influence over public opinion and the political agenda. My first question is: would you agree that these desired outcomes apply to both news media aimed at Scots as Scottish citizens and news media consumed by Scots as UK citizens, if you see the difference?

Professor Beveridge: Indeed so. Certainly I agree with Ofcom’s definitions there and, again, because Parliament and the regulation system have some influence over broadcasting, much less over newspapers, we do have some plurality of voice. A very good example of that is BBC Alba, which was set up recently and provides a voice for the Gaeltacht, which is obviously a voice for a minority.

I would turn around to you, my Lord, and ask how would you feel if there was going to be a referendum on Britain’s or England’s membership of the European Union and the press reporting on it were mostly in favour of Britain or England staying in the European Union
and were owned and controlled from outside this country. I think there would be an enormous furore if that took place. That is the position Scotland is in at the moment. Most of the newspapers that are read in Scotland are owned and controlled outside Scotland. Despite Rupert Murdoch’s late conversion to being supportive of Alex Salmond and the support of the *Scottish Sun* for the SNP, I think there is an imbalance of voice when it comes to the Scottish media as a whole.

**The Chairman:** Do you think that therefore all Scottish media should be owned in Scotland, whatever that might mean in the world of global capitalism, or do you have a positive proposition as to what is desirable?

**Professor Beveridge:** No, I am not a supporter of Scottish nationalism per se, although I see it as civic nationalism as opposed to ethnic nationalism, so no one would turn around and say that all the media need to be owned in a particular country. But within the UK there are big questions, for example about the BBC, as to whether the BBC Scotland is Scotland’s voice in the BBC or whether BBC Scotland is the BBC or London’s voice in Scotland. Therefore, it seems to me to be very important that when we look at impartiality, balance and accuracy in broadcasting, organisations that are still dominant, even more dominant than newspapers, pay attention to the need to have reporting that reflects the diversity of the UK. I have raised this with Ofcom. I got in touch with them and said, “Perhaps you should look at ITN news and Channel 4 news and see whether it is learning the lessons of the BBC Trust King report”, but I did not get very far with Ofcom in Scotland on that issue.

**The Chairman:** Do you think that the BBC does though? I am sure it would tell us it is trying. Do you think it achieves that?

**Professor Beveridge:** No, I do not. The BBC’s own research on purpose gaps clearly indicates that there is unhappiness among viewers and listeners in Scotland about the representation of Scotland. Again in my paper, one of things I drew attention to is the soap “River City”. “River City” costs a lot of money. It is a welcome investment in creative industry production in Scotland. It is good cultural representation. I am from Edinburgh, as you might tell from my accent. “River City” is Glasgow, so I do not watch it all that much, but my belief is that it should be shown south of border. It should be shown on the network. I once asked the then controller of BBC One why it was not being shown and did not get a satisfactory answer. Why do we not have “River City” on the BBC One network across the UK so that viewers in England can get a better sense of Scotland? Obviously the BBC has a responsibility to help people in England to understand Scotland and vice versa.

**The Chairman:** This is as slightly frivolous point, but we could see “Rab C Nesbitt”.

**Professor Beveridge:** Yes, that is true, but there is history of programmes not making it on to the network. Again, one of the things I am arguing in my paper is that there should be devolution max for BBC Scotland. BBC Scotland should have control of its own schedules, of the amount of money raised in Scotland in the licence fee. Incidentally, that would be good business practice: ensuring that the BBC became less centralised and trusting its executives and managers in Scotland much more.

**Q355 Baroness Deech:** I think I am treading on eggshells here, but I remember in the past discussions about showing “River City” south and I think it was a market or artistic decision that it would not be widely watched. Conversely, I have just checked my iPad copy of the *Times* and the print one has a whole chunk on Scotland every day. I think that the argument you are making is not really about diversity of voices. The view that you are presenting—I do not think it is your view—is that the Scottish media and the English media
are not giving sufficient attention to Scottish separatism. That is a question of the different drives of the newspapers. The answer is that if you do not like them then do not buy them.

Professor Beveridge: I think that is true for newspapers but, as I said, if you were faced with a referendum on EU membership and the way in which it was being presented and the agenda that was being set owed much more, arguably, to the owners than to the readers, you might have a different view.

Baroness Deech: Conceivably you can make that argument in England and Wales in relation to the European Union. There is not a lot of European news, they say.

Professor Beveridge: That is true.

Baroness Deech: When the referendum comes, the papers may point one way. In fact it is already said they will point pro Europe, so we are familiar with that argument.

Professor Beveridge: I am sorry, are you saying that the newspapers in England would be pro Europe?

Baroness Deech: I read that it is often said—I am not sure I can judge this—that the English and Welsh media are pro Europe even now, long before we get to the referendum.

Professor Beveridge: No, my understanding is that the English press in particular is much more heavily Eurosceptical, and that would of course be in tune with the ownership of whatever News International is called now.

Baroness Deech: Yes. There obviously can be reasonable opinions about this, but I suppose you buy your paper, pay your money and take your choice.

Professor Beveridge: That is absolutely true for press. It is a very different ballgame when you start talking about public service broadcasting.

Lord Skelmersdale: Could I go back to my question? Following on from what you have just said, do I assume that you believe that the Ofcom Advisory Committee for Scotland is suggesting that there should be an extra component of plurality, that Scotland be adequately represented within the UK, as should be the case with all other nations?

Professor Beveridge: Absolutely. I would go further and say that I am very disappointed in the Scottish Government, and Alex Salmond as First Minister as well. The Scottish Broadcasting Commission came out in 2008, under Blair Jenkins, with a proposal for a Scottish digital network that would cost around £75 million, £80 million a year. What was important about that was that it was accepted by the full Scottish Parliament. It was not an SNP gambit. The Liberals, the Conservatives, the Labour Party and the SNP, the whole Parliament unanimously accepted the report and its recommendations. I suppose there might financial or political reasons why they have not gone ahead with it, but I personally think that a Scottish digital network should be set up by the Scottish Government, with adequate safeguards for independence and so on, and keeping the politicians away. That would immediately have a significant influence on plurality because it would be available on digital terrestrial television and available to viewers south of the border, as indeed BBC Alba is.

The Chairman: Is this something that you think the UK Government should do, because it could do it equally well?

Professor Beveridge: Yes, indeed it could. I suppose, given the political constraints, that might be very difficult for the UK Government. I do not see why the UK Government could not do that except they would be seen as pandering to Scotland.
The Chairman: You would probably have to do the equivalent for Wales and Northern Ireland.

Professor Beveridge: Indeed so, yes.

Lord Skelmersdale: It would have to be post referendum too, Chairman.

The Chairman: Now, yes, but that is not that far hence.

Professor Beveridge: Although Ofcom, to their credit, did recommend the public service publisher back around 2005 or 2006.

The Chairman: So the basic proposition behind your evidence is that Scotland is not getting a terribly good deal at present?

Professor Beveridge: Yes, absolutely.

Q356 Baroness Deech: We have had some discussion about this. Would you say that the proper place for making sure that Scotland is represented in UK-wide media is in the public service media but that you cannot really force non-public service media to represent Scotland adequately?

Professor Beveridge: I agree entirely with that, yes. The price for being designated as public service media, having a reduced price or no price in the spectrum, should be that you have to abide by certain codes, rules and regulations. That goes without saying, I think.

Baroness Deech: Would you say that the public service media as we have it, in particular the BBC, does not represent Scotland adequately at the moment?

Professor Beveridge: There are a variety of views around this. I am a critical friend of the BBC. BBC Scotland does what it can, but I draw your attention to the point I made earlier, which is that I think that BBC Scotland should have control over its own resources and the licence fee raised in Scotland, and have the ability to opt in rather than opt out of the schedules. I suppose I am arguing that the BBC, and indeed the governance structure for the BBC, needs to become more federal. I was very interested to see what the leader of the Conservatives in Wales said the other day about that aspect. I am quite clear that the BBC needs to be in step with devolution. In 1998 the BBC governors turned down the idea of the Scottish Six by saying that the BBC needed to be in step with devolution. My belief about cultural representation—although that is in a cycle like the British film industry; it is good one year, bad the next year—and certainly about governance is that it is out of step with devolution as it has happened.

Baroness Deech: There is a Scottish governor, is there not?

Professor Beveridge: Yes, there is. Bill Matthews.

Baroness Deech: Trustee rather.

Professor Beveridge: Yes, Scottish trustee. That is right.

The Chairman: While on this subject, although it is not directly relevant to what we have said in the immediate past, there is a clear relationship between the devolved powers that the Scottish Assembly has and the powers that are retained in the UK.

Professor Beveridge: Forgive me, my Lord, the Scottish Parliament.

The Chairman: Parliament, I beg your pardon. But there is a difference between powers and influence. Do you consider the Scottish Parliament to have more influence than it has
strict legal powers, particularly in respect to broadcasting? It has very little direct legal capabilities in respect to broadcasting.

**Professor Beveridge:** If I may turn it around to you and this Parliament, I would ask why, when the Scotland Act was passed in the late 1990s, it was decided to keep broadcasting as a reserve power alongside foreign and defence policy. Why did the British state and the UK Parliament consider that policy on broadcasting to be so important that it could not be devolved to the Scottish Parliament? I would suggest that even in the event of a no vote next year in the Scottish independence referendum, devolution max will be on the agenda and there will be a case for a federal BBC perhaps being considered as an option in the forthcoming BBC charter review.

**Baroness Healy of Primrose Hill:** Could you say whether you think there is a problem to address on the fulfilment of Ofcom’s two desired outcomes on that front: diversity of viewpoints available and prevention of too much influence—which I think you already think there is—accruing to any one voice or media owner? If so, could you elaborate on this or these, and would you say that there are different concerns to address across the various media, newspapers, broadcast and online?

**Professor Beveridge:** Absolutely, although I think that the voters, the citizens of the United Kingdom, are not stupid and they see that the major problem in our country over the last 40 years or so, outlined by Harry Evans in his evidence before you last week, has been that one particular company, one particular family, one particular person ended up with far too much influence. Regrettably, but one understands why it might have happened, the political class ended up being very afraid of this company and this person and paid court to this person.

The way in which you deal with it is very simple. I think you make sure that one company or family or person does not own more than one daily newspaper and one Sunday newspaper. That might seem simplistic. I am talking at the national level. I am not talking at the regional level, I am not talking at the local level, but at that level that seems to me to be quite appropriate. Stanley Baldwin, who was a Member of this House back in the 1930s, said press barons had power without responsibility. That has remained the case throughout the decades and it is time for this Parliament to do something about it, please.

**Q357 Baroness Scotland of Asthal:** Coming on from that, you know that we have heard many views in relation to plurality, whether we should have caps, thresholds, metrics to use in setting them up, automatic divestment, public interest obligations and so on. Do you have your own view on how to reform plurality policy that could address some of the concerns that you have raised regarding the news media consumed by Scots as Scottish citizens? I very much take into account what you have just said to Lady Healy, which is a very straightforward form of reform, but would you like to add to that? How in particular would you respond to Ofcom’s proposal for periodic reviews of the UK media plurality, including plurality at the level of nations? Could that form part of the system?

**Professor Beveridge:** Periodic review is certainly a good idea. However, I do not take the view, despite my unhappiness with the propaganda that we sometimes get in the national newspapers, that you should be interfering in the press more than you are already doing, I hope properly. I support the idea of a royal charter with statutory underpinning for independent self-regulation of the press. For me, the most important thing is beyond that, which is that with broadcasting, including broadcasting online, you have an absolute red line on impartiality, accuracy and balance in reporting, whether it be radio, television or online. There is then an interesting question, which you were looking at in your report on convergence, as to how you regulate online, including online newspapers. But as long as the
brand is there, as long as it has the kitemark of being a public service broadcaster, whichever platform it is on, that seems to me entirely proper.

I do not think you should get into the problem of trying to tell the press that they must be accurate, balanced and so on. That is for them to do through their own regulator. I do not think you are going to get diversity of pluralism in that way. It is for the market to deliver that. For example, I wish there was a Scottish newspaper that supported independence, and for the right reasons. I wish there was a press in Scotland that was not putting the boot into the argument for independence but was, as John McCormick, the electoral commissioner, has said, providing voters in Scotland with honest information that enabled a proper decision to be made. I think the press are certainly letting down the people of the United Kingdom and Scotland in that context.

**The Chairman:** Are the broadcasters, given their impartiality requirements, doing the job more or less as you feel it should be done?

**Professor Beveridge:** They are doing better than I had expected.

**Baroness Deech:** But how much did you expect?

**The Chairman:** Not much by the sound of it.

**Professor Beveridge:** Well, Jim Naughtie being on “Good Morning Scotland” on BBC Scotland is fine. My problem is slightly different because I am a citizen of Scotland but I am also a citizen of the United Kingdom and I have concerns about the ways in which the media as a whole are enabling voters in England to understand the issues and what is going to happen. I think for our democracy it would be useful if that was done more and better.

**The Chairman:** As a flanker to this one, you will have heard Ashley Highfield, I think, talking about the competitors to the Scotsman being the Scottish editions of the English papers.

**Professor Beveridge:** He is absolutely right about that.

**The Chairman:** I wanted to ask you about that. Are they Scottish or are they English?

**Professor Beveridge:** They are English. Sometimes they have a bit of a kilt on them but they are absolutely English.

**The Chairman:** They are Englishmen in kilts, is that—

**Professor Beveridge:** More or less. But can I raise something about Ashley’s evidence that disturbed me greatly? He said, on the record, that the Scotsman was an Edinburgh newspaper, not the voice of Scotland. The Scotsman is selling around 28,000 copies a day and, despite his evidence, it might well be in danger of going out of business or alternatively having to merge with the Herald. I think that would be a major problem for diversity in Scotland. However, I am not clear myself about what one might do about that. In my paper I produced one or two ideas about that and I have talked a little bit about a technology fund, because the other thing I was concerned about when I was listening to the previous witnesses was that newspapers, especially local and regional papers, are fine, but newspapers are in immense decline. I can see that and I have seen it for years in my students. I think this Parliament needs to help newspapers to get the poetry right for them but it is for you to help with the pipes, as in Lord Carter’s analogy or metaphor in his report Digital Britain. If newspapers go it is bad for our democracy, so I hope you will have a look at my recommendation and see what you think of it, in 10(5) I think.
Q358  Bishop of Norwich: One of the questions we are asking everyone—this is a UK-wide question as much as a Scottish one and follows on from the previous question—as part of any new plurality policy, who do you think should have ultimate responsibility for making interventions? Ought it to be the Secretary of State, Ofcom or some new specialist plurality commission, or do you have some other ideas of who ought to hold the responsibility?

Professor Beveridge: I have the utmost respect for you as politicians, believe it or not. However, I remember the part played by Lord Birt some years ago when he was director-general of the BBC in stopping the proposal for a Scottish Six and how he compromised the BBC’s independence at that time by getting too close to New Labour, which was utterly shameful. I am also very clear about how unhappy many people are with attempts to bully the BBC by politicians over the years. It is not confined to any one political party, sadly, and the recent outburst by Grant Shapps is yet another example of this.

One further point, if I may. Some years ago I was in Kuala Lumpur in Malaysia at a media conference and I always remember a former high commissioner to this country from one of the Asian countries saying, “The BBC is so important to the world, should we leave it in the hands of the British?” I think the behaviour of Lord Birt and the behaviour of Grant Shapps in the last few days is clear evidence over the years that politicians cannot be trusted when it comes to the BBC and therefore there has to be a regulator that is independent.

Bishop of Norwich: Since you support, in another sphere, the Leveson hybrid, would that be the sort of option you would go for in relation to plurality?

Professor Beveridge: As I was sitting outside waiting to come in, I thought when I had said Leveson hybrid that the answer would be yes, but it still gives power to the politicians and maybe it is better with a regulator. But let me add this. As you will see from what I said about the possibility of taking Ofcom to judicial review, the regulator also has to play its part and there has to be the will in the regulator, in the case of the citizen interest, to advance that rather than to choose among the varying competing clauses that are in a Bill like the Communications Act.

The Chairman: Those who have advocated to us the involvement of Secretaries of State and Ministers have argued that it is very important that there should be accountability. I entirely understand you are saying that independence is the most important quality. Just so we are clear, what you are telling us—and I am not making any comment about whether I think you are right or wrong—is that the independence is more important than the political accountability in this context?

Professor Beveridge: Yes, I am, very definitely. Having said that, one would want the people at the regulator to be appointed according to Nolan principles, and therefore what you are looking for is people to do a good job. The democratic accountability then comes when the regulator presents its report and appears before various Committees such as yours. That is the kind of two-step process I would seek.

Q359 Baroness Fookes: Professor, you clearly have very strong and lively views on all these matters. Could I ask you to turn your mind to the promotion of diversity and whether you have any suggestions that will be useful to us in this regard?

Professor Beveridge: Better regulation, I am afraid, Baroness Fookes. For me, it is as simple as that. I talked about Tony Judt. If you go back to the early 1980s, coincidentally at the same time as Mrs Thatcher and Mr Murdoch were coming to their deal, or allegedly coming to their deal, Mrs Thatcher went ahead and set up Channel 4. Channel 4 was a fantastic example of diversity of supply and content and it invigorated the creative industries in the
United Kingdom, including the film industry. I do not see why, if that model worked in the early 1980s, we are throwing the past out and forgetting the good things that were done in the 1980s, or indeed in the 1920s, just because this thing called the internet has come along and everybody says it is going to change everything. Every communication technology was new at some stage. It disturbed the economic, political, cultural and social balance of power and states found a way of dealing with it.

The UK in particular gave public service broadcasting to the world. I think we should continue that kind of model and that is why the public service publisher, or in particular in my country the Scottish digital network, with a requirement to provide diversity would be useful. For example, in Scotland we have many people of the Polish diaspora. In fact probably more people in Scotland now speak Polish than speak Gaelic. So there is a case, I have heard, for having programmes in Polish on television in Scotland. Why not have a Scottish digital network that reflects the diversity of voices in Scotland?

Baroness Fookes: That is one very interesting thought. Do you have any others while we have you before us?

Q360 The Chairman: Can I follow up about the Channel 4 point? Partly because he was my MP, partly because he was a friend and partly because I admire him a great deal, in fact Willie Whitelaw was the creator of Channel 4, was he not?

Professor Beveridge: That is right.

The Chairman: He was a Scotsman.

Professor Beveridge: Yes, the Cumbrian MP, I think.

The Chairman: Yes, that is it. But the point about Channel 4 is it was very cleverly configured financially in that it is effectively paid for by advertising. I think there is a real problem for the future because there is a very finite amount of advertising about.

Professor Beveridge: That is why Ofcom were clever to call it a public service publisher and the Scottish digital network was clever. But, forgive me, Channel 4 ended up subsidising ITV.

The Chairman: Yes, but the point I am making is that if we are going to see more publicly funded initiatives, do you think taxpayers' funding is going to pay for it? I cannot quite see where else it might come from.

Professor Beveridge: I am constitutionally unhappy about top-slicing the BBC licence fee, for a whole variety of reasons.

Baroness Fookes: Could any money come from Scotland itself?

Professor Beveridge: Certainly for the Scottish digital network, yes, it should come from the Scottish Government—I am clear about that—which goes back to your earlier point. Forgive me, my mother is 83 years-old and she tells me there is nothing on television to watch and I should tell you people this. So I have now done it, Mum.

The Chairman: I hope you go back and tell her you told us straight.

Professor Beveridge: However, my belief is that, rather like Channel 4, if you funded a Scottish digital network or a public service publisher initially, like Channel 4, with a requirement to be different, innovative and all the rest of it, that would add to choice and therefore that would then be successful by definition. When we got digital television we got more channels, but I do not believe we have more choice.

Baroness Deech: I agree with you about top-slicing and I agree with your mother.
**Professor Beveridge**: She will be pleased to hear that, Lady Deech.

**Baroness Deech**: Just on the Polish question, I have lived through this debate before and there is an argument to be made as follows. I believe there is an Asian channel and that there is a Pakistani radio programme somewhere. The argument goes that it is better in the long term for everyone who is here to learn the language and share so they can discuss things around the water cooler and so on rather than providing, let us say, a Polish programme. The argument applies to Scotland, too. You lose that unifying effect. Therefore, what you are putting forward has huge political implications. You are really saying that Scotland is a separate nation right now in whatever sense you want to understand that. Maybe that runs contrary to at least the European movement: we are all one and national boundaries do not matter and so on. I just wanted to raise that with you. I see an analogy between the Polish issue and the bigger Scottish one.

**Professor Beveridge**: I think you make a very powerful point, if I may say so. Having said that, there are around 60,000 people who speak Gaelic but they get around 300,000, 400,000 people watching the programmes even though they are in a different language. Part of that is because they are producing quality programmes, for example the one-hour documentary, and BBC Alba is a great success story. Citizens of Scotland who happen to be of Polish ethnicity are also licence fee payers and therefore they deserve something in return for paying their licence fee. I agree with you that 99% of that should be in English but maybe some programming, just the odd programme from time to time, in Polish might work, or something that addresses the concerns of being a Pole in Scotland.

**Baroness Deech**: I take it it has not been tried yet?

**Professor Beveridge**: There may have been one or two documentaries of which I am unaware, but they would have been in English rather than Polish, I think.

Q361 **Lord Skelmersdale**: On a linked subject, can I rather cheekily ask you in which languages you teach when you are abroad?

**Professor Beveridge**: I am extremely lucky that the University of Sassari in Italy provides me with a translator for my lectures, and at Nottingham University in Ningbo all the lecturing is in English and the Chinese students are working very hard. They are going to be very competitive for us in the future. I do not speak Gaelic, although I wish I did.

**The Chairman**: What about Chinese?

**Professor Beveridge**: A little, not much.

**The Chairman**: Ofcom has said it would like to conduct some sort of plurality reviews. Are there any particular facets of what they should be doing that are particularly important for Scotland or that you think might not apply if they took a purely anglo-centric view of the thing?

**Professor Beveridge**: I do think there needs to be an all-Scotland licence for whichever the licence holder is. Currently STV has STV North and STV Central. I have concerns about the provision that is going to be made for viewers in Scotland in the Borders. As I said again in the paper, one of the things that happened was that I believe that Ofcom and Ofcom Scotland did not meet the citizen interest. They allowed ITV to get rid of the Border Television news programme. I think that was a disservice to viewers in that area and to citizens both north and south of the border. Ofcom accepted the commercial arguments that were being made by ITV, which was, "It is a very small audience, lots of sheep in the Borders, if I can put it that way, not many people watching, and therefore we cannot afford
to put this programming on”. It caused political problems and eventually Ofcom reversed that decision, and good for Ofcom for reversing that decision.

The Chairman: What you are really saying is that there should be a single Scottish licence for Channel 3?

Professor Beveridge: Absolutely. There have also been problems between STV and ITV in the recent past. Hopefully they are now working much more in partnership with each other, but 92% of Scottish Television’s programming comes from south of the border. It does a very good job, better I think than the BBC, because it has STV Edinburgh and STV Glasgow and so on. But if ITV decided, for example, just to sever connections with STV, STV would lose 90%-odd of its programming and would just become a small production company. You can already get ITV London by satellite in Scotland.

The Chairman: You can certainly get it by IPTV.

Professor Beveridge: Yes, that is right. Maybe Ofcom, and indeed this Parliament, might want to look at the relationship between ITV and STV for the future.

The Chairman: Thank you. We are getting towards the end of our session and we move on to the last question.

Q362 Bishop of Norwich: You have mentioned the referendum in Scotland on a number of occasions. In what ways is that affecting the debate in Scotland about the media? You have given your own opinions about it. Is it creating a much more focused debate about plurality in the media, ownership of the media in Scotland itself?

Professor Beveridge: The danger is, of course, that it is becoming party political, as indeed the BBC charter review might well be in the run up to the charter review because we have the UK general election in 2015. I have a very great fear about the media and the referendum, and it goes along the following lines. I think it will be a close vote. My gut feeling is that it will be no, but the problem then comes afterwards because if the media have not done a professional enough job in helping us to have an informed electorate, they are going to get the blame for that result. I do not think that would be good for the BBC or for ITV. I am not convinced it would be good for the press either, and I do not think it would be good for our democracy. So I would really want the media to use another Scotsman’s holy trinity: inform, educate and entertain. Certainly they need to do a better job of informing and educating than they are doing at the moment. I do not have research evidence to back this up, but I am clear in my own mind that the press are almost uniformly hostile to Scottish independence and therefore they are not doing a good job for democracy there either, because people need to be informed. John McCormick, the electoral commissioner for Scotland, has made this very point in a report.

Bishop of Norwich: In relation to that, David Elstein, speaking to us, said that a channel run by Scots, for Scots and funded by Scots is overwhelmingly overdue. Do you agree with that?

Professor Beveridge: I agree with him 100%. It was very interesting to me to hear David Elstein, who I do not normally associate with those views, coming out with those views. Having said that, that would be a Scottish digital network. There is another way of solving it and that is to give BBC Scotland devolution max/independence.

The Chairman: Were you to do that, do you think that the licence fee should be differentiated?

Professor Beveridge: You mean a different amount of money?
The Chairman: The English would pay one amount and the Scots would pay another amount.

Professor Beveridge: That would be a matter for the people in charge of it, would it not?

The Chairman: It would, but I was wondering what you would do.

Professor Beveridge: We are heading that way in universities, are we not? You differentiate between the prices you pay for different courses.

The Chairman: No, I am just interested to get an opinion from you.

Professor Beveridge: I do not see an objection in principle to that, but I can see that it would have political repercussions.

Q363 Baroness Scotland of Asthal: I was very interested to hear in various comments you made that sounded to me as if you were pro the Leveson recommendations. I know that Alex Salmond had indicated that he would have accepted them in full from the Scottish Parliament’s point of view. Has Scotland done anything towards making the Leveson type of scenario a reality as far as you can see?

Professor Beveridge: The Scottish Government commissioned the McCluskey report. I agree very strongly with the McCluskey report. It had Ruth Wishart, a serving journalist, on it but it went much further than Leveson and much further than you are attempting with the royal charter. Alex Salmond on this occasion, I think, decided that discretion was the better part of valour, and so unusually they decided to go in with the UK system. I wish the UK system and this Parliament every success in going down that road, because it is not statutory regulation. It is independent self-regulation with statutory underpinning. I think the way the press have been treating you and this Parliament on this issue is nothing short of disgraceful and a vested interest.

Baroness Scotland of Asthal: But you would go the McCluskey route?

Professor Beveridge: Personally, yes, but I can see the political problems with it. I am a strong believer in public service broadcasting. I like the culture of balance, accuracy and impartiality that we have in broadcasting. I wish the press would do the same kind of thing, but I guess they are probably not going to, so we stay with a mixed economy.

The Chairman: We are drawing to a conclusion but before we finally wrap it up, is there anything else you would like to say to us that we have not touched on that you think is important for us to understand about the Scottish scene or you think is important for us to throw into the debate about what is going on in Scotland?

Professor Beveridge: Thank you, my Lord. I have three points, if I may. First of all, stop bullying the BBC. It shoots itself in the foot enough. It is a great British success story. This Parliament should celebrate it and be a critical friend, but please stop doing it down. Secondly, if I may say this—and I know this is direct—I think you should all have the courage of your convictions. You are here to represent the public interest, not your own or Rupert Murdoch’s. This Parliament set up the BBC and Channel 4 so you could do it again.

The Chairman: If I could just stop you there. One thing I do not think anybody on this Committee sees themselves doing is representing Rupert Murdoch or any other proprietor.

Professor Beveridge: I am delighted to hear that, but I was talking broadly about the Parliament.

The Chairman: I appreciate that.
Professor Beveridge: That is a very important distinction. Thirdly, whatever the result of the referendum, I think we should all do well to remember that Scotland is a nation, not a region of the UK, and that it needs media policies and practice that reflect that.

The Chairman: That seems a very good way to conclude. Thank you. That is very helpful. I know you are shooting off to China shortly.

Professor Beveridge: At 10.30 this evening.

The Chairman: It was very good of you to come to see us. Thank you.

Professor Beveridge: Thank you very much.
British Film Institute – written evidence

Summary

1. This response from the British Film Institute (BFI) to the House of Lords Select Committee on Communications’ Call for Evidence in its inquiry on media plurality makes the following key points:

   • Media plurality is fundamental to a well-functioning democratic society. In the context of the proposed EU-US free trade agreement, we believe that it is vitally important that European trade negotiators do not allow any kind of liberalisation that would undermine public policy goals relating to plurality.

   • While recent reviews of plurality undertaken by Ofcom and as part of the Leveson report proposed a narrow scope focused on news and current affairs, this reflects the contexts in which they were asked to report. The BFI welcomes the fact that the Select Committee’s inquiry steps back from these individual debates to consider media plurality in the round. Our view is that the scope of media plurality should not be restricted to the provision of news and current affairs, but should also reflect the value of plurality on social and cultural grounds.

   • In the film sector, public interventions – whether directly supported by grant in aid or by other means such as the Film Tax Reliefs, Lottery support, the BBC Licence Fee, and gifted or discounted spectrum – addressing market failures have a crucial role to play in ensuring that audiences have access to a wide range of material. Because of these market failures while competition policy is a necessary tool it is not sufficient in itself to guarantee plurality in the film and moving image sector. Indeed, such public interventions have become even more important as a guarantor of diversity in a digital age when many traditional sources of funding have shrunk.

   • We believe that those who design and implement public policy should also be very mindful of the implications of their decisions for the degree of plurality that exists for different kinds of content.

   • There are a number of ways in which the duties in respect of plurality for public service broadcasters in relation to film, could be strengthened as required, within the policy framework, including as part of BBC Charter Reviews and Ofcom’s PSB reviews, and any future reviews of media plurality that Ofcom is asked to conduct. Under DCMS’s proposed changes to Ofcom’s statutory duties (on which it is currently consulting), the DCMS could also ask Ofcom to review the impact of changes made by the PSBs in relation to particular forms of content within the context of the broader availability of that content.

Introduction

2. The BFI is the lead organisation for film in the UK. Since 2011, it has combined a creative, cultural and industrial role as a Government arm’s length body and distributor of National Lottery funds. Its key priorities are to support a vibrant UK film
culture by investing in film education, audience access, filmmaking and film heritage. Founded in 1933, the BFI is a registered charity governed by Royal Charter.

3. In October 2012, the BFI published ‘Film Forever, Supporting UK Film 2012-2017’, which set out its strategy for the next five years, following an extensive industry consultation. It described the activities underpinning the BFI’s three strategic priorities:

- Expanding education and learning opportunities and boosting audience choice across the UK
- Supporting the future success of British film
- Unlocking film heritage for everyone in the UK to enjoy.

4. The BFI welcomes the opportunity to respond to the House of Lords Select Committee on Communications’ Call for Evidence in relation to its inquiry into media plurality. As the Call for Evidence notes, there has been considerable debate on issues relating to media plurality in recent times, in various contexts such as the proposed acquisition of BSkyB by News Corporation (launched in June 2010 and withdrawn one year later) and Lord Justice Leveson’s inquiry into the culture, practices and ethics of the press (final report published in November 2012). Key policy contributions, in the UK and elsewhere, include Ofcom’s report on Measuring Media Plurality (June 2012) and the European Commission High Level Group on Media Freedom and Pluralism’s report on “A free and pluralistic media to sustain European democracy” (January 2013).

5. Policy debates have, understandably, focused primarily on media plurality in terms of the provision of news and current affairs. The importance of this democratic form of plurality is exemplified by the coverage in the media regarding Lady Thatcher’s legacy following her recent death, the extent and range of which could be taken as evidence of a vibrant pluralistic ecosystem that comprises different kinds of media, subject to multiple regulatory frameworks and adopting a range of positions. Taken together, the coverage of Lady Thatcher’s death in the UK media was lively and varied and presented a multitude of viewpoints, reflecting the extent of media plurality in the system. It is vitally important for a well-functioning democratic society that this democratic form of media plurality is safeguarded and enhanced where possible.

6. While political and democratic issues rightly lie at the heart of any debate on media plurality, the central point that the BFI wishes to make in this response is that media plurality should not be considered to be solely about the provision of news and current affairs. Our view is that the social and cultural dimensions of plurality are also very important, and need to be taken into account by policymakers. Public debates have paid little attention to these elements of media plurality, and we welcome the explicit consideration of the scope of media plurality in the Select Committee’s inquiry. We discuss this overarching issue in more detail in the next section, and go on to respond briefly to other questions in the Call for Evidence in the final section of our response.

7. In its recent report on media convergence, the Lords Select Committee made reference to the talks that have recently begun between the EU and the US about a possible bilateral free trade agreement. The audiovisual sector has typically been treated as a special case in previous international trade negotiations, given the
importance of protecting cultural diversity. The BFI believes that it is vitally important that European trade negotiators have a clear mandate not to allow any kind of liberalisation that would undermine public policy goals relating to media plurality in the UK and the rest of Europe.

**Overarching points**

8. The overarching points that the BFI wishes to make relate to one particular question in the Call for Evidence:

*What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?*

9. It is generally accepted that news and current affairs should be central to any definition of media plurality, and this is reflected in recent policy debates, including key interventions by policymakers. In its report on measuring media plurality, Ofcom considers what the scope of its review should be.\(^99\) It notes a response by the BBC to its Invitation to Comment, which states that drama, comedy and factual formats can play a role in helping to condition the political discourse, and that such genres contribute to the way we see ourselves as a society. It also refers to international case studies that show that some countries – including Germany, France and Norway – look at media content in the broadest sense. Nonetheless, Ofcom concludes (para 3.16) that news and current affairs are the most relevant forms of content for the delivery of the public policy goals, and recommends that the scope of any plurality review should be limited to these.

10. Lord Justice Leveson also considered the scope of media plurality in his inquiry. His final report notes that some people who provided evidence, including Professor Stephen Barnett and Claire Enders (of Enders Analysis), argued that “plurality as a concept extends beyond the narrowly political to the wider cultural environment” (Part I, Chapter 9, para 2.2), while others argued that the central focus should be news and current affairs.\(^100\) Leveson concluded:

> “I recommend that the particular public policy goals of ensuring that citizens are informed and preventing too much influence in any one pair of hands over the political process, are most directly served by concentrating on plurality in news and current affairs. However, this focus should be kept under review.” (Part I, Chapter 9, para 2.8)

11. It should be recognised that these positions were shaped by the contexts in which Ofcom and Leveson were asked to report. Ofcom’s report was requested by the Secretary of State in the context of the proposed News Corporation purchase of BSkyB, concerns around which related primarily to news. Ofcom specified the public policy goals for media plurality in its report as being its contribution to a well-functioning democratic society. With this starting point, it was perhaps inevitable that it would adopt a definition of plurality that focused on news and current affairs. Similarly, the Leveson inquiry was commissioned in response to the behaviour of the

---

\(^99\) See [http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/](http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/)

UK press, so news – and journalistic practices in particular – was again the central concern.

12. The BFI welcomes the fact that the Select Committee’s inquiry steps back from the specifics of these individual debates to consider media plurality in the round. In this broader context, the BFI’s central argument is that the scope of media plurality should not be restricted to the provision of news and current affairs, but should also reflect the value of plurality on social and cultural grounds. A corollary of this is that targeted interventions – from the Government, Ofcom or other relevant regulatory bodies – may be justified when the market does not deliver a sufficient degree of media plurality on social and cultural as well as democratic grounds.

13. The European Commission High Level Group on Media Freedom and Pluralism’s recent report on media pluralism adopted a similar position. While much of the report focuses on news and journalism, it also called for a more extensive definition of media plurality:

“The concept of pluralism embraces both cultural and linguistic pluralism, taking account of the needs of minorities, reflecting geographical diversity as well as local and regional priorities. A key function of media, therefore, is to protect local cultures (whether national or regional), and, with them, Europe’s cultural diversity” (page 12)

“Recommendation 26: There should be a provision of state funding for media which are essential for pluralism (including geographical, linguistic, cultural and political pluralism), but are not commercially viable. The state should intervene whenever there is a market failure leading to the under-provision of pluralism, which may be considered as a key public good” (page 39).

14. We discuss the policy implications of this broader scope for media plurality in our responses to the individual questions in the Call for Evidence in the next section.

15. The BFI would like to make one additional point with regards to the scope of media plurality. We believe that plurality – whether democratic, social or cultural – needs to be considered across all relevant platforms, including traditional and new forms of digital media. Digital distribution does not just result in additional platforms that need to be taken into account; it also raises new kinds of challenges. One example, which relates to the filtering mechanisms employed by digital services such as Google News, is provided in the recent EC Green Paper on convergence:

- “At the same time, ways how people relate to information change. Filtering mechanisms, including personalised search results, make it more likely for people to receive the news in their area of interest, and from a perspective with which they agree. On the one hand, such filtering and personalisation mechanisms have a clear potential for empowering citizens, by allowing them to navigate efficiently through the information overload that characterises the digital environment and to receive tailor-made services corresponding to their individual needs. On the other hand,

---

this may decrease the role of the media as editors in the public sphere and strengthen the role of platform providers, for example online companies. The latter may not only determine what content is accessible but can also impact choices, e.g. by varying the prominence with which certain content is displayed, limiting the citizen’s ability to change the menu or restricting certain applications. This could influence the de facto choice for citizens to access media offerings representing a plurality of opinions and can lead to a situation where citizens potentially find themselves in a vulnerable situation without realising it.” (page 13)

Responses to other questions

Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

16. The BFI believes that plurality should be explicitly considered as part of the overall approach to media policy, and that public policy should reflect a broad definition of plurality that includes the social and cultural dimensions as well as the democratic one. This will help ensure that audiences get access to a diverse range of films and moving images. Competition policy alone with its focus on consumers rather than citizen interests is a necessary but not sufficient guarantor of plurality with regard to film. For example, the BFI itself in formulating its own policy interventions pays very careful attention to their impact on the variety of films and moving images available to audiences. Similarly, the Independent Review of Film Policy chaired by Chris Smith was mindful of this principle in looking at the entire range of public interventions around film.

17. The plurality of film for audiences is underpinned by a series of public interventions in the UK – including the Film Tax Reliefs, Lottery funding direct grant in aid support, the BBC Licence Fee and gifted or discounted spectrum. These interventions play a vital role in helping ensure that the public and private sectors alike are able to help ensure that audiences in the UK have access to a wide range of films, contemporary and archive – at the cinema, on television and across all other platforms. The plurality of film available to audiences in the UK is determined, in large part, by the interplay between these different interventions and the private sector. Such public interventions are even more important in a digital era when many traditional sources of revenue are shrinking, thereby threatening the range of certain kinds of content available to audiences. The Committee’s recognition of the vital role that these interventions play in helping to ensure ensuring plurality of choice for audiences in the UK would be very welcome.

18. The BFI believes that, just as for news, it is important for policymakers to protect the ecology of providers of other kinds of media content that provide plurality on social and cultural grounds. Policymakers should always take into account the degree to which new interventions affect the degree of plurality that exists for audiences for different kinds of content, including films and the moving image generally.

In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition, or should it be improved?
19. The BFI believes that the definition of plurality proposed by Ofcom is too narrow, and that it should embrace a broader scope, as discussed above. The academic literature review that Ofcom conducted (Annex 7 of its report on measuring plurality) revealed that definitions of media literacy tend to dwell on the democratic and political importance of plurality, but that the literature also allows for “multidimensional approaches” to plurality. European Commission reports on indicators of media pluralism across Europe include political, structural, cultural, geographical and content dimensions to plurality.

20. One study of media pluralism indicators commissioned by the EC, which provides a helpful typology of different kinds of pluralism, defines cultural pluralism in the following way: 103

“Cultural pluralism in the media refers to the fair and diverse representation of and expression by (i.e. passive and active access) the various cultural and social groups, including ethnic, linguistic, national and religious minorities, disabled people, women and sexual minorities, in the media. It comprises a plurality of themes and voices being present in the media, socialisation through multiple forms of media access and participation, choice between different forms of interaction and the representation of diverse values, viewpoints and roles, in which citizens belonging to various cultural and social groups, including national, ethnic, and linguistic groups, women, disabled people and sexual minorities, can recognise themselves.”

While this may not be the pithiest of definitions, it points to the elements that should be included in a definition that includes social and cultural dimensions of plurality.

What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

21. These questions raise complex issues that the BFI believes needs to be discussed more widely, particularly with regards the cultural and social dimensions of plurality, which have thus far been subject to minimal public debate. The ambition should be to find a model that strikes an appropriate balance between proportionate interventions that help to safeguard plurality without going against the grain of market and technological developments. For example, there are a number of ways in which the duties in respect of plurality for public service broadcasters in relation to film, could be strengthened as required, within the policy framework, including as part of BBC Charter Reviews and Ofcom’s PSB reviews, and any future reviews of media plurality that Ofcom is asked to conduct. Under DCMS’s proposed changes to Ofcom’s statutory duties (on which it is

---

The DCMS, at its discretion, could also ask Ofcom to review the impact of changes made by the PSBs in relation to particular forms of content within the context of the broader availability of that content.

For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?

How should ‘sufficient plurality’ be measured?

22. The BFI does not believe there is a hard and fast rule as to what “sufficient plurality” means for each kind of content. We would, however, argue that for any given kind of content, a sole provider – and in particular a single gatekeeper responsible for determining what content is made available – would be a concern, as this would place all selection and funding decisions in the hands of one person or team. This will generally place excessive power in too few hands. This applies as much to digital media as to traditional forms of content.

23. It also follows that when decisions made by market players – whether internal decisions or proposed mergers – lead to reductions in plurality, this can sometimes be justified on legitimate grounds when other benefits are realised. In particular, a proposed merger that leads to a reduction in external plurality does not automatically imply that intervention is justified on plurality grounds: the reduction in plurality needs to be considered in relation to the likely benefits of the merger.

Should the BBC’s output be included in a review of it?

24. The BFI does not yet have a view on this issue.

How can internal plurality be sensibly measured against external plurality?

What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

How should the deployment of these either structural or behavioural be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?

With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

25. The BFI would need to undertake further work to provide detailed answers to these questions. However, we would reiterate the point made above that actions that lead to reductions in plurality can sometimes be justified when other benefits are realised, and a careful trade-off of the benefits and costs needs to be undertaken.

To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

26. The BFI does not yet have a view on this issue.
What should the UK learn from international approaches to media plurality?

27. While the BFI has not undertaken a review of approaches to media plurality in other territories, we note the value of the academic literature reviews and internal case studies undertaken by Ofcom, which informed their analysis.

May 2013
Introduction

- Sky welcomes the opportunity to respond to the Committee’s inquiry on plurality. We also refer the Committee to our response to Ofcom’s invitation to comment on measuring media plurality in November 2011.\footnote{http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/responses/bskyb.pdf}

- The Committee rightly highlights that much has changed since the regulatory framework around plurality was put into place. UK citizens can now access an increasingly wide range of news and current affairs services from an increasingly wide range of providers, from traditional linear broadcast bulletins and newspapers to rolling news, online news and video, social media and blogs.

- Sky has invested in news provision for over twenty years and is proud of Sky News’ reputation for delivering high-quality, award-winning news coverage to millions of people.

- Sky News has done much to revolutionise news provision in the UK. In 1989 Sky introduced the UK’s first 24 hour rolling news channel, and now provides news online via skynews.com, on the radio, on mobile phones and tablets, on desktops and out-of-home screens, in addition to its broadcast television channel available on all major platforms. Sky News reaches over 107 million homes across 117 countries across the world.

- Sky News has built a deserved reputation for being the first to break major news, and has won numerous awards since its launch including the Royal Television Society (RTS) News Channel of the Year a record eight times, the RTS International News Award in 2012 for coverage of Libya along with an unprecedented fourth Broadcast Journalist of the Year award for Alex Crawford. Sky also won the Home News award in 2012 for coverage of the UK riots and Anna Botting was named Presenter of the Year.

Sky News

- Sky has made a significant investment in Sky News which now operates as a multi-media platform across TV, mobile, online, radio and iPad. Sky News does not receive any public funding or subsidy with Sky’s investment being made for commercial reasons rather than as a result of any regulatory obligations.

- Sky News’s contribution can be measured by its weekly reach of 6.3 million viewers. Its Share of Viewing (“SoV”) across all homes is around 0.68% this year. The SoV in the homes of Sky TV customers is running at 0.92%. This is 24% higher than the equivalent SoV for the BBC News channel.

- Sky News is renowned for the speed of its coverage and flexibility of reporting news live across its platform. Evidence of this can be seen in the viewing figures when stories such as the Boston Marathon bombing break. Audience figures surged with reach across that
particular week up to 9.4 million viewers, with 4.6 million unique users accessing Sky News’ digital platforms. These viewing figures demonstrate the popularity of Sky News, and with it, the vital contribution it makes to the plurality of news services in the UK.

Media Plurality

- Platforms for accessing news are evolving and the range of services and investments being made are increasing as barriers to entry lower. In its report to the Secretary of State,105 Ofcom noted the emergence of online as a destination for news content, which it believes is likely to play a major future role in converging media. Whilst traditional platforms continue to represent an important conduit through which people access news, there is a growing use of online sources with 41% of adults using the internet106, increasing from 27% in 2007 and 15% in 2002.107

- Online news distribution provides both immediacy and depth to news content, combining text, graphics, images, audio and video. Sky News is leading the way in delivering news through a multitude of digital services. The Skynews.com website receives between 8-10 million monthly unique users with around 135 million monthly page views. Sky News’ iPhone App has been downloaded over 3 million times and has been named in Apple’s top ten free UK apps of all time. Over 1,194,000 people follow @SkyNews and @SkyNewsBreak on Twitter.

- As a result of a wider range of sources and ways to access news, people’s consumption of news is changing, with multiple sources frequently used from a variety of platforms. This evolution has led to consumers now using an average of 4.8 news sources drawn from 2.4 platforms108.

- The range and number of sources of news available to consumers is growing rapidly, whether delivered over the internet or on platforms such as Sky109. This would suggest that the existing regulatory regime is conducive to supporting a broad range of news provision, and that issues of market dominance and concentration of ownership are becoming less significant factors.

- Many of these news sources are provided by commercial operators. A key factor in the future wellbeing of healthy news provision will be the safeguarding of commercial incentives to invest, thereby supporting the pluralistic supply of news sources across the range of platforms.

- Policy makers need to understand the challenges faced by commercial providers of news caused by existing interventions in the news market, most obviously the BBC which remains by some way the most significant provider of news across a range of media services. It is therefore imperative that the BBC’s output is included in any measures or reviews of plurality.

---

105 Measuring Media Plurality June 2012
106 Kantar Media Report for Ofcom, April 2012. Ofcom’s report on measuring plurality
107 Ibid
108 Ibid
109 There are 16 news channels on the Sky platform
British Sky Broadcasting – written evidence

• Before considering any further interventions, policy makers need to be clear on the outcomes they seek and that the consequences of any intervention made are properly understood. The primary means of ensuring plurality is through encouraging commercial investment in, and growth of, the provision of news and current affairs content across a range of media services. It follows that the regulatory environment must be designed to support this.

• Specifically, there is a significant risk that any changes to the plurality regime would have unintended consequences that could undermine commercial operators’ incentives to invest.

Impartiality

• We note the proposals surrounding impartiality in the Committee’s recent Media Convergence report.

• It is worth stressing that we understand that our viewers value the strong tradition of providing distinct, impartial and independent news. That is why our editorial agenda is primarily based on audience expectation rather than regulatory interventions, albeit the two tend to coincide. In simple terms it is good business for Sky News to be impartial and this has been the foundation of the reputation and trust that has been built up over two decades.

May 2013
British Sky Broadcasting – oral evidence (QQ 182-198)

Evidence Session No. 6    Heard in Public    Questions 182 - 214

TUESDAY 16 JULY 2013

Members present

Lord Inglewood (Chairman)
Baroness Bakewell
Baroness Deech
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Lord Razzall
Baroness Scotland of Asthal
Earl of Selborne

Witnesses

Mr David Wheeldon, Director of Policy and Public Affairs, BSkyB, and Mr Adam Kinsley, Director of Policy, BSkyB

Q182 The Chairman: I would like to extend a warm welcome to two witnesses from BSkyB: David Wheeldon and Adam Kinsley. We have details of their careers in our papers. Before starting I think I ought to mention, which I have already declared, that I was kindly asked to the Hay Literary Festival and my wife and I spent a night with BSkyB down there earlier in the summer. I do not know whether either one or both of you would like to make a brief introductory statement. In any event, for the purposes of the recording could you just tell us who you are and why you are here?

Mr Wheeldon: Thank you very much, Lord Inglewood. I will make a short opening statement, if that is all right, just to give some context.

The Chairman: Absolutely, yes.

Mr Wheeldon: Since we have an hour, I am sure you can ask all you want of us. My name is David Wheeldon and I am director of policy and public affairs at BSkyB. I look after the policy issues that affect the company across the broad range of our communications business, from the TV channels, the TV platform, and indeed our broadband business.

Mr Kinsley: I am Adam Kinsley. I am director of policy and I, too, look at the policy issues affecting Sky across the business.

The Chairman: When we ask you questions do, both of you, feel free to respond if you want to, but if only one of you feels it is necessary then do not worry. Again, if there are things you want to draw to our attention that we do not specifically lead you towards, would you please tell us what you think.
Mr Wheeldon: Sure. Thank you very much for inviting us here on this baking hot day. It is nice to be somewhere cool. We recognise what a very important issue this is. We have followed the debate that you have been having with the people who have given evidence thus far and are aware of the intensity of the public debate. From our point of view, we do not necessarily see it as always being particularly well informed. There are lots of people who have perspectives that are not necessarily grounded in the reality of the market that we operate in or indeed based on experiences that bear a resemblance to ours, but we are very pleased that you are taking this seriously and looking to understand it.

Just to explain where we are coming from, our perspective is primarily as the founder, owner, and continuing investor in Sky News, which is, of course, the UK’s only unsubsidised TV news service. We know a little of what it takes to sustain investment in high-quality news in the UK. We are very proud of the reputation of Sky News—it is the winner of eight Royal Television Society News Channel of the Year Awards—but I think we are even more proud of the service that it provides to our customers. It has a weekly reach of over 6 million homes and its share of viewing in Sky homes is a quarter higher than that for the BBC News channel. So it is highly valued by our customers. We also think it makes a very significant contribution to plurality.

We know what it takes to provide commercial news and, ultimately, I think we take the view that plurality can only be sustained via providers of such news services and that, therefore, colours our view of this debate. For us, it is absolutely vital that nothing undermines the incentives to invest that we depend upon and it is the sustaining framework that matters more to us. I think our view would be that this debate is sometimes the wrong way around, in as much as it is looking at constraints rather than how you sustain and create opportunities to invest in news and current affairs that will add to plurality.

Given the potential for perverse incentives arising from most forms of political and regulatory interventions, I think we believe it is very incumbent on the public debate to do two things: to set a very high bar in respect of the problem that we are trying to solve, in respect of defining that problem clearly and accurately, and to deploy absolute rigour in understanding the impact of any interventions that might be put in place to solve that problem. As you probably have recognised from our written evidence, we have not yet seen analysis that adequately addresses those two issues to our satisfaction, but I am hoping that there will be some clarity through this inquiry and objectivity to a debate that sorely needs it.

Q183 The Chairman: Thank you very much. That is a very helpful starting point. You may be interested to know that I think you are the first person who has come in front of us and said, “No, we do not think that change is needed in this area”, but what you have said is that you believe that the existing regulatory framework is the appropriate framework to ensure media plurality in this country. The framework comprises a series of tools that are available to the Government of the day and their regulators to deal with some things that can emerge from however the media landscape is configured. Is your proposition that, in detail, the way all the bits lock together is satisfactory or are you simply saying, “Here are a number of tools and we think those are the right tools that should be deployed but not necessarily in exactly the way they have been done in the past”?

Mr Wheeldon: I think it is probably the former, Lord Inglewood. It is important that we recognise the sheer number of interventions that exist to ensure that the media is regulated in a way that both delivers for the broader public interest and sustains plurality. I jotted them down before I came in here. It is worth bearing in mind that we obviously have the
merger control rules, which include the public interest test. We have ownership rules, which include the 20/20 rules and the Channel 3 news provider rules. We have sectoral competition rules. We have general competition rules in the UK and the EU. We have broadcasting rules affecting impartiality and, of course, taste and decency. We have the interventions in the BBC and the interventions in respect of the commercial PSBs and, of course, we have advertising and sponsorship rules. All of those things work together in some form and I think it is important to understand that we are not operating in a space where there are no rules.

When you start to look at our experiences of how those rules have been applied in various circumstances, it is not evident to us what the problem is that we are trying to address here. I know people have opinions and they may well be opinions that come from a particular commercial interest or an ideological perspective, but I am not sure I understand what it is that they are trying to address, to solve or to prevent, even.

The Chairman: You think that the various rules that we have are justified in their existence and it is a matter of not enlarging them?

Mr Wheeldon: Individually and collectively justified, correct.

The Chairman: Yes. Do you think it is possibly appropriate for the definition of “media enterprise” to be widened, bearing in mind media is not what it used to be, if I can put it that way?

Mr Wheeldon: It goes with my point that we are not convinced there is a problem that needs to be addressed; that changing the rules in any way has not yet been justified. What I would acknowledge is that, when you are looking at defining plurality in particular, you need to take into account the developments in technology, in the market and in consumer trends over the years, as indeed Ofcom recognised in its report to the Secretary of State. But that is not the same thing as saying that you necessarily need to widen the scope of the rules, no.

The Chairman: I think I understand the point you are making there.

Q184 Baroness Scotland of Asthal: You said that you thought there had been ill-informed debate. What causes you to make that assessment? To what do you refer?

Mr Wheeldon: When I talk about ill-informed debate I mean the range of views that have been expressed in the media over a good number of years in response to individual circumstances or in general.

Baroness Scotland of Asthal: What in particular?

Mr Wheeldon: The suggestion, for example, that you heard from this Committee that there was a failure in the public interest test in respect of the last time it was exercised in respect of the News Corp bid for BSkyB. I did not understand where the so-called failure of the public interest test came from.

Baroness Scotland of Asthal: Did you understand the nature of the concern that was expressed throughout the country in relation to the way in which that matter was dealt with or did you think that was ill informed as well?

Mr Wheeldon: It is important to state that from our point of view we were the passive recipient of a bid and, therefore, were not engaged in any of the conversations with government or with regulators.

Baroness Scotland of Asthal: No, but clearly an informed observer, well versed in the field; so had a proper understand and could help this Committee by giving your information.
Mr Wheeldon: Yes. An issue was raised by the regulator following reference to the Secretary of State about plurality. A set of remedies were proposed to address that concern and the process continued as the process was set out and expected to be followed in law. I come again to: what was the real issue that was being advanced here? Even though this public interest test has impacted our company twice and it has not always resulted in outcomes that we necessarily agree with, try to step back from the individual commercial interests and the ideological interests that everybody has here and ask the question: was the system in place adequate to deal with the problem that was identified by the regulatory authorities at the time? Again, I come back to: I did not see that there was any problem. There was no lack of identification. There was no lack of solution.

The Chairman: I think we may come on to this point again a bit later, but it seems to me that one of the problems may be that it is still very unclear precisely what the criteria might be because we never had a completed analysis, particularly the second case, of what the issues might be. I think perhaps we ought to leave that until we get further into the questioning.

Q185 Baroness Fookes: Mr Wheeldon, I would like to pursue the point you made in your introductory remarks where you very clearly suggested that plurality and diversity could best be served by encouraging rather than just constraining. Can you describe the kind of regulatory regime that would serve this purpose?

Mr Wheeldon: The most important thing from a commercial perspective when you are looking to invest is certainty and stability. For us it is absolutely critical, as a major investor in news and current affairs in the UK, that we are faced with a certain landscape to make those investments. I think that is the most important matter that should be before the public debate in this area. The last thing one would want, as a commercial investor in news, is for there to be interventions in place that might kick in as a result of something that had nothing to do with you; in other words, that were a facet of the market or of a competitor doing something. That would create a very unwelcome environment for continued and sustained investment in this kind of content in this country. It is important that that is understood. In all the noise that goes on around this issue, that is the central point for us.

Baroness Fookes: But you are an established player. What about people seeking to come into this? Are you saying exactly the same criteria should be adopted?

Mr Wheeldon: That is absolutely right, Baroness Fookes. Again, it is important. If you are going to make significant investments into a market, you want to know what you are dealing with. You certainly do not want to be faced with a situation where the market rules might change overnight, especially because of something that you had no effect over and were not responsible for.

Baroness Fookes: Is that a veiled reference to some kind of capping?

Mr Wheeldon: No, it is not a veiled reference. I am not veiling anything.

Baroness Fookes: An explicit reference?

Mr Wheeldon: Absolutely. We should recognise, of course, that this is a market place and this is an industry where, generally, barriers to entry are coming down through technology and, certainly from the point of view of distribution of news and current affairs, the opportunities are growing. But, in order to sustain very high-quality news and current affairs with the investment in journalism and investment in production quality that, for example, we
undertake at Sky, you are talking about big commercial risks and it is even more important that big commercial risks are sustained by a stable regulatory framework.

**Baroness Fookes:** There is nothing more that could be done in the regulatory framework rather than to stay the same. Is that what you are saying?

**Mr Wheeldon:** I think there is an awful lot to be said for stability and staying the same, yes.

**Mr Kinsley:** It is worth adding that when you look at the analysis of the evidence that has been put forward—hundreds of pages of evidence that has been put to this Committee—it is mainly framed in the way of looking at additional interventions. Fundamentally, if we are looking to support plurality and promote investment in news, it does not seem conducive to do that all the time. Thinking about things in another way and trying to think about promoting that investment as a starting point may get us off the blocks in the right direction.

Q186 The Chairman: But, against the background of what you have said and Lady Fookes’ question, do you think the current regulatory environment sufficiently supports not necessarily diversity, because you told us you think it does, but market entry? Do you think the market place is sufficiently relaxed to enable market entrants to come in, in a sensible manner?

**Mr Kinsley:** Yes, absolutely. The barriers to entry in this space have never been lower. If you look at what has happened in the online space and you look at people’s use of and access to news and the provision of news in that space, it is quite phenomenal and it cannot ever have been easier to get into this market. Looking at the data points that we see, looking at the growth that we see as a company in our products that are delivered online, looking at the trends that have been identified by the regulator and looking at other studies that have been done, people’s access to news and people’s ability to produce that news is very, very high.

The Chairman: Is it part of your company’s policy to fully watermark where things come from so that people who are interested in a topic that appears, say on one of your websites, can drill down into where you obtained it from? That would encourage diversity, would it not?

**Mr Wheeldon:** You are talking about multi-sourcing referencing?

The Chairman: Yes, an aspect of that. I am just asking. I am not saying you should or should not.

**Mr Wheeldon:** Obviously important editorial best practice is that all one’s sources are referenced. We invest a lot of money in journalists who can be the primary source of news. We do not often look to others to provide that news, but obviously if we get a story that has been broken elsewhere and it is appropriate to do so within the editorial guidelines then that is what they will do. It is important that we recognise, though, that news, opinion and current affairs are being generated from a whole variety of different sources. In fact, when you ask the editors in Sky News where they think their big competitor is it is not so much the terrestrial news services or the newspapers; it is online and Twitter. From my own personal experience, this morning, reading the stories about the health service and stories about opinion polls, I probably went to half a dozen websites that were writing and generating news before I even went to the traditional media and before I even turned my television on to watch Sky News. People are getting information from a much wider range of sources than we could have even imagined five years ago. Personally, I find Twitter is very
useful for that. It is a personalised news feed and it delivers it to your handheld device every morning.

Baroness Fookes: Not necessarily authoritative though?

Mr Wheeldon: Correct. Individuals are not necessarily authoritative, but the good thing about Twitter is that you can configure it so that it delivers you links to the stories that you are following. That enables you to get news and information from a much wider range of sources than you might previously have done.

Q187 Baroness Deech: Judging by the tenor of what you have said about stability and investment, it seems to me that you are looking at Sky and your pride in its reach as a commercial business. Would it be different if you were considering, as we are, the effect, the influence, the power of an institution such as Sky over the public in their voting attitude or over politicians?

Mr Wheeldon: We operate in a very heavily regulated space. Sky News is subject to the impartiality rules under the Broadcasting Code that exists for all of the commercial television news providers and indeed not at all different from the BBC’s guidelines. I would not recognise that Sky has a particular influence over politics, as such. I think we make a massive contribution to people’s understanding of the world and we are proud of that, but do we seek to influence? No, that is not the job of television news and it is not anything that we aspire to.

Baroness Deech: I think that is remarkable. If 6 million people are watching and you are very anxious to keep it up and we are worried about plurality and diversity, is it not because we all believe—perhaps not you—that politicians and the watching public are somehow influenced in their views by what you are showing them?

Mr Wheeldon: You, the politicians, have put in place a framework that governs and regulates television news, which guarantees impartiality. Indeed, the Broadcasting Code goes further than that and has a whole raft of rules about what can and cannot be reported on and shown in the way that it can be delivered. I do not recognise the concern, if I am honest, Baroness Deech. I can see that might apply in other media, but we do not operate in the other media. We operate a TV news service and I can only comment from a TV news perspective.

Baroness Deech: But if we accept for the moment that the BBC is impartial, you are almost arguing yourself out of a job because if we have one impartial source of news why on earth would we need another?

Mr Wheeldon: Not at all. The whole point about Sky News is that we provide a service that our customers value and expect and that resonates with them. The whole culture of television news in this country is impartial. We have always said that, regardless of whether there were actual rules on impartiality, Sky News would remain impartial because that is what our customers and its viewers want and expect. I would also say that, for a commercial news service, we need to have the greatest reach possible in order to be able to sustain the business model that funds it. I do not believe in this country that there is a sufficient market for politically skewed television news.

Q188 Baroness Bakewell: One person’s impartiality is another person’s bias, as recent history has just demonstrated. Are you satisfied that this country, with you and the BBC, has enough diversity of news? You speak about the abundance of Twitter, and I use Twitter and we all get the information. It tends to hone down around the same lead stories. The agenda
British Sky Broadcasting – oral evidence (QQ 182-198)

that leads the BBC News is the same agenda on Sky News and it is what arrives on Twitter, but there is a convergence of news that is, in a sense, smoothed along by what the public want and find acceptable. Royal stories come second lead, for example. Are you satisfied there is enough real diversity?

Mr Wheeldon: I would say there is, Baroness Bakewell, because there are different ways of viewing or understanding television news. Sky News does not operate in exactly the same market as the BBC or ITV. For us, breaking news is what defines Sky News. Sky News will go where the story is and what we like nothing better from the point of view of audience numbers is a big breaking story that we can get behind and provide our customers with an in-depth understanding of what is going. We do that not just via linear television but also via distribution on multi-platform devices, through your iPad where the Sky News app provides a richness of text and video and getting beneath the story that gives customers much more depth. We are doing that differently from, say, ITV News who are bulletin-based, are editorialising what is happening over the day to a far greater extent, and providing an alternative. I would argue that within the constraints of the medium, yes, there is quite a lot of diversity.

Baroness Bakewell: What are those constraints? I take your point and, of course, you are known for your scoops, for your leading the breaking stories, to the distress of the BBC as we know, but none the less the agenda tends to be the same. However it is treated, that is the styling that is done. I am talking about the actual content. Who decides what a breaking story is? Is something that happens in the Home Counties a more important breaking story, if it is quite modest, than a story that is breaking in—I do not know—Ethiopia? Who is deciding this agenda?

Mr Wheeldon: I put it to you, that is a very big societal question that goes slightly beyond what I feel comfortable answering in the confines of a debate about plurality.

Baroness Bakewell: No, because you are satisfied with things as they are and that is why I lobbied a bit harder, because if you are satisfied with things as they are then we are all satisfied the agenda should stay as it is. Where is the new media to play in? How are agendas to be shifted for the range to be increased?

Mr Wheeldon: I am not trying deliberately to be obtuse. I genuinely do not fully understand where you are coming from. To me, television news fulfils a certain service to the public. It is a particular medium that has all sorts of technological, historical, regulatory legacies behind it. Within that, I think we have an incredibly diverse television news culture and media in this country. You have the BBC, you have the commercial PSBs and you have Sky, all doing things differently and approaching stories in a different way within the existing regulatory framework. I am not sure I recognise the concerns that you are expressing.

Mr Kinsley: It may well be that, if an agenda for local news is to be pushed and it is not being covered by the main broadcasters, the initiative from the DCMS for local news providers is one way of achieving that.

Baroness Bakewell: There used to be 14 local television channels, independent businesses, all of which thrived and made money and they have now ended up as one channel, ITV. I regard that as a loss of diversity and I think that is—

Mr Wheeldon: Is the problem one that can be addressed in the context of plurality rules or is it one that is about the business models of television news, which is challenging for everybody? I think we need to unpick what the cause and what the effect might be.

Baroness Bakewell: That is what we are trying to do.
The Chairman: We must move on, but can I just wrap this one up? I think the point that Lady Bakewell has been trying to make in a different way is: when there is a potential story that is breaking out there, what makes it a story that you decide to run with?

Mr Wheeldon: Just to be clear, I am not a journalist and I do not work for Sky News.

The Chairman: That is fair enough. Do not feel you have to answer it.

Mr Wheeldon: That is a journalist question, but all the people who make that decision at Sky News are trained journalists and they will make the decision based on journalistic criteria. Again, the UK is fortunate in having a very respected pool of television journalists who understand how to create compelling stories but also what stories are important. I certainly would not want to second-guess them and I would be deeply concerned if politicians tried to second-guess them.

Q189 Earl of Selborne: I am not sure, Chairman, that we will move very far from this subject because I think I will be bringing it back to the same issue. We have heard very clearly from you that you are confident that the regulators are guaranteeing impartiality in news and current affairs, but we have to recognise in an inquiry into media plurality, which is what we are doing, that there is the issue of consolidation of media ownership. I think we have to recognise, if you look what is happening in local media and national media, that there is inevitably concern of the disproportionate power and influence that this brings. It is not just in news and current affairs. It can well be in other platforms. The question, therefore, that we have to determine is: to what extent do plurality rules need to take cross-market media power into account? In other words, does the fact that Sky is in partnership with other companies have an important influence in determining its agenda?

Mr Kinsley: Our starting point is that when we think of plurality, when we have looked at this issue and tried to analyse it, we very much think that plurality is about news and current affairs. When we look at the legislation, when it came about and the debate that was had, it focused very much on ensuring that we have an informed democracy and that we have a range of views out there. That has been followed through from the early stages of that debate, through to some of the competition cases that have been heard—when the Competition Commission and the Court of Appeal, in the Sky v ITV case, deemed that it should still be about news and current affairs—and even as recently as last year, when Secretary of State, Jeremy Hunt, and Ed Vaizey again confirmed it is about news and current affairs.

We do not see that anything that is about trying to ensure there is a well informed, democratic debate and how that would extend to other genres such as general entertainment. We think that it is better by news and current affairs. That is what Ofcom has concluded, too, and we would agree with it.

Earl of Selborne: But we are back again to who defines news. Your news will have sports programmes. It will have arts programmes. Your programmes cover a number of sports programmes. They cover a number of arts programmes. Surprise, surprise, these are the ones that get into the news. There are whole tranches of people who feel that they are not represented in the media, that there are whole sports—women’s football, to take an example—that feel they are greatly underrepresented, not covered by your programmes to the same extent. Is this not demonstrating that the lack of diversity, the degree of consolidation of media ownership, is proving a real threat to plurality and to diversity?

Mr Wheeldon: Can I just correct you? We have a very proud record of covering women’s sports in depth; in fact women’s football in particular, including the women’s FA Cup.
Yesterday afternoon, I also watched England draw with Russia on the BBC in the Women’s World Cup. There is quite a bit of women’s sport on television.

**Earl of Selborne:** That was BBC, you said?

**Mr Wheeldon:** That was BBC, yes, and I am acknowledging that. But I am challenging this notion that these things are not covered.

**Earl of Selborne:** Perhaps if we do a comparison between men’s football and women’s football, what do you think the ratio is?

**Mr Wheeldon:** No, I accept that. But these are fundamentally—

**Earl of Selborne:** Who determines that ratio? I am simply saying you are setting the agenda here.

**Mr Wheeldon:** What we are doing is responding to our customers’ interests and demands. That is what we do as a customer-facing business and that is in our DNA. That is how we think about the world. What do our customers want to see? What do they value? Where can we invest so that customers will get even greater value for what we are putting into it? How can we innovate so that they experience the investment that we have made in content to an even greater extent? I would argue that we are totally in tune with what customers want, with what the people in this country want, and I am not sure I would recognise that there is any attempt to influence. That is not the way that we think about it at all.

**The Chairman:** You must be in tune with your customers because otherwise they would not be customers, would they?

**Mr Wheeldon:** That is absolutely the case. Yes.

**Q190 Baroness Bakewell:** You do innovate. Sky Arts is an amazing newcomer and it has the BBC worried. That is good. But you spoke about how you could further your diversity. So within your business you are thinking there is a place for more diversity, but you would want to keep it within your company. Would it not be good to have more diversity created outside your enterprise?

**Mr Wheeldon:** There is a great deal of diversity in the media world that is in a variety of different enterprises, all of whom provide different services to the public and to their customers in different ways. We think about diversity of our services very closely, not least because our customers are diverse, and it is very important that we reflect their experiences back at them. We think very carefully about gender and, particularly on Sky News, we have thought very hard. Sky News has made a big push to ensure that there is more balance in terms of external commentators on screen.

We think very hard about that, but we do so because we know that is what our customers want to see. We are driven solely by them. We are absolutely not driven by any other greater imperative and, to be clear, we are absolutely not driven by a political agenda because I think it is important that politicians do not necessarily decide what the public should or should not see. In the end, that leads you down quite a slippery slope.

**Baroness Bakewell:** I do not think it is not a political matter, but if there were other people wishing to innovate, as you have done, does the size and the limit of the number of enterprises not inhibit new arrivals in your industry?

**Mr Wheeldon:** It is certainly true that there are characteristics of television that mean that businesses that are going to make very significant investments need to be of a certain scale. I
do not think we would deny that, but we see there are specific interventions in the UK that sustain a public service remit and that has long been a historic case. We also see new entrants into news and current affairs, in particular, stimulated by the investments we have made.

If you go to the Sky platform and you are a Sky customer, I think the last count was 16 different news channels available on our platform, many of them free-to-air. So you do not even need to be a Sky subscriber in order to see them. That is an example of where commercial investment has given a big boost to a range and diversity of views.

**Mr Kinsley:** I would add to that that if you look over a 20-year period at this and you look at the number of channels that are available to UK citizens, it has grown exponentially. If there are gaps in the market we obviously look and Sky Arts is a very good example of that, but there are other niche areas that plenty of other channels have stepped into—channels that are incredibly niche. They can get a foothold and they have access to the UK population.

**Baroness Bakewell:** But they get access on your platform?

**Mr Kinsley:** Absolutely.

**Mr Wheeldon:** We are regulated, so we are obliged to provide them with slots. We are an open platform. We cannot deny anybody who wants to launch a channel to our customers. They are absolutely free to do that.

**Q191 Lord Razzall:** One of the things that is obviously going to concern us when we come to the end of this lengthy inquiry is: do plurality rules, restrictions, just apply to news or current affairs? Do they bleed across to issues such as *West Wing*, *Homeland* or *24* that clearly, on one view, do express political views? But, going back strictly to news, you have said to Ofcom that there should be no limits on news market share. Bearing in mind the history of the last year, I suppose you would say that, would you not?

How do you respond to the suggestion that, if there should be no limits on news market share, at least thresholds might be triggered for review or consideration of undertakings in relation to news market share or is your absolute blanket that you think that the market for news should be left completely uncontrolled, without any trigger for an inquiry or possibility of undertakings? If so, is that primarily because of the role of the BBC or because you think that anyway?

**Mr Wheeldon:** What we have said, Lord Razzall, is that we believe that the way that, historically, the public interest test has been defined and looked at in terms of the range and number of news organisations is the right way to look at it because it gives you a quantitative and qualitative way of assessing plurality.

We have also said that you have to be very careful before you start bringing in share because you are effectively determining what number of people is the right number to have freely chosen what kind of news service they want to consume. We are generally driven by the view that consumers are free to choose. So long as they have a range and a sufficient number of choices, that is up to them.

We are very nervous about the idea that you can come in and determine what the right share is because you are effectively calling into question the free choice of the customers. Of course, if you go down that route, you run into the issue of the BBC because its share is, by some margin, greater than anybody else’s.
Q192 Lord Razzall: Yes, but the BBC does not own newspapers, does it? Do you take the view that if a company associated with you were, hypothetically, to control 60% of the newspaper market and Sky News—I know there is the issue of separate ownership—would you take the view that that is not a matter for a plurality inquiry? It is just a matter for competition law and that plurality, in those circumstances, simply does not matter.

Mr Wheeldon: I am trying to fully understand your question. From our point of view—

Lord Razzall: Up until the split it was suggested that, because of the Murdoch-controlled newspaper empire and the way the newspaper market was going, Murdoch-controlled newspapers could get 40% plus and, at the same time, own BSkyB, which is presumably one of the reasons why the proposal for the purchase of BSkyB involved spinning off Sky News into a separate entity. Do you take the view that that is completely irrelevant with your evidence to Ofcom and that no limit should apply and that was wrong?

Mr Wheeldon: BSkyB is an entirely separate company from News Corporation or 21st Century Fox and News UK.

Lord Razzall: Under the new structure.

Mr Wheeldon: The whole point about this was that the bid was about—

Lord Razzall: You want to control the whole of BSkyB, yes.

Mr Wheeldon: No, we are BSkyB. We were subject to a bid by an organisation that wanted to own the whole of us. It triggered a public interest test, because the Secretary of State asked Ofcom to look at the public interest element to it, and Ofcom concluded that there was potentially a public interest element to this because it would result in a change of control. At the moment, we are separate. You are asking me to comment on something that is nothing to do with us. I do not have a view on—

Lord Razzall: You say you do not have a view, but had that proceeded, whether or not plurality issues were triggered, had the bid succeeded.

Mr Wheeldon: I am sorry. You are talking about had the bid proceeded, rather than what would happen now?

Lord Razzall: Had the bid succeeded, yes.

Mr Wheeldon: We did not get involved in arguing—

Lord Razzall: No. I understand that. I understand that. You are perfectly entitled to say you do not have a view on this because it is nothing to do with you, but you have given evidence to Ofcom. You said there should be no limits on news market share.

Mr Wheeldon: For the reasons that I explained earlier, I think you go down a slippery slope if you start trying to determine what the right market share is. As I said earlier, we have a well developed framework of rules that includes strong competition rules.

Lord Razzall: You do not apply that to competition rules?

Mr Wheeldon: No. The competition rules are separate.

Mr Kinsley: In this case, rather than looking at any hypothetical situation, just think about the issues that would be involved in limits, triggers or whatever you want to call them. It amounts to the same issue for the regulator, in which they then have a measurement issue. They have acknowledged that they do not believe there is any sensible way of being able to come up with cross-media measurements, so the route that you inevitably go down is into single sectors. Then you come into a whole load of problems. You have mentioned the BBC
but, even in the print world, if you have triggers that will be triggered by somebody departing the market and you are going to penalise somebody that is there already, because their market share has gone up by dint of somebody else or their just surviving, it seems to be a perverse outcome. It is not unsurprising that Ofcom have said that this is not an idea that they would want to pursue.

**Lord Razzall:** We have had conflicting evidence from some people who think that perhaps putting a percentage share of turnover is completely wrong, and that there should be all sorts of subjective tests, which would keep the lawyers in business for God knows how long, and the Enders organisation, which thinks that there should be an absolute blanket of 15% of overall coverage, which should trigger an investigation.

**Mr Kinsley:** If you come back to the first point that David made, the thing that we are looking for most of all is regulatory certainty. The idea that there is a—

**Lord Razzall:** The 15% test would give you regulatory certainty.

**Mr Kinsley:** It depends on what everybody else is doing in the market. You could trigger that through no fault of your own.

**Mr Wheeldon:** It is a fairly arbitrary number.

**Lord Razzall:** I know. I understand the point.

**Mr Wheeldon:** I am not sure I understand quite why 15% has been alighted upon.

**Q193 Baroness Bakewell:** You like things as they are. So, okay, let us look at it from your point of view. We have regulatory framework, we have competition framework and we have plurality framework. Do we have too many frameworks then, because they overlap, do they not—Ofcom and the Competition Commission?

**Mr Wheeldon:** I certainly think we could do away with the sectorial competition powers, which seem to be an unnecessary burden on an industry that is subject to rapid globalisation and lower barriers to entry, as I described earlier. That is one thing you could get away with. We do not think that the interplay between competition, plurality and public interest test rules are necessarily broken. We have had some experience of that.

**Baroness Bakewell:** I do not think they are broken. I wondered if they were a bit superfluous. Would you be happy if it was always Ofcom that was the determining body?

**Mr Wheeldon:** The way we would look at it, and from our experience of the ITV stake, I think it makes sense to have Ofcom looking at plurality because it plays to its expertise. But, in the circumstances of transactional remedies, then the Competition Commission seems to us to be the competent authority to both examine whether there is an issue and what the remedies might be. It also avoids confirmation bias, which is quite important in regulatory—

**Baroness Bakewell:** But there is overlap there, is there not, between Ofcom’s concerns about how you are running your business and guaranteeing plurality and all those kind of things and whether, therefore, it should be referred to the—is it caused by these—

**Mr Wheeldon:** There was not an overlap in the ITV case that we experienced. We did not like the outcome of that, but what I am trying to say is that we are trying not to take a purely commercial-interest position on this. We are trying to understand how the framework works and we were operating there in a framework that we understood. We did not necessarily agree with the outcome, but we understood it.

**Baroness Bakewell:** Are you satisfied with that? Not pleased, perhaps, but satisfied?
Mr Wheeldon: We are not seeking any changes that would make it any easier for us to get—

Baroness Bakewell: Any improvements?

Mr Wheeldon: There are always improvements to be made in the way regulators look at these things, and in the way evidence might be gathered, but we are certainly not arguing that there should be a substantial change in the public interest test or the Enterprise Act rules. No.

Q194 The Chairman: Can I make this clear? You could argue, “Forget about the existing rules, all competition matters, the Competition Authority. All plurality matters, keep them distinct, Ofcom”. Does that sound a sensible way of looking at it? You said earlier we need clarity, so people know where they stand.

Mr Wheeldon: What we have with the public interest is a two-tier system, so Ofcom—

The Chairman: Is that a good thing?

Mr Wheeldon: Yes. It is a good thing, because Ofcom is able to use its expertise to judge whether there is a problem; giving it to another competent authority that has experience in transactions, who can look at whether that transaction—remember, this is why we believe this current framework offers stability, because it happens only in a transactional case. The Competition Commission is in a good place to look at the consequences of that transaction and, if remedies are required, to require remedies. That seems to us to be sensible split and there are plenty of historical precedents. It has happened in competition cases for many years. So yes.

The Chairman: Do you think the present system, whereby things are referred to competition policy, is the right way, rather than leaving the power of initiative with the competition authority? I am not trying to push you somewhere you do not want to go; I am just trying to be clear about what your arguments are.

Mr Kinsley: Obviously, when you are looking at two regimes that are looking at similar types of issues and similar concepts but they are different, it does appear complicated. You have to think about it and get your head around it but, when you look at it, it is perfectly intuitive. As a framework, it seems to work. I do not think that we are advocating any change. We do not see any reason to change what has worked. It has been tried. There have been three cases. The framework has seen those three cases through. There have been remedies. There have been outcomes we have not liked, as David said. But, as a framework, we would rather have that framework and certainty than some of the other suggestions: rip it up, start again and try to create something that is unproven, for no reason apparent to us.

Q195 The Chairman: I can understand your argument. But, to go back to something Lady Scotland was saying at the start, certainty is important. You have been involved in the crossfire in two big cause celebres. It strikes me, as an observer, you could conclude that one of the problems about those two causes celebres was there really was not all that much certainty about what was going on. Is that a wrong conclusion to draw?

Mr Kinsley: When you are going through a transaction, are there uncertain times? Yes, but we know, as an industry, that is going to be triggered only on the transaction. When we are in that space, then we will be going through this process and yes, life is—
The Chairman: But if you are a player in the transaction—in particular as Mr Wheeldon has said, these things sometimes involve very, very big sums of money—is this a satisfactory state of affairs?

Mr Kinsley: It is preferable to us that it is triggered on a transaction that happens to two companies that are affected principally, than either by limits that could be triggered by entry or even periodic reviews.

The Chairman: There is a separate certainty point, which is that, before you embark, the law needs to be certain so that those affected by it know what the score is before you start. If you have a series of rules that are opaque or generally rather vague, it means that, if you are thinking about whether or not to do something that will bring you up against these legal provisions, you do not, frankly, know where you stand. One of the things I am interested in knowing about is whether you think the way the rules are currently drafted gives the people who might be affected adequate certainty about what is going on.

Mr Wheeldon: Yes, I believe it does and I believe it gives the public certainty as well. Despite the smokescreens and the wailing and gnashing of teeth that have been thrown about, particularly in one of those transactions, what happened was predictable. It delivered outcomes that would have addressed the concerns that were identified by the regulators in the process that they had been asked to undertake by the Secretary of State. I come back to my opening statement. What is the problem that we are trying to identify here?

The Chairman: That is absolutely fine, but the way the system works is not particularly transparent. Do you think it offers sufficient clarity when negotiating about undertakings and what have you? Is that a good way to do business?

Mr Wheeldon: In any merger situation, it is open to the parties to negotiate undertakings in lieu of competition remedies.

The Chairman: I agree about that.

Mr Wheeldon: Again, that is a well established path.

The Chairman: Do you think that is a satisfactory element of the commercial environment in which all these things happen? I am just asking.

Mr Wheeldon: It is one companies are very well used to. When you conduct a transaction and you have competition concerns raised, it is open to you to talk to the competition regulator about remedies that might address those concerns. Sometimes they are not sufficient and sometimes, therefore, a transaction is prevented on competition grounds. Again, companies are well used to the rules there. You could say that the same absolutely applies in respect of the public interest test. I do not see any difference and, again, from a commercial point of view, we know what is expected. We do not always like the outcome, but we know what is expected.

The Chairman: Do you think, from the public’s point of view, particularly in the public interest test context, there is enough transparency for the world at large about what might or might not be going on? On one level it is a private matter. On the other, by definition, there is a public interest—

Mr Wheeldon: It is difficult to negotiate complicated things such as that in the full glare of public scrutiny, particularly when the people doing the scrutinising might have a commercial interest in the outcome, which is, of course, the rest of the media. In media cases, it is quite difficult to be totally transparent in that way, but the same thing applies in any commercial negotiation.
The Chairman: That is worse than having no transparency?

Mr Wheeldon: The important thing is: is it done within a framework that everybody understands and that has the appropriate checks and balances on the outcome? I do not see any evidence that that is not the case, although I accept that politicians may feel that that is something that needs to be examined.

Q196 Baroness Scotland of Asthal: I was wondering whether you felt, having gone through this experience, that the need for full and frank disclosure in order for there to be better understanding of the undertakings that need to be made is a condition precedent to accepting a fair resolution of these issues?

Mr Wheeldon: Honestly, I cannot comment on that because we were not negotiating undertakings. Notwithstanding what you were told by the Guardian when it gave evidence to you, it was not BSkyB’s lawyers making representations to the Secretary of State; it was News Corporation’s. We have not experienced that.

Baroness Scotland of Asthal: You said, in effect, there should be no limit other than competition. If the competition rules were to change, let us put the competition to one side, can I take it that you would accept that 100% could be owned by someone, provided there was sufficient internal plurality in the way in which they discharged their duty?

Mr Wheeldon: I find that a difficult question to answer in the hypothetical because there are competition rules. So you know that could never happen.

Baroness Scotland of Asthal: But, you see, there is a limit. You said the competition rules are the only limit there should be and, other than that, there should be no limits.

Mr Kinsley: It is not that there is no limit. We think it is covered by the current rules on the range and diversity of voices. One is clearly not enough.

Baroness Scotland of Asthal: I am merely picking up the evidence you have given us and the evidence you clearly gave was that there should be no limit other than competition.

Mr Wheeldon: We have not said there should be no limit, Baroness Scotland. We said that there should not be artificial limits. That is not quite the same thing. What we have said is that the existing public interest test and competition merger controls are sufficient to deal with those kinds of concerns that you are raising. We are not saying there should be no limit, but that those limits can be determined by the existing framework.

Q197 The Chairman: In theory, by organic growth, it is possible to conceive an instance where, if you do not get to 100%, you might get way above 50%. I do not think, on the way you are looking at it, if there was not a transaction, there would be any means to intervene. Would there?

Mr Wheeldon: If companies abused a dominant position, then clearly—

The Chairman: The abuse of dominant position provisions, you would pray in aid to deal with that problem?

Mr Kinsley: The other thing I would say is that what you are painting is quite an extreme picture.

The Chairman: I could not agree more with you.

Mr Kinsley: If anyone was ever to get to that scenario organically, it would take some time and Ofcom already has the ability to review this every three years. If we decided that the
framework, for some peculiar reason, was not holding there is always that option, but it does sound like quite an extreme—

**Mr Wheeldon:** We operate in a market with lots of other interventions: the BBC, the PSB licences. These are deliberate interventions that also constrain.

**The Chairman:** What you are saying to us is that, in the current state of play, you think this framework is a pretty good one.

**Mr Wheeldon:** Yes.

**The Chairman:** But, of course, there is always the residual backstop for the politicians or the regulator to implement certain provisions that they can from time to time, which could lead to an intervention to deal with an abuse as and when it emerged.

**Mr Kinsley:** I would say abuse is already covered, but to deal with a scenario that led to somebody having a size that was unacceptable.

**The Chairman:** Fine. I think that broadly explains that case you are making to us.

**Baroness Scotland of Asthal:** You do not have any concerns about the cross-sectorial issues that we have raised during the Committee?

**Mr Wheeldon:** I think they are covered by the framework that we just described, but we are talking about highly hypothetical scenarios that have not happened and I struggle to conceive how they would happen. As Adam said, there are already existing interventions that could take place were that to be the case.

**Q198 Baroness Deech:** How would you handle the issue of the BBC in a plurality review: in or out? If it is in, how would you treat it?

**Mr Kinsley:** At the moment the current regime is triggered on the transaction. The BBC is never going to trigger a review of itself at the moment, so that sort of works. It should be measured within the regime. It is a provider of news. It is contributing to plurality, so it is absolutely the case that it needs to be part of that measurement. I think you are referring to: what would you do with the BBC—coming back to the earlier discussion—if it was the reason that the review had been triggered, which is a hypothetical? It highlights the problem with such a regime because it would be difficult to concede that there could be interventions imposed on the BBC. It would make the regime quite hard to operate in practice if it applied only to the private sector.

**Lord Razzall:** No. It could if the BBC tries to go across media, could it not—a side note—if it was going to build a huge international business with multiple operations?

**Mr Kinsley:** It is already—

**Mr Wheeldon:** You are describing the BBC.

**Baroness Deech:** Would you not expect the trust to intervene or be asked to intervene?

**Mr Kinsley:** Yes, I think that is a good point. There are rules in place on a day-to-day basis that ensure there are public value tests carried out by the trust and market impact assessments by Ofcom of the activities of the BBC. It is interesting to note that Ofcom recommends that the BBC ought to be thinking about its impact on plurality, but that would not necessarily be through the plurality regime or changes to it. It could be done today within the current regime.
Lord Razzall: There is a former chairman of this organisation who is on the record as saying that he thinks the mistake the BBC has made is not taking on BSkyB as a big international player. In those circumstances, that presumably would trigger the sort of inquiries you are talking about.

Baroness Deech: Thank you.

Mr Wheeldon: I am not sure I understand that point, though.

Lord Razzall: No, because BBC’s licensing restriction does hold it back in the things that it tries to do. It has not tried to build itself as a huge—

Mr Wheeldon: But BSkyB does not operate internationally other than in Ireland, where we do compete with them.

Lord Razzall: No, of course. It is Sky I am talking about. I understand the distinction.

Mr Wheeldon: This is part of the problem, though. People like to confuse the two and yet the whole point about the public interest test was that the two are separate. BSkyB was separate from the company that was trying to buy it out and I know there are all sorts of political and commercial reasons for confusing the two but we are a separate company.

Lord Razzall: No, I understand the point. I should have said with Sky. His view is that BBC has made a mistake in not commercially trying to take Sky on and build the BBC brand worldwide in a way that they have held back on because of the—

Mr Wheeldon: You mean take News Corp on, not Sky?

Lord Razzall: Yes.

The Chairman: We are drawing to a conclusion and you have been candid with us in what you think. I cannot believe there are not some improvements to the system that you can conceive. Why do you not tell us?

Mr Wheeldon: This is not the first time I have given evidence to you, Lord Inglewood, where we have argued that there is a primacy in regulatory stability and we are not a company that generally goes to government asking for leg-ups or hand-outs or any particular favour. By and large, what we want is a stable environment with which to continue to invest and innovate to serve our customers. That is what we are focused on. I hate to disappoint your esteemed Committee, but I am not going to be drawn into suggesting that we have any particular improvements to make.

The Chairman: That is, fine. Thank you very much. Unless somebody else has any questions, we have appreciated your coming along and seeing us this afternoon.

Mr Wheeldon: Thank you.
ABOUT THE CPBF

1. The Campaign for Press and Broadcasting Freedom (CPBF) is a leading independent organisation dealing with questions of freedom, diversity and accountability in the UK media. It is membership-based, drawing its support from individuals, trade unions, and cultural and civil society organisations. The CPBF advocates policies designed to encourage a more pluralistic media, and intervenes in public debates over the future of media across the United Kingdom.

SUMMARY: Media plurality and ownership regulation

2. The CPBF proposes that the ‘Public Interest’ (PI) test, established by the Communications Act 2003, should be revised and extended. We regard the test as one important means of helping to secure media pluralism across converging media, and extend PI obligations to commercial media firms that have a significant reach and influence.

3. Strong cross-ownership rules are needed with clear ceilings on the share across media markets. Any supplier with a 15 per cent share in a designated media market should be subject to a PI test in respect of any merger or acquisition in the same or another media market. Ownership concentration and cross-ownership above the 15% threshold may be permitted subject to organisations meeting certain public interest obligations in their operation. The maximum permitted holding in any of the following designated market should be 30% (national news; regional news on all platforms and in each of the following platforms - radio, television, newspapers, online).

DEFINING THE SCOPE OF MEDIA PLURALITY

Q  What should the scope of media plurality policy be?

4. In order to protect plurality it is essential that there is adequate recognition of the breadth of plurality concerns. Ofcom (2011: 2), inviting comments on measuring plurality, asserted ‘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’. This is a reasonable and straightforward statement about why pluralism matters and many would agree that it states why pluralism matters most. It draws upon Ministerial, parliamentary and other statements about the importance of media pluralism in a democracy. However it does not serve as a comprehensive statement of media plurality concerns, nor even how such concerns have been expressed within UK media policy. It is also far removed from the policy consensus on media plurality informing international associations such as the Council of Europe.

5. UK regulation should reflect the Council of Europe (CoE)’s identification of media plurality as the scope for a wide range of social, political and cultural values, opinions, information and interests to find expression through the media. The CoE understands media pluralism to encompass ‘the diversity of media supply, use and distribution, in relation to 1) ownership and control, 2) media types and genres, 3) political viewpoints, 4) cultural
expressions and 5) local and regional interests’ (European Commission 2009:5). Plurality concerns include:

1. Content variety and cultural diversity
2. Media access (social, cultural and economic access for individuals and groups in society, especially marginalized groups)
3. Independence of creators, programmers and journalists
4. Owner influence affecting media content and performance in entertainment, fiction and factual programmes as well as ‘news’
5. Plurality of sources of funding for media

6. Plurality matters. A healthy media culture should mean that there is a real range and diversity of voices, of creative expression, ideas, information and opinion. Such a plurality of voices, reflected in the media citizens use and consume, is necessary for democracy. But such a range of voices is also needed to foster mutual understanding and dialogue. The widest possible range of creative expression is vital for social and cultural, as well as economic, enrichment.

7. Media pluralism draws on three main sets of concerns: economic, political and geo-cultural. As a recent study summarises, ‘[i]n mature democracies media pluralism encompasses political, cultural, geographical, structural and content related dimensions’. This Independent Study on Indicators for Media Pluralism in the Member States, prepared for the European Commission Directorate-General Information Society, identifies five dimensions of media pluralism: political pluralism, cultural pluralism, geographic/local pluralism, pluralism of media ownership and control, pluralism of media types and genres.

8. Cultural pluralism refers to (European Commission 2009: 12):
the fair and diverse representation of and expression by (i.e. passive and active access) the various cultural and social groups, including ethnic, linguistic, national and religious minorities, disabled people, women and sexual minorities, in the media. It comprises a plurality of themes and voices being present in the media, socialisation through multiple forms of media access and participation, choice between different forms of interaction and the representation of diverse values, viewpoints and roles, in which citizens belonging to various cultural and social groups…can recognise themselves.

9. Media pluralism is not restricted to news but encompasses broader forms of cultural expression and communication. Rather than being a discrete set of policies concerning news media, the protection of pluralism involves a wide range of policy measures and obligations including UK commitments under the UNESCO Convention on the protection and promotion of the diversity of cultural expressions, adopted on 20 October 2005.

10. Ofcom (2012), in its report on measuring plurality, narrows the scope of plurality to the point of offering a partial and misleading account of the public interest test provisions in the Communications Act 2003. Ofcom states (2012: 18), ‘There are two “plurality” media public interest considerations: plurality of views in newspapers and plurality of persons with control of media enterprises’. In fact there are two others, both of which address cultural provision:
• The need for a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests
• The need for persons carrying on media enterprises to have a genuine commitment to the attainment [of broadcasting standards]

The Government’s own guidance (DTI 2004) explained the purposes of these provisions as ‘safeguarding the quality and range of broadcasting when mergers take place in order to ensure a diversity of programming and protect the interests of viewers and listeners’.

MEDIA PLURALITY CONCERNS IN UK MEDIA MARKETS

11. The UK media system has high levels of concentration of media ownership, bottlenecks and gateway control at key points across the press, TV, radio and online media markets. Current media ownership rules do not adequately protect pluralism. As Ofcom (2010: 15) highlighted in its review of the proposed News Corporation/BSkyB merger, once a merger is approved, ‘there is no subsequent opportunity or mechanism to address…plurality concerns that may emerge in future’. If the News Corp/BSkyB merger had gone ahead News Corp would have increased its reach amongst regular news consumers to 51 per cent. That level of market concentration contradicts the presumption that media ownership rules can be relaxed due to naturally occurring digital diversity.

12. Diversity of news provision is more likely to come from a plurality of types of news outlets, platforms and funding models as well as a diversity of news owners. There have always been anxieties over the ownership of the media because of its agenda-setting role. Media owners have, over time, been shown to influence the way their organisations present news and in turn have some bearing on public debate and political opinion. Owners can have an effect on news output through various means including, at times, direct intervention. More frequently, however, it is likely to be via indirect means: through the appointment of like minded editors, emphasising particular business approaches, cross-promoting or censoring matters of corporate interest, or by prioritising certain types of journalism. Owners can also influence the journalistic ethos of a news organisation and this can filter through to the processes of news production.

13. Despite the ownership regulations currently in place, a handful of owners in the national and regional press have a large market share allowing a disproportionate influence over the media agenda, public debate and political opinion.
Market share of UK national daily newspapers (%) (1997-2009)

<table>
<thead>
<tr>
<th>Title/Company</th>
<th>1997</th>
<th>2001</th>
<th>2002</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>News International</td>
<td>34.4</td>
<td>31.8</td>
<td>32.2</td>
<td>34.8</td>
<td>33.8</td>
</tr>
<tr>
<td>Trinity Mirror</td>
<td>23.9</td>
<td>21.0</td>
<td>20.2</td>
<td>15.6</td>
<td>16.2</td>
</tr>
<tr>
<td>Northern &amp; Shell (formerly United Newspapers)</td>
<td>14.3</td>
<td>12.5</td>
<td>13.8</td>
<td>14.9</td>
<td>13.5</td>
</tr>
<tr>
<td>Daily Mail &amp; General Trust</td>
<td>13.6</td>
<td>18.7</td>
<td>18.5</td>
<td>21.2</td>
<td>19.9</td>
</tr>
<tr>
<td>Telegraph Group</td>
<td>7.7</td>
<td>7.7</td>
<td>7.3</td>
<td>7.4</td>
<td>7.3</td>
</tr>
<tr>
<td>Pearson</td>
<td>1.3</td>
<td>3.8</td>
<td>3.5</td>
<td>4.0</td>
<td>4.1</td>
</tr>
<tr>
<td>Guardian Media Group</td>
<td>2.7</td>
<td>3.1</td>
<td>3.0</td>
<td>3.0</td>
<td>3.3</td>
</tr>
<tr>
<td>Independent Print Ltd</td>
<td>2.1</td>
<td>1.5</td>
<td>1.4</td>
<td>1.8</td>
<td>1.9</td>
</tr>
</tbody>
</table>

Source: Audit Bureau of Circulations

14. Richard Desmond’s Northern and Shell, for instance, now owns Channel 5, four national newspapers, celebrity magazines such as OK! and Portland TV which runs 17 UK broadcast channels with carriage on Sky, Freeview, Virgin and BT Vision and includes adult channels such as Television X and Red Hot TV.

15. There has been a marked consolidation of newspaper ownership. Today, just four companies control over 72 per cent of the market. In commercial radio just four companies have an almost 80 per cent share of the market. The case advanced for such consolidation was that it would offer the prospect of substantial economies of scale and cost-efficient operation. Instead, according to the National Union of Journalists, the impact of consolidation on local newspapers and local radio has been a narrowing of the range and diversity of editorial voices and massive job cuts, sometimes driven by creating regional hubs/newsrooms or subbing pools covering a number of titles. Local newspapers should underpin local democracy, informing their readerships about local events but also providing a vital watchdog role over local government, the police and health provision. But the pursuit of profits by regional newspaper monopolies like Trinity Mirror, Johnston Press, Newsquest and Northcliffe has debased the value of the newspapers they own. Mergers and takeovers have meant that in many places news operations are often centralised miles away from the communities journalists are reporting on. Also, the management response, as advertising collapsed in the wake of the recession and the growth of the internet, was to cut costs, shed staff and further reduce the quality of their papers.

16. Some argue that while ‘legacy’ publications remain under concentrated ownership, the growth of online publication means that plurality concerns, and the case for intervention, has diminished. Yet, it would be wrong to draw the conclusion that the massively increased availability of content online diminishes concern about the sources and supply of news, or the share and reach of media companies operating across various platforms. As Ofcom (2010: 13) has highlighted, ‘traditional media providers account for 10 of the top 15 online providers of news (eight newspaper groups plus the BBC and Sky), with the remainder predominantly being news aggregators rather than alternative sources of news. This suggests that today online news tends to extend the reach of established news providers as opposed to favouring the use of new outlets that are not present on traditional media’.
17. Britain’s media ownership laws have been unfit for purpose for several decades. As Will Hutton (2010) explained in his seminal Observer article in September 2010, despite our long history of democracy, Britain is lagging behind. ‘We impose no nationality requirement. We do not tightly police the share of an media market held by one proprietor, nor make demands about limiting owners’ power to take ownership chunks across the media domains; we do not even care much about preventing market dominance. The assumption has been that lightly applied competition law, along with self-regulation, is all that is required, with little thought for any political and cultural consequences’.

**CURRENT MEDIA PLURALITY REGULATION IS INADEQUATE**

18. Since a wave of deregulatory legislation swept over the UK media, beginning with the 1990 Broadcasting Act, through the 1996 Broadcasting Act, to the 2003 Communications Act, attempts to protect media pluralism and limit media power have been dismissed. Instead the imperatives have been on opening up media markets, promoting light touch regulation and stimulating growth and competition. Public interest concerns were marginalised.

19. Following the Leveson Inquiry report, and with a new Communications Act pending, this is a critical moment and historic opportunity to address the totality of communications regulation. The handling of the BSkyB merger exposed major flaws in the current system to protect media pluralism, with the power vested with the Secretary of State rather than through a more open democratic process. The Government also exploited the restrictive legal framing of the test to bracket out not only consideration of ‘fit and proper’ governance but a host of other concerns about the power and behavior of Murdoch’s media empire. The process proved inadequate to do what was originally intended – to address public interest considerations, like how corporate media power was exercised and might increase if News Corp was granted an even stronger grip across UK media markets.

20. The Leveson Inquiry has called for a new system for measuring and addressing concentration of media ownership. Strong *ex ante* powers are required to assess and where necessary prevent levels of concentration that would stifle innovation, domestic production, and choice and quality for viewers and users. We propose an approach that is democratic, flexible and responsive to media plurality problems in the way media content services are organised and supplied across the UK.

**REVISING THE PUBLIC INTEREST TEST**

21. The CPBF proposes that the “Public Interest” (PI) test established by the Communications Act 2003, should be revised and expanded. We regard the test as one important means of helping to secure media pluralism and extend PI obligations to commercial media firms that have a significant reach and influence. Our proposals build on the existing apparatus but develop it in various ways. We propose that broader democratic and cultural criteria are set out in the next Communications Act, and that Ofcom, operating under suitably revised terms, should have lead responsibility for investigations, and concurrent powers to initiate public interest tests.
Q. What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic?

22. We propose that share of supply should be the main trigger for initiating a public interest test, not just merger situations. In key markets, such as national news on each platform, and television-based services, there should be a public interest test when firms reach 15 per cent of the market. Above 15 per cent Ofcom would have powers to require divestment—an ownership cap—but we have suggested there could be greater use of public interest obligations and undertakings. Public interest obligations (PIOs) would be applied

- to place specific structural or behavioural requirements on the activities of firms with a market share above 15%
- as a means of monitoring and enforcing adherence to broader standards of conduct, including codes of conduct
- as a broader agreed set of standards and requirements for media service providers in particular markets. For instance in news there might be obligations concerning investment in investigative journalism; in television services there might be obligations concerning investment in original programming.

23. At the lighter end these PIOs would include behavioural controls, for instance to prevent editors from being sacked at the whim of owners, and protect editorial standards. A news organisation might have public duties to sustain investment in newsgathering or meet undertakings to pool and share resources with other media providers where this benefits media pluralism. At the stronger end they might include requirements to establish new forms of public governance. In particular we think that the maximum market share for privately owned media in key markets should be 30 per cent. Above that, the company would either need to divest or reorganise the service to comply with public interest requirements—for instance by establishing a public trust or community enterprise. The proposals are guided by a key principle: for media that serve public audiences, with size and reach come responsibilities. We regard the test as one important means of helping to secure media pluralism and extend PI obligations to commercial media firms that have a significant reach and influence. So far these policies have been put forward by the Campaign for Press and Broadcasting Freedom, and adopted by the Trades Union Congress Executive.

24. Strong cross-ownership rules are needed with clear ceilings on the share across media markets. Any supplier with a 15 per cent share in a designated media market should be subject to a PI test in respect of any merger or acquisition in the same or another media market. Ownership concentration and cross-ownership above the 15% threshold may be permitted subject to organisations meeting certain public interest obligations in their practice. The maximum permitted holding in any of the following designated market should be 30% (national news; regional news on all platforms and in each of the following platforms - radio, television, newspapers, online).

25. Ofcom should have concurrent powers to initiate the PI test rather than control resting exclusively with the Secretary of State. The test should be applied in accordance with any of the following conditions:

- The passing of market share thresholds.
- In response to evidence of ‘significant public concern’
Following the revelations of the Leveson Inquiry and other investigations into the conduct of the Ministers, special advisors, Ofcom and others in the planned News Corp- BSkyB merger, there is very little public confidence in the existing public interest test mechanism. It is legitimate that the Secretary of State can initiate PI tests but the powers should not rest with the Government alone. Evidence of the collusive relationship between Government Ministers and News Corporation highlighted the very real dangers of such a concentration of decision-making power. Our proposals provide multiple sources of legitimacy to initiate PI tests: Ministers, regulators, legal-economic market analysis and evidence of significant public concern. There are problems, limitations and legitimate concerns associated with each source of power.

Government Ministers are likely to be influenced by considerations for their parties of decisions concerning powerful media groups who shape and influence voters' opinions. Regulators may privilege market players' interests above citizens and even consumers interests and may be subject to regulatory capture. Economic market analysis is a necessary source of legal-regulatory legitimacy but is limited in its ability to identify and address media plurality concerns including qualitative, social and cultural aspects of media provision. Democratic public involvement has been the vital missing component in communications regulation. Public concern has been neglected and needs to be placed at the heart of democratic media policy-making. Yet the mechanisms to do so need to be developed carefully to assist public participation and to command public confidence and support.

26. Determining media pluralism should involve a combination of quantitative measurement, qualitative assessment, democratic input and oversight. The PI test should be initiated principally on the basis of market share. However, we recommend a discretionary dimension that would allow the Secretary of State or Ofcom to initiate a PI test in accordance with criteria and processes established in law. Ofcom should be required to have regard for evidence of significant public concern and to initiate the test in response to such concern. Ofcom should conduct periodic reviews of media plurality. Ofcom should also be subject to periodic review by the Culture Select Committee on the operation of the test as part of a review of media plurality and regulation. We have set out our proposals in submissions to Ofcom ‘Measuring Plurality across Media (November 2011); the House of Commons Culture, Media and Sport Committee Inquiry into Media Pluralism (January 2012); submission to Leveson Inquiry, module 4.

Q. What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

Scope of public interest interventions

27. Ofcom (2012) proposes that reviews of plurality should be limited to news and current affairs considered across television, radio, the press and online. The PI test should not be limited to news markets alone nor to criteria solely concerned with news and information services. The existing PI test provides grounds for intervention in media mergers on behalf of considerations including

- Accurate presentation of news (newspapers).
- Free expression of opinion (newspapers).
• A sufficient plurality of persons controlling media enterprises serving an audience (broadcasting).
• The need for a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests (broadcasting).
• The need for persons carrying on media enterprises to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003 (broadcasting).

28. This list needs to be expanded and updated for convergent media. Criteria for the PI test and remedies should include:

• source diversity
• content diversity
• freedom of expression (including protection for editorial freedom)
• transparency (disclosure of corporate and commercial communications interests)
• fair dealing
• adherence to standards (i.e. relevant self-regulatory codes; compliance with relevant rules and law)
• application of the fit and proper person test.

29. The scope to influence political opinion formation and public opinion makes the control of news and current affairs information and discussion the most important area of concern. However, as we have argued, media pluralism is much broader than this. It includes the diversity of content, share of voice and quality of access to ideas, information, imagery and opinions. The regulation of media plurality must not be restricted to news media but encompass all media services that are public facing and which provide content services to large aggregated audiences. This includes print, television, radio, and online media content services. We believe that Ofcom should be required to include all such public media in assessing pluralism. Such assessment would need to include the totality of domestically produced programmes, and domestically-produced children’s programmes, for instance, both of which have been acknowledged concerns for Ofcom in recent reports. It matters that children have access to UK national and regional programmes that can educate, entertain and inform them, and which reflect both cultural diversity and cultural proximity.

30. We argue that the public interest test should not be restricted to news, not only because of the need to embrace wider notions of cultural pluralism but also because this is the best way to safeguard plurality in news. If media plurality is shrunk to news it allows commercial media services to expand and consolidate relatively unchecked, but these services and their profit maximising dynamics increasingly impinge on the production and circulation of news.

Conditions and obligations

31. Firms may be permitted to operate up to a market share of 30 per cent subject to meeting any conditions imposed by Ofcom or undertakings drawn up and agreed with the regulator. No commercial entity would be permitted to have control above 30% in designated markets. A higher share would only be permitted where the supply was under public ownership and governance. Ofcom would have powers to
safeguard public interest consideration by requiring divestment, above 15% market share, or other structural remedies, or by requiring behavioural conditions.

32. The public interest test process would determine whether a merger or market share position was permissible or not. But it could also extend the power to impose remedies other than simple approval/disapproval that refer to ‘behavioural’ conditions placed on the conduct, performance, and governance of organisations (see 22 above). The nature of behavioural controls that could be included in the case of media mergers include:

- **Protection of the editorial independence of media workers**: The power to appoint or dismiss editors could be safeguarded against decisions made by those with a controlling interest. Media owners and others with a controlling interest could be required to adhere to publishers’ and journalists’ codes of conduct, as well as to undertakings drawn up for specific practices.

- **Investment in Newsgathering**: Evidence of a consistent approach to and commitment to newsgathering and in particular to investigative journalism.

- **Forms of ownership and control**: The existing enforcement powers include alteration of the constitution of a body corporate. Another important way in which the merger regime could be enhanced would be to grant powers to the relevant competition authorities to require that entities subject to merger approval adopt designated forms of corporate status, ownership and governance as a condition of approval. For instance a firm that was dominant in a market and sought to expand into other media in the same market could be required to establish the new entity as a public trust, co-operative venture, non-profit distributing company, or other form.

**Measuring plurality**

33. The breadth of plurality concerns has implications for the measurement and assessment of plurality. No single form of measurement is adequate to capture the range of plurality concerns that arise. The recent *Independent Study on Indicators for Media Pluralism*, prepared for the European Commission by an international expert group, shows how varied are the measures applicable and how complex is the task of finding suitable indices. It is possible to start more simply. We advocate the use of ownership and market share measures to determine thresholds. The principal measure should remain that of the number of persons controlling media in designated markets. The market share of suppliers in designated markets remains the second key measure for the purposes of identifying media concentration and cross ownership.

34. We do not believe that the ‘total’ media market can yet be determined with sufficient clarity and precision to form the basis for numerical thresholds. We also favour an approach that is more responsive to media plurality problems occurring within and across media markets as defined by platform, service, political and other content aspects, geographic and/or cultural markets served. This requires a variety of measures that derive from the different areas of concern: economic, political and geocultural.

35. Enders Analysis has proposed a cap on total media market revenue (15% for any single firm). This is simple and impactful, but total market measurements that include wider sectors such as all publishing and computer games are problematic as they would permit significant concentrations within news publishing, television and radio before total market thresholds were met. In addition, defining the market by revenue would not provide a sufficiently
sensitive instrument to identify problems of market and media power. We favour a more compound approach that involves:

- A total market threshold;
- The relevant total market may be best defined as the market for media content services across UK television; newspapers and periodical publishing, radio and online.
- Thresholds in designated markets (the markets for news and markets for media content services). Key designated markets would include national and regional news services; television and radio content services; online news;
- Discretion to allow the regulator to initiate the test on PI grounds.

36. There are many ways in which current regulations fail to deal adequately with online platforms and convergent media. Online media services should certainly be included in analysis of media pluralism. However it is important that these are assessed carefully. We believe Ofcom adopted the right approach in assessing the cross-media market share for news in its report on the proposed takeover of BSkyB by News Corporation.

37. We believe that the assessment of media pluralism should involve analytical tools, such as market share analysis, and adopt fair and transparent legal-regulatory processes. However, assessment should not be limited to economic and market analysis but encompass the range of relevant indicators to provide a reasoned, evidence-based assessment of plurality concerns and risks. We favour an approach that combines the rigorous application of specific measures, in particular ownership and market share, with scope to apply a broader range of plurality criteria and considerations as set out in new legislation. We favour a discretionary approach that involves Ofcom selecting and justifying appropriate measures. This process should be informed by effective public consultation and democratic oversight. Deciding whether there is too much media concentration, or insufficient cultural diversity, in media serving audiences within any part of the United Kingdom should be fully open to public opinion, consultation and deliberation. Above all, we believe that determining what is in the public interest must be achieved through effective democratic participation, as proposed in our revised public interest test.

38. Ofcom (2012:28), in its response to the consultation on measuring media plurality, rejects any discretionary basis for a public interest review based on market share or any other metrics. Its principal objection is that this would result in a ‘lack of certainty to market players – 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’. We agree these are important considerations but not that the system we propose lacks appropriate safeguards. Firms will be able to plan within the parameters of market thresholds and guidance, such as that of the DTI (2004), which supports the existing public interest test. Changes arising from the market exit of other providers can be addressed by allowing a suitable period for firms to address public interest obligations. Predictability for business is an important criterion by which the public interest test should be measured and enforced, but it is the public interest that should be the overriding consideration for regulation. Any market actor with significant impact in a

---

110 Ofcom has wide discretion in relation to the assessment of sufficient plurality under the current public interest test (see Ofcom (2010) Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation, London: Ofcom). The Court of Appeal in BSkyB/ITV confirmed that Ofcom should provide a qualitative assessment of the position resulting, or likely to result, from the proposed merger.
relevant market (like news) should expect to meet and be answerable to public facing standards that are established in law. The objection that tests initiated by market share lack predictability is overstated, not least given the inherent unpredictability for market actors in the favoured option of periodic reviews. The current test is supported by extensive guidance and such guidance would be drawn up to help market actors operate under the new public interest test.

**Democratic involvement**

39. Ofcom (2012: 32) objects to calls for greater democratic involvement in media plurality decisions by arguing that it could create ‘perverse incentives among well-funded or organised campaigns to ‘flood’ the process, making it a costly process to organise and run’. We do not propose that any one organisation or co-ordinated campaign should exercise undue weight. It is also important to guard against astroturf campaigns (pseudo - grassroots campaigns) orchestrated by commercial operators which would bring the process into disrepute. However, we do not think it is difficult to assess ‘significant public concern’ based on evidence of such concerns expressed across civil society and through mechanisms such as (e)petitions . The risk of abuse is a poor argument against facilitating greater democratic participation in media public interest decision-making.

**Monitoring plurality**

40. Ofcom should have sufficient powers and resources to continue to conduct periodic reviews of media ownership, and pluralism and diversity in media markets. Since Ofcom, under our proposals, would be the lead body responsible for investigating and proposing enforcement action, it is important that there is sufficient independent, and democratic, oversight. We believe that the Culture, Media and Sport Committees in both Houses have an important role here in overseeing Ofcom and in initiating consultations and reports on media pluralism. We believe that Ofcom should be required to have regard for independent monitoring of media plurality and should establish an expert working group on media plurality, drawing on the successful model of the Council for Europe, that would undertake research and meet periodically with the wider community of academics, civil society organisations, as well as business and commercial policy-analysts.

**The BBC and Media Plurality**

Q Should the BBC’s output be included in a review of it?  
Q How can internal plurality be sensibly measured against external plurality?

41. The public interest test we propose is not designed to restrict the size of publicly funded or publicly owned media. The BBC is publicly funded and has to meet requirements for pluralism and diversity. Channel Four is governed by a public trust and has explicit obligations for cultural diversity, pluralism and impartiality. The commercial PSBs, ITV and Channel Five have weaker public service obligations, and as commercially-funded organisations should be included in the calculation of market share thresholds for the PI test, but should also be granted special consideration as public service media.

42. Public service media (PSM) require special consideration. The combination of requirements on public service media and systems of governance and oversight are not replicated across commercial media. Public service media are required to meet standards of
internal pluralism across editorial content, including impartiality in news and opinion. In addition, the periodic authorization and review of PSM provides a mechanism to assess and sustain internal pluralism, both within individual suppliers and across the public service system as a whole.

43. It is right that the BBC is included in the calculation and analysis of market share since the presence of BBC services has a market impact that must be included wherever relevant. But it does not follow that the BBC’s market share should be included in assessing the degree of market concentration within non-public service media. The latter should be assessed alone as the basis for regulatory action to sustain plurality. This is necessary because the pluralism obtained by public service media should not be allowed to serve as grounds to diminish plurality across other media serving audiences in the same markets. The public interest test cannot directly remedy the risk of public service provision itself curtailing market competition and provision. However to the extent either problem arises it can be addressed through other mechanisms of public service governance. The purpose of the public interest test, by contrast, is to provide an available and effective mechanism to secure public interest outcomes by providers other than those designated public service media.

**Tackling concentration in distribution of media**

44. There are other issues that policies for media plurality need to address. We have set out our proposals in responses to the Ofcom consultation on measuring media plurality and to the Culture, Media and Sport Committee Inquiry into Media Pluralism.

One important problem to remedy concerns distribution. The move from rail to road distribution and the dominance of the system by the major publishers make it difficult for smaller publications to have equal access to markets as their larger competitors. This is an issue that needs to be addressed in the interests of plurality and equal access to markets. The French system, which guarantees distribution to smaller titles, is one that deserves careful consideration.

**Media plurality and related media regulations**

45. **Impartiality** rules do not inhibit diversity in media, instead they provide safeguards that those who own and control powerful, public communication resources, must adhere to standards to safeguard the quality of information and the range of opinions necessary for political opinion formation in a democracy. Impartiality rules are vital, but they are not sufficient safeguards on their own for editorial independence and standards, and they do not, as some argue, provide sufficient safeguards to justify liberalisation of media ownership rules.

46. As newspapers, that are not subject to impartiality requirements, become ‘broadcasters’, with online audiovisual content, there are renewed threats to impartiality rules. If there is a free-for-all in the area of online newspaper content, established broadcasters like the BBC will risk having their own standards driven ever lower in order to compete with the online versions of newspapers like the *Sun* and *Express*. The standards of public service broadcasting, and in particular the all-important requirements for impartiality and balance, could be seriously jeopardised by the effects of politically partisan broadcasting creeping in through the back door. In our view, online versions of newspapers should therefore come within the regulatory scope of Ofcom, but with a lighter regime than for conventional broadcasters.
47. Regulations have not kept pace with the pressures towards corporate cross-media promotion and to the integration of advertising and media (that is integration between commercial communications and media content in which users have expectations of editorial independence and integrity). We have addressed these important issues in other submissions and believe that, where relevant, they should be included in criteria for the ‘behavioural’ controls and conditions established under the public interest test.

Q To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas? Q What should the UK learn from international approaches to media plurality?

48. The Campaign for Press and Broadcasting Freedom has been involved with the European Initiative for Media Pluralism (EIMP) from the start. The EIMP is a campaign initiated by around 100 civil society organisations, media, and professional bodies throughout Europe which calls for legislative actions to stop big media and protect media pluralism in Europe. We fully support the demands of the EIMP which call on the European Commission to draft a Directive for the protection of media pluralism. The EIMP demands: a) effective legislation to avoid concentration of ownership in the media and advertisement sectors; b) guaranteed independence of supervisory bodies from political power; c) definition of conflict of interests to avoid media moguls occupying high political office; d) clearer European monitoring systems to check up regularly the health and independence of the media in member states.

References


Ofcom (2011) Invitation to comment on measuring plurality across media, London: Ofcom


April 2013
TUESDAY 25 JUNE 2013

Members present
 Lord Inglewood (Chairman)
 Baroness Bakewell
 Lord Clement-Jones
 Baroness Deech
 Baroness Fookes
 Baroness Healy of Primrose Hill
 Lord Razzall
 Lord St John of Bletso
 Earl of Selborne
 Lord Skelmersdale

In attendance
 Baroness Scotland of Asthal

Witnesses

Mr Chris Goodall, Enders Analysis, and Dr Jonathan Hardy, Campaign for Press and Broadcasting Freedom

Q108 The Chairman: A warm welcome to our first witnesses for today, Chris Goodall of Enders, and Jonathan Hardy. We look forward to hearing what you have to tell us. We do not expect you will necessarily agree in every particularity, but that is what makes a hearing all the more interesting. We have had a brief CV from each of you, which has been circulated, which tells of your distinguished careers and contributions in this sector. I do not propose to repeat that. So, in opening, if each of you could briefly set out what we describe as the mechanics of your overall approach, and if you want to use that to make a brief opening statement, that would be helpful. Could we start with Chris Goodall, who is on the right as I look at you?

Mr Goodall: What we proposed at Enders Analysis was to address what is the cross-media problem. That is to say that, in competition law assessments, for example, of mergers and acquisitions, the regulators have tended very much to concentrate on market share with individual media: the press, video games, or whatever. But, in fact, a lot of the strengths of an
operator in these markets can come from its presence in more than one market. That is why most other countries have taken on board some form of restriction on the degree of cross-media ownership. Our belief is that most of the malign influence of extremely high market shares in media arises not necessarily from the ability to influence the political process, but to influence the economics of the industry in this large company’s favour. Domination is the object, and James Murdoch said that directly to Leveson. That domination means that the link between the creator of media content—the journalists, the author, the video games developer—and his or her audience is held by a small group of extremely financially well-off individuals and companies. That is bad for the cultural diversity and strength of the economy and the society at large.

The Chairman: Jonathan Hardy, would you like to follow some of those things up?

Dr Hardy: Thank you. Jonathan Hardy, I am a media academic at the University of East London and National Secretary of the Campaign for Press and Broadcasting Freedom, which was set up in 1979 as an independent media reform organisation supported by trade unions, civil society organisations and members.

To begin, can I say that your review is extremely welcome and timely. The UK was very close to a deal that would have given Rupert Murdoch's News Corporation the greatest control of any private company across newspapers, television services and radio news. There is real concern in this country—and among young as well as old—that media pluralism is delivered. The guiding principle of our approach is that with size and reach comes responsibilities. Those providing media content or public communication services are providing services that matter for democracy, for social and cultural life, for the creative economy. Their behaviour can raise market power issues but also media power issues, so at heart our plans are to build on the existing apparatus, the public interest test set up in the Communications Act 2003. We propose that firms with 15% share in designated markets, such as national news, should be subject to a test, not just in merger situations. Above 15% Ofcom should have powers to require divestment. We think there should be greater use of public interest obligations and undertakings, and we think there should be a maximum share set—probably at 30%—so that no private company can take a greater share in designated markets and would, therefore, either have to divest or make some of that service a different form, such as a public trust.

Q109 The Chairman: Thank you. Chris Goodall, you are very much focusing on the relationship between economic power, which is obviously something that falls within the remit of the Competition Authority, and economic powers' ability to control the voice in the media.

Mr Goodall: To act as a gatekeeper; to restrict the flow from the person creating the content to the person—

The Chairman: Is it a question of restricting the flow or is it a question of perhaps doing the opposite: creating material in order to push it out to the audience?

Mr Goodall: The media company continues to have an extraordinarily important role in creating, editing, marketing, and financing the creation of most media. If it is put in a position where it can completely control the flow from creator to consumer, that gives it a dominance over, for example, political content and innovation and cultural content. A diverse and innovative cultural sector demands plurality in the gatekeeper sitting in the middle as the media accomplice. I am not trying to diminish their role or suggest that all that
they do is malign, but I do think that it is important that competition law does not stop that, because it only operates at the individual market level.

The Chairman: The market is going to be the overall media marketplace, is it?

Mr Goodall: Yes. The overall media marketplace.

Q110 Baroness Fookes: Some of our witnesses have suggested that we should confine plurality to news and current affairs. Both of you go broader than that, but I wonder whether each of you could expand on why you think this should be so. You have already touched upon it in your opening statements but could we have a little more detail?

Dr Hardy: We propose to build upon the existing public interest test. It is important to highlight that that does not just cover news and information; there are other important provisions built into it to address plurality in broadcasting services. It speaks specifically, for example, of the need for a wide range of programming, taken as a whole, is both of a high quality and calculated to appeal to a wide variety of tastes and interests, and the need for persons carrying out media enterprises, including broadcasting services, to have a genuine commitment to broadcasting standards. We want to build on that. In other words, we feel that cultural plurality, quality and entertainment content were built in to the original design. What is needed, of course, is to update it for 21st-century media, beyond the press and broadcasting framing. That is one reason.

We also think Britain can learn from and connect with the vision of plurality set out by organisations like the Council of Europe. That is a broad-ranging provision that sees supply of content, distribution, voice, access to media as all-important considerations. Therefore, we think this is best done by drawing up a range and variety of plurality considerations set out in law, which can then be used as a guide for public interest tests. We favour an approach that identifies designated markets, such as news and television services, rather than a total market approach such as Enders has proposed. On that, we think their analysis would be helpful. It is clearly important, as media converge, to look at cross-media configurations. I think what Chris has said about tracing power is extremely important. Our central concern is that if you include in the calculation book publishing and video games, the market is defined so broadly the net impact would be too liberalising. In other words, we think it is better to have a more flexible approach that identifies what we call designated markets. We feel the key ones should be set out in legislation so it has the support of Parliament, but I think there needs to have flexibility built into the legislation for Ofcom to develop. For instance, concerns about the video games market will emerge at the wholesale or retail level; it is right that a plurality process, a public interest test, can address those.

Q111 Lord Razzall: For example, do you think in the area of television the people who make programmes like The West Wing or Homeland, which are clearly political in content, ought to be covered by the plurality test?

Dr Hardy: I think there is an important argument that entertainment can be influential in terms of people’s political opinion formation, and you have already heard people arguing that. Where we would make the stress is to say that if you are looking at different markets, you are looking at different media forms and at different sets of concerns. We would rather have a process that was flexible enough to say, for instance, “Here we are looking at news”. In a situation where six of the seven national papers support one main governing party, it is important that the process can address, with some sensitivity, those kinds of issues of plurality. We might say more perhaps about entertainment. We think there it is much more an issue of diversity of content and access to create content.
Lord Clement-Jones: But you would not lump it all together.

Dr Hardy: We would not suggest a total market measure along the lines Enders has suggested. There is a suggestion floated, for example, to define a total market in news across all platforms and set a cap there of 15%. I am much more sympathetic to that approach. Perhaps we can go into some of the detail. But there is real diversity across the cultural industries. Diversity in terms of content creation: how the economics of the businesses work, how goods are sold, what kinds of control are exercised. We have real concerns about trying to put all of that together into a single total market calculation, but, as I say, very sympathetic to the other driver of this initiative, which is to track cross-media convergence issues.

Baroness Fookes: Perhaps we could ask you, Mr Goodall, to put your views forward on this.

Mr Goodall: Thank you, yes. It is only relatively recently in this country that plurality in media meant plurality of news and current affairs. Going back to the documents coming out of government departments 10 or 15 years ago, plurality meant cultural diversity across all forms of media. For obvious reasons, our obsession with news is only recent. There is good reason to believe that, at least in the past, we recognised the importance of cultural diversity across all media because of their ability to affect the economy—the ability to sustain a vibrant cultural sector—but also to provide people with the information and entertainment they deserve.

Baroness Deech: Does plurality necessarily equal diversity? Is there not a risk that if you forcibly bring more people in or push more people out they will all just go to the lowest common denominator? Just because you have several different organisations providing something you can never force the public to be able to access, for example, right-wing plays, anti-Green viewpoints or whatever.

Mr Goodall: But I think on balance a greater diversity will tend to need a greater range and greater scope for the innovators to get access to their market. Many of us in this room may not like much of the stuff that is now sold as entertainment, but the process by which those creatives get to their market is incredibly important to the cultural strength of the country. No, plurality in itself does not bring diversity, but I suspect it is better for diversity than just having one or two providers.

Baroness Bakewell: Do you include the film industry in—

Mr Goodall: Yes, absolutely.

Q112 The Chairman: Some forms of communication get material to the market much more easily than others because, in the world of the web, everything is out there if only you find it, is it not? Therefore, in terms of the plurality, at one level at least, stuff can be got hold of in a way that it never could have been.

Mr Goodall: With respect, I still think the newspapers in this country have pretty much as much influence over the news agenda as they did even in the 1920s.

The Chairman: Are we now talking about the news agenda?

Mr Goodall: I misunderstood you. I thought you were talking about the fact that the internet allows news to get to people—

The Chairman: No, I was really talking about opinion. In terms of opinion, you can find without looking very hard.
Mr Goodall: Those two things are very difficult to disentangle.

The Chairman: Yes. But I was just throwing the question out without knowing what the answer was. Anyway, that is fine.

Dr Hardy: I just want to link those three comments and questions. I think at the heart of concern is concentrations of supply. The media still have an ability to concentrate communication resources. I think we have realised that after the 1990s promised digital expansion, we live in quite a complex environment where there are still concentrations, some in old media like newspapers and television, some in emergent areas. That is at the heart of the issue. So, it is a matter of ensuring that plurality safeguards as much diversity of access and supply as is needed for a rich culture and democracy.

Baroness Fookes: Would you regard it as a worry that newspapers can now produce their stuff online? It is still the same product, is it not, but on a different platform?

Dr Hardy: I do not think it is a worry, but I think that one of the drivers in our policy is to try to think it through and ask: overall, what is the kind of regulatory approach for 21st century media? If certain models such as full licensing, as we have had in broadcasting, are going to become less available, should we not have as a principle that large organisations supplying communications services meet some public-facing obligations and come up with mechanisms to deliver that? That will be the way in which public interest can be sustained in 21st century media.

Q113 The Chairman: Is there not also a problem that the way that people consume what we call “media” is very different according to the generation they are in? Those in their teens and early 20s—if one is to believe what one hears—hardly look at newspapers in the way that our generation does, so is it possible to produce blanket generalised rules? Perhaps media power has already undermined the diversity of content across the whole media market; some people might say it has happened already.

Mr Goodall: We live in a more diverse media ecology than we did 20 years ago, and we live in probably one of the most plural media ecologies in the world. Broadly speaking, that is absolutely terrific and the internet has shaded that of course. Media consumption patterns are different. It is unclear whether those who do not watch much television or read books will end up, as they get older, switching to the habits of their elders. I suspect the change is forever. That is one of the reasons why we feel that trying to produce a plurality law that covers the whole of media has more logic to it than focusing on individual elements.

Dr Hardy: As someone who has the privilege of teaching young people, can I say I think we need to be very careful about the view that media plurality is just a concern—as someone said in an earlier hearing—as someone said in an earlier hearing—of the over-45s. I think that misrecognises the extent to which young people, who do feel digitalisation is their environment and their media, are concerned with the issues raised, whether that is privacy, control, big data. That connects to what we are discussing here.

The Chairman: When I raised the point, I was not trying to say that they did not have a concern. I was simply saying that if people’s consumption of media, according to generation, is so very different, and their perspectives on it are so very different, it makes framing rules that have a quasi-universal application that much more difficult.

Dr Hardy: Can I make one other point? We believe that we should address differences in the cultural industries partly because book publishing does have bottlenecks, control of retail, but the book industry still functions on the basis of a plethora of content creators
with various degrees of access to book publishing outlets. The point we are discussing here is that some other parts of the market—television and its transition from broadcasting to beyond, newspapers, and so on—are still very much more concentrated on control, and there are real concerns that trying to generate those conditions online are causing problems because it is not enough to do away with paper and have distribution. The costs of producing investigative journalism are proving very high. If an organisation like the *Guardian*, with massive resources to migrate from old media to new, is struggling to do it, there are real concerns about how we create digital diversity in news and content creation online.

**Q114 Lord Razzall:** Could you each expand a bit on how, in practice, the interventions might work with the schemes you are proposing? In particular, what impact they would have for the non-news and current affairs content of a mixed supplier.

**Dr Hardy:** As I say, we believe that an entity with 15% share in the designated market should be subject to the public interest test. The kind of obligations range from what you could call light to strong. At the light end, we think they should include compliance with things like codes of conduct agreed across an industry. They should also include some commitment to basic working conditions and pay. I think that is an important issue across the creative industries. A little bit higher up the scale we think they would take the form akin to undertakings in lieu of a reference. In other words, more agreements at the level of the firm to open up access to other suppliers, to independent providers and so on. At the strong end of the market, we think there needs to be divestment and change of ownership.

In the case of news, for instance—and I am thinking here particularly of concentrations at a local or regional level—a private firm that has significant power should open up to a greater range of voices and providers from the community to make a channel for young creative entrepreneurs to access their work. If it is a more news-based organisation, we should ensure that voices in civil society can have greater access to that media. That is a way of delivering greater diversity. So we see a range of measures: some a basic adherence to common rules and standards, and then, as firms are slightly higher up in terms of share, more on the level of undertakings. I guess the key point there is the degree of flexibility. All of these measures have to trade off viability with ensuring public interest standards. We think some flexibility there about what measures are used is the right approach.

**Lord Razzall:** If I could ask Enders: you obviously have a much wider definition of the plurality issue here, but do you regard everything as like for like? In other words, is £1 of revenue from video games equivalent to £1 gained from news and current affairs, or do you take the view—

**Mr Goodall:** In terms of ability to dominate a market and act as the gatekeeper, approximately, yes. I am not suggesting that news and current affairs are necessarily like for like the same as a video game. Looking at the media market as a whole, the ability to influence the development of that market is very largely driven by the amount of profit you make. That is why we have focused on that.

If I may just briefly differ from Dr Hardy, I think what he has proposed ends up being too complicated and its regulation extremely difficult to administer. In a perfect world, it might be the right way to go. I fear it would impose strains upon any regulator that was asked to administer it, and it would prove impossible to deal with. We have gone for a relatively simple, extremely arbitrary rule—and I use that word carefully because to me that is a good thing—because it is then very much easier for regulators to maintain control and to make sure that the rules are well understood by every participant.
The Chairman: Just on the point that in a sense the arbitrariness covers both the obvious things and the fact that video games are in books and so on, do you envisage the definition of media changing?

Mr Goodall: We struggled to come up with a definition. We wrote that long paragraph in the paper two years ago. The important point was trying to work out how to define what a gatekeeper was in the media industry. I am not certain we have it right, and it needs a lot of work before we would ever be able to legislate on it. But it seems to us to be moving in the right direction, and we think it is possible to make a definition of what is media and what is not.

The Chairman: You start from the definition you have in your paper as being a good starting point to find it?

Mr Goodall: Yes. I am sorry it is very clumsy but—

The Chairman: It is a very helpful response, I now see that you are not saying, "This is the solution", you are merely saying, "This is the way that you ought to look at it, in order to get to a state of affairs that probably would be sufficiently subtle and sophisticated to meet the case".

Mr Goodall: But also, the regulator and the companies that it regulates—and let us assume it is Ofcom—sees a clear white line over which no company can tread. It reduces the scope for the kinds of regulatory gamesmanship that has so disrupted the working of the communications markets in this country. The very biggest operators in the media markets in this country are able to outgun Ofcom, every single day of the year, by spending vast sums of money challenging everything Ofcom does. I think it has become very difficult, even for a regulator as genuinely competent as Ofcom, to put controls over the largest media companies in this country. In our view, the best way of stopping that is having a line that is so clear that not even a competition law judge can see ambiguity in it. I tell you, that is a very difficult thing to do.

Baroness Fookes: If it is that clear, could it not also have drawbacks?

Mr Goodall: Yes, any arbitrary white line will have drawbacks. However, in my experience working as a competition commissioner, industries like white lines because it means that they know where they are. There is no regulatory uncertainty. One of the worst things that any company could face—and I looked at this extensively in supermarket retailing—is an uncertainty as to what they can and cannot do. When we were looking at supermarket retailing, around the time of the consolidation 10 years ago, we were very clear that what we had to put in place, in the Competition Commission, were rules that enable Tesco and the others to know when they could buy a supermarket and when they could not. Broadly speaking, that has been entirely successful, with the exception of a Tesco’s store in Slough that has been the subject of continuous dispute ever since 2003.

Baroness Fookes: But what if a company grows organically and suddenly goes over the magic 15%?

Mr Goodall: If we are to maintain plurality, we have to cap success. That is my argument. I can see that it is a weak argument in some sense. However, I absolutely believe that if we think plurality and diversity are important, we have to stop one dog in the industry becoming too powerful.

Baroness Fookes: Even if they have then to sell something that is perfectly good.

Mr Goodall: They might have to sell it, yes, absolutely.
Lord Razzall: Under competition law, if they were in a dominant position they would have to sell, would they not? It is a similar principle.

Baroness Fookes: Yes.

Dr Hardy: I think the public interest considerations are simply richer than those for the supermarkets. The media public interest concerns are richer, more varied and deeper than those applying to supermarkets, great as those already are. So we believe the process should include concerns about editorial autonomy, safeguarding news production, there should be a fit-and-proper-person test applied once firms reach 15%.

On the question of complexity, we believe clearly that there needs to be legislation because there needs to be the authority of Parliament and we need to minimise—I am sure we would all agree—a legal to-ing and fro-ing through the courts. It is really crucial we avoid that and we are very committed to doing so, but I think statements in legislation that set out the relevant markets and the relevant considerations—

The Chairman: Can you finish the question because when we close off we will have just a brief moment before we come back? I do apologise for this.

Dr Hardy: Not at all. Thank you. So in the jargon, it is important to have some hard law and some soft law. We believe that is very important and it is a strong answer to the concerns about predictability and market certainty. I think that in 2004 the DTI produced an 50-page document explaining how the very short public interest test would work and would be interpreted. That is very important. It gives guidance to market actors and market players.

The Chairman: I am sorry, but can you just speak through the Division Bells, just to finish?

Dr Hardy: Yes. That is the approach that we believe should be adopted, and I think the third key thing to emphasise is we believe it will be evolutionary. This is crucial for all players, including civil society, and it needs to be backed to evolve. There needs to be the right degree of caution for all market players but, over time, we believe that the public interest test is the best platform to address these concerns.

The Chairman: We will adjourn at this point. We shall come back having voted and then we can continue. I am sorry to break up when you are in full flow.

Sitting suspended for a Division in the House.

Q116 Baroness Deech: I believe that the two of you have slightly differing views on whether your scheme will take account of the BBC, in particular, and digital intermediaries. In particular, I wonder how you would handle the BBC in plurality, bearing in mind that it has a duty to be impartial and that in production the independent companies are already guaranteed a certain share, as far as I recall. I think it was 40%. Would you or would you not include the BBC?

Mr Goodall: I think in any discussion of plurality the BBC has to be included. If we want diversity, if we believe that is important, we cannot have one company dominating, however good and noble it may be. Our definition of plurality is based on revenue and includes a much wider industry, but I can see that it is very important to generate plurality in news. The BBC has a 50%-plus share of news consumption in the UK. To me, as a citizen, that is worryingly large, however well I think the BBC handles that responsibility. When we are looking at plurality in news and current affairs, we need to think about whether even an impartial, large corporation should have quite the share it does.
Impartiality is good but it is not the same as setting the agenda. As I am sure this Committee has discussed extensively that the influence of the news provider is largely on setting the agenda and not on whether it is partial. To me, the BBC’s very large share of total news consumption in the UK has elements that are very worrying.

**Baroness Deech:** Can I say that people choose to watch the BBC, and I do not know how you can artificially reduce it. In fact, because it is—I was about to say publicly funded, technically, it is not—licence-fee payers’ money, the BBC is under some pressure always to show how many people use it. So you have a bit of a conundrum there.

**Mr Goodall:** Yes. But personally I think it would be better if there were two competing sources of news inside the BBC. Any organisation, however devoted to the public interest, however noble it is, runs the risk of an intellectual rigidity, and acceptance of norms, which is dangerous in a democracy. As the BBC’s share of news creeps ever upwards—and it probably will, there is nothing going to stop it as far as I can see—the risk of the BBC view becoming the dominant, indeed, the only voice that is heard, in news and current affairs, seems to me to have risks.

**Baroness Deech:** It ought not to if it is impartial.

**Mr Goodall:** Impartiality is one thing, but the BBC still chooses to cover some things and not others. Any news provider does that. That is how you influence the news. It is not by being impartial but by saying, “This is important. This is not important”.

**Baroness Deech:** Is there a circular attitude, in that if you walked around a television studio, you would see them all studying the newspapers in the morning to see what the agenda is and then, no doubt, the newspapers have a look at television and decide what their agenda is? They influence each other in a closed circle.

**Mr Goodall:** Absolutely. Certain things get covered and certain things do not. In this country over the last couple of years we have had remarkably poor coverage of the Government’s changes to social security and the Government’s changes to the NHS. I think that is partly because the BBC has chosen not to be very interested in those topics because they are too politically contentious. Sorry, sir, I am moving well off the topic here, but it does seem to me to be—

Q117 **The Chairman:** No, you are speaking precisely about the kind of things we want to hear your views on.

**Lord Razzall:** But I would dispute your view about the NHS. You cannot turn on the “Today” programme without listening to about half an hour on the contents of people’s bowels. I agree your general point, you only have to look at Al Jazeera news and compare that with the choice of stories you can watch in the UK with what the BBC shows, which completely proves your point.

**Mr Goodall:** Yes, and people could choose to watch Al Jazeera. It does have much more foreign coverage. It comes from a completely different perspective, and, I have to say, having watched it a reasonable amount, I think its impartiality is unquestioned. But it is choosing to focus on very different things from the BBC news channel.

**Baroness Bakewell:** I take your point about the need for more diversity and plurality. I am with you on many of those points, but if you simply fragment everything there is a danger that you will end up with a lot of fragmented little institutions second-guessing each other and ending up very often with a lot more of the same. So there is a danger in too many people vying for little segments of the market, is there not?
Mr Goodall: Yes, indeed, but I still think you have more protection against intellectual rigidity and the standard view.

Baroness Bakewell: Then you will lose the audience. You will lose the general sense that the audience have of there being set places for where they can look for certain things. If you have lots of little companies doing lots of drama and lots of people doing children’s programmes, the thing will be simply like the MET is now—it will not be a broadcasting landscape, it will be too multifarious.

Mr Goodall: Too much diversity would be—

Baroness Bakewell: Yes. Depending where you are setting the cap, I am suggesting there might be a risk of that simply because everyone will have a go at the game.

Mr Goodall: Yes, but our 15% cap for the whole of the media market still leaves you with £6 billion or £7 billion-worth of potential revenue. You have the authority and the size to do things properly even at the top end of that range.

Earl of Selborne: Taking the media as a whole, the BBC does not meet your 15% cap, does it not?

Mr Goodall: The BBC is nowhere near it at the moment—

Earl of Selborne: Some 12%, do you think?

Mr Goodall: —and it is falling.

Baroness Deech: I suspect that while we in this room think these circles are very much influenced by “BBC News” and so on, the younger generation is not watching so much and is getting its news elsewhere, and so there is a disconnect.

Mr Goodall: But when Ofcom has measured the consumption of news, including these unconventional sources, it has found that the BBC is still the most important source of news, even for people in the younger generation. There is no alternative that has yet grown up that has the resources to do the sort of work the BBC does.

Dr Hardy: If I may, the BBC is an organisation established and governed to deliver pluralism. We would argue strongly that the internal pluralism of a truly independent news service is a vital one to retain. Therefore, we would be very worried about any erosion of that service and we believe, as a principle, that the BBC should not be used in an argument to reduce plurality elsewhere in the market. The purpose of a public interest test is to safeguard and extend plurality.

We therefore believe that the BBC should absolutely be included in the market analysis—that is absolutely right—but we believe that the mechanism to deal with the BBC’s market presence and any problems that arise from that should be handled elsewhere in the governance of the BBC and not through a public interest test. So the market thresholds that should apply to other market actors should not include the BBC.

Q118 Lord Clement-Jones: At the risk of retracing our steps somewhat, and obviously we have talked about various aspects of the differences between you in terms of what you want to take into account, I wonder if you could each explain why you favour the measures you do for assessing plurality. The Enders approach is a total market revenue and the CPBF is, of course, a broader set of metrics. If I could put it first to you, Chris, last week, for instance, Professor Collins suggested to us that a problem with a revenue cap is that a rational response of a player breaching the threshold is to reduce prices, which may well extend their influence. That is one, perhaps unintended, consequence of taking that
approach. Do you agree? Do you see that there are issues with taking a total revenue approach?

**Mr Goodall:** I can see many issues with taking the total revenue approach, but I think Professor Collins’ case is a weak one. If you are an entity that is coming close to that cap, you might decide to divest something at a good price. The last thing you are going to do is to deliberately reduce your profitability. That is simply not the way companies work.

**Lord Clement-Jones:** I want to ask about the total revenue across the piece that you do, in terms of the total sector. That is obviously one of the areas, in particular, that I think some of us would question, taking video games and so on into account. How flexible are you about whether you should take all those sectors into account?

**Mr Goodall:** We wanted this to be internally logically consistent because, without it, it is never going to get the intellectual acceptability. So that is why we came up with the definition of what a media company was.

As I said in response to an earlier question, I am not absolutely certain that we have it right. It may be that video games should be in it. But what we are looking for is some sort of consistent definition of the media industries and the participants in it, which everybody can recognise, both in the industry and the citizens who benefit from the activities in that industry.

**Lord Clement-Jones:** You would defend publishing being brought within that and so on?

**Mr Goodall:** Yes, absolutely. I am personally reasonably happy with the list of industries, however disparate they are in that. I think in each of those major segments that we looked at, including video games, there are people who operate across that segment and at least another one. In other words, companies do spread across media and there is evidence that they are continuing to do so to a greater extent. Therefore, it seems logical to us that we should try to aim for a definition—I stress that our definition is not necessarily perfect—that encompasses the whole of the industry, but it also makes it 10 times easier to regulate if you know exactly what the rules are.

**Lord Clement-Jones:** Lady Fookes used the word “platform”. Do you think that strengthens your case in terms of convergence and so on? Is that part of the argument or is that irrelevant?

**Mr Goodall:** When I use the word “platform” I sometimes mean something through which a communication flows, a common carrier to use the language of a generation ago. So BT, in its role as the stringer of fibre optic cable down the street, is not a media company. In the role of selling TV sports channels, it very definitely is a media company, and we would only be interested in the second of those two activities.

**Q119 Lord Clement-Jones:** Jonathan, similarly in terms of your own approach, which is a broader set of metrics, you say that you would favour the use of a broad range of measures. Which of those quantitative and qualitative measures must be included in any assessment? Earlier on, it was slightly concerning that there was a possibility of including so many different elements as to give a high degree of uncertainty in terms of regulation, which of course then has a knock-on effect into businesses ability to plan and, indeed, the regulator’s own ability to regulate. Are there some that you would clearly exclude? Are you saying that there is any number of metrics that you can include and that you would not like to discount any at this stage?
Dr Hardy: I think the fundamentals are to try to grasp both market power and media power issues. The key measure we would look for is share of supply in the market—that is, the nature of ownership; the number of owners and supply combined with audience measurements; and the volume of the market supplied and served by those providers. Those are the key ones.

When we get to judgments of impact and influence, we are clearly getting into a more qualitative area. That can inform policy and it can build legitimacy. I would say as an aside that my colleagues who are media and cultural scholars can contribute here alongside lawyers and economists. I think that will be valuable.

But to answer your question, I agree that such material is more speculative and what we should start with is clearer assessments of the number of providers and the audience share in designated markets. News is the most critical across all platforms and on each key platform—newspapers, radio, television and online—but we do believe there are other key markets that should be identified, such as television services.

I should add one other key point. We believe that this process should have rigorous market analysis—it must meet clarity and legitimacy—but we do not believe that is the only approach or concern. We think that ultimately these are democratic matters, and they need to have a regulator influenced by democratic input to make judgments. That is the right way to proceed. There is a qualitative judgment at the end about where the public interest lies in communication. I think that needs to be supported by market analysis but not solely defined by market analysis.

Q120 Lord Clement-Jones: What worries me slightly about that is how long the regulator’s thumb is. Are you going to build on precedent in those circumstances to inform the regulator, or is that a possibility? You say that a review could be triggered at the discretion of either of the Secretary of State or Ofcom. Are you saying this is terra incognita each time and, therefore, it depends on the state of public opinion or your new market analysis that might be carried out? There is a high degree of uncertainty in those circumstances, is there not?

Dr Hardy: I think precedent, although it would not apply in a strictly legal sense, is an important concept. Yes, we would favour an approach that is evolutionary, which sets out parameters, which is transparent, which makes those judgments principally by Ofcom. Incidentally, I like the idea of a specialist plurality committee, but we think that should be folded into Ofcom and that Ofcom is accountable to Parliament and, in particular, to Select Committees of the House of Commons and House of Lords. So you have a process in which the regulator makes judgments in a transparent and accountable way, in a manner that is overseen by Parliament, and, crucially, in which there is democratic input. One of the key things we argue, and it is significantly neglected in almost every contribution to the debate so far—and in fact dismissed by Ofcom—is the role of the public. We think, fundamentally, public interest concerns in communication should be reflective of democratic concerns. We have argued that there should be a mechanism whereby the public can indicate significant public concern over an issue, and that that in itself can then trigger a review.

Clearly there are concerns about how a mechanism like that might work, but we believe that, developed sensibly as a way of deciding what are markers of properly diverse civil society concerns, it is a mechanism that could work. It is indicative of the way in which we think the whole process should be informed by rigorous competition-type analysis but cannot be entirely contained within that. What it does need to do—to answer your question—is to be transparent and precedent-based in the decisions that it makes.
Lord Clement-Jones: Is it not even more uncertain when you have two bodies—you have the Secretary of State or Ofcom—either of which could trigger a review?

Dr Hardy: To be very clear, we think the Secretary of State should initiate a public interest test because that is a source of legitimacy in a democracy for a Minister to do that. After that point, they must be wholly removed from the process. We cannot have, please, any repeat of the suspicions that arose from the News Corp, BSkyB merger. Really deep concerns arose from that process.

It seems to us right that a Minister—that Ofcom—and also that the public could initiate in an area where there is significant public concern. We believe that might work particularly well where there are local issues of media dominance and concentration. We are moving beyond a national frame or a southern England frame, to one where I think if a community feels there is a problem, because someone is owning a significant share of television services, radio, online, newspapers, they should be able to use appropriate mechanisms to say, “This should be investigated”.

Lord Clement-Jones: Do we not run the risk of what I think you in your evidence called an “Astroturf” response to this?

Dr Hardy: Yes, I think that is very important. All of us know the realities of the situation, which is that money buys a huge amount of influence over regulatory processes in ways I am sure we would all agree do not ultimately serve the public interest, whether that is the ability to go to the courts to have decisions reviewed or whatever. Of course, in the real world, corporate players will look for opportunities to generate campaigns on behalf of their interests, but I believe we can find clear ways to address that. I come from a campaigning tradition, but I do not believe a measure of significant public concern is an online campaign getting all its members to send e-petitions. I think it is significant, it does reflect serious views but on its own that should not be a suitable measure of significant public concern. I think we would want to see a plurality. What are the charities and civil society organisations saying about whether there is a problem? If there is enough evidence of diverse concern, then it would be a very welcome innovation into policy-making to have that built into the new system.

Q121 Lord Skelmersdale: I suppose it is inevitable that this afternoon the magic figure of 15% has been raised in virtually every question. I am afraid I am going to have another go at it because it has been put to us several times, in both written and, indeed, in oral evidence, that a total market cap of 15% could have pretty dire consequences. In other words, CPBF produced some 2010 data in their its evidence and stated that a 15% cross-sector revenue cap would not even be crossed if a merger took place between all of the following: all non-News International national newspapers, all of the UK’s regional newspapers, and 50% of radio services. From that one might well decide that your 15% was extremely generous to the operating companies, the “platforms” or whatever you want to call them.

Dr Hardy: I do not recognise that in the policies of the campaign because we have identified designated markets that should be the trigger. So in newspapers, for example, News International, Trinity Mirror, would both exceed the 15% threshold.

Lord Skelmersdale: Yes. But the chairman is the chairman of a vast newspaper group of local newspapers, and that group, plus 50% of radio services, plus national newspapers not run by News International, could be achieved at less than 15%, could they not?

Mr Goodall: I am sure that is right.
The Chairman: It was Enders’ figures, was it not?

Lord Skelmersdale: Yes, it was Enders’ figures.

Mr Goodall: That sounds familiar. That is absolutely true. We are not arguing that there should not be a cap or some form of regulation on news plurality, because those institutions were all providers of news, if I understood you correctly.

Lord Skelmersdale: Well, they need not be.

Mr Goodall: We made no comment about that. There may well be arguments for controlling the share of any one provider of news. But if you do that, to me logically, you run across the problem of: why are you allowing the BBC to be so dominant?

Dr Hardy: I understand the question now, which was in reference to Enders’ total market. All I would say is that we share that concern. For all its good intentions, it would be too liberalising to set a total market cap of 15% because it would not address important concentrations in sub-markets.

Mr Goodall: I should stress that we have never said that there was no case against regulation of diversity of news provision, but, because that is in one single market, it is more appropriate to use conventional competition processes, competition law, to stop the integration of those companies.

Lord Skelmersdale: Yes, but is not conventional competition law 20%?

Mr Goodall: There is absolute; there is no figure. At 20% you can assume there might be a problem but there is no arbitrary limit in competition law.

Lord Skelmersdale: Is there not? All right.

Mr Goodall: Not in the UK.

Q122 Earl of Selborne: Going over from assessment of plurality and 15% and the like to remedies, my question must be to Jonathan Hardy rather than to Chris, because I understand that Enders do not think much of behavioural remedies. You have some distrust. CPBF has indeed suggested that public interest obligations, as you call them, might have a role to play. Perhaps you could elaborate further as to how you think they might be effective.

Dr Hardy: As I said earlier, I think there needs to be legislation, guidance and different tiers of obligation. At the base level, there should be compliance with codes governing the media service or industry. In many cases those will be industry-generated codes. They will be voluntary. In some cases they will link to existing statutory regulation, as in broadcasting. So there should be adherence to codes of conduct. We believe there are important measures, particularly in news, for protecting editorial independence: so safeguarding editors and journalists; broader protection for working conditions. Higher up—in other words, for larger players with more resource and more market share—we think there are behavioural remedies which can include requirements to invest in news-gathering to share resources. We have seen schemes already for the BBC and other broadcasters to share broadcasting resources. We think that is a model that could be developed to open up pluralism. Clearly, when we are at the level of undertakings, we are moving from adhering to general standards, which can be set out quite clearly, to agreements between parties. Clearly those have to be transparent and will be arrived at through negotiation. For all of this, of course, there is the capability for divestment. So divestment could occur at 15%. We would hope in most cases that firms would agree to public interest obligations instead of facing divestment.
At the top end, we believe that private operators should not have greater control than 30% as an absolute maximum. At that point, firms would need to be reconfigured into public trusts, co-operative ventures and so on, so that a private entity stayed within a 30% threshold.

**The Chairman:** Are you not merely substituting one monopoly for another? One controller of 30% is a quasi-monopoly and you are just changing the ownership but are not changing the characteristics of having a grip on it.

**Dr Hardy:** If anything, that is where our proposals differ from some others that have argued for share dilution. We are sympathetic—that clearly can be one of the tools used—but plurality is also about types of organisation, sources of financing and control. We believe that, above 30%, there should not be a private company with that degree of reach over key markets such as news.

**Q123 Earl of Selborne:** You are talking about media organisations taking on these public interest obligations, and I suppose there must a degree of cynicism as to whether they will be as good as they were. Whose job is it going to be to ensure that they do indeed come up to scratch?

**Dr Hardy:** Ofcom. I accept the cynicism. I think it is worth noting that there has been a particularly poor track record in national newspapers. We need to be careful to not extrapolate across the entirety of the media. If we look at other areas, advertising regulation, for instance, functions pretty effectively through self-regulation. The early stages of video-on-demand, which is co-regulation between industry and Ofcom, are also arguably working well. There has historically been a problem in undertakings agreed in national newspapers. I do not think from that we should extrapolate that undertakings cannot work. Clearly there are incentives and threats. If the power to call for divestment is there, as it needs to be, then I think that is an important incentive for public interest obligations.

I would emphasise that, for us, this is also about trying to think through the appropriate level of responsiveness and flexibility for 21st century media because there are sectors of the media that are going through really deep crisis. The kind of obligations placed on those needs to be carefully thought through. We do not believe that the corporate model of news is particularly successful, going forward. It should not be used as an excuse not to intervene, but clearly those businesses are in crisis and the response, in terms of public interest obligations, needs to be carefully thought through. We believe is that it does not threaten the bottom line to have codes of conduct for editorial independence. Where it might threaten the bottom line, what we are really arguing for, is opening up to other voices, other players. We think that is the right approach to take, particularly with an entity with such a significant share as approaching 30% of the market.

**Earl of Selborne:** I am still not quite clear who is going to enforce the codes of conduct for the newspaper media. I can see that Ofcom might have a role, but clearly we are concerned at the moment about national media, or some parts of it. How are you going to sort that out?

**Dr Hardy:** Indeed. For some areas, Ofcom would continue as a statutory-type regulator. As you rightly say, we are awaiting the outcome of the Leveson process to see if we are going to have a measure of self-regulatory agreement for the newspaper industry backed up by a dab of statute. We feel our proposals are in harmony with that approach in many respects. They look to incentivise industry self-regulatory codes and adherence, rather than excessive statutory intervention. Just as Leveson pointed out, we also believe that any approach in this
Campaign for Press and Broadcasting Freedom and Enders Analysis – oral evidence (QQ 108-125)

area needs to balance and safeguard freedom of expression. For me, that does not mean simply the rights of owners and editors to claim freedom of expression for their own. It means that freedom of expression is an important consideration, and any measures that look towards improving standards of plurality need to be done in a framework that properly safeguards freedom of expression as well.

The Chairman: Before moving on, Chris Goodall, there is anything you want to say at this stage in the context of what has been said?

Mr Goodall: What Jonathan is saying sounds to me very complicated and it would be very difficult for the industry to work out what the regulator wants and vice versa. I would argue for greater simplicity and clarity in any regulatory structure put in place inside individual industries.

Q124 Lord St John of Bletso: You have almost answered the question, but I have a supplementary to Lord Selborne’s question on who should intervene in the public interest. Jonathan, you mentioned that the Secretary of State should initiate the public interest test and we have three options: either having intervention by an electorally accountable politician, or Ofcom, or a special plurality commission. Certainly, Chris, the Enders proposal would remove all need for this discretion. Clearly, Jonathan, you said that discretion should be in the hands of Ofcom. Could you both elaborate on your approaches?

Mr Goodall: Whatever you decide to propose, I hope you leave no discretion to anybody.

Lord St John of Bletso: A clear line.

Mr Goodall: Absolutely.

Dr Hardy: Our approach takes away some of the problems, for example, from the way the BSkyB inquiry was handled and the existing public interest test. It was drastically narrowed in scope. Major players in the industry said, “If this merger goes ahead, it raises a variety of issues about cross-market control” and those concerns were bracketed out. The fit-and-proper-person test was bracketed out. The approach we recommend is: clear legislation; Ofcom initiating a public interest test and identifying what criteria should apply; and access for the public to say, “We think these are matters of concern, too. We think this raises issues about editorial independence”; or, “It raises issues about the fit-and-proper-person test”.

I do not believe it need be particularly complex as it evolves. I particularly believe that in many markets the public interest test will really be a matter of saying, “Does this company, which has significant share, adhere to basic standards, codes of conduct agreed by the industry, basic rules of editorial independence?”. If it does, that is it. I do not think we are talking about complex, cumbersome investigations going on across the market. But I do think it is a clear way of saying, “If you reach 15%, here are some obligations we would expect to see you meet”.

Lord St John of Bletso: Thank you. To go back to Chris, I take your point that there should be no discretion, but earlier on in your evidence you said that the large media operators could outgun Ofcom—I think those were the words that you used—and, Jonathan, you mentioned that you thought there was scope for a specialist plurality commission that could be folded into Ofcom. Do you think that Ofcom has the right level of skill sets to ensure transparency in the whole process?

Dr Hardy: I think we would like to see Ofcom reformed, in terms of some of its obligations and, clearly, if Ofcom is going to take on this role as the major competition
inquiry body, it will need to be strengthened. But we think it is better than regulatory jeopardy by having a competition commission sitting alongside Ofcom. We have had that experience in the past with Oftel and the ITC and it has been a fairly unhappy one. I think there is some inherent complexity—that is what we have been grappling with here—because these are judgments about media influence. Ofcom is best placed to combine a market analysis with competition rigour and judgment, and these plurality judgments which go beyond simple market analysis.

Q125 The Chairman: Thank you. I see that Lord McNally is on his feet. I suspect we are about to have another vote, particularly as all the mobile phones are pinging and telling us to get ready. So I think it is the right time, if I may, is to draw the hearing to a close.

Before specifically doing that, there is a lot of detailed stuff in each of your pieces of evidence, which we are most grateful for. Is there anything, in particular, you want to draw to our attention at this point? I would like to ask Chris Goodall one point, which is: as regards digital intermediaries, how do you deal with revenues that they generate, and what sort of structural remedies—if any—are available in respect of them?

Mr Goodall: Are we talking about Google and Facebook?

The Chairman: Yes, those sorts of people. Yes, well, I think you are.

Mr Goodall: That is what I think.

Dr Hardy: Yes.

Mr Goodall: Yes. The idea would be that those companies would be subject to same cap as everybody else, because they control the passage of information and entertainment from the creator to the consumer. Were they to come up against that 15% cap, they would be required to divest part of their operation to bring them back inside that.

The Chairman: So it would be as straightforward as it sounds: the revenues they generate are from advertising.

Mr Goodall: Yes. There are going to be issues as to whether Google’s revenues are generated in France or wherever.

The Chairman: Again you have jurisdictional problems, but you could sort that out. You are talking about the UK market only, presumably. What are you doing about the stuff coming from outside the UK into the UK market?

Mr Goodall: Where there is no revenue attached to it, we would—

The Chairman: There would be advertising revenues attached to some of it perhaps.

Mr Goodall: Yes. You could say that YouTube is not UK and YouTube has advertising on it and you might have—

The Chairman: I am just asking to try to be clear what you are saying rather than making any value judgment about it.

Mr Goodall: This would be more difficult to administer than some other aspects. But let us say you were dealing with a non-UK, non-EU-based platform—call it Facebook or Google—that carries advertising. That advertising is for a product where the money is paid in Ireland, just as an example. So there are undoubtedly going to be issues about where that revenue was acquired and whether it represents media industry revenue in the UK. I believe it is not beyond the wit of a regulator to get on top of that.
The Chairman: Is it beyond the wit of a regulator to get it right?

Mr Goodall: To my mind, it is pretty clear that the revenue that Google gets from supplying advertising to people in the UK is unambiguously inside the UK media market, whatever HMRC says.

The Chairman: Thank you. That is crisp and clear. Not much equivocation, which seems to be the theme of your evidence, so thank you.

Each of you, is there anything more you would like to say in conclusion?

Dr Hardy: Only that you will hear lots of calls from market actors for certainty, but I think we should recognise the moment we are in. There is real concern across the country to address media plurality issues, and I think those calls for certainty are also calls to evade some of the issues you are grappling with on this Committee: how to address the public interest in plurality; how to include some greater democratic involvement in that. What we are arguing for is that the old world of rigid ownership caps cannot be sustained but the new world needs to ensure the public interest. I think your investigation carries great weight and legitimacy in this debate, and part of the answer here is that we need multiple sources of legitimacy to answer these questions. So I am very grateful for your deliberations.

The Chairman: Thank you. Mr Goodall: anything else?

Mr Goodall: Whatever you decide, please go for something that is extremely simple, has bright lines and is arbitrary and mechanistic, because that is the only thing that is going to be possible to implement. Revenues do matter. That is the way in which large companies influence the nature of the culture and the political process. And, please, never ever use behavioural remedies because they will end up causing everybody extreme unhappiness.

The Chairman: Thank you both very much indeed. We are grateful for you coming. We appreciate it.
Professor Martin Cave OBE (Imperial College) and Professor Richard Collins (City University London) – written evidence

1. Concerns about media pluralism are pervasive. Why? The long dominant advertiser-supported business model, which sustained print media in particular, is under threat, leading to closures and merger. And “negative” regulation (government defined ownership controls) is less and less effective as government control of entry to media markets declines (broadcasting satellites, the internet etc).

**Economic context.**

2. The period since 2005 has seen a significant change in the distribution of global advertising expenditures with “legacy” media’s share (notably print media) falling and the internet rising as shown in Table 1.

**Table 1. Compound annual growth (%) of global advertising 2005-2010 (Ofcom 2011: 21).**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>All</td>
<td>-1.0</td>
</tr>
<tr>
<td>Newspapers</td>
<td>-4.3</td>
</tr>
<tr>
<td>Magazines</td>
<td>-3.1</td>
</tr>
<tr>
<td>Television</td>
<td>5.1</td>
</tr>
<tr>
<td>Radio</td>
<td>-0.7</td>
</tr>
<tr>
<td>Cinema</td>
<td>6.4</td>
</tr>
<tr>
<td>Outdoor</td>
<td>3.4</td>
</tr>
<tr>
<td>Internet</td>
<td>24.5</td>
</tr>
</tbody>
</table>

Countries differ in the speed at which internet advertising is replacing advertising in traditional media, however the UK leads the global field in the migration of advertising to the internet – see Figure 1 below.

**Contact:** Richard.Collins.2@city.ac.uk This evidence is summarised from the authors’ article: Media Pluralism and the Overlapping Instruments Needed to Achieve it. *Telecommunications Policy.* 37, 311-320.

The views expressed are those of the authors alone.
3. A further Ofcom figure (figure 2 below) provides a possible explanation. It shows the strong apparent correlation between internet advertising share, broadband penetration and the number of internet users.

Figure 1. Internet share of total advertising expenditure

![Graph showing internet share of total advertising expenditure from 2003 to 2009](source: Ofcom 2010: 214)

3. A further Ofcom figure (figure 2 below) provides a possible explanation. It shows the strong apparent correlation between internet advertising share, broadband penetration and the number of internet users.

Figure 2. Internet advertising share, active internet users, and broadband penetration in the UK, 2005-2011.

![Graph showing internet advertising share, active internet users, and broadband penetration](source: Ofcom 2010: 214)

4. In the period covered by the data in figures 1 and 2 above, the UK has seen significant numbers of newspaper closures and mergers\(^\text{113}\), notably in the local/regional sector. Moreover, the economic health of the national press is shaky:

\(^{113}\) See, for example, the table showing declining circulations of twenty representative non-national UK newspapers over twenty years compiled by Peter Robins in August 2010 at [http://www.guardian.co.uk/media/organgrinder/2010/aug/25/long-fall-local-press](http://www.guardian.co.uk/media/organgrinder/2010/aug/25/long-fall-local-press)
circulations have fallen, papers have reduced pagination (eg the Financial Times),
closed free access to websites (The Times) raised prices (the Financial Times doubled
its price between 2007 and 2010 and further increased it in 2012) and closed (The
News of the World). In television Channel 3 (ITV) has foreshadowed closure of its
regional news services.

5. The decline in advertising spend accruing to “legacy” media has several important
consequences: public access to affordable content (most importantly, news) is likely
to decline; the quality of content is likely to decline and the plurality of sources of
content (most importantly, of news) may decline – not least as firms merge in order
to reduce costs in response to diminishing revenues and/or as control of bottleneck
essential facilities (subscription management systems, encryption and API protocols,
transmission and distribution platforms etc) in electronic communications services
endows a few firms with sufficient market power to exercise dominance. This
contributes to pervasive disquiet about the future of a robust and pluralistic “fourth
estate” – a disquiet for which media concentration provides a convenient lightening
rod and one particularly attractive when, in the UK, the largest commercial media
player, putatively exemplifying the baleful consequences of concentration, is the
Rupert Murdoch/News Corporation/BSkyB nexus of media interests.

6. However, growing concentration of ownership seems to be a consequence of
structural changes in the sector – falling revenues leading to closures and mergers –
rather than to behaviour which could be inhibited by regulation. Moreover,
ownership regulation has produced perverse outcomes where media outlets have
been forced to close rather than to continue under new ownership (albeit more
concentrated ownership): a striking case in point arose following the merger of
EMAP and Scottish Radio Holdings.114

How to measure media pluralism?

7. Any assessment or attempt to assign numerical values to pluralism must start with
decisions about the scope of the content the plurality of which is to be assessed, the
degree of granularity in specifying the relevant audiences, the universe of media
capable of contributing to a plural supply, and the basic source of evidence or data.

8. In respect of the scope of the measures, there is a considerable range of possible
options. For example, if the fundamental question concerned plurality in matters
concerning the underlying values of society, the coverage, and any process of
evidence-gathering, would necessarily be wide. If, however, the issue at stake was
political impact, then a restricted focus on the supply of news and current affairs
would be appropriate (though this would not necessarily imply that fiction is free
from political implications). Further, consideration would need to be given to the
geographical scope of the enquiry: in the UK case the statute refers to ‘every
different audience in the United Kingdom or in a particular area of locality of the
United Kingdom’ (Ofcom 2010a: 4).

114 The Smash Hits service in Aberdeen, Ayr and Dundee had to close so that the post-merger service
offer conformed to what were then Ofcom’s concentration of ownership regulatory requirements.
See Guardian 2006.
9. Which media would be included? If the focus were political, then those supplying news and current affairs would naturally be included. However, the principal platforms – newspapers, television and on-line – provide content of all sorts. In principle, non-news and current affairs access should be excluded. Online included? The case for including on-line sources of news and current affairs gets stronger day by day. This immediately raises the issue of weighting. Some platforms, for example those using video, may provide a preferred service with a greater impact. Is an hour of radio listening equivalent to an hour of TV watching and to the purchase of a newspaper? Any decisions about weighting will depend on objective data, such as levels of consumption/circulation, but also on matters which can be determined with less certainty – is the impact of broadcasting greater than that of print; does the “pull” nature of online media amplify/discount their effect relative to “push” media such as broadcasting?

10. The final issue concerns the source of the basic data. Where there is strong interest in rates of change, this will be determined to a large extent by data coverage in early periods (and the periodisation chosen may significantly influence findings). It is likely that any such inquiry will include the collection of data on both reach (proportion of audience using a service at least once in a time period) and consumption (in hours per week or in proportion of audience self-reporting as regular users) and further, where one platform subcontracts its provision to another, a decision has to be made about whether to allocate the audience to the wholesale provider or to the retailer (or to split it).

11. The search for measures (or indicators) of plurality can be, and has been, likened to the search in competition law and policy for measures or indicators of market power. It took several decades to generate the consensus that operates today – that data, including share data, have a role to play in making an assessment of market power, but there is no ‘silver bullet,’ in the form of a single piece of evidence, which can take the relevant competition agency immediately to a precise evaluation of market power. It is also fundamental to market power appraisals in competition law that they are made with reference to a defined market. Although analytical procedures are available to determine the relevant market, in most cases it relies on the decision-makers’ judgement, just as a decision as to whether to include on-line sources of news and current affairs does in the case under consideration here.

12. In European competition law, a key threshold in the level of market power is the transition to ‘dominance,’ defined as the ‘a position of economic strength ... affording [the firm] the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers.’ Leaving aside the question of whether this definition might be adapted to describe a media universe without plurality, we note that in competition law and policy, a well-known single index of market concentration is the Hirschman-Herfindahl index or HHI (which is used by the FCC in its assessments of media concentration). It provides a neat and economical way of assessing concentration and is calculated by expressing the market

---

115 This is not to imply that drama, documentaries and other programming genres are unimportant only that issues are both more acute in news and analytically more manageable when focused on the single genre of news. For an excellent discussion of the issues in respect of news see Ofcom 2007.

shares of all participants as percentages, squaring the individual percentages and adding up the result. It can range between 10,000 in the case of a 100% monopoly and 0 where there are a very large number of firms each with a vanishingly small market share. The application of the squaring rule has the effect of giving high weight to large firms. Thus a firm with a 20% share will add 400 points to the index, which is twice the combined contribution of 200 points of two firms each with a share of 10%.

13. The principal use of the HHI in competition law is as one characterisation of market structure and as a filter to identify merger proposals where their impact on concentration is insufficient to warrant further examination.

14. We suggest that it might be desirable to ‘test’ the HHI formula (or something like it) as a preliminary indicator of the level of plurality and of how it changes over time, with a view to seeing whether it accords with other qualitative measures of (changes in) plurality. If there were a convergence of view, such a summary measure might be used to track changes over time, or even to develop a sense of where (roughly speaking) the risk of crossing the boundary between acceptable and unacceptable levels of plurality might justify further investigation.

15. By way of illustration, applying the HHI formula to the Ofcom consumption data suggests the following contribution to the index of each media firm:

Table 2. UK media consumption share by firm expressed in HHI form.

<table>
<thead>
<tr>
<th>Firm</th>
<th>HHI</th>
</tr>
</thead>
<tbody>
<tr>
<td>BBC</td>
<td>1369</td>
</tr>
<tr>
<td>News Corporation</td>
<td>144</td>
</tr>
<tr>
<td>ITN</td>
<td>144</td>
</tr>
<tr>
<td>Sky</td>
<td>100</td>
</tr>
<tr>
<td>DMGT</td>
<td>25</td>
</tr>
<tr>
<td>Trinity Mirror</td>
<td>16</td>
</tr>
<tr>
<td>Northern &amp; Shell</td>
<td>9</td>
</tr>
<tr>
<td>Guardian</td>
<td>9</td>
</tr>
<tr>
<td>Telegraph</td>
<td>4</td>
</tr>
<tr>
<td>Others (estimate)</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1830</td>
</tr>
</tbody>
</table>

On this basis, a hypothetical merger of News Corporation and Sky would increase the index by 240. However, it is notable that the resulting firm would still account for a share considerably lower than that of the BBC.

**Online substitutes?**

---

117 It can be shown that in some conditions the mark-up over costs which emerges in the market is proportional to the HHI index.

118 In competition law proceedings, the level of the HHI index at which market concentration concerns become more acute is around the 2000 mark.

119 (22 x 22) – (12 x12+10 x10). Co-incidentally, such a change in the HHI based on existing market shares would render a merger subject to further investigation by the USA Department of Justice. If alternatively, Sky left the market, and half of its audience went to the BBC, the index would increase by 395, simply because the BBC had such a large share to begin with.
16. The decline of legacy media has been accompanied by a collapse of entry barriers and the blossoming of a host of specialist internet based media: websites; e-zines; Web 2.0 collaborations manifesting the flourishing of what is variously been called “citizen”, “distributed” or “networked” (Beckett 2008) journalism or a “fifth estate”. And in the USA (and Australia), “crowd financed” or “community funded” sites, such as www.spot.us, have developed through which readers/supporters can contribute to the financing of enquiries, resulting in publication, proposed by journalists. However, despite the growth of news and comment internet sites/media and a host of blogs such sites tend to have a mayfly life.

17. Despite the promise of “fifth estate” journalism and the contributions to pluralism made by new web based entrants to the UK media there are solid grounds for supposing that the basis on which authoritative, affordable and pluralistic public media have been available for around the last hundred years is falling away. In television, first resources and then consumption are shifting way from free to air to subscription (pay wall protected) television; in radio no viable subscription model has been developed but, in the UK at least, advertising revenues are falling slowly though consumption is shifting faster to licence fee funded services; and in the press sector, advertising funded newspapers are (with the qualified exception of free sheets) in decline with no viable pay wall or other alternative emerging.

18. The change in the advertising market seems, if the trends identified above are sustained, to presage a significant qualitative change in the general mass media environment: for legacy media, threats seem most salient; for new media, opportunities. But in both legacy and new media these changes point to considerable uncertainty about how the core social and political role of public media – to provide pervasive and affordable access to diverse, high quality, content – is to be sustained particularly in a context where mergers, closures and diminishing legacy media pluralism seems inevitable.

19. Are online media satisfactory substitutes for legacy media? The answer is - not yet. Despite the fact that OxIS (Dutton, Helsper and Gerber 2009: 19) found that “The Internet has become the first port of call when people look for information,” as great as is the potential of “crowd sourced” media and “webzines”, such as www.openDemocracy.net, and as impressive is the expansion of the consumption base of “legacy” media made possible by online access (enabling the UK based Guardian newspaper to aspire to the status of “the world’s leading liberal voice”), online media do not have either the salience and authority (or the resources) yet to challenge effectively legacy media, in holding to account the powerful or in acting as conduits for democratic functions.

What can be done?

20. The difficulties of objective measurement of concentration; the pressure of a changing advertising market, increasingly compromising the economic viability of “legacy” media and leading (almost) inevitably to further closures and mergers in many media markets; and the public service broadcasting elephant in the room, making regulatory action directed only towards private sector media concentration intellectually indefensible, makes recourse to traditional remedies – prohibiting
mergers, requiring dis-aggregation etc – unlikely to be effective. What alternatives exist?

21. First, a conceptual shift is needed. Focusing on prohibition of mergers and establishing a floor level for media concentration is unlikely to be effective when the economic base on which a pluralistic mass media has been established is fast eroding. Already there have been perverse outcomes arising from the implementation of “legacy” concentration regulation – such as the forced closure, as a consequence of regulatory requirements designed to inhibit concentration of ownership, of radio services following. Rather than conceiving of media pluralism as an objective to be realised by prohibiting mergers, it should be thought of as pointing towards intervention designed to facilitate and encourage entry.

22. Here Ofcom’s 2005 proposal for a Public Service Publisher (PSP) 120 deserves resurrection, in relation to the media content and structure under discussion here. Much would need to be done to develop criteria for eligibility for funding and assessment of performance but these matters are not our concern here. However, the current context is one in which extraordinary and damaging economies are being made in news gathering and provision; this is exemplified in the report, in a study (Ofcom 2011a) of the proposed merger of Kent Messenger Newspapers and Northcliffe Media, that there is only one political correspondent in the whole UK local newspaper sector. Simply ensuring that there is a satisfactory number – whatever that number is to be – of media enterprises operating in a particular market is unlikely adequately to safeguard the public interest. Hence the need to re-think matters in terms of encouraging supply rather than simply limiting concentration of ownership of a given set of activities.

23. Second, both “old style” concerns about excessive concentration and the exercise of dominance and “new style” proposals for consideration of public support, eg on PSP lines, for qualifying firms (and particularly new entrants) point towards a comprehensive policy review of established public interventions and notably public service broadcasting. Recall that the BBC’s 37% share of news consumption in the UK, when assessed by analogy with the HHI market concentration methodology, which attaches a high score to ‘large’ firms, represents 1369 in a total score of 1830, or 75% of the concentration measure. This provides grounds for allocating a further portion of the broadcasting licence fee to non-BBC media players.121

References.


121 Precedents have been established by reserving a portion of the licence fee to fund the introduction of commercial television in the 1950s (in the event funding from the BBC was not required) and more recently by funding S4C from the licence fee.


22 April 2013
Q286  The Chairman: Can I extend a warm welcome to Martin Cave? We have a potted CV that testifies to his distinction and expertise in the area we are interested in this afternoon, which is media plurality, competition and rules in that area generally, and the relationship between the two and the lines of demarcation that may exist between them. I do not think there can be many people better than you to come, so thank you very much. We are being televised so if, before you start, you could just tell us who you are then it is down on the record.

Professor Cave: I am Martin Cave. I am a visiting professor at Imperial College Business School. I am also a deputy chair of the Competition Commission but I am not appearing in the latter capacity this afternoon.

The Chairman: Thank you very much. As we know, and you know, you and your colleague Professor Collins submitted some evidence to us. We may want to touch on that in the discussion we have. It has seemed to us that on occasions, when you look at the political debate surrounding media plurality policy and competition policy, the lines of demarcation between them get a bit blurred and there is perhaps lack of clarity about understanding precisely what the reasons for the different policies might be and the processes and the institutions involved in administering them. As a starter, could you tell us why you think, looking back, this might have occurred?
Professor Cave: I ought to preface my remarks by saying one other thing. I would like to appear before you standing on the shoulders, figuratively at least, of lots of eminent jurists and economists who have studied this question and whose wisdom I am imparting to you, but in fact it turns out to be rather little investigated, so what you are hearing is, to a considerable degree, homemade rather than reliant upon the literature.

That said, we started in the UK as far as competition law is concerned, with common law prohibitions of monopoly, which go back for centuries and centuries. The most learned writer at this is William Letwin, and he describes how the common law approach to monopoly varied considerably. At the time when the King held most of the monopolies, the courts were fairly indulgent towards them. With the rise of capitalism and protestant judges and so forth, they became rather more competitive. So there was that backdrop.

As far as specific statutes are concerned, I think first out of the blocks was the United States, which passed the Sherman Act in 1890. This was a fairly tumultuous period in US history, with the trusts having taken over large amounts of industry. That period was the origin of the phrase “muckraking journalists”, like Lincoln Steffens and Upton Sinclair, who wrote extensively about the inequity of what was going on and eventually got a law passed. Then it was used very effectively by the Government, most notably in 1911. The Standard Oil Trust of New Jersey was broken up. It was split into a large number of components. It had attained a kind of stranglehold on the oil trading business.

As far as Europe is concerned, competition law only started after the Second World War. We created the Monopolies Commission in 1948 and, most notably, the Treaty of Rome contains itself two very significant articles—Article 81 and Article 82—which prohibit forms of anti-competitive conduct. Those, of course, can only be removed or changed by a treaty change, so they are part of the fundamental architecture of the European Union.

The Monopolies and Mergers Commission went to work in this country and the law was modernised in 1973 with the Fair Trading Act. The Fair Trading Act set the principle upon which decisions would be made in relation to monopolies and mergers firmly as the public interest standard. That meant, in effect, that almost anything could be considered as falling within the public interest.

I was a member of the Monopolies and Mergers Commission in the 1990s. By that time the more generalised notion of the public interest had largely gone, partly because in 1983 the then Mr and now Lord Tebbit enunciated the so-called Tebbit doctrine, which was that consideration should be given primarily to competition issues by the Monopolies Commission within the framework of the public interest standard, and so that operated. I recall we used to spend the last half day of an inquiry wondering if there were environmental consequences or effects on employment in Wales or the impoverishment of Edinburgh as a financial centre and so forth. It was really by that time basically competition. That meant that public interest considerations, other than that, were not prominent.

The Enterprise Act in 2003 formalised this and basically made the investigations focus on competition, but certain additional public interest considerations were introduced explicitly. The ones that now apply are national security, which is fairly broadly construed, media plurality and financial stability. Financial stability, the public interest carve-out, was the explanation for why Lloyds was allowed to take over HBOS at the time of the global financial crisis. There has been a small change since then in the Employment and Regulatory Reform Act, which enables references to combine both the competition and the public interest aspect.
The key feature of the public interest aspect of this is that the Competition Commission, when it receives a reference, and the other bodies, such as the Office of Fair Trading and Ofcom, are essentially making preparatory investigations prior to a decision being taken by the Secretary of State. On the competition side the decision rests with the regulator. On the public interest side it rests with the Secretary of State.

As far as the Competition Commission is concerned, the most prominent, and I think quite possibly the only, case was the investigation of BSkyB’s 17.9% holding in ITV, which the Commission cleared on plurality grounds but found had adverse consequences on competition. On that footing it required Sky to divest.

You can see, in a sense, as far as competition law is concerned, that there is some kind of locus for public interest. It has now been specified more clearly, and that means that the bodies, the economic regulators who are making this kind of investigation, have acquired some experience of trying to run these things either in parallel or separately. To be honest, there have not been all that many cases.

**Q287 The Chairman:** Can I stop you there? To go back, you referred to the Tebbit doctrine, where competition was focused as being the purpose of competition policy, competition itself, economic competition. Before then, would it be fair to say that the prior definition of competition policy would have included media plurality, or do you think media plurality is a new phenomenon that has been introduced into this area?

**Professor Cave:** The public interest under the Fair Trading Act for sure, and I think previously as well, was fairly broadly construed. There was a list of things that it covered, but then it said that it was not an exhaustive list, so basically anything could be considered. In some inquiries quite a significant importance was attached to public interest considerations, but to the best of my knowledge—I am not really a historian of these matters—I cannot think of a case in which media plurality was an issue. Indeed, I do not suppose that phrase existed, although I may be mistaken.

**The Chairman:** Equally, you cannot think of any instance where it was made clear that it was not?

**Professor Cave:** I am pretty certain that a group established at the then Monopolies and Mergers Commission could basically count anything it chose to as the public interest. Obviously that was not the norm. They did not go off chasing wild hares.

As far as plurality is concerned, I guess you probably know far more about that than I do, but I might make some remarks about how it seems to me that the change in economic developments in the media has had some influence on the approach to plurality. They are rather blinding statements of the obvious, so I will make them as brief as I can. Clearly with newspapers the most prominent thing is that people are not reading them any more, so it is a declining industry and that has huge effects. It has already had huge effects in one European country, Holland, which tried to introduce a media plurality law and then abandoned it because it turned out to have too adverse effects upon the newspaper industry.

Television is a rather interesting case. One of the features of the development of the broadcasting industry was the reluctance of government to make new services available. We had iTV coming in 1952, which Lord Reith in the House of Lords described as equivalent to the deliberate inculcation of bubonic plague and smallpox in a country. Then it took years and years for anything else to come along—BBC 2, then Channel 4 and then Channel 5. This was not because the spectrum did not exist to allow the stations to broadcast; it was just government policy to try to make sure that people were not able to exercise too much
choice. The choices that they were able to exercise were, in consequence, rather “better” than the ones they might have made had they had a great deal more choice. That meant that in a way, with that very narrow range of services, impartiality effectively became a substitute for plurality. Now, of course, we have multi-channel television, although the historical channels still remain very strong. That kind of consideration obviously requires much less significance than it did.

Finally, as far as the internet is concerned, the key aspect of the internet is that no permission is required. You can pretty much do what you like if you can find an audience, which may not, of course, be particularly easy to do. The substitution of revenues, as Richard and I point out in our submission to you, from newspapers to the internet is having a very major effect upon all these issues. That is what I might say by way of my interpretation of how we have got to where we are.

The Chairman: That is extremely helpful. Thank you very much. That is a very good start.

Q288 Lord Skelmersdale: You have explained in your historical survey what competition policy is for and why it is there. Could you be a little more definite about plurality? Can you tell me what different outcomes they seek to achieve, or perhaps they do not seek to achieve but do achieve?

Professor Cave: Let me begin with plurality. This is something that has occurred to me while I have been considering this question. It seems to me that plurality is basically a social and collective goal. There is no point in my being plural unless everybody is plural, or at least a significant number of other people are, because the output of the whole process is a vibrant and well informed democracy. The individual who benefits, typically benefits by virtue of everybody else engaging in plural activities.

That means that, as with many collective endeavours, the definition of the goal and the metrics for the goal have to be set top-down. There has to be some guiding intelligence saying, “We want plurality for various reasons, this is what we mean by it, this is how we are going to measure it and at the final stage this is how we are going to achieve it”. The three standard metrics of availability, consumption and impact are there and they are likely to be mixed up with various objectives for plurality as well, but it seems to me that the focus must inevitably be on actual consumption, not—as with competition policy, as we will see in a moment—opportunities for consumption but actual consumption. The consumption of a media product has to take place in order for the goals of plurality to be realised.

Lord Skelmersdale: Are you saying that there are two ends meeting in the middle?

Professor Cave: No, I am really saying that this form of plurality, the fundamental metric of which is likely to be consumption, both in aggregate and of the individual through multisourcing, is different from competition policy.

Lord Skelmersdale: Which is supply?

Professor Cave: I interpret competition policy as being basically there to ensure that constraints are imposed upon a firm’s activities, the constraint arising from other firms competing with them and the constraint arising because their customers can go to those other firms if they wish. That is essentially an individualistic analysis. What we are trying to do is take the customer, who in the case of consumer goods will be a person or a household and in the case of intermediate good will be a firm, and try to ensure that that customer is able to exercise, without constraint, their own choices as to what they consume. We are not really interested so much in the outcome of what they consume; we are interested
more in the ability of the customer to be able to make choices in a way that constrains firms from raising their prices. That is fundamentally it.

The Chairman: You were talking about plurality and saying that for you consumption was the crucial characteristic, but you can have wide-ranging different views, some of which may be inherently worth while or different but are very narrowly consumed. Do you think that the availability of material, which may not be consumed very much, has any bearing on it?

Professor Cave: It has a benefit, but if it is not consumed at all it is hard for me to see how it enhances plurality.

The Chairman: Except if it is not consumed today it might be consumed tomorrow, I suppose.

Professor Cave: That is possible, but I suspect that quite a lot of media products have a fairly high depreciation rate, so they may deteriorate.

The Chairman: Newspapers in fish and chip shops.

Professor Cave: That is right. Going back to what I was saying about how my view of the goal of competition policy is, in essence, to ensure that the customer can exercise their choices in a way that is untrammelled by market power, that means that the analysis starts first and foremost with the customer. When you are defining a market for competition policy, you are not imposing it, as I suggest you might be if you are doing pluralism; you are observing customers’ behaviour and finding out what kind of choices they make, what kind of things they regard as being good substitutes. On that footing, you are defining a market that is customer driven. Then you examine whether there is a firm that is typically in a position to exercise dominance within that market because it has the ability to behave independently of its competitors and its customers. Then finally you decide, in many competition laws, whether it is abusing that dominance and doing stuff that it ought not to, either by exploiting its customers or, alternatively, by excluding its competitors.

Lord Skelmersdale: Is not news consumer driven in exactly the same way as soap powder?

Professor Cave: I agree with you. The production of news in a properly competitive market will be consumer driven. But when somebody is trying to achieve pluralistic objectives, it seems to me that their interest will be how, in aggregate, people make those consumption decisions. They may observe a situation, for example, in which people make consumption decisions of their own free will and without any presence of market power, but the outcome turns out to be very unpluralistic.

For example, suppose everybody chose to read the same newspaper. That would be, in competition terms, in the absence of market power and in the absence of any kind of abusive behaviour, quite a satisfactory outcome. It is the best newspaper so people buy it. But in terms of achieving the objective of pluralism, which is to ensure that a broad range of opinions are consumed and that no proprietor or owner is in a position to exercise power by virtue of his or her capacity to determine what is in those newspapers, that objective will not be achieved.

Q289 Lord Clement-Jones: Could you not logically start from exactly the same point? To follow up Lord Skelmersdale's point, say you were looking at the point of view of a reader and consumer or whatever. Is not the essence, starting with them, to see whether there is a range of opinion that is available for them to consume? Could you not start from exactly the same point as you do in competition law, except that one is more about a range
of opinion and the other is more about a choice of different services? It is more economic, if you like.

Professor Cave: I guess it depends entirely upon how you define the objectives of pluralism. You can define them in terms of availability. I suspect that is not a particularly helpful way of doing so because, absent consumption, availability does not create any differences of opinion.

Baroness Deech: Is there not a danger that a tough regime of plurality would be anti-competitive, if one imagines that in plurality once a newspaper or some media outlet becomes too popular there will be an attempt to cut it back down to size? You could argue that it would be against the proprietor’s interests to be too popular because something nasty will happen. Does that not mean that consumers’ choice is therefore rather being ignored or rubbed off?

Professor Cave: My basic argument is that plurality and the kind of economic efficiency that competition policy is designed to protect are related but different things. Therefore, since they are different things, you may very well find yourself having to make tradeoffs between the objectives.

There is a principle, originally formulated by an economist called Jan Tinbergen, which has wide application. The Tinbergen principle is that if you have two policy objectives you need to have two instruments in order to achieve them. In old-speak, if you had the policy objectives of full employment and stable prices, you needed to have fiscal policy to achieve the full employment and monetary policy to achieve the stable prices. Here, it seems to me, if you have the objectives of competition and plurality, you probably need two instruments, in order to achieve them. You need a competition-type law in order to ensure that from the individual’s point of view the collectivity of individuals achieve the range of goods and services that they want made available to them. If on top of that you have further objectives relating to plurality, then you probably need another instrument. Sometimes the two instruments may work together, but equally sometimes the two objectives may work in opposition to one another.

Q290 Lord Clement-Jones: Back to the availability point, you say that is not the right test, but does that mean therefore—

Professor Cave: In my view it is not the right test. The point about plurality being effective is—

Lord Clement-Jones: No, I understand you are putting a proposition forward. I am just testing the proposition. Are you saying that it is not about availability, it is about the influence that is exercised for the purpose of plurality, and that is why it is not bottom-up in the same way in which a choice is assessed? Is that the reason?

Professor Cave: That is my tentative proposition. Absent consumption, you will not achieve plurality.

Lord Clement-Jones: But then if there is availability, surely that presupposes that there are outlets that have various opinions, and that in itself could be plural, could it not?

Professor Cave: Yes. I am really talking not so much about the sole determinant of plurality but about what I consider to be the dominant determinant of plurality. There is the third one, the very elusive one of impact. In a sense, for plurality you probably do not want only consumption but you may want some kind of impact in facilitating the gathering or formation of opinions.
Bishop of Norwich: Is that not one of the most difficult things to work out? You may have a newspaper with a rather modest circulation, the stories of which are picked up on the BBC and go viral elsewhere in the media. The impact can be huge for a relatively poor-selling newspaper.

Professor Cave: That is absolutely right, although in your case if the story did go viral you would be able to follow the audit trail in other media to some extent. But impact and influence are certainly extraordinarily difficult to measure. I think Ofcom discusses it in some of its work.

Bishop of Norwich: Does that not come into some of your work in competition as well? Is there not an impact there that is other than sales or economic power?

Professor Cave: In evaluating markets for their competitive outcomes, the analysis focuses in most cases upon the decisions that customers make. There is an important exception, which is that if you think the customers lack the knowledge to make appropriate decisions, as might be the case for example with financial services, then observing behaviour—for example people mis-buying pensions—would not convince you that the situation was entirely rosy. But if we are talking about a lot of goods that people have a fairly good understanding of what they are buying, then the focus is largely upon just the act of purchase. The fact that somebody is willing to spend his or her pounds on buying this product is a kind of validation.

The Chairman: Just before we move on, where you have competition issues and plurality issues in conflict, do you have any views on how you would determine which one trumps the other?

Professor Cave: That is for legislators. Perhaps I can put it in another way. I see this relationship in terms of Venn diagrams, if I could resort to that rather basic bit of representation. You have overlapping circles and there are some problems that are plurality problems only that require a plurality solution. As per my illustrious economist colleague, Tinbergen, now sadly deceased, you need plurality measures. Then there are other ones where there are basically competition problems only. There you just need the competition measures. The difficulty is the area of overlap, where you have the possibility that a competition measure will promote plurality and vice versa, but you also have the possibility that a plurality measure will diminish competition or vice versa. That is the most difficult area.

The Chairman: That is the judgment of Solomon, or whoever it is you put, by statute, in charge of taking the decision?

Professor Cave: Yes.

Q291 Baroness Healy of Primrose Hill: Discussing your written submission, your co-writer, Professor Collins, suggested that not only is there a case for a conceptual shift in plurality policy towards positive interventions but that you have together flirted with the idea that plurality policy should perhaps not impose any limits on market concentration at all. Could you elaborate on this in the part of conceptual shift you advocate? Would you go so far as to suggest that plurality policies should not be concerned with preventing concentration but more with expansion?

Professor Cave: I do not think I go as far as Richard in identifying this as an approach that replaces other approaches. I would confine the application of that principle to situations where you are dealing with a declining media.
You get the same kind of thing in competition law as well. The general principle is that you do not allow mergers to take place if it is likely to lead to a significant lessening of competition. If you have two airlines on one route and you allow them to merge, it looks, on the face of it, as though it is going to achieve a significant lessening of competition, so it tends not to be allowed. There are exceptions. If one of the airlines is about to go bust, so in competition law it is considered to be a failing or exiting firm, then you might allow the merger to take place. Oddly enough, just last week the European Commission allowed Olympic from Greece and Aegian Airlines to merge because Olympic was a failing airline. It was going to go out of business so, against the alternative of Olympic just going out of business, there was going to be no significant lessening of competition.

I think that kind of argument might be applied within the context of pluralism as well. You would recognise that if, for example, there were two newspapers, one of which was on its last legs, there would be no competitive detriment and no pluralistic detriment if a merger were allowed to take place. That seems to be fairly straightforward.

Trying to go beyond that to overrule competition considerations in order to promote a kind of—I might almost call it a viewpoint champion; you know, there is this notion of national champions—if you thought that the left side of the argument needed a bit of bolstering as far as plurality was concerned, the notion of trying to enlist competition law to assist you in this probably rather difficult endeavour would not be appropriate.

Q292 Bishop of Norwich: Is market concentration really only for the competition authorities and something we ought to avoid as part of a plurality policy? We have had witnesses who have argued for a cap on market share as part of plurality policy and perhaps have not been that interested in matters related to competition. I am trying to imagine your Venn diagram and whether everything will overlap everything else as a result of that sort of suggestion. Are you arguing that market concentration ought not to be part of plurality policy at all?

Professor Cave: Paradoxically, I am drawn to a position in which, because of my focus on consumption for a plurality point of view, share of consumption could be quite an important metric in plurality policy. It is generally believed that market share plays a very large role in competition analysis, but in my opinion that is something of a misconception simply because you can end up with firms with the same market shares with very different competitive outcomes.

Let me give you two examples. We all know of the endless battles between Airbus and Boeing to sell their planes. They each have 50% of the market. I have not investigated this, but on the face of it it looks as though they are absolutely knocking lumps out of each other all the time and the price of jets is certainly not excessive. You have a situation there where you have very high market shares, with considerable competition in all respects between the parties.

Another quite telling example is Google. Google has a market share in search in Europe of 90%. It has gained that entirely through organic growth. I do not suppose there is anybody in this room who does not use Google daily. It is astonishing. The 90% to 95% figure does seem to be borne out. Unless there were barriers to switching—there are not because, as Google always says, “Our competitors are one click away”; you can click something else on your screen and you will get Bing or Yahoo or something like that—the fact that it has acquired this enormous market share does not automatically lay it open to decisions on the part of competition authorities that it is having a detrimental effect on consumers. It does have problems with competition authorities, but those problems arise because it is alleged
that it is putting its affiliated companies at the top of all the search results and so spreading, by those means, its dominance in search into all sorts of areas like maps and so on. The mere fact that it has a very high market share would not necessarily count against it in a competition analysis unless there were the barriers to switching or whatever it might be.

Competition authorities may use the distribution of market shares for screening purposes to decide whether an industry is interesting from a competition point of view or whether a merger should be investigated further. You may have heard of the fabulous Herfindahl-Hirschman index, which enables you to capture a distribution in a single figure. Competition authorities do not use that when they examine a case because they are interested in just about everything that relates to the competitive situation: how many people switch, how easy it is to switch, how the market shares are changing, whether the technology is changing, whether the good is a homogeneous good or a heterogeneous good.

I come to the perhaps slightly paradoxical result that competition authorities use market share to a relatively little extent, but by my understanding of a plurality measure based upon consumption, the market share would be quite interesting and quite central.

Q293 Lord Razzall: Without getting hung up on Google, which is obviously slightly material to our inquiry, surely there is a huge barrier of entry for somebody to compete with Google. It may well be technically possible to switch, but the barrier to entry would be the massive marketing spend you would have to make to compete with Google, so there must be a barrier to entry there.

Professor Cave: I am not saying there is no barrier to entry. Google has crawled over every webpage that has ever existed, and Microsoft has tried to do the same with Bing but does not have the depth of analysis of it. I was not saying there was no barrier to entry; I was saying there was no barrier to switching. You are right that the barrier to entry would represent something that is considerable.

Earl of Selborne: It is hard to argue, surely, that Microsoft does not have the financial clout to do it but has chosen not to spend it.

Professor Cave: I think, sadly for them, they have spent billions and it has not worked.

The Chairman: Do you think that there ought to be some kind of convention—I do not think you can legislate over it—about certain attributes of algorithms, for example that they should not give prominence per se to material that is generated by the same person as they themselves?

Professor Cave: As it happens, I do think that if you are in a dominant position, as a search engine might be, whatever its name is, there would be problems if the algorithm were distorted in some way or the availability of the Google ads on the right-hand side of the screen, the bidding for those that takes place, were distorted in the direction of favouring a company. This is exactly what the European Competition Commissioner, Mr Almunia was thinking about, or perhaps has been thinking about, for three years now without so far reaching a conclusion.

Lord Clement-Jones: Is that where your impact or influence aspect comes in and is of particular relevance to Google? It seems to me that if you are talking pure consumption on the plurality side, yes, Google therefore falls within that. But on the impact and influence it does not really, does it, if it is a virtual, see-through-type portal, except when, as you say, it distorts?
Professor Cave: Yes. These so-called digital intermediaries do have a potential role in determining what people see and read and so forth, so they are certainly in the game. But one could imagine a search engine that just did the search and did not do anything else and was entirely algorithmic and there was no incentive to exercise favouritism, no interest in it. In that case, I guess it would not really have much of a bearing upon the pluralism debate.

Bishop of Norwich: Can I come back to where you began? Are you saying with your Google illustration that we cannot really rely on competition regulation very much in relation to any plurality policy?

Professor Cave: No, I do not think I was trying to say that. I am saying that competition policy is directed towards other ends, which are basically maximising customer welfare and not taking too much account of how that welfare is derived. You are just looking at the taste at any given time of a consumer and asking whether that person has been able to get the best out of the marketplace and trying to prevent a detriment to that consumer as a result of the abuse of market power. That is really all I am saying.

As I said earlier, there are certainly some cases you could imagine where an anti-competitive measure would actually promote pluralism. What I am arguing is that it would almost be by accident if that happened. It would be a desirable by-product of something that was basically aimed at another objective.

Q294 Lord Clement-Jones: Can I test the border between plurality and competition in a different way? There has been some disagreement among our witnesses about what counts as a plurality problem. There are some, such as Chris Goodall of Enders, who argue that it is a plurality concern in and of itself when a media enterprise has a strong market position. He says that plurality should be concerned with a large media enterprise’s ability to influence the economics of the industry in this large company’s favour. That is his view.

On the other hand, there are those such as David Elstein who are rather less convinced that a plurality policy should be concerned with market position per se and raise the question of how, even if it were, it would be possible to decide which bits of revenue matter for plurality purposes. For example, from a plurality perspective, should Sky’s market position as a whole matter when, as he told us, a third of their revenues come from selling hardware to its customers on multi-room subscriptions or landlines or telephony or broadband?

I suspect I know what your answer is going to be, but how do you see those concerns raised by Chris Goodall in particular? Are they really plurality matters or are they competition matters? Perhaps they are neither.

Professor Cave: I think potentially they are plurality matters in the following sense. The nice way of looking at plurality is that we end up with an educated citizenry that makes good democratic choices, but one consequence of not having plurality is that you may end up with media owners being able to exercise a considerable purchase on regulators and on Governments. You might end up with a vicious circle in which the media get more powerful, the Government gives it more and more favours, the Government is elected because of the media support, and so this goes on and on. There is that kind of dystopic vision that I think should be taken into account. After all, we have seen in Italy a case study of how that can happen. One is a bit less worried about Italy now than perhaps we were three years ago, but obviously you can get there so I think it is a reasonable point to raise.

Lord Clement-Jones: So they run alongside each other at that particular point?
**Professor Cave:** Absolutely. There is a very big trend in discussions of regulation in particular, the so-called regulatory capture hypothesis, in which the big firms manage by various means to distort the regulation in their favour, and that applies to government policy as well. If you get into that kind of territory—obviously there are some people who believe that we are in that kind of territory in the UK already, and I do not want to express an opinion about that—then that consideration becomes important.

In a sense, you have to try to work out exactly what the hypothesis is. It could be what I might call a deep-pocket hypothesis that somebody in the media world, or indeed in any world, with a lot of money can buy the regulator or the Government. In that case there you would be interested in the evaluation of the power of somebody in that kind of position and in how deep their pocket was, whatever it was in.

There is another narrower sense in which this issue might arise, if you are talking about an industrial structure in which competition policy does have a purchase, because in some countries the competition authority has gone after what it calls conglomerate mergers. That is mergers between firms in different industries where there is some kind of link between them that makes it appropriate to consider there might be adverse effect on competition, despite the fact there has been no increase of concentration in the markets, narrowly construed, taken separately.

**Lord Clement-Jones:** Despite the fact you do take Chris Goodall’s point, if you took the Enders’ 15% total media market revenue cap as a plurality cap, would it not be likely that the competition authorities would have raised competition concerns before that kind of threshold was breached or not?

**Professor Cave:** Just to wind back a bit, I take his point about the risks. I do not take his point that that is the way in which desirably we should measure the situation at the moment, because I do not think we have got there. Adding in a whole lot of extraneous activity that was engaged in by a media owner does seem to me to run a much greater risk of actually distorting the reality of the situation.

**The Chairman:** It depends what you mean by a media enterprise.

**Professor Cave:** If it is a media enterprise, then it would all be captured. If it were a media enterprise, then competition policy would have a kind of purchase on it via this conglomerate merger notion, but typically that would be only if the merged entity plan to cross-sell and say, “If you want to buy X television, you have to buy Y newspaper as well”, or, “If you buy X television service, we will give you Y newspaper at half price as well, but only if you do that”. That kind of tying and bundling could easily come up against a competition policy.

**The Chairman:** We see a certain amount of that in the relationship between telecoms and streamed services and one thing and another, do we not?

**Professor Cave:** It does take place, there is no doubt about it, and it is potentially very beneficial to consumers. The last thing a competition authority wants to do is to stop people getting a discount. It is only if the discount is configured in such a way as to have a high probability of driving out the competitors and the price is going to go through the roof that you worry about that sort of thing.

Sorry to wind back on that. Your question was whether somebody with 15% of media revenues would fall foul of the competition authorities?

**Lord Clement-Jones:** Potentially a large media enterprise.
**Professor Cave:** They could, but if their holdings were fairly evenly spread and if the domains in which they operated or the markets in which they operated were fairly competitive—so the fault was not in competition, the newspapers were engaging in circulation wars and so on, but you still had the problem that this particular firm had 15% of the voice in any particular country—that would be an example of where it is very easy to conceive of there being no competition problem, but there could be a plurality problem. I am not endorsing the 15% figure, by the way.

**Lord Clement-Jones:** No. That was just a hypothesis on my part. Thank you.

**Q295 Earl of Selborne:** Regulators tend to concentrate on market share by considering market share separately—the printed press, video games, radio and the like—but in fact a lot of the strength of operators in these markets comes from their presence in more than one market, hence Christopher Enders’ approach, which perhaps stems from frustration with the way competition authorities tend to define markets in a converging media landscape. Do you recognise this frustration? Do these sorts of concerns raise questions about the United Kingdom’s approach to competition policy or plurality policy?

**Professor Cave:** It is interesting that competition authorities are criticised for adopting very narrow markets from different perspectives. Some people criticise them because by adopting very narrow markets they are more likely to find dominance and they are more likely to impose remedies. There has been a long-lasting discussion about the degree to which advertising on television is a market in itself. Some people say there are all sorts of other places where you can advertise and that therefore ITV should not be subject to constraints on selling its advertising prices. That is one strand of it. People complain that narrow markets lead to too much regulation, but I think the alternative to the Goodall approach is to say you have to see these things in the round in order to identify the depth and strength of the power that cross-owning media companies exercise and do something about it.

My answer to the question, though, comes back to my Venn diagrams. I think there are some things that are basically competition problems and you need competition weapons to deal with them. Then there are some things that belong to plurality, where you are looking at a much bigger marketplace, the marketplace where it would have an impact upon the citizenry, and I think you need different instruments for dealing with that. Maybe what people are frustrated about is that they do not have a plurality instrument and that trying to promote a competition instrument as an all-singing, all-dancing substitute for it is not going to work because it is not what it does, it is not what it is there for.

**Earl of Selborne:** In the light of that, would you accept that competition authorities need to recognise that market power can accrue across these different media enterprises and that concentrating on the narrow markets might not address the issue of market accrual?

**Professor Cave:** If they can show that there is a wider market and that customers are switching between different types of media, then they should analyse that wider market. If it turns out that there is really a narrow market—there is a market for newspapers and a market for TV for example, as competition authorities have generally tended to say, not unreasonably, in the past—then they should examine the situation in each of those markets. I think it is a fair enough thing for them to do. But, as I have said, what we really need is the right person to come up on the white horse, who has a plurality instrument, and deal with it in that fashion.

**Earl of Selborne:** Do the competition authorities have it right at the moment? Are they taking it into account?
Professor Martin Cave OBE – oral evidence (QQ 286-297)

Professor Cave: The competition authorities in the UK only take media plurality into account when the Secretary of State has invited or told them to do so. He has done so once, when Sky bought 17.9% of ITV, as he famously did. He nearly did so on the occasion of the extension of News International’s ownership of Sky, but that did not happen. Competition authorities generally have a limited discretion about what they can investigate, and they can only investigate things according to their statute. At the moment, I think I am right in saying that unless they receive instructions from the Secretary of State they would not be able to investigate the kind of thing that we are talking about: plurality as the alternative. A different statute might have a different body doing it and the rules of the game would be quite separate.

Q296 Lord Dubs: You have come very close to answering my question, but let me see whether there is any scope for it. You are probably aware that the written evidence we received from the Competition Commission suggested that it sees itself as, “Having the appropriate skills and necessary expertise and economic awareness to investigate the media mergers, to report facts and give advice to Ministers or, should Parliament consider it appropriate in the future, to determine issues relating to public interest matters”. You may or may not feel comfortable about the way that is put, but do you see the competition authorities as the most appropriate institutions to consider matters relating to plurality?

Professor Cave: I am aware that there are other bodies that have experience in this matter. Ofcom, for example, has a considerable amount of knowledge of this matter and I have admired some of the publications that it has done. Obviously this is a matter for Parliament. What I can say about the Competition Commission is that I have been there for about 21 months, and I will not say that all these attributes apply to me but my colleagues seem to be extremely diligent and very focused on evidence and very analytical and sober in their judgments—and more generally sober as well, of course—and that kind of analytical capacity is probably what you want. That analytical capacity can be found, I am sure, in many public bodies within the United Kingdom, or one could create a new body in order to establish a new modus operandi. But I think the Competition Commission would be one option.

Lord Dubs: You could say the same about Ofcom as well.

Professor Cave: I have said the same about Ofcom. That has been my intention.

Lord Dubs: So the question is whether it should be the Competition Commission or Ofcom or whether there should be a dual responsibility?

The Chairman: Would you say the same about Parliament?

Professor Cave: What, diligent? Unquestionably.

The Chairman: The range of characteristics you have described. Sober, for example.

Professor Cave: Perhaps that is too complex.

Lord Dubs: The question is whether it is a balance between the Competition Commission and Ofcom for many of these issues or whether there should be a dual responsibility.

Professor Cave: It depends how Parliament chooses to configure the arrangements. I would suppose that the Secretary of State would ultimately be the decider. That is not necessarily so. You could make a regulatory body the decider. If a regulatory body were the decider, you would probably have to have some kind of appeal process, so you would have to have two tiers of regulatory body in order to do that. If the Secretary of State were the decider, then there might be all sorts of ways in which that might be done. The Secretary of State might himself or herself want to have a two-stage process and then make the decision.
The problem with that is that it may make it very hard for the Secretary of State to make any decision other than that which has been reached by the two regulatory bodies, so it really takes the political control out of the thing, if that is the objective. You can play with different institutional architectures, and I am sure that people will make representations to you in a rather more knowledgeable way than I am able to do.

**The Chairman:** You started talking about plurality, if I can use the word in a non-emotive sense, in a slightly negative sense, but there has also been evidence put to us that steps should be taken to promote positively plurality and different voices. Do you have any thoughts about that and, if so, where do you suppose the money to do it might come from?

**Professor Cave:** Richard Collins and I have noted that you can promote plurality by subsidy. It is obviously dangerous because you have to be sure that the person doling out the money is beyond suspicion, and it is a very hard thing to find an appropriate kind of Caesar’s wife figure to discharge that particular responsibility.

We proposed in our work that the natural place to take the money would be from the BBC licence fee, which would then become a television licence fee. That would be a way of achieving plurality in that area. Whether a similar regime could be cooked up for, say, newspapers is rather more difficult. You always run the risk with subsidy that you keep on throwing money at something that is basically doomed. The old UK motor industry might be an example. It is very hard to call a halt to it. It is another instrument that is available.

Another instrument that is available is this notion of nudging consumers in particular directions, presenting them with choices in ways that might encourage them, for example, to multi-source, which seems to me a very important part of the debate that ideally will be captured. I have no idea how you do it, but it is a very fashionable thing to talk about now, as you know.

**Q297 Baroness Fookes:** Is there any point that you would like to make that has not been covered already this afternoon?

**Professor Cave:** No, I think I am very content with the questions so far.

**Baroness Fookes:** Could I go a bit further? Is there any advice that you could offer us in this rather difficult inquiry?

**Professor Cave:** Very briefly, since time is nearly up, I agree with quite a lot of the things that David Elstein has said about how you would set about the process, first of defining the range of activities—which in my view should initially be news and current affairs because the rest is just too difficult—and how you would institute a programme of achieving a working solution of many of the measurement problems, such as the rate of exchange between different kinds of media. I have suggested that a focus on actual consumption is a good start, although that would not, to my mind, exclude the other considerations that we have discussed: availability and impact as well.

Then you get to the really tricky thing, which is what the test is: the 15% or the 30% or whatever it might be. I think that some kind of regular process would be desirable rather than just simply linking it with mergers. Then you would have to construct the institutional architecture that Lord Dubs was alluding to.

**Baroness Fookes:** But you are guiding us away slightly from a 15% or any other percentage?

**Professor Cave:** I would not favour acting in this field before a certain amount of preliminary spadework and possibly testing of the measurement system over a cycle. I think
it would be quite difficult to impose, for example, divestments on the basis of a number that was chosen inevitably with a fair degree of arbitrariness.

The Chairman: You have given us a very comprehensive overview of what, certainly for me, is a complex subject. I am very grateful and I am sure my colleagues are too. Thank you very much for that. Unless there is anything additional you want to add, as Lady Fookes has put to you, time is more or less up.
The Chairman: I apologise for starting a bit late but, as you probably gathered, we had a Division earlier on. There may be more, so if it happens again please excuse us. I am very pleased to welcome Magnus Brooke, who is Director of Policy and Regulatory Affairs at ITV, Dan Brooke—as far as I know no relation—who is Chief Marketing and Communications Officer at Channel 4, and Marcus Lee, who is Director of Legal and Commercial Affairs at Channel 5. Thank you, all three, for coming. We have a series of questions that we will ask you and each of you please give your uninhibited response. At the same time, we will try to keep it reasonably concise as best we can. Before we start, although we know who you are and have received your evidence, if one after the other you could each briefly say, for the purposes of the recording that is going on, who you are and then we can bowl into an opening session. If anybody wants to make an opening statement, please feel free to do so. So, starting on my left, your right.

Mr Magnus Brooke: I am Magnus Brooke. I am Director of Policy and Regulatory Affairs at ITV.

Mr Dan Brooke: I am Dan Brooke. I am the Chief Marketing and Communications Officer for Channel 4.

Mr Lee: I am Marcus Lee, Director of Legal and Commercial Affairs for Channel 5.

The Chairman: Would anybody like to make an opening statement of any kind? Please feel free. No? All right, fine. Thank you very much. You are all public service broadcasters, albeit
each of you is slightly different and you are slightly different in turn from the BBC, who have just been giving evidence to us. Can I ask each of you to say, from the perspective that you are looking at it, what is it that PSBs, and particularly your organisation, contribute to media plurality in the country?

Mr Magnus Brooke: Shall I start? I think the crucial thing for us is in providing guaranteed effective competition and plurality to the BBC and Sky. That is really the core contribution that ITV makes in three areas: in high quality national and international news in the UK, in current affairs and political programmes like The Agenda, and in Nations and Regions TV news where we are the only competition to the BBC.

There are two other aspects that I would mention. The first is that this competition is underwritten by an organisation with the size and resources to compete effectively in comprehensive news gathering as well as in standing behind difficult and challenging output, probably epitomised most recently by the Exposure programme on Jimmy Savile. We spend over £100 million each year on news output alone. The final thing is probably that a key part of our news investment goes on ITN where ITV plays a key role in sustaining ITN as an independent news gatherer and programme maker in competition with the BBC and Sky. Without ITV's investment, without ITV's contract, ITN would not be viable.

Mr Dan Brooke: Can I start by saying that I think the UK has a wonderfully plural media system as it currently exists and that is to be celebrated. If it is not the most plural in the world, it must be close to being so. There is also an extremely plural landscape within television. At the heart of that is the very sophisticated ecology that exists with a variety of different public service organisations with different objectives and different business models and, consequently, a range of different sizes, audience focuses and editorial focuses. It is what, at its heart, creates that plurality. There are clearly other things, there are hundreds of channels, but at the heart of it is public service broadcasting. My main message would be “Long live public service broadcasting”.

As far as the contribution that Channel 4 makes to that, plurality is part of our very existence. There are two parts. One is our unique remit to provide something different, to be distinctive, alternative views, to be innovative and, secondly, our business model, part of which is being a publisher/broadcaster, that encourages and indeed requires us to work with a wide range of different independent producers. By dint of that, it is almost guaranteed that you get a wide variety of different voices. I think the upshot of this is that Channel 4 does provide consistently distinctive content into the market, whether it be in news and current affairs with, for example, the pioneering journalism that we have done around the ending of the civil war in Sri Lanka, or in our current affairs with Dispatches, which I do not think other broadcasters probably would have done, such as the investigations into child abuse in the orthodox Jewish community, but also in other genres such as cutting-edge film and drama, or in areas perhaps where other broadcasters might be doing the same activity but we do it in an entirely different way, such as we have done with the Paralympics. All of the research that we do among viewers suggests that this role given to us by Parliament is an important one, it is one that we deliver on, and it is one that they greatly value.

Mr Lee: At the risk of making this sound like a cosy consensus between the PSBs, I would like to agree with the comments that Magnus and Dan have made on behalf of ITV and Channel 4. In respect of Magnus’ point on competition, I think that competition is extremely vibrant in the UK media market. There has never been so much competition for viewers and eyeballs. In respect of Dan’s point on the rich plurality that exists in this country, I think that that is absolutely the case. How Channel 5 contributes to that is that we attract over 40 million viewers a month. Last week was the first week that we managed to get a bigger share
than Channel 4 seven days in a row, so we are proud of that. What it means is that
underlines that we care about competition and we care about our financial sustainability.

In respect of our programming, we have a broad range of programming broadcast, be it Big
Brother or the Ashes coverage last week, and just to name a few of our most recent
successes: Extraordinary People, the Revealed strands, The Hotel Inspector, as well as things like
Home and Away, Neighbours and US acquisitions like the CSI series.

In respect of our news and current affairs output, we primarily meet, and in fact exceed, our
regulatory obligations by broadcasting our 5.30pm news bulletin and our 6.30pm bulletin,
which has now been refreshed as NewsTalk Live, which is a discussion programme involving
guest speakers. We also have daily for two hours every morning The Wright Stuff, which is a
topical irreverent discussion of the news of the day. That paints a picture of what we do.

In terms of competition, because there is so much competition each broadcaster has to find
its own niche. Each broadcaster has to find its own voice. It has to develop its own unique
proposition, and we are no different to that. We like to think we contribute to the range of
options available to viewers. Also in respect of diversity of how we obtain our content, like
the other PSBs we are under an obligation to source 25% of our output from the
independent production community, so that again bolsters the way in which we can ensure
that there is that range of input into our schedules.

The Chairman: Fine, thank you. Perhaps we might move on.

Q235 Baroness Healy of Primrose Hill: Broadcast has long been the most used
platform for news—that is what this Committee has learned—and indeed Ofcom says in
particular that TV remains the most used and important platform for news. However, in this
increasingly complex news ecology it is arguably no longer quite so special as it once was.
What impact do changing media habits, particularly among different generations—and I am
particularly interested in the young—have on the role that broadcast and, in particular PSB
NCA, plays in UK citizens’ news diets and how are you dealing with it as individual channels?

The Chairman: Who wants to start?

Mr Dan Brooke: I am happy to take the bowling. Habits have undoubtedly changed and
become more complex. That is driven by the internet and by the availability of mobile
devices on which you can get the internet rather more than by multi-channel television,
particularly in the area of news and current affairs, and most particularly among younger
people who tend to be the greatest users of digital media. I will come back to younger
people in a second. But notwithstanding that, we would echo the evidence that you have
heard from other people, which is that it is still the case that television news is king. That is
what all of the independent research says. The gap between it and the rest may be different
from what it was but it is still fairly substantial. Television news is clearly, all the independent
research suggests, the most trusted. It seems like we are going to have to wait quite a long
time for that to change. That may turn out to be wrong but I hope, as someone who works
in television, that this will not turn out to be the case.

It is possible that the role of rolling news within television—not particularly our area of
expertise—has changed a little bit because you can get breaking news through the internet
on a mobile device perhaps more quickly than finding your way to a television. But I do not
think the role of the type of in-depth analysis and investigative journalism that Channel 4
news and current affairs does has changed at all. Certainly, the reputation that we have for
providing that has not changed.
As far as audiences are concerned, audiences for television news across the board have been going down, and I think that that is because of these factors that I have been talking about. For us, and particularly for Channel 4 News, we are disproportionately good at appealing to younger viewers and to viewers from ethnic minorities, and that has been reflected in a lot of the activity that we do outside of television. We have invested heavily in our news websites. We are very engaged with social media—I think Jon Snow has more Twitter followers than any other news presenter in the country—but we do not have our head in the sand. The world is changing and we have invested in order to cater for that demand but also to make sure we are well placed as the world develops.

I would like to make one last point, if I may, about the power of television and the extent to which for younger people, despite the fact that their consumption habits have changed, television remains a very important focus for them, which is the impact that the television debates had around the last general election. A very interesting piece of Reuters research that looked into it said there was substantial impact of those television debates and most particularly among younger people who inevitably are more likely to be first-time voters. I thought that was a very interesting piece of research. While I am on the subject and as I have a captive audience, just as an aside I do think that more public discussion about those election television debates - how many there should be, who they are done by - some public discussion about the process for how these are decided would be a good thing for our democracy.

Q236 The Chairman: Can I intervene before the other two of you reply, bearing in mind what Dan has said? When you are thinking about this in the response you give could you just touch on whether you think there is a generational divergence in the way in which media is consumed? If you only have newspapers, people will gather the news from newspapers. When you have television and newspapers people will gather that news from television and newspapers. Increasingly now there are so many different ways of doing it that people may not be operating at all consistently across the generations. Something that interests me is whether we are seeing different age groups moving in different directions in the way in which they consume news and current affairs.

Mr Dan Brooke: I hate to generalise but the data suggests that younger people are more inclined to digest things that they can read and sometimes things that they can see via the internet. That is what we are finding.

Mr Magnus Brooke: Yes, I think, certainly from ITV’s point of view, to the extent that demand is shifting online that is where we need to go. What we have done is invest very heavily in a 24-hour rolling news service online, which we launched in March 2012, which has shown the most astonishing levels of growth in terms of our online news offering. We need to go where people are going.

Having said that, I think that we should not announce the death of TV news. What our numbers show is that our evening national news is up nearly 1% in volume and up in share on a like-for-like basis versus 2012 for the first 26 weeks of this year. Regional news is holding pretty steady too, in terms of audience share. So I think online is a complement probably rather than a substitute for television news. We are still getting very substantial volumes in television news.

Part of that might be that the television news programme is a kind of curated, considered summary of what has happened that day and, with the noise, the cacophony, the opinion of the internet, you suddenly have a kind of area, an oasis of calm almost, a summary of what has happened that day, what the particular editors and journalists think are the biggest
stories. You have that compressed into a period of time and provided to you versus going on to the internet and finding the stories you are interested in. That is the serendipity about television news, it presents you with things you might not otherwise have seen. I think in a strange way, in a world of almost limitless plenty on the internet, there remains a role, and potentially even an increasingly important role, for that professionally gathered, professionally edited and compiled news programme against almost limitless content on the internet.

**Mr Lee:** There are two takeaway points. One of them is that, as we have all said, television news is still the primary source of the people’s news. The figures bear that out. Looking at the first six months of 2013, the number of people tuning into news services on the key commercial channels for at least three minutes—the BBC touched upon this earlier—for the BBC was 85%, ITV 86%-87%, Channel 4 63%, Channel 5 65% and Sky News 32%. What you take away from these figures is that television news is still by far the source that the population relies upon.

The other point is that even though there are other sources of news available via the internet, sources like Twitter or bespoke news sites, as Magnus says it does not mean that you start consuming in those ways and you stop consuming traditional media news. Often they can complement each other. The way that we use, say for example, our Channel 5 News Twitter account is to point viewers in the direction of the news stories that are being featured on the bulletins that day.

Online news content does not do the same thing as TV news and it is not trusted in the same way. To borrow a stat from ITV’s evidence, 74% of viewers trust TV news to deliver unbiased reporting, whereas that figure is only 5% for the internet. They are different things. On the internet you will receive news content quicker. You may not receive it as accurately; you may not receive it in an unbiased way. As I say, the internet reports in a different way and you are talking about different products. On Monday, tweets about the royal baby peaked at over 25,000 tweets a minute, but you could not say that any of those tweets could replace the content of a report on the royal baby on television news. They are not substituted in that way and because you are picking up on those tweets does not mean that you will not watch the TV report of it later.

**Q237 Baroness Scotland of Asthal:** Can I ask if things like TV catch-up help? You can then simultaneously, wherever you happen to be, if you have the line, pick up the current TV news on your iPad or on your computer. Has that had an influence?

**Mr Dan Brooke:** Definitely. We find there is a lot of video consumption on our website. Ironically, the place where there is greatest consumption of our news video is on YouTube. When Krishnan Guru-Murthy interviews Quentin Tarantino and they have a set-to with each other, that gets a million views on YouTube and it does not get a million views on the Channel 4 website.

**Mr Magnus Brooke:** The quite interesting thing is that people talk a lot about how nobody trusts online news. One of the things I think for us as a PSB, certainly for ITV, is whether we can take a brand that is synonymous with accuracy and impartiality and in effect create the same trust online as we create in our evening news programme. That feels to us like an obvious place to go in a world where people go online and do not necessarily trust what they are seeing. That is one of the reasons why we think expanding our online offering makes a lot of sense.
The Chairman: But you are differentiated from many of the others online by virtue of the fact that you are a PSB broadcaster. People expect certain standards from PSB broadcasters that they would not expect necessarily from somebody out there.

Mr Magnus Brooke: Yes, and that is a source of potential competitive advantage from our point of view.

The Chairman: Yes, that is right.

Q238 Baroness Deech: As you probably know, we have heard from the BBC this afternoon, as well as yourselves, and we have heard a great deal about the different contributions made by all of you to the British news scene. Can you explain to me what these differences are between the three of you and the BBC, these institutional and cultural differences, and how they contribute to the diversity of views circulating in the public sphere?

Mr Magnus Brooke: To pick up something Dan said, we are uniquely well served in the UK by the number of competing news programmes and news providers. There is plenty of evidence that competition between each of us, as well as Sky and the BBC, has created both innovation but also differences in approach. Most classically, ITV came along with a rather less deferential style than the BBC. Sky innovated clearly with Sky News, followed by the BBC. Channel 4 has a very distinctive, often foreign news-led, very lengthy and in-depth programme at 7 o’clock, which is very distinctive to what other people produce. 5 has its own particular style of news and its own particular demographic. I think there is plenty of evidence that competition between us has spurred all of us on, both to compete against each other but also to find niches of audience that may not be as well catered for elsewhere. In ITV’s case, we have an audience that skews female, it skews C2DE and it skews slightly younger than the BBC.

So there are a number of ways and I think part of it is also just supporting a number of teams of competing journalists who are by their nature very competitive and want to get the stories. They want to produce distinctive programmes. They want to meet the demands of the audience. I think there is plenty of evidence that competition between us has driven innovation and quality.

Mr Lee: I think that is absolutely right. As I said just now, because of that very vibrant competition in the market you each have to find your own voice and your own unique offering. I think that in an odd way scheduling comes into it because, for example, Channel 5 lead with the first evening bulletin of the day at 5.30 pm. It is a different proposition to, say, a lunchtime bulletin where perhaps the news of that day has not unfolded yet or you are previewing what is going to happen later on. Equally, you do not have the time that is afforded to a 9 pm or 10 pm bulletin. In order to put across to the viewing public a comprehensive summary of what is happening in today’s national and international news, there is its own unique challenge within that timeslot and there will be a different proposition for the other bulletins at other times on other channels as well.

Going back to what was said, though, clearly each channel has its own demographic, its own audience and its own voice that it is trying to put across.

Mr Dan Brooke: I would go back to the drum that I was beating earlier on, the importance of which I do not think I can stress highly enough to you, which is this extraordinarily sophisticated ecology that we have that has been built up over a number of years where we have a variety of different organisations with distinct objectives from each other and distinct business models. Those are extraordinarily fertile circumstances for producing a plurality of
output I would say across the board and in particular in news and current affairs. For us, it is extraordinarily simple: we are given a remit by you, a unique remit, to be distinctive, to be innovative, to represent alternative views and so forth. We try to do that across all of our content. We have greater success in some areas than in others, but probably I would say no more so than in our news and current affairs because we regard them as the jewels in our crown, not least because of all the first-run programming that we produce. Channel 4 News occupies more airtime probably than any other programme in Channel 4. We try to ensure that it fulfils the remit by, first of all, giving it a lot of airtime - it is the only one-hour long news programme in peak regularly; secondly, it is on every single night of the week. It is not on as an hour every night of the week but for most of the week. We do, as Magnus has generously said, focus on in-depth analysis and investigative journalism. We do have a strong emphasis on foreign news because we observe that that is where there is a gap in the overall landscape. We do also try to produce stories that we do not think—as I said in my first remarks—would appear anywhere else, and the story about the Plebgate affair is a terrific example of that. That story had gone through many hands before Channel 4 News and Dispatches started to do an investigation of it and came up with a completely different conclusion from that which other people had come up with.

That is all based on what we think we put into it. But based on what other people say back to us, the University of Westminster has done this terrific piece of ongoing research about the content of television news changing over time and they have said consistently, and in the most recent report, that Channel 4's news is the most broadsheet of all the news programmes. Our own research also suggests that levels of trust and belief in Channel 4 News independence are very high.

**Q239  Bishop of Norwich:** What sort of people watch Channel 4 News? Is it ABs, is it younger? What is the—

**Mr Dan Brooke:** It is a wide variety. As I said earlier, we do particularly over-index relative to other news bulletin programmes for younger people and for people from ethnic minorities, and that has long been the case.

**Baroness Deech:** How do your journalists get the education that they need to present different sides of the story, especially if they are trying to be different from the BBC?

**Mr Magnus Brooke:** ITN provides our national and international news and our regional news service in London. We provide our own regional news service in the rest of the country. I think it is something to do with the culture of ITN, which is an independent organisation and absolutely sees itself in hand-to-hand combat with the BBC. It has a very distinctive independent culture, slightly more freewheeling with less resource but needing to be more entrepreneurial, more creative, I suppose, in how it deals with television news because it does not have the resources of the BBC. It is well resourced but it does not have the sheer scale. It is a little bit like the British army and the American army; we try to do more with less I suppose. Within that there are separate teams who create the ITV news programme—and indeed your programme and 5's programme—and whilst there is a degree of internal competition between those separate teams who work on different programmes they are fundamentally producing quite different products from the same organisation. So it is a very healthy culture, I think, and very different to the BBC.

**Bishop of Norwich:** I would like to understand more about the relationship between ITN and you, because ITN is a pretty powerful provider as the wholesaler of news. What is the retail product? How do you influence what ITV serves up to you? You have talked about
three different modes of the news being conveyed and yet it is the same organisation that is actually behind it. This is a pretty powerful body, is it not?

**Mr Magnus Brooke:** I do not think we see it like that. First of all, of course, we are the customer so we set the overall strategy and editorial objectives for our news programmes and we are in charge. We are paying for them, which is not to say we are in day-to-day editorial charge. We want people to have their head and to run with the running order and the editorial, so we are not consulted on a daily basis about what stories to run but we certainly have control of—

**Bishop of Norwich:** How do you review it then if you do not have any editorial control over your news programmes on a daily basis? Where does the control come from?

**Mr Magnus Brooke:** There is a continuing dialogue about strategy and about editorial objectives. For example, one of the things we have done relatively recently is have a look at the economic and business coverage of the ITV news programme. As a result of that, we have hired some specialist correspondents, Laura Kuenssberg and Richard Edgar, to beef up our coverage of economic and business affairs, which we did about a year, 18 months ago. That was a good example of, over a period of time, looking at the programme and saying, “Things are happening here that we need to cover in more detail and we need to change the emphasis of the way the programme works”, and what we did was have a dialogue with ITN and then some specialist correspondents were brought in. It is a more strategic relationship, I would say, rather than day to day, “Run this story and put it at this point in the running order”.

It is slightly different for regional news because most of the regional services are provided directly by ITV. But even there what we very much want our news teams to do in each region is to respond to the regional agenda and to run the programme they think is going to be most effective in their region, rather than to look up to somebody in London to say, “Should I run this story in preference to this story?” or “What should my agenda be?” Again, there is an overview and a degree of central control in terms of strategy and editorial approach, but we do not want day-to-day running of it, nor do I think that would be very helpful in terms of encouraging plurality.

**Mr Dan Brooke:** From our perspective, ITN has produced Channel 4 News since day one and have done an exceptionally good job of it, otherwise we would not have used them for the last 30 years. I can understand why you ask the question but I really do not think that there is any issue here. From our point of view we hold the whip hand. We have a commercial contract with ITN, which is very detailed—

**Bishop of Norwich:** But there is no one else you could go to, is there?

**Mr Dan Brooke:** Yes there is...

**Mr Lee:** Prior to our current contract with ITN we were with Sky News. We switched over for a few reasons, including financial ones, but also that ITN could provide a more bespoke service for Channel 5 and fit in more with what we wanted to achieve editorially.

Q240 **The Chairman:** How many common services are there behind the different products you acquire?

**Mr Lee:** I think that one of the ways in which ITN were able to offer us a commercial deal that made sense to Channel 5 was that there is that element of fixed costs being shared. In terms of everything else, I would say that by and large the separate units of ITN, which produce the respective news output for Channel 5, Channel 4 and ITV, are run entirely
separately. You do not have editorial crossover in any way. In respect of Channel 5, the editorial teams are completely different. They are run in separate offices. In fact they are run in Channel 5’s offices. We built studios especially to house the Channel 5 News unit, and that is where all of the ITN staff who are engaged on Channel 5 are based. As far as we are concerned, it is completely separate.

Mr Magnus Brooke: I guess the question in a sense is what matters, and as far as we are concerned what really matters is the editorial output. If there is an ability to share the cost of facilities, the building, the PA fee, all that basic stuff that lies behind creating a news service, that seems to us to be pretty efficient provided that there is a very distinct and dedicated editorial resource for each of our programmes. That seems to us to be where it makes sense to put most of our money, and if there is a way of sharing other things, which reduces the wasted cost, if you like—it is not wasted because you need it but—

Bishop of Norwich: ITN is also providing your 24-hour online news, is it?

Mr Magnus Brooke: Nationally and internationally, but the regional bit of it is done through our regional news operation—so it is the same news gathering operation.

Mr Dan Brooke: There are undoubtedly economies of scale that they are operating, which I hope we are benefiting from, to do with back-office costs and so on. There is also undoubted sharing of things like information in relation to safety in certain parts of the world. There are economies of scale in training and so on, but I think from what I have determined, the Channel 4 News team is in a different part of the building to the ITV News team. I know many of the individuals involved. They are quite different people. Individuals and organisations tend to attract each other. The type of people who have a Channel 4 type of personality tend to be the ones who go to Channel 4 News, and I think if you were to speak to the people in Channel 4 News they would say that they have a kind of dual nationality—part of it is ITN and part of it is Channel 4.

Not only do we have a detailed contract but we have a detailed quarterly review process to ensure that the programme is living up to the editorial strategy that we wish for it, which is based on the remit, and where that is not happening they sure as heck know about it. In that respect it is relatively straightforward for us, and I do not see anything that would cause me concern that we were not getting, in editorial terms, something that was ideally suited to us because we have the remit that we have.

Mr Lee: There is just a further point, which is that, as the broadcaster, you are the broadcast licensee, it is your PSB licence. Whatever goes out on your channel is your responsibility and you cannot abdicate that, you cannot sublicense that or outsource that. So I do not know whether it is necessarily helpful to characterise a relationship as a retailer-wholesaler one. For us, it is more collaborative than that. It is not so much a concern that ITN, as an organisation, has too much of a powerful voice, because the way we see our news output is that it is Channel 5’s voice and it just so happens that ITN create that for us. So Channel 5 is not a sleeping partner there. We are not just receiving the news content that ITN creates. We have an integral role there. We have a collaborative and well documented and set out process whereby ITN may well come up with the day-to-day detail of what is included in the bulletins, but in terms of editorial strategy, in terms of approach and look and feel, tone of the programmes, we cannot abdicate our responsibility.

Q241 Earl of Selborne: My question is to Magnus Brooke because it refers to ITV’s written evidence where you caution against relying on market mechanisms to deliver news plurality and for supporting PSBs. If I could just quote what you say, “We suggest that a
strong intellectual property framework, a fair regime for PSB channels carried on major TV platforms and modernising the electronic programme guides, EPG, prominence regime are areas in which policymakers should focus. Could you expand on that, particularly what you mean by a fair regime for PSBs, and will this deliver plurality?

Mr Magnus Brooke: The key thing for us is that the news services we provide are part of a channel that is flourishing commercially. That enables us to maximise our investment in original content but I think in turn it also means that mass audiences come to our channel and the more people come to our channel the more they watch the news programme, bluntly, because it is part of an overall channel that is popular, that attracts an audience. From our point of view, self-help has always been key to flourishing commercially. We have to make our own way in the world, we have to create programmes people want to watch and we have to exploit them effectively and make revenue in order to be able to pay for the news programmes, and also to attract audiences of a scale that gives us a real role in media plurality in the UK. But equally—and this is where we have a concern—we have to be in a position where we can make a return on our investment in successful content. To the extent there are existing interventions or policies that inhibit that, then we do have some concern, and the three areas you identify are probably the three most important.

Earl of Selborne: You identified them, not me.

Mr Magnus Brooke: The first on IP, we do see a fashion to weaken IP protection in the UK, and some interest in Government in enlarging exceptions beyond what is already proposed, and we are very concerned that this could undermine the UK content industry in the long term to no obvious benefit. That is a real concern, because increasingly our ability to invest in our content depends on making a secondary return, and news is part of an overall programme ecology that has to make economic sense from our point of view.

The second is the regulated relationship between PSB channels and pay TV platforms, which in our view results in increasing amounts of money accruing to platforms as the result of the exploitation of our content, partly by new PVR devices that enable ad skipping and which enable you to build up virtual VOD services of content stored on your hard drive. Increasingly that value is being extracted by platforms and, as a PSB, we have to supply our channel for free for these platforms or, in the case of Sky, we still have to pay Sky to distribute our service when more of the value from our content is being extracted downstream by the platform. So again, we worry that our ability to continue to make a return on the investment that we make in content to reinforce this virtuous circle that drives audiences to our service, and also enables us to continue to afford the news programme, is potentially jeopardised because money is leaking out of the system via pay TV platforms.

The third I think is that as global companies increasingly battle for the control of screens by which content is being accessed, particularly in the living room, PSB content risks being less and less prominent over time as prominence becomes traded on a global basis. So, effectively, global gateways end up doing global content deals and what you end up with on the main screens that you access content on in your living room are the result of global deals rather than local content providers, PSBs, in the UK. Therefore, the habit of watching the news, the habit of going to public service broadcasting channels begins to wane and people cannot always find the content they want. We think that is quite an important emerging issue.

Q242 Earl of Selborne: But these EPG platform displays are global, are they not? They are not all within the regulation of Ofcom.
Mr Magnus Brooke: I think the interesting thing about this is if you look at the platforms by which people access most of their television, they are still essentially rooted in the UK. That may change, but equally these platforms need to be sensitive to local market demands to an extent. I think it is quite difficult to have a mass market content access platform to deliver a suite of services in the living room unless you have a base of some sort in the UK, in truth. I think it is genuinely quite difficult. If you look at the people who have tried to access this market remotely—the Googles and others—they have not been very successful.

I think the way in which this market will evolve is you will find platforms who have to base themselves to an extent in the UK and come under the jurisdiction of the UK and offer a suite of services in the living room via an access point that comes via our television set. So I do not think that you are going to have providers in the States offering a plausible substitute for Sky or cable in the living room any time terribly soon. I think they are going to have to get closer to their consumers and develop more of a relationship with them, which I think means they probably have to come closer to where the consumers are.

Earl of Selborne: When you say these are areas in which policymakers should focus, are you suggesting that Ofcom’s remit should be changed?

Mr Magnus Brooke: I would agree with the BBC. I think there are things you can do in the existing EPG regime that would give you a degree of protection where platform operators are offering access to certain sorts of content. Potentially you could envisage a perfectly plausible regime in which there continues to be prominence for PSB channels.

Mr Dan Brooke: I would echo that. I think this EPG prominence needs to be sorted out, I really do. The current framework is just not specific enough and it could easily be made more specific and it could be immediately spread across other things like HD channels, VOD services, which are all contained within the UK. It is more complex when you get into areas for things that have distribution wider than the UK, but just for those areas I think they can be sorted out and they should be.

Q243 The Chairman: Do you think EPGs will continue to be menus rather than search engines?

Mr Magnus Brooke: In a sense it is part of the way that these things are evolving. We need to refine the definition of what an EPG is in order to capture some different ways in which people are going to access content in future. So you can envisage search engines, based on algorithms, that are entirely unbiased, but equally you can envisage all sorts of search engines that are fundamentally rigged to come up with certain sorts of content. There is a policy question, at least, in those circumstances whether you ought to have some degree of prominence, potentially, for PSBs.

Earl of Selborne: That would be wholly interactive, but again this is where technology was going to set the pace. I cannot quite see what role a regulator will have. If search engines develop in this way that is the way the market will go, surely.

Mr Dan Brooke: I do think we need an element of observation of current human behaviour, though, into all of this just to create a bit of realistic context. The audiences that we best serve—we are particularly good at serving younger audiences who are perhaps more likely to use less traditional forms of ways of finding content—are a little bit further advanced than the general population as an average, but it is still the case that 90% of audio-visual content consumed in the UK is via linear television, according to the schedule - no time shifting, no recording. The biggest chunk of the 10% is people watching it on their PVR and a minority
percentage, 3%, 4%, is people watching things on other devices or via video-on-demand services.

While that obviously is a big change from 10 years ago, would we expect there to be a big change in 10 years’ time? A bit like the way that viewers still go to television as their chief source of news, we would anticipate that certainly in the next 10 years—which is not an unreasonable regulatory timeframe across which to look—that will remain the case.

**The Chairman:** Do you have any thoughts on this?

**Mr Lee:** Just to say that EPG prominence is a central plank to what the PSB deal is. In order to remain financially viable, financially profitable, EPGs must have regard to the status of PSBs and if there are developments that over time erode the measures that protect the prominence of PSBs on EPGs then perhaps the regulatory framework needs to be revisited. There is the Ofcom code on electronic programme guides. As far as I am aware, that piece of regulation has not been looked at in a very long time indeed. What Dan says is correct, it is a very vague piece of regulation. Arguably, because it is so vague it is very easy to get around it if you are in the business of getting around these things. Arguably, there have been a lot of innovations that have happened since it was drafted.

If you were to look, for example, even on the Sky HD EPG you do not see the order of channels being the same as they are on standard definition. It is completely different. So in Channel 5’s case you have to look on page 3 of the guide before you even get to the first channel. The point is that that is a development that has happened since that piece of regulation was drafted, and it does beg the question why it has not been looked at since.

**Mr Magnus Brooke:** It is a very simple point in a way. As audience behaviour changes or the ways in which audiences access content changes in the living room change, how important is it that they should be able to easily access PSB news services, to give one example? They can pretty easily, for the most part, identify where those news services are at the moment on traditional linear EPGs. As new ways of finding content in the living room are developed and offered to consumers, the question I think for policymakers in the end is how easy do we want it to be for them to be able to find accurate and impartial news services? Should they be on the third screen, the 10th screen? If you start searching for content via your TV platform, should PSB news services appear near the top of the list if you search for news or should other news providers, or indeed anybody else, be able to pay for those sorts of positions when people are looking for something else?

In a sense, we think that the PSB regime ought to keep up with the ways in which consumers are accessing content in the home, which, as Dan says, are not changing as radically as sometimes you might suppose.

**The Chairman:** Certainly I can see from your point of view commercially—and it is a perfectly reasonable proposition—that you would like to see your wares up near the top of the list.

**Mr Magnus Brooke:** It is partly that, but it is partly also in a sense the PSB point that Marcus makes. If as a society we value these things and we want them to be prominent, we want people to watch these news services, then in a sense they need to be prominent too, otherwise—

**The Chairman:** I agree with that—

**Mr Dan Brooke:** Viewers say that they do. If you ask a member of the public, “Are you in favour of public service broadcasting?” they would look at you a bit funny, but if you ask
them, “The constituent parts that are delivered by the system, are you in favour of them?” people seem resoundingly to say, “Yes”.

**The Chairman:** Yes, but the trick is to know how to do it.

**Q244 Lord Dubs:** Turning to impartiality, you clearly have an obligation to uphold due impartiality in your news and current affairs output. What do you see as the interplay between diversity and the breadth of views on the one hand and due impartiality on the other? In other words, how far can a due impartiality requirement really go towards supporting diversity?

**Mr Dan Brooke:** An interesting question. To start, I think philosophically one could argue that impartiality may in fact be at odds with plurality. But our view is that in actual fact, in practice, it probably does the opposite, it probably encourages it. A lot of that is in the flexibility that exists within the due impartiality regime, some of which was discussed in the previous session with the BBC. As for the present situation, we have impartiality and, as I have said, I think we also have high degrees of plurality, so there is something there that works. Whether or not there is a cause and effect relationship between those two things is a slightly different matter: But if one asks, “What happens if you were to remove impartiality for television?” then I think it is entirely possible you create the circumstances where owners of media, of television outlets, can do what has happened in other parts of the media, which is to have a partial view but to have a consistently partial view across all of their output. Therefore, what ultimately this could lead to is the potential where you get as much plurality as there are media owners, as opposed to the present situation, where I think it is more like you get as much plurality as there are channels and possibly as there are programmes or programme strands.

As a final point, I do think it is very important to maintain the impartiality rules and to retain them across all of television, not just for PSBs, because viewers do seem to recognise that there is a difference between television in this regard than all other media. I think that viewers’ ability to make those distinctions will be much harder between television channels, as between television and other media.

**Q245 The Chairman:** Again, this is not a question that has any value overtones. It is the case that hitherto the only news you can get on television, as opposed to streamed Fox News from America, meets the impartiality requirements. We have only lived in a world in this country where TV news is impartial, so that may colour people’s response to the questions.

**Mr Dan Brooke:** But people are not asked, “Are you in favour of impartiality?” People are asked, “What do you trust?”

**The Chairman:** Yes, and they like that because it is impartial.

**Mr Dan Brooke:** They may not necessarily be able to work out the cause and effect.

**The Chairman:** But it does mean, as you say, people trust it but they have not had the opportunity, the alternative. I am not saying they necessarily should have the opportunity and alternative, but it has to be careful not to fall into that trap I think.

**Mr Magnus Brooke:** I suppose in a sense they do have the alternative in the press, do they not?

**The Chairman:** Maybe, if that is the right response.

**Mr Dan Brooke:** And on the internet.
Mr Magnus Brooke: So in a sense there is almost a plurality of different models. There is an impartial model in TV news, there is a highly partial model on the internet, and there is a mildly partial model in the press. In a sense, one has a mixture of all those different models all co-existing at the same time. Certainly we would support impartiality, but also I think we are very careful to make sure that we reflect different opinions and to make sure that we reflect different views of the world in our output, and we think that is entirely consistent with being impartial. Indeed, a requirement of impartiality is to give a voice to all sorts of different views of the world in order to help people make sense of it, and obviously to put those views into context and to put opposing views together in order that people can make up their own minds.

Mr Lee: I think that is absolutely right. There is an audience expectation for there to be that due impartiality. Audiences are not stupid, they know when they are being led down a particular route or a particular argument, one above the other. Aside from the Ofcom code, rule 5, which is there and we have to comply with, audiences expect there to be a naturally balanced approach to news and current affairs in this country.

In answer to the original question—and this goes along with what Dan says—in concept diversity and breadth of views on one hand and due impartiality on the other, in practical terms those two concepts can exist side by side. You can provide for a breadth of views but at the same time not favour one argument over the other. You can provide your audience with a broad range of views and allow them to make their own decision.

Mr Dan Brooke: I think it is a combination of impartiality and this thing that I have been banging on about, this sophisticated ecology of different organisations with different objectives. It is the combination of those two things.

Lord Dubs: So you think that there is no need to rethink the role played by PSBs as providers of newsworthy impartial news and also as gateways to diverse opinion? Do you think the present situation covers that?

Mr Lee: I do.

Lord Dubs: The British public are conditioned to believing that television news is balanced and impartial and so on, are we not? Until you have been to the States and looked at Fox you do not know there is anything different possible. Do you think the more that people go on the internet and see things that are not as objective that will make them wonder about the news that they see on television, or are we all accepting in every generation that that is the way our news is?

Mr Dan Brooke: It is a free country. People can go on the internet, people can buy newspapers yet, hey ho, here we are: the single most significant source of news, which is also the most popular, happens to be television, which happens to be the one that is subject to due impartiality and accuracy rules. I think that part of the problem is when you start to make those changes you cannot go back.

Q246 Baroness Fookes: Last week we had representatives of BSkyB before us and we asked them if they wanted to see any changes made in the regulatory framework governing plurality. They made it abundantly clear that they were content with the present regime. Would you concur with that and, if not, what changes would you like to see?

Mr Magnus Brooke: Broadly speaking, we would concur with that. We do not think it is particularly easy or practical to seek to set up an ex-ante media plurality framework with some sort of arbitrary cap or permissible market share. In a sense, even if you did have that
sort of framework, I think we would have concerns about what you would do if that cap was exceeded and whether the consequences of exceeding it could end up either penalising success or potentially even leading to less plurality rather than more. I think that that is our position in relation to the ex-ante test.

We do think it is important to maintain a clear public interest dimension to the media merger regime. In addition, I think one of the emerging issues here may be less about blocking media mergers and more about taking a forward-looking approach to sustaining a viable level of plurality by allowing certain mergers to go ahead. That is a slightly different way of thinking about the media plurality test and the public interest test. If you look at the way the competition regime is currently dealing with newspaper mergers, that does seem to us to be suboptimal. In particular, in its local media assessments in newspaper cases Ofcom appears, reading between the lines, to believe that consolidation would probably be justified, looking at how the market is developing and with one eye on the broader public interest. By contrast, the pure competition authorities still seem to be struggling with the way in which the markets are changing rapidly, with globalisation, with digitisation, and are therefore taking a rather more cautious approach. The risk of that approach is that rather than preserving a sustainable level of plurality through allowing consolidation now, in effect you get less plurality in the long term because you take too cautious an approach to permitting consolidation, to permitting greater scale in order to compete effectively as a news organisation in a world that is changing very rapidly and where competitors are increasingly powerful.

Beyond this, one of the themes from today is just recognising that the PSB regime is absolutely key, we think, to maintaining media plurality in the UK. If we get it right we can ensure effective competition between different universally available, free-to-air and well resourced news providers of scale. As markets change quickly, I think one of the key things we would emphasise is this does require Government, the regulator and parliamentarians to be vigilant and to move fast in areas such as EPG policy or the relationship between channels and platforms, in order to ensure that this ecology continues to be sustainable and, crucially, has the scale to compete against some of the people, particularly coming out of the US market, whether it is tech companies or content companies, moving to use their economies of scale in markets like the UK. If you want to maintain UK broadcasting, UK news, as a powerful force, providing genuine plurality and a genuinely UK perspective on the world, you do need to pay attention because things are moving pretty rapidly.

Mr Dan Brooke: From our perspective, there is the competition framework, which we support, and then there is the public interest test. Broadly speaking, we agree with what Ofcom has said about the public interest test. We do think that periodic reviews, where everyone knows when they are going to be and they are four or five years apart, is a good thing, not least because that will have the potential to pick up this issue of organic change in the market rather than change as the result of an individual transaction.

More broadly than that, this whole concept of the rich, sophisticated ecology that I keep going on about is a result of policy and regulatory intervention and it has been extraordinarily successful. Obviously there are a number of different parts to that, and we do not know how delicate that is because significant parts of it are not changed that frequently, but thinking very hard about what the good reasons might be to change some of it should always be very carefully considered. Our view is that society will probably benefit, rather than the other way round, if that system is strengthened rather than even maintained at its current level.
Q247 Baroness Fookes: How would you strengthen it?

Mr Dan Brooke: I am glad you asked that because I will take that as the “magic wand” question that you asked our predecessors. I think the EPG prominence that we have been talking about is an important one. Certainly for us as a commercial PSB, the one that I would really ask you to focus on is this harmonisation down of advertising minutage, which we think is in the interests of viewers and also in the interests of the commercial PSBs and would have the effect of increasing our revenues. I cannot speak for others but certainly in Channel 4’s case that money would be immediately reinvested in UK-originated programming and, as I have said, news and current affairs is absolutely at the heart of our operation. So that is a very particular way, and I think probably the biggest way from our point of view in terms of the numbers involved, probably more than EPG prominence. I would also add what has now been quite an extensive debate about platform fees.

Mr Lee: From Channel 5’s point of view, what was interesting was that there was a question posed in the Ofcom advice to the Secretary of State: at what point do we feel that media plurality in the UK is sufficient? What does sufficiency look like? How do we get there? How do we measure it? I am not sure whether there is an answer. Channel 5’s position is that there is a vibrant market in the UK, there is effective competition and a range of diverse views out there, a lot of choice for viewers to benefit from. It is difficult, therefore, to think of a regulatory regime or a change to legislation that would preserve that because you do not know what you are aiming for. You do not know whether what we have at the moment is right or not or actually achieving the aims that you want to achieve. So, there is that.

In terms of competition law, in a way we know where we are at with that. We know that there are triggers there. We know when that is relevant. We know when the authorities are likely to take interest in a transaction or not. So that has been proved to be effective. In that sense, that is Channel 5’s feedback in respect of that type of control.

In terms of the “magic wand” question, going back to future sustainability of PSBs, I guess there are a few things that we could mention. These are not financial or economic “nice to haves”. These are not “we are commercial enterprises therefore we want to make as much money as we can”. We are talking about viability of services here and sustainability in the long term. For Channel 5, that has not always been assured. Under previous ownership Channel 5 never made a profit. It made a profit in the first year of Northern & Shell ownership, but that is a very exceptional year: we had redundancies, changed suppliers, and so on. As the newest and smallest PSB, we are always concerned about erosion of what the PSB deal is. We are happy to provide news and current affairs output. We are happy to meet/exceed our other obligations in respect of things like originations and commissioning of independently produced output, but in order to do so we have to make sure that we are financially viable. How you do that is within the benefits of being a PSB, which are primarily allocation of DTT spectrum and EPG prominence.

Anything that would erode the benefits of those things would eat into and be a concern in respect of financial viability. Magnus has already mentioned changes to copyright law, retransmission fees, and the TPS regime whereby between the PSBs we have to pay £10 million a year to Sky, which is therefore taken off screen and into Sky’s coffers, which is a concern. So, there is that.

Other things around the edges include Section 73 of the Copyright, Designs and Patents Act that effectively enables cable retransmission for free of PSB channels. We invest in content. We do not get paid for it. That is an issue that needs to be looked at. A side issue there is that unauthorised online aggregator sites like TVCatchup are able to use that as a loophole.
in order to take our PSB content and retransmit to the public, inserting their own adverts and keeping all the revenues from them. So there are things, as I say, that erode the viability of PSBs going forward.

**The Chairman:** That is all interesting, and thank you. We must stop by 6.00pm. It is now 17.58, so I will formally say is there anything else any of you would like to say? Please bear in mind you have two minutes between you to do so. Thank you very much indeed. Thank you for coming. We appreciate it.
Channel 5, Channel 4 and ITV – oral evidence (QQ 234-247)

Transcript to be found under Channel 4
Professor Richard Collins and Professor Martin Cave – written evidence

See Professor Martin Cave (Imperial College) and Professor Richard Collins (City University London)
TUESDAY 18 JUNE 2013

Members present

Lord Inglewood (Chairman)
Baroness Bakewell
Baroness Deech
Baroness Healy of Primrose Hill
Lord Razzall
Lord St John of Bletso
Earl of Selborne
Lord Skelmersdale

Examination of Witness

Professor Richard Collins, City, Huddersfield and the Open Universities

Q29 The Chairman: Thank you for waiting and welcome to Richard Collins. We have a biography explaining your considerable achievements in this field and you have advised this Committee in the past, so I do not think we need to introduce the way we do business. Thank you for coming; it is much appreciated. Thank you for the written evidence. Unless you want to say anything at the start, we have a number of questions, so perhaps we could just go through them.

Professor Collins: May I just make a couple of preliminary observations, my Lord Chairman? First, my invisible friend Professor Cave sends his regrets and apologies for not being able to be here today. He is on business for the Competition Commission and I am under strict instructions to tell the Committee that if we stray onto Competition Commission issues, it is me who will be speaking and not Professor Cave.

Otherwise, I would just like to summarise our paper, which I think consists of three arguments. One is that there is a significant structural change going on in the media sector, notably, the migration of advertising revenue to the internet, which is undermining a business model that has sustained relatively high quality and relatively pluralistic media in the UK and elsewhere for a long time. Increasingly, we think that this structural change means that regulators and policymakers will be faced with very uncomfortable decisions as to whether to permit mergers or to accept that businesses will go out of existence. In any case, we will see an increasing concentration in ownership.
Q30  The Chairman: Can I stop you there? That is in the two traditional bits of the media—namely, newspapers and television broadcasting—is it not?

Professor Collins: In advertising-funded media, yes, and radio of course too. I might add a fourth area, regional newspapers, which is where we see this pressure most intensely. Press Gazette research found that between 2005 and 2011, 242 local newspapers in the UK had gone out of business.

That, in summary, is our first argument. The second is that whatever measurement instrument is taken by regulators and policymakers, it is not an innocent choice. We know that your Committee has received evidence suggesting that a revenue measure should be taken. This foregrounds the position of News Corporation. The argument that Professor Cave and I have made is that share of consumption should be taken and this puts the BBC into the frame as the largest actor on the block. The choice between these is not a neutral one: the choice of the measuring instrument takes the regulator in very different directions. We think share makes more sense as a measurement index, simply because the concern over concentration of ownership is a concern about the diminution of opportunities to receive a variety of interpretative perspectives, different news values and so on, in order that readers, listeners and viewers can act more rationally and better informed in a political context. If one takes revenue as the indicator, you are vulnerable to some rather perverse outcomes. If one imagines that a large, high revenue news conglomerate were to reduce its prices, its revenues are likely to decline, thus taking it out of the regulatory crosshairs. However, consumption might very well go up after that price drop, increasing the putative influence on opinion formation and so on. We think share rather than revenue is the best indicator.

Thirdly, although there is pervasive and intense concern over the changes in the media sector, it is not wholly a story of threats; it is also a story of opportunities. We see opportunities for modest experimentations in public support for emerging new media to foster pluralism and diversity. In sum, that is the nature of our arguments.

Q31  The Chairman: Thank you very much, that is a helpful starting point for discussion. If I could begin by saying that generally everybody believes, rather like motherhood and apple pie, that plurality is a good thing, but how widely or how narrowly do you think it should be defined or measured?

Professor Collins: The bounding of the issue is always going to be, to some extent, arbitrary. I see no reason to suppose that fiction or children programmes might not be important in opinion formation. If we were to take media content beyond an admittedly rather fuzzily defined news and current affairs focus we would get into so sprawling and all-embracing an inquiry. If we are looking at the influence of fiction or concentration in the supply of fiction, one would have to logically look at video on demand, theatres, cinemas and so on. News and current affairs has had a sort of time-honoured status in this domain. This is what concern focuses on, not only in the UK but in other jurisdictions where there is ownership regulation, and for good reason, I think. The core of this concern is really a concern for enabling citizens in democracies to expose themselves to different news values and different interpretative paradigms.

The Chairman: So you think one should focus the inquiry in that direction?

Professor Collins: We do yes—my invisible friend again.
Q32 **Lord Razzall:** My fundamental question—which is: what are the major prospects and threats to media plurality in the UK?—is one that you could probably speak on for an hour and a half. Could I probe you a little on the views you have expressed? You suggest that media concentration provides a convenient lightning rod for disquiet about the future of media plurality, although you are rather depressive about the collapse of the current business model in that area. You also suggest that the fifth-estate journalism, i.e. the development, is not going to be strong enough to sustain the plurality that we want. I do not know whether you want to expand on both of those views.

**Professor Collins:** That is fair comment Lord Razzall. None of us is infallible in predicting the future and it may well be that events falsify the perspective that we have put forward. There does seem to be a very strong secular trend in changing the advertising market and for some reason the UK seems to be leading the field in this. We have seen a remarkably large number of closures, particularly in the regional press. We are also seeing increasing concern about the ability of established and continuing news outlets to fund high quality and comprehensive journalism.

Q33 **Lord Razzall:** Are you talking about the written media more than the broadcast media?

**Professor Collins:** In 2009, ITV regional news was reduced from 17 different news centres to nine. ITV continues to rattle its sabre about closure of regional news. This trend is certainly being experienced most acutely in the printed media but it is not confined to that. If that trend is to continue, we will continue to see mergers and closures and we will see regulators faced with these very uncomfortable choices as to whether to permit mergers and increasing concentration or to see closures and increasing concentration.

We think that changing the regulatory order is going to have relatively little bite on this structural problem. Focusing on changing media ownership regulation is taking attention away from looking at what the main issue is. We see the remedy—if there is a remedy—more in terms of public intervention to redress or mitigate classic market failure. We have got that very well established in the UK with the BBC and other publicly funded broadcasters, other jurisdictions, press subsidies and so on. The growth of the online media, the fifth estate as you say, at the moment is a very halting one. We have a shoal of minnows, as it were, although there are complex two-way flows between consumers and journalists online. None the less, that shoal of minnows is very highly dependent on relaying and repackaging information from what we could call legacy or established media. For Professor Cave and me, we do not see a proximate possibility of the crisis in the business model of established big media being mitigated by letting 100 flowers bloom, or letting 100 minnows swim. It is time, and Ofcom launched a kite about five years ago with its idea of a public service publisher, to think about a different and more widely spread form of public intervention and public support.

Q34 **Lord Razzall:** Your point about minnows is probably correct on the fifth estate in news and current affairs, which is basically recycling material. It would not be true in other areas—for example, BT’s intervention in football, which is hardly a minnow. There is potential there for significant development.

**Professor Collins:** That is true, but as I said to the Lord Chairman, our view is that the nub of this issue is news and current affairs.
Q35  The Chairman: You described, which we all now recognise, the move from newspapers in particular to online, where quite a lot of the biggest players are the newspapers' websites. Do you consider that that is merely sending the same information in a different packet or do you actually see it as a different product?

Professor Collins: I do not see it as a different product, Lord Chairman, but for me whether it is a different product or not is a secondary issue. None of those websites is really making money. The funding problem remains.

Q36  Baroness Fookes: We have looked at some rather negative aspects through you. Could you tell us what you think the objectives for the policy should be?

Professor Collins: Yes, Baroness. I think, broadly, the objectives of the policy should be to ensure that citizens within the UK have affordable access to a sufficient—and doubtless we will return to this word—number of high quality and independent sources of information and comment. That is the objective.

Baroness Fookes: That is broadly in line with the Ofcom advice about the “desirable outcomes”, as I think it calls it.

Professor Collins: Yes, although we have a difference in nuance with Ofcom because we think that the issue is attention to the supply side and that there is very little that policymakers and regulators can do to affect consumption, whereas Ofcom talks quite a lot about the diversity in the consumption of different media.

Baroness Fookes: That is really not possible, is it? You cannot dictate to people what they take in.

Professor Collins: I agree

Q37  Baroness Deech: We have been talking about pluralities, as it were, across a landscape of media. As Lady Fookes said, is there not a problem in that perhaps all of us just look at one little segment? There must be an awful lot of people who just consume the local newspaper and nothing else. I do not know what you can do about that.

Professor Collins: In a democracy, not very much, Baroness Deech. What you say is true. By and large, people's consumption of media is not particularly diverse. Television remains overwhelmingly the most important source of political and general information about the world for most people in the United Kingdom. There is not much migration between different news services. People select either the BBC, or ITN, or Sky. There is the same kind of loyalty in the newspaper sector. Where I think there is some mitigation is that, by and large, there is remarkable commonality of news values in the British media. Different political spin or interpretation is often put on it, but by and large the same things are reported.

Baroness Deech: Would plurality not be greatly increased if everybody—going back to a previous study we did—could get online? Those who cannot, and there are many millions, are depriving themselves of a whole range of information.

Professor Collins: Indeed. I think it is highly desirable that there is universal, affordable access to broadband in the UK. It is increasing pretty fast—the telcos are doing a reasonable job at that—but I agree with you completely: universal, affordable access to broadband is an important objective.
Q38 Lord Skelmersdale: I heard you say that, by and large, most people get their news information from television. What about the wireless? I suggest that most people use both.

Professor Collins: I cannot tell you whether you are correct on that, Lord Skelmersdale. It may be true, but the statistic that I have in mind is that 85% of UK citizens, when asked what their main source of information about the world is, television news is nominated.

Lord Skelmersdale: Can you send us a reference for that remark, please?

Professor Collins: I am sure I can.

Q39 Lord Skelmersdale: Perhaps I can move on. On plurality, should this purely be a provider inquiry or should it also include recipients?

Professor Collins: There are difficulties in legislating or regulating consumption. One can regulate and legislate to change supply, which has a knock-on impact on consumption. We think it is the supply side that historically and properly has been the focus for these regulatory activities. If one were to look at consumption, or what Ofcom calls the “individual level”, a variety of different sources or high level of cross-media usage of the kind that you referred to, with people using both television and radio, can only be obtained if there is plurality in supply. Whichever way one skins the cat, one comes back to the supply-side issues.

Q40 Lord Skelmersdale: From what you said earlier you believe that this should be cross-media?

Professor Collins: I am not quite sure I know what you mean when you say it should be cross-media.

Lord Skelmersdale: By cross-media I mean, as we have been discussing just now, local newspapers, national newspapers, internet, wireless, television.

Professor Collins: I certainly think the regional and national newspapers, radio and television should form part of this examination of the extent to which people in the UK enjoy plurality in supply. Whether it is the right time to move into the internet, I am uncertain. Such evidence as we have suggests that it is legacy media, as I call them, that are still overwhelmingly the source of information about the world for people. As I have also said, the evidence is that most, but not all, online media are parasitic or symbiotic on those established media. It is only the newspapers and the broadcasters really that have got the resources to do a significant amount of news gathering and news origination. There is, as I said to Lord Razzall, a shoal of minnows out there online but not of the importance of the established media.

Lord Skelmersdale: I must say as an aside, I like your comment on parasites.

Q41 The Chairman: What you said that is interesting is that if you are analysing where news comes from, you have to go behind the veil. How many significant separate sources of news do you think are actually out there?

Professor Collins: It depends how you are counting, my Lord Chairman. For people like you and me, I read the Wall Street Journal every day; I read the International Herald Tribune every day; occasionally, when I want to punish myself, I read Le Monde. I recognise that not many people do that.

The Chairman: But some of them are feeding off each other too, are they not?
Professor Collins: Yes, they are, and they are all feeding off a limited number of news agencies or freelancers. It is an extremely complex task to identify where news comes from. It would be a nightmare mandate for any regulator to be given that.

The Chairman: You have made your point pretty clear.

Q42 Baroness Bakewell: It is a very knotty problem, but what I am interested in is your view on the nature of change. Once or twice you have mentioned the fact that it is important to bring new information channels into the picture, and I wondered how you would define that within the view you want us to take of the review, because it is a changing situation. You have this army of internet journalists, citizen journalists, suddenly arriving onto the whole global picture. Where do we limit and what do we measure?

Professor Collins: Our perspective, Baroness Bakewell, is to say maybe we should spend a bit less time limiting and measuring and a bit more time fostering and supporting so that these minnows or 100 flowers that are precariously blossoming can establish themselves—or some of them can establish themselves—as genuine authoritative alternatives to the established big media we have now. That would be a very interesting topic for another inquiry. One would not want to hand out public money to just anyone who applied; you have to think of the criteria. It would be perfectly appropriate to ask for an adherence to a code of ethics and so on.

Q43 Baroness Bakewell: Do you think that should it come within the scope of our review?

Professor Collins: No. As I have said, any regulation of media ownership should focus on news and current affairs. It is not for me to tell this Committee how to bound its inquiry, but I think that might be a step too far for this inquiry.

Q44 Baroness Bakewell: What is going to trigger the sort of action that is going to redistribute or change media plurality? What would the triggers be?

Professor Collins: If one were pessimistic—and several members of the Committee have already said that we are putting forward a very pessimistic perspective—increasing concentration and diminution of pluralism will intensify this concern. I am, by and large, a great fan of the work of Ofcom. There are two past papers of Ofcom that really bear on this issue very interestingly. The first is the one in which they advocated the establishment of a public service publisher. Secondly, I think it is 2007 and I am pretty sure the reference is in our evidence to you: New News, Future News. This paints a rather gloomy picture of how this sector is going to develop.

Q45 Baroness Bakewell: So we wait for the change to happen, do we?

Professor Collins: If we are being pessimistic, yes. If we are being optimistic, we would like to see parliamentarians and government take the initiative and proactively foster some new initiatives here. These have happened, as we know, in the broadcasting area: the establishment of S4C, for example, of Channel 4 and so on. There is no particular reason in principle why this should not be done in other categories.

Q46 Baroness Bakewell: But surely it has got harder since then. Have the global financial interest focusing on these issues made it harder? Channel 4/S4C was in a more benign landscape, was it not?
**Professor Collins:** We only know it is impossible if we try it. Those who see the glass as half full rather than half empty will point to a variety of online sources where periodically one finds really authoritative and interesting commentary. I have spent most of my career in universities and I think there are intelligent and well informed people there who might very well be harnessed to contribute more effectively to putting their expertise out in the public domain. Chatham House would be another institution, and so on.

**Q47 The Chairman:** Just to be clear: are you thinking of these public service publishers—or whatever you want to call them—in terms of newspapers, or web presences, or what?

**Professor Collins:** I think this is an area for reflection and investigation, my Lord Chairman. I would not preclude either.

**Baroness Bakewell:** I am very much in favour of what you suggest. I am not quite sure how we knit it into the perspective that we are taking, which is to look at the existing landscape. It would be a very productive to see whether we could do something upbeat and positive like that, but I do not know whether we are going to find it possible.

**Q48 Earl of Selborne:** I would like to move on from systems of measurement to potential remedies. We have had a number of proposals, including structural remedies, which I do not think you really favour. Submissions include mandatory shareholder dilution; then we have had proposals for behavioural obligations, such as requiring independent editorial boards; allocation of more space for alternative viewpoints. In your evidence, you have suggested that a conceptual shift is required. Could you elaborate on just what you mean by this and how we would recognise it?

**Professor Collins:** By all means, my Lord. We have remained silent on what you have described as structural and behavioural remedies, because the core of our analysis is that the institutions and the firms on which these obligations would bear are increasingly going to be under economic pressure and increasingly will be unable to deliver on those new obligations. That is why the conceptual shift that we are enjoining is one to look at fostering new initiatives and new players in the media landscape, rather than trying to control and shape the behaviour of the existing ones, who are going out of business at the moment.

**Q49 Earl of Selborne:** You have suggested that Ofcom’s 2005 proposal for a public service publisher should be resurrected and that there are, “Grounds for allocating a further portion of broadcasting licence fee to non-BBC media players”. Could you expand on these approaches?

**Professor Collins:** Yes, this touches on my response to Baroness Bakewell’s question, and indeed to the Chairman’s. If, as we recommend, a policy of fostering entry and supporting new entrants were to be adopted, that would be a different way of addressing the problem of declining plurality. If one does the thought experiment to ask, “Okay, that sounds interesting, how would it work? Where would the money come from?”, I can think that at a time of stringent public expenditure cuts, the only obvious candidate for that funding is the licence fee. We have had a number of precedents where very small amounts of the licence fee have been directed to supporting non-BBC media initiatives. S4C is the most recent and the most substantial. When ITV was established in the 1950s, a chunk of the licence fee revenue was reserved for support for ITV, should it have been needed. In fact, it was not needed: the new entrant, the infant industry, turned out after about a year or so to become rather a robust child. We have had some—though I acknowledge not very many—precedents where a portion of the licence fee has been reserved for supporting new media
entrants. We think that might not be a bad way to go in future, particularly since our analysis based on share suggests that if there is a dominant player in the UK media landscape, it is the BBC.

**Q50 Earl of Selborne:** Do you think it is practical or desirable for the Government to make positive proposals or introduce measures requiring alternative viewpoints, whether on the BBC or anywhere else?

**Professor Collins:** We are coming up to BBC Charter renewal. I think this would be a good time for whatever parliamentary inquiry is undertaken prior to charter renewal—as most members will know, the origins of this Committee lay in the House of Lords Select Committee on BBC Charter Renewal.

**The Chairman:** Where you are too modest to say you were special adviser.

**Professor Collins:** I was, thank you very much. That would be a very interesting point for reflection on whether funding for public service media should continue to be confined to funding the BBC—the BBC and S4C, as is now the case.

**Q51 Baroness Bakewell:** But Channel 4 is struggling. If you are going to have another channel—

**Professor Collins:** I would not preclude it, Baroness Bakewell. That is the great merit of Select Committees like this. You can probe these hypotheses. I am not necessarily advocating it, because I have not done the sums, but it would not necessary have to be a broadcast television channel. Broadband is continuing to roll out. There is a variety of low-cost opportunities to do online media, hybridised online media with limited print circulation in particular areas and so on.

**Q52 The Chairman:** If I can just pick up on that: I am involved with a local newspaper group and one of the criticisms of the industry is of course that the BBC is in receipt of money of the kind you talked about and it is a competitor and it is all unfair competition. I have no doubt—although I need to say I have not asked them—that if this idea were developed further, you would find a whole range of players currently in the marketplace who are suffering difficult economic times saying, “Look, here is the Government introducing extra competition that is going to bring us down faster”.

**Professor Collins:** I am sure they would say that, my Lord Chairman.

**The Chairman:** I am sure they will, too.

**Baroness Bakewell:** They could apply.

**Professor Collins:** Our point is that there may be two ways to skin this cat. Neither way is problem free, but instead of only focusing on regulation, more obligations, it is worth at least a few thought experiments about fostering and supporting entry.

**Q53 The Chairman:** I will quickly make two slightly disparate points. The first one is, given the way the marketplace is now, you could argue that the logic of what you have told us is that there may not be need for many—if any—limits on concentration.

**Professor Collins:** In our bolder moments, we do flirt with that idea, my Lord Chairman.
The Chairman: Yes. The other thing is that we talk about the Herfindahl-Hirschman index. Just so we are all clear how you are employing it: you think this basically a kind of early-warning system, do you? You do not see it as anything more than that?

Professor Collins: Yes; it is a screen. It is not the Holy Grail, not the silver bullet I think is the metaphor we use. It is a useful screen that throws into visibility some findings that have made some people sit up and take notice.

Q54 Lord St John of Bletso: We have heard of the three options on who should intervene in whether it is in the public interest: the electorally accountable politician, the media regulator and a special plurality commission. Which do you believe is the best approach—or is it a mix?

Professor Collins: We are very boring on this, my Lord. We think the current arrangements, where essentially Ofcom does the analysis and the Secretary of State decides, is as good as it is likely to get.

Q55 Lord St John of Bletso: Do you think this is necessarily the right mix of accountability, competence and ethos?

Professor Collins: Yes. We think that this is a political decision as to what is achievable, what “sufficient plurality” reasonably can be stated to be. Ofcom has got significant expertise in gathering market data and market analysis. We do not see any merit in establishing another institution that would require its own research and analytical secretariat.

Lord St John of Bletso: Of course, we are all waiting for the Communications White Paper to see as to whether there is any scope for amendment in the future. “If it ain’t broke don’t fix it” is your approach.

Q56 The Chairman: You have sufficient confidence in the kind of steely probity of those in high office that they will not be influenced by these great media moguls whose behaviour appears to be partly behind why we have this inquiry at all.

Professor Collins: My experience of serving this Committee’s predecessors, my Lord, is that parliamentarians are not slow to identify and to probe any straying from the path of steely probity.

Baroness Bakewell: You would not allow for any brake on a Secretary of State’s judgment?

Professor Collins: I would respond, Baroness Bakewell, by asking: who would the brake be? One of your peers, Baroness O’Neill, has very convincingly argued that you have to trust someone somewhere. You cannot have an infinite regress of institutions checking on each other. The chain of accountability has to stop somewhere. It seems to us that with the Secretary of State is probably the least worst place.

The Chairman: He or she is also subject to judicial reviews, of course, which is important in this case as it puts a box round it.

Q57 Baroness Healy of Primrose Hill: Some have argued that there is an increasing role for Europe to take on matters of public interest in media plurality. How far should European competence in this area go? How should it marry with national responsibilities for protecting the public interest?
Professor Collins: I am afraid we will give a pretty short answer to that, Baroness. We think that the media markets of European Union member states are so diverse that it is very, very hard to imagine a coherent and meaningful pan-European policy coming into existence. The Commission has flirted with this for a number of years and has I think, thus far, been defeated by the practicalities. We have a series of separate national or language markets of very different size and structure. Some small member states—Estonia or Ireland—have got a limited economic capacity. They simply do not have the money to support the range and diversity of the media that can exist in larger member state. If you look at the larger member states, in Germany and France for example, the press is largely a regional press. In the UK it is a national press. It has proven very hard—and we think continued effort is not really worthwhile—to formulate a coherent and effective European policy on this. Subsidiarity is what we enjoin.

Q58 The Chairman: Is there any market on the Continent that you think has significant lessons for this country: the systems they deploy, and so on?

Professor Collins: I am tempted to say, my Lord Chairman, that I think we will look on this period in the UK as a golden age. That is putting it too strongly, but I cannot think of any other media market in the world with five reasonably high quality newspapers, owned by different owners, and with three separate, reasonably authoritative sources of broadcast news. This is about as good as it is ever likely to get. The structure of the industry is changing and this relatively good position is unlikely to be sustainable. I do not see anywhere else that really has got a better media or regulatory regime in this domain.

Q59 Baroness Bakewell: Some have suggested that Germany had things to teach us. Do you think this regional nature of German media is of benefit?

Professor Collins: I am a big fan of Germany, Baroness Bakewell. I have written a book about German television and whenever there is a lesson from Germany to be learnt, I am keen to learn it. The structure of the Germany economy and German politics is so different from the UK. It is a federal state; very important responsibilities lie at the Länder level and the media is organised to reflect that: the newspaper that widely circulates in Hamburg has a tiny circulation in Munich. It is very difficult to read across. There are some things to be learnt from Germany: they have a permanent commission for example on concentration of media ownership. I think Ofcom does a good enough job here; why would we want to do it differently?

Baroness Bakewell: Yet we surely all regret the collapse of the ITV network: Granada, Anglia, Border. That was a real loss, was it not?

Professor Collins: This, we would argue, is grist for our mill, Baroness. As revenues decline, so concentration increases to reduce costs.

Baroness Bakewell: But regrettablly.

Professor Collins: Regrettably, indeed.

Q60 Baroness Deech: We have received a lot of criticism of the existing system for ensuring plurality. Is it really that bad, or is there anything in our existing system that you would keep?

Professor Collins: I think that the basics of the existing system are, at worst, unexceptionable. I do not think we would want to change anything that exists at the
moment. The 20/20 provision is likely to come under increasing pressure, but I do not see any pressing need for that to be changed at the moment. I have already responded to the question about who should decide to say that, rather boringly, we think that the existing arrangements are okay. I will just look at my notes for anything else. The public interest test is always going to be judgmental; there are quite sensible guidelines spelled out for that. I think we regard the existing regime as one that does not have any striking difficulties about it. It is more that we think that that regime is going to come under increasing pressure because of the economic changes in the sector itself. It is not an intrinsic problem with the character and the manner of regulation.

**Baroness Deech:** But we still have a greater choice in this country than probably any other in the world.

**Professor Collins:** Indeed, but is it worsening. The quality of journalism in the UK is clearly falling off, particularly at the local and regional level. Hundreds of newspapers have gone out of existence.

**Q61 The Chairman:** Thank you. Before finally drawing this session to an end, there is a small point that I would like to raise with you. You say in your evidence that a decision has to be made about whether to allocate the audience to the wholesale providers or retail providers. I suppose this question is: who actually has greatest editorial control over them? Do you have any thoughts you would like to share with us about that?

**Professor Collins:** Yes, my Lord Chairman. We agree with you that editorial control is the key issue, and that that may be at the wholesale or retail level. In a response to an earlier question—I think it was one of yours—I was saying that teasing out those chains would be a nightmare task for any regulator. Professor Cave and I did discuss this very issue last night and concluded that some pretty ad hoc decisions will have to be made on it, but when there is a forced choice the journey should start at wholesale level but should not necessarily end there.

**The Chairman:** So the key thing is to try to see who actually editorialises the material.

**Professor Collins:** It may be at many places along the chain.

**The Chairman:** Yes, I can see that. We are almost at the end of our time. Thank you. However, before releasing you—if that is the right word—is there anything else you would like to say to us that we have not covered, which you think is relevant? If so, please do.

**Professor Collins:** Only to offer the thanks of my invisible friend and myself for inviting us.

**The Chairman:** Thank you and your invisible friend for coming along to see us today. Thank you very much indeed.
Professor Richard Collins – supplementary written evidence

At the oral evidence session on Tuesday 18 June, Professor Collins undertook to respond in writing to a point raised by Lord Skelmersdale. He sent the following information:

“The vast majority of the UK population (95%) use one or more of the four main platforms (television, radio, newspapers, internet) for news ‘nowadays’ – 85% say they use TV, 53% say they use newspapers, 53% say they use radio, and 41% say they use the internet.”

Executive Summary

1. COBA welcomes this inquiry and would like to highlight COBA members’ important contribution to plurality. The UK multichannel sector is now investing £624m per annum in UK television content, an increase of 27.9% on 2009 levels.\textsuperscript{123} This means the UK is successfully moving to a more mixed ecology, with funding for homegrown television production flowing from a greater range of sources than ever before. As a result, overall funding has increased in recent years, reaching £2.9 billion in 2012.\textsuperscript{124}

2. In news and current affairs, COBA members make an important contribution. Sky News represents a major commitment, while other news organisations with significant UK operations include CNN, CNBC, Fox and Bloomberg. Testifying to their contribution to news plurality, CNN this year won the award for News Channel of the Year from the Royal Television Society.

3. Beyond news, COBA members provide creative competition and audience choice with a wide range of UK content, including factual, comedy, drama, and entertainment. Children’s channels have increased commissioning of UK content by 60% in recent years, and are now investing around £30m per annum in UK shows.\textsuperscript{125} This provides much needed investment in a genre where commercial PSB commissioning has declined markedly.

4. This growth illustrates how the UK sustains a competitive ecology. In its statement last year, Ofcom said that it saw little need for additional statutory protections in broadcasting,\textsuperscript{126} and we support this view (COBA’s comments are limited to broadcasting as, although some of our members may be active outside television, we represent purely broadcast interests).

Introduction

1. The Commercial Broadcasters Association (COBA) is the industry body for commercial sector broadcasters in the UK. Its members are Bloomberg Television, BSkyB, Chinese Channel, Discovery Networks, Fox International Channels, NBCUniversal, QVC, Sony Pictures Television, Turner Broadcasting System, Viacom International Media Networks, and The Walt Disney Company.

2. COBA members are significant investors in the UK. They contribute more than £4 billion a year to the UK economy in GVA, through content investment, employment

\textsuperscript{123} COBA 2012 Economic Impact Report, Oliver & Ohlbaum Associates for COBA, September 2012. Copy available on request.
\textsuperscript{124} Ibid
\textsuperscript{125} Ibid
\textsuperscript{126} Ofcom, Measuring Media Plurality, 2012, Section 5.100
and other expenditure. In addition, the sector is growing strongly, doubling the size of its workforce over the last decade.

3. As part of this investment, COBA members invest £624m per annum in UK television content, an increase of 27.9% on 2009 levels. This has helped drive growth in overall investment in new UK TV production in recent years from all sources. Funding for first-run national network originations has increased from £2.8 billion in 2009 (the earliest year available) to £2.9 billion last year, even factoring in relatively flat investment at PSBs.

4. Additionally, COBA members, who include many of the world’s leading multinational broadcasters, invest more in the UK than any other European market by some distance. This helps ensure the UK is a leading European media hub.

Response to Questions

1. Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

1.1 We believe plurality policy is already well thought out and sufficient basis exists in statute to protect plurality of provision in broadcasting (COBA’s comments in this submission are limited to the broadcasting platform). Ofcom’s statement last year concluded there was little need for additional statutory protections in broadcasting, stating:

“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 areas may have limited impact and be difficult to define.”

1.2 We support this view. We believe statutory protections exist to ensure that plurality is achieved in broadcasting, including competition rules and Ofcom’s statutory duties (which include ensuring that news and current affairs are provided by all PSBs and impartiality rules on all services). In addition, and crucially given its substantial scale in news and current affairs, the BBC is subject to Royal Charter and the BBC Trust.

---

127 This figure is for broadcast operations only, so excludes activities that are part of wider corporate groups such studio ownership and ISP divisions.
128 Skillset, Television Sector – Labour Market Intelligence Profile
130 UK Commissioning Trends, Oliver & Ohlbaum Associates for COBA. Figure excludes commissioning specifically for Nations and regions.
131 Ibid.
132 Ibid, Section 5.100
133 2003 Communications Act, Section 279
134 Ibid, Section 320
2. In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition, or should it be improved?

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 process/agenda.”

2.1 We have no further comments on Ofcom’s definition.

3. What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?

3.1 UK media policy already supports plurality beyond the news and current affairs genres, at least indirectly. The statutory definition of Public Service Broadcasting set out in the 2003 Communications Act requires a wide range of programmes in a variety of genres to be made available that appeal to the tastes of different audiences. The 2010 Digital Economy Act developed this, making it explicit that Ofcom should take into account services provided by non statutory Public Service Broadcasters when reporting on this provision.

3.2 In its previous reviews of Public Service Broadcasting, Ofcom has concluded that having a wide range of providers is important to providing a genuinely wide range of content that appeals to different audiences. We strongly agree with this conclusion, and believe that primary legislation therefore provides for media plurality beyond just news and current affairs.

3.3 COBA members play a vital role in ensuring this plurality is delivered, both in news and current affairs and in other genres. According to COBA’s 2012 Economic Impact Report, commissioned by COBA from Oliver & Ohlbaum Associates, the UK multichannel sector is now investing £624m per annum in UK television content, an increase of 27.9% on 2009 levels. Of this, nearly £500m is on first-run UK production (including sports production costs but excluding payments for sport rights), a figure that is also up 27% on 2009 levels.

3.4 This means the UK is successfully moving to a more competitive, mixed ecology for funding homegrown television production, with investment for creating UK content flowing from a greater range of channels and other sources than ever before. Investment from Public Service Broadcasters (PSBs) remains dominant, accounting for the greater proportion of UK content.

---

135 2003 Communications Act, Section 264
commissioning. But, according to new research carried out by Oliver & Ohlbaum Associates (O&O) for COBA, non PSB sources (the multichannel sector, PSB portfolio channels and the independent production sector) now account for 37% of total investment in first-run network originations.\textsuperscript{137} As a result, funding for first-run network originations has increased from £2.7 billion in 2009 (the earliest year available) to £2.9 billion last year, even once relatively flat investment at PSBs is factored in.\textsuperscript{138}

3.5 In news and current affairs, COBA members make an important contribution. Sky News represents a major commitment and is widely credited for a radically innovative approach and providing strong competition for incumbent providers. Other news organisations with significant UK operations include CNN, CNBC, Fox and Bloomberg. Testifying to their contribution to news plurality, CNN this year won the award for News Channel of the Year from the Royal Television Society.

3.6 Beyond news and current affairs, COBA members provide crucial creative competition and audience choice in a wide range of genres. Discovery and National Geographic offer factual content, including an increasing amount of UK content. Sky is commissioning UK content in a variety of genres, notably comedy, drama, factual and entertainment. And children’s channels in the COBA membership, namely Nickelodeon, Disney and Turner, have increased their commissioning of UK content by 60% over the last three years, and are now investing around £30m per annum in a range of UK children’s shows.\textsuperscript{139} This provides much needed investment in an area where commercial PSB commissioning has declined markedly.

3.7 In addition to plurality of provision, we would also like to highlight COBA members’ role in ensuring plurality in the programme supply base. COBA members are commissioning relatively high levels of programming from smaller independent producers across the country, thereby helping ensure that a diverse range of producers are sustained within the production sector. O&O’s report for COBA last year highlighted how 69% of spending on independent producers by the multichannel sector went on companies with annual turnovers of less than £70m.\textsuperscript{140} This supports Pact’s census, which reported that, in 2011, multichannel broadcasters spent a substantially higher proportion of their UK commissioning budgets on smaller producers, investing around 34% of their total expenditure on independent UK commissions on companies with turnovers of £25m or less. This compares to 16% at the BBC, 8% at Channel 4, 19% at Five and 11% at ITV.\textsuperscript{141}

\textsuperscript{137} UK Commissioning Trends, O&O for COBA, August 2012. Figures excludes regional spending and sports rights costs. Copy available on request.
\textsuperscript{138} Ibid
\textsuperscript{139} COBA 2012 Economic Impact Report, Oliver & Ohlbaum Associates for COBA, September 2012. Copy available on request.
\textsuperscript{140} Ibid
\textsuperscript{141} Independent Production Sector Financial Census and Survey, O&O for Pact, June 2012, page 14
4. **What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic?**

4.1 We believe the current provisions are sufficient in the broadcasting sector. We see no reason to grant Ofcom ex ante powers in this area, and believe that doing so could create a risk of greater regulatory uncertainty for the industry.

5. **Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?**

5.1 Ofcom already has duties to review public service broadcasting provision, including looking at the range of services provided for PSBs and non PSB broadcasters, and we see no reason to add to this in broadcasting.

6. **For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?**

6.1 We believe Ofcom’s elaboration, outlined in Question 2, is sufficient in broadcasting.

7. **How should ‘sufficient plurality’ be measured?**

7.1 Ofcom’s statement last year put forward a range of ways of measuring plurality, including availability, consumption and impact. We see no need for a more prescriptive formula in broadcasting. We note that Ofcom’s existing statutory duty to review public service broadcasting includes looking at the range of services provided, and this has already allowed the regulator to gauge where there is a threat to plurality, as it did in the children’s genre in 2009.\(^\text{142}\)

8. **Should the BBC’s output be included in a review of it?**

8.1 As a large-scale supplier of news and current affairs in the UK, the BBC should absolutely be part of any analysis of media plurality, and is already under Ofcom’s statutory duty to report on public service broadcasting, as well as BBC Trust reviews.

9. **How can internal plurality be sensibly measured against external plurality?**

---

\(^\text{142}\) Second Public Service Broadcasting Review, Ofcom, Statement, January 2009, Section 11.8
9.1 We believe impartiality rules have an important role in protecting internal plurality and that having a range or outlets within one corporate entity may therefore contribute to overall plurality within a mixed ecology. The same measures should be used for external and internal plurality, such as audience impact, availability and consumption.

10. What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

10.1 This would depend on the nature of the problem but a range of measures exist, notably under the different options available to the completion authorities, as well as in sanctions available to Ofcom around Public Service Broadcasting delivery.

11. How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?

11.1 We recognise the commercial challenges in providing high quality news and current affairs and believe that these issues should be amongst the factors when considering remedies or other interventions.

12. With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

12.1 In our view, the competition authorities are the most independent and effective protection in this area.

13. To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

n/a

14. What should the UK learn from international approaches to media plurality?

n/a

May 2013
Competition Commission – written evidence

Summary

1. One of the underlying goals of competition law is to secure effective rivalry in markets. Accordingly, the robust pursuit of competition policy and enforcement of competition law have an important role to play in contributing to the maintenance of plurality in the media, by ensuring that there are a number of economically independent enterprises meeting demands for information and opinion.

2. In addition, under the current UK merger framework certain specific media plurality issues can be examined when a relevant merger situation arises under the Enterprise Act 2002 (Enterprise Act). Where public interest considerations arise, the Enterprise Act allows the Secretary of State to ‘intervene’ in the merger and in the light of advice from the Office of Communications (Ofcom) and the competition authorities, the Office of Fair Trading (OFT) and the Competition Commission (CC), to take decisions to protect them.

3. The CC believes that it (and in the future, the Competition and Markets Authority (CMA)) is well placed to consider mergers raising media plurality issues. It has the appropriate skills, necessary expertise and economic awareness to investigate media mergers, to report facts and either give advice to Ministers or (should Parliament consider it appropriate in future) to determine issues relating to public interest matters. The number and variety of cases the CC has considered that touch on the media industry illustrate the scope of the CC’s experience in media more generally. The Government has recognised that the UK’s competition authority is also well placed to advise on such matters in market investigations. The Enterprise and Regulatory Reform Act 2013 gives the Secretary of State the power to request the CMA to investigate public interest issues alongside competition issues during a market investigation (phase 2, which is the CC’s current function).143 This reform aligns the markets and mergers regimes more closely in relation to the examination and assessment of public interest issues.

4. If the Committee is minded to recommend changes to the current media plurality framework, there are some technical issues with the media public interest considerations as set out in the Enterprise Act that the CC would draw to your attention: (a) the comments of the Court of Appeal on the drafting of the ‘plurality’ test; and (b) its scope and application to electronic media.

The CC’s role and functions

5. The CC is one of the independent public bodies which helps ensure healthy competition between companies in the UK for the benefit of consumers, companies and the economy. As a Phase 2 authority, it has no jurisdiction to originate cases, but decides on mergers, markets and regulatory issues on reference from another body:

---

Note: National security is currently the only public interest consideration specified in the markets regime. An affirmative Order from Parliament will be required to add a new public interest consideration to the current list.

---

143
(a) On mergers, the OFT is the sole referring body on competition issues. Ministers may make references on specific public interest issues, as was the case for the BSkyB/ITV merger\textsuperscript{144} and the anticipated News Corp/BSkyB merger.\textsuperscript{145}

(b) In relation to markets, the power to refer is extended also to the principal economic regulators.\textsuperscript{146}

(c) The CC has a variety of roles in various regulatory regimes; each has its own particular features. For example, the CC hears appeals against licence modification and price control decisions in sectors including gas, electricity, postal services, rail, water and telecommunications.\textsuperscript{147} In such cases, the CC takes decisions not as a competition authority, but rather in accordance with the public interest goals of the relevant regulatory regimes.

6. The CC expects that in April 2014 it will be replaced by the Competition and Markets Authority (CMA), which will take on the functions of the CC and the OFT’s competition functions and consumer enforcement powers\textsuperscript{148}. For ease of reading, this memorandum refers throughout to the CC.

7. The CC’s role is to conduct in-depth investigations into matters where initial investigations have identified concerns that merit further consideration, and to act as an expert body hearing appeals. The CC’s decisions are made by inquiry groups comprising experienced commercial and competition experts, with a wide range of skills and backgrounds, independent of Government and other public bodies and regulators. In newspaper merger cases and in certain other regulatory cases these groups are required to include members of specialist panels with particular relevant expertise. They are supported by staff with expertise in economic, legal, financial and business analysis.

8. The CC has significant powers to remedy problems it identifies. When considering remedies, the CC is required to ‘achieve as comprehensive a solution as is reasonable and practicable’ to address the adverse effect.\textsuperscript{149} When deciding on what remedy is appropriate, the CC will consider the effectiveness of different remedies and their associated costs and will have regard to the principle of proportionality.\textsuperscript{150}


\textsuperscript{146} ORR’s power to make a market investigation reference to the CC derives from section 67(2A) and (2B) of the Railways Act 1993; GEMA’s in relation to gas derives from section 36A(2A) and (2B) of the Gas Act 1986 and, in relation to electricity, from the Electricity Act 1989, section 43(2A) and (2B); Ofwat’s derives from section 31(2A) and (4) and section 36 of the Water Industry Act 1991; Ofcom’s derives from section 370(1) and (3) of the Communications Act 2003; the CAA’s derive from section 86(2) and (4) of the Transport Act 2000 and section 60(1) and (2) of the Civil Aviation Act 2012; and Monitor’s from section 73(1) and (2) of the Health and Social Care Act 2012.

\textsuperscript{147} See www.competition-commission.org.uk/about_us/index.htm.

\textsuperscript{148} The Enterprise and Regulatory Reform Act 2013 establishes the CMA. This Act received Royal Assent on 25 April 2013, with the relevant provisions expected to come into force on 1 April 2014.

\textsuperscript{149} See sections 35(4), 36(3) and 134(6) of the Enterprise Act 2002.

\textsuperscript{150} See CC Guidance on Market Investigation References, CC\textsuperscript{3}, and CC Guidance on Merger Remedies, CC\textsuperscript{8}.
may also have regard to any relevant customer benefits arising from the merger (or for market investigations, any relevant customer benefits of the market feature(s) giving rise to the adverse effect).151

9. The CC’s remit and expertise is not solely focused on competition assessment. Its other jurisdictions, such as sector licence modifications, and its ability to take other issues (including, for example, financial stability and national security) into account in its merger deliberations, recognize the CC’s more general expertise. In light of this, the Enterprise and Regulatory Reform Act 2013 will empower the CC to investigate public interest issues as part of a market investigation.152

10. Details relating to the CC’s involvement in media mergers which raise public interest considerations and the reforms to the markets regime introduced by the Enterprise and Regulatory Reform Act 2013 are set out in Annex A.

The CC’s experience in media

11. The CC has had experience in a variety of media cases. Under the Enterprise Act 2002 and the Fair Trading Act 1973 that preceded it, the CC has looked at mergers among newspapers and radio stations153, the video-on-demand joint venture between BBC Worldwide Limited, Channel 4 and ITV154 and ITV’s contracts rights renewal undertakings155. In 2012 the CC completed its market investigation into pay-TV movie rights156 while in 2011, Kent Messenger Group’s acquisition of several newspapers in the East Kent area from Northcliffe Media Limited157 and News Corp’s proposed acquisition of the remaining shares in BSkyB158 not already owned by it were referred to the CC (the references were then cancelled because the proposed acquisitions were abandoned by the parties).

12. Most recently, the CC is currently conducting a merger inquiry into the completed acquisition of GMG Radio Holdings Limited by Global Radio Holdings Limited159. Prior to it being referred to the CC this merger was the subject of a public interest intervention notice, which was issued by the Secretary of State for Culture, Media and Sport. The Secretary of State received advice from the OFT on jurisdiction and competition issues and from Ofcom on the public interest issues with regard to the plurality of the media. However, following advice from the OFT and Ofcom the Secretary of State decided not to make a reference to the CC under section 45 of the Enterprise Act on the grounds that no public interest consideration was relevant to the consideration of the relevant merger. This meant the transaction reverted to being considered under the standard UK merger regime and in October 2012 the OFT

---

151 See section 35(5), 36(4) and 134(7) of the Enterprise Act 2002.
152 See www.bis.gov.uk/Consultations/competition-regime-for-growth?cat=closedawaitingresponse.
153 http://www.competition-commission.org.uk/inquiries/subjects/newspapers.htm and
referred the case to the CC for investigation (the CC’s statutory deadline is 22 May 2013).

13. Assessing media plurality issues is akin to assessing competition issues in that a similar analytical approach and similar skills can be brought to bear in examining the issues. As an expert, independent body the CC is capable of examining any complex set of facts, rigorously testing the arguments put to it and ultimately forming robust and transparent judgements. In the cases the CC has heard, it has considered issues including:

(a) whether Sky’s position in relation to the acquisition and distribution of movies in the first pay window in the pay-TV retail market has an adverse effect on competition;

(b) the BBC’s contribution to the level of plurality of news and to the free-to-air offer in the BSkyB/ITV merger;

(c) the sufficiency of persons with control of media enterprises and the change in plurality that arose as a result of the BSkyB/ITV merger, in relation to both internal and external plurality;

(d) whether the prospective acquirers of local newspaper titles would have sufficient market power to raise prices (to advertisers) to a level that would cause concern;

(e) the extent to which other media can substitute for local newspapers; and

(f) the need for accurate presentation of news and free expression of opinion.

The CC’s independence and expertise was expressly recognized by the Secretary of State in his statement to Parliament on 11 July 2011, announcing he was referring the News Corp/BSkyB transaction to the CC160 and by the Government in its response to the consultation on Growth, Competition and the Competition Regime in March 2012.161

14. The CC believes that it is for Ministers to propose, and for Parliament to determine, who should be the final decision-maker on media plurality issues. The CC believes it has the capabilities and characteristics, along with the relevant skills and expertise, to investigate media mergers (and should Parliament consider it appropriate media public interest considerations as part of a market investigation), to report facts and to give advice to the Secretary of State. The CC’s determinative role in remedies for mergers and markets in the standard UK regimes means that the CC is also well equipped to determine issues relating to the public interest, if required to do so. The CC is confident that whatever the role is that the legislature decides to give the CC (be it to continue its existing role or modify it), it is well placed to undertake the role.

Technical issues with current public interest considerations for media plurality

15. There have been some practical difficulties with the drafting of the media public interest considerations specified in the Enterprise Act. These were raised in the media merger case of BSkyB/ITV.

16. The media public interest considerations specified in the Enterprise Act are complex and essentially require the CC to undertake a fact-based analysis of media plurality for each relevant merger. The CC has identified two issues with the media plurality provisions in the Enterprise Act that the Committee (and the Government) could look at as part of its review of the current framework.

(a) The meaning of the current ‘plurality’ test

17. The first issue relates to the assessment of ‘sufficient plurality’. The BSkyB/ITV transaction was the first inquiry to be referred to the CC by the Secretary of State under the public interest regime in the Enterprise Act and, therefore, the first to consider the media public interest consideration specified in section 58(2C)(a)—the need for there to be a sufficient plurality of persons with control of media enterprises serving each audience. Section 58A of the Enterprise Act assists with interpreting the media public interest considerations specified in section 58(2C). There is no statutory definition of plurality in section 58A or elsewhere in the Enterprise Act. There is also no statutory guidance as to what constitutes a ‘sufficient plurality of persons’. In its report to the Secretary of State on the transaction the CC noted references in the debates before Parliament on the Communications Act 2003 to the need to examine media mergers in an ‘analytical, fact-based way’ and the need for an ‘evidence-based approach’.

18. In this case, the CC concluded that BSkyB’s acquisition of 17.9% of the shares in ITV would not materially affect the sufficiency of plurality of persons with control of media enterprises servicing audiences for news. The Secretary of State agreed with the CC’s approach and adopted the CC’s recommendations. The CC’s advice to the Secretary of State and the Secretary of State’s decision on BSkyB/ITV were the subject of an appeal to the Competition Appeal Tribunal and then the Court of Appeal. The media plurality issue on appeal concerned the interpretation of section 58(2C)(a) of the Enterprise Act and its interaction with section 58A. The Court of Appeal described it as follows:

---

162 BSkyB/ITV remains the only case where the CC has applied the media public interest considerations. The News Corp/BSkyB transaction was referred to the CC by the Secretary of State on 13 July 2011 but cancelled on 25 July 2011 after the CC received confirmation from News Corporation that it no longer intended to make an offer for the entire issued and to-be-issued share capital of British Sky Broadcasting Group PLC not already owned by it. The CC’s cancellation reference notice is here: www.competition-commission.org.uk/inquiries/ref2011/news_corporation_bskyb/pdf/11_07_25_cancellation_notice_news_corporation_final_2.pdf.


The puzzle presented by the two sections is this. On the one hand, section 58(2C)(a) requires an assessment of whether, following the merger, there is or would be sufficient plurality of persons in control of relevant media enterprises. This suggests that one should look at the actual position as regards the extent of control. On the other hand, section 58A(5) provides that where there is any degree of control over one such enterprise by another, both of them have to be treated as under the control of only one person. This seems to impose an overriding assumption of 100% control, regardless of the actual facts. The Competition Commission favoured the former view, and considered that section 58A(5) did not prevent it from having regard to the actual level of control. The Tribunal on the other hand felt unable to reconcile this reading with section 58A(5), and therefore held that the latter view was correct.

19. The CC’s approach to the ‘plurality test’, as outlined above, was upheld by the Court of Appeal in January 2010. It has subsequently been set out in the CC/OFT Joint Revised Merger Assessment Guidelines, published in September 2010. The relevant extract reads:

[The CC] does not regard the test as simply an exercise in counting the number of controllers. The CC will have regard to both the range and the number of persons with control of media enterprises. The CC will also have regard to the degree of control exercised by one enterprise over another, including whether the extent and level of control are increased as a result of the merger. Where control is less than complete, the CC will consider whether in practice it would enable the controlling enterprise to dominate the policy and the output of the controlled enterprise. Where appropriate, the CC may distinguish between the plurality of persons with control of media enterprises and the implications of that plurality for the range of information and views made available to audiences.

20. More recently, Ofcom adopted the same approach as the CC above in its Public Interest Test Report on the News Corp/BSkyB transaction (published in December 2010), which Ofcom then echoed in its advice to the Secretary of State for Culture, Olympics, Media and Sport on measuring media plurality (published June 2012).

21. In reaching its decision the Court of Appeal recognized the difficulties in interpreting the provisions in the Enterprise Act on plurality:

---

166 A sufficient plurality of views in newspapers in each market for newspapers in the UK or a part of the UK to the extent that it is reasonable and practicable; there to be a sufficient plurality of persons with control of the media enterprises serving every different audience in the UK, or in a particular area or locality of the UK.


169 See, for example, paragraphs 2.9-2.13 of Ofcom’s Public Interest Report of December 2010 and paragraphs 5.113-5.115 in Ofcom’s advice of June 2012.

The resolution of this issue is far from easy...

As a matter of statutory construction the issue is finely balanced...

It seems to us unsatisfactory that the terms of the Act should have been open to the conflicting interpretations placed on it by the Commission and the Tribunal. If it were thought that to limit the deeming effect to one of number alone does not allow for sufficient protection of the sensitive interest of media plurality, it should not be difficult to amend the legislation accordingly, now that possible difficulties in applying the current legislation have been identified.

22. The Court of Appeal’s judgement will provide the CC and parties with helpful guidance on how to apply the plurality test in future inquiries. However, given the difficulties experienced and time consumed in the first and only inquiry to apply a media public interest consideration, the current review of the media plurality framework—by the Government and your Committee—provides an opportunity to review all the existing media public interest provisions to determine whether there is scope to clarify the wording of them, to ensure that Parliament’s intentions are clearer for future inquiries.

(b) The scope and application of the media plurality test to electronic media

23. The second issue relates to the breadth of the media public interest considerations. Currently, the media public interest considerations apply to newspapers, broadcasting and cross-media ownership.

24. By way of background, in its report to the Secretary of State on the BSkyB/ITV acquisition, the CC noted that the industry was characterized by significant and rapid changes in technology and consumer demand. It also expressed the view that sections 58 and 58A of the Enterprise Act explicitly provide for cross-media considerations in the context of the plurality test (in this matter such considerations were ITN’s production of news and News International’s newspaper publishing interests) and that the CC can and should undertake a cross-media analysis in this case. During consultation and prior to the CC providing its report to the Secretary of State, the parties queried whether the CC should take such cross-media considerations into account for the purposes of its analysis. The CC’s approach was informed by the DTI Guidance, which expressly notes (at paragraph 8.8) that intervention on public interest grounds may be considered necessary in exceptional circumstances even where there are media ownership rules in place as well. Moreover, the fact that the public interest provisions introduced in the Communications Act 2003 sit alongside revised and updated media ownership rules suggests that Parliament intended the public interest test to supplement the regulatory framework provisions.

---


Based on its experience in BSkyB/ITV and subsequent transactions in the media industry, the CC agrees with Ofcom that there is also value in reviewing the scope of media public interest considerations to determine whether they could be modernized to reflect developments in the structure of the industry since the law was framed. In particular, the CC encourages the Committee to consider whether there is merit in thinking about how the specified media public interest considerations could be broadened, to work for media as a whole including, for example, the role of online and social media, developments in which could not have been envisaged when the original legislation was prepared.\textsuperscript{173}

Other issues on which the Committee has sought views

The CC does not consider it is appropriate to provide substantive comment on the remaining questions raised by your Committee. It is apparent from the recent cases that the CC can be called upon to investigate matters in the media industry at any time. The CC would not want to compromise the robustness of its decisions under the current regime by giving the impression that its decision in any case was influenced by a particular policy view, rather than being determined, as now, by application of the law, as it currently stands, to the facts of each case.

\textsuperscript{173} This change would affect the CC's investigation into the public interest considerations of a merger. The CC would of course still need to determine the appropriate market definition on a case by case basis, as part of its investigation into the competition issues of a transaction.
Public interest considerations in mergers: media plurality

1. Whether or not they raise competition concerns, certain mergers raise public interest considerations. The Enterprise Act enables the Secretary of State to intervene when he/she considers that one or more of the public interest considerations specified in the Enterprise Act may be relevant to consideration of a merger. The Enterprise Act permits the Secretary of State to modify this list of public interest considerations, to specify a new consideration or to remove or amend an existing consideration.

2. Presently, the specified ‘media’ public interest considerations are the need for:

   (a) accurate presentation of the news in newspapers;

   (b) free expression of opinion in newspapers;

   (c) to the extent reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the UK or a part of the UK;

   (d) there to be a sufficient plurality of persons with control of media enterprises serving each audience;

   (e) the availability throughout the UK of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and

   (f) persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards and objectives set out in section 319 of the Communications Act 2003.

3. The Secretary of State can intervene not only in cases which meet the normal UK or EU jurisdictional thresholds for merger control but also in some cases where normal jurisdictional thresholds are not satisfied.

4. Where the Secretary of State intervenes in a case, the procedures and issues are distinct as compared with merger cases that do not raise public interest issues (general

---

174 These were added to the Enterprise Act 2002 by the Communications Act 2003.

175 Unless they are referred to the competent authorities of a member state by the European Commission, competition issues relating to concentrations with a ‘Community’ dimension are determined by the European Commission; but member states can intervene to protect legitimate interests including ‘plurality of the media’; Article 21(4) of Council Regulation 139/2004/EC.

176 In newspaper mergers, intervention is possible if one of the parties has a pre-existing share of supply of newspapers of any description in the UK or in a substantial part of the UK of at least 25 per cent. In mergers involving broadcast media enterprises, intervention is possible where one of the parties has a pre-existing share of supply of broadcasting of any description in the UK or in a substantial part of the UK of at least 25 per cent. This differs from the standard jurisdictional test in that there is no need for there to be an overlap between the parties’ activities under the special merger regime. No competition assessment is carried out in special merger cases, the assessment made being confined to the relevant public interest consideration.
mergers) to recognize the fact that the decision of the CC is determinative on competition issues but not media plurality ones, and that media plurality issues can outweigh competition concerns.

5. The effect of an intervention notice is to require the OFT to investigate the merger and provide a report to the Secretary of State. Where the intervention notice specifies a media public interest consideration, Ofcom will advise the Secretary of State on public interest aspects of the case.

6. The Secretary of State takes these reports into account in deciding whether or not to refer the merger to the CC. Where a merger is referred to the CC on competition and public interest grounds, the investigation carried out by the CC is broadly similar to an investigation carried out on competition grounds alone. Where the reference decision specifies a newspaper public interest consideration, the Group of members appointed by the CC to conduct the investigation must include at least one member of the CC's specialist newspaper panel, and the CC must ensure that it obtains a representative cross-section of opinion of those who may be affected by the media merger.

7. The CC carries out its investigations and prepares a report for the Secretary of State. In cases referred on both competition and public interest grounds, that report contains the CC’s decisions on whether the transaction qualifies as a relevant merger situation, and whether taking account of any substantial lessening of competition identified by it and the public interest consideration(s) specified in the reference decision, the merger operates, or may be expected to operate, against the public interest. If the reference was made on the basis of public interest concerns alone, the CC does not carry out any competition assessment and its report will address only the jurisdictional issue and the public interest issue(s).

8. If the CC decides that the merger does operate against the public interest, the CC must decide whether remedial action should be taken by the Secretary of State, or whether the Secretary of State should recommend that others take remedial action in order to address the adverse effect on the public interest.

9. On receipt of the CC’s report, the Secretary of State has 30 working days to make a decision on the questions the CC had to decide. When deciding whether the merger is against the public interest, the Secretary of State is not bound by the CC’s views.

---

177 The OFT’s report will address jurisdictional issues and the competition assessment. It is Ofcom’s role in such cases to advise the Secretary of State on the public interest issues raised by the merger and to carry out the consultation seeking third party views on the impact of the transaction on the media public interest consideration specified in the intervention notice. The OFT’s report may include a summary of any representations on the media public interest considerations that it has received, but it is not under an obligation to seek out those views. In special public interest mergers, no competition assessment is carried out by the OFT. If the Secretary of State decides to refer a special merger situation (where normal jurisdictional thresholds are not satisfied) to the CC for further investigation, the CC will not carry out a competition analysis and its report will deal only with the jurisdictional and public interest issues.

178 If the CC has decided that there is or will be a substantial lessening of competition resulting from the merger, it must answer the same remedies questions that it answers in general mergers (assuming that the CC will be required to take action). The CC is required to proceed as if the case was a general merger if the Secretary of State, upon receipt of the CC’s report, decides not to make a finding.
having discretion in relation to the public interest consideration. If the Secretary of State decides that the merger is against the public interest, he or she has the power to take remedial action, and discretion to determine whether and which remedies are necessary to address the adverse public interest effects.

Public interest considerations in market investigations

10. The Secretary of State currently has the power to issue a public interest intervention notice after a market investigation reference has been made to the CC, or when the OFT is considering accepting undertakings instead of a reference, when it considers a specified public interest consideration is relevant to the case. National security is currently the only public interest consideration specified in the Enterprise Act. Following a public interest intervention after a market investigation reference, the CC reports to the Secretary of State on the competition issues and proposed remedies. The Secretary of State must accept the CC’s findings in respect of the competition issues. The Secretary of State must decide whether an eligible public interest consideration is relevant to the case and what action should be taken to remedy the competition issue in light of the public interest consideration. The CC currently has no role or powers to investigate and advise on remedies for the public interest issue; its role is limited to assessing competition issues. To date, there has not been a public interest intervention notice in a market investigation.

11. Substantial changes to the framework for the consideration of public interest issues are included in the Enterprise and Regulatory Reform Act 2013, which received Royal Assent on 25 April 2013. This Act will give the Secretary of State a new power to request the Competition and Markets Authority (CMA) to investigate public interest issues alongside competition issues during a market investigation (Phase 2 – which is the CC’s current function) when he/she considers that a public interest consideration specified in the Enterprise Act is relevant to the case. This will be called a ‘full public interest reference’ in the Enterprise Act. The Secretary of State will retain his/her existing ability to consider public interest issues him/herself whilst asking the CMA to investigate competition issues. This will be called a ‘restricted public interest reference’ in the Enterprise Act.

12. The introduction of a full public interest reference power for market investigations aligns the markets regime more closely with the mergers regime in relation to the examination and assessment of public interest issues. It is intended to facilitate a more holistic assessment of public interest considerations in appropriate markets cases.

13. The changes will not affect the list of specified public considerations under section 153 of the Enterprise Act. The only specified public interest consideration will remain national security unless Parliament agrees to other public interest issues being specified in the future.

14. To enable the CMA to investigate public interest issues alongside competition issues following a full public interest reference in the new regime, the Enterprise and Regulatory Reform Act 2013 provides for a number of other amendments, including regarding the timing of the public interest intervention notice, the procedure for appointment by Secretary of State and role of public interest experts to advise the
CMA, the impact on the investigation and report, and the impact on the Secretary of State’s decision-making role.

1 May 2013
TUESDAY 11 JUNE 2013

Members present

Lord Inglewood (Chairman)
Baroness Bakewell
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Bishop of Norwich

Witnesses

Dr Rachael Craufurd Smith, University of Edinburgh, and Dr Damian Tambini,
London School of Economics

Q1 The Chairman: A very warm welcome to Rachael Craufurd Smith and Damian Tambini, who come respectively, I think, from Edinburgh and London. Thank you very much for coming to give evidence to us. We have quite full biographies of you, so I do not wish to repeat what we know already about exactly who you are and what your most considerable expertise might be. Just before we get the hearing under way, I have to declare an interest, which is that I am non-executive chairman of CN Group, a Cumbria media company.

I do not know which of you would like to start, but there are one or two things you might like to explain your thoughts on in a brief opening statement: how you define media plurality; how widely you think Government’s policy on plurality should be conceived; and what you think the major prospects and threats for it in this country might be.

Dr Tambini: We have submitted some written evidence. In that evidence, we look back at media plurality as a policy objective. The first thing that we say is that it is very important to clearly define what the objective is. If you look back at the post-war years, you can see that it has not always been very clearly defined. I describe media plurality as a kind of policy meme that has come up in treaties. Article 11 of the Charter of Fundamental Rights of the European Union says that media freedom and media plurality should be respected.

The Chairman: We might come on to that a bit later.

Dr Tambini: The reason why it pops up, not only in international treaties but also in the Communications Act and historically in legislation—particularly merger legislation, as it affects the media sector, and broadcasting and licensing-related legislation—is that it is a fundamental safeguard of democratic communication. The idea of media plurality is trying to
achieve some fairly simple objectives. One of them is that the diversity of information and news available to citizens should be not below a certain level; we should not have too much concentration of control over opinion formation. Another is that there should be a diversity of opinions available to people. There are lots of different ways of describing that, and we can go into the detailed definitions and theories, but the objective, I would argue—if you look back at the history of policy in this area—has been broadly about democratic communication and controlling media power.

We are going through a lot of changes in media markets. Some people argue that, because of the wonders of the internet and digital broadcasting, this is no longer a problem. I fundamentally disagree. I would say that there are a number of ways—if you wish, we can go into those—in which media plurality and media power remain a problem. The new media bring new kinds of problems when we think about the fundamental issue of the control of private organisations over opinion formation in a democracy.

In terms of the major prospects and threats, I can think of short-term issues. This inquiry is taking up the issue of media plurality at a time when Lord Justice Leveson has made a number of recommendations. He has also set out a number of reasons why he could only go so far but Parliament could go a lot further—and, in his view, should go a lot further, with advice from Ofcom and others—in recommending a new framework of media plurality. When we think about the current threats, we need to think also about what we just have had in terms of the Leveson inquiry and what we have found out about relationships between politicians and the media in particular. We also need to think about those future issues and the horizon issues around what Robin Foster will be talking about, in terms of the new roles of information intermediaries in internet distribution and whether they raise problems for opinion formation in a democracy.

I am taking up rather a long time, so I am going to hand over to Rachael for her introductory remarks.

Dr Craufurd Smith: Thank you, and thank you for inviting me. I just want to add a couple of riders to that. One important thing is to be aware of the focus of the debate when one talks about media plurality. It tends to be about structural controls. Those structural controls are primarily introduced in order to deal with the potential abuse of power that arises when you have one individual or a number of individuals or organisations that have an excessive ownership of the opinion-forming media. Sometimes, that is seen as feeding into the abuse of the political process through influence on politicians. You can see that, potentially, with examples like John Major saying that he was under pressure to change his policy on Europe in order to get favourable coverage in the press. That Faustian bargain can also undermine the watchdog role of the press, because then they have entered into an agreement that potentially compromises their position.

My view is that one also needs to be aware not just of the relationship between press ownership and the democratic process in its more usual meaning, but also of the ability to control opinion-forming media more generally. The media are important not just in terms of news, but also in terms of, for example, the music that they convey, cultural programmes and soap operas. All of these are very important to diversity and the range of views, and the ability of individuals to form political, economic and personal decisions. One of the things that we will be picking up is whether, in the context of this debate, one needs to be focusing on the impact of media ownership on news and news diversity alone, or whether one wants to look more broadly and consider the impact of media ownership on the range of opinions more generally.
Secondly, I have one very brief point. My focus, in terms of thinking about media plurality, is very much on this capacity—which may not be exercised—to unduly influence opinions. In order for that capacity to be controlled, you need to have a diversity of owners who can prevent the suppression of information and possible misinformation. That can feed into a diversity of views and opinions. But media ownership control is itself perhaps a rather limited tool at the end of the day for ensuring diversity of views and opinions. We have to understand the limits of media ownership control as a means to create media diversity. There are a whole range of behavioural and other interventions in the market—the most obvious one is support for public service broadcasting—where we try to create an environment where people can get access to a diversity of views. The focus here is very much on media power and influence; we should be aware of its importance for media diversity in terms of content diversity, but also its limitations and what you perhaps cannot do with structural controls.

Q2 The Chairman: Before moving on, one thought occurred to me when you were speaking. You were talking about the excessive pressure that might be put on politicians by the media and media owners. Do you think that the way of dealing with any possible abuses in that quarter is principally through rules that relate to politicians and Governments, or rules that relate to the media?

Dr Tambini: I do not think it is a choice. Immediately the Leveson inquiry was set up, the Ministerial Code was altered in order to introduce transparency in those relationships, at least as they involve Ministers. We do not have to make a choice. In our policy frameworks in this country, and around Europe and in North America, we have long recognised that both structural and behavioural controls as regards the media, and some kind of guidelines and guidance as regards politicians, are necessary.

Where we probably need to broaden and shift the debate is to see how media plurality and media ownership rules are part of a wider category of democratic safeguards. If we think about, for example, rules limiting funding of election campaigns, transparency of political parties and so forth, these are all fundamental democratic safeguards and we see them as necessary in a democracy. We do not think of media plurality and media ownership rules in that regard, but, in the light of what we have seen in the Leveson inquiry in terms of those exchanges of policy favours or some other kind of favour from a politician to a media company, it is important to open up those relationships, just as it is important to maintain transparency and limits on, for example, election spending.

We need to acknowledge that media plurality is part of that democratic protection. I think it is marvellous that the Committee is doing this inquiry, because we need to think about what is happening in the short term in the media market, and in the medium and long term, that could threaten those established relationships. There is a huge rate of change in the media sector, as you have pointed out in your convergence report, which is affecting those relationships and those exchanges. Those really need to be opened up.

Q3 Baroness Fookes: First of all, I must state that I have no interest to declare that I can possibly think of. Turning now to your evidence, you said it was essential that the objectives should be very clearly set out, and you referred to Ofcom’s desired outcomes—two of them—but thought that they might be in tension. I wonder if you could elaborate on what you meant by that.

Dr Craufurd Smith: One of the criticisms that we have had of the media plurality rules is that, particularly in relation to the provisions in the Enterprise Act, they are not necessarily
consistent in the way they apply to the print and to the broadcast media. There is a question
of consistency, but I think there is a range of fairly clear objectives that have developed over
time. A key one is the potential abuse of media power, and the second one—which I think is
a more questionable one, in terms of its links with media ownership controls—is an attempt
to use structural controls to create content diversity.

There are contexts in which, if you are seeking to ensure that there is a diversity of owners,
you are going to require the market to be fragmented. In a market where there are limited
revenues, fragmenting the market might mean that no one player is obtaining sufficient
revenues to carry out the kind of investigative journalism and provide the kind of
programmes or reports that are important. That was the kind of tension that we were
identifying there. In that context, you might decide that you prefer to allow the possible risk
of undue influence or a potentially limited range of views in order to ensure the quality and
the funding for the reporting, as opposed to the loss that you then get of possible alternative
views from other competing media. There are also play-offs that one has to consider here—I
am sure we are going to go on to those—between the clarity and simplicity of objectives
and the sensitivity and the established effectiveness of the mechanisms that one has in place.
There are a number of trade-offs that have to be considered in this field that make it
particularly complex.

Baroness Fookes: What about the relationship between those media that have to make
their money in order to do anything and the BBC, which is publicly funded?

Dr Craufurd Smith: The extent to which one includes the BBC in any assessment of the
market is a controversial question, because the BBC is a major player. It has moved into
online provision, and that has had quite a significant impact on the way the market has
developed. My view is that one definitely needs to take into account the impact of the BBC.
However, the BBC, in terms of concerns about media power and influence, if that is what is
really motivating one’s desire to intervene structurally, has its own system of constraints and
controls, in part because it is accountable to Parliament at the end of the day, and through
the impartiality and its own maybe unique—it is possible that other broadcasters do it—
form of self-analysis. If you look at the way the BBC reviewed its coverage of the Iraq war or
the Arab spring, it thinks quite carefully about how it uses its power and how it provides a
diversity of views. In terms of media power and influence, the BBC has to be seen as a
rather special case. It also has to be seen in the context of the public interest test, which is
there to ensure that if it is introducing new services, it is not foreclosing without good
reason new services coming on stream that are being provided by commercial operators.

Baroness Fookes: You mentioned the importance of investigative journalism and said that
if you had too many diverse groups they might not have the funding to do that, but the BBC
itself engages in investigative journalism. Surely it is important to keep that going.

Dr Craufurd Smith: Absolutely, yes. There is a question about how far that should go, but
in terms of international bureaux and international reporters, the BBC, because of its
funding, is able to provide a very special service to the people in the UK.

Q4 Bishop of Norwich: Can we stay with the question of who should be included in any
review of plurality? I was not quite sure whether you were saying that the BBC ought to be
excluded or included in some particular category, but there are plenty of other players in
the field. Who should be included and who should we exclude?
Dr Tambini: If we begin to talk about how a regulatory framework works, and might work in the future, we have to be quite specific about what we are proposing. We potentially have a framework for reviewing, which could then be used to advise a Minister that a decision might need to be taken about whether a merger should be reviewed, or we might have a system of limits that are absolute limits, for example. We need to think about what it is we are proposing. In our evidence, we have set out a few basic ideas. In terms of the existing limits and where we are going with all of this, I would say that we should think about this as a transitional moment. We have existing rules. They apply separately to radio, television and newspaper markets. They tend to come into play when there is a transaction, a merger, or a change in a broadcasting licence. There is a discussion about whether we should move to a system that captures not only transactions but endogenous growth as well. If a media company comes into a position of power and influence that may lead us to have concerns, it can do so through endogenous growth and not just transactions. One of the elements that I would argue should be part of a new system is the ability to deal with endogenous growth. Whatever limits we have, I would argue, should be there permanently, and there should be some sort of bright-line limit on the size of media companies. They should apply to the existing media markets: radio, television and newspapers. We know that that is where the influence is, and we have those existing rules. Ofcom has carried out reviews of media plurality and public interest tests in relation to the News International/Sky merger and, previously, the ITV deal. In its advice to the Secretary of State on media ownership, it has set out some potential for new kinds of measures.

I would argue you need the rules that apply to existing media, but you also potentially need to think about new intermediaries. Rules that apply should be based on audience thresholds for existing media, but you might have some kind of higher threshold that applies to other media companies, potentially even including online intermediaries, if they have the role of a media company—if they do something that is affecting output or media plurality, or distribution of news.

Q5 The Chairman: Can I just stop you there? Surely any intermediary of this sort is affecting the distribution of news, is it not?

Dr Tambini: If you have an ISP, a search provider or a network operator that is offering fair and reasonable, non-discriminatory access to other providers and operating in a completely neutral way—if you had networks that were obliged in legislation to be neutral as regards content providers—it would not be.

The Chairman: I accept that. With that category of people, they are just processes, are they not?

Dr Tambini: If you think about social networks, they are becoming a distribution platform—for many demographics, the principal distribution platform—for news. They have highly concentrated network effects, but the question really is whether they actually have any editorial control over that content. I would say that some of those intermediaries do and some of them do not.

The Chairman: So the key thing, in your view, is editorial input and control over the material on there.

Dr Tambini: Yes, defined widely. It does not have to be somebody with a trilby hat on acting as an editor, but affecting the distribution of news in ways that could be consequential
and could enable them to discriminate in ways that affect those traditional objectives of media plurality that we set out at the outset.

Q6 Bishop of Norwich: But that could change, could it not? As you get larger, the temptation to engage in editorial control and the pressures upon you from outside sources to engage in editorial control—as with Google, in some ways, I would have thought—must be greater, must they not?

Dr Tambini: I am not sure about the incentives and whether the temptation would be greater. You would be under a more intense public scrutiny and a more intense spotlight. The principle, though, is that the regulatory framework should make it clear that, if you are carrying out those kinds of editorial functions, that comes with a responsibility, and part of that responsibility may be being subject to some kind of obligations within a media plurality regime. As I mentioned, we are in a transitional phase. We need to keep our eye on those new kinds of problems, but we also need to maintain the existing rules, particularly because the Facebooks, the Googles and the network providers are not operating in news gathering very often. One of the effects of the current economic crisis in the news industry is that news gathering—the actual work of journalism—is being carried out by fewer professional journalists. There may be citizen journalists, but there are fewer professional journalists, under more economic pressure, in that part of the picture.

Bishop of Norwich: I used to have this fantasy that there is a difference between news and opinion. I am not sure there is now. Do you think there is a distinction that you can draw between the two? Where does media plurality come in in relation to that? Is there such a thing as hard news, or is all our news a matter of opinion?

Dr Tambini: I am not sure that it affects very much what we would recommend in terms of policy, but blogging as a genre has less of a clear, established and professionally recognised distinction between news and opinion. It is certainly true that, in the history of newspapers, you have clear signalling when you are moving from news to opinion. In the blogosphere, you do not.

Dr Craufurd Smith: One interesting point there is that, if you think about the different ways in which people have proposed you might measure media ownership, the approach that was adopted by Ofcom when it looked at the BSkyB/News Corporation merger was to look at share of reference. That asked the individual to say what it was they regularly turned to as their source of news, and did not then require them to make fine distinctions about whether it was opinion or news. It was something they looked to that steered their perspective or opinions on particular issues, and that could be hard facts or not.

Bishop of Norwich: I am even intrigued about where news and current affairs end, and where drama and all the rest of it begin.

Dr Tambini: I think there is a big question—if there is ever a new Communications Act—that legislation will have to resolve at some point about whether any limits should apply to news, or whether they should be broader and apply to film, etc. That is a question that is about pragmatics rather than principle. In terms of the objective of media plurality, it seems to me that both are relevant. If you can imagine a complete monopoly of film distribution in any society, that is a problem from the point of view of media plurality if somebody decides they do not like films that have an environmental theme, for example. Film matters for media plurality, but it may be the case that news matters more. The systems of measurement that we tend to think are going to be more useful for measuring the objective of media plurality
are share of references and audience recall measures. It may be that you need to have a system that focuses some questions on news but maybe has some other questions that apply to other genres as well. Ultimately, the question comes down to what data you can get, how much of an exhaustive machinery of review you want to set up and how many different sectors it applies to. I do not think it is a principle question; I think it is a pragmatic one.

**Bishop of Norwich:** Maybe this is a pragmatic one as well. How should wholesale news providers be accounted for in relation to our inquiry, do you think?

**Dr Tambini:** In its reviews, Ofcom very sensibly measured them. You have quite a lot of concentration in wholesale news. The Ofcom approach of looking at those wholesalers and trying to look at the news flow between those wholesalers and other distribution platforms and providers is important. It is a very complex question, because you have selectivity at every level in that chain. You have to be more concerned with the news that is actually reaching consumers, rather than the wholesale market itself. It is relevant if you have one news agency that is hugely dominant and is able to control the news agenda. That has to be a cause for concern.

**Bishop of Norwich:** Before I pass on, I should have declared no interest. I do not think I have any interest, apart from writing occasionally for newspapers and broadcasting, at tremendously good value for the BBC.

**The Chairman:** How fortunate we all are.

**Q7 Baroness Bakewell:** I had better declare an interest. I work for any broadcaster and newspaper that will pay me. Over the decades, it has been all of them.

You go into some detail in your papers about the pros and cons of different ways of measuring plurality, and you appear to favour a “multi-faceted plurality assessment”. That is what it says here. This is clearly a very knotty problem, and I want to know what your view is on how plurality should be measured.

**Dr Craufurd Smith:** I agree; it is an extremely knotty problem, and for anyone who is putting forward proposals in this area, there are a number of options. We have just discussed one issue, which is whether you include news or cover all the different genres and all the different forms of programming and content that could influence public opinion. Ofcom identified in, I think, their most recent paper a number of different approaches. One is availability—the number of individual sources—which is relatively easy to count, but in itself will not tell you what the share or the potential power and influence is of each of those particular sources. They also talked about consumption, which in my view is probably a rather more helpful metric if you are talking about influence. That focuses on a number of potential features of a particular market. The reach of a service could be one; a second is duration of exposure—how many minutes you spend looking at or reading a particular source—and impact is the third one that they mention. A decision has to be made as to how sophisticated your model is going to be and if you are going to try and catch all these.

In my view, having looked at it, if you are really concerned about the power of any one individual to influence the agenda in any particular area, perhaps one does not have to become too sophisticated in all this. It is, at the end of the day, a policy judgment that Parliament has to make as to how many operators you want in a particular market. You have to decide what your market is, but how many do you think it is necessary to have in that particular market? The most helpful metric is probably exposure and the extent of exposure.
If a particular company or organisation is able to dominate exposure and has that opportunity—it has your eyeball or your readership for a particular period of time—then that is a mechanism that one can introduce to impose limits.

Baroness Bakewell: You can only do that from the supply side, though, can you not? You cannot measure how much people are paying attention when the television is on. The television might be on in another room. Can you call that exposure? It can only be the supply that you know about.

Dr Tambini: Yes and no, because the instrument that Ofcom use—the share of references—is a subjective measure. It is a day-after survey: “Think about your sources of news yesterday. Where did you go to for the news?” You are looking at the demand side as well. There are a range of different measures in terms of how you would monitor the level of concentration of media power. I would argue that we also need to discuss whether we are speaking about thresholds, for example, or whether we are talking about absolute limits. We are arguing for a system whereby, because there may be some markets in which there is a problem of sustainability and difficulty in maintaining the revenues to continue news gathering and so forth, you might need to have a system whereby companies can grow above a certain size. If you had, say, a 20% share limit, you might want to have a threshold limit at that point that you are able to go above if you conform to certain requirements. If we take 20% of share, which is based on a measure that Ofcom has the role of monitoring permanently and reporting on, maybe in its quarterly market review reports and in a specific annual media plurality report, companies will have the certainty that they are approaching that 20% limit. In the legislation, you could also have a set of requirements that, were you to exceed that threshold, you would have to meet those requirements. Those requirements would place some kind of obligations on you. For example, they could be to have some kind of non-executive board that maintains editorial integrity; there could be some form of right to reply; or you could have specific clauses in the editorial contracts of journalists. On the Australian model, if you have a converged approach to journalism self-regulation across different platforms, you could say that media companies above a certain level have an obligation to contribute to the journalism self-regulator. Just to clarify, we argue strongly for audience-based measures. You would need to monitor that. They are subjective. You are making surveys of media users all the time in order to monitor the level of media plurality, but the best way of doing that is to ask people what they watch, read and listen to.

Baroness Bakewell: I take all that about measuring, but what about how to measure the quality? Even within news and current affairs itself as a genre, you can have light-hearted Channel 5 news—which takes 60 seconds and the newsreader stands up or walks around and it is very easy to digest—or you can have the heavy-duty, solemn, Radio 3-type news. Should we be concerned about these kinds of qualitative differences, even within an area like news and current affairs?

Dr Craufurd Smith: My view is that it just becomes much too complicated. These are basic controls that are introduced, and if you then start having somebody deciding whether a particular programme is likely to have a greater impact than another programme, the whole thing will be mired in complexity. This probably goes against our own suggestion about a multi-faceted approach. I can see that there is really something to be said for understanding the market and understanding how people are impacted by media. That is something that can be helpfully carried out by an organisation such as Ofcom, and certain countries are engaged in really quite deep research as to how people read and use the media. But in terms of a control for business, business needs to have some kind of clarity as to where these rules
are going to be fixed. I think that is a useful kind of analysis for us to understand the media, and it may feed into the limits at some point in the future, but I would not want to get into too sophisticated a distinction between particular types.

The Chairman: But you are not keen on revenue limits. That has been suggested by Enders.

Dr Craufurd Smith: I have some sympathy with the Enders approach. I quite liked, in a sense, that 15% overall market limit that she had. If you are going to start having a cross-media metric that covers sectors like film, video and games, which is what she is proposing, it may be that revenue is the only way that you can do that without imposing some enormous burden on the regulator in order to convert all these. This might be one test among a number of tests. It goes back to you in terms of what you would want to propose and how sophisticated this whole system would be, but, as a sort of catch-all test to see where, across the industry, there are people involved in film and music-making from different companies and organisations, the Enders approach has some attraction to it. It is not in itself sufficient, because you could have one company that completely dominates news and the newspaper sector and the Enders approach does not pick that up.

Baroness Bakewell: I picked up the point from a phrase you used, which was “the influence on public opinion”. That begs so many questions about light or serious news, or music, or whatever, does it not?

Dr Craufurd Smith: This is a view that has been very influential in the German media regulatory controls. They have a broad approach: it is 30% of the revenue of television. They see that television is an influential medium and they do not try to make that distinction.

Q8 Baroness Healy of Primrose Hill: The evidence that we have received has broadly three proposals for remedies, and I would be interested in your view about them. There are structural remedies, behavioural remedies—which I think you are more interested in—or hybrid remedies. Could you outline the approach you would recommend, and how this would work?

Dr Tambini: It is a hybrid. The first thing to say is that there is more than one way to skin a cat. There are a number of different ways you could do that. You could have a combination of a threshold that is not a fixed cap, based on audience share, and outer limits that are higher, which we would say were caps that companies that exert that kind of editorial control and can be defined as media companies should not be going over, whether that is 30% or something around that area. Rather than speaking about behavioural remedies as something that is at the discretion of a Minister or a regulator, one of the problems that we really want to avoid is too much discretion, either for a regulator, which has less accountability than a Minister would, or for a Minister, for all of the reasons that we saw come out during the Leveson inquiry of compromises, conflicts of interest and general difficulties with Ministers being involved in those decisions. I would argue strongly that you need to get the Ministers out. The threshold should be in the legislation. Instead of behavioural remedies or undertakings in the case of a merger, you would have a series of requirements that apply if you go over the 20% market share, and, in addition, a cap. It is definitely a hybrid.

Dr Craufurd Smith: There are so many ways of doing this, and we have thought about it quite a bit. I think what Damian might be suggesting here—and we have discussed this—is that you could have something like a 20% limit, depending on what your metric is, and that
limit prevents you from taking over any companies, so that actually acts as a prohibition on merging with another company in one sector. If one grows endogenously because of one’s business success or whatever, while one wants to encourage businesses to be successful, and maybe they have put together a particularly attractive package that they are developing, nevertheless they are gaining greater influence over the market and over opinion in that context. That is where one might want to specify a number of modifications to the way they operate, to ensure other perspectives or investment in news. Then, at the final level, there would be an absolute cap. That, in itself, is quite problematic. One would apply it in most contexts; there might be contexts, such as with the BBC, in which you might allow an organisation to go over it. At that point one would be talking about divestiture.

There are different options open to you. You can have a prohibition, you can have a threshold, and you can have an absolute cap. We would suggest that it might be a prohibition in terms of mergers at a particular point, with an intervening period where you would not necessarily penalise a company if it grew above it, but it might be expected to modify in some way its organisational behaviour.

**Baroness Healy of Primrose Hill:** You want to be able to encourage success and new journalism, etc.

**Dr Craufurd Smith:** Yes.

**The Chairman:** What sort of cap do you have in mind? There are all different kinds of caps, and they have rather different consequences, do they not?

**Dr Craufurd Smith:** They do, yes. We were discussing this before we came in. We fixed it at 30%, and you could imagine a context in which, if you have a number of newspapers, at that point you might be expected to divest one that brought you below it. Another option that has been suggested by some people is that, if you exceed the 30%, you modify the shareholdings. If you were the major owner, you would have to divest yourself in order to bring in other shareholders within it. It is problematic in the market, because you start to devalue a product if it is then required to be divested in some contexts.

**Q9 Lord Dubs:** I have no present interests to declare, although many, many years ago I was on the Broadcasting Standards Commission. That is so long ago that it does not really count for purposes of declaring an interest.

We have heard, broadly, three options for who should decide whether there should be intervention in the public interest. Those have been an electorally accountable politician, an independent media regulator, or a special plurality commission. I think you go for the Ofcom option—the middle option—of an independent media regulator. Is that right?

**Dr Tambini:** Yes, for the reasons I mentioned before. We should have learnt by now that it is problematic for elected politicians to be involved in too much discretion over media mergers, or indeed decisions about divestiture or behavioural remedies and so forth. On the other hand, you would not want too much discretion with the regulator.

The example of Germany is worth thinking about. They have much clearer rules, which are basically based on the television market—they are going to have to think about those at some point themselves—but the specific media concentration regulator can make decisions about whether a merger should be allowed or not on the basis of thresholds and limits that are set out in the legislation. The rules are very clear. A merger that, in a UK context, was similar in some senses to the News International/BSkyB merger—the ProSiebenSat.1
merger—was refused by the regulator on the basis of those rules. It works if you have clear rules and an independent regulator. I would argue that you need to take the elected politicians out, but you also need to take some of the discretion out of the system at the point of those decisions.

Dr Craufurd Smith: I would add to that that Ofcom was set up as a body with specialisation in the communications industry, and it has specific statutory obligations to take into account the interests of citizens and consumers, as well as business. The competition authority has competition powers and expertise in that field, but why do you have a specialised communications regulator if, in a sense, it cannot be the body that decides issues relating to the media? This is a policy issue that relates to the media.

The report you prepared on convergence is going to be very important to you in terms of what kind of body takes this forward. One of the suggestions that you outlined in that paper was that there would be a new system of regulation that covered both on-demand media and non-public service broadcasters, so you have a slightly different regulatory pattern. That might be overseen by a body such as Ofcom, but acting much more as a co-regulator, perhaps a bit more removed from day-to-day decision-making, with more self-regulatory powers devolved to a body such as ATVOD, with then rather extended powers. Then you can see Ofcom, or whatever the communications regulator—the co-regulator—would be, being a bit more distanced from the industry and, in that context, being quite a suitable body to take up the issue of media plurality, even in its more limited sense, as one has tried to remove some of the discretion from it. What we are proposing would be a much more automatic system, although the body itself would need to oversee the industry to see where these thresholds were likely to arise, and to take account of changes in the industry from new media and entities such as news aggregators and decide whether they should be included in the market. The body would have a number of different roles, seeing both how the markets were developing and possible problems within them.

Lord Dubs: So we are going with an independent regulator.

Dr Craufurd Smith: Yes. Sorry, that was a very long way of answering your question.

Lord Dubs: What do you think can be done to ensure that such an independent regulator has the right mix of accountability, competence and ethos? How can we be sure they are good enough to do the things we want them to do?

Dr Tambini: I think it follows from what I said before, about taking away some of the discretion. Every regulator needs to be accountable, but the less discretion they have, the less pressure you have in that respect. Ofcom would have to think hard if it were going to take on more of the discretion that the Secretary of State has, with advice from Ofcom and the Competition Commission, currently. Ofcom would need safeguards on its independence. It would need to fully review and revise all the data it has in this area, and be sufficiently resourced to have adequate data. It may need a specialist media plurality panel within Ofcom, with security of tenure and some independence of operation, for example. This is not something that Ofcom could take on without thinking about it seriously and being reformed in some way.

Dr Craufurd Smith: You would need experts. You would need to appoint people who are experts in the field, to avoid political appointments and for them to be responsible and accountable to Parliament. You would need to ensure that the appointments mechanism itself operates in an independent fashion and is subject to the Nolan principles and whatever.
**Lord Dubs:** And you would keep your fingers crossed.

**Q10 Bishop of Norwich:** You said in your evidence that “there is a strong argument that the European Commission has competence to review media plurality” and “this would be useful way to deal with threats to democratic life of states in the European Union”. I wonder if you could elaborate on that argument, and say why you have seen this competence in the European Commission in this area.

**Dr Craufurd Smith:** The European Union has competence on a number of grounds. The first reason why it might be involved is that it is concerned with business and the internal market, and these rules on ownership can be seen as potential barriers to trade and the ability for organisations to establish themselves in other countries. If one country does not have rules at all, you might get very large media organisations that develop in that country and that might have distortive effects on other countries. The other strand that is feeding into European Union thinking at the moment is the idea of citizenship and democracy. Across Europe, we vote for Members of the European Parliament, and we need to be properly informed about our choices in that respect. I think they are concerned also about democracy, and, as Damian mentioned, within the Charter of Fundamental Rights there is also now the enshrinement of media freedom and freedom of expression. Pluralism is increasingly seen as an aspect of that.

There are thus a number of factors that are feeding into an argument for European engagement and concern with this field, but there is also a very strong aspect of subsidiarity. As you are probably aware, the EU has tried to intervene in this field before and was unsuccessful. It was unsuccessful because a number of member states feel quite strongly that these issues are better dealt with, and—since we are talking about the difficulties of this—can be better contextualised and developed at the national level. However, there might be concerns that some states are not engaging with these issues, in which case the EU might want to give a steer in that context. The EU can also play an important role in supplementing member states by providing them with data and information, and encouraging them to think about aspects that might possibly be less contentious, such as the independence of media regulators—which they have just commissioned a consultation on—and transparency of media ownership.

In many instances, we look at the UK and we think that we have a really healthy media environment here, but it is not the case across Europe. If you think about other countries, some of them are experiencing real difficulties in terms of media freedom. The EU has been very aware of difficulties in Hungary, and I have been working with people in Romania. There are very different difficulties, and it is sometimes quite easy from the UK perspective to ask, “Why are they intervening? We do not need this intervention.” Other countries look to the EU as possibly—rightly or wrongly—trying to solve problems that they are not solving themselves.

**Dr Tambini:** I would add to that that I do not think that the EU and its recent high-level group report is embarking on a journey that is going to end in some kind of common rule or common limit to be applied across the whole of the Union. If that was where they were going, I think that it would be absolutely right to tell them to stop. What they might try to do is establish some good practices and some standard setting, and transparency of media ownership is pretty fundamental there. The Open Society Foundations recently did a survey of company law, which revealed that in most European countries it is not possible for citizens to understand who is behind their news. Understanding the financial and other
interests that are involved in owning the media in any country, and transparency about that, could be a very positive outcome of this process.

Q11 The Chairman: Am I right in saying, then, that you are not suggesting that there is any competence in the European Union to legislate specifically about plurality? Rather, you are suggesting that there may be—given the provisions of the Charter of Fundamental Rights and the general role of the Commission—a role for information-sharing and promulgating best practice “observatories” in this general area. Is that the kind of place on the political map that you see this?

Dr Tambini: Regarding the question of competence, it seems to me that there is a range of views out there.

The Chairman: Do you think there are people who are saying: “Yes, the European Commission could introduce proposals for regulation determining the way in which media plurality is measured and implemented across Europe”?

Dr Craufurd Smith: Yes, I think there are. They have thought about it in the past, and they got as far as actually drafting one. It was not successful, because certain member states were not prepared to accept it. They would be faced with exactly the same situation if they tried to do it now.

The Chairman: Do you think that, jurisprudentially, there is a sufficient legal base for this thing to stand up?

Dr Craufurd Smith: There is, but the legal base has to also be seen in the context of subsidiarity. The subsidiarity argument here is a very strong one, which is that we do not need to have European harmonisation of standards; there are other ways in which they can deal with this. They can nudge or support member states that are not taking proper action to do so.

The Chairman: You think that is something that would probably be desirable.

Dr Craufurd Smith: Yes, I think it could be for certain states. You are considering it, so we have active consideration of the issue already here in the UK. If we had not acted, and if one had major control by one or two organisations, perhaps I would be looking to Europe to try to resolve it. Fortunately, that is not the case.

Q12 Bishop of Norwich: I am still trying to work out how the EU might intervene when that might develop in a member state. Maybe it is a poor example, but I am thinking of Berlusconi in Italy and what the consequence of that sort of connection between media ownership and power would be if it happened here, and what any European regulation could then do to affect that.

Dr Craufurd Smith: The Italians have been pressing very hard. A lot of the pressure for EU action has come from the Italians. At the moment, they have not had a response.

Dr Tambini: The question arises when the European Commission is asked to review a merger. At the moment, the European Commission will examine that purely on competition grounds. There is a question about whether there is some informal notion that media plurality might be relevant within discussions surrounding that merger decision, but one area that I think is probably less likely to arise within this current debate is whether merger decisions should involve a European-level decision, based on plurality rather than simply competition.
The Chairman: So it is a slight expansion of the competition policy provisions.

Dr Tambini: Yes.

Bishop of Norwich: But it seems to me that there is almost another issue here. That is that we tend to think of these things nationally in terms of the public interest as the media becomes more and more international.

Dr Tambini: News markets are still very national.

Bishop of Norwich: Is that likely to remain the same, a long time into the future?

Dr Tambini: I have little evidence for this, apart from recent historical developments, but I would say it seems likely to be the case, given that polities remain national and so, in many cases, do language groups.

Dr Craufurd Smith: I have just one point on the EU. The other aspect, in terms of Italy, is that the EU has competence in terms of the allocation of spectrum and, to some extent, the role of the communications regulators. They have ensured that the communications regulators to that extent are independent, which helps to insulate them to some extent from political pressure. They have also been interested in the way that state aid has possibly been used to advantage particular players in the Italian market. They have been able to assist in certain respects.

Lord Dubs: Is there not the danger that we are happy if some European body looks into Italy, for example, but woe betide them if they start looking at us? Are we liable to get into a bit of a political tangle? I am not taking the UKIP line; I am just saying that where we have a well-worked-out system, we do not think they can do as well as we do, but where another country does not have a good system, then certainly it could be done better from Brussels. That is a pretty difficult argument to sustain.

Dr Craufurd Smith: Yes, I think it is. One needs to be honest that we can learn things from some of our compatriots in Europe, just as they can learn things from us. The UK media system has been a source of inspiration for quite a lot of developments in Europe, but I am quite sure that there may be aspects, in terms of independence or whatever, that we might want to think about a little bit more.

Q13 The Chairman: You mentioned Hungary. I have heard it said that Hungary’s system is, on paper, quite similar to the arrangements we have here, yet the media landscape in Hungary has been criticised in a way that I do not think anybody has attempted to criticise us. Is it the form of these systems that surround the media that is important, or is it the nuanced way in which, in the culture of the place where they are established, it is administered?

Dr Tambini: I think it is both, and the two are related. I do not know if you want to say anything more about independence of regulatory authorities.

Dr Craufurd Smith: No, not really.

Dr Tambini: That has been an issue in Hungary, and there is a question there about the extent to which the European Union can put pressure on countries within Europe to ensure that the regulatory authorities in broadcasting and audiovisual, as well as telecommunications, are sufficiently independent from the state.
The Chairman: It is a matter of putting political pressure on to ensure political independence. Is that how you might describe it?

Dr Tambini: Yes, if that does not sound too much of a contradiction.

Dr Craufurd Smith: Can I just add something? It is partly culture, but it is also a complex set of rules. If you think about the independence of the BBC, it has the independence written into its charter, even though it is effectively a government body at the end of the day and the royal charter allows for strong influence of the Government. I know that your Committee has looked at questions of governance, and whether there should perhaps be more accountability to Parliament rather than just Government in this particular context, but there is this culture and also quite important rules that are built into it. I was recently at a Council of Europe meeting, and there was a Hungarian colleague there. They were extremely worried about the example of the royal charter (if implemented in the field of press regulation) and how that would be read in the context of other European countries. I had to explain that it is not just Government moving in—if this is actually approved at the end of the day—and being granted power over the content of the code. You have to see it as a much more sophisticated system, in which the accreditation body is really only there to ensure that the self-regulatory body is independent and effective, and therefore can be seen as, to some extent, a buffer from both industry and political concerns. You are right that these things can play out very differently in different countries, but there are often very clear rules that are sometimes conveniently forgotten in other countries that make them work in a very different way here.

Q14 The Chairman: Time is almost up. I do not want to detain you longer than is fair, but perhaps I could ask a wrap-up question. A lot of criticism has been levelled one way or another at the status quo—what we have here. Looking at it from the other point of view, what do you think are the core things that we ought to make quite sure we hang on to?

Dr Tambini: I mentioned that we are at this transition point. I would argue that, in some way, we need to retain rules that apply to the currently influential media: radio, television and newspapers. Which elements of that we need to retain would depend on what replaces it. Whether we need, for example, to retain the public interest test would be up for question. If we had a sufficient system of clear thresholds and absolute limits, it may be that we could do away with the public interest test and referrals for media mergers.

The Chairman: Would the 20/20 rule be relevant in the future?

Dr Tambini: There are specific issues that arise with cross-media ownership. One of the issues we did not really speak about is the importance of exposure diversity, as well as source and content diversity. It may be that certain cross-ownership rules need to be retained, because large numbers of individual consumers having access to only one or two news sources—in other words, not multi-sourcing—would be a problem from the point of view of media plurality. The answer to all of these questions depends on what is replacing it, I am afraid, but maybe some cross-media ownership rules would still need to be retained.

Dr Craufurd Smith: I am afraid that the plurality test just does not work at the moment. That is virtually the only control that exists, so I find it hard to see anything positive in the present situation, beyond your commitment to look into it and to try to find something that works better. I commend you, and I wish you all the best with your analysis, but at the moment we have a broken system. There is a risk in going back to the past, as it were. All of this was dismantled in 2003, and you feel a bit old-fashioned suggesting that limits might
come back again. Have we not moved beyond that? But I tend to think that we do perhaps need to go back and really think about whether those are still needed.

**The Chairman:** Thank you. You have both been very helpful, and it is much appreciated. I appreciate that you think this is a worthwhile project. It is rather daunting that you tell us how difficult it is. Thank you very much.

**Dr Craufurd Smith:** If we can be of any further help to you, I am sure we would be happy to do so.

**The Chairman:** Thank you.
The Government welcomes this Inquiry into how a workable approach to media plurality might be achieved.

In May 2011, the Government published an Open Letter signalling our intention to commence a wide-ranging review of the regulatory regime for the UK’s communications sector. In this, we set out our ambition to establish UK communications and media markets as amongst the most dynamic and successful in the world.

As the Committee’s recent work and latest report has shown, convergence is a dominant theme across the media sector. Any consideration of media ownership must be viewed within this wider context. With new technologies such as tablets and smartphones rapidly adopted by significant numbers of households with multiple connected devices often accessing different types of content simultaneously, this technology is becoming thoroughly embedded in the fabric of every aspect of our lives – how we entertain ourselves, work, socialise and organise our affairs.

As the Committee rightly notes, this convergence also applies to markets, with media organisations offering a variety of services and operating across a range of platforms. This raises issues about the scope of plurality policy, as well as adding further facets to the debate around current media consumption. On the one hand, the consumer is exposed to a greater range of news sources, particularly with the continuing expansion of the internet, which could increase the plurality of views they come into contact with. On the other, the increase in new media does not guarantee pluralism: an increasing array of information heightens the possibility that people will selectively modify their own news intake to only the information that reinforces the views they already hold. And as noted by the Committee, the ‘filter bubble’ effect, whereby website algorithms speculate on what information a user would like to see based on information about them based on previous searches, could further reduce the plurality of views that they are exposed to.

Following the proposed merger between News Corporation and BskyB, the Secretary of State for Culture, Media and Sport asked Ofcom for its advice on media plurality. This advice was submitted in June and September 2012, and was considered by Lord Justice Leveson as part of his Inquiry into the culture, practices and ethics of the press. Within the broad constraints of the work that the Inquiry had to undertake, however, Lord Justice Leveson noted that there was insufficient time to look at these issues in detail. His analysis and recommendations were therefore at the level of desirable outcomes and broad policy framework, rather than the technical means of achieving those outcomes. Nor were these recommendations the subject of detailed discussions in cross-party talks.

We will therefore seek views on these issues and how to take forward Lord Justice Leveson’s recommendations.

There is a broad consensus that plurality is vital for a healthy and well-informed democracy – and that plurality is concerned both with what is available, that is, the number of different media voices, but also what information people consume. As identified by Lord Justice Leveson, a number of questions flow from this relating to scope, measurement, remedies
and triggers, all of which are issues set out in the Committee’s call for evidence. We note the Committee’s proposed timing of publication for its report in this area and consider that this will form a valuable input into the Government’s consultation.

May 2013
TUESDAY 26 NOVEMBER 2013

Members present

Lord Inglewood (Chairman)
Lord Clement-Jones
Baroness Deech
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Lord St John of Bletso
Baroness Scotland of Asthal
Earl of Selborne
Lord Skelmersdale

Examination of Witness

Rt Hon Ed Vaizey MP, Parliamentary Under-Secretary of State for Culture, Communications and Creative Industries and the Department for Culture, Media and Sport

Q422 The Chairman: Welcome to Ed Vaizey. We were not expecting you until yesterday. We are very glad you have come as I understand Maria Miller is not well. So it is good of you to come into the breach at the last minute. We do know each other in this Committee, so it is not as if you are an entirely unknown quantity. Just before we start, could you say who you are for the purposes of the record?

Ed Vaizey: My name is Ed Vaizey and I am the Minister for Culture.

The Chairman: Is there any kind of introductory statement you would like to make to us?

Ed Vaizey: I do not want to make a detailed introductory statement, Chairman, because I think that quite a lot of the points will be covered in the questions that this Committee has for me. First of all, may I apologise for being here. That is because, as you said in your opening remarks, my Secretary of State is not well and she would have been here if she could. But if it makes this Committee feel any better, other people have also been stood up by her because of illness, including the Prime Minister. So she has a legitimate reason not to be here, but I can genuinely tell this Committee she very much wanted to be here and had prepared quite assiduously for this hearing.
The Chairman: Will you pass back that we hope she gets better quickly?

Ed Vaizey: The first thing she would like me to say—and I will also speak on my own behalf from now on—is to thank the Committee for launching this inquiry. I think it is important to get the point across that the DCMS sees this inquiry as a very important part of the process of the investigation into the issues of media plurality that have been raised since we started our own consultation. We do think the issue of media plurality is very important. We think the ability of citizens of this country to access a wide range of news, views and information about the world they live in is essential to the health of our democracy and society. It sits alongside freedom of speech because without media plurality only the voices of the dominant in our society would be heard. So that is why it is such an important issue and provokes such a debate. I think it is a very complex area as well. Everyone supports the concept of media plurality, but when it comes to talking about the detail of what a plural media looks like, and how that can be achieved or safeguarded, there is a plurality of views. It is made of course much more complicated by the world in which we now live. The Chairman is right, I have appeared before this Committee before to talk about media convergence. We now have a huge range of devices on which you can access media and as a result, of course, a huge range of content from blogs, to podcasts, to TED Talks, to Twitter and so on. That is changing business models as well. It is a global trend, although I am pleased to see that certain British newspaper organisations, the *Mail* and the *Guardian*, it seems to me are beginning to really succeed in the digital world. But I think that the issue of changing technology is another reason why it is important to look at media plurality.

I am sure, Mr Chairman, we will examine the process that we are undertaking but, as you know, the key issues that we see as the first stage of the process are examining the scope, what is within media plurality and working out how to measure that plurality. We think it is very important to start the whole process of looking at the policies for media plurality by gathering the appropriate evidence. Thank you very much.

The Chairman: If we can help you that is all to the good. But do you think that when we conclude our report it would be possible to come up with a set of recommendations that would be deemed by people to be reasonable, or do you think it is absolutely inevitable, given the contentiousness of some of the background political debate surrounding this topic, that there is going to be a criticism and that we are bound to end up not satisfying everybody?

Ed Vaizey: To a certain extent there are two processes under way, both of which could potentially be susceptible to criticism. There is our own consultation on scope, which we issued earlier in the year, which ended towards the end of October: what should we consider in terms of media plurality? Then there is this Committee’s inquiry, which is going to be wider in range and cover more issues. I do not think anyone could argue that both of us have not consulted and been very open, taken on board a huge range of views and a wide range of organisations have contributed. There are certain key trends emerging, which I think people can coalesce behind, and clearly we will be taking on board the recommendations of the Committee at the start of a process. There will inevitably be debates about scope. Then there will be a debate about how we measure media plurality, and then there will probably be an even more robust debate about the conclusions, whether we do have a plural media, and remedies. But I think scope is probably the least controversial as we go along that journey,

The Chairman: You touched on key themes that are emerging. Would you like to tell us what you think the key things are? We have touched on what the work would cover.
Ed Vaizey: I think if you could say, “Do not let the best be the enemy of the good”. As I said in my opening remarks, because the internet has made the issue of media plurality almost infinite in terms of how many different organisations or types of media you could take into account, you could be debating this for years. So I think one has to set certain limits. Therefore, I think news and current affairs is seen as the core ground for media plurality in terms of when we talk about media we talk about news and current affairs.

Clearly, you have to take into account online. Although I am sure there will be a debate about how widely you go online, you have to take into account online. Then I think what emerged very early on was that the BBC, clearly because it has got its huge share of voice, has to be taken into account when you are considering media plurality. So those would be the three themes that have emerged in terms of our examination of the scope of media plurality.

Q423 Baroness Scotland of Asthal: By what you have said, Minister, it is clear that you have put this issue quite high in your priority in terms of importance, and you have expanded your consultation to include ownership as well as media plurality. Can I take it also from what you have said that you would propose to—particularly if we can produce our report in January—to take the conclusions or the recommendations of our report into account when you come to consider what the Department itself will say or do in relation to this issue?

Ed Vaizey: Yes, Lady Scotland, you can. As you know, our consultation closed on 22 October. We gathered evidence and it will take us some time to digest that. That concertinas quite nicely with the inquiry that the Committee is undertaking, so there is an opportunity for us—if the report is published in January—to take it into account. We would also potentially be flexible because we do regard this inquiry as a huge opportunity, given you have pretty much taken evidence from all the main bodies that have put in written evidence. You have taken oral evidence from them as well. So, without wishing to put too much pressure on your clerks, I think the report is going to be extremely influential and will be very helpful to us.

Lord Clement-Jones: You do not always have a history of agreeing with us, though.

Lord Skelmersdale: What do you plan within your own judgment, given that you have just said that you will accept our January report, assuming we achieve it?

The Chairman: That is the plan, to report in January.

Ed Vaizey: Yes. These timelines are always pretty flexible. I am afraid I make a very facetious joke, which I probably should not make in front of this Committee, which is I tend to say that we are launching a report in the spring but in Whitehall spring runs from February to November. But what we are planning to do is to take into account the Select Committee’s report and to issue our own conclusions in probably February, March or April. I am reluctant to tie myself down to months. Once that report is out on scope we will commission an independent body to put together the measurement framework. They will not do that in a closed room behind a locked door. They will do that working with industry, consulting. We hope to put the findings of that out towards the end of next year. At that point we will then go on to analyse the market, based on that measurement framework.

Baroness Scotland of Asthal: Bearing in mind that this Committee has done a great deal of work on this, are there specific issues that you would be minded to suggest that we might like to consider in our report? Is there anything in particular that you would like assistance on?
Ed Vaizey: Yes. I think that we would be obviously very interested in scope. But when I say that three trends have emerged in terms of how we regard scope, we would still be very interested in drilling down. So we would be very interested in the Committee’s findings on what online media you think should be taken into account, whether there is some kind of de minimis rule and how you deal with online media that is outside the UK. We would also be interested in how you define news and current affairs. Again, almost every phrase or word you use in this debate has an obvious meaning until you start trying to sit down to define it. It would be useful to have a view on what you regard as news and current affairs. I think those would be two important issues.

I have to say we are a long way from working out either the measurement framework or potential remedies, but we would welcome any proposals the Committee felt it wanted to put forward in that area.

The Chairman: From what you were saying about the timeline, it did not look to me that one could anticipate any legislation about this during the present Parliament. Is that right?

Ed Vaizey: I hesitate to take a fixed view on that. I think it is important to take the time to get this right. These things often take slightly longer than one anticipates, but certainly I think one would be looking at doing the practical work that may or may not require legislation over the course of 2015.

Q424 The Chairman: The other thing is you were talking about metrics and measuring. What is your view about the proposition, which we have heard, that perhaps what is appropriate in 2015 will not be appropriate in 2020 and that you will have to retain a considerable degree of flexibility within whatever framework you have as to the precise detail of how quite a lot of things you need to do should be done?

Ed Vaizey: The reason I am laughing, Mr Chairman, is because I had this discussion with my officials this afternoon. I think this is where we start to get into the realm of real complications because I think that it is important, on the one hand, to have a system that is fit for purpose. As you quite rightly say, a set of measurement frameworks put together in 2014 may not be adequate even in 2016 or 2015, given the pace of change of technology. At the same time, I think the people working in this industry want an element of certainty, so one does not want to be operating in an industry where, to a certain extent, one feels there could be almost whimsical intervention, if I could put it that way. One does want a certain set of fairly hard principles that you know are going to be relevant to your business.

The Chairman: That is principle-based perhaps.

Ed Vaizey: I think so, yes.

Baroness Deech: There are some people who might say, without thinking too much about it, that lack of plurality—whatever that is—is bad and plurality is good. When you get right down to the heart of it, what do you think is the purpose of a plurality policy? What is it that a plurality policy is supposed to grapple with and control?

Ed Vaizey: I think it is about the individual being able to access a diversity of views. It is important that there is a range of views on different subjects that are easily accessible, not just a one world view that the citizen is exposed to. The other side of that coin is to prevent one dominant media company or owner dominating the news agenda and forming it around their view.

Baroness Deech: There are some interesting questions around that. We can hardly prevent citizens now from accessing—at least online—a whole range of media, and there are
local newspapers but perhaps they are not terribly inclined to buy them. In other words, is there really a problem, in your view?

**Ed Vaizey:** There are two points there, Lady Deech. First of all, when we say in our consultation document that we in the Government are not in the business of forcing media plurality on the citizen, that you will by diktat expose yourself to a range of views, one can see almost a parody of the nanny state there. If somebody does choose to only expose themselves to a very narrow view of the world, that is entirely their choice in a free and democratic society. But when you say, “Is there a problem?” I think that sits at the heart of this entire process. It started with Lord Justice Leveson’s recommendations and the view was, first of all, that we needed an up-to-date measurement of media plurality in this day and age and, secondly, we needed to look carefully at the kind of remedies, because it was felt that the one-size-fits-all remedy of only being able to intervene in a particular media merger situation, if you want to put it that way, was potentially not adequate. I think it is important to stress that this is not a process with a pre-ordained outcome. The process is scope, what is the media, measuring it and then deciding whether there is plurality.

**The Chairman:** I am afraid we are going to have to pause, for reasons you will understand. I hope you will forgive us and we shall be back as soon as we can.

_Sitting suspended for a Division in the House._

**Q425 Baroness Deech:** You said that the plurality policy also had the mission of preventing one media owner having too much influence over public opinion. Nevertheless, is it not the case that we have no real evidence that newspaper readers are persuaded to vote one way or the other by their newspapers? Is it not the case that politicians believe in the power of the dominant media owner and it is in order to prevent politicians from cosying up too much to media owners that we need a plurality policy?

**Ed Vaizey:** That question is a bit of a catch-22, Lady Deech, because if media organisations did not have any influence then we should not mind about politicians cosying up to them. They should cosy up to them with gay abandon, if they had no influence at all.

There is certainly a perfectly respectable view that would say that the Westminster village looks at the media and we are the ones who wake up in the morning, check the Twitter feed—I would not suggest you do, Lady Deech—check the news feeds, read the papers—

**Baroness Deech:** I do.

**Ed Vaizey:** —check the updated e-mails, subscribe to the *Spectator Coffee House*, get the *Telegraph*, lunchtime e-mail, evening e-mail, go home, watch the news, watch “Newsnight”, watch the newspaper review on Sky and then go to bed.

**The Chairman:** When do you do your departmental work?

**Ed Vaizey:** We are on the one hand exposing ourselves to a plurality of media but we are also media obsessed. I slightly lost myself in that, but the point is that there is an Act. It is part of our legislation that plurality should be taken into account and there have been three merger cases—obviously the News Corp one that everyone knows about, but also ITV and the global takeover of GMG Media—where the plurality test has been applied. So it is used. It may be the Select Committee wants to look at the fundamental question: should we have a plurality test at all? But given that we do, and given that there is a broad consensus that
there should be one, it is important that it is up to date with the digital world, that people agree on what it applies to and how it should be applied.

**The Chairman:** Arising from Lady Deech’s point, you have the plurality policy but then the rules relating to the snuggling up between media proprietors and politicians are something slightly distinct, are they not?

**Ed Vaizey:** Yes, there is a plurality policy so that we want a diversity viewpoint, we want a plural media, we think that is a good thing for democracy, and we do not want one media owner to dominate that media and bend it to their view. The Prime Minister has made it clear, and it is part of the ministerial code of conduct, that all meetings with media proprietors, editors, and, I think, senior journalists are recorded.

**Q426 Lord Clement-Jones:** You have been very open about the emerging themes from the consultation.

**Ed Vaizey:** That sounds like a terrible error.

**Lord Clement-Jones:** It is probably a very bad mistake. But you mentioned three things particularly: what the core was at the scope, the fact that it was going to take into account online and the inclusion of the BBC. Those are the three areas, but of course the consultation paper itself necessarily asks some fairly limited questions because it related to the scope. Are there are other emerging themes that deal with some of the other points made by Lord Leveson, and the sort of things that we have been considering through the term of this inquiry, in terms of who carries out the review, the way in which reviews would be triggered, the kind of remedies, and so on? Are there other themes that are emerging from the responses to the consultation themselves?

**Ed Vaizey:** I could either answer no or I do not know. I will double check in terms of the consultation responses, whether people cover those issues. I have not had time in preparing for the Committee to review them. But what I would say in terms of answering no is that in terms of government thinking there are no particular thoughts because we are on this slightly process-ridden journey. We want to sort out scope first, then we want to go on to measuring the evidence base, then we want to test whether plurality exists under that evidence base, and then we want to look at remedies. We would regard it as premature to offer thoughts at the moment on what remedies might arise.

**Lord Clement-Jones:** Coming back to the scope again, do you feel there is a strong consensus around those three themes?

**Ed Vaizey:** Yes. I do not want to overegg the pudding. It seems to me those are the three obvious themes where most people seem to agree, broadly speaking. It would be a big shock if we published a paper that said we were not going to take into account online media. One of the big changes that came about over the last couple of years, and it came about partly through Ofcom’s work on media priority, was the importance of the role the BBC plays in the debate, and that should be taken into account. Clearly, it is—I hesitate to say “common sense” but it is pretty obvious that news and current affairs is what we are talking about when we exercise our concerns.

**Lord Clement-Jones:** The one where we found there had been differences of opinion is about the inclusion of the BBC, although funnily enough the BBC Trust today were clear about the fact that they thought it should be included. Quite a number of respondents have said they thought the BBC should be excluded, but you did not see that in the consultation.
Ed Vaizey: I would not like to say because I have not reviewed them so I would not want to mislead you in any way. I can write to you separately on that. I think we have made it clear that we are happy to publish responses that are not given in confidence or do not have confidential material in them. I will ask my officials to try to give you a summary on that particular point if it would be helpful.

Lord Dubs: You have probably largely answered this question but just in case there is anything left of it, should the scope of the plurality review be confined to news and current affairs or should it go wider than that into other genres?

Ed Vaizey: Unless one is prepared to not let the best be the enemy of the good, you could have this debate almost endlessly. Should films form part of the debate—individual films can be extraordinarily influential, wildlife documentaries, for example—video games, books being published, clearly polemical books on particular issues? You would be hard pressed to come to any kind of manageable system that incorporated that wide a scope.

Lord Dubs: So news and current affairs is what it is about?

Ed Vaizey: Yes.

Q427 Lord St John of Bletso: You have mentioned several times today the pace of changing digital technologies and the impact that this has had on the media landscape, the media plurality. Some would argue that media plurality in fact is not a problem but we have heard of a number of different options that should be considered in a new plurality policy, so-called bright line caps, the soft line thresholds, and then of course the recommendation of Ofcom that there should be a periodic plurality review. How do you respond to the arguments that have been put to us that firm caps and threshold carry a number of significant risks?

Ed Vaizey: It is a very difficult issue to get clarity on. I would also add the caveat that we have not done a great deal of hard thinking on this. To a certain extent everything I say should be taken as—I was going to say “speculation” but not even speculation. Just a thoughtful response to your question, if I can put it that way, which is that bright line caps, this idea of a hard line in the sand where you go over a certain share of media, remedies can be played; thresholds are soft lines in the sand where you do not necessarily have to have hard remedies perhaps of divesting yourself of part of your organisation but there could be soft remedy codes of conduct or editorial independence for an element. Where the hard line stops and where the soft line comes in to play is a question. I understand this idea of thresholds has emerged, partly through the evidence taken by this Committee.

The difficulty with any kind of cap rule will be that it will be a cap perhaps in one sector of the media that would not reflect the whole range of different media and would not take into account the context in which that one sector exists in relation to others. Also, it can have inadvertently difficult consequences where a competitor goes out of business and suddenly you have moved your share of media beyond where you were. So there are all sorts of difficult issues surrounding it. Without wishing to take refuge in my earlier exposition of where the Government are, we are at the moment quite a long way away from examining those issues in the kind of detail that is needed.

Lord St John of Bletso: Surely these risks would not be there if it was simply a periodic plurality review. We have heard obviously of the Enders proposal and others, but would it be much simpler if the Government were to take the recommendations of Ofcom for a periodic plurality review, possibly once a year?
Ed Vaizey: Reviewing the market could potentially form part of our overall conclusions. When we have finished this regular review of the market it could form part of our overall conclusions when we finish this exercise, so that could be a sensible place to start. Going forward, we have yet to decide how to measure and when. It is very important, therefore, that we measure the current state of media priority before we decide things, but we are not saying that Ofcom’s ideas are not without merit.

Lord Skelmersdale: You have heard Lord Clement-Jones express the Committee’s surprise at the Trust’s attitude to being reviewed by Ofcom periodically. I think it is probably an open secret, from what you have just said, or you have opened that secret, that there will be a review in due course within the next five years. Once a review has been undertaken, do you think it is for the BBC Trust to act upon it, do you think it is for Ofcom to act upon it, or do you think it is for the BBC itself to act upon it?

Ed Vaizey: I must apologise because, Lord Skelmersdale, you are now firmly pushing me into the territory of “I cannot comment” in the sense that I genuinely do not have a view, nor does the Government have a view, which I suppose could be a view in itself.

We would welcome this Committee’s thoughts on whether you thought it was appropriate for the Trust or Ofcom or the BBC to do that, but clearly that would be an issue that would need to be addressed.

Q428 Earl of Selborne: You were kind enough to give evidence to us on the convergence report and if that report taught me anything—and I am sure other Members of the Committee would agree—it was that you cannot predict the way that the media is going to evolve when things move so fast. When it comes to determining the precise metrics of a periodic plurality review it would seem unwise to legislate in such a way that one assumed one could predict what form the media was going to deliver and how it was going to manifest itself.

Would you agree, in so far as legislation will be required to enable such periodic plurality reviews to take place, they may need to be specific and rigorous in principles and guidance on such things as metrics but, equally, flexible enough to allow the reviewing body to determine these in a way that is reactive and sensitive to the media landscape at the time of the review?

Ed Vaizey: It is important, having opened this session by saying that we live in a fast-moving digital landscape, to balance that comment a bit, in the sense that some things are not changing as quickly as people think. Live linear television viewing, for example “The X Factor” and “Strictly Come Dancing”, is still very healthy. Three or four key programmes on Sunday night each got about 10 million viewers, so it is important to say there is still scope for what one might call a basic common-sense approach to media plurality that is meaningful in terms of ensuring there is not a dominant media.

In your question, Lord Selborne, you hint at the quite difficult dilemma that I addressed earlier when I was answering a question from Lord Inglewood, which is that any media operator deserves certainty, as indeed do the public, in terms of how the Government may or may not intervene in issues of media plurality, but at the same time the parameters of that intervention need to be kept up to date, so we need this slightly difficult circle to square of flexibility and certainty. It is very difficult. That is why we are taking time to get this process right in terms of the measurement framework and then conduct what we would regard as the first state of the nation report on media plurality in the UK.
This inquiry and that report will bring to the fore precisely the issues that you are asking about.

**Earl of Selborne:** The media are entitled to a degree of certainty as to what it is that they are expected to conform to and, if legislation is not always going to be very precise a few years away from the period it is covering, presumably guidance that can be updated is going to be more flexible.

**Ed Vaizey:** I think that is right.

**Earl of Selborne:** That is guidance to the reviewing body.

**Ed Vaizey:** Yes. Again, you have tempted me. I have dropped my guard and you have tempted me into speculation. Broadly speaking, I think your point is very sensible.

**The Chairman:** Is it not a particular complication of looking at the existing figures about how media is used that most of those who are sitting round this horseshoe table are in the age group where we watch a lot of linear television and yet if you look down in the younger age groups you suddenly find a hugely different way of using media? It is about 45, is it not, where it changes? I do not know which side of the line you are.

**Ed Vaizey:** I am 45.

**The Chairman:** So you can change the position to what you feel.

**Ed Vaizey:** Clearly, depending on the time of day. I am either watching very old-fashioned media or I am very up to date and “with it”.

**The Chairman:** You are very well placed doing the job you do.

**Q429 Baroness Fookes:** I do not know whether I am able to further tempt you into making some points you would probably rather not make, but may we assume, just for the purposes of the argument, that we accept the Ofcom model of a periodic review after which the body makes its recommendations. There seem to be two alternatives as to what happens next: either a politician, a Minister, makes the decision of whether to accept them or there is what is usually called the Leveson hybrid whereby the Minister accepts the recommendations and if he does not then he has to give reasons why not. Could you make any observations on that?

**Ed Vaizey:** You are very tempting, Lady Fookes, so I will. I know that my previous boss, Jeremy Hunt, the then Secretary of State for Culture, was almost isolated when he gave evidence. “Isolated” is a pejorative word. He was a relatively lone voice when he gave evidence to the Leveson Committee when he said politicians should not have the ultimate decision, and at the moment the state of the debate, it seems to me, is that most people still think there should be some accountability. I would defend Jeremy’s position, having obviously not been involved in the News Corp issue. We took a decision very early on in terms of accountability that there should be one Minister responsible. It would be confusing if there were two Ministers involved in the process. He seemed to me to have been dealt a hand that he could not win with because people would lay on to a politician’s motives, which in my view is completely unfair but you can do it with a politician because they are of one party or another. As Lady Deech indicated in her question, there is an element in this debate of politicians being too close to the media.

So I can absolutely understand why Jeremy would say that to avoid any suggestion, particularly an issue of media plurality where there is an element of subjectivity, that political
influences are being brought to bear on a very highly emotive issue of media ownership or a dominant voice in the media, you should take politicians completely out of the process.

It seems to me that there is—and it is very clearly the view of Lord Justice Leveson in his high-level recommendations—a feeling that there should still be political accountability in this decision. He proposed the model. In fact, that was the model that Jeremy followed, which was to take the advice of Ofcom and officials and very clearly show if and when he diverged from it. I cannot remember off the top of my head where he ever did, but I do not think he did.

So there is that opportunity to have an ultimate political candidate, somebody who can answer questions in Parliament but who follows a very transparent process in terms of taking advice, that advice being made public, and where the accountable Minister differs from that advice, explaining why and being able to be examined by either a committee like this or in Parliament.

**Baroness Fookes:** Do you think you have given me an answer?

**Ed Vaizey:** I hope not. I have no view and I may not be the Minister when all of this stuff comes to a head, but I suspect at the moment the prevailing view from committees such as this, which are very influential in the debate, is that there should remain some element of political accountability.

**Q430 The Chairman:** It struck me you certainly gave a reply. We are getting to the end of our questioning, but one thing I would like to ask about is, can we tempt you into telling us anything more, anything you think we ought to know that matters to you that you have not told us? Like you, we are working on the same piece of legislation about 18 months down the line.

**Ed Vaizey:** The noise you can hear behind me, Lord Inglewood, is the sharp intake of breath from my officials. Yes, you can tempt me to say more.

To a certain extent, and I hope I do not sound repetitive, there is a view—it is not my view—that in a truly digital world of a cacophony of voices and divergent media that a media plurality test is unnecessary and that the citizen should find their own way in the world, where they find their own views. I do not agree with that. I think there is still a role for a media plurality policy. I think we will find when we examine the scope, and when we examine it on the basis of news and current affairs online and the BBC, that it may not prove to be as difficult as the almost infinite landscape that we take into account. There will be some fairly obvious things that you could, at a push, describe as media but most people would not regard as news and current affairs.

I also think that, broadly speaking, despite people talking about the death of newspapers and so on, most people still get their news in what we would regard as relatively conventional ways, from television news broadcasts, newspapers, newspaper websites and so on. There has not been some big player that has come in and disrupted it unduly. It is updated. What has disrupted a lot of newspaper profits is the advertising changes. That is the key, not competing news voices.

I think the metrics will prove challenging, but that will be the next phase of consultation. We do not have a view on the remedies proposed by Ofcom, but no one has jumped up and down and said either they are completely barking or they have missed some huge opportunity for another remedy. So we broadly know the landscape of where that debate will happen.
There is a great opportunity and what has come out of the whole process was an understanding fundamentally that we have to update the media plurality rules, we have to do a deep down investigation into how the new digital landscape has changed to plurality, and we do need to look at this potential organic intervention. Just sitting and waiting for a potential media merger may not be enough.

At the same time, returning to my earlier points, it is important. If I was sitting here as the owner of a media company doing a legitimate job, providing news alongside a whole range of other entertainment to consumers who are willing to pay for it, I would want certainty for my business. I would not want to be thinking that we are entering the area where Government at a whim can intervene, that the process is somehow almost either subjective or opaque. So it needs to be clear and transparent, and people need to know when they might cross a line. That is not a pejorative word but simply a phrase that they might just cross a line in terms of ownership and scope. I hope that was helpful.

**The Chairman:** It was helpful, and we hope we have been helpful to you too. Thank you very much indeed. Thank you for coming at such short notice.

**Ed Vaizey:** You are welcome.
DMG Media – written evidence

1. My position at DMG Media is Editor Emeritus, responsible for regulatory matters on behalf of the Daily Mail, Mail on Sunday, Mail Online and Metro. I am the company’s representative in negotiations over the future of press regulation following the Leveson Inquiry, and I also act as negotiator on behalf of the industry at large. Prior to taking up this role I was Editor of The Mail on Sunday for 14 years. My background and experience is in the editorial rather than the commercial side of the industry, and I will answer this call for evidence from that perspective.

2. The company’s commercial position was most recently set out in its response to the Ofcom Consultation on Media Plurality, submitted in December 2011. The submission itself was confidential, and has now been superseded by other events. However Ofcom’s subsequent report Measuring Media Plurality indicates that the main conclusion of our submission – that the BBC and news aggregators should be included in any review of media plurality – has been widely accepted (Measuring Media Plurality, paragraphs 5.36, 5.47 and 5.143).

Historical context

3. From the eighteenth century onwards the prevailing view in this country has been that a liberal democracy such as Britain is best served by a wide range of competing, privately owned news outlets, functioning with a minimum of state interference. Plurality is guaranteed by the marketplace.

4. This was challenged by the arrival of broadcasting in the 1920s. Scarcity of broadcast spectrum and technical resources, and the commercial uncertainty of a new medium, led to the establishment of a single state-licensed broadcaster, funded by a licence fee (arguably a form of poll tax): the BBC. Clearly such a news service, beamed into people’s living rooms for free, could be exploited as a powerful weapon of Government propaganda. To prevent this happening, the BBC was given a Charter under which it had to observe impartiality. With only one broadcast news supplier, internal plurality was guaranteed by the state. When commercial television arrived it still relied on state-granted broadcast spectrum and similarly operated under licence, so was also required to maintain impartiality.

5. The last 20 years have seen the biggest revolution in news provision since the invention of the printing press. The Internet, Google, Facebook and Twitter have arrived in rapid succession. Not only does this mean that any individual can become a publisher with a mass audience – Stephen Fry has 5.7m followers on Twitter, far outstripping the sales of any newspaper - it has created immense commercial pressures for print media.

For the regional press it was even tougher. In 2004 the equity value of Johnston Press, publisher of 13 regional dailies, 154 paid-for weeklies and 37 free weeklies was £1.547 billion. Five years later it was just £47 million, a fall of 97 per cent.

7. Newspapers did their best to embrace the new technology. In the forefront was the Guardian which, until eclipsed by Mail Online, published the biggest newspaper website in Britain. But, despite heavy investment, it failed to deliver revenue: the Guardian Media Group lost £53.9 million in 2010, £54.5 million in 2011 and £75.6 million in 2012. According to one survey, in 2011-12 national newspapers lost £6 in print advertising revenue for every £1 they recovered in digital. DMG Media is a very rare exception in reporting digital advertising revenue increases (£13 million) that more than make up for losses of national newspaper print advertising (£11 million).

Plurality under pressure

8. Inevitably these pressures will lead to moves towards consolidation in some marketplaces and in turn to concerns over plurality. One possible answer to these concerns, which has been aired on a number of occasions recently, is to find a means of enforcing ‘internal plurality’ by regulatory means.

9. Thus Ofcom, in its June 2012 report Measuring Media Plurality said:

‘We defined plurality as:

- ensuring there is a diversity of viewpoints available, and consumed, across and within media enterprises; and
- preventing any one media owner or voice having too much influence over public opinion and the political agenda.’

‘We said that plurality needs to be considered both within media enterprises (i.e. internal plurality) and between media enterprises (i.e. external plurality).’

This was developed in its October 2012 supplementary advice, which followed Measuring Media Plurality, into the suggestion of regulatory measures:

‘Behavioural rules that improve standards: Such remedies aim to improve standards of practice within news providers. They might mitigate potential concerns around too much influence being exerted by any one media organisation, typically by securing fairness (in terms of how news providers report issues) and accuracy (in terms of the completeness of what is reported). They may be suited to market-wide issues, to improve levels of trust in news provision and help secure a diversity of viewpoints that met minimum safeguards and standards – although their introduction would need to balance the risk that they bring uniformity to news provision. Alternatively, they could be targeted to particular providers to address specific plurality concerns.’

10. Lord Justice Leveson in his report largely supported the Ofcom approach, and in particular raised the prospect of regulation being used as a device to allay concerns over plurality:
'I therefore recommend that the levels of influence that would give rise to concerns in relation to plurality must be lower, and probably considerably lower, than the levels of concentration that would give rise to competition concerns.

‘Ofcom has presented the Inquiry and the Government with a full menu of potential remedies, and I have not seen any arguments to suggest that any of them are inappropriate in principle. Each of them might be appropriate in a given set of circumstances and I recommend that the relevant regulatory authority should have all of them in its armoury.’

11. Finally the January 2013 report of the European Commission High Level Group on Media Freedom and Pluralism makes the link between concerns over plurality and calls for state regulation even more explicit:

“Media pluralism is a concept that goes far beyond media ownership … It embraces many aspects, ranging from, for example, merger control rules to content requirements in broadcasting licensing systems, the establishment of editorial freedoms, the independence and status of public service broadcasters, the professional situation of journalists, the relationship between media and political actors, etc. It encompasses all measures that ensure citizens’ access to a variety of information sources and voices, allowing them to form opinions without the undue influence of one dominant opinion forming power

**Recommendation:** All EU countries should have independent media councils with a politically and culturally balanced and socially diverse membership. Nominations to them should be transparent, with built-in checks and balances. Such bodies would have competences to investigate complaints, much like a media ombudsman, but would also check that media organisations have published a code of conduct and have revealed ownership details, declarations of conflicts of interest, etc. Media councils should have real enforcement powers, such as the imposition of fines, orders for printed or broadcast apologies, or removal of journalistic status. The national media councils should follow a set of European-wide standards and be monitored by the Commission to ensure that they comply with European values.”

**But is more regulation the answer?**

12. The problem with this approach is that, to borrow the Prime Minister’s language, it involves crossing not one Rubicon, but two (or in the case of the EC High Level Report, several Rubicons).

13. I do not need to rehearse here the difficulties in setting up a regulator for the press which is, as recommended by Lord Justice Leveson, simultaneously voluntary and independent, and delivers self-regulation. It is difficult to envisage any publisher willingly submitting a title to regulation by a body in which commercial rivals all had a stake, if that body had the power to impose rules which might deny that title its distinctive voice and thus damage its commercial viability. Such a move would inevitably involve the regulator in trying to set rules about suitability of content which, unlike rules governing journalistic conduct, all publishers would argue is incompatible with freedom of expression.
14. This does not mean there is not a need for regulatory controls in cases where cross-media ownership creates behemoths of news and entertainment provision – the BBC, funded by an assured flow of taxpayer’s cash, and the now-abandoned News Corporation/BskyB merger, where cross-fertilisation of newspapers, subscription TV, websites, book publishing, Hollywood film production and sports rights would have locked together to give one company a dominating grip on consumer content.

15. However very different arguments apply to individual newspaper titles. In 2011 the Kent Messenger Group (KM Group) bid for seven newspapers in Northcliffe Media’s Kent division, believing that one profitable local media company would be better placed to preserve titles than two struggling competitors. The merger failed when the Office of Fair Trading announced it would refer the bid to the Competition Commission. KM Group chairman Geraldine Allinson said the cost of a Competition Commission review ‘would be completely unreasonable for a business of our size and for a deal of this scale.’ The result: two of the Northcliffe titles were closed immediately with the loss of 38 jobs and the KM group announced ten redundancies. A process set up to guarantee plurality and diversity had the consequence of reducing both.

16. Britain currently enjoys the luxury, almost unknown in the Western world, of a truly diverse national press. There is competition between rival newspapers in each of the redtop, midmarket and broadsheet sectors, and among broadsheets there are both rival conservative papers and rival left-of-centre titles. Neither of the left-of-centre broadsheets, the Independent and the Guardian, makes a profit. The time may come when the choice is either one profitable, merged left-of-centre paper or none. And such a paper would no longer be serving its readers if, in the interests of plurality, it had to balance every column by Polly Toynbee or George Monbiot with one by Richard Littlejohn or Rod Liddle.

17. It may well be, therefore, that there will be fewer newspapers. But that need not mean that there is any diminution in the plurality of opinion available to any individual member of the public. In addition to a choice of newspapers, the public today have access to a vast array of TV channels and radio stations, which in turn gives them a choice between two different news regimes. On the one hand there is the print media, self-regulated, campaigning and proud on occasion to be partisan, and on the other is broadcast media, state-licensed, state-regulated and committed to impartiality. And even if the public weren’t aware of this choice, thanks to social media such as Twitter, Facebook and YouTube, in the digital era readers of one particular newspaper, or viewers of one television channel, constantly have their attention drawn by the sharing of links to news and opinion published by titles they would not normally dream of reading.

18. This is one of the reasons for the apparent promiscuity of readers of newspaper websites, many of whom are drawn to a particular website not by habit, but by a link in a tweet from a friend, or from a celebrity whose tweets they follow.

19. This also explains the recent phenomenon of controversies generated in one newspaper and its website by comments published in another. We had experience of this at the Daily Mail when columnist Jan Moir wrote about the death of singer
Stephen Gately. It provoked vociferous comment on Twitter – much of it from people who clearly never read the Daily Mail but had been encouraged to visit the Mail Online website by other Twitter users. Other newspapers have had similar experiences – in the case of the Observer with a recent column by Julie Burchill about transsexuals.

20. It is tempting for those involved in regulation to look at television and radio and ask why newspapers and their websites shouldn’t offer an impartial service to broad heterogeneous audiences in the same way that broadcasters do. The truth is that newspapers have survived into the electronic age by serving distinct audiences, whether they are defined by geography, demographics, or ideological viewpoint. To do this they must remain free of regulatory control over their content. And that freedom is itself the refuge of last resort of broadcasters when they come under political pressure. At the end of the first opening seminar of the Leveson Inquiry one of the then most senior figures at the BBC came over to me and said: ‘Whatever you do you must not lose this battle. It is only the fact that we can come to you to make our case without constraint that enables us to see off politicians when they put us under pressure.’

8 May 2013

_In preparing this submission I am indebted to Tim Luckhurst, Professor of Journalism at the University of Kent, on whose work I have drawn._
The debate about media plurality tends to take place within the framework of existing statute and regulation. This lends an additional layer of artificiality to a discussion which depends heavily on assumptions and surrogates, with reported consumption of news, circulation of print and readership statistics substituting for what we really care about: influence, which is very hard to measure.

We value media freedom because it is regarded as an essential part of an informed citizenship, as well as a crucial check on power everywhere. We regard widespread ownership of media outlets as important, because we assume that these outlets have influence, and we do not want influence to be concentrated in too few hands. However, we lack hard evidence of how the views of the public are formed. Media necessarily have to take their place in the context of family, friends, work, religion, voluntary associations and many other elements which “influence” our opinions, and which “mediate” the “news” which we might read, hear, see or call up online.

Even the simplest of connections — say, between newspaper voting recommendations and reader voting behaviour — is at best ambiguous. Indeed, the vast majority of news consumption, as reported in successive surveys by Ofcom, is derived from television and radio, which are required by law to eschew partiality and observe balance. If it is influence that concerns us, it is not easy to understand why newspapers, especially national newspapers, are the focus of so much concern.

Of course, many academics and other observers suggest that, even though newspapers form such a small part of news consumption, and are any way in rapid decline in terms of circulation and readership, they help set the agenda for broadcast media: witness the use of newspaper headlines in daily news programmes on TV and radio. Yet when Ofcom attempted a sophisticated analysis of the sources of news stories, the BBC remained the biggest single originator, with the mass circulation dailies barely visible in the league table. Legislation has not brought clarity. In commercial broadcasting, rules are aimed at dispersing ownership: but as Ofcom requires impartiality in news reporting from all holders of licences, it is not clear what the ownership rules are meant to achieve. Indeed, of late, and in response to economic pressures, the barriers to owning a broadcaster and a newspaper in the same locality have been removed: effectively acknowledging that little or no actual influence over views derives from ownership of a broadcaster.

Conversely, the newspaper rules require a diversity of views (leaving ownership issues substantially to economic regulation). This has led to some perverse outcomes: protecting a title with unabashed Orange sympathies from take-over (to avoid loss of that viewpoint), and allowing other local newspapers to die of economic causes rather than succumb to take-over.

Much of the current debate over plurality is driven by hostility to the Murdoch press and TV empire, not least in the light of the crimes committed by the News of the World (and perhaps The Sun). Yet arguing that a 34% share of national newspaper circulation is now unacceptable comes ill from a Labour front-bencher who was utterly silent during a 15-year period when she was a minister benefitting from endorsement from The Sun at a time when
News International’s share of a much larger total circulation was always higher than 34%. That said, at least a 30% limit is an improvement on Mr Miliband’s 20% proposal, which would have led to a series of absurd and anti-democratic interventions, such that regulation itself would have been discredited.

In any case, why focus on the national press? Do not our hundreds of regional and local titles have any influence over their readers? And why focus on circulation, rather than readership? And why print copies rather than combined online and hard copy readership?

The problem is that we struggle to measure across different media what exactly it is that should concern us. The Ofcom report on the possible impact of the News Corp attempt to buy all of BSkyB shows – alarmingly – how even an expert regulator can make disastrous errors of judgement, and reach completely absurd conclusions.

Fortunately, Ofcom has seen the error of its ways, and has largely abandoned both the methodology and the policy objectives it adopted during the heated argument over that transaction. It is essential that, before any further attempt is made to tinker with plurality rules, we embark on a careful and wide-ranging exercise of agreeing what it is we are trying to measure, why we are doing so, and how to do it.

That exercise has to include industry participants as well as outside experts. It has to give certainty to ministers, regulators and media enterprises as to what is permitted, what is not, and why. We cannot afford another fiasco in which – after a transaction is announced – Ofcom arrives at a conclusion about the relative consumption of news provided by the BBC and that provided by the parties in a proposed merger of 43:24, when the correct relativity is closer to 60:10.

I supply for the Committee, to accompany this note, my original evidence to Ofcom on the BSkyB transaction, my assessment of the Ofcom report on that transaction, my evidence to Ofcom on its plurality consultation, and a subsequent analysis of Ofcom’s report on measuring media plurality published in 2012.

May 2013
Submission to Ofcom concerning News Corporation’s proposal to acquire all outstanding shares in BSkyB

It is welcome that an expert and politically independent body is examining this proposal, allowing the issue to be judged on its legal and regulatory merits rather than on competitive and political preferences.

Much of the comment so far has been driven by general anxieties about the role of News Corporation (hereafter NC) in British public life. NC’s chairman, Rupert Murdoch, runs major media businesses, in the UK and elsewhere, and is well known for his willingness to involve himself in political matters, partly to support issues, groups and individuals where he feels affinity, and partly to support his business interests: some would argue that there is considerable overlap.

The scale of NC’s operations, when combined with this political engagement, gives many people pause. They fear that the desire of politicians to win the endorsement of such a powerful media mogul only enlarges his power. They note (rightly or wrongly) that NC’s position in UK media – with 37% of national newspaper readership and 39.1% of the strongest business in the broadcasting sector – would not be allowed in jurisdictions like the US or Australia (these territories are invoked because of Murdoch’s current and previous citizenship).

Such people further note – not that there is much that NC can do about this – that NC’s underlying political preferences are shared by the next biggest newspaper groups, Associated Newspapers and the Telegraph, marginalising left-of-centre opinion in the national press. That these two groups vehemently oppose the NC transaction does not alleviate the anxieties of those who invoke a threat to our democracy from the NC proposal. (In passing, one might note the irony that The Guardian, in advocating the cause of the Liberal Democrats at the election, in practice threw in its lot with the supporters of the major coalition partner.)

The general harum-scarum that NC’s proposal has provoked has been given support by the normally highly reliable consultancy, Enders Analysis. Unfortunately, the paper submitted by Enders to the Secretary of State contains enough errors and contradictions to make it a poor guide to action.

Most of the errors arise from a misunderstanding of what BSkyB is. It is described as a media business, as if it were to be compared to ITV or the BBC, yet it derives significant parts of its revenue from set-top box installation, telephony and broadband subscriptions, along with the extra fees charged for high-end technology, such as multi-room installations, Sky+ digital video recorders and HD functionality. In advertising revenue, it lies in third place, with ITV far in front, and Channel 4 in comfortable second place. It makes and commissions few programmes outside sport and news.

Similar considerations apply to Virgin Media, which has annual revenues of £4 billion and has seen a much stronger surge in its market value in the last 18 months (1,000%) than BSkyB has experienced. VM owns no channels or content, yet is described as a “media” company (not least in its name), because it sells other people’s channels and content to its customers. Conversely, BT, with its annual revenues of £20 billion, is only marginally seen as a “pay-TV”
participant, because its BT Vision subsidiary has only 500,000 customers. BT’s revenues dwarf those of NC in the UK and BSkyB combined, but that does not register with Enders. Enders asserted that BSkyB commands 80% of the pay-TV market. This is clearly a mistake, by almost any calculation. What they probably meant to refer to was the premium channel market, not pay-TV as a whole (where BSkyB’s share is between 50% and 60%, with the balance earned by Virgin Media, BT, TopUpTV and ESPN). The dominance of the premium market will ease as Ofcom wholesale pricing rules at last incentivise BSkyB’s competitors to offer premium sport to their customers. In any event, it is hard to understand the significance of BSkyB’s relative position in pay-TV in relation to the issues being addressed by this Ofcom review. Public interest concerns arise in this instance over control of viewership, not control of hardware or platforms or non-broadcast services.

For instance, a number of critics of the NC proposal have commented on the relative size of BSkyB compared with the BBC. Yet these two organisations barely impinge one upon the other. They do not compete for revenue, for customers, for talent, for staff or – except at the margin – for content. It is largely immaterial to each of them how big the other is. Even BSkyB’s complaints about the BBC’s online spend (which the BBC has agreed to reduce by 25%) relate to less than 5% of the BBC’s income.

Of course, BSkyB is a broadcaster, but its broadcast channels constitute only a minority of its revenue-generating activity. It is primarily a platform, deriving a major part of its revenue from packaging third-party offerings in expensive technology wrapping. Indeed, the most significant recent change in media ownership was arguably the transfer of the Virgin Media TV channels to BSkyB, which conceded to BSkyB the leading position in basic tier channels as well as premium, and effectively ended any prospect of a competing basic tier offering (comprising MTV, Discovery, VMTV, UKTV and Universal) emerging to challenge BSkyB’s aggregating role, from which it derives a margin of 85%. However, this change did not trigger regulatory intervention.

The terms of this review explicitly exclude cross-media ownership issues, as these are dealt with under the 2003 Communications Act, and clearly do not apply to the NC proposal. Yet critics of NC – perhaps regretting that they failed to impose different cross-media rules during the passage of that Act – regularly invoke the “cross-media ownership” mantra as if that were decisive in dealing with this proposed transaction. The actual rules overwhelmingly deal with the main terrestrial commercial broadcaster, ITV, not with satellite broadcasting, other than in its potential linkage with ITV.

So we need to concentrate on the actual issues at stake, which are essentially whether the proposed transaction would endanger media plurality in the UK, typically judged by the number of media owners and outlets (with news supply a central consideration where outlets are concerned).

Would dislodging the current holders of 60.9% of BSkyB’s shares reduce the number of media owners? Given that the vast majority of these shareholders are investment institutions, not strategic or trade players, it is hard to see how the label “media owner” can attach to them, even if they (a nebulous and ever-shifting set) constitute a majority. After all, when The Independent and Independent on Sunday were sold by the public company which owned them to Mr Lebedev, the number of “media owners” was not reduced by several thousand. It was not reduced at all. The corporate body was deemed to be the owner before the sale, and the individual purchaser the owner afterwards. Likewise,
when the Telegraph titles were sold by a public company, with thousands of shareholders, to a private company led by two brothers, it was not deemed that there had been a reduction in the number of “media owners”.

As it happens, NC has long been regarded by regulators as being in effective control of BSkyB, despite owning less than 40% of the equity. This goes back to the company’s origins, where the 50:50 merger between Sky and BSB explicitly placed control in NC’s hands – a fact fully recognised in the prospectus at the time of BSkyB’s IPO, when NC agreed to reduce its holding to 40% to assist the flotation.

By contrast, when RTL – whose dominant shareholder, Bertelsmann AG, is controlled by the Mohn Trust, led by Reinhold Mohn’s widow – steadily increased its stake in Channel 5 from a non-controlling 30% to full 100% ownership, no public interest concerns appeared to arise, despite a clear change of control, placing publicly-owned UK spectrum in the hands of a private German foundation, whose embarrassing past connections with the Nazi regime were well documented.

Likewise, when Channel 5 was bought by Northern and Shell, there was a measurable reduction in the number of media owners, as N and S owned four national newspapers, as well as a successful magazine and sex channel business, whilst RTL withdrew entirely from UK television broadcasting.

So would NC’s potential 100% ownership of BSkyB reduce the number of media outlets? Again, that would clearly not be the case immediately, and it is not obvious why it would predictably and consequentially become the case in the future.

It is hard to see that “media outlet” concerns would apply to television in this transaction. BSkyB’s own share of UK viewing is modest, and apart from an occasional documentary on Sky 1, the only output that would seem to matter is Sky News, which commands about 1% of all UK viewing and rather more of news viewing (where the BBC and ITV are overwhelmingly dominant).

Superficially, one might imagine that Sky News is sustained by the will of the external directors of BSkyB, against the natural pressure from NC to close down a loss-making service. However, Sky News is very much a creation of NC’s, from before Sky merged with BSB, and the cumulative investment of hundreds of millions of pounds in the service is very much driven by Rupert Murdoch personally.

Some critics imagine that it is only the presence of outside directors that keeps Murdoch from converting Sky News into a Fox News clone. They forget that Sky News ran for nearly two years before Sky merged with BSB, and it would not surprise me if BSkyB board minutes revealed that the outside directors had never had cause to discuss the editorial stance of Sky News.

My personal experience of having had responsibility for all Sky programming for four years is that no pressure was ever applied to Sky News. Indeed, the only serious blemish on its impartiality I can remember (subsequent to my departure) was over-enthusiastic reporting of the BSkyB bid for Manchester United: hastily compensated for by extensive coverage of the Manchester United Supporters Club’s opposition to the bid.
Earlier this month, Sky News led with a lengthy report on Andy Coulson being interviewed by the police – a story that might have been top of the agenda for The Guardian, but certainly not for BBC News or ITN. Sky News also interviewed critics of NC’s bid – Lord Young and Sir Christopher Bland – at length on the Jeff Randall programme on the day the bid was formally referred to Ofcom. Last month, it showed the full clip of Sarah Murdoch’s embarrassing announcement of the wrong winner of Australia’s Next Top Model. Arguably, the success of the lengthy Sky News campaign for leader debates to be held in the general election was an important factor in frustrating the Conservative victory for which all the NC UK newspapers had argued.

Sky News has done more to sanitize the largely negative image of NC than any other Murdoch initiative. Given that Fox News is already available in the UK, and attracts negligible amounts of viewing, it is hard to see why Murdoch would want to subvert the success of a multi-award-winning news service, even if Ofcom rules preventing this were to be changed.

The BBC’s business editor, Robert Peston, has speculated that if a sale of Sky News were (for whatever reason) required by the UK regulators as a condition of the proposed transaction, NC would comply. Quite why anyone would want to buy a news service that was permanently loss-making (and could never make a profit as long as the BBC News Channel was publicly funded), and would probably lose even more money if were forced to re-brand (on the assumption that no buyer would want to continue promoting the Sky brand), is hard to comprehend.

So this scenario has only one realistic outcome: the closure of Sky News. How that could be interpreted as protecting media plurality in the UK is a puzzle indeed. If the immediate consequence of the proposed transaction was that there would be no reduction in the number of media owners or outlets, how real are the more speculative anxieties about media plurality subsequent to the transaction concluding?

These anxieties seem almost entirely to revolve around the ability of BSkyB, once 100% owned by NC, to divert its large cash flows to NC’s newspapers (to the severe detriment of its rivals), or to allow the deployment of cross-media stratagems that would not be available to NC’s disadvantaged newspaper competitors.

Both these areas of speculation suffer from fundamental flaws. On cash flow, if NC were determined to bankrupt its competitors (and were able to do so within the limits of legally competitive behaviour), then the £8 billion it would need to acquire the 60.9% of BSkyB’s equity not already owned seems more than substantial enough to undertake the task: it is certainly more than the mere hundreds of millions in additional annual revenues that the acquisition would deliver.

As for cross-media possibilities, over and above the cash issue, these are open to be executed today, if they are genuinely of advantage to both arms of the cross-media equation. So, for instance, if merging newsrooms (something NC has signally failed to execute with the media it already owns outright) were to the benefit of both BSkyB and, say, The Times, then there would be nothing to inhibit its being undertaken now. That it has not been suggests that, either there is no mutual benefit, or that the benefits are too small to justify the risks inherent in merging very different activities.
Likewise, joint selling opportunities would be possible now, if they were mutually beneficial. Various commentators and interested parties have speculated that if NC fully controlled BSkyB, it could package newspaper offers into its subscription rates. Steve Hewlett opined on ITN that a £1 a month offer for The Sun would do great damage to the Daily Mirror. Again, all these scenarios miss the point. If NC were legally allowed to offer The Sun for 4p a day to 10 million Sky subscribers, and thought it would be effective to do so, they could simply put up the cash now: why would the BSkyB board object? We can only assume that it has not happened because a) it might breach competition rules; or b) it would be far too costly, in reducing the price of The Sun for existing readers who were Sky subscribers, but not attracting enough new readers away from competitors; or c) it would visibly devalue The Sun as a consumer proposition, and possibly alienate Sky subscribers who disliked The Sun.

It is worth noting that NC does not even offer joint subscriptions of its newspapers at the moment – even The Times and The Wall Street Journal. Why a package involving satellite television, telephony and broadband plus The Sun would be more attractive to consumers and compelling as a business proposition than a straight price cut is hard to see.

In any event, such an approach is readily available to NC’s competitors. The Guardian has the honey-pot of Auto Trader into which to dip to build its video operation. Associated Newspapers and Trinity Mirror have both in the past launched TV channels – it is scarcely NC’s fault that they pulled out after early losses while NC persevered. The series of “ifs” involved in this kind of crystal-ball gazing surely does not merit serious regulatory attention. It is not even clear why some kind of merged operations between NC’s newspapers and BSkyB would be an issue. There is no legal or regulatory inhibition to such co-operation whilst they are separately owned. If it is not objectionable when done by the BBC, it is hard to see what might be objectionable in the NC/BSkyB case.

And if there were a realistic objection, NC could presumably meet it by unilaterally closing down Sky News and renewing their proposal. How grateful UK viewers might be for this indirect result of regulatory intervention remains to be seen.

Some of the speculative opposition to the NC transaction stems from anxieties about the pay-wall that NC has already created for three of its newspapers, and says it will extend to both its tabloids. Various newspaper competitors have predicted that this initiative will fail: in which case, NC pouring BSkyB’s supposed surplus cash down this drain is surely a cause for celebration. Conversely, were it to succeed, the pay-wall might prove to be a welcome escape route for other newspapers struggling with declining advertising revenues and circulation. Either way, the success or failure of the NC transaction would seem to have little relevance to this issue.

If we stand back, and look at NC’s main initiatives in the UK market, we can certainly see a pattern of aggressive marketing and – in the case of The Times – price-cutting and re-sizing in order to deliver a much higher circulation (though still not, as it turned out, profitable publication). That may or may not be repeated in the future, but the BSkyB transaction does not seem relevant to this activity, which has not – as yet – resulted in the closure of any competitor.

By contrast, the gamble of switching NC’s print operations to Wapping, which Fleet Street observed – unsympathetically – from the sidelines, in due course allowed all national titles to
discard their costly agreements with the old print unions, and embrace modern technology. No national newspapers have closed since then, and four have been launched (the three Independent titles and the Daily Star Sunday).

Similarly, the even larger gamble of launching Sky TV – again largely derided by NC’s competitors – has allowed hundreds of new channels to be launched in the UK, and led to the availability of 14 24-hour news channels on the BSkyB platform. This massive increase in consumer choice, led by the multi-million investment in Sky News, constitutes an undoubted enrichment of media news outlets.

Was this all part of some deep-laid plan to disadvantage competitors in due course and reduce the number of media outlets and owners? Is that really within the power of NC, with or without this transaction?

It is overwhelmingly in BSkyB’s (and NC’s) interests to maintain a strong line-up of news channels on its platform. As it happens, that does not necessarily have to include Sky News, but there is no evidence that NC would want to close it down. Irrespective of the fate of Sky News (which – if it is threatened at all – is only threatened by the desire of NC’s opponents to extract some kind of penalty for a transaction they so dislike), the net outcome of NC’s strategy has been a significant increase in news provision for UK viewers, and that will remain the case come what may.

A certain amount of hysteria has built up over this issue. Thousands of anti-Murdoch campaigners have been encouraged to flood Ofcom with submissions. The editor of The Guardian has cited his perfectly legitimate concern about too much power resting in one organisation’s hands to support resistance to a transaction on grounds which do not have standing in this review. Even the heads of the BBC (wholly improperly) and Channel 4 (unwisely, as the transaction does not affect them) have added their names to the public clamour.

In the end, a steady anxiety about the role of NC and the Murdoch family in the UK’s public life, however well-founded and dramatically expressed, is not enough to trigger a formal plurality investigation into a transaction that clearly does not reduce media ownership or outlets now, and cannot be realistically projected as doing so in the future, in and of itself. That, surely, is the test Ofcom must apply.

19 November 2010
Impartiality – an outdated concept?

There is a remark – no doubt apocryphal – attributed to the new BBC Director-General, when he was the editor of BBC2’s Newsnight: an exhortation to his team to see how they could f*** the government that day.

In the UK, news and current affairs programmes are bound by obligations to impartiality, entrenched in the BBC’s Charter and Licence, and – for commercial stations – in the Ofcom rule book. Recently, a news channel reflecting views from Russia was rebuked by Ofcom for lack of impartiality, after complaints about its reporting from Libya and the frontiers of NATO.

Yet current affairs programmes are by their nature inquisitive, investigative and interrogative: and the normal object of their inquiries will be those making and implementing policy. They may adhere to impartiality requirements in the way they report, but their agendas are inevitably shaped by the world they observe.

In the US, although lip service is paid to the notions of objectivity and balance, the rise of radio shock jocks and strident cable news services has marginalised the staid reporting of the network news programmes. Liberal commentators bemoan the corrosive influence of Fox News, and are not much consoled by the countervailing tone of MSNBC and CNN.

Less noticed had been a drama series on HBO, which has just finished its run in the UK on Sky Atlantic: The Newsroom – the latest offering from the inventor of The West Wing, Aaron Sorkin. The West Wing told the story of a Democratic President, for the most part with clear political sympathy. The Newsroom has gone much further.

The Newsroom has two conceits. The first is that each episode is set in the recent past, re-inventing how a one-hour peak-time cable news show – coincidentally entitled “Newsnight” – reported the news. The second is that its host and new executive producer (inevitably, a romantic item in the past) have embarked on a mission to educate the American public. This quixotic enterprise follows a moment of revelation in a college debate when the host is asked by a student to sum up – “in a sentence or less” – why America was great. He attracts instant notoriety by asserting that America was not great (listing its many failings by world standards) but might one day become great again.

The host – Will McAvoy, played by Jeff Daniels – identifies the main reason for American backsliding as the rise of the Tea Party. Sorkin tries to finesse the party political dimension of this approach by designating McAvoy as a Republican shocked by his party’s lurch to the right under pressure from these insurgents. McAvoy, on air, acknowledges that he is now labelled a RINO (Republican in name only) but is determined to reclaim his party by dint of reasoned analysis and argument.

The two conceits are massive drawbacks in terms of the dramatic impact of the series. The Sorkin trade-marks of snappy dialogue and tortuous love triangles are played out – wholly unconvincingly for anyone who has worked in a newsroom – in full view of the production team, which every so often breaks out into non-ironic applause. There is so much “wisdom after the event” that even Christopher ‘Tietjens’ prediction almost to the day of when the Great War will start (in the BBC’s impressive Parade’s End) seems only mildly prescient by comparison.
For the most part, “The Newsroom” allows the production team of Newsnight to shoot fish in a barrel, with clips from the offending politicians heavy-handedly pulverized by the righteous McAvoy. On one occasion, a “real” supporter of a Tea Party politician is asked repeatedly if he is offended – as a gay man – by that politician’s evident belief that homosexuals are inferior humans. Just this once, McAvoy is put in his place by the invented character, for attempting to define him exclusively in terms of his sexuality.

And that’s it for the bad guys. Indeed, when Newsnight succumbs to pressure from ratings losses to cover the trial of alleged child murderer Casey Anthony, it is solely in order to be allowed to stay on the air long enough to mount a full scale “debate”, in which all the leading Republicans adhering to Tea Party ideology – played by members of the production team – are to be duly interrogated by McAvoy.

Does “The Newsroom” bear any relation to reality? On CNN, Anderson Cooper often debunks know-nothings like Michele Bachman in his AC360 show. I was helpless with laughter after one of his interviews with a Republican “birther” congressman who continued to doubt Obama’s Hawaiian birth certificate even after Cooper displayed a copy on screen; but Cooper mixes this up with other news stories, and more light-hearted fare (check out his “ridiculist” online). And Jon Stewart and Stephen Colbert also regularly lampoon the obvious Republican targets.

However, in the UK, we regularly deplore the right-wing bias on US cable news, most notably on Fox News, where many leading Republicans find regular employment. During the NewsCorp bid for BSkyB, the possible conversion of Sky News to something more like Fox News was often invoked by opponents of the deal. As it happens, although the news agenda can be massaged – compare Channel 4 News with ITV News, both, as it happens, supplied by the same company. But that minor flexibility is as far as it goes.

To see a high-budget, high-profile drama series take direct and steady aim at right-wing ideologues is at one level exhilarating, not least because the HBO series was carried in the UK on BSkyB’s Sky Atlantic, despite a storyline in The Newsroom coming within a whisker of directly accusing James Murdoch of organising large-scale hacking of phones and computers at the News of the World.

Of course, that the dramatic impact of the series was undermined by its implausible and shrill characters, and by the insufferable smugness of its political correctness, somewhat mutes one’s enthusiasm for the abandonment of any pretence at impartiality – even Fox News tries to describe itself as “fair and balanced”.

Yet that HBO commissioned and broadcast such a full-throttle critique of the new right-wing orthodoxy took me back to the 1960s, 1970s and 1980s, when The Wednesday Play and Play for Today gave airtime to writers, directors and producers like Jim Allen, Roy Minton, Alan Clarke, Alan Bleasdale, Dennis Potter, David Hare, Ken Loach, Tony Garnett, Stephen Poliakoff, David Mercer, David Storey, James McTaggart, Margaret Matheson and Richard Eyre.

Those heady days at the BBC are long over. Gordon Newman’s brilliant and subversive “Law and Order” (unconnected to the US series) was broadcast 35 years ago; Troy Kennedy Martin’s “Edge of Darkness” 27 years ago.
Measuring cross-media ownership

Introduction

The UK media regulator, Ofcom, has called for comments on how media plurality should be measured. The Ofcom consultation document invites views on the metrics most suitable, on the advisability of fixed limits on shares of the news market, on what circumstances outside a transaction could justify intervention, on which websites – if any – to include in measuring plurality, and on whether the BBC should be included in any system.

At one level, this is a natural part of the process of responding to a direct invitation from the Culture Secretary, Jeremy Hunt, to undertake such a review. However, given that it was Ofcom itself that first suggested a change in the media ownership rules – in its report on the proposed News Corporation acquisition of the whole of BSkyB – the way the consultation has been framed raises the question of whether Ofcom may now be acknowledging that the methodology it used in judging the BSkyB case was inherently deficient, and not just – as I argued in a published response – flawed in design and execution.

Be that as it may, at least this consultation provides an opportunity to establish an agreed, transparent, easily understood framework for measuring plurality, whether that be in the context of a transaction, a statutory review, or any other agreed basis for intervention.

Metrics

Ofcom refers to four mechanisms it used in its BSkyB exercise: reach, consumption, references and stated “main source of news”.

Reach

If there was one clear lesson from the BSkyB process it was surely that any attempt to use reach as a reliable measure across different media is immensely difficult. Reach is a sophisticated concept, and meaningful definitions of reach require a great deal of careful thought if they are to be comparable across media. Using different versions of reach – “3 consecutive minutes in a week” for TV news, “5 consecutive minutes in a week” for radio news, any use in a week for newspapers – was both confusing and undisciplined.

Reach definitions in television are highly sensitive to three parameters: the length of viewing required to qualify as a single “use”; the period of time during which “use” is measured; and the frequency of “use”. There will be different outcomes for each of “1 continuous 15-minute session in a week”, “3 continuous 5-minute sessions in a week”, “5 continuous 3-minute sessions in a week” and “15 minutes of use in a week however registered”. It may not be obvious to the layman why there are different outcomes, and why it matters. As this kind of analysis is simply not available in any other media, it is misleading to settle on one (very low) reach threshold in TV and imply that it is the only definition available, let alone try to transpose it to other media which have no equivalent metrics.

A serious error committed by Ofcom in its BSkyB report was to create a measure for radio news reach, even though RAJAR data cannot provide such information: and to then claim that anyone who ever listened to any commercial radio output for 5 consecutive minutes or more in a week should be deemed to be a radio news listener (even though news
constitutes a mere 2% of commercial radio news output, and even though RAJAR figures show us that millions of people reported as radio listeners never tune in for the first quarter hour of the clock hour, which contains all the news output).

So Ofcom should ignore reach in any future measurement system unless a comparative methodology can be established which attracts widespread expert support. Such methodology will inherently require multiple definitions of reach in each area researched, so that a range of judgments can be made as to true comparability across different media.

**Consumption**

Actual consumption of news content seems at first glance the most obvious pathway to assessing plurality. However, even here Ofcom’s BSkyB exercise committed several serious errors. Ofcom decided to equate minutes reading a newspaper with minutes watching a television news broadcast, despite the obvious – and unanswerable – objection that much of the content of newspapers has nothing to do with news: puzzles, cookery tips, travel supplements, motoring reviews, theatre and TV listings, investment advice, agony columns and horoscopes surely cannot be compared with a news bulletin.

In deciding on this puzzling approach, Ofcom was following in the path of an Enders Analysis paper, whose submission to Vince Cable had helped trigger the whole process of investigating the BSkyB deal. Yet Enders Analysis has recently submitted to the Leveson Inquiry a report which undercuts both its own original paper and the Ofcom approach in its BSkyB report. It argues that less than 20% of newspaper content is actually news: surely making it impossible for Ofcom in the future to treat all newspaper reading as news consumption.

Another questionable judgment was the exclusion of all newspapers other than those distributed nationally. It is certainly true that only national newspaper market shares are considered in the specific rule barring owners of 20% or more of that market (or businesses more than 20% owned by owners of 20% or more of that market) from owning more than 20% of ITV licences. It is also true that national titles are more visibly represented than regional titles in the “share of references” that Ofcom separately studied (see below). However, in terms of how consumers behave, regional and local newspapers constitute a significant proportion of news consumption (24% of all daily newspaper readership, according to the June 2011 NRS figures). Moreover, most of the major regional titles carry at least as much national news as regional news. One of the prominent citations of newspapers this month in broadcast news bulletins was of an article by the Archbishop of York in the Yorkshire Post on banker salaries.

The essentially subjective “share of references” assessment should not be allowed to distort the more straightforward calculation of time spent reading newspapers, which is measured by the National Readership Survey, and includes regional titles. The figures published by Ofcom in its BSkyB report thus arguably underestimated total consumption of newspapers (by excluding non-national titles), as well as overestimating consumption of actual news in newspapers (by including non-news material).

The Ofcom consultation document makes only oblique reference to one of the more contentious measurements of plurality used in the BSkyB report: the differentiation between “retail” and “wholesale” news supply. This was not a distinction aimed at assessing the role
of news agencies, but more narrowly at the presumed responsibility for news output that commercial radio and television contracted out to third party suppliers. In the case of ITV and Channel 4, Ofcom decided that responsibility was allocated to ITN (which is not covered by cross-media ownership rules, as it is not a broadcaster in its own right, and so is not classified as a “media enterprise” covered by the relevant Acts of Parliament).

In the case of Channel 5 and Independent Radio News (which provides national and international news content to the UK’s commercial radio stations), the current supplier is Sky News. In the original Enders Analysis calculation of shares of news consumption, Channel 5 supply was excluded entirely from the Sky News column, on the grounds that the channel’s owner had indicated his intention to change suppliers. Ofcom allocated 100% of supply to Sky News. The report this month that Sky News would be removed as the supplier, and be replaced by ITN, surely demonstrates that Ofcom’s allocation was wrong, not least because Channel 5 has exercised its underlying control of its news output by deciding it wanted not just a cheaper news service, but one presented in a different style, of its own choosing.

The consultation document asks “at what point in the value chain is there potential for the greatest level of editorial influence over content?” This at least acknowledges what the Competition Commission in the past has recognized: the likelihood that both broadcaster and supplier have influence over the content of these news bulletins, with the broadcaster setting the remit and the budget, the broadcaster and supplier sharing responsibility for the news agenda, and the supplier responsible for actual content delivery (for which the broadcaster remains wholly liable in both legal and regulatory terms). Even the difference in tone, style and agenda between ITV News and Channel 4 News – both supplied by ITN – demonstrates that the broadcaster is key to shaping the approach of the news service.

Common sense suggests that the allocation of output responsibility for contracted television news should be shared between the supplier and the broadcaster. Where there is evidence that content is multi-sourced, the minutes consumed should be allocated as between the known sources. Where there is a single source but shared responsibility, 50:50 is the suggested split that should be used in any future computation of market shares.

As it happens, the effect of Ofcom’s decision in the BSkyB case to allocate 100% of radio news responsibility to Sky News was compounded by dramatically overstating the volume delivered by Sky News and used by the stations. Ofcom asserted that commercial radio transmitted 3 minutes an hour of news, and attributed all commercial radio news consumption to Sky News.

Independent Radio News (IRN) makes material from Sky News (the “Net Newsroom”) available to commercial radio stations, to use as they please. This material is also packaged as an hourly 2-minute bulletin from “the Sky News Centre”. Industry research shows that the proportion of commercial radio news broadcast that is in Sky News package form is less than 7%; mostly used overnight. During daytime, stations compile their own bulletins, and it is impossible to say how much Sky News material is used. It appears that the total volume of news broadcast is less than 72 minutes a day: perhaps only 48.

The appendix below reduces by one-third the non-BBC radio news minutes imputed in the Ofcom calculations (using the figures in the Enders Analysis paper as a base) and allocates them 90% to “commercial radio” and 10% to Sky News. That 10% may be a little low, but – against that – it seems that Sky News has for much of the time a status in commercial radio akin to Reuters and AP – one not recognized by Ofcom as having any editorial control.
In its BSkyB report, Ofcom calculated a market share for News Corporation and Sky News together of 23.7%. This was based on actual consumption of TV news (and allocating 100% of Channel 5 news output to Sky); a massive over-statement of commercial radio news supply by Sky News; no provision for non-national newspapers; and inclusion of all the non-news elements of newspaper consumption as if they constituted news.

Yet alternative calculation methods deliver a very different result: by including regional newspapers; by reducing the enlarged total of newspaper minutes classified as news consumption to allow for non-news content; by removing the excess commercial radio news minutes as over-stated by Ofcom, and allocating 90% of those minutes to commercial radio, rather than Sky News; and by splitting Channel 5’s news minutes 50:50 between the supplier and the broadcaster, we arrive at a market share for News Corporation and Sky together of 11.5%, not 23.7% (see appendix below).

Indeed, by March 2012, when the Channel 5 contract will have moved to ITN, and the long term impact of the closure of the News of the World will have been confirmed (reducing News Corporation’s share in favour of Trinity Mirror and Northern and Shell), the joint share for News Corporation and Sky News would be 10.4% (see appendix below). Ken Goldstein of CMI in Canada undertook a simple weighting exercise with respect to Ofcom’s own figures: he multiplied the raw audience shares as calculated by Ofcom for the four different media by the “main source of news” percentage for each as reported to Ofcom by actual consumers. Ofcom offered two versions of its “main source of news” data: the latest results of an annual survey, and a more granular specially-commissioned cross-media audience research (CMAR) survey. In practice, these actually produced very similar results (with television far ahead of newspapers, radio and the internet as a “main source of news”).

Applying the two different sets of weightings, Goldstein arrived at a joint share for News Corporation and Sky News of 12.14% (using the most recent results from the annual survey) or 14.45% (using the CMAR results). If we were to adjust for Sky News’ prospective loss of the Channel 5 contract and News Corporation’s closure of the News of the World, the combined share would be 10.0% or 11.42%, respectively. However, even these more realistic outcomes still exaggerate the actual combined share, as they use Ofcom’s over-stated volume of Sky News supply to the commercial radio system.

The point of this analysis is not so much that Ofcom may or may not have been wrong in its BSkyB report calculations, but that the huge difference in outcomes demonstrates how careful we need to be in deciding methodologies where it is common ground that all we are dealing with is supposed proxies for what primarily concerns us: undue influence.

Share of references

Although the “share of references” study in the BSkyB report was interesting, in tracking where stories carried in the main sources of news may have originated, the likelihood of Ofcom being able to produce anything authoritative in the six weeks of its work on the merger was fairly low. Again, this type of exercise is complex, involving a good deal of expert judgment rather than simple tabulation, and Ofcom would need to demonstrate the robustness of the method over a much longer period of measurement before it could be used as a reliable basis for making interventions in the market.
The difficulty is two-fold. First, in any short period of time, the balance of references might be distorted by a major story – for instance, parliamentary expenses (Daily Telegraph), phone-hacking (The Guardian) or the liberation of Tripoli (Sky News). Secondly, unless there were on-going linear studies of references that were widely accepted as authoritative, a one-off long-term measure of references would probably be too complex to be undertaken in the time that any regulatory intervention could be assumed to occupy, and would inevitably be open to challenge as arbitrary and subjective.

From this, a general principle might be extracted: whether or not any new power of intervention in media ownership is enacted, the measures used to judge the significance of ownership positions should be readily visible, clearly established by regular publication of data, and broadly accepted by both the media industry and expert analysts of industry data. There should be the minimum of discretion left to the regulator, and that should relate to the significance of the industry data, not the ingredients of that data.

At present, for instance, Section 59 of the 2002 Enterprise Act provides for “special interventions” by Ofcom in newspaper and broadcasting mergers, where 25% of the broadcasting or newspaper market (however defined, by Ofcom) would be the decisive metric. According to the Act, this could be calculated by “value, cost, price, quantity, capacity, number of workers employed or some other criterion” that Ofcom thinks appropriate. In making economic judgments, this degree of latitude may be acceptable, as all the measures mentioned are “hard”; but in making plurality judgments, not only are there are almost no “hard” data measures, but all the metrics are simply substitutes for what really concerns us: as stated above, undue influence.

Main source of news

The one metric cited in the consultation document that directly addresses influence is “main source of news”: an exercise inviting news consumers to tell us which source of news they mainly rely upon, irrespective of how much they consume. This metric has two distinct advantages.

First, Ofcom has been tracking a set of answers for many years, such that we have a long view rather than a snapshot. Secondly, reliance data successfully filters for both the non-news element in newspapers (which, based on raw consumption, is at a level similar to TV) and the perception of bias in news sources (reported as much higher in newspapers than in broadcasting).

In its BSkyB report, Ofcom published two versions of this “main source of news” research (see above). The CMAR findings were a “snapshot”, but offered more granularity than the annualised series. The annual series highlighted the steady decline in newspaper circulation, showing how the newspaper share of this metric had declined from 15% to 8% in just five years, with TV and the internet both gaining several share points.

There is an obvious difficulty with this metric in policy terms, yet to discard it (as Ofcom effectively did in arriving at its conclusions in the BSkyB study) begs many questions. The difficulty is that the “main source of news” metric underlines the massively dominant position of the BBC.
Even the un-amended Ofcom figures show a BBC share of 43.5%. My own re-analysis of the Ofcom figures (see above and below) shows a BBC share of 46.5%. The Ken Goldstein weighting exercise (see above) shows how multiplying the “main source of news” data by the raw share of news consumption reveals a BBC share between 57% and 61%. The BBC position is discussed below.

**Current affairs**

Ofcom’s BSkyB report said it would measure current affairs consumption, but although such a measure is readily available from BARB (which publishes details of all TV consumption, category by category), Ofcom failed to take it into account. In future such exercises, there is no reason not to include current affairs TV.

Likewise, current affairs radio programmes can be identified from listings. The proportion of output devoted to current affairs can then be converted to minutes of consumption by apportioning total listening for the relevant station.

There are no grounds for broadening the categories of output that should be included in the measurement process, beyond news and current affairs. However, with current affairs programmes, even those supplied by third parties, 100% of the editorial responsibility should attach to the broadcaster. Each programme is the result of a specific approval by the broadcaster, whether it is pre-recorded or broadcast live.

**Fixed limits on share**

Given the continuing decline of national newspaper circulation the emphasis on those papers in current cross-media rules looks increasingly anachronistic. National newspaper circulation has fallen by over 40% in the two decades since 20% of such circulation was deemed to be the limit for anyone wanting to own more than 20% of an ITV licence – one of the last remaining specific cross-ownership rules in the media sector. If influence is the consideration, then logically the 20% limit thought appropriate in 1990 should have steadily been raised as newspaper circulation continued to decline.

The question is simple: if there is a fixed point of unacceptability, is it share or absolute volume? If 20% of a 16 million circulation market is thought to be a key threshold, does that same significance also apply to a circulation market of 9 million? Or should the “fixed” limit then be raised to 35%? Why should it matter if 7 million adults – out of a population of 45 million adults – happen to read, on any given day, newspapers published by the same company? And if that 7 million becomes 7 million plus one, should that increase trigger some kind of intervention?

At no stage did Ofcom’s BSkyB process address the ambiguities built into the relevant legislation, whereby preserving sufficient plurality of views is the desired outcome in newspaper transactions, but a sufficient plurality of owners is the desired outcome in broadcasting transactions. The rationale for this variation in objectives is that licensed broadcasters in the UK are required to comply with the Ofcom Broadcasting Code, which expressly precludes the expression of the owners’ views.

Arguably, the only way that plurality of views could become a broadcasting policy objective would be if the impartiality rules were withdrawn. Quite how the different types of plurality
can be cross-matched in a cross-media transaction is by no means obvious, as in theory it should be irrelevant who controls Sky News (for instance) provided the Broadcasting Code prevails. The Ofcom consultation document makes no reference to the two different definitions of plurality.

As for a possible 20% limit simply on national newspaper ownership, the implication is that ownership above that level must somehow be dealt with, either by forced divestment (or closures – not a great advertisement for commitment to news plurality), or by rationing of newsprint to force The Sun (itself 29% of national newspaper sales) below the 20% level – a mechanism that would then have to be used against the Daily Mail, already above the 20% level, and then against the Daily Mirror, as that in turn rose above the 20% level, thanks to rationing of The Sun and the Mail.

This kind of approach simply ignores the history of newspaper circulation. 50 years ago, it would have been the Daily Mirror which would have been the first to be sanctioned for breaching the 20% share level; 80 years ago, it would have been the Daily Herald – two Labour-supporting newspapers that achieved temporary leadership.

There is an important lesson here. Plurality of newspaper ownership is no guarantee of plurality of views on offer to the public, as Ofcom has always recognized. We have eight publishers of national newspapers: the products of five of these offer right-of-centre opinion, with left-of-centre opinion prevailing from the other three. But the balance of sales is more 75:25 than 5:3. Imagine if the 25% were concentrated in one left-leaning newspaper group, which was then subject to a fixed limit sanction.

And there are lessons from further back in history. 150 years ago, The Times sold 20 times as many copies as its nearest rival: only to be swamped within a couple of years by the penny press, as the removal of the last taxes on newspapers in 1855 allowed low prices finally to deliver mass sales for an array of titles. Newspaper sales naturally ebb and flow, in response to public taste, pricing, content and innovation.

When the News of the World launched in 1843, it quickly soared to a circulation above 100,000. Within 50 years, it had sunk to 39,000. 60 years later, it was selling over 8 million – 30% of the entire Sunday market. Likewise, when Harmsworth launched the Daily Mail in 1896, at a halfpenny, the paper quickly reached the 1 million mark, selling five times more copies than its nearest rival; but the Daily Mirror and the Daily Express eventually overtook the Mail, only for the Express to collapse from a sale above 4 million to below 700,000 today.

As it happens, for the last two decades the group structure of the UK national newspaper industry has been remarkably static, with only modest change in the market shares of the eight ownership groups. The faster circulation decline of the Trinity Mirror titles enlarged the market shares of News Corporation and Associated Newspapers, but only because their own circulation decline has been slower. This year, the closure of the News of the World has boosted Trinity Mirror (and to a lesser extent Northern and Shell) at the expense of News Corporation.

Thanks to the i (a cut-down, cut-price version of The Independent), the Lebedev titles have relegated Guardian Media Group to the bottom of the sales table, with both just below the Financial Times (in sales, not minutes of news consumed).
Yet those very positions should surely tell us something. For all their lack of buyers and readers, The Guardian and the FT (and to a lesser extent The Independent) have been major influences for many years, thanks to heavy investment in specialist journalism, and a narrow focus on key political and economic issues. There is no automatic correlation between market share and political influence.

The evidence of the supposed ability of national newspapers to influence actual voting is actually remarkably tenuous. According to Deacon and Wring’s “Patterns of Press Partisanship in the 2010 Election” (published in British Politics), when The Guardian, at the 2010 election, shifted its voting recommendation from 2005’s “Labour or LibDem, depending on who stands the best chance of winning the seat” to straight “LibDem”, the proportion of its readers that then voted LibDem actually dropped 4%.

Of course, newspapers can have a steady “drip, drip” effect, outside the narrow confines of election periods, with their choice of stories and the emphasis given to them. Yet research also tells us that readers of newspapers and non-readers of newspapers have very similar judgments as to what are major issues. No doubt it could be argued that newspapers set the terms of the news agenda, even if you obtain your news from the BBC (as a majority of people do): the BBC simply takes its cues from the national press. But this mechanistic model of opinion-forming fails to take account of how people actually behave: friends, family, religion, the work-place, education and events are often more important collectively than newspapers in shaping opinion.

So the notion that fixed limits for national newspaper ownership need to be introduced now runs into a range of problems: the continuing decline of circulation, which reduces both the relevance of national titles and the significance of a fixed percentage; the implausibility of potential sanctions; the difficulty of reconciling plurality concerns in newspapers with plurality concerns in broadcasting; the huge natural swings in newspaper market shares over long periods of measurement; the contrasting stasis in market shares for the last two decades; the lack of correlation between market share and influence; the knowledge that plurality of ownership is anyway only a proxy for plurality of views; and the absence of evidence, and even of a coherent psychology, in pin-pointing newspaper influence. All these should give policy-makers pause.

**Interventions outside transactions**

The notion of intervening in the media market, other than in the context of transactions, originates in Ofcom’s report on the proposed BSkyB transaction. When Jeremy Hunt took up this idea, he referred to the possibility of market exit or organic growth to explain why such powers might be needed. Both these eventualities effectively refer back to the fixed limit approach, with its very obvious drawbacks.

But what could Ofcom do in such circumstances? Subsidize a failing newspaper to prevent its closure? Punish a successful newspaper because an inept rival had failed? Prevent would-be consumers of the most successful newspaper from obtaining a copy because its circulation or readership had grown too fast? Close one newspaper in a group if another newspaper had over-stepped a fixed ceiling on sales, as determined by Parliament? Close down a website for several hours a day to prevent a news supplier exceeding a fixed limit of “readers”? Prevent The Sun distributing in Scotland?
It is not just that the sanctions are inherently unsatisfactory: it is that, were they to be effective, the means of evading them would quickly become apparent. Indeed, any attempt by government or regulator to penalise or limit the publication of a newspaper would most likely lead to a John Wilkes situation, with the eventual discrediting of such interventions (other than a ban on unfair competitive behaviour, such as predatory pricing) as disguised censorship.

The 1947-49 Royal Commission on the Press (appointed by Labour) made the point succinctly: “we do not see how any individual could justifiably be refused the right to buy the paper he wants merely because a given number of his fellow citizens also want to buy it”.

Websites

It seems unavoidable, in any attempt to measure news consumption, to include internet use. However, there are a number of complicating factors. First, we are only concerned about “undue influence” in the UK: so we would need to be sure that only UK usage of websites was being measured. On the other hand, UK usage of non-UK websites ought to be included: even though it is highly unlikely that a non-UK website would achieve significant – let alone undue – influence, we want to measure as far as possible the totality of inputs for UK news consumers, so as to put in context UK consumption of UK sources.

Secondly, there are hundreds of websites that include some element of news. Moreover, the proportion of news in amongst much other content is highly variable: much more than in print products. Even the BBC website contains a great deal of non-news material, and the second most popular UK news site – the Daily Mail – is thought to owe its success to its gossip content, not its news pages. It will be a matter of judgment as to what volume of websites to track (Ofcom’s BSkyB exercise involved fifty), and – again – this will have to be an exercise whose detailed dimensions are agreed with industry and academic experts, and are published in advance.

A third problem is actually what to measure. Much internet traffic is driven by search engines, with visitors often spending only a few seconds on a page before realizing it is not actually what they are trying to find. So page views alone cannot be an acceptable measure of internet usage. The answer might be to discount the first 30 or 60 seconds of any visit before calculating total reading time. In addition, the same 50% discount that needs to be applied to print newspapers also needs to be applied to their web versions, and so – by extension – to other websites that are included in the measurement process (I have not done so in the appendix below only because the online volumes are so low).

Readership behind pay walls is not as susceptible to transparency of measurement as free-to-view sites. However, there is a strong commercial incentive for pay wall publishers to issue readership statistics. There are indications that although a great deal of readership disappears when a pay wall is inserted, the usage rate of those who subscribe can be as much as 45 minutes per visit.

So it is important to be sure that website traffic is measured as to: 1) UK users only; 2) news-carrying sites (UK or non-UK) above a certain threshold of use; 3) usage being defined as a multiple of page views and duration after excluding a certain minimum time threshold; and 4) discounting by 50% whatever average minutes per head per day that emerges.
As with other metrics, it is important that — whether or not new intervention powers are granted — whenever either Ofcom or the Competition Commission has to judge plurality issues, the criteria for judgment are thoroughly understood beforehand.

**Including the BBC**

The final question raised by Ofcom is whether the plurality measurement system should include the BBC. Given the BBC’s overwhelming position in TV news, radio news and even internet news (as measured in the Ofcom report on the BSkyB deal), this seems an odd query: how could one fail to take the BBC into account? All other shares of news consumption pale into insignificance when compared to the BBC, which is perhaps why David Cameron specifically mentioned potential BBC dominance in his announcement of the various inquiries into the media.

The reason why the BBC monopoly in radio and television broadcasting was broken in 1955 was that it was thought to be unacceptable in a democracy for the population to be dependent for all its broadcast news and information on a single supplier, however reputable and high-minded. That the BBC is today the source most relied upon by over 60% of consumers of TV, radio and internet news is arguably a matter of equivalent concern. However, it is not just the dominance of the BBC’s position, but the impact it has on the market as a whole which justifies its inclusion in any proper assessment of plurality issues.

A document recently issued by STV Group (owners of the two Scottish television licences) spends seven lines describing the competitive threat from the BBC, compared with one line for all its commercial rivals: “one of the most significant competitors is the BBC, which is an advantageous position compared to commercial television channels as it can exploit economies of scale, does not operate in as strict a regulatory environment and can be creative with its formats and cross-promotions (e.g. advertising BBC Television on BBC Radio)...the BBC has large advertising and marketing budgets and a high level of public funding.”

The chief executive of the third largest commercial radio group, GMG, is on record as saying: “we are at war with the BBC and we still compete for listeners tooth and nail, as we always will”. And GMG, which also owns The Guardian (the most enthusiastic print supporter of the BBC) is under no illusions about the huge competitive pressure the BBC’s online expenditure places on all commercial online journalistic ventures. Indeed, the Enders Analysis paper to Leveson is emphatic in stating that the BBC’s commitment to free online access to its news websites makes it difficult for any commercial competitors to make money, whether behind a pay wall or relying upon advertising.

Furthermore, the sheer scale of the BBC’s dominance — it has a greater share of news consumption than all other broadcasters and all national newspaper groups combined — makes discussion of what goes on outside the BBC somewhat artificial. As explained above, in its BSkyB report Ofcom concluded that a combination of News Corporation and Sky News would command 23.7% of news consumption: but a more realistic figure is half that. In terms of media plurality, a combination of two entities controlling such a small share of consumption should have little significance, not least because one of the two entities is not allowed to express any views. The confusion between the two types of plurality referred to in current legislation — plurality of views in newspapers and plurality of owners in broadcasting — has not only been glossed over in the BSkyB report, but is not referred to at all in the
Ofcom consultation. Although both are aimed at preventing undue influence, one only deals with a proxy for viewpoints (ownership) and the other not at all with viewpoints.

Indeed, the main reason cited by Ofcom in the BSkyB report for disregarding the BBC position was precisely because it was publicly owned and had special governance arrangements, such that it was not allowed to express any views, and was not involved in recommending how people should vote. Yet surely advocacy is only a very minor (and seemingly ineffective) part of the role of the media. It is the steady building up of a world picture that constitutes the main role of the media. The BBC, like any other newsgathering and news publishing organisation, has a news agenda: the absence of one would be shocking. We may feel that this agenda is itself shaped by the press (which would beg the question of why we allow so much to be spent on BBC news, if it is simply a megaphone). We may feel that the BBC’s agenda is its own, and that its obligation to impartiality is a safeguard against manipulation. Yet over the years we have had many reports – some from the BBC itself – noting a perceptible bias in dealing with key issues. The latest external critique was written by Peter Oborne in relation to reporting on British membership of the EU. The latest internal critique was for a series of programmes on the BBC World Service TV, which violated crucial rules about editorial independence.

Conversely, the more complete our confidence in the BBC’s ability to maintain impartiality, the less that shifts and changes in the commercial media should concern us, outside normal competition issues. And the larger the BBC’s share of news consumption, the more arcane will seem considerations like those advanced by the author of the original Enders Analysis paper for Vince Cable.

He calculated that the News Corporation/BSkyB merger would have led to a reduction in the number of companies with a 1%+ share of news provision from 10 to 9; an increase in the C4 ratio (the proportion of all news consumption attributable to the top four suppliers) from 72% to 80%; and an increase in the HHI (the standard index of media concentration) from 2073 to 2306 – all this based on a presumed share of news consumption of 22.6% for the merged entity, in turn reflecting the paper’s failure to discount 50% of newspaper consumption, to include non-national newspapers and to understand how much news commercial radio stations carry.

Correcting these errors (see appendix below), we can see that there are actually 12 1%+ suppliers, reducing to 11 if the merger had happened (and Ofcom had no hesitation in approving the acquisition of Channel 5 by Northern and Shell, even though that reduced the number of media enterprises in the UK by 1). As for the C4 ratio, it would have increased from 67% to 70% (less than half the increase claimed by the Enders Analysis paper). The HHI would have increased, not by 230 points, but 47 points (23 points after the March changes).

As Professor Martin Cave, of the LSE, recently noted: if we really worried about the HHI, 2163 points out of the current 2321 total are attributable to the BBC: 93%. If we wanted to reduce media concentration in the UK, we should be splitting the BBC in half: nothing would do more to increase media plurality.

Summary
That Ofcom is seeking views on how to measure media plurality is welcome. The metrics need to be robust and transparent, such that it is immediately apparent – to ministers, regulators and the parties themselves – whether an intervention in relation to a possible transaction is necessary.

At all times, we need to recognize the difference between ownership plurality and plurality of views, how difficult it is to treat the first as a proxy for the second, and how the rules relating to broadcasting constrain the ability of any owner to use a broadcast platform to push his views. We must resist the temptation to second-guess competition decisions with plurality judgments, especially if they are based on two different sets of legislative criteria. Trying to impose fixed limits on ownership in specific media, outside the context of competition concerns, raises a series of questions, for which no good answers are yet apparent. Is the fixed limit set at a percentage or an actual volume of users? What sanctions are envisaged for exceeding any fixed limit? Does the intervention meet the underlying need – correcting undue influence – or is it a purely mechanical process? What evidence is there, other than with the BBC, that undue influence has been exercised by a media owner as a function of the scale of ownership?

Interventions outside the scope of transactions effectively can only be justified in a fixed limit regime (the notion that regulators could intervene at will in media ownership is surely not what ministers or Ofcom have in mind). This simply begs the same set of questions. What media operators and the public interest require is clarity, not arbitrary regulatory power. Ofcom already has the duty to report on media ownership rules, and the extent to which they protect plurality. As and when a consultation is held on these rules, and new ones (if needed) are adopted by Parliament, regulators and the regulated will know where they stand. Ideally, after this consultation, we will have a robust definition of news consumption, and a clearer recognition that organic changes in a multi-platform market are both inevitable and welcome.

Legitimate organic growth (that is, not achieved by predatory means) should be encouraged, not penalized. So should public-spirited investment in loss-making news operations. And the status of the BBC should not be treated as some kind of unmentionable elephant in the room. The BBC’s existence is crucial to the way in which commercial media operate, and its dominance – which has steadily grown over the years – is a matter of real public concern.

18 November 2011
Appendix

In my response to the Ofcom report on the BSkyB transaction, I offered a number of different ways of re-interpreting the figures used by Ofcom. To the frustration of many commentators, the summary table in the Ofcom report (figure 26 on page 59) was expressed solely as percentages, making any re-working problematic.

Fortunately, the author of the original paper from Enders Analysis supplied a table showing both actual minutes per head consumed as well as percentages, and there was sufficient correlation between the two approaches and their percentage outcomes to allow actual consumption figures to be imputed from the Ofcom percentages table. At the time, I did not correct the Ofcom and Enders Analysis commercial radio news consumption figures. It is now clear that these were wrong: in total, and dramatically so in the attribution to Sky News. I also both down-weighted the reported minutes reading newspapers (which must be right) and up-weighted minutes watching television news – arguably correct, given the results of “main source of news” research, but – at 50% – somewhat arbitrary. On reflection, the Goldstein formula (raw consumption percentages multiplied by “main source” percentages) is more elegant.

For the purposes of this note, I have not up-weighted TV, but I have allowed for non-national newspapers (by increasing total minutes reading newspapers by 32%, whilst still reducing all newspaper minutes by 50%). The original Enders Analysis paper had a newspaper consumption figure of 30.79 minutes, including 0.22 minutes outside the main groups. I therefore deducted the 0.22 minutes and added 32% (9.78 minutes), of which I allocated 10% to Trinity Mirror, and 5% to DMGT, in an attempt to reflect their leading positions in the regional press. I also made an upward adjustment in the Independent total to reflect the recent success of the “i”.

I have removed the excess minutes reported for commercial radio news supply, reducing minutes consumed per day to 2.54 (instead of 3.81), and allocated them 90% to the stations and 10% to Sky News. As a separate exercise, I have adjusted the figures for December 2010 for the changes we know about in relation to March 2012 (a loss of 0.75% of share by News Corporation as a result of the News of the World closure, re-allocated in the proportion 2:1 to Trinity Mirror and Northern and Shell; and the transfer of Channel 5 News to ITN, reducing Sky’s share by 0.34% and increasing ITN’s). The total number of news minutes consumed per day is 59.42. 5.67 minutes (9.54%) is accounted for by a wide variety of regional and local papers.

The HHI scores are the sum of the squares of all percentages above 1%. The HHI is 2321 for December 2010 and 2316 for March 2012, in the absence of a merger between News Corporation and BSkyB.
<table>
<thead>
<tr>
<th></th>
<th>December 2010</th>
<th>March 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>BBC</td>
<td>46.51</td>
<td>46.51</td>
</tr>
<tr>
<td>News Corporation</td>
<td>8.68</td>
<td>7.93</td>
</tr>
<tr>
<td>DGMT</td>
<td>6.72</td>
<td>6.72</td>
</tr>
<tr>
<td>Trinity Mirror</td>
<td>4.81</td>
<td>5.32</td>
</tr>
<tr>
<td>ITN</td>
<td>4.46</td>
<td>4.80</td>
</tr>
<tr>
<td>ITV</td>
<td>3.94</td>
<td>3.94</td>
</tr>
<tr>
<td>Commercial radio</td>
<td>3.84</td>
<td>3.84</td>
</tr>
<tr>
<td>Sky</td>
<td>2.81</td>
<td>2.47</td>
</tr>
<tr>
<td>Northern &amp; Shell</td>
<td>2.38</td>
<td>2.62</td>
</tr>
<tr>
<td>Telegraph Group</td>
<td>2.37</td>
<td>2.37</td>
</tr>
<tr>
<td>Independent</td>
<td>1.67</td>
<td>1.67</td>
</tr>
<tr>
<td>Guardian Media</td>
<td>1.60</td>
<td>1.60</td>
</tr>
<tr>
<td>Channel 4</td>
<td>0.52</td>
<td>0.52</td>
</tr>
<tr>
<td>Pearson</td>
<td>0.15</td>
<td>0.15</td>
</tr>
<tr>
<td>Other regional</td>
<td>9.54</td>
<td>9.54</td>
</tr>
<tr>
<td>Total</td>
<td><strong>100.00</strong></td>
<td><strong>100.00</strong></td>
</tr>
</tbody>
</table>
Mouse? Damp squib? Or just plain common sense?

Ofcom published its report on measuring media plurality on June 19\textsuperscript{th}. It received little attention. The fierce battle triggered by its report on the News Corp bid to take full control of BSkyB still reverberates through the Leveson Inquiry hearings, but this report – as submitted to Leveson – is in a very different key.

I was sharply critical of the BSkyB document, listing a series of errors and questionable judgements. I also challenged the suggestion made in that document that there might be ad hoc discretionary interventions in the media market to protect plurality.

Ofcom has now fully backed away from this idea. It rejects (no doubt to the disappointment of Ed Miliband and the Daily Mail) the idea of fixed limits on newspaper circulation (“bright white lines”) as too rigid, recognising that the decline of total newspaper circulation is likely to lead to consolidation as a means of commercial sustainability. Fixed limits can also militate against innovation.

In terms of local news operations, Ofcom has already implemented abolition of cross-media ownership restrictions, on the basis that it is preferable to have one surviving competitor to the BBC than none.

In passing, Ofcom also rejects the Enders Analysis proposal to limit any one organisation to 15\% of “total media revenues”. Defining relevant revenues is too difficult. How would you discipline non-UK companies? And how does a revenue-based approach help in the narrower tasks of measuring influence or ensuring diversity? We can confidently predict that no fixed limits on circulation or “media ownership” share will now be introduced.

Ofcom has also recognized that a permanent discretionary right to intervene to halt organic growth in share is too draconian a measure: leaving the market in a constant state of uncertainty, and undermining the core regulatory principles of proportionality, transparency, simplicity and practicability.

Having in its BSkyB report raised the prospect of an “exit trigger” (an intervention when a media player exits the market), Ofcom now lays that hare to rest. Such a trigger requires too much discretionary power, and implies constant market review: both undesirable. Sheer impracticability must also have played a part in this judgement. If a loss-making news operation closes, what can be done anyway? Subsidise the loss-maker? Out of whose pocket? Doesn’t that penalise success? And if a closure increases the market shares of others, what follows?

This was always a dumb idea. The only “exit trigger” Ofcom now mentions is the prospective closure of either ITN or Sky News, unable to compete with the £430 million the BBC spends each year on news operations. As Ofcom acknowledges, there is nothing that government could do about either.

The only practical incentive government could offer BSkyB to keep funding the massive losses incurred by Sky News was within the context of the attempted purchase of BSkyB by News Corp. Indeed, given that the status of Sky News was the only obstacle to that transaction (before it fell apart), it is a lucky accident that Sky News has survived this long.
And as the funding of ITN by the three commercial terrestrial broadcasters (ITV, Channel 4 and Five) is already a trade-off for concessions granted to them, whose value is steadily diminishing, there is no action government could take to ensure ITN's survival – top-slicing the licence fee is not on the agenda.

Ofcom has instead settled for what many of us urged: periodic reviews of the market, every 4-5 years, using criteria that concentrate on actual consumption (as measured by volume, reach and multi-sourcing). As until recently Ofcom anyway carried out a review of media ownership rules every 3 years (the last was in 2009), the “mouse” and “damp squib” verdicts on its efforts look understandable.

Actually, that would be unfair. When a regulator shows that it can learn from its mistakes, we should all feel comforted (as Luke 15:7 puts it, “there is more joy in heaven when a sinner repents...”) A whole series of errors in the BSkyB review have now – even if unacknowledged – been conceded.

Ofcom now recognizes it should have included current affairs programmes in its BSkyB review (it said it would do, but failed).

It recommends that the definition of “media enterprise” in the relevant Act of Parliament needs to be amended, so as to embrace ITN (a gaping hole in its last report).

It now recognizes that the “value added by editorial control downstream” makes nonsense of its decision in the BSkyB review to allocate – in measuring share – 100% of the news consumption on Five and commercial radio to the wholesale supplier (Sky News).

It now recognizes that there is no actual measure currently for news consumption on radio (in the BSkyB review, it decided to treat the total reach of commercial radio as equivalent to commercial radio news reach: an indefensible assumption).

It now recognizes that “it is not meaningful to combine volume measures for different platforms”, though not quite conceding the error in its decision to treat minutes reading newspapers (more than half of whose content is nothing to do with news) as equivalent to watching TV news bulletins.

It now recognizes that the BBC cannot be excluded from the process of measuring media plurality, just because of its governance and its commitment to impartiality – such a commitment may be a safeguard, but cannot be a guarantee of impartiality, as there is still room to “influence the news agenda through the selection or omission of stories”.

Ofcom paints a startling picture of the BBC’s dominant position in news consumption. It is responsible for 74% of TV news hours, a “high but unquantifiable” proportion of radio news hours (at least 70%), and 46% of all page views in the top 50 online news providers. 57% of online news consumers use BBC online: the next highest placed providers are at 19% - and they are Facebook and Google (not Google News), suggesting that their reported score is not a pure news measure.

Given that previous Ofcom surveys have shown that these three media are judged by news consumers to be responsible for between 86% and 92% of their news consumption (with newspapers at between 8% and 14%), the BBC appears to have a share of the news consumption market of well over 60%.
According to specially commissioned research, Ofcom finds that three of the top five sources of TV news are BBC One, the BBC News channel and BBC online. In radio, the three at the top of the list are BBC Radio 4, Radio 2 and Radio 1. In terms of share of references (a different measure of influence), the BBC is the source identified for 56% of TV news stories, 69% of radio news stories and 29% of online news stories, giving a staggering total of 47% across all media.

Ofcom does not believe the BBC’s current position should trigger a plurality review in itself, but warns that the BBC Trust does not include the promotion of internal plurality as one of the BBC’s purposes. It also notes that the pressure for cost savings adds to the problems of centralised newsgathering and output, further reducing the scope for internal pluralism.

There is a coded warning that this state of affairs may not be sustainable: there is a “potential risk that people who rely primarily on the BBC for news [are] not being exposed to a sufficient diversity of perspectives, contributors, subjects or treatment of news stories”. Ofcom also raises the question – but leaves the answer to Parliament – as to whether the famous 20/20 rule (which effectively excludes Murdoch from controlling more than 20% of ITV) any longer makes sense, given that the first of these “20’s” (ownership of more than 20% of the national newspaper market) related to daily sales of 16 million newspapers when the clause was enacted, but now relates to daily sales below 9 million. Ofcom notes that normal competition rules have anyway precluded BSkyB from owning more than 5% of ITV: the “Murdoch rule” may just be a relic of 20-year-old legislation.

Perhaps at heart Ofcom recognizes the inherent difficulty of any media plurality regime. How can anyone “ensure” that “there is a diversity of viewpoints available and consumed across and within media enterprises”? How, as per the Communications Act of 2003, can Ofcom “secure the maintenance of a sufficient plurality of providers of different TV and radio services”? Define “sufficient”.

Ofcom itself says that the rationale for making ITV, Channel 4 and Five show an “appropriate amount of national and international news” is to “ensure a range of impartial news programmes is available which appeals to different audiences”; yet all those news programmes come from a single supplier: ITN.

The Ofcom report identifies share of consumption as a good proxy for measuring influence: but concedes that this might be mitigated by internal plurality (even the four Murdoch papers made three different recommendations as to how to vote in the 1997 and 2005 elections).

Ofcom’s job is half done. It has buried a series of bad ideas. It has indicated which metrics are most useful in at least trying to measure news consumption, and then placing shares of consumption within a more nuanced context, taking into account reach (where it can be measured), multi-sourcing and more elusive concepts such as impact and diversity, all within a framework of economic sustainability and rapid technological change. Now it needs to get together with media players and independent experts and thrash out some of the detail. Its comments on the BBC are significant. It is fair to assume that Ed Richards, Ofcom’s CEO, recused himself from the final stages of completing this report, as he is a candidate to be the BBC’s Director-General. If the BBC Trust still appoints him, despite this shot across its bows, we can expect a serious reconsideration of how the BBC generates and presents its news in the course of the next Charter review. For that relief, much thanks.
Q248 The Chairman: I would like to extend a very warm welcome to David Elstein, who has had a very long and distinguished career in and around the television industry, both doing it and commenting on it. Everyone has the brief biography. Just before we go on, could you introduce yourself for the benefit of the recording and if you want to make an initial statement, please feel free to do so.

Mr Elstein: Thank you very much, my Lord Chairman, and I am very grateful to the Committee for inviting me to give evidence. My name is David Elstein. Currently I have only marginal involvement in the broadcasting industry. I chair the Broadcasting Policy Group and I am executive producer in a TV production company. Last year we produced a documentary on Athol Fugard to mark his 80th birthday. I also chair openDemocracy and occasionally write for it. It is what I think is called a webzine, a current affairs magazine that has been going now for 12 years and publishes many thousands of articles about current affairs worldwide. About a quarter of its readership of over 2 million a year is in the UK, a quarter in the US, a quarter in the rest of Europe, a quarter in the rest of the world. We have many thousands of contributors, very few of them paid. We have tiny finances, a few hundred thousand a year. We are funded by grants, readers’ contributions and a very small amount of commercial revenue. If you read the current front page of openDemocracy, which you can find on opendemocracy.net, you will find many articles about Egypt, Turkey, Syria and all kinds of considerations about life in the UK. We have a section called Our Kingdom, which specialises in constitutional issues, the distribution of power within the UK and occasionally
runs television criticism written by yours truly. My last contribution was an analysis of BBC Two’s drama series *The Fall*.

**The Chairman:** Thank you very much. That is a very broad start. Just a small point. Is the stuff in openDemocracy about Egypt, Turkey and Syria mainly read here or do you think it is mainly read over there?

**Mr Elstein:** We do break down the readership and it is primarily from inside to outside, so most of the readership will be outside of any of those territories, but we do find it very valuable to have people who are in Tahrir Square or Gezi Gardens, or whatever it might be, blogging from there. We carry multiple viewpoints. People do not necessarily agree with each other at all. Indeed, my own rave for *The Fall* was countered by Beatrix Campbell, claiming it was misogyny through and through, but that is what freedom of speech is all about.

**Q249 The Chairman:** Deriving from that, do you think that there is a legitimate requirement to have a media plurality policy in this country or, for that matter, other countries?

**Mr Elstein:** I think it is integral to virtually any democracy to have a media plurality policy and indeed rules. We operate effectively with three different types of mechanics. The first is competition law. We saw that working in the BSkyB attempt to take over 17.9% of ITV, where the Competition Commission ruled on economic grounds that that should not be allowed to proceed. Sky managed to hang on to that stake for three years, which tells us a lot about the lack of urgency in our system. I think in Germany they would have lasted six weeks holding that stake. Fortunately, it did not make any difference and poetically it cost them a huge amount of money because they bought at the top of the market and were forced to divest 12% at the bottom of the market, but there you go.

The second thing we have is sector-specific rules expressed in media legislation dating back to the 1980s—the Broadcasting Act, the Communications Act and so forth. These were designed to prevent concentrations of ownership nationally and locally. In fact, locally was the original priority. Ownership of ITV was meant to be dispersed. I think there were 16 different ITV companies and owners of local newspapers or local radio stations were limited as to their ability to participate in ownership of ITV franchises. Basically, we were treating ownership as a surrogate or a proxy for influence, and I think it is influence that in the end is important to us and obviously undue influence or disproportionate influence. Unfortunately it is rather difficult to align ownership rules and influence issues, but that is the closest that we get. We also had the famous Murdoch rules, the 20:20:20 rules, which made it impossible for anyone owning more than 20% of national newspaper sales to own more than 20% of ITV, and anyone in turn owned more than 20% by such a newspaper owner also to own more than 20% of ITV, which was targeted at BSkyB. As we now know, under the competition intervention, even 17.9% was deemed to be too much.

The third weapon we have—this is in some ways the most contentious—is public interest interventions. I think these are important and they are clearly something that 10 years ago Parliament spent quite a bit of time on and it was all part of the Joint Parliamentary Committee chaired by Lord Puttnam. There are difficulties, because it is very hard to offer definitions of plurality and sufficiency, so when we say we want a sufficient plurality of ownership of media enterprises—which is another word for broadcasters—and a sufficient plurality of viewpoints in newspapers, we are not really given a clue as to what “sufficient” means. In the US, plurality is a majority. If you have 51% of the votes, you win the election.
We have different definitions of plurality and effectively we decide it on a case-by-case study. For instance, when Channel 5 was acquired by Northern & Shell, clearly there was a diminution in the number of owners of media enterprises because Northern & Shell already owned Express Newspapers—the Daily Express, the Sunday Express, the Daily Star, Star on Sunday—whereas RTL was exiting the UK. There was no public interest investigation, so you have to assume that sufficiency of plurality of ownership was not affected by that reduction. Somebody must have judged that we had a reasonable sufficiency at that point.

Where we have run into problems is largely over the News Corp bid for BSkyB and the battle over that attempted takeover is still being fought out in the evidence being given to you, much to my surprise. Oddly enough, one of the few things that worked really well in that imbroglio was the position of the Secretary of State, operating in a judicial or a quasi-judicial capacity. Although Jeremy Hunt took an awful lot of stick during the course of his involvement, not least because his personal views were very clear that he was in favour of the deal, I think—and I think Lord Justice Leveson agreed with me—I came to the conclusion that he acted exactly as he should have acted all the way through. Indeed, he paid too much attention to Ofcom and the OFT, in my view, as I have explained in my written evidence. I thought the Ofcom analysis of that transaction was deeply flawed and probably biased, which is something quite regrettable in a public regulator. Broadly I am a supporter of Ofcom, but that report was deeply worrying.

But in the end the parties did what they were meant to do. Ofcom carried out a public interest test. It came to a conclusion that there might be a negative for plurality if the transaction went through. Therefore it recommended a reference to the Competition Commission, which would judge whether there was going to be a significant impact in plurality terms. Entirely properly, the Secretary of State invited News Corp to offer undertakings in lieu of a reference and News Corp foolishly agreed to go through that process. All the UILs were carefully measured by Ofcom and the OFT. Mr Hunt did nothing other than convey views from one party to the other for a period of six months and at the end of it the UILs were accepted. My personal view is that the UILs were likely to damage Sky News and I was delighted when News Corp, because of the Milly Dowler revelations, not just abandoned the UILs and referred itself to the Competition Commission but then abandoned the whole process. But generally speaking, you can see that the public interest test was applied; the process was very visible. Even if at one level, in my view, it was deeply flawed, we could all see what was going on.

But I think what emerged from that process was a period in Ofcom’s life when it felt quite bullish about coming up with a revised intervention process. In its report on News Corp-BSkyB it talked about interventions outside the regular three, four-year overviews, triggered by market exits, fixed caps on ownership and so on. After it ran its consultation, all credit to Ofcom, it abandoned all of that. It clearly could not work. It recognised why it could not work and what it rightly focused on were two things. Those are the two things that I would invite this Committee to focus on, which is how do you establish the metrics that you are going to use to measure plurality? What exactly are you doing? We know why we are doing it. We are doing it so as to avoid undue influence, but how do you do it?

I will give you a “for instance”. Ofcom, in its report on the public interest test, introduced the concept of reach. Reach is very accurately measured in television. There is a huge industry that looks to BARB, who are the people who do the research, to analyse exactly how many people will have been exposed to commercial messages, and you can only do that by seeing how many people are exposed to programmes. But there are many definitions of reach, because reach constitutes three different things. The first is the period of time of
continuous viewing: it might be three minutes, five minutes, 10 minutes, 15 minutes, and obviously each is more demanding than the previous. The second is the period of time during which such an individual period of viewing is measured: one week, two weeks, a month, whatever. The third thing is the number of such instances—in other words, what we call one plus, two plus, three plus. So if you are an advertiser, on the whole you want as much one plus viewing of an ad as you can get and as little eight plus, because by the time someone has seen an ad the eighth time, they are probably sick of it and instead of going and buying the product, they are absolutely resolving never to go near it again. So these things are very important.

Unfortunately, Ofcom just selected one out of a dozen potential definitions of reach in television. If it had gone for a five-minute reach instead of three minutes, it would have knocked out 60% of all the viewing of Channel 5 news, because it has very short bulletins. It may look like a decision that is judicious and carrying no value judgment; absolutely not. It then compounded the error by trying to translate reach into radio. Radio audience measurement is far more primitive than television audience measurement. It is done on a diary basis, not on an electronic recording basis, and there is no measure of news listening in radio, just listening, BBC or commercial radio. In television we know how many people watch each news bulletin on each channel and each current affairs programme. So, trying to bring those two things together was extraordinarily difficult.

It then committed a further error, in my view, in trying to do the same with newspapers. In newspapers, by my analysis, much less than half of a newspaper constitutes news. There is abundant research in North America showing that a third of newspaper buyers never read the news pages; they are not interested in them. Some of them, like me, go straight to the sport. I spend three minutes on the Times content and 23 minutes on the Killer and the Super Fiendish Sudoko. That is the nature of the beast. So to count my 26 minutes for the Times as news consumption is clearly not right.

Likewise, Ofcom commissioned some special research from Kantar Media trying to get newspaper group readership statistics, which is a synonym for reach. The National Readership Survey does paper-by-paper analysis but not group-by-group, but we are never told how the two correlate. It just did not add up. According to Kantar, not a single person who read the Independent ever read the Independent on Sunday and vice versa, because the group reach was twice the individual newspaper reach. So I think what Ofcom has understood from that is that reach is going to be a very poor way to determine the metrics going forward and the two that really matter are actual consumption of news and current affairs and reliance on sources.

We have a pretty good sense of actual consumption of news and current affairs. We have to apportion newspaper readership; we have to have an estimate for radio but that is not that difficult if you are intelligent about it; and we have online estimates. TV is very hard numbers. From that we know that overwhelmingly the consumption of news is from the BBC and when we go to the other test, which is how do people say what they rely upon for news, Ofcom has been measuring this for decades—it is not Ofcom for decades because it was the ITC before Ofcom—and overwhelmingly people rely on television for their news, with radio second and newspaper and online currently third and fourth. Online is obviously going to pass newspapers any minute now. Newspapers are relied on by roughly 8% of people for their news.

What Ofcom could get from that is that it has to spend more time thinking about plurality in TV news offerings than it previously had. For the first time, in Ofcom's May report on its consultation on measuring media plurality, it addressed the issue of the BBC and noted that
the BBC’s purposes do not include internal plurality. The BBC is a wonderful institution. It has many important purposes, most of which I would endorse, and despite its occasional missteps and flaws, I think it does a pretty good job. But it is a unitary organisation. Under John Birt and his then head of news and current affairs, Tony Hall, now director-general, news and current affairs were merged inside the BBC. In the last year BBC World Service has been merged into the news and current affairs directorate. It is huge. We also know that until recently it was deeply dysfunctional, because that is what the Pollard report told us.

My concern is not so much with its dysfunctionality as with the lack of pluralism in the way BBC news and current affairs is organised. I would love to see Tony Hall taking the principled view that the way to deliver internal plurality is to reverse the process that he has played such a large part in, which is to allow BBC radio, the BBC News Channel, BBC World Service and BBC online to be independent editorially. Obviously they all end up reporting to the director-general, because that is the nature of the beast, but you should not have—and in my view long ago we should not have had—this mammoth editorial bureaucracy trying to tease out what can and cannot be said across the entire range of BBC output.

There was a famous instance when I think it was Matthew Parris was a guest on Newsnight and there was a discussion about the number of gays in the Labour Cabinet and he volunteered the view that Peter Mandelson was a senior Minister who was gay. As I understand it, Peter Mandelson protested to his old friend from London Weekend, John Birt, who was director-general, and a ruling went out from the head of BBC editorial policy that no mention of Peter Mandelson’s sexuality would be allowed again on any BBC outlet, television, radio, online. I find it absolutely extraordinary that a single person could decree—the BBC employs about 70% of all broadcast journalists in the UK—to 80% of all our journalists, “Thou shalt not mention this fact—as it was a fact—again until you are relieved of that obligation”.

I can remember when I was in the BBC, a long time ago, it was impossible to report on Northern Ireland. My colleague at Panorama in those days, who later became a Member of the other House, Phillip Whitehead, had to leave the BBC and go to ITV to commission a programme on gerrymandering in Derry. It would never have reached the air in the BBC. It would have been blocked because the BBC, as a unitary organisation, is capable of doing that. Thames Television, where This Week was one of half a dozen current affairs programmes, did it without a blink of the eye.

However good the BBC is as an organisation, however professional all its journalists are, it is not in the public interest, in my view, for there to be a unitary editorial structure inside the BBC. I think Ofcom has given the BBC Trust fair warning that it is looking for evidence that it is going to put internal plurality high on the list of things to do.

Q250 The Chairman: Thank you. Can I briefly go back to one or two things you have said before we move on? You talked, I think rightly, about the influence of influence and you said that ownership had been used as surrogate for influence. In an imperfect world, do you think that is quite a sensible thing to do?

Mr Elstein: Ownership of what is the key issue for me. At the moment our sector-specific rules simply talk about national newspaper sales. When the MailOnline has 10 million readers a day, actual sales do not seem to me to be the most relevant issue here. The Guardian staggers along with 180,000 sales a day but has 7 million to 8 million readers a day. So I think sales is an out-of-date concept. Readership is much more relevant and online readership is as relevant if you could measure it successfully.
**The Chairman:** Do you think it is possible sensibly to measure these things with a degree of accuracy?

**Mr Elstein:** The NRS measures hard copy readership and has done for decades, and we all accept those readership numbers. Whatever is left of the advertising industry in newspapers relies heavily on the NRS and we are getting more sophisticated about online readership. I have a caveat in my written evidence, which is that even BBC online contains a lot of non-news content of entertainment, gossip and so on, so you have to be a little judgmental about how you interpret the minutes spent online. I would also suggest that there is a kind of barrier that you have to cross before you are counted as an online reader, because all my understanding is that people go to online sites by accident or are looking for something and it is not there. So probably you should discount the first 30 seconds or 60 seconds spent on any alleged news site because they were probably looking for something else. But once you get past that I think it is legitimate.

It is still quite small relative to what we know is news consumption in TV—tiny actually—and we have to apply a discount to the NRS figures for minutes spent with each newspaper. They do give a number—I think 37 minutes is the lowest, which is the *Daily Star*, and 100 and something minutes for the *Sunday Times*—but clearly there has to be some discount for non-news content. Interestingly, Enders Analysis, whom I come across frequently, not just because we are alphabetically close to each other, put in evidence to Leveson that suggested that only 20% of newspaper reading minutes were news minutes. When it gave its evidence to the Ofcom inquiry into BSkyB-News Corp it allocated 100%. I wrote to Chris Goodall who wrote the paper and said, “That cannot be right, absolutely cannot be right, 50% maximum”, which he conceded was what the German regulators use as a discount. It appears he now thinks 80% is the correct discount.

In my view there are experts in audience analysis, there are academic experts, there are industry participants and there are regulators who need to get around the table and spend a year just teasing out all of this and arriving at a consensus as to which metrics we should use in trying to make any judgments because, without a reliable basis for making judgments, in the end all you ever express is your prejudices. I think Ofcom has come to that realisation as well and I look forward to seeing that process start. I hope your Lordships will encourage it.

**Q251 Baroness Deech:** I appreciated reading the written evidence you gave us, which was very refreshing and caused one to go back to basics, and I understand what you are saying about metrics. But having said all that, what in your view are the prospects and threats for media plurality, given that we do need it in the UK? In particular, what is your estimate of the promise of digital journalism and will its growth mitigate some of the threats to plurality arising from market trends, assuming there are threats to plurality?

**Mr Elstein:** Online journalism is obviously relatively new—it is less than 20 years old—compared to the newspaper industry. I think the *Observer* was founded in 1791, so there is a little way to go. Our 2.2 million a year on *openDemocracy* should compare with *MailOnline* of 10 million a day on the day Prince George was born, so it is tiny. I think it is very helpful that so many newspapers are building an online presence, helpful for me economically because I can now read the *Guardian* without having to buy it, for which I am very grateful to *Auto Trader* for enabling. The business model for digital news is still under debate. We are still working our way through the more successful elements, the *New York Times*, *Financial Times*, with different metering of different areas of consumption. The web bloggers are a tiny part of that and, frankly, a lot of so-called journalism that arises there is not to be taken seriously.
The big threat to journalism comes from the undermining of the economics. It was astonishing when Ofcom reported that the entire local newspaper industry had one political editor between them. That is what happens when you drain the economics out of an industry. Professors Cave and Collins warned that it was a really serious problem to see so much advertising money draining out of national and regional newspapers with no evidence that digital revenues were going to replace that. The most recent news we have is that the *Daily Mail* lost £5 million of normal advertising revenue and gained £3 million of digital revenue. It is better than nothing but it is still not getting us there. The *Guardian* has lost £210 million in the last five years while working on this transition to being a global digital newspaper. I do not know how long the *Auto Trader* chest of gold will last—four years, five years? Without that it would have gone under long ago.

Curiously enough, one of the major reasons why the *Guardian* is in such severe economic difficulties is that it is the newspaper that undertook the only merger transaction in the national newspaper industry in recent years when it bought the *Observer* to stop the *Independent* buying it. The *Independent* went ahead and launched the *Independent on Sunday*, which destroyed its economics as well, and the *Guardian* has been nursing a £20 million a year loss on the *Observer* ever since it foolishly indulged in that.

**Baroness Deech:** I can see and I think probably all of us have some understanding of the severe economic threats to newspaper journalism as we know it, but what I am interested in, especially with you having your own openDemocracy site, is the future. Will digital journalism make up for what we might be losing in plurality with paper journalism?

**Mr Elstein:** It will add to plurality but it will not mitigate the quality issues. There is a trade-off, frankly, between plurality and quality that everyone recognises, which is why the ownership rules for local media have been relaxed as there is no point in having three weak players facing the BBC in a particular region. You need two less weak ones. That is not going to go away, but what I do find is that the disciplines of digital journalism are actually feeding back into the print industry. When you go online to read the *Telegraph*, the *Times* or the *Guardian* it is a newspaper that is being rewritten as you go. Yes, there is a snapshot print version that turns up, maybe, on your doorstep in the morning but if I am reading online I will find there is a constant updating, particularly of live events like sport or demonstrations in Tahrir Square. If you go to the *Guardian* online it will tell you when the story was first posted, when it was then updated, when it was last updated and so forth.

I think that is a really interesting development because it will allow newspapers to compete more effectively with television. Rolling news has historically been a radio and television phenomenon. You turn on the radio at 4.00pm and you get, hopefully, a slightly different bulletin from the one you got at 3.00pm. Now newspapers online can do the same and because, in my view, the quality of newspaper journalism is sharper than that for broadcast journalism, that is a very good trend. Maybe they will do an end run around the loss of advertising revenue into a subscriber-driven version of a rolling newspaper, maybe in five or 10 years’ time.

**Q252 Baroness Deech:** But being up to date is not the same as plurality, is it? It might be better to have more diverse sources. A few years ago we would not have cared two hoots whether the news was two hours old or 12 hours old. I am not sure that is the answer to plurality.

**Mr Elstein:** You have to ask yourself what we want plurality for. We have a rule that says we have to have plurality of ownership and media enterprises in broadcasting. Why? They are not allowed to differentiate their news in any significant way. Every broadcaster has to
follow the Broadcasting Code, so either we do not believe Ofcom can do its job of imposing the Broadcasting Code or we are hunting around for something that is irrelevant.

**Baroness Deech:** Is not competition important?

**Mr Elstein:** If it were that important why do we allow ITN to supply news to Channel 3, Channel 4 and Channel 5, which are the publicly owned bits of spectrum? We have a single news provider. By the way, ITN itself is not currently regarded as a media enterprise. It falls outside the law. As I put in my written paper, if the *Daily Mail* bought ITN there could not be a public interest intervention because ITN is not a media enterprise because it is not a broadcaster. It is simply a news supplier. One of the reasons why, hopefully, processes like this that my Lord Chairman and the rest of you are leading is to ask these very questions: why do we have a rule that does not seem to make any sense any more? What is it for? When Ofcom intervened in the Sky-ITV transaction it tried to argue that this was a problem with news plurality, that somehow Sky would subvert ITN. The Competition Commission threw that out, as did the Court of Appeal, and rightly so. What were they going to do, quietly fix it in a corner and no one would see? You are broadcasting your news. Ofcom did the same again in the News Corp-Sky transaction. It is as if they could not believe that due impartiality works or that they could enforce due impartiality, which for me makes no sense at all.

**The Chairman:** Do you think due impartiality does work?

**Mr Elstein:** Yes, it does. I am relaxed about due impartiality. It embraces Channel 4 news on one side and Fox news on another, and Ofcom rightly interprets it as the impartiality that is due in context and in terms of the audience’s expectations. So, although ITN supplies Channel 5 news, which is very poppy, and Channel 4 news, which is rather leftish, and ITV news, which is dead down the middle, all of those fall within the rubric of due impartiality. But if we have that, why are we so concerned about plurality of ownership? What does that have to do with it?

**Baroness Deech:** If we have impartiality, why are you so concerned about the internal diversity of the BBC? Why does it matter if, in your view, it are impartial?

**Mr Elstein:** Wow. This is an excellent point. This is where the debate about due impartiality rests at the moment, which is that if you have multiple outputs they can all be compliant with the requirement for due impartiality but really be quite different from each other, which is very good for the viewer, the listener and the reader. I have said how I would break up the BBC news empire. I would actually break it up further and devolve news responsibility in Scotland, Wales and Northern Ireland back to the people who get the news together and edit it, instead of it all coming back to the centre for control. I think devolution would be a very good thing there and we would just get a different type of perspective, still duly impartial under the terms of the Communications Act and the Broadcasting Code but different in tone and output.

Professors Cave and Collins estimated that the BBC’s share of the infamous HHI, the Herfindahl–Hirschman Index, which is the European standard measure of media concentration, was 75% of our score of nearly 2,000. Actually I think the score is 2,300 and the BBC is responsible for 91%. My proposal to devolve editorial responsibility much more broadly within the BBC should have the effect of taking our HHI score down into the low 1,000-plus, which is not obviously a matter of huge interest to the world at large but would be an indication that we had responded to the challenge of plurality in the most positive way. The BBC itself says it is keen on internal plurality. It just does not know how to deliver it.
Q253 **Lord Razzall:** I suspect it will not come as a surprise to you that you are at the extreme end of the witnesses who have given evidence to us with regard to the importance of plurality of ownership in any event, as you have made quite clear. Assuming that there will be some form of plurality control, could you help us a little bit with regard to the role of digital intermediaries? It is much easier to deal with plurality in the traditional media, but with digital intermediaries how do you think their role should be measured in any plurality review? Whether or not you agree that there should be any, what remedies could be appropriate or workable with regard to plurality concerns with digital intermediaries? I know I am asking you to hypothesise on an area you probably do not feel you agree with in the first place but, bearing in mind your role with your organisation, could you just help us a little in this?

**Mr Elstein:** I assume by digital intermediaries you mean people like Google, Yahoo, MSNBC?

**Lord Razzall:** Yes, or indeed BT if it comes strongly into the market, for example.

**Mr Elstein:** BT is a player, there is no question about it. You see, this is one of the problems that we all have in terms of metrics. If you look at the Enders Analysis proposal for a 15% cap on media revenues, their definition of media revenues excludes BT and the TV production industry. It excludes, by my view, about a third of all revenues because it is designed for a purpose, which is to limit the influence of Murdoch or Sky or whatever. Unfortunately for Enders Analysis, I think that fox has just been shot by the split of 21st Century Fox and News UK.

But in terms of Google, Yahoo, MSNBC and so on, they are what I would call aggregators as much as intermediaries, and they are platforms. As the chairman of openDemocracy I am very nervous of Google. I wish Google was able to operate a subscription system that was not so antithetical to small players like us. I wish that small organisations like openDemocracy could gather together without attracting the interests of the Department of Justice in the US if we agreed a rate card for international subscribers. But given the difficulty we have in even getting Google to pay tax in this country, I cannot imagine what remedies we would have for undue or super dominance that it might eventually exercise as a platform. The interesting thing about Sky is that once it became the dominant player in subscription television its platform became regulated because it was a UK company and because it had Ofcom licences. Google does not have any Ofcom licences, Yahoo does not have any Ofcom licences, so where is our leverage? What is our point of control?

I must say I am very sorry to hear I am at an extreme end of evidence. When I was reading the evidence before you I thought I was the moderate person and all these extreme people were over there, but obviously there is a selective perception issue going on. I am fully in favour of having a functioning media plurality regime but to make it work you have to get your measurement right first. You have to decide what you are going to measure and why and how and you have to get agreement on that so that everyone knows what is going on, so that you do not have surprises, so that you do not have fiascos like Ofcom coming up with a 23% share of news consumption for News Corp-Sky that was actually 10%. You cannot operate that way.

**Lord Razzall:** I take your point about Enders, but their evidence was indicating that they wanted just a certain and easily understood criterion and that it should not be subjective; or indeed objective criteria should be applied but just a straight across the board 15% and then all the media companies would know where they stood. I take your point about the underlying but that was their thesis.
**Mr Elstein:** Yes, but it is a nonsense thesis. It is 15% of revenues. Why revenues? Why not free cash flow? I have sat on boards of many companies. Revenues are the last thing you look at—profit, pre-tax profit, post-tax profit, EBITDA, all kinds of things. If you look at the Enterprise Act itself, when it says that Ofcom can intervene on the 25% test it offers a whole range of criteria—including workforce. What does revenue have to do with anything? Then you have to decide which bits of revenue. Why should it matter that Sky sells hardware to its customers on multi-room subscriptions or landlines or telephony or broadband? That makes up over a third of all Sky’s revenue. What do we include and what do we exclude? If you have bundled products, how do you divide them? To say that 15.1% of media revenues gives you complete dominance, blimey, we could have six organisations with complete dominance of the media industry according to Enders Analysis. It just does not make any kind of sense at all.

I think Claire is very open as to why she is recommending it, and I have written to her in the past when she first proposed it. It is just another way of dealing with Murdoch. I said to her, “Be open about it. Ask the House of Lords to put forward a Bill banning Murdoch. It is within the sovereignty of Parliament to do so. Go away. Make sure he cannot come into the country, make sure he cannot make any phone calls to anyone. Whatever you want to do, just do it, but do not muck up our media plurality regime for the sake of a personal campaign against a particular proprietor. However well intentioned you are and however well merited that campaign might be, that is not the point of this”.

**Q254 Lord St John of Bletso:** There certainly appears general consensus on what media plurality is and there is some room for debate about its scope. You mentioned in your introductory comments that it is important to have media plurality rules and then you went on to talk about the matrix for measuring media, but you do not appear to see a problem. You said earlier on: what do we want plurality for? Clearly we need to differentiate between news providers and non-news providers. How widely and how narrowly do you think that media plurality should be concerned?

**Mr Elstein:** I think the issue is news, and probably current affairs as well because they are closely connected, and I think we should measure the consumption of news and current affairs from all the media that are relevant, TV, radio, newspapers. By newspapers, I would include regional and local newspapers, which Ofcom excluded: 24% of all newspaper readership gone; *Yorkshire Post* gone; the *Evening Standard* does not count. You have to be realistic and comprehensive in what you are trying to measure and once you have measured consumption then you have a matrix that you can look at and say, “Where is our area of concern?” You cannot start from an area of concern and then go and measure. You have to start by measuring.

When you look at news consumption, what you come up with is broadly 60% BBC and then a bunch of players somewhere between 6% and 9%, including News UK, *Daily Mail, Daily Mirror*, ITN, Sky News and so on. You may have perfectly good grounds for saying, “I am worried about all those sub-10% players and if two of them get together that is a cause for concern”. Absolutely fine, I do not have a problem with that, provided you are accepting that there is a level playing field of measurement.

The second thing I think that absolutely needs to be taken into account is what consumers, who hopefully we are trying to protect from undue influence, themselves think and we are told that year after year. First of all, whom do they rely on for news and, secondly, what do they think of those suppliers? I thought it was quite quaint for Professor Barnett, my good friend Steven Barnett, to suggest that, intuitively, biased newspapers had more influence than
unbiased news. We have overwhelming evidence that that is not true. Ofcom does a survey regularly and every time it comes up that broadcasters are much more trusted than newspapers because they are perceived to be much less biased. It makes me wonder what the £2 million we have spent on Steven’s career so far has bought us but intuition is a valuable thing.

Once you have those two issues, where is our point of concern, do we have a plurality problem at the moment, and is it in the commercial sector? I think it was Cave and Collins who said that it would be intellectually disreputable only to focus on the commercial sector if you are looking at concentrations of news consumption. For me, it does drive you back to the BBC. The BBC is great but the BBC has grown. In the last eight years the BBC’s share of news consumption has expanded 10% at the expense of ITV and it continues to grow because its online service is by far the best funded of any online service. So you do have to ask yourself whether it matters at all.

When I look at internal reports of the BBC’s coverage of the EU or immigration it does make me think that however good the BBC is it is still not perfect. Perfection is not attainable, so is there anything you can do to improve internal plurality in the BBC that would have a really big effect more broadly around the country? It is true I do not see a problem in the commercial sector at the moment and personally I did not see a problem with the News Corp-Sky bid. As far as I was concerned, News Corp controlled Sky anyway; it certainly did when I was there. But we do have to look at the elephant in the room.

Lord St John of Bletso: You are right that overwhelmingly the population looks at television for its news, but increasingly the younger generation are referring to the mediums of Twitter and BuzzFeed for their news and the digital space is radically changing the whole landscape of media plurality. I would like to touch briefly on the economics. You spoke earlier on about the drainage of economics and we are seeing a major threat here for local and regional journalism. What scope do you see for there being a revitalisation of regional and local journalism?

Mr Elstein: Of course we had a proposal from the last Government, supported by Ofcom, to inject cash into regional news consortia as competition to the BBC in and around the nations. The truth of the matter is that, that having failed, what we are looking at is a continued drainage of regional and local coverage by ITV, now approved by Ofcom again, and we are still waiting for the local TV experiment to be implemented, so we do not know how that will work. We are currently looking at a steadily worsening position in terms of the balance of information in the TV industry alone. We know that regional and local journalism has suffered hugely from the economic effects of the internet sucking out all the advertising. I am not in favour of using public money to inject into old media ways of competing with new media. That is the Canute policy. They have to find their own solution and I am reasonably optimistic that they will find an online solution.

The young are always looking for different things. It sometimes puzzles me when we look at these issues. I just do not have in my mind a picture of 500,000 tabula rasa retired colonels in Hampshire who suddenly get sent a copy of the Daily Telegraph and learn their politics from the Daily Telegraph. I suspect that people bring their politics to their choice of newspapers and their choice of media, just as they do to their choice of everything. The young want gossip and all kinds of information that we would not regard as information at all. They want to know how many inches Katie Price has added to her capacious bosom at the last go round. That for them is important information. I do not see Twitter and BuzzFeed as anything other than additions to the scene. I do not think Twitter is going to put the Times out of business. The campaign for press and broadcasting freedom might put
the *Times* out of business and a 20% limit on national newspaper ownership might put the *Times* out of business but not Twitter.

**Q255  Earl of Selborne:** You told us that due impartiality in broadcasting does work but you have gone on to urge that BBC’s news and current affairs be broken up with editorial independence and regional. Is this in order to ensure more impartiality or a variation on impartiality?

**Mr Elstein:** A variation. As I said, Fox news and Channel 4 news both qualify under the due impartiality rule. They are very different but what their audiences expect is the rule that Ofcom applies. In the past I have complained to Ofcom about a programme that I thought was in breach of their due impartiality rules under the Broadcasting Code and 91 pages later and a long analysis of every word in the programme we agreed to differ temporarily. I know that when the World Service radio was independent editorially I loved listening to it because its news agenda was just so different from Radio 4, Radio 1, the BBC News Channel. I welcomed that there was a different set of still utterly professional news judgments being made about which stories to cover, the order in which to cover them and how to do them. I am sorry that the World Service is now being folded into this giant bureaucracy, mostly for economic reasons, because I think that is a loss of a distinctive voice.

There are loads of potentially distinctive voices within the BBC of high value that would benefit our nation greatly if they were released. When I worked in ITV as an editor of a current affairs programme, *This Week*, there were 15 or 16 ITV companies and each of our current affairs programmes was independent. I ran *This Week*, Gus Macdonald or Ray Fitzwalter ran *World in Action*, John Birt ran *Weekend World*, John Willis ran *First Tuesday*, somebody else ran the *Cook Report* in Central. We were all completely independent of each other, competitive with each other and all compliant with the Broadcasting Code. Different voices, different viewpoints, different priorities, and healthy competition between them. I think that we undervalue what internal plurality can deliver in terms of broadcasting.

**Earl of Selborne:** Continuing the probing as to whether we are achieving due impartiality with the present arrangements, I believe you have said that certain drama shows, such as *The Newsroom* broadcast by BSkyB as Sky Atlantic, demonstrated the abandonment of any pretence of impartiality. Did that matter?

**Mr Elstein:** I did not like *The Newsroom*. I thought it was an extremely foolish programme and insufferable at times, but I did enjoy the fact that just as *24* on the Fox Channel could be—how should I put it—bullish in its support of military intervention around the world, so you could have things like the *West Wing* and *Newsroom* from Aaron Sorkin giving a very liberal point of view. I think within reason that is great. I look back nostalgically to the days when the *Wednesday Play* was a den of Trotskyists and we had fabulous pieces of drama from the likes of Ken Loach, Dennis Potter and Alan Bleasdale. I would love to see *Our Friends in the North* revisited. Committed drama that is open about its commitment is no threat to anyone. It is a challenge dramatically but not politically.

**Earl of Selborne:** Surely, therefore, it is not really sensible to describe this as impartiality. It may be undesirable but the Broadcasting Code is clearly being ignored in this respect.

**Mr Elstein:** You are right, and I welcome that. I think the Broadcasting Code applies primarily to news and current affairs. That is where we most need due impartiality. Outspokenness in satire shows, in drama, if it is well done—Fox, owned by the aforementioned Mr Murdoch, runs a show called *The Simpsons*. One of the characters in *The Simpsons* is a very recognisable newspaper tycoon of right-wing views and rather silly
behaviour. Nobody doubts who that person really is. I suspect Mr Murdoch just shrugs his shoulders and says, “As long as The Simpsons is making me money I am not going to care too much about it. Good luck to them”. For me, drama is in a different category. I want dramatists to be free to speak. I was very keen on Ian Curteis’ The Falklands Play. It was partial but it was excellent in terms of its dramatic drive. An awful lot of people thought the BBC should never have put it out and certainly the BBC for a long time did not put it out. I do not think that is right. We need bolder voices in drama.

Q256 Lord Dubs: I am very interested in what you have been saying about the BBC and you have partly answered the question I was going to ask you. At one point you said that John Birt determined the particular type of coverage and you advocated a splitting of the BBC so that that could not happen again, but then you also said that Tony Hall would still be in charge. Surely to split the BBC in the way you suggest would require having not one director-general but a separate one for each part?

Mr Elstein: I think it is how you would manage devolution. I would welcome a Scottish broadcasting council funded out of the licence fee and with its own independent place on the Sky EPG, a voice of its own, but failing that, stronger devolution back down to the excellent journalists who work in Scotland would be great. The other day I was listening to Radio 4 and a Welsh journalist from the BBC was being interviewed about the latest scandal in the Welsh health service arena. It felt like imperial Britain reaching out to the unwashed provinces for a little bit of extra information to supplement what we need. I am a strong believer in the ability of an organisation to incorporate multiple points of view comfortably so long as they are all compliant with the broadcasting rules.

Lord Dubs: But if you were DG surely you could ensure that that would happen without splitting the BBC into separate areas?

Mr Elstein: I do not want to split the BBC. I want to devolve editorial responsibility in all those journalistic areas. I am not advocating chopping the BBC up.

Lord Dubs: But if you were DG you could ensure such devolution without splitting the BBC?

Mr Elstein: Yes, I think so.

Lord Dubs: So it is a matter of the policy from the centre rather than the structure of the BBC?

Mr Elstein: It is a matter of will, I agree with you.

Lord Dubs: Just one other thing. Some years ago you were the chair of a committee looking at the BBC and you advocated—I think I am right; it is a long time ago now—that the BBC should move to a subscription service. Is that still your view?

Mr Elstein: Absolutely. I think the BBC would do very well from that. Funnily enough, there was a rather interesting article in the Sunday Times just this weekend explaining that the BBC’s drama output was so lacklustre because the licence fee forced it to just put out mostly soap whereas in the US market-driven economics were producing outstanding drama across a whole range of different outputs. I think subscription funding would be good for the BBC. I think it would be good for consumers; it would give us more choice. The BBC could offer a much greater variety of content, it could have a menu of services, and I think it would prosper mightily. I gather than John Birt and Greg Dyke share my view in that respect. Although the licence fee has worked extremely well over many decades, it has the
David Elstein – oral evidence (QQ 248-260)

unfortunate effect of forcing the BBC into too much so-so output and too little excellent output.

**Lord Dubs:** I do not quite follow that because in relation to what you said earlier you were saying that it depends a bit on how much plurality is encouraged within the BBC. Why should the licence fee affect that unless it is the interpretation of the DG and the people that are influencing overall policy?

**Mr Elstein:** No, it is a very different issue. When you are funded by the licence fee you are very conscious of your average audience and your average reach because nearly everybody pays the licence fee. Therefore, you feel obliged to provide average programming, so you do loads of *EastEnders*, loads of *Casualty*, loads of *Holby City*. In the US it would be unimaginable that such programmes would make their way into peak time because they are committed to a much higher quality of drama production. That is the price we pay for having a flat rate way of paying for the BBC, which at one point was probably pretty good for everyone but in my view is actually counterproductive these days.

**Lord Dubs:** Have there not been times in the past when notwithstanding the licence fee the BBC did produce cutting edge drama of the sort that you referred to earlier?

**Mr Elstein:** 30 years ago, 20 years ago.

**Lord Dubs:** But there was still a licence fee then.

**Mr Elstein:** Yes, but that was before we discovered that subscription was a more effective way of driving revenue. If you look at the US scene, HBO, which is funded entirely by subscription—it does not even take advertising—produces only a couple of hundred hours of content each year, compared with the BBC’s 5,000, but it spends $2 million to $5 million an hour on that content. It is all of very high quality and there are 18 different US broadcasters doing that. That is because it has discovered that the way you prosper is by not trying to be all things for all people. You offer particular things to particular people who are so keen to have it that they will put up their subscription money for it. By the way, HBO costs about $10 a month, which is a lot less than the licence fee. But it is not part of my plurality views and I do not want to take up too much of the Committee’s time.

**The Chairman:** I was going to say that this is for the BBC Charter inquiry.

**Mr Elstein:** Absolutely.

Q257 **Lord Skelmersdale:** You have outlined this morning a whole lot of problems, as you see them, in the area of plurality rules and public interest test regimes. Indeed, a man from Mars might describe your evidence now as essentially negative. Could I ask you to be a little more positive and wave a magic wand and make you Secretary of State? What would you do in these areas?

**Mr Elstein:** I would not change much, to be perfectly honest. Absolutely we have to have competition law—EU and UK—and absolutely we should have sector-specific cross-media ownership rules, although the ones we have are increasingly out of date. I still think we need the ability for the Secretary of State to call for a public interest test—and by the way I do not demur from your Lordships’ view that maybe there should be a co-signatory that Ofcom might also initiate the public interest test—and I still think that the Secretary of State needs to be the backstop because in the final analysis even competition authorities get things wrong. We know Ofcom has got three major things wrong in three different key issues.

I would like to have a much more rapid process for competition investigations. It is absolutely extraordinary that they could drag out to three years the forcing out of Sky from
ITV. The Competition Appeal Tribunal took nearly two years to adjudicate on the original Ofcom ruling on Sky wholesale pricing of its sports channels. Ironically, despite scathingly dismissing Ofcom’s grounds for introducing those controls in a fashion that I have never seen any regulator dealt with, the controls stayed in place because it suited everyone. Nobody has overturned the regime and in fact Ofcom has just updated that regime.

But I do think that the first thing we need to get right is the metrics and that needs the Secretary of State to say to Ofcom, “Get on with it. You have given us a road map. In your May 2012 document you said, ‘These are the things that we need to examine’. Do it.” Everyone is willing to participate, BARB, RAJAR, all the agencies that deal with audience analysis, all the advertising agencies, all the broadcasters, plenty of academics are happy to participate, and then at least we will have a template against which we can judge any concerns that might arise. The concerns themselves will differ from time to time and you cannot always anticipate them. Our cross-media rules at the moment talk about a 20% share of newspaper sales, national newspapers only. When that rule was brought in it was 20% of 16 million. Today it is 20% of 8 million. So what was our concern, the 20% or the actual number? Was it 3.2 million or 1.6 million? That is the problem when you have fixed caps. The market changes on you and you have to revisit what is it that causes us concern. If newspaper circulation was 1 million, would 20% of that 1 million still be grounds for having a specific cross-media ownership rule dealing with national newspapers, or do we mean readership?

I do think there is plenty of opportunity for work to be done and once you have done the work then you can revisit the sector-specific rules as well as the public interest test, and maybe one day Parliament will get round to defining plurality and sufficiency as well. I live in hope.

Q258  Baroness Healy of Primrose Hill: You have argued really strongly against the use of structural caps, which I take on board as part of media plurality policy, but how do you respond to those who argue that thresholds, if not limits, have a role to play, not necessarily as caps but as triggers for review or consideration of undertakings? Do the same arguments apply? Is it influence that we need to measure in this system rather than readership and so on? We would like more ideas from you in terms of how we can set about understanding.

Mr Elstein: My working assumption is that influence is what we care about, that ownership as such is a competition issue not a plurality issue, and influence is very hard to measure. Who is to say which have more influence, the 75% of national newspapers who are hostile to the European Union or the BBC that for many decades was rather positive about the European Union? Given that 60% of all consumption is the BBC and 8% is newspapers, I am not really sure. Ofcom did a rather interesting piece of work on sourcing of news. There was an argument that was being advanced that, yes, the BBC is responsible for a huge amount of consumption but every morning they will give you the newspaper headlines so it is the newspapers who drive the BBC agenda. Ofcom found that is absolutely not true. 54% of all news stories emanated from the BBC itself. In national newspapers it was tiny numbers. I think the highest was the Sun with 3%.

So an influence can be irrespective of size. The Guardian is a hugely influential paper. Without the Guardian’s exposure of phone hacking we would not have had Leveson, we would have had BSkyB wholly owned by News Corp. The FT is a very influential newspaper with relatively trivial sales. All that we can do is find proxies for influence because things will change over a matter of time. The Times emerged as a major leader over teenager sex
abuse, with Andrew Norfolk’s articles. Is the *Times* therefore more influential than some other paper? My view is that we should look for the closest proxy to influence that we think we can find and consumption, which is in my view readership of newspapers rather than purchase of newspapers, is the nearest that we can get. I am just one of scores of potential so-called experts who might opine on this but that is what we are trying to get to, in my view.

**Q259 The Chairman:** We are drawing towards the end, although we have overspent the time you have kindly given us. I am just trying to go back over what you have said. It seems to me that one interpretation of what you have said to us, based on your analysis of the way you think the metrics might accurately present influence, is that frankly the only one that matters is the BBC and you could let the rest go hang. Is that true or not?

**Mr Elstein:** If there is a problem at the moment that would be it. Maybe it is not a problem, and in my view it is a relatively easy to deal with problem anyway, but that appears to be Ofcom’s view as well as my view. We need a new set of metrics but if you are looking at immediate issues that is the only one that presents itself.

**The Chairman:** Do you think it would matter if a hypothetical newspaper baron owned every national daily newspaper in this country—

**Mr Elstein:** Of course, absolutely.

**The Chairman:** —even though they are such a small percentage of the whole because, like the *FT* and the *Guardian*, the influence may be completely disproportionate to anything that is measured by the metrics?

**Mr Elstein:** In my original analysis of the Ofcom report on the BSkyB process, I took its logic and projected it and said that if News Corp sold down its interest in News International to 39.1% but still retained management control, as it does with Sky, and used the proceeds to buy 39.1% of the *Mail*, the *Telegraph*, Trinity Mirror, the *Guardian*, the *FT* and the *Independent* and got editorial control of all of those, according to Ofcom nothing would have changed. There would be exactly the same number of owners of newspapers and at that point News Corp would not even be one of them. So we have potential absurdity in the way we deal with ownership at the moment. We have to have a much clearer idea of what is involved.

As it happens, the Competition Commission would prevent Murdoch buying anything more. He was allowed to buy *Today* for a few years, which then closed. At 35%, competition rules would rule out anything more. Whether he should be forced to divest anything, he has had that 35% for 25 to 30 years. Unless we believe that owning that 35% is what led to the criminality at the *News of the World* and phone hacking and so on, when we have all the evidence of Operation Motorman that it cannot possibly have been, I am not sure what more we would need to do in specific media plurality rules because competition rules deal with that.

**The Chairman:** The other thing is that we tend to look at these things that you set caps and you cannot go beyond them. Might it be a more sophisticated way to look at this kind of thing by saying there are certain thresholds above which people have to justify to the regulator the positive reasons why it is a good thing for them to be allowed to do something and you flip the process to some extent on its head?

**Mr Elstein:** The proposal of the Campaign for Press and Broadcasting Freedom is that there should be a public interest test applied if you pass a cap. The problem with that is what do
you do if two fingers are held up? Do you close the Times; do you force the Sunday Times to stop selling in Scotland; do you raise the price of the Sun? You have to have sanctions if you are going to have caps that are meant to be enforced, so you have to think through what the consequences of—

The Chairman: If you have some system that is catalysed by a transaction and you have a legal enforceable regulatory regime that says you cannot do it, you can always use the law of the land if you so want. I am not saying I am going down this road myself. If you can just simply say, “You cannot do it”, it is an injunction.

Mr Elstein: But the problem with that, my Lord Chairman, is how do you deal with organic growth? I take you back to the Royal Commission on the Press from 1947-49 with its dictum that no one should be denied the newspaper of their choice because somebody else wants to buy it too. If we are going to penalise success we should penalise it by saying, “Thus far and no further” in terms of acquisitions and transactions. But if a newspaper closes and another one thereafter grows, are we really going to apply penalties? Is there a public interest test for the Times when News UK is at 35%?

The Chairman: I think you have slightly misunderstood me. I was not talking about organic growth here, I was talking about transactions—

Mr Elstein: We already have the right in transactions and that is absolutely correct. We must be entitled, where there is a public interest in the transaction, as we did with News Corp and Sky, to extract undertakings. I thought the undertakings were deeply damaging and counterproductive. I am delighted they have been abandoned. I think Sky News would have suffered greatly from them, but that was the consequence of the intervention that we had and the fact that News Corp completely misplayed their strategy. So be it. Fortunately it all went away. Yes, as far as transactions are concerned, we have competition rules and we have public interest rules. But organic growth is extremely difficult and I think Ofcom came to the same conclusion.

Q260 The Chairman: Is it really the case that this is very difficult and complicated in a changing world and that it is almost impossible to lay down very exact and clear rules?

Mr Elstein: Absolutely not. I completely resile from such a view.

The Chairman: I was not ascribing it to you. I was merely putting it to you.

Mr Elstein: I think it is untrue. It is not rocket science. It is a matter of bringing together informed and interested people to get the metrics right. The problem with Ofcom and BSkyB is not that they made so many mistakes—I  is what I counted—but that they were trying to do it in six weeks. They were trying to do a massive amount of work in six weeks that should take a year. Well, let us take a year. Let us get everyone around the table, examine the pros and cons and get the metrics right. Once we have got the metrics right we can go back and adjust the sector-specific cross-media ownership rules and we can look at what the public interest test should really be concerned with it if it needs to be applied. We have a good regime. It actually worked rather well last time, although in a way that got everyone terribly upset, and it needs constant revisiting. 2003 now looks like an awfully long time ago and 1980 even further ago. The 20:20:20 rule is still there from 30 years ago and maybe it should last for ever. Who I am to say not?

But there are other things that surely merit re-examination. We have expert competition people, there is the new CMA that is going to emerge, we have Ofcom and so on. We have very good, interested, independent parties who can contribute their thoughts and we have
both Houses of Parliament. There are loads of people with a real interest in the issues. We should easily get this right.

The Chairman: Thank you. Is there anything else? It sounds like a very good conclusion but—

Mr Elstein: I have overstayed my welcome.

The Chairman: No, you have not done that. You may have overstayed your time but you have not overstayed your welcome.

Mr Elstein: I am just conscious of the fact that this is a really contentious area of debate and that there are high politics involved. I am not political. I do not have any political or commercial or any other interests in life. I see myself as completely independent and that this is a problem that could be solved and it should be solved with good will.

The Chairman: Thank you very much indeed. We are very grateful.
Towards a methodology for measuring media plurality

The central objective in addressing media plurality is to ensure that no single body or person exercises an undue degree of influence over the flow of information and the formation of political opinion in the UK.

Our knowledge of how political opinions are formed or influenced is limited: however, the focus on media plurality is driven by the assumption that influence can be exercised, given sufficient opportunity to do so.

This does not necessarily entail a “tabula rasa” theory of public opinion, waiting to be formed by those who control the information flow, and who seek to influence the public’s views by choice of story, choice of angle, or explicit exhortation.

However, there is a methodology which can at least measure that opportunity to influence opinion; even if no direct evidence can be adduced showing how such control is actually deployed. What we can and should calculate is the actual consumption by UK adults of news and current affairs (the two key categories of information identified by Ofcom).

Other contributors to this debate have suggested alternative metrics: of which turnover and reach are two. The problem with turnover is that it bears no usefully measurable relationship to actual readership or viewership. Nor is turnover in itself the only widely used measure of financial strength: free cash flow and one or other definition of profit or return to shareholders are seen in the financial world as more reliable indicators. “Turnover is vanity, profits are sanity” is a well-known business saying.

Reach is an indirect measure of influence, but is more obviously a “threshold” indicator – suggesting a media operator with influence that should be measured more precisely – than a metric in its own right. Not least of the problems with reach other than in a threshold role is the difficulty of reconciling the different definitions of reach within and across different media. There are at least a dozen in television alone.

For actual consumption, however, we have a metric – “minutes per day per adult” that is well within reach. In television, we have hard figures for news and current affairs consumption. In radio, we have no comparable hard numbers, but reasonable assumptions can be made about consumption, based on known broadcast schedules of stations whose overall levels of consumption are regularly measured.

With newspapers, the traditional metric used has been circulation. However, influence – if it is exercised – is surely more connected to the readership of newspapers than to their purchase (even assuming there is a purchase price). Fortunately, the NRS has been collecting readership data for many years, and it is widely regarded, in terms of reliability, as close to the BARB data generated for television.

On-line consumption of news is clearly growing, though the evidence we have in the UK is that it is still at a relatively low level. A survey by City University in 2011 concluded that on-
line readership of the main newspapers constituted less than 5% of their total readership. This is in line with the regular reports by NRS on total readership of those titles, broken down as between hard copy and on-line use.

This document will attempt a first pass at assembling these four elements into an overall estimate of total news and current affairs consumption, and the relative degree of control or ownership by individual bodies or individuals within the overall total.

**Television news**

Thanks to BARB, Ofcom has been able to track over the years the exact amount of daily consumption of TV news, by channel and by supplier. That consumption seems to edge upward every year, but at the last point published by Ofcom in June 2012 (and relating to the year 2011), the total was 20.7 minutes, of which 74% was supplied by the BBC, 14% by ITV, 8% by Sky, 3% by Channel 4 and 2% by Five (the percentages total 101%, but that is a minor issue). That translates into actual minutes consumed daily as: BBC 15.3, ITV 2.9, Sky 1.6, Channel 4 0.6, and Five 0.4 (total 20.8 minutes rather than 20.7).

**Television current affairs**

BARB has a category of current affairs, so is able to supply daily consumption figures, but Ofcom has chosen to ignore this, despite saying in its original assessment of the News Corp for BSkyB that it would include current affairs. If we simply identify in the schedules programmes like Newsnight, Panorama, Despatches and ITV equivalents, we can arrive at a realistic figure, which I offer tentatively as 1 minute per day for the BBC, 0.2 minutes for ITV and 0.1 minutes for Channel 4.

The running totals of minutes consumed are therefore: BBC 16.3, ITV 3.1, Sky 1.6, Channel 4 0.7 and Five 0.4.

**Radio news and current affairs**

This is quite a contentious area. Ofcom has attempted various interpretations of RAJAR data, both to estimate reach and also consumption. Given that RAJAR has no separate data for news, let alone current affairs, some judgement is called for.

The basic split of audience between the BBC and commercial radio is 55:45. However, the BBC transmits considerably more news minutes than commercial radio. In two separate documents, Ofcom estimated the news minutes split at 73:27 and 62:38. However, in that context, it should be noted that in its public interest test report on the News Corp bid (which contains the 73:27 estimate), Ofcom significantly over-stated the amount of news broadcast by commercial radio.

The latest RAJAR research reports that weekly listening to the BBC is 10.4 hours on average per UK adult, compared with the commercial sector’s 8.4 hours. In daily terms, that translates to 89 minutes and 72 minutes respectively. However, the proportion of the commercial schedule devoted to news is barely 3%, whereas the BBC average is closer to 10%. That would suggest daily consumption of 2.4 minutes and 8.9 minutes respectively.
In addition, Radio 4 and Radio Five Live carry a significant volume of current affairs content. Whereas Ofcom estimates that 22% of Radio 4 output is news, my analysis of the published schedule is that over 50% of airtime is devoted to news and current affairs. Given that average daily adult consumption of Radio 4 is nearly 20 minutes, this suggests that the figure for BBC total consumption of radio news and current affairs should be enlarged by at least 5 minutes per day, to 13.9 minutes, as opposed to the commercial sector’s 2.4 minutes.

The running total is therefore BBC 30.2 minutes per day, ITV 3.1, IRN (which is responsible for news provision on commercial radio) 2.4, Sky 1.6, Channel 4 0.7 and Five 0.4.

Newspapers

There are three issues to address in terms of newspapers. First, should we only look at national newspapers? Secondly, should we be measuring circulation or readership? Thirdly, what discount factor should be applied to take account of the substantial volume of non-news content to be found in “newspapers”?

Ofcom concentrated on national newspapers. The reasoning behind this is presumably that the cross-media ownership rule for ITV only relates to nationally distributed newspapers, and that in terms of “influence”, it is the national conversation rather than local conversations that primarily concerns policy makers.

As it happens, nearly a quarter of all newspaper readership is accounted for by our excellent regional and local titles, but if we accept the “national conversation” argument, we should leave that to one side, even if it means that widely read titles such as the London Evening Standard and Metro are excluded from our calculations, despite having readerships larger than those for most of the 22 “national” titles (Metro’s is exceeded by just The Sun, The Daily Mail and their Sunday versions).

The normal method for measuring shares of the national newspaper market has been based on circulation. However, “influence” is not confined to those who buy a paper: it is surely those who read it who matter. Fortunately, NRS can provide readership data for all the national titles. This enables us to calculate share within the sector, but – more importantly – actual consumption, once we factor in two other pieces of information.

The first is the actual time spent on average each day in reading each title. NRS and City University have data on this, even if it is not readily accessible to lay people. I have made a detailed calculation of the average minutes spent with each title each day it is published, and then converted that to an average consumption per adult per day.

However, this is a raw figure, which does not account for the wide array of non-news content in almost every newspaper. Especially at weekends, newspapers package up great swathes of pre-printed features material (motoring, gardening, travel, TV guides, investment advice and so on) to amplify the normal level of horoscopes, puzzles, and problem solving – both personal and financial – that take up a large part of the paper.

In Germany, the regulator reckons that 50% of newspaper readership should be deducted from consumption calculations because of the “non-news” factor. Here, Lord Leveson was advised by Enders Analysis, a key participant in the measurement debate, that 80% might be the real figure. For this document, I have used the 50% discount, the logic for which Ofcom
acknowledged in its News Corp document, but then failed to apply, leading to a massive over-statement of the putative combined News Corp/Sky share of news consumption, and therefore of the public interest issue involved.

So the newspaper element in news consumption is a function of readership (not sales), including on-line readership as measured by NRS (which City University concluded represented less than 5% of combined hard copy and online readership in terms of time spent); of time spent by this readership, discounted by 50%; and of just the 22 national titles (20 once we treat as one the Independent and the i, and the Daily Mirror and Daily Record).

The average minutes of readership per adult per day (reduced by 50% from the gross readership minutes) are:

<table>
<thead>
<tr>
<th>Newspaper</th>
<th>Minutes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily Mail</td>
<td>2.3</td>
</tr>
<tr>
<td>The Sun</td>
<td>1.9</td>
</tr>
<tr>
<td>Daily Mirror/Record</td>
<td>1.7</td>
</tr>
<tr>
<td>Daily Telegraph</td>
<td>0.9</td>
</tr>
<tr>
<td>The Times</td>
<td>0.9</td>
</tr>
<tr>
<td>The Guardian</td>
<td>0.7</td>
</tr>
<tr>
<td>Daily Express</td>
<td>0.6</td>
</tr>
<tr>
<td>Daily Star</td>
<td>0.4</td>
</tr>
<tr>
<td>Independent/Indie</td>
<td>0.23</td>
</tr>
<tr>
<td>Financial Times</td>
<td>0.1</td>
</tr>
<tr>
<td>Mail on Sunday</td>
<td>0.5</td>
</tr>
<tr>
<td>Sun on Sunday</td>
<td>0.4</td>
</tr>
<tr>
<td>Sunday Times</td>
<td>0.34</td>
</tr>
<tr>
<td>Sunday Mirror</td>
<td>0.23</td>
</tr>
<tr>
<td>Sunday Telegraph</td>
<td>0.19</td>
</tr>
<tr>
<td>Observer</td>
<td>0.1</td>
</tr>
<tr>
<td>Sunday Express</td>
<td>0.09</td>
</tr>
<tr>
<td>The People</td>
<td>0.08</td>
</tr>
<tr>
<td>Daily Star on Sunday</td>
<td>0.07</td>
</tr>
<tr>
<td>Independent on Sunday</td>
<td>0.06</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11.79</strong></td>
</tr>
</tbody>
</table>
If we group the results by publisher, we have:

<table>
<thead>
<tr>
<th>Publisher</th>
<th>Readership</th>
</tr>
</thead>
<tbody>
<tr>
<td>News UK</td>
<td>3.54</td>
</tr>
<tr>
<td>Associated</td>
<td>2.8</td>
</tr>
<tr>
<td>Trinity Mirror</td>
<td>2.01</td>
</tr>
<tr>
<td>Northern and Shell</td>
<td>1.16</td>
</tr>
<tr>
<td>Telegraph Group</td>
<td>1.09</td>
</tr>
<tr>
<td>Guardian Media Group</td>
<td>0.8</td>
</tr>
<tr>
<td>Independent Group</td>
<td>0.29</td>
</tr>
<tr>
<td>Pearson</td>
<td>0.1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11.79</strong></td>
</tr>
</tbody>
</table>

The shares of readership for the 8 groups are 30% News UK, 23.7% Associated, 17% Trinity Mirror, 9.8% Northern and Shell, 9.2% Telegraph Group, 6.8% Guardian Media Group, 2.5% Independent Group, and 1% Pearson.

The running total so far is now BBC 30.2 minutes, News UK 3.54, ITV 3.1, Associated 2.8, IRN 2.4, Trinity Mirror 2.01, Sky1.6, Northern and Shell 1.56, Telegraph Group 1.09, Guardian Media Group 0.8, Channel 4 0.7, Independent Group 0.29 and Pearson 0.1, or just over 50 minutes in all.

**On-line readership**

This is the hardest category to quantify, not because data is lacking, but because the rate of growth in take-up of on-line news consumption is subject to a variety of estimates.

Ofcom estimates that the BBC is responsible for somewhere around 40% of online news consumption: far ahead of any competitor. For the purposes of designing metrics for UK plurality measurement, we need to exclude non-UK readership of UK news sources, but include UK readership of non-UK sources.

There is a separate issue with online data, in that it is hard to separate out from genuine readers those people landing on a site by accident, and quickly moving on to their intended target. My suggestion is to exclude from online “readership” minutes the first 30 seconds of any recorded visit to a news site included in this metric.

Given that the NRS readership data already includes online readership of the national titles, it seems reasonable to attribute just 4 minutes a day to separate online news consumption (in the US, Pew Research estimates online news readership at 13 minutes, but that includes readership of print titles). Of those 4 minutes, 2 minutes can be allocated to the BBC, and 2 minutes to “other suppliers”.
The final totals under this methodology are as follows:

<table>
<thead>
<tr>
<th></th>
<th>Minutes</th>
<th>percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>BBC</td>
<td>32.2</td>
<td>59.3</td>
</tr>
<tr>
<td>News UK</td>
<td>3.54</td>
<td>6.5</td>
</tr>
<tr>
<td>ITV</td>
<td>3.1</td>
<td>5.7</td>
</tr>
<tr>
<td>Associated</td>
<td>2.8</td>
<td>5.2</td>
</tr>
<tr>
<td>IRN</td>
<td>2.4</td>
<td>4.4</td>
</tr>
<tr>
<td>Trinity Mirror</td>
<td>2.01</td>
<td>3.7</td>
</tr>
<tr>
<td>Other online</td>
<td>2.0</td>
<td>3.7</td>
</tr>
<tr>
<td>Sky</td>
<td>1.6</td>
<td>2.9</td>
</tr>
<tr>
<td>Northern and Shell</td>
<td>1.56</td>
<td>2.9</td>
</tr>
<tr>
<td>Telegraph Group</td>
<td>1.19</td>
<td>2.2</td>
</tr>
<tr>
<td>Guardian Media Group</td>
<td>0.8</td>
<td>1.5</td>
</tr>
<tr>
<td>Channel 4</td>
<td>0.7</td>
<td>1.3</td>
</tr>
<tr>
<td>Independent Group</td>
<td>0.29</td>
<td>0.5</td>
</tr>
<tr>
<td>Pearson</td>
<td>0.1</td>
<td>0.2</td>
</tr>
<tr>
<td></td>
<td><strong>54.29</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

**Conclusions**

Perhaps the most interesting finding from this methodology is that in practice it closely resembles the “weighting by saliency” method used by Kenneth Goldstein, the Canadian expert, in his re-analysis of the news consumption data in the Ofcom report on the BSkyB transaction.

His logic was very simple: Ofcom was trying to protect the interests of UK news consumers. They consistently reported to Ofcom what their news preferences were, placing television (whose news consumption was 74% from the BBC) far clear of all other media. He therefore multiplied the Ofcom-reported share of total news consumption by the consumer-stated saliency. His figures (which I have previously supplied) came to 61% BBC, and 10% News and Sky combined. The above exercise results in 59.3% BBC and 9.4% for News and Sky combined.

Of course, the data will change at every measurement period, but if the mechanics suggested above are applied to each new release of authorised figures for readership, viewership, listenership and online news consumption, we will have a reliable and regularly self-adjusting set of metrics upon which to base media plurality policy.

**What should that policy be?**

Clearly, looking at the consumption data outside the BBC, we have a relatively healthy national newspaper scene: eight separate owners, none with as much as 7% of total news consumption, and all but one backed by hundreds of millions of pounds in shareholder assets.

The only private sector transaction that has raised public interest issues in the recent past – News Corp potentially buying all of Sky – has ceased to offer a public interest dimension now that News Corp has been split into two separately quoted entities: were the bid to be...
renewed, it would be mounted by the entertainment company, not the newspaper company from within the old News Corp.

By contrast, the share of news consumption for which the BBC is responsible is nearly ten times greater than that of its nearest rival. Indeed, at the rate that the BBC has been taking share from ITV in terms of TV news consumption, its share in that sector may well have risen further since 2011, when Ofcom reported it as 74%, given that Ofcom also reported that the BBC’s share had risen by an average of 2% a year since 2004. So the BBC’s share of total news consumption is almost certainly now over 60%.

Such a dominant share in private hands would be a serious cause for concern. Does that concern disappear because the BBC is publicly owned?

It is certainly true that the BBC is highly trusted, has very detailed governance rules, and has a long history of providing reliable and accurate information across a wide spectrum of stories and subjects. There have been occasional glitches, where important stories have been mis-reported, or not reported at all, but the most noticeable feature of those episodes has been that the BBC has typically investigated itself, and owned up to falling below its own high standards from time to time.

However, such investigations tend to take place well after complaints of imbalance have been made, and the possibility remains that the BBC’s reporting has helped shape public attitudes towards the EU and immigration for many years, perhaps contributing to policy errors and even to damage to our social fabric.

Certainly, we would be very nervous indeed of a private company or individual with a 60% share of the public’s consumption of news. One of the reasons why, in the end, the BBC’s monopoly in broadcasting was broken was that Selwyn Lloyd’s minority view within the 1949 Beveridge Report on the BBC eventually prevailed: that – however high the quality and high-minded the intentions of the incumbent – it was not safe in a democracy for so much power to be wielded by one organisation. Then, of course, television was in its infancy, and newspapers dominated the world of news consumption, but the argument held good.

Ofcom itself has now concluded – in its June 2012 report on media plurality – that its earlier view (in its BSkyB public interest report), suggesting we did not need to worry, was probably too sanguine. The absence of any reference to internal plurality in the BBC’s stated purposes has led Ofcom to ask the BBC Trust for its proposals as to how to offset that 60% share by developing more realistic means of delivering internal plurality.

What do we mean by internal plurality? The ability for a journalistic organisation to contain multiple points of editorial authority, sometimes even seemingly in conflict one with another. It is not enough, says Ofcom, for the BBC to seek to represent many viewpoints through its single editorial control mechanisms. What is needed is more devolvement of editorial decision-making: akin to the way ITV was for many decades able to house five different current affairs strands, each independent of the others, and all independent of ITN, which supplies ITV news.

Twenty years ago, the BBC moved in the opposite direction, merging news and current affairs, and requiring journalists to operate in both TV and radio, as well as on-line. More
recently, BBC World Service radio has been merged into the single operating and reporting structure.

When Nick Pollard – the news executive who was called in to report on the BBC’s handling of the Savile affair – was interviewed recently on The Media Show, he made clear that he found the BBC structure hostile to good reporting, in that it laid too little emphasis on good ideas, suffered from too much group-think and operated with internal reporting lines that were too long.

It does seem as if the potential concern over plurality points to a course of action that might both improve BBC news output, and also create the separate levels of editorial decision-making that Ofcom appears to require.

This can be achieved without physically or legally dividing up the BBC. All it needs is for the constituent parts of the news and current affairs division to be allowed the space to breathe, deciding their own news agendas and news priorities.

So BBC current affairs and BBC radio should both have devolved responsibility, answerable only by dotted lines to a BBC executive board member – perhaps a re-invented Deputy Director-General – who takes front-line responsibility for all news and current affairs output.

In addition, BBC Scotland, BBC Wales and BBC Northern Ireland should be allowed not just editorial control within their own geographic boundaries, but access to the network for the relevant parts of their output. Likewise, BBC World Service should be restored to editorial independence, and it might also be possible to allow the BBC News Channel editorial independence.

Thus, a dozen or points of editorial control could be introduced into the BBC: BBC News (for BBC1 and BBC2); BBC News Channel; Radio News (with possible further differentiation between Radio 4, Radio 5 Live and Radio 2); BBC World Service radio; BBC TV network current affairs; BBC Radio network current affairs; and news and current affairs departments in each of Scotland, Wales and Northern Ireland. The distinctive voices of the BBC’s many local radio stations would add to the delivery of internal editorial plurality.

As it happens, BBC News for BBC1 and BBC2 would still be by far the biggest source of news for news consumers, accounting for nearly 40% of their supply: but that is a significant step back from the current 60% share that the combined BBC output commands, with all the network output under the direct control of a single executive.

There will no doubt still be people who regard the News UK 30% share of the steadily declining national newspaper readership as an issue that needs dealing with. Indeed, there are those who have in their sights the 23.7% share of Associated. What they have in mind is never disclosed.

Do they envisage newsprint rationing, or a ban on sales in parts of the UK so as to force down circulation? But what if consumers respond by simply substituting online readership for hard copy readership?
Perhaps forced divestment is the answer – yet the Mail on Sunday in other hands might well see a collapse of its sales and readership, so driving back over the 20% mark both the Daily Mail and The Sun. A sale of The Times seems improbable, given its continuing losses: so is closure the deeply ironic answer to this threat to media plurality?

The one great advantage of a consumption-based metric is that it would force those who remain obsessed with Murdoch’s supposed influence and Dacre’s perceived malevolence to explain why these two operators – with a combined 11% share of the news consumption market – should be the focus of attention, when their shares are actually declining, in contrast to the BBC, whose 60% share is rising inexorably.

That said, the immediate concern of this paper is not to anticipate what policy measures might flow from an agreed set of metrics, but to support Ofcom’s role in generating those metrics over the coming months. There is nothing better for clearing the head of pre-conceived notions than a solid factual base agreed by all parties to the debate: broadcasters, publishers, data experts, commentators and regulators. Let the process begin.

21 August 2013
Enders Analysis – written evidence

Media ownership rules

This paper argues for a cap on the share of the total revenues of the UK’s media industries that can be held by any one company. The purpose of this change is to ensure that plurality – the diversity and range of suppliers of media to UK citizens – is maintained at a high level.

We argue that focusing on the plurality of providers of news and current affairs is not sufficient to ensure true diversity. Any sufficiently large company, whether or not it participates in the provision of news, can strangle the vibrancy and dynamism of the UK’s creative industries which are so important to future employment and exports. A cap on the percentage share of the media market will protect against any one company having too much control.

Media ownership: the background

The UK and many other countries have laws that control media ownership. The purpose of this legislation is principally to maintain a minimum amount of plurality.\(^{179}\) The word ‘plurality’ has never been adequately defined in UK legislation but research carried out for us has proposed that it means ‘a large number or quantity or profusion’.\(^ {180}\) In putting rules in place to maintain diversity of ownership of media, national parliaments have wanted to ensure that mass media are controlled by a large number of different people and businesses. Legislators have wanted to maintain plurality of media because it ‘protects the citizen and democratic institutions from limitations on the freedom of expression and because it helps maintain cultural vitality’.\(^ {181}\)

The Bill that became the 2003 Communications Act proposed to loosen media ownership regulations and some legislators were concerned that the change would eventually cause a deterioration in the degree of plurality in UK media. The parliamentary Joint Committee, chaired by Lord Puttnam, that scrutinized the draft legislation therefore proposed a number of measures to help buttress existing levels of diversity of media ownership.

The Committee was successful in inserting a clause into the Act that gave the responsible Secretary of State (originally of Business, now of Culture) the right to order an inquiry into whether individual takeovers might result in an unacceptable diminution of plurality. The Secretary of State is entitled to refer any proposed merger to Ofcom for an investigation, followed if necessary by a full scale inquiry by the Competition Commission. At the end of this process, he or she is entitled to block the combination on the grounds that the remaining plurality will be insufficient.

Secretaries of State have used the right to order an inquiry on two occasions. First, the government asked Ofcom to investigate the possible threat to plurality arising from the

---

\(^{179}\) See, for example, Ofcom’s *Media Ownership Rules review*, November 2009

\(^{180}\) Concluding paragraph of note by Professor Charlotte Brewer, University of Oxford, submitted by Enders Analysis to the Ofcom review of the proposed takeover of BSkyB by News Corporation, December 2010

\(^{181}\) *Consultation on Media Ownership Rules*, DCMS, November 2001
purchase of ITV shares by BSkyB in late 2006. In 2010, Vince Cable, the Secretary of State for Business, ordered an inquiry into whether News Corporation’s proposed bid for BSkyB would reduce plurality to an insufficient level.

**The current exclusive focus on news provision**

In recent years, British institutions have tended to assume that plurality very largely refers to the diversity and choice of news media, not the entire mass communications industry. Parliamentarians, Ofcom and the Competition Commission have focused their attention on whether the provision of factual reporting, comment and opinion through the press, radio and TV are becoming concentrated in too few hands. For example, the Competition Commission’s long plurality review of the 2006 purchase of ITV shares by BSkyB examined little except news provision. Ofcom’s 2010 investigation of the proposed News Corporation bid for BSkyB focused closely on news because it ‘is the most important content type’.\(^{182}\)

**The need to widen the meaning of plurality**

The diversity of news providers is an important part of plurality. But it is only a part. Media ownership legislation was originally intended to make sure that our communications industries retained vitality and choice by ensuring that no one company could ever gain too large a share of society’s expenditure on mass media.

Just ten years ago, a DCMS consultation paper said that ‘plurality maintains our cultural vitality. Different media companies produce different styles of programming and publishing, which each have a different look and feel to them. A plurality of approaches adds to the breadth and richness of our cultural experience’.\(^{183}\)

Although the focus for the last few years has been entirely on the sources of news, those working on the last Communications Bill during 2002 saw clearly that plurality was a much wider concept. The Joint Committee on the draft Bill said that ‘All decisions on media ownership controls … (reflect) … a balance between plurality and cultural considerations, on the one hand and economic efficiency, on the other.’

The UK’s distinctive, fast-changing culture and the important industries that support it depend on creative people being able to find a route to their public. A wide spread of ownership means that one set of dominant ideas, or the interests of a small group of media proprietors, cannot direct or control the evolution of national culture or of public opinion. Britain has perhaps the most innovative and path-breaking cultural industries in the world, partly due to the plurality of our mass media.

The media industries act as the gatekeepers between the creative professions and citizens. We suggest that the core purpose of plurality obligations is to ensure that no gatekeeper can ever exert too much power. Since such power is generally exerted through financial dominance, it may make sense to restrict the percentage of the flow of money controlled by a single company.

\(^{182}\) Ofcom Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation, December 2010

\(^{183}\) Consultation on media ownership rules, DCMS, November 2001
A company or individual with very large financial firepower could easily control output in a certain media – through paying more for popular journalists, scoops, successful TV shows or the rights to televise popular sports such as Formula 1 motor racing. One consequence would be that this company would probably gain viewers and revenues, creating a greater concentration of media power that would force less successful players out of the market.

The unrestrained operation of the free market - which always tends to drive out all but the most financially successful companies - and the maintenance of plurality and cultural vitality will sometimes be in conflict. The UK needs ownership legislation that ensures that no one company can dominate the media industries. Competition law is not enough to maintain vibrant and culturally diverse mass media.

Patterns of media ownership regulation around the world

Most developed countries impose controls on the ownership of the media. The regulations fall into three groups: restrictions on foreign ownership, limitations on the share of one medium and controls over the percentage of multiple media held by one company.

Restrictions on foreign ownership

Many large countries do not allow foreign proprietors to control enterprises in the TV, radio or press industries. Smaller countries, usually eager to attract investment and unsure of the commercial viability of their national media companies, tend to allow foreign holdings. In the debates on the 2003 Communications Act, which swept away foreign ownership restrictions on TV, parliamentarians were concerned that US companies would see ownership of TV companies as a route to market for American programmes. The health of the national TV production industry might be affected, they thought, by the influence of a media gatekeeper able to influence the source of programming.

This argument was rejected by Parliament and the UK has no foreign ownership restrictions unlike, for example, France, the US and Canada. Canada’s rules exist to ‘safeguard, enrich and strengthen the cultural, political social and economic fabric’ of the country. Australia has relaxed restrictions but retained the right to veto transactions carried out by non-nationals. Many other countries have also moved to reduce limits on foreign ownership.

Limitations on the share held of one medium

Competition law, which seeks to ensure that one company does not exert economic control in an industry, is increasingly used around the world as the means to ensure plurality inside individual media such as TV or newspapers. However, many countries also retain caps on the maximum share that any one entity can own of a broadcast medium, either across the country as a whole or in any local area. The assumption in many countries is that competition law and practice – which often accepts that a market with only three participants is sufficiently competitive to ensure that no company dominates – does not ensure proper plurality in the sense we have identified of a multiplicity or profusion of providers.

---

184 Broadcasting Act, Canada, 1991
Enders Analysis – written evidence

The US restricts the number of TV and radio stations an entity can control in one geographic market. Spain forbids local or national dominance of radio while France insists that no one company can control more than half of the voting rights of a company that holds a satellite broadcasting licence. TV licence holders in Germany cannot hold more than 30% of viewing, or less if the broadcaster has large-scale interests in other media.

Cross media controls

Many countries try to ensure that a single company does not hold too powerful a position across the media industries. Competition law, which tends to see TV, radio, press and internet as in separate economic markets, and therefore not affecting each other in any way, struggles to deal with the issues created when single companies own large stakes in several different media. The assault on plurality that may arise when one firm builds a large share in two or more content distribution industries needs to be addressed though clear rules on cross media ownership. As media converge, the need to control total ownership, not just the market shares in one medium or another, becomes more and more obvious.\(^\text{185}\)

Some jurisdictions have therefore put in place rules that seek to protect diversity. Australia, where News Corporation controls a very large fraction of all newspaper sales, insists on metropolitan areas having five different media ‘voices’. In Germany, a plurality regulator examines proposed mergers to check that companies with large market shares in one industry cannot also become powerful in another market. France restricts national broadcasting licences to those companies that control less than 20% of the national daily press.

Enders proposal

Our suggestion, based on the experience in other jurisdictions, is that the most effective way of ensuring plurality is to introduce a cap on the share of the revenues of the total media market controlled by any company. The definition of the market might include advertising and subscription revenues, ticket sales, newsstand payments and physical media such as DVDs. A measure such as this could be implemented quickly and simply in the UK.

The advantages of imposing a cap on the share of total media industry revenues are as follows:

- A cap of, say, 15% would ensure that no one company could completely dominate the UK media industry. At least seven companies will always be participants
- A company that is highly successful in one market will be restricted from buying a dominant stake in another. This both maintains plurality and ensures that the acquirer will not be able to use the profits of one industry to act as a predator in another, driving out weaker competitors
- No one company would dominate UK culture
- As media converge, a 15% cap on the share of the revenues of the total industry would be a better – and much clearer – regulatory intervention than other forms of control

\(^{185}\) DCMS Secretary of State Jeremy Hunt made this point in his speech to the Royal Television Society on 14th September 2011.
Enders Analysis – written evidence

- Unlike rules covering, say, shares of audience or shares of news consumption, the use of a percentage cap on revenue is a good way of controlling the total influence of a single company over customers, suppliers, regulators, governments and other institutions.

A crucial initial task is to define what we mean by the media market. If our proposal is to put a rule in place that says that no one company or proprietor can control more than 15% of the revenues of the media market, we need to lay out a clear definition of what is included in this market. It is obvious that newspapers are media – they convey information and entertainment from a writer to a reader. But is Facebook? A phone directory? A video game?

We suggest the following definition:

An organisation (or individual) is in the UK media market if it produces or selects audio, visual or text-based content that is conveyed in physical, analogue or digital format to an audience of multiple consumers not present at the moment of initial creation of that material and who are not consuming the content principally for professional or business reasons. To be included in the market a company (or individual) must produce or select content that: (1) a reasonable person would consider to be targeted at the UK public; and (2) does not consist solely of advertising.

This definition excludes:

- Revenues from the live performances of music, exhibitions of art or ticket sales to football matches because there is no conveyance of the content to a remote audience. (But the revenue from selling cinema tickets to, say, a live performance from Covent Garden is media industry revenue.)
- Commissions or agency fees (such as advertising agency income or wholesaler margins in the newspaper trade) that arise from the performance of a service to media companies. As we define it, media industry revenue only includes the money actually accruing to the media company.
- Revenue that is derived from providing a communications pipeline of some form, such as a telecommunications provider offering broadband provision.

The definition includes:

- The revenue of companies that only have a limited role in producing new content. Most importantly, we see the revenues of Facebook and Google as being inside the media industry because these companies convey material to remote audiences. They select content of relevance to particular individuals and this is what makes their advertising slots valuable to advertisers.
- Both advertising, subscription and ‘pay-per-view’ revenues.
- Content that is owned by a non-UK company and provided from a non-UK physical location but which is intended for a UK audience.

How might a cap operate in the UK?

We believe that our definition means that the list of media inside the total market includes...
The attached table A shows that the total current revenue for this market was about £31.8 billion in 2010.

The attached table B lists our estimates of market share for the main participants in the market. The BBC is the largest provider with about a share of about 12%. News Corporation is the second biggest player at about 11% of the current total. (We have included a 39% share of BSkyB’s revenue in this calculation because News Corporation has this size of stake in the company.) The rest of BSkyB is next, with 9%, and then ITV with 5%. Google also has about 5%.

If News Corporation were assigned the whole of BSkyB in this calculation, on the basis that it has substantial say in the running of the company, it would have a market share of about 20% in 2010. Thus a combination of BSkyB and News Corporation would breach the proposed cap as, for example, would a merger of Virgin and BSkyB or News Corporation and ITV.

Our estimates of the figures for 2015 are provided in Tables C and D.

Administering the regulation would not be complex. Each year Ofcom would produce an estimate of the total size of the market. It carries out very similar tasks already. It would calculate the shares of the major participants and publish the information. If a company breached the cap it would be obliged to sell a sufficient portion of its activities to bring it inside the limit within six months.

All transactions in the media industry would be assessed by Ofcom and the OFT to determine whether they would result in a breach of the cap. If so, they would be blocked. There will be no need to carry out ‘public interest’ investigations although mergers and takeovers will still be subject to the normal competition policy tests.

Market share caps, such as the one we propose here, are arbitrary. But they do provide two substantial advantages.

- They are easy to administer
They provide clarity and certainty to industry participants. Every company will know with accuracy where it stands from year to year. Acquisitions will not therefore be subject to any regulatory uncertainty.

<table>
<thead>
<tr>
<th>Table A: U.K. media market 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>National newspapers</td>
</tr>
<tr>
<td>Regional newspapers</td>
</tr>
<tr>
<td>Consumer magazines</td>
</tr>
<tr>
<td>Television</td>
</tr>
<tr>
<td>Books</td>
</tr>
<tr>
<td>Music</td>
</tr>
<tr>
<td>Cinema</td>
</tr>
<tr>
<td>Video/DVD</td>
</tr>
<tr>
<td>Internet (print content)</td>
</tr>
<tr>
<td>Internet (advertising)</td>
</tr>
<tr>
<td>Radio</td>
</tr>
<tr>
<td>Video games</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

*Number in brackets assumes 100% BSkyB ownership

<table>
<thead>
<tr>
<th>Table B: Main participants 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>---------------------------------</td>
</tr>
<tr>
<td>BSkyB</td>
</tr>
<tr>
<td>News International</td>
</tr>
<tr>
<td>Other News Corp</td>
</tr>
<tr>
<td><strong>Total News Corp 39% BSkyB</strong></td>
</tr>
<tr>
<td><strong>Total News Corp 100% BSkyB</strong></td>
</tr>
<tr>
<td>BBC</td>
</tr>
<tr>
<td>ITV</td>
</tr>
<tr>
<td>Google</td>
</tr>
<tr>
<td>DMGT</td>
</tr>
<tr>
<td>C4</td>
</tr>
<tr>
<td>Virgin Media</td>
</tr>
<tr>
<td>Vivendi</td>
</tr>
<tr>
<td>Trinity Mirror</td>
</tr>
</tbody>
</table>
### Table C: UK media market 2015

<table>
<thead>
<tr>
<th></th>
<th>Total revenues (£bn)</th>
<th>News Corp revenues (£bn)*</th>
<th>News Corp share (%)*</th>
</tr>
</thead>
<tbody>
<tr>
<td>National newspapers</td>
<td>2.1</td>
<td>0.7</td>
<td>34</td>
</tr>
<tr>
<td>Regional newspapers</td>
<td>1.4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Consumer magazines</td>
<td>1.1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Television</td>
<td>13.2</td>
<td>2.2 (5.5)</td>
<td>16 (42)</td>
</tr>
<tr>
<td>Books</td>
<td>1.4</td>
<td>0.1</td>
<td>7</td>
</tr>
<tr>
<td>Music</td>
<td>1.0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Cinema</td>
<td>1.3</td>
<td>0.2</td>
<td>13</td>
</tr>
<tr>
<td>Video/DVD</td>
<td>2.1</td>
<td>0.3</td>
<td>12</td>
</tr>
<tr>
<td>Internet (print content)</td>
<td>0.7</td>
<td>0.01</td>
<td>4</td>
</tr>
<tr>
<td>Internet (advertising)</td>
<td>6.7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Radio</td>
<td>1.1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Video games</td>
<td>2.7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>34.0</strong></td>
<td><strong>3.4 (6.8)</strong></td>
<td><strong>10 (20)</strong></td>
</tr>
</tbody>
</table>

*Number in brackets assumes 100% BSkyB ownership

### Table D: Main participants 2015

<table>
<thead>
<tr>
<th></th>
<th>Total revenues (£bn)</th>
<th>Share of total media market (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSkyB</td>
<td>5.5</td>
<td>16</td>
</tr>
<tr>
<td>News International</td>
<td>0.7</td>
<td>2</td>
</tr>
<tr>
<td>Other News Corp</td>
<td>0.5</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total News Corp 39% BSkyB</strong></td>
<td><strong>3.4</strong></td>
<td><strong>10</strong></td>
</tr>
<tr>
<td><strong>Total News Corp 100% BSkyB</strong></td>
<td><strong>6.8</strong></td>
<td><strong>20</strong></td>
</tr>
<tr>
<td>BBC</td>
<td>3.4</td>
<td>10</td>
</tr>
<tr>
<td>Google</td>
<td>3.0</td>
<td>9</td>
</tr>
<tr>
<td>ITV</td>
<td>2.0</td>
<td>6</td>
</tr>
<tr>
<td>Virgin Media</td>
<td>1.0</td>
<td>3</td>
</tr>
<tr>
<td>C4</td>
<td>1.0</td>
<td>3</td>
</tr>
<tr>
<td>DMGT</td>
<td>0.8</td>
<td>3</td>
</tr>
<tr>
<td>Vivendi</td>
<td>0.7</td>
<td>2</td>
</tr>
<tr>
<td>Trinity Mirror</td>
<td>0.5</td>
<td>1</td>
</tr>
</tbody>
</table>

May 2013
Enders Analysis and Campaign for Press and Broadcasting Freedom – oral evidence (QQ 108-125)

Enders Analysis and Campaign for Press and Broadcasting Freedom – oral evidence (QQ 108-125)

Transcript to be found under Campaign for Press and Broadcasting Freedom
European Initiative for Media Pluralism – written evidence

1.0 Background Information

1.1 The European Initiative for Media Pluralism (EIMP) was officially launched in Brussels in February 2013, and the UK launch took place in the House of Lords on 21 March 2013. A European Citizens’ Initiative (ECI) recognised by the European Commission needs to collect one million signatures from at least seven out of the 27 member states to succeed. When the EIMP was launched it had the support of over 100 organisations in nine member states (the UK, Italy, Hungary, France, Belgium, Portugal, the Netherlands, Romania and Bulgaria) but support has grown since then in other counties, including Spain and Ireland, and more organisations have joined from the original nine member states.

1.2 The EIMP is the result of over three years’ work which began when European Alternatives (http://www.euroalter.com) launched a campaign in 2010 to highlight the issue of media pluralism through its European network. This coincided with the bid in June 2010 by News Corporation to take full control of the UK satellite broadcaster BSkyB. Indeed the plan, codenamed Project Rubicon by James Murdoch, had a clear strategy: first to get approval from the EU Competition Commission and then remind David Cameron of the support the News International titles had given him in the 2010 general election to push the takeover through.(1) Once cleared James Murdoch planned to integrate News Corporation’s European operations, including Sky Italia and Sky Deutschland. This case made me realise the importance of clear and coherent EU-wide rules to protect media pluralism and the independence of the media, and I have actively supported the work to launch the EIMP since then.

1.3 The EIMP calls for:

Effective legislation to avoid concentration of ownership in the media and advertisement sectors;

Guaranteed independence of media supervisory bodies from political power and influence;

Definition of conflict of interests to avoid media proprietors occupying high political office;
Clearer European monitoring systems to check up regularly on the health and independence of the media in member states.

1.4 The EIMP does not in any way want to regulate media content or journalists. We are very clear that the scope of the EIMP proposals do not include editorial content which will be completely independent from legislation. Indeed the EIMP would provide a framework which strengthens and protects media independence. It is an ambitious and inspiring project to develop a clear, democratic framework for the media across the European Union.

2.0 Scope of Evidence

2.1 I am a National Council member of the Campaign for Press and Broadcasting Freedom (CPBF) and support the analysis and proposals submitted to the inquiry as evidence by the CPBF (www.cpbf.org.uk). In particular one section of the CPBF evidence, paras 4-10, on
What should the scope of media plurality policy be?, is important for its emphasis on the view that ‘Media pluralism is not restricted to news but encompasses broader forms of cultural expression and communication.’ (para 9)

2.2 In this submission I want to focus mainly on ‘to what extent should plurality be seen in a wider EU context?’ but also firstly to raise some specific issues about media plurality and news reporting of the European Union in UK media.

3.0 UK Media and Europe

3.1 Four newspaper groups – Rupert Murdoch’s News Corporation, the Barclay brothers’ Telegraph group, Lord Rothermere’s Daily Mail and General Trust, and Richard Desmond’s Northern and Shell - have a consistently hostile editorial stance towards the European Union (EU) and carry caricatured reporting of its activities. These four groups have 75% of the market share of UK national newspapers (see below). This inevitably has profound democratic implications in the way a distorted public understanding of Europe is created.

<table>
<thead>
<tr>
<th>Title/Company</th>
<th>1997</th>
<th>2001</th>
<th>2002</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>News International</td>
<td>34.4</td>
<td>31.8</td>
<td>32.2</td>
<td>34.8</td>
<td>33.8</td>
</tr>
<tr>
<td>Trinity Mirror</td>
<td>23.9</td>
<td>21.0</td>
<td>20.2</td>
<td>15.6</td>
<td>16.2</td>
</tr>
<tr>
<td>Northern &amp; Shell (formerly United Newspapers)</td>
<td>14.3</td>
<td>12.5</td>
<td>13.8</td>
<td>14.9</td>
<td>13.5</td>
</tr>
<tr>
<td>Daily Mail &amp; General Trust</td>
<td>13.6</td>
<td>18.7</td>
<td>18.5</td>
<td>21.2</td>
<td>19.9</td>
</tr>
<tr>
<td>Telegraph Group</td>
<td>7.7</td>
<td>7.7</td>
<td>7.3</td>
<td>7.4</td>
<td>7.3</td>
</tr>
<tr>
<td>Pearson</td>
<td>1.3</td>
<td>3.8</td>
<td>3.5</td>
<td>4.0</td>
<td>4.1</td>
</tr>
<tr>
<td>Guardian Media Group</td>
<td>2.7</td>
<td>3.1</td>
<td>3.0</td>
<td>3.0</td>
<td>3.3</td>
</tr>
<tr>
<td>Independent Print Ltd</td>
<td>2.1</td>
<td>1.5</td>
<td>1.4</td>
<td>1.8</td>
<td>1.9</td>
</tr>
</tbody>
</table>

Source: Audit Bureau of Circulations

3.2 For many years the European Commission Press Room attempted to highlight some of the absurd stories which appeared in the UK media and elsewhere about Commission policies. They were termed ‘Euromyths’ but they have had a powerful impact on public perceptions of the Commission’s work. Get Your Facts Straight points out, ‘Most of us rely on our national newspapers, television and radio news to find out about what is going on in the EU. Unfortunately, amongst the clear and informative reports lie a large number of stories based on twisted facts or even lies. The stories can make entertaining reading, but many people believe them and often come away with a picture of the EU as a bunch of mad ‘eurocrats’.’(1)

3.3 Media in other European Union member states carry critical stories about the work of the Commission but sections of the British press carry news reports which are deeply suspicious or even revile most aspects of the European project, and use every journalistic exaggeration, trick and sleight of hand to sully the EU’s name. Occasionally the stories
contain truth, but often they are plain wrong. As a New York Times report observed, ‘Most of the stories tend to portray the Commission as menacing, out of touch, or quite literally crazy. The common theme is that of a rabble of unelected bureaucrats — to use tabloid parlance — out to destroy European freedoms and identity in its enthusiasm for a European superstate.’(2)

3.4 Striking examples of this can be seen in recent reports in the UK press on EU media issues. In January 2013 a group of experts convened by the vice president of the European Commission, Neelie Kroes, published its report, A free and pluralistic media to sustain European Democracy.(3) I have read the report but I would not recognize its contents or its proposals from coverage in UK newspapers like the Daily Mail or Daily Telegraph. According to the Mail the report ‘proposed giving the EU draconian powers to control the media and even sack journalists.’ The Telegraph emphasised the same points: ‘A European Union report has urged tight press regulation and demanded that Brussels officials are given control of national media supervisors with new powers to enforce fines or the sacking of journalists.’(5) There is no suggestion in the report, which is a consultative document, of any EU body with the power to sack journalists.

3.5 One recurrent theme of such negative reports is that the EU is secretive and undemocratic because important decisions are made behind closed doors. On April 14 the Sunday Telegraph published a news article by Andrew Gilligan claiming that the ‘EU pours millions into groups seeking state control of the press.’ Gilligan claims that the EU was angry with the way it is treated in the British press, and is therefore ‘seeking new national and Europe-wide regulatory powers over journalists.’ He describes ‘five concerted and coordinated initiatives being pursued by Brussels to increase its powers over the media’ and claims the EU is ‘quietly (my emphasis) pouring millions’ into these initiatives. Gilligan’s report contains deliberate distortions so that he can present an argument that the EU is trying to subvert the free press.

3.6 The accusation, so common in the British press, that the EU deliberately operates in secret so as to sneak things past its unsuspecting citizens illustrates the dangers posed by the current state of the UK press. It is the Europhobic press who are responsible for our ignorance of what happens in Brussels. The truth is that the British press is not fulfilling its vital democratic function with regard to the EU. The first step towards a more democratic EU is that people should actually know what happens there. Ironically, it is newspapers like the Daily Mail and Telegraph that whip up a nationalist frenzy so that we then elect UKIP to the European Parliament who have no interest in taking responsibility for actually governing the EU, and don’t turn up to work. What actually happens in Brussels is rarely reported. How many people know that on the civil liberties committee of the European Parliament, they are represented by the BNP?

3.7 The CPBF submission (para 6) states, ‘Plurality matters. A healthy media culture should mean that there is a real range and diversity of voices, of creative expression, ideas, information and opinion. Such a plurality of voices, reflected in the media citizens use and consume, is necessary for democracy. But such a range of voices is also needed to foster mutual understanding and dialogue. The widest possible range of creative expression is vital for social and cultural, as well as economic, enrichment.’ The four UK newspaper groups identified in para 3.1 act as a powerful barrier to media plurality by not fulfilling their vital democratic function, not only with regard to the EU, but also within the UK. Of course the Telegraph and other newspapers should, for example, be able to make the case for Britain
leaving the EU, but they should do so without resorting to deceit. They treat their readers with contempt, as a rabble to be roused rather than citizens to be informed. As it stands though the UK is still in the EU, and we need the media to play its part, not in promoting the EU, but in educating citizens on the actions their representatives are taking on their behalf.

**Policy Proposal**

*The core problem is the ownership of newspapers by proprietors who ensure editors and journalists on their newspapers adhere to an anti-European agenda. A change in journalistic culture in the reporting of the EU is necessary but this will only happen if limits on ownership are adopted and genuine diversity of viewpoints developed.*

**4.0 Media Plurality, the EU and Competencies**

4.1 The EU is a group of democracies that have agreed to open their markets to each other to increase trade, prosperity and ensure peaceful relations between member states. The single market requires universal standards to be applied in the production of goods and services so as to avoid regulatory arbitrage where firms move production to wherever they have the fewest obligations. We need to trust each member state to do their part in governing it, and also to implement the rules that have been commonly agreed. The Union is based on mutual benefits, and we need therefore to know that member states will act in their own best interests, since their interests are also ours. If we fear that governments of other member states have been captured by special interests, then we begin to lose faith in the governance of the whole union.

4.2 Policies on the level of media ownership or forms of media regulation have normally been left, under the concept of subsidiarity, to member states. Only when media mergers pose issues of market dominance across the EU does the EU Competition Commission intervene. In the case of News Corporation's bid for full control of BSkyB, clearance was quickly given but the decision highlighted the problem of relying solely on competition law. Promoting competition to ensure market efficiency and safeguarding pluralism on democratic, social and cultural grounds are distinct and different policy objectives. The issue of media pluralism in the UK was irrelevant in the EC clearance of the BSkyB takeover.

4.3 One area of media policy the European Commission has competence over is the audiovisual market. Since the 1989 *Television Without Frontiers* directive, subsequently updated and renamed as the *Audiovisual Media Services* (AVMS) directive in 2007 to cover internet TV and on-demand services, clear rules on advertising, both content and duration, and other matters are laid down. The intention of the directives is to ensure common rules to facilitate the efficient working of the EU audiovisual economic market.(7)

4.4 In an important speech in Dublin on 22 March 2013 Neelie Kroes, the European Commission Vice President, signaled an openness to revisit a key area of EU media policy, one which the Commission has always shied away from until now.(6) She identified a free and pluralistic media as a key foundation supporting democracy, transparency and human rights within the EU but went on to identify a number of problems which have arisen in member states: media concentration and lack of diversity; restrictions on online and offline media; state control, pressure and interference.
4.5 There are strong arguments for establishing EU-wide minimum standards on media ownership. In the media sector, as in other economic sectors, globalisation has created companies that national authorities find it very difficult to regulate. Global companies are often very critical of the EU because it has the power to challenge their anti-competitive behaviour or questionable tax avoidance policies. Brussels is currently investigating whether Google favours its own products in its search results. This shows firstly that there is already a monopoly issue in online media, and secondly that it is really only the US and EU that have big enough markets to give their authorities the necessary clout to police such global companies. There is also an argument that the owners of major media organisations in the EU should be EU citizens. This requirement could result in less misleading coverage of the EU, particularly if it were combined with strict limits on ownership which would reduce barriers to entry and might encourage businesses which see the economic value of the EU to also invest in the mainstream media. The USA has this requirement. Rupert Murdoch, for example, had to become a US citizen in order to acquire and develop his Fox TV network there.

4.6 In the media industry market dominance comes with political influence and often where countries have national limits on media ownership, as media companies grow towards them, the thresholds often seem to mysteriously retreat. It would be more difficult for media companies to lobby for national changes if there were backstop rules set at the European level. The fear of antagonising Rupert Murdoch, or the desire to win his support, has been a feature of UK politics for over four decades. The phone-hacking scandal and evidence to the Leveson Inquiry demonstrated vividly the power and influence of Rupert Murdoch’s News Corporation over UK politics and government. Intriguingly the Leveson Report only made a general statement about media plurality. As Harold Evans, former editor of The Sunday Times and The Times commented, ‘Leveson is very disappointing indeed. He doesn’t really go into the detail that’s really necessary but makes vague remarks about the need for further transparency...Press ownership is an unresolved issue in the Leveson report. I’m highly critical of the fact that it seems to accept the present level of media concentration, and the present level of media concentration is one of the reasons the phone-hacking scandal erupted. Why? Because the politicians were scared of News International and News International was scared of nobody.’

4.7 The formation of media policy, both at a European and UK level, has been largely the preserve of politicians, media companies and lobbyists with specific interests to pursue. The public is, with rare exceptions, absent from the process. What is refreshing and innovative about the EIMP is that it creates a public space for a diverse range of people across the EU to express their support for an essential foundation of democratic societies, media pluralism. The initiative also addresses the other important issue of media freedom – how you ensure through independent regulation that political or commercial interests do not subvert or control media for their own narrow ends.

4.8 One politician’s response to the EIMP was reminiscent of the character Smike, brutalised by Mr Squeers in the Dickens novel Nicholas Nickleby. The politician feared that the initiative would provoke the ire of the anti-European newspaper groups and therefore would not support it. Like Smike he ducked before a blow was even struck. Of course we can expect to see headlines about the anti-democratic EU attempting to throttle the free press but if we believe this is the right course of action and give up because the media companies won’t like it then we have lost already, and we can only expect things to get worse.
Policy proposal

An EU-wide standard framework of rules on media ownership would provide a clear and important foundation for free and independent media. The four EIMP policy proposals contained in para 1.3 address particular problems that have arisen in EU member states and provide the basis to protect and develop media plurality.

References

(1) Peter Jukes The Fall of the House of Murdoch (Unbound 2012). Project Rubicon is first mentioned on p2 and the shift of News International’s newspapers to support David Cameron and the Conservatives pp152-154.


(9) http://www.guardian.co.uk/media/video/2012/nov/29/leveson-report-press-ownership-harold-evans-video
The Chairman: I am sure I am speaking for everybody when I extend a very warm welcome to Sir Harold Evans. You do not need any introduction from me, and, as I was saying to you before we came in, it is very nice to have you here for real, having previously had you on the big screen.

Sir Harold Evans: A great pleasure.

The Chairman: Just if I might explain, the meeting is being televised and a transcript is being taken, so before we get going, if you could just kindly tell us who you are, and then, if you have any general points you would like to make at the outset, please feel free to do so.

Sir Harold Evans: Thank you. My name is Harold, known as Harry, Evans. I am presently editor-at-large for Thomson Reuters, which is an independent company, and I do not speak for Reuters. They speak for themselves. They are committed to defending truth and accuracy in the news—the Thomson part of that, of course, comes from Roy Thomson, who was Lord Thomson when I was editor of the Sunday Times—and his grandson, David Thomson, is just as committed to that. Apart from that, they have no part of my testimony here.

I am otherwise engaged as a writer and broadcaster. I wrote a book on the history of American innovation, which I was told would not be welcome in America, so I sold it to the Chinese, who have published it. Last week I also got a copy in Chinese of Good Times, Bad Times with a picture of Mr Rupert Murdoch on the cover, so I must be popular in China.
Maybe left-wing sympathies are beginning to show. I hope not, because I regard myself as independent politically. That is enough you need to know, I think, is it not?

**The Chairman:** We are here to hear what you want to tell us.

**Sir Harold Evans:** I was editor of the Times and the Sunday Times, and editor of The Northern Echo, and president of Random House in the United States, which is the largest trade publisher, and founded Condé Nast Traveler magazine. I was editorial director of the US News & World Report, the news magazine, Fast Company, The Atlantic and the Daily News tabloid newspaper of New York. Otherwise, I try to earn a living in some other way. That is enough, I should think.

**The Chairman:** Indeed. Given that we are carrying out this inquiry against the background of the work that Sir Brian Leveson did, and given your wide experience both geographically and over time, how do you see diversity of voice in the national and regional media here in this company? In particular, how do you feel it compares with the United States?

**Sir Harold Evans:** The interesting comparison between the States and Britain: the legal systems are completely different. The American press starts with a huge advantage, which we wish we have here, of the First Amendment. One of the reasons I supported Leveson was his suggestion that a voluntary self-regulation statute should entrench a freedom of the press clause similar to the First Amendment in the United States. I have spoken about this a lot: the collection of laws in Britain—contempt; confidence, which is unknown in the United States; and fairly strict defamation here—are so strict. The American press is, in those respects, freer.

However, the American press has also become as polarised as the country, so in terms of diversity you have the New York Times on the one side, Wall Street Journal on the other, and the Financial Times somewhere in the middle. You have the tabloid papers, the Daily News, for which I used to work, and the Sun, which is owned by Rupert Murdoch, which in terms of a tabloid, is very brilliantly done.186

There is diversity to that extent, but if you consider diversity too in terms of television, the diversity is more real than apparent. In terms of serious coverage, broadcast television has basically abandoned foreign affairs. When there is a crisis, they send a man out with a palm tree and a wind machine and he stands in front of it, and that is foreign coverage, by and large, apart from CNN. Here in the United Kingdom we are blessed with brilliant journalists, brilliant writing—that is better writing on the whole than the United States, which adds to the diversity because many web outlets provide for that. The BBC is much more powerful an influence and force in the United Kingdom than NPR and PBS in the United States, which are kind of feeble, and a lot of public bodies in the States suffer from a bureaucratic inertia, which I think is unusual because the United States is normally much more enterprising.

The diversity in the United Kingdom is, as I have written, greatly diminished by what happened in 1981. In my own view, I trace the hacking scandals back to the over-concentration of the press, which enabled politicians to be blackmailed too easily.

**The Chairman:** Which country do you think is more fortunate now, ourselves or the United States, in respect to diversity of voice and plurality?

**Sir Harold Evans:** I think the United States is more fortunate. As a journalist, one is freer in the United States than here. First of all, you have a continent to go at, so in terms of starting a website—although the web is now global, of course—you have the possibility of an

---

186 I refer to the tabloid techniques. I have less respect for its standard of accuracy and fairness.
immense audience. My wife started the Daily Beast website, and she has 15 to 16 million a month unique visitors. But revenue is limited for these free websites, and that is one of the limitations in terms of web development because they are not normally able to afford to do the deep investigative journalism that requires a lot of time and effort and risk-taking.

One of the benefits in the United Kingdom, if we could preserve the plurality and independence, is that with a concentrated market and a concentrated population and an educated population, more or less homogenous by comparison to the United States, it is possible to focus effective public attention on a single issue. When diversity produces many spotty little voices you do not get a cohesive force for pressing a particular issue. In my experience, some of the things we did at the Sunday Times would have had no impact, even though they were true and just, if we had been confined to a smaller blog audience. Getting concentrated attention is very hard.

Most of what people talk about in the United Kingdom, it seems to me as a visitor every four or five months, is dictated by the agenda of the national printed press. We should not exaggerate the importance and impact of the national press today—the Telegraph, the Times, the Financial Times, the Sun, and then to a lesser extent other papers, the Independent and so on. Of course those papers are not as independent as the diversity of titles would suggest, because the Times and the Sunday Times and the Sun are all part of the same outfit, brilliantly run by Rupert Murdoch—absolutely brilliantly run—and the News of the World is gone, thank God, in the sense of what it did, but not thank God in terms of some of the investigative journalism it did. On the other hand, from my point of view—my experiences are obviously slightly prejudiced and you must take this into account—the loss of the investigative journalism from the close of the News of the World is to be regretted. They did some very good work. On the other hand, the cohesive power of all those papers in one ownership was destructive.

The Chairman: Thank you.

Q313 Baroness Bakewell: Where does the Huffington Post come? That seems to have an enormous nationwide hold, does it not?

Sir Harold Evans: The Huffington Post has a huge readership. I must speak with due respect of the Huffington Post—apart from anything, being a personal friend—but a diversity of individual voices on the Huffington Post is not the same as the impact of a coherent and consistent strong voice in a newspaper. The Daily Beast is the leader in national security coverage: it is influential, but it does not have the impact unless it is taken up by the New York Times or the Financial Times or the Wall Street Journal. Somebody drew my attention to that. I would not put my total faith in the web as presently constituted, including the Huffington Post, the Daily Beast, Talkingpointsmemo.com and the rest of them. There are 10 decent websites, including Arianna’s, but I would not put my faith in them as being the answer to media concentration.

Baroness Bakewell: Is that a transition? Is that transitional as we move from the printed press?

Sir Harold Evans: I hope and pray for transitions every night. So far there is not a single news website that is making sufficient money—profit—able to sustain itself for a long time, and secondly, also able to sustain the deep-rooted investigation that is required very often. The site [Slate] started by Michael Kinsley for Microsoft, and Salon and others are all excellent sites, but the effect is diffuse and in a sense, although I would not push this too far, you could almost argue they cancel each other out against the mass impact—I am talking the
United Kingdom now—of the *Daily Mail*, the *Telegraph* and the *Times* taking more or less a similar position for many issues, against on the other hand a rather enfeebled left-wing press; forgive me. The *Sun* is very, very powerful, much more powerful than the *Daily Mirror*. I think those printed newspapers are still—I sound antediluvian to say it—highly relevant, Baroness Bakewell.

Baroness Deech: Is that not simply an age issue?

Sir Harold Evans: Are you saying I am getting old? It is true.

Baroness Deech: No. I mean will the young people stop reading papers and look for their news on the internet 20 years from now?

Sir Harold Evans: I think 20 years from now is a different case. We will all be digitised out of existence, 20 years from now. The basic economic facts of the web are as follows. You can have a readership of 10, 20, 30, 40 million digital visitors a month. The *Daily Mail* has 100 million a month. It does not make a profit. The *Guardian* has 100 million. It does not make a profit from any of this. The *Guardian* is sustained because of the Scott Trust, and Alan Rusbridger has been extraordinarily adventurous in doing that. Maybe in 20 years his bet will pay off and they will get sufficient revenue either from subscriptions, from advertising, or from what other means you can think of, like other business development, conferences and speeches and education and so on, but it has not arrived yet. Baroness, when you look forward to the future, you may be right. I am just talking about the present. I have very limited faith in my capacity to forecast the future.

Q314 Baroness Fookes: Sir Harold, in the Cudlipp lecture this year you were somewhat critical of the Leveson report for “glossing over”, as you put it, “the demonstrable effects of media concentration”. Would you like to elaborate on what you think should have been said?

Sir Harold Evans: Yes, I would. Much as I admired much of what was in Leveson, I thought he flunked it. When it came to what happened in 1981, about which I know quite a great deal, the point is that that was a cooked-up deal. It should never have happened without transparency.

When Roy Thomson applied to acquire the *Times*, having ownership of the *Sunday Times*, he had to go before the monopolies commission because the acquisition of the *Times* would give Times Newspapers 6% of the British press, and he had to convince them. When I met the *Times* new board of directors, I had to convince them that I would not take any notice of Thomson’s other commercial interests and so on, and we duly did that. For instance, when Roy Thomson applied for a licence to explore the North Sea for gas, in the *Sunday Times* we wrote an editorial saying the terms of the Government licences were too lax. I never heard a thing. Years later, when we criticised Cheddi Jagan, the socialist minister in British Guyana, for being corrupt, the Thomson Reuters television team was in there trying to sell him television. They were deported the next day. I only heard about that three years after it happened. That independence was crucial.

What we tried to do in 1981 when we formed a staff buy-out committee for the *Times* and the *Sunday Times*, certainly for the *Sunday Times*, was to provide the continuation of that independence. The *Times* itself, which had a notorious record in the 1930s of appeasing Hitler, had overcome that record. The *Sunday Times* had gradually developed an independence, thanks to Denis Hamilton [its editor]. That independence was at risk, and that was why we were particularly offended, and why I still feel a sense of outrage today, that in the sale of titles in 1981 there was no transparency whatsoever. There was a
backroom deal in which Mrs Thatcher, God rest her, gave the papers to Mr Murdoch and the local Thomson people fixed the figures to get it through. I have written all about this ad infinitum; in fact I am beginning to bore myself about it. Since you make the point, what I objected to about Lord Leveson was that he had the testimony in front of him, but he did not bother. I think he did a first-class job in many respects, but was enormously disappointing on media concentration. He huffed and puffed and put it on one side, and I would say that to him if I ever met him face to face. I understand why he backed off. He was handling enough hot potatoes as it was, with all the appalling crimes that had been committed, and to get involved in a fight with a very formidable opponent would have been a tactical error. None the less, looking back on it, I personally still believe that what happened in 1981 was the progenitor of all the scandals that followed later, because you give any particular source of power too much power, and when it is hazarded by changes in administration, you are inviting that power to be used for purposes it should not be used for.

Baroness Fookes: What should Lord Leveson have said in practical terms to deal with this?

Sir Harold Evans: He should have said that in future every transfer of power in the media should be transparent. There should be no more backroom deals. It cannot be left to the Secretary of State, who is a political person, to decide on something like this without revealing the full reasons, and when the full reasons for this transfer were placed in the House of Commons library and we went through them, we discovered that they completely did not support what was argued, which was that the *Sunday Times* was an unprofitable newspaper. Have you noticed it is still coming out? Of course it is still coming out, because it was not an unprofitable newspaper then, and it was not an unprofitable newspaper when they made the decision [that the News Corps could be excused a reference to the monopolies commission because it was not “a going concern”]. It was the completely wrong way of doing things. That is what Lord Leveson should have condemned, and he should have insisted on transparency for future acquisitions by major media insofar as any hint of oligopoly or monopoly was a risk. If you are going to call the monopolies commission for 6% and let 37% go, there is something wrong, and somebody should take notice, but Parliament did not take any notice. It did not enforce the guarantees that had been given to the editors, and they are still not being enforced.

Baroness Bakewell: Would you have been satisfied if Leveson had simply said, “There must be transparency”?

Sir Harold Evans: Yes.

Baroness Bakewell: Or would you have wanted him to spell out how that transparency took effect?

Sir Harold Evans: I think very few things can be done in public that are disgraceful. When they are done in private, they can be. I have believed all my life in transparency. One major thing for this Committee to consider is some kind of mechanism to ensure that we have things done in the public light and not behind back doors.

Baroness Fookes: Is that more important than a particular percentage?

Sir Harold Evans: No, I do not think it is. It is a question of judgment. But I do think there is rather a big difference between 6% and 37%.
Q315 Lord Razzall: Can I just take you back to the issue that you have said is even boring you now, which is the undertakings that were given in 1981, which I think at the time you said were not worth the paper they were written on? Perhaps I could ask you to think about this in the context of what has recently happened at the *Times* and *Sunday Times*, where what appears to have happened is that News Corporation wanted to appoint Mr Witherow as the editor of the *Times* and Mr Ivens as the editor of the *Sunday Times*, but seem to have forgotten initially that this was within the power of the independent directors. They got around that initially by appointing the two of them as acting editors, and life went on. Then, eventually, those appointments were confirmed by the independent directors, and of course the suggestion at the time was that what they wanted to do was to merge the two titles, and that was the purpose of doing this, and the independent directors put out a statement saying they had received satisfactory undertakings that the two newspapers would remain independent.

First of all, do you agree with that scenario I have painted as to what happened? Secondly, did it make you change your mind about these undertakings not being worth the paper they were written on? I know it bores you, but—

Sir Harold Evans: No, no, no. Understand they are all honourable men—Mark Antony. No, I came to the conclusion at the end of my period at the *Times* that they are not worth the paper they are written on, because I think it is unworkable to have outside directors. I know there are some proposals afoot, implicit in some of the advance brief I got, to think everything can be solved if you have outside directors, like the BBC or whatever. The BBC Trust is, I think, pretty well run on the whole by Christopher Patten. I do not think it works in the daily business of a newspaper where a million decisions that have to be taken. I am not exaggerating. Every single one of them, whether it is a caption, a headline, the line of an editorial—you cannot expect the outside directors to monitor that. You have to remember—and let me be quite frank about this—I have always respected, subject to law and the monopolies commission, the right of an owner to see his point of view in the *Daily Mail*, the *Guardian*, whatever it may be. But in the *Times* newspaper’s case, these were specifically barred by promises sworn to by the Secretary of State and sworn to by News International.

Lord Razzall: That is the editorial independence point.

Sir Harold Evans: Editorial independence was written there and solemnly sworn to as a way of getting around the monopoly, so it was not worth the paper it was written on, partly because of the way newspapers work under speed, and partly because you are asking an editor in all these cases to put his neck on the block and have a continual argument with his proprietor. It is not going to work. I spent a lot of time with the late Hugo Young, devising the articles of the constitution for the *Times* newspaper. They were just washed over. Probably I was totally naive in thinking that we could erect a straitjacket out of which Houdini could never escape, but in one bound he was free because Parliament was engaged in other things. Secondly, it will not work, as anybody who has been in journalism for five minutes knows. You only have a single proprietor to say, “I would not do that if I were you” or whatever. The case is classic. I am so sorry. It can be done, and a proprietor or a company can gain a massive control, but if it is an independent editor who is responsible professionally, he then has to be strong enough to stand up. I thought that in James Harding certainly—editor of the *Times*—that person was him, not that other editors had not done pretty well within the constraints they felt. However, you have to ask yourself about it, because the recent independent directors were pretty useless in that.

Lord Razzall: But the other point of course is retaining the two titles.
Sir Harold Evans: Yes, exactly.

Lord Razzall: It was rumoured. That is the other thing about directors.

Sir Harold Evans: I know. I will come to what I think about the two titles. If we are going back to 1981, that was not supposed to happen. The two titles were supposed to remain independent. Sir Denis Hamilton—Brigadier Denis Hamilton—sat next to me at the board meeting where we examined Mr Murdoch as the prospective owner and specifically stressed that point to him: “Will you guarantee the titles will remain independent?” Denis Hamilton, war hero, the creator of the independence of the Sunday Times, got that assurance and it proved not worth the paper it was written on. It was for a time, I have to say.

The Times loses money and Rupert Murdoch has done a great deal to keep it going. Whatever defects there may be in the independence of political policy, he has done that and he is also a very formidable operator. However, once he proposed to reduce the losses at the Times by creating a seven day newspaper the independent directors should have asked for title to the Times to be put up for sale. “Impossible, nobody would have bought it.” Believe you me, they would. Mr Jeff Bezos of Amazon, with whom I spent time last week at Aspen, has just bought the Washington Post and he has paid $250 million. There is still a great passion and an incentive to acquire a great newspaper, and a great newspaper like the Times, in my judgment, would have been bought by somebody else and you would have had a more diversified press as a result. As it was, you now have a less diversified press because John Witherow, who is a very skilled journalist, is not going to change the attitudes he had in the Sunday Times at the Times. They are going to be similar; it is in the same company. So it was a big mistake and the independent directors—I deserve to be tarred and feathered for saying it—should have either resigned or stood up.

Q316 Lord Dubs: Among the competing proposals for a reform to plurality policy, there is a recommendation there to introduce thresholds in designated media markets such as the newspaper market, so that, for example, a newspaper company would be obliged to take on responsibilities to behave in a certain way to protect editorial independence once it acquired a market share above a certain threshold. The witnesses coming before you seemed to go down that path, and your answer would be the opposite, would it not, because in your autobiography, you said internal freedom cannot be acquired by external rules? So would you go against the previous witnesses?

Sir Harold Evans: I would hate to do that. They must all be honourable men too. But no, I think that it is unworkable and almost in a sense deserves to be unworkable if you basically get close to committee stage journalism. No, I think it is unworkable. I thought it could work, but it cannot. Let us have a situation, let us just imagine: I have a story here and you are the proprietor. Okay, do I tell you I have a story that is going to damage either your commercial interests or your friendship or your political beliefs? No, I do not, because you have guaranteed me independence, right? What is the next step? I do it. The next day, I discover my coffee has no sugar in it or whatever the punishment may be, and the third day I discover I cannot park my car because of rather difficult circumstances. No, seriously, it sounds like a soap opera, but in the day-to-day working I do not think it can be protected.

The only thing I would say is the BBC seems to make it work, but that is a public body. It is open to scrutiny, it is transparent. One disadvantage of the BBC that I must mention here is that it is overly cautious, so when you had the hacking crimes going on, the BBC was not in the lead. It was attacked for even reporting it straight.
Sir Harold Evans – oral evidence (QQ 312-321)

Well-meaning schemes to protect independence, to which I gave my name with Hugo Young and the entire editorial board of the *Times* and Denis Hamilton—I think we were all wrong. You could argue—and there is certain force in this—there are not many proprietors as persuasive, intelligent and forceful as Rupert Murdoch. You could say that was a once in a lifetime thing. You are not going to get another person as brilliant as that. Maybe so, but I would not take the risk.

**Lord Dubs:** You said the BBC was different because it was a public body, a public broadcaster. Do you think the difference might be between newspapers and broadcasters rather than between a publicly owned body and others?

**Sir Harold Evans:** The BBC is obviously public airwaves, as is the same in the United States with the broadcasters using public airwaves, so they are more—how can I put it?—vulnerable to state interference.

**Baroness Bakewell:** The point you have not mentioned about the BBC is it is non-profit making.

**Sir Harold Evans:** Yes.

**Baroness Bakewell:** It is not going after profit.

**Sir Harold Evans:** That is good. Lady Bakewell, I take your point.

**Baroness Bakewell:** That makes a huge difference to the attitude of the people within it, controlling it and sustaining its independence.

**Sir Harold Evans:** Yes. I do not want to be getting to the position of being anti-profit, but I agree with you.

**Baroness Bakewell:** No, but it accounts for many of the characteristics of the BBC.

**Sir Harold Evans:** Yes, this is true. No, the BBC is not profit-driven. I almost came back with the rejoinder, “They do sometimes tend to be ratings-driven and what is the difference?” Some of the dilution of BBC quality at certain periods in its time have been due to having rating priorities, and it affects United States television. United States television, the broadcast side, is so-so; cable television has Fox News on the one side, which is vehemently right-wing, and on the left-hand side you have MSNBC, which is less effectively left-wing, and in the middle you have CNN, which tries to be independent and gets squashed. I am not suggesting this Committee’s work is easy. It is very difficult. I admire you for taking it on.

**The Chairman:** Maybe more fool us. Lady Deech.

**Q317 Baroness Deech:** Sir Harold, we have heard other witnesses’ views on how media plurality policy should be reformed. We have had a plurality of views on that. I wonder if you have your own model, even just an outline or a suggestion, as to how we should reform plurality policy. You have said that transparency is necessary, but I doubt whether that is sufficient, so do you have a model for reforming plurality policy that would help us?

**Sir Harold Evans:** I do not, to tell the truth. I have thought a lot about it and I certainly do not have an automatic form of, “X percentage of revenues or whatever should be considered excessive”. I think there is some hope—you were on this track before, my Lady—from what has been happening in the United States. Just before I left the United States, Pierre Omidyar, who founded eBay, called us up—my wife spoke to him—and he is prepared to put umpteen millions into forming investigative journalism. He is on the far left. That was quite interesting.
You have a philanthropist backing ProPublica, which is absolutely first-class—total honesty, integrity, transparency—edited by Paul Steiger, and I think that is probably better than having some state-imposed or even monopoly-commission limitation on how to achieve diversity. At the same time, I do feel that there comes the point, which we passed in 1981, when too much is too much, and especially when too much is done undercover and not properly exposed and when basically lies are told throughout. I found that very offensive and I still do.

Baroness Deech: But part of our remit here will be to say, “When is too much too much?” That is the difficulty.

Sir Harold Evans: It is like Socrates: “What is justice?” Well, if you see injustice, then you know what justice is. I think it is a judgment—

The Chairman: In this case it is too late, is it not?

Sir Harold Evans: It is too late, frankly, except that we had a continuation of what happened in 1981 just recently with the Times and the Sunday Times. It is a question of judgment and if you get Leveson with the regulator and you can say, “This is about to happen. The record of this company is one of total interference, unwillingness to correct mistakes” and so on, “so it is too much power for that company”. But I do not have a simple answer, I honestly do not. Certainly although I am on the whole in favour of Leveson, I must say I very much regret that it was so misreported, because his primary principal, the first clause, should be the first amendment—“Government shall not interfere with the freedom of the press”—and that was lost in all the pantomime.

Baroness Bakewell: When you cite the two extremes in America that seem to have arisen and that you commend, is that simply market forces that have led them, or personality, or wealth?

Sir Harold Evans: No. You say “commend”. I do not know that that would be quite correct: “observe”. I do not think the truth emerges from a collision of two points of view; it may lie somewhere else.

Let me go back. I do think in a sense it is a kind of relief to know if you turn on Fox News you are going to get a particular point of view. You do not have to think. In fact, most people observing Fox News are convinced that Saddam Hussein started the Iraq War.

There was a fascinating example recently: we heard a big argument about the ObamaCare, as it is called, which is the Affordable Care Act. The Affordable Care Act is Obama. They take a microphone out on the streets and they ask customers, “Which do you prefer?” Everybody, “The Affordable Care Act”. You say to them, “Do you think people with prior conditions should have medical insurance?” “Oh, yes, yes, yes.” “Is that in the Affordable Care Act?” “Oh yes, it is.” “Is it in the ObamaCare?” “No, it is not.” Of course it is, they are identical, but not a single one of the people they stopped in the street knew that.

The lack of communication is incredible: the level of ignorance propagated by having all the facts on this side here on this channel, and all the facts on this side over there. Some of the things on the left-wing channels make me curl up with embarrassment, just like this, so I do not commend this system at all. I just hope that the generally independent CNN will exert some ameliorative force on this, but by and large it does not work. We have seen the pantomime in Washington recently. It was such a disgrace. A polarised nation gets a polarised point of view presented to it. I do not know; it is chicken and egg. To be fair to the Wall Street Journal, although it is on the right, it was much more independent-minded on this occasion than many other papers or organisations.
Q318 Bishop of Norwich: Some of our witnesses, Sir Harold, have said that instead of trying to limit the power of the major media players, our focus ought to be on encouraging experimentation and diversity in the smaller online players who are around. You were a bit sceptical about the actual power even of the Huffington Post and the Daily Beast in the United States, but do you think there is any conceivable way that we could encourage public or charitable funding for a broader and more diverse range of journalism? You mentioned about eBay and maybe we just have to rely on rich entrepreneurs, but are there things that we could suggest in terms of public or charitable funding, for example?

Sir Harold Evans: I would like to buy that, but I have always been kind of leery about taking finance from anybody that might impact on the independence, whether it is finance from News International or from some public body, but that is my upbringing—to try and retain independence. There might be some possibility whereby a start-up operation on the web with certain objectives that are monitored or whatever are encouraged by tax policy or public policy. I hesitate at public subsidies; I always have, because then you are beholden. I think that the private—Omidyar, Jeff Bezos and the family supporting ProPublica—are to be commended, but I would not go any further. I wish I could say, “Oh, it would be great if all of online publication had a better tax relief or whatever” but I am still a free marketeer to that extent of it.

It is of course difficult, because as Baroness Bakewell points out profit comes into it, so when you are losing, as websites tend to do—we know the Guardian is losing maybe $50 million,—you feel in your inner heart, “I wish we could give them some tax relief” but that seems a kind of slippery slope to me. As I say, you have a very difficult task here, to try to encourage diversity in the media, which is essential, and get more cultivated and educated debate.

I regret certain things that have happened in Britain since I left. I am not suggesting that is cause and effect, but we used to have a programme called What the Papers Say. We used to bring the press to heel when it misbehaved, as it did in hacking, but the hacking scandal was left to the Guardian. It is outrageous that that kind of conduct had gone on for five years and the Guardian was alone. Now it is off on some other track about surveillance, but that is a separate issue. I am sorry, the answer must be disappointing, because I do not have an answer.

Bishop of Norwich: No, although I suppose I am stuck between wanting to support that and recognising that within our own overall news and current affairs economy, the statistics that we were given suggest that the British public, in terms of time, get 60% of their news and current affairs from the BBC, which after all is a public body, and when you look at even the proportion of time people spend soaking up the views of the Murdoch press, it is quite small compared with the time they give to the BBC. I just begin to wonder then whether we over-egg the influence of some of our newspapers. I can hardly say that to somebody who has edited such eminent newspapers, but are we more neurotic about the power of newspapers in the public life?

Sir Harold Evans: It is a very fair point. I do notice when I come back to the United Kingdom that the agenda does tend to be set by the printed press still.

Bishop of Norwich: Because the BBC pick it up every day, do they not? Yes.

Sir Harold Evans: They pick it up, and what do they lead with? They do not lead with the Huffington Post or the Daily Beast, they lead with the Daily Telegraph or the Times.

Bishop of Norwich: Or even the Independent.
Sir Harold Evans: Or the excellent Independent. No, seriously. Listen, I am not here to defend print or whatever, but I do notice that the temper of the country seems to me to be set to quite a significant degree by the printed press. Of course the BBC is crucial—with due respect, they do have some excellent programmes—but they do not insert advocacy in news which is a good thing in many ways. The advocacy that goes on in the Daily Mail about immigration or crime can be criticised. At the same time, when the Daily Mail took up the Lawrence case, which everybody else was scared of, they received justice at last for something that was manifestly unjust – the acquittal of Stephen Lawrence’s killers. No blogsite is going to say, “This should have happened, that should have happened”. It required that impact from the Daily Mail. So I think that for the next 10 years—which is all I may have, as it were—the printed press is going to still be very important.

The Chairman: Do you think there is greater confidence in the printed press than there is, say, in the television press in terms of leading with campaigning stories, partly because the public service broadcasters are constrained by impartiality and other sorts of provisions?

Sir Harold Evans: I think they are constrained by that. It is much more exciting to have an emphatic opinion presented to you every day—“Down with these immigrants” or whatever it may be—than it is to say, “Look, on the one hand”. I think the public likes the sensation. You just have to look at the Sun newspaper. It is a brilliantly done newspaper but not a model of national enlightenment.

Q319 Baroness Bakewell: Given we want the printed press to survive, given that you admit that there is a problem, and given that you reject the idea of other bodies’ funding initiatives, what safeguards do you believe would be effective?

Sir Harold Evans: The only safeguard is for more people who have independent views, in Parliament and out of it, to express their views and not be cowed, as they were during the hacking crimes. I still cannot understand why the whole of British media, except the Guardian, and to some extent the Independent, were so cowed. There was an obvious injustice going on here.

What safeguards can I give you? All I can do is make the speech before Agincourt and say, “Remember where you were on this day”. I do not know the answer. I do not come before you as a one-person shopping stop. I can speak to certain experiences with certain knowledge and conviction. Otherwise, I am just an idle spectator.

Baroness Bakewell: I am inviting you to relax and informally, as though we were not perhaps in a Committee such as this, to speculate on what you might say to other people in the media, “What we need, what would transform this would be—” We will not take your word as gospel and write it into the Bible, but what is your hunch?

Sir Harold Evans: This is again off the cuff and I do not put much credence in it, and I will try to phrase this carefully. I mentioned What the Papers Say. I would love to see a paper that was regularly prepared to examine the performance of its peers, and we used to do that at the Sunday Times from time to time. When Harold Wilson said that there was a gang of politically motivated men behind the seamen’s strike and every newspaper took it up—“Commies on the docks”—it was false and we investigated and we criticised the papers that had done so. I think—with due respect, with all honour to my colleagues—that was a beneficial thing, because it said to our colleagues, “Look, we are a newspaper with a 1.5 million circulation. We have shone a spotlight on your story and it is false. You are behaving ridiculously and the Prime Minister misled the country”. There is a tremendous virtue.
Now, the Guardian and the Independent are almost there, but they do have their own hobby-horses, so it depends. I come back to what I said before: you need to have some people who are prepared to stand up. I would love to see the BBC more aggressive on this front. The BBC buried What the Papers Say; they took the franchise and put it in the back garden. I would love to say to the Trust, “Why do you not do something? Why do you not bring these things to light?” They are brilliantly run. Mark Thompson is now helping the New York Times to be profitable, but there is a certain—how can I put it?—caution and timidity.

Baroness Bakewell: I agree with you there. I think the BBC is obsessed with balance to such an extent that it would have given a hearing to Hitler in the interests of fair play.

Sir Harold Evans: This is absolutely true. The fallacy in the schools of journalism in the United States is what I call, “She says, he says” or, “What you have to do is what he said and what she said”. Yes, but there is something in between. There are not two sides to every question, there are three, and it is our job to find the third side, which is the truth, and find it and publish it and publicise it. That I think is very, very important. So I am joining your army, Lady Bakewell.

Q320 Lord St John of Bletso: Thank you, Sir Harold. When there is a need to intervene in the public interest, there are various options: should it be the Minister, duly elected and accountable; should it be the regulator; should it be even a special plurality commission within Ofcom or even a Leveson hybrid?

Sir Harold Evans: I tend to favour the regulator. If the regulating body is set up with the proper people on it, with due regard and some knowledge of the hurly-burly of journalism and politics, I tend to prefer that to a Minister. I would prefer—with due respect to Ministers and especially to Peers—a reasonable distance from these things, so I think the regulatory body, if it is set up properly. Heaven knows how the argy-bargy is going to go on between the royal charter, my royal charter versus yours and all this kind of thing.

The thing has been so badly reported and so misreported, I am in almost total despair. “What is new?” “Oh well, there is another thought on this.” You look back at how the press has reported Leveson and it does not give you any confidence in the British press. I regret to say that, but it is true.

My answer to that is if you could set up a decent regulator body with people who know the business and know what it is like in journalism and are not simply having some theoretical thing, I would prefer that. I do not want Ofcom anywhere near it. When Leveson suggested a role for Ofcom, I thought it was a major mistake—it suggested state interference. It is Ministers who make the appointments. I want to make it clear: public men do honourable work, but there is a limit and the press should be independent.

Lord St John of Bletso: It is exactly that last point: do you think that Ofcom has the right balance of accountability and competence and ethos?

Sir Harold Evans: No, I do not like Ofcom. I would not trust it with the regulation. To talk about diversity, Ofcom gave the nod to BSkyB being acquired, which was extraordinary—the whole history of BSkyB in itself. The idea that the Government was about to give News International control of BSkyB when the initial acquisition of BSkyB was called by the Home Secretary—“It is illegal, but I am going to approve it”—do you remember that famous thing? You do not. You are all too young, that is the trouble. No, I do not have a great

---

187 The media cross-ownership regulation provided that a national newspaper could not own more than 20% of any British television company. In 1990 the Home Secretary, David Waddington, approved a
deal of confidence in Ofcom. I never forget that BSkyB thing. Rupert Murdoch is absolutely brilliant: he played it superbly well to get a stake in BSkyB and made a fantastic success of it, so when he wanted to acquire the whole thing, everybody fell over like puppies and yet it was supposed to be illegal: no person should have more than X% of this. So you see all these well constructed formulas: very often a powerful, well organised individual can defeat an army of the well meaning.

**The Chairman:** Sorry, Lady Bakewell, you wanted to come in now, did you not?

**Baroness Bakewell:** I have been pressing you all along to solve our problem for us, and I wondered whether there was any further advice that you want to give us.

**Sir Harold Evans:** Be wary of journalists from overseas carrying solutions in their back pockets.

Q321 **The Chairman:** I would like to ask you one thing. We were talking earlier on about the new website-based news media products, and then you were talking in response to a question from Lady Bakewell, where she said, “We do not want to lose the written press, do we?” Can you envisage a circumstance where the written press will go the way of the manuscript book—it will just be part of history and the way that this kind of information is conveyed to the wider world will be just completely different from where we are now? Do you think anything should be done to stop that process or should it just be allowed to take its course?

**Sir Harold Evans:** The *Sunday Times* was wrecked by trade unions, print trade unions. The print unions were disastrous for that. That was an independent newspaper that was destroyed by gangsters in the press room. That can be easily demonstrated and that is what drove Kenneth Thomson out of this country and out of journalism here altogether. I am suspicious of the overweening power of certain unions probably.

Having said that, no, I find it very interesting that Jeff Bezos, who is perhaps one of the most brilliant businessmen we have ever seen today, creating Amazon: if you want anything today, if the Committee would like Karl Marx’s first edition, unmarked, for tomorrow or maybe Adam Smith, you can have it in your offices in the morning thanks to Jeff Bezos. He is putting $250 million into a printed newspaper. I spoke to him last week and he is excited about the print newspaper. There is still a longing for print. Even websites and electronic media always like to try to find an outlet in print, certainly in the United States. Maybe the desire for print, even in Caxton’s country, is not as strong as it is in the United States, but I think print media of a different kind will survive. For instance, I can envisage an elite—a terrible word, it sounds almost snobbish—press supported by a higher cover price, by limited advertising. Let me just explain: enhanced means of delivery. I was recently invited to stay offshore on a Greek island. Okay, we were offshore on a boat rather larger than a rowing boat, and every morning when I came down to breakfast, there was the *Los Angeles Times*, the *Wall Street Journal*, the *New York Times* and the *Washington Post* all laid out every morning. I said to this guy who owned this boat, “How do you do it?” Easy. Satellite printing to him. Hewlett Packard has the machinery that produces it.

At the moment, most of the printed papers are delivered by arthritic truck drivers, wheezing vehicles and arrive a day and a half late. That is what has ruined the news magazine business, by the way—*Newsweek, Time*—because by the time they have gone to press on those news magazines on Friday or Saturday, they do not get on national newsstands until Tuesday or

merger between Sky and BSB though Mr Murdoch thereby acquired a 50% stake in a British television company.
Wednesday and in the meantime you have hot-breath cable news and radio news going on. But I can still see a technological future where print is delivered very, very quickly by Hewlett Packard. It is the 750, I think, the latest machine, and it is not all that expensive; it is $2,000 or $3,000 for that machine. That is the way for print, instead of having great grinding presses. There are some technical problems, like do you just staple it or how can you fold it and bind it, but my answer is print will live. You can put it on my tombstone, “He said—”

The Chairman: Perhaps that is a good moment to conclude, so thank you very much for those comments.

Sir Harold Evans: Thank you very much. Thank you, Committee, for being patient.

The Chairman: Thank you.
Q381  The Chairman: Welcome back to Simon Milner and Peter Barron, who obviously were in the room earlier in our meeting this afternoon, having banished you. We are very glad to have you here. We are looking forward to hearing what you have to say. Just briefly, before you start, please say who you are and where you are from so that the recording systems can pick that up. Then we will move on into the first question.

Mr Barron: Fine. I am Peter Barron. I look after communications and public affairs for Google in Europe, the Middle East and Africa.

Mr Milner: I am Simon Milner and I am the UK Policy Director for Facebook.

The Chairman: If I may I will begin with a general question, which I hope will give you a way in. It is clear, from what we see from the statistics that have been collected recently that there is a kind of sea change going on about the way in which people find out news content. What have you seen about the way things are changing on each of your respective platforms, please?

Mr Barron: I think we can say that in the last 15 or so years, the way people are accessing news or current affairs content has completely changed. There has been a complete sea change. If we go back a few years, there was a very small number of sources of information, whether it was channels, national newspapers, local newspapers. There was a very limited number of people able to publish content. We have seen that that has completely exploded, so now we are in the situation where anyone who has access to the internet can not only access most of the world’s information but can be a news gatherer and a news publisher as
well. Literally everyone today with a Smartphone is a publisher. We have gone from a world of great scarcity to a world of huge abundance.

**Mr Milner**: We have 33 million active users in the UK using Facebook. They are using Facebook for all kinds of different things, including finding out about what is going on in the world. Some of that is from their friends and organisations that they are interested in. Some of it is from established news organisations. Some of that they are finding out directly, perhaps because they have liked the ITV News page and they will get snippets of news from ITV News, but more often than not it is that their friends have seen something that is happening in the world and will send them a link to that. We are certainly seeing, both on our platform but also in the different studies, including the recent Reuters institute study, that people are picking up a lot of news about what is going on in the world from their experience on Facebook.

**Q382 Baroness Fookes**: Is there any positive evidence that the news stories that are being picked up are making for a more diverse and more plural system, or are people just circulating within narrow boundaries as before?

**Mr Barron**: Perhaps I could talk a little bit about Google News, which was set up in response to 9/11 back in 2001. It was the project of an Indian engineer who was living in America. After 9/11 he was rather frustrated that all the news that he was receiving was coming from similar sources with similar points of view. He worked on algorithms to try to bring together a range of news and a range of voices from right across the world. That was really the defining principle of Google News and that is what we see today. Our aim is precisely to bring plurality and diversity in the number of sources that we have. Around the world on Google News we have something like 50,000 publishers included in Google News and about 70 different editions in different countries. If you go to Google News you can see a dropdown menu for all the different editions. Of course, the diversity on the front page of Google News brings together stories from all kinds of different publications but also bloggers and, indeed, more recently from social media. As Simon suggests, social media is now playing an important role in news as well, so a very, very diverse range of news.

**The Chairman**: Was that seven zero?

**Mr Barron**: Seven zero, yes, about 70 national editions of Google News around the world. Of course you can access those from any country. You can look at the dropdown menu and see what is making the news in America or Singapore or anywhere.

**Baroness Fookes**: But they are all in the English language?

**Mr Barron**: No, they are not. They are in a range of languages around the world.

**Mr Milner**: Facebook does not have a different section that you go to to find out about the news, but every one of the 1.2 billion people using Facebook has a different experience. What they see on Facebook depends on who they are, who their friends are, what organisations they are linked to. If they like a particular MP or political leader they may be getting news directly from them about what is going on in the world. The key feature for most people is their news-feed, and we call it a news-feed because it is about stories that are happening in the network that they care about. That is a regularly updating feed: either friends who are on holiday posting their photos or somebody commenting on the latest disaster. A lot of people commented on the recent typhoon in the Philippines and encouraged others to give money, sharing some of the amazing images from that news incident. There are all kinds of different ways and it is definitely more plural. If you are on Facebook and have a pretty healthy news feed, you are going to find out about different
things that are going on in the world than if you are looking, for instance, at the BBC app on your phone. Brilliant as it is, that is the same for everybody who looks at it, whereas on Facebook what you are seeing is different depending on who you are.

Q383 Baroness Deech: Is it a worthwhile distinction to draw between news, gossip, rumour, chat, et cetera?

Mr Milner: Yes. Indeed one of the things the Reuters institute study shows is that people still trust established sources of news more than they might trust something that comes via social media. Something like 80% of people trust the news from a broadcaster and the figure is less than 10% for social media. That is indicative perhaps of how people think about news. There may be a rumour that a particular band is splitting up, but until you actually see it on the BBC you may not believe it.

The Chairman: Can I perhaps make one point before we move on, which is that presumably both your organisations’ audience tends to be younger rather than older?

Mr Barron: Yes, up to a point. It is certainly true to say that the consumption of linear television is still remarkably strong. How many people are still watching television in the traditional sitting back on the sofa watching scheduled programmes in the evening? I think something like 90% of people are still doing that, but if you go to the younger generations, the under 45s, you see that their consumption of media is radically different.

The Chairman: Presumably, in your thinking, you are predicating the fact that as the older people move off this mortal coil the younger people become older people, so we are likely to see a substantial shift in the habits of responding to and finding out about news in the foreseeable future.

Mr Barron: I think so. The explosion over the last year to 18 months in mobile devices and the way people are consuming media from mobile devices is absolutely extraordinary. On YouTube a year ago, 6% of users were consuming YouTube videos via mobile devices. A year later that has gone up to 40%. These trends are moving really, really fast.

Mr Milner: I would not necessarily say that it is just about younger people. With 33 million users, we have people right across the population. I happen to be on the board of something called the Tinder Foundation, which is all about getting people online. We still have some 8 million to 8.5 million people in the UK who have never been online, and typically they are in older age groups and poorer demographics as well. That is clearly a factor in the consumption of news via digital and social media.

Q384 Lord Razzall: Obviously you are aware of the purpose of our inquiry. If I could just direct this to Facebook, perhaps you could tell us something. You have explained a little about the way news information is provided through you. Could you perhaps explain a little how you may exercise editorial influence over the news diet available to users, first, in your discretion and the inclusion and priority of items in the news feed, which you referred to, and, secondly, the automatic inclusion and priority of items in the news feed via use of your Open Graph technology, which enables what a user is interested in to be fed to friends of that user?

Mr Milner: Okay. There are a number of different points there. Just to be clear, Facebook’s system works to try to surface information and stories that people will be interested in. One of the things that matters is who you are most connected with, and one of the things our algorithms learn is that Simon Milner really likes to get news from Peter Barron. He is really engaged in anything that Peter posts, and therefore we are more likely to surface things that
Peter posts on Facebook to Simon because he is more engaged. We want Simon to be engaged. We want him to be getting the most out of the platform. That is not about us making editorial decisions; that is how we engineer our service to ensure maximum engagement and most utility for the user.

When it comes to editorial judgments about content, we only make a judgment about whether something is allowed or not allowed on Facebook. We do have certain rules. For instance, we do not allow nudity or pornography on Facebook. I am not aware of any news services that focus on nudity as part of their news service, but if they did they would not be allowed on Facebook.

**Lord Razzall**: Channel 5.

**Mr Milner**: Some of us may remember the topless news that was on “Live TV”, but if anybody was still running that kind of service, that clearly would not be allowed on Facebook. That is the only editorial decision we make, so clearly anybody who is running a professional, or indeed amateur, news service can have a place on Facebook and on our graph. Some people choose to invest more and want to create apps that integrate with Facebook, and that can mean that when somebody is consuming a piece of content on that app, that can automatically be shared back with their friends via Facebook. The degree of integration that different news organisations seek to have with our platform can have an influence on how easy it is to access their material and how much people want to share. Frankly, the most important thing is: is your content engaging? Are people interested in what you have to say as a news organisation? The more interesting you are, the more you are surfacing news that others are not, the more engaged people will be, and therefore their friends will see it. That is going to be much more important than any algorithm of Facebook.

**Lord Razzall**: You are saying that Facebook exercises no editorial influence; the influence is entirely exercised, absent pornography and all that sort of stuff, by the user.

**Mr Milner**: It is determined by the individual user, what they are interested in and who is in their network. Just to be clear, their network is not just about friends; it can include public figures and other organisations.

**Lord Razzall**: No, I understand that. Thank you.

Q385 **Lord Clement-Jones**: Could we go the same route and talk about Google’s possible ways in which it may exercise editorial influence over the news diet available to users of your platforms? For example, can we explore how the design of your search algorithm possibly influences the editorial influence? How does the presentation of sponsored results and the prominence given to your own services, such as YouTube, add up to editorial influence, or do they add up to editorial influence?

**Mr Barron**: There are a few points there. It is worth just saying how people access news stories through Google’s services. The two main ones to point to are straightforward Google Search and then Google News, which is effectively an index within the broader Google Search. We send something like 5 billion clicks a month through Google Search through to the websites of news publishers, and in Google News alone we are sending about 1 billion clicks a month.

In terms of the way Google News works, again going back to the idea of diversity, there are a whole lot of algorithmic signals that we are looking for in putting together the aggregation of Google News. They are things like freshness—is this story new? is this story exclusive?—and aiming to find diverse and interesting views. It is also worth saying that there is no editor
of Google News. There are no journalists in Google News. There is no manual intervention at all. The whole thing is done by algorithms, but algorithms are created by human beings and are an opinion of what signals we are looking for. The signals are some of the ones I have mentioned.

**The Chairman:** Are there any principles within the construction of the algorithm that are immutable?

**Mr Barron:** It is a constantly changing thing. It is being tweaked all the time. Our algorithms, both in Search and in Google News, are being changed all the time. As I mentioned, there are some immutable principles, such as diversity, freshness, exclusivity and so on. You may have seen that we have something called “Editor’s Picks” and that was something that we talked about with news publishers. Editors are very often interested in surfacing a story, a serendipitous story that may not necessarily appear in the normal run of events. We have a section on the front page of Google News that allows editors of publications to promote content that they think is interesting. We also have something called “Spotlight”, which seeks to elevate stories that are a longer read, perhaps the *New Yorker* style read or perhaps investigative journalism, things like that, which deserve prominence but might not necessarily have prominence in the normal course of events.

**Lord Clement-Jones:** There are judgments involved here, are there not? There is a paper that you sponsored yourself, or you commissioned and published, by Eugene Volokh about the fact that inevitably your algorithm is non-neutral in its editorial influence.

**Mr Barron:** There are judgments made in terms of writing the algorithm, and we have been very clear that any algorithm we write is our opinion of what is the most relevant and useful result to the user. I suppose the difference between a daily newspaper where you have an editorial decision every day and editorial meetings and you pick one story and say, “That is not a good story, that is a better story” and so on is that there is no process like that. The algorithms are written once. They are, indeed, tweaked and adjusted from time to time, but there is no daily process of editorial judgments.

**The Chairman:** There is nothing in the algorithm—and I do not suppose for a moment there is—that says, for example, “We will not have any news about X political party”.

**Mr Barron:** No.

**The Chairman:** There is nothing in the algorithm—and I do not suppose for a moment there is—that says, for example, “We will not have any news about X political party”.

**Mr Barron:** There are general principles, absolutely. If it was suggested to us that perhaps we might downplay stories about Google—and goodness knows there are plenty of those—clearly we would not put anything in our algorithm to do that. If we did, the scrutiny of the many millions of users and readers around the world would instantly catch us out on that.

**The Chairman:** So you have an ethical framework behind the algorithm?

**Mr Barron:** There is not an ethical framework behind the algorithm. The framework behind the algorithm is to do with the stated principles of diversity and plurality.

**Lord Clement-Jones:** It gradually becomes more tailor-made over time, does it not? Depending on what hardware you are using, and you are using the search engine, that becomes more specific to the individual, does it not, over a period of time?

**Mr Barron:** This goes to the whole question of the filter bubble that has been suggested: that news is somehow tailored to individuals. There might be an element of tailoring going on, but it is very much at the margins. If any of us in this room went to Google News or did a search from news stories, we would get broadly the same items.
Q386 Baroness Scotland of Asthal: That is the point I was going to ask you to explore a little further. I have listened very carefully to what you have both said, and you have said that there is no editorial, no crafting, no honing of the message. That means that the individual will be the final arbiter of what type of information they receive. Can you help us? A number of people said that is one of the key problems because the whole point of ordinary news is that sometimes you will look at things that will surprise you, that you have never thought of, that you never heard of. That is the way in which you get plurality. If we are going to have a system that more and more hones and filters down to what the individual may have identified as their interest, how do we deal with that?

Mr Barron: That is an interesting theoretical point. I do not think there is any factual basis for suggesting that that actually happens. This is the filter bubble argument. In terms of an analogy, if we had grown up reading only one newspaper and never having any other influences upon us, then we would be a very narrowed and blinkered person. It is probably impossible to point to a single person in this country who has only ever got news sources from one publication, because they are being bombarded at all times by so many different sources of news and content. Of course, with the internet that has exploded on a vastly bigger scale.

On the question about access to information and the diversity of information that people access through the internet, it is worth bearing in mind that people are getting sources of information from all kinds of different areas. They might go through Google. They might go through Google News. They might go through Facebook or Twitter or many, many other sources. If you look at the way you use the internet, one thing has a habit of leading to another. Facebook is a fantastic example of this: you are looking at family photographs on Facebook and suddenly you notice a video beneath it, and you click on that and suddenly you are taken down another pathway. All the evidence suggests that the way people access the internet and the many, many millions of sources of information on the internet vastly increases diversity and plurality rather than narrowing it. What you suggest is an interesting theory, but I do not think there is any factual basis for that.

Mr Milner: Certainly, I have seen independent evidence to support that. If there was a worry that Facebook could become an echo chamber, and that people are only connecting with people like themselves, once you get over a reasonable number of friends, above 50 to 60, you may have similarities with those people but you are also going to have differences. They also have friends, which means that effectively your friendship group is much larger than that. Therefore, the chance is that if their friends post something that they then share or like or comment on, and that then surfaces in your news feed, which means there is much greater serendipity and much more chance that you are going to see things that you would never normally see, particularly insights. I imagine this is true of all of you; it is certainly true of me. Because many of us now have social networks that are global, the things that you would pick up about what is going on in the world—and sometimes it can be a really interesting story that has relevance to your own life here in the UK—you would never have seen that in any national newspaper or any national newspaper website, or on the BBC, which Peter and I both love dearly, having both worked there.

Mr Barron: Could I come back to you on the point about sponsored results, which I did not answer earlier? I should make it clear that sponsored results are advertisements and are completely separate from natural or organic search results. You have the organic results in the middle of the page and the sponsored results on the right-hand side. The sponsored results are simply advertisements relevant to the terms being typed in. They are generated
by an ongoing online auction. Just as in newspapers, there is a very clear distinction between
church and state. The same thing applies on Google.

**Q387 Baroness Scotland of Asthal:** Have either of you undertaken any research or
observation of your users that would help to inform our deliberations with some sort of
evidential empirical data, which would help us to better understand why you are not
concerned about the filter bubble whereas other people are?

**Mr Barron:** I am not sure I have evidence to hand. The Reuters institute report into trends
in consumption of news is a very interesting report. I think Simon mentioned that he had
some empirical evidence.

**Mr Milner:** I have certainly seen it. It is not evidence that we have done; it is what other
people have done. Frankly, typically in the US there is much more money for doing this kind
of research. I know you have Ofcom coming to talk to you. They have done research in this
area. The work that David Levy and his colleagues at the Reuters institute have done is very
powerful in showing the range of different media sources that people use in the UK
compared to other countries. I would encourage you to look at that and to use that
independent evidence as the best source of evidence in this territory.

**Earl of Selborne:** As you can imagine, we have had a number of views on how plurality
policy should be implemented and reformed. Would you like to give your views for your
organisations, however rough they might be?

**Mr Milner:** We have seen the government consultation on how it should assess plurality
and what the framework is for assessing it. The key thing from our perspective is by all
means consider how people might be using social media, including Facebook, to find out
about what is going on in the world, but do not conclude that Facebook is another media
platform or a news organisation. We are not. So long as people understand that distinction
and are very clear about it, we are perfectly open to the Government wanting to include all
the different ways in which people find out about what is going on in the world via digital and
traditional analogue media within that framework.

**Mr Barron:** I would add to that we are not a publisher. We are not creating content
ourselves; we are helping people find access to content on a great scale. Therefore, we and
other services, such as Facebook and Twitter, are engines of plurality.

In terms of regulation that might encourage plurality, I think it is important to go back to an
earlier point. We used to be in a world of scarcity and we are now in a world of abundance.
The problem in the past used to be about a very small number of publishers of information
or a small number of broadcasters. If you are thinking about policy and how to preserve the
media plurality that has been generated by the internet, access to the internet is clearly one
key area. The Government have clearly put a lot of effort into broadening access. Secondly,
there is the question of supporting and promoting freedom of speech. We are in a world
now where it is not just an elite that is able to publish; literally everybody in the country is
able to publish. Their ability to publish and to have their freedom of expression preserved is
really important.

**Earl of Selborne:** You have both painted a picture that suggests that your organisations are
contributing positively to plurality. Can you think of any instances where this might not be
the case, where indeed you might be having an impact on parts of the media plurality that
might be adverse?
Mr Barron: No. To be frank, I think genuinely in both cases and in many other cases, Twitter being another good example—I do not know if you are hearing from Twitter—the way people consume media and the access to an exceptionally broad range of media has simply increased inordinately.

The Chairman: Would it be true to say that once the kinds of services you are providing are universally available, it is arguable that there will then cease to be any problems about plurality?

Mr Milner: I would suggest that is a matter for policymakers rather than us, but I would have thought that all the evidence would continue to support the view that there is ever-increasing plurality in the sources of news that people not only are able to access but that they do access.

The Chairman: Would you concur?

Mr Barron: Yes, I would.

Q388 Baroness Deech: Against the background of the comments that you have just made, what is your view on digital intermediaries like yourselves being included in a periodic plurality review?

Mr Milner: As I responded to Lord Selborne, provided that it is clear about the role that we play and does not suggest that we are the equivalent of “Sky News” or the Guardian or the “BBC News”, then I think it seems perfectly reasonable. The Government would want to understand the different ways in which people are accessing news. If you look at the Reuters report and what it says about the way people access news, saying, “We are not going to worry about that as we consider plurality”; would be like saying, “Let us only care about the people who only have access to analogue television”. It would just be bizarre. It seems to make sense, but the Government and Ofcom need to be very clear about the nature of what that means in practice.

Baroness Deech: Which metrics would you recommend be used to measure your role: consumption, reach? What sort of metric would you recommend was used if, say, Ofcom was carrying out a plurality review?

Mr Barron: It is hard to think of a metric that relates directly to plurality in terms of the size of Facebook or Google or other players. The important metric to focus on is: what is the access to information and news sources? Some of the metrics that I mentioned earlier, such as 72 different editions of Google News that offer content from around the world—by the way, translated into English, as is required—and 50,000 news sources included in Google News, represent a huge change from what most people in this country would have had access to only 10 or 15 years ago.

Mr Milner: I suppose the key thing I would want to suggest is that saying that the source of news is Facebook is simplistic because it is not coming from Facebook. It is on our platform, but that could mean that it is news that is being surfaced from the BBC, from the New York Times, from the Times of India. Therefore, one has to get beyond thinking that it is, and I would say it is the same for Google News. It cannot just be that you get your news from Google News. I would say, “Well, hang on a minute, which part of Google News?” I would say the same for Facebook. It has to go beyond that rather simplistic measure.

Mr Barron: Just to add to that, the way Google News works is that we take a little snippet of the news stories from all those different sources and when you click on it you go through to the website of those publishers.
Baroness Deech: It comes down to the very difficult issue of how we treat filters—if I can call you both filters—or channels in the way people get news from a much broader source.

Mr Barron: Yes. We would call Google News an aggregator. In terms of search more broadly, we are a search engine that is helping people to connect with useful and valuable content.

Mr Milner: One thing that might be feasible, and one of the things that comes out of the different studies, is people saying that they are getting their news from Facebook but do not necessarily remember which brand it was. I saw this story about the typhoon in the Philippines but I do not remember whether somebody linked to a BBC story or a Guardian story. Perhaps you might want to consider Ofcom almost observing people’s experience of these platforms and seeing what brands they are getting news from when they talk about getting news on Facebook. That might be an interesting thing to explore. Remember also that bbc.co.uk will know where they are getting traffic from on the internet. They will know about their referrals from Facebook as well as from Google News. You could also ask them where people come to the BBC from online. That would be another indication of plurality.

The Chairman: Is it your general impression that the material that is viewed through your systems, in the most general sense, reflects the way in which it is received by those who go direct without your intermediating activities? In effect, like reading the Times, they will get Times stories through the way they are presented and so on. To some extent, you are merely reflecting the wider world rather than distorting it or changing it.

Mr Milner: If I might offer a view on that, I am not sure whether it completely answers your question but I will just give you an example of it. I mentioned that we both worked for the BBC. When Director-General George Entwistle resigned, I found out about it on Facebook. But I also, of course, then turned on “BBC News”. When I was watching “BBC News” I was also engaged in a conversation on Facebook with many of my friends who used to work at the BBC about what we thought about this. I think what we are doing is amplifying news, giving people some personal context around news, where people are intermingling the professional broadcaster interpretation of events with a personal interpretation based on one’s experience. Some people who had worked very closely with George Entwistle had a particular view. We are making that a much richer experience. That is one of the reasons why a lot of people really enjoy that two-screen approach to news consumption.

Mr Barron: If you look at Google News now you will see that we are surfacing social media results alongside news results because of precisely what Simon is talking about. That kind of conversation going on around the news is important as well.

Q389 Baroness Healy of Primrose Hill: Moving away from the plurality review, how do you—particularly Google—respond to some of the suggestions that have been made, for example, by Robin Foster in his report, News Plurality in a Digital World, that there could be some clear ways in which you might proactively encourage a diverse news diet among UK citizens? Obviously you give them a vast amount of information, but could you do more?

Mr Barron: I was interested to see the comments that Robin Foster made. Most of the things that he is suggesting already happen. For example, if I search for “Philippines typhoon”, I will get a range of different results, and within those results I am going to get news results when using Google Search more broadly. There is certainly an attempt to show a wide range of stories. I mentioned “Editor’s Picks”, which might be a more in-depth piece, or “Spotlight”, which might be an investigative piece. We are trying very hard to serve up a rich and useful diet.
Where we might part company with Robin Foster would be on regulating for that. Just as it would be wrong to regulate for what is on the front page of a newspaper every day, it would be wrong to suggest that there has to be public service content in the results. There is public service content in those results day in, day out, but I think regulating for it would be problematic.

**Mr Milner:** One of the things that we introduced relatively recently on Facebook was hashtags. If people are interested in what people are saying about the typhoon in the Philippines, to use the same example, there are hashtags associated with that which they can surface. They can surface content on Facebook that is associated with that, which will mean that they are open to a wider variety of sources of news and influence than they might be if it was just in their news feed. We are looking for ways of enabling people to use Facebook for different purposes like that.

**Q390 The Chairman:** Let us move on. You have already answered this to some extent, but do you see yourselves essentially as providing access to news? One of the characteristics of the EU telecoms regime is that it deals with access. Do you think there is a case for approaching the activities that you do from slightly the same perspective? Perhaps you do not need to do anything, but at the end of the day what matters is that there is the kind of access that you are giving to stories and, if necessary, enshrining certain principles that should be adhered to by people like yourselves?

**Mr Barron:** We would disagree with the analogy on access.

**The Chairman:** You disagree with it? Sorry, I could not hear you properly.

**Mr Barron:** Sorry, I disagree with the analogy with telecoms because in that case you are dealing with scarcity of supply. There is limited spectrum, and therefore access is very important. If you are being supplied electricity, for example, access is extremely important, because you are locked into a contract and if something goes wrong with that contract the cost of switching out of that is expensive and difficult, whereas on the internet the cost of switching to other services is literally non-existent. If Google did not exist for a day, people would have access to all kinds of other sources of content through many, many different channels. Something we often say is that competition is literally a click away. If you want to go to another service, there is no contract or lock-in to keep you there. You can simply go, and people do switch. They switch in how they access information day in, day out.

**The Chairman:** If I can follow up on that, you could say that the scarcity in the case of the provision of news—using that word in its broadest sense—is in real terms often the front page of any supplier of your type. We all know that it is hugely important to be high up the pecking order, so that may be where the scarcity lies.

**Mr Barron:** It is a two-way street. We are obviously aiming to give people the most relevant results, the best results, for the terms they are searching for. But publishers also have a role in this. If they are writing boring or uninteresting material that is badly presented and is not easily findable in search results, it will not rank highly. They play a very, very important role in seeking to get to the top of the rankings. If you do any search, for example, you will very often see that Wikipedia is very, very high and near the top of the rankings. That is because it is an extremely well-presented source of information. It is extremely authoritative and well regarded and it is linked to by many, many other sources.

**Mr Milner:** I am not quite sure what to make of that analogy. The world of telecoms is the one I came from in BT.
The Chairman: Make what you will of it. It may be a bum point on our part but we want to explore it. That is the point.

Mr Milner: I would never suggest that you are making a bum point. I just do not see that this is relevant to how people access news. There is no sense. The only thing we do is to enable people to access a much more varied range of news sources than was ever possible before. To suggest that that in any way becomes a bottleneck, which is the classic economic term that we use in the world of telecoms, just strikes me as nonsensical. Indeed, the opposite is the case. Any previous bottlenecks that may have existed because of the scarcity of journalism, because only a certain number of organisations can pay to have a reasonable number of journalists across a reasonable number of issues, so that people want to come there, have gone because people can access news from all over the world. There are lots of organisations that they can go to, as well as the citizen journalists and the person who really cares so much about their issue that they are prepared to invest their time in order to get this news out to the world. Any suggestion of a bottleneck around access to news is I think mistaken.

The only access issue—I would echo what Peter said—is access to the internet. That is the principal thing. The more we can do to help the 8.5 million people in this country to see the value of being online, to have the skills to do it, and to continue to ensure that there are good, cheap devices and access packages, the better. That is the key.

Q391 The Chairman: If you are trying to supply some very important, very boring information, that seems to be the category of information that might fall foul of the algorithm. Is that right?

Mr Barron: Not so, because again you are perhaps talking here about Google News. The point about the internet is that it enables people to find very niche subject matter. If you go back again to the days of television, imagine you were interested in banjo music, which I happen to be interested in. You would wait a long, long time for something about banjos to appear on television or in a newspaper, and when it did appear you would go, “It is very superficial. I know all that already. That is very basic”, whereas if I am interested in a niche subject I can go directly there. I can spend all day on banjo news or whatever it is, thereby satisfying my appetite in that area. It is not right to think that you are being served up one thing by a search engine or a provider of, say, Google News or by Facebook. People have the choice to go to almost anything they want to, and that is an extraordinary change.

Mr Milner: It is hard to imagine quite what something important but boring could be, but I guess one of the things that is interesting is—

The Chairman: I am glad you said that, because I realised that was a slight flaw in my question.

Mr Milner: I am just wondering what the equivalent of a news flash is. Remember in the good old days when everybody was watching a programme and you got a news flash: “We are bringing you this important news. We are breaking into the programme”? You never see that any more because you do not need it. If something really big happened—in my age group, and I imagine for some of you as well, the death of Lou Reed felt like quite a big moment—how did I find out about that? I found out about it through Facebook, from the first person who posted, “So sad to hear the news about Lou Reed”. You do not need a news flash for that—not that we would ever have seen programmes being interrupted for that, but I did not need to be listening to “6 Music”, which may have been the BBC radio station that would have thought that was the most important news for its listeners. I can find
out on Facebook, or if I was on Twitter I would find out about it. There is something
different there about social media, particularly around search. It is unlikely that I would have
been searching for who has died today to find that out, but I would see it surface via my
friends.

**The Chairman:** We always do that. If we could just continue that, it is an interesting
question. On Google, if Lou Reed dies, how long is it before when you tap in “Lou Reed”
you will get that piece of information?

**Mr Barron:** Oh, gosh, it is instant. Certainly, again, in Google News terms that would be
one of the freshness signals for the algorithm. It would have popped up very quickly, but you
might, for example, be on Google Plus.

**The Chairman:** If I had been watching Facebook and I discover Lou Reed has died and
then I go straight on to Google and tap in, “Lou Reed” how long will it take before it tells
me he is dead?

**Mr Barron:** I suspect it would be very, very quick.

**The Chairman:** Very, very quick, so it is effectively instantaneous, you would say?

**Mr Barron:** Yes.

**The Chairman:** That is a principle that pertains right across the piece?

**Mr Barron:** Yes.

**The Chairman:** Very good.

**Q392 Baroness Healy of Primrose Hill:** My son had to text me to tell me that Lou
Reed had died, but that is another matter. Obviously people are very concerned that the
shift in advertising revenue from news media investing in journalism to digital
intermediaries—such as your platforms—has prompted calls for a levy on your activities to
be redistributed to investment in journalism. Those making these calls often cite the new
digital innovation press fund in France as a precedent. I am interested in this. Could you tell
us how you respond to these calls? To Google particularly, could you say something about
the digital innovation press fund in France? How did this come about?

**Mr Barron:** It is certainly right to say that advertising revenues have moved towards the
internet, and that is because advertisers take decisions every day about where best to spend
their money. They know that online advertising is very effective. It is also true to say that
they are making decisions very dynamically and they are choosing across a broad range of
different advertising platforms.

We would certainly accept that the transition to digital has been difficult for the news
industries across the world. In France, we entered into a business agreement with French
publishers aimed at helping in that transition to digital. It is all about stimulating digital
innovation now. If you make a comparison between French publishers and British publishers,
there is quite a wide gap. In Britain, we have an extremely vibrant news industry, which is
doing very well online by and large. We see the *Guardian* and the *Mail* in particular, which
have really become world-beating online news providers, whereas in France we do not have
anybody in the top 10 in online publications. We have worked with French publishers on a
business arrangement aimed at helping in that transition. Clearly, that is an agreement that
we hope will be both good for French publishers but also good for Google ultimately. That is
one effort that we have made.

**The Chairman:** Can you tell us how long the agreement lasts?
**Mr Barron:** It is for three years. It is a three-year agreement. The way it works is that publishers, whether they are established news organisations or pure digital players, can pitch for funding around digital innovation projects. We do that in France but we are also very committed to helping to stimulate digital innovation right across the board. We do many projects in the UK, across Europe, across the world, aimed at helping newsrooms and publishers who have found the transition difficult. It has been a massive revolution in an extraordinarily short period of time. Our aim is to be helpful in that process. Sometimes it has been suggested that Google has been unhelpful. I think if you talk to many publishers now they would say it is a very good and helpful partnership. I suppose our aim is to offer a virtuous circle in our relationship with the news publishers, which is very much to provide tools that can engage readers and keep them on their pages. In terms of those tools, we are talking about things like Google Maps, YouTube, and the ability to do video conferencing through Google Hangouts. All those tools are completely free to publishers to embed on their pages, and that will engage readers and keep them on the pages for longer. Then we work with the publishers on more effective means of advertising, innovative and more productive forms of advertising, which will then feed through into greater revenues that can be invested in journalism. We are working hand in hand with the publishers on that and I think that that process is going well. Certainly, in terms of UK publishers, it is a pretty healthy scene in terms of the national newspapers.

**Mr Milner:** I would say that one of the things we have seen is some advertising money moving to online but also lots of journalism moving online and some really quite fascinating new journalistic ventures being set up using advertising revenue online. I would also say that in the UK we have this incredibly healthy, vibrant, creative advertising industry. I would suggest there is more than enough money within that world for Facebook to do well, for Google to do well, and for many great journalistic organisations to do well. I do not see this as a zero sum game. Far from it.

**Mr Barron:** Yes, I think that the figures show that the pie is getting bigger. Consumption of television is getting bigger at the same time as online consumption is getting bigger. People willing to pay for content, which is a line from David Levy’s Reuters report, has doubled year on year. I think the ecosystem is becoming more vibrant and healthy over time.

**Q393 The Chairman:** I should declare an interest as chairman of the Regional Newspaper Group. Do you know whether much of your advertising revenue has moved from conventional media to you, or is it new advertising?

**Mr Barron:** We would certainly say that the pie has grown bigger. As I say, advertising is an extremely dynamic business. It does not stay static. Advertisers make decisions every day about where they place their money. As Simon says, there has clearly been a move towards online, first of all because a lot of eyeballs are online, but secondly because advertising online is extremely efficient because you can measure with great precision the effectiveness of it.

**The Chairman:** Newspaper people in their dark moments—I am not saying this is right or not, I am just putting the point—say, of course, “The advertising used to come to our newspapers. It has now gone to the people like you, but the people who are going to you are really coming to look at our material and it is unfair”.

**Mr Barron:** Yes, but let us look at what happens. I mentioned the clicks that we are sending through to the websites of publishers—in total something like 6 billion clicks a month. We share $7 billion in advertising revenue with publishers. Every single time we send a click through to the website of a publisher, that is a business opportunity. That is generating around about $7 billion a year globally.
Mr Milner: I do not have anything to add to that. We have a different kind of business model where there is no similar revenue exchange. Nonetheless, frankly, when it comes to this kind of thing, we are much smaller than our colleagues at Google. We have not been going at it as long and, frankly, we do not get the same kind of accusations levelled at Facebook.

The Chairman: Fine. Thank you very much indeed. Before we finally draw stumps on this, is there anything you would like to say to us that we have not asked you about that you think would be helpful to our inquiry?

Mr Barron: I do not think so.

Mr Milner: No, I have nothing else to add. Thank you very much.

The Chairman: Thank you both very much indeed. That was very helpful.

Mr Barron: Thank you.
Robin Foster – written evidence

1. Introduction

I am pleased to submit this evidence on media plurality to the House of Lords Select Committee on Communications. It draws on my witness statement of last year to the Leveson Inquiry, and on papers written over the past 18 months for the Reuters Institute for the Study of Journalism at the University of Oxford, and for the BBC.

I am an independent adviser on regulatory, policy and strategic issues in the communications sector, and a founder member of the UK-based media consulting group, Communications Chambers, in which capacity I have advised various clients on media policy, including plurality.

I have previously held senior executive positions at Ofcom, which I joined in 2003 as a founding partner in charge of strategy, at its predecessor the ITC, and – from 1993-2000 -at the BBC. I was an independent member of the previous Government’s Digital Britain Steering Board, which developed proposals for UK broadband policy and regulation, and was one of the four independent advisers to the UK Convergence Think Tank, which preceded Digital Britain.

2. Main Points

I suggest that a new plurality framework should aim to:

- Focus on news and current affairs, not on wider cultural content.
- Provide a sensible balance between safeguarding plurality and enabling the news market to grow and innovate.
- Avoid over-reliance on blunt instruments like simple ownership caps and triggers and instead adopt a range of approaches.
- Provide greater clarity to the market about approaches, measurements and processes – and hence help create a less uncertain investment climate.
- Provide more effective accountability to Parliament (through more detailed guidance to Ofcom) while depoliticising each individual decision by taking away those decisions from the Secretary of State.
- Include new as well as old media and be prepared to address new concerns as they arise, for example as may be the case with new digital gatekeepers.

Given these aims, future plurality policy might profitably be focused in the following areas:

- **Improved measurement and processes** – we need a better understanding of how to measure plurality, what “sufficiency of plurality means in the UK, and how best to monitor and respond to market changes.
- **Routine periodic reviews by Ofcom** – to improve our understanding of plurality and the possible need for action over time.
- **Behavioural remedies** – if large news providers are an inevitable consequence of market trends (and of value to society because of the financial support they provide
for high quality newsgathering), then perhaps more emphasis in future should be
placed on influencing the way they behave rather than constraining their scale and
scope.

- **Positive support for plurality** – to address enduring market shortfalls, it will also be
  important to use available public funding and regulatory levers to continue to secure
  high quality and impartial news from designated suppliers, including the BBC.

- **Access rules** – new digital gatekeepers could have a huge impact on the range and
diversity of news which UK citizens can access. The incorporation of rules to secure
  continuing open and fair access for all news suppliers to these networks and
gateways could be an important new part of the future plurality framework.

3. **Context**

3.1 **The importance of plurality**

Media in general play a vital role in shaping our culture, values and society. News media in
particular have a significant part to play in supporting the effective functioning of a
democratic society, by ensuring wide and free dissemination of a diverse range of
information, opinions and arguments. High quality news helps us find out what is going on in
the world and enables us to debate key issues of the day. Effective journalism can play an
important role interrogating the work of public and private institutions, and holding
authorities to account.

For that reason, media plurality is an important goal, with wide public support. But there is
less agreement about what it means in practice. Some focus on the number of media owners
in a particular market. Media plurality in this sense is taken to mean the existence of a
“sufficient number” of media organisations such that no single media organisation or owner
can have too much influence over public opinion and the political agenda. It is hoped, but not
 guaranteed, that the existence of a number of media outlets will also ensure that the public
has access to a diversity of viewpoints.

But this is only one dimension of plurality, focusing on inputs rather than outcomes.
Alternative approaches to plurality would place more emphasis on the conduct and content
of news providers, rather than their number. Others look to direct public intervention (for
example through public funding of journalism and public service codes) to support plurality.
The European Commission in its Working Document on Media Pluralism188 argues that
media pluralism means “all measures that ensure citizens’ access to a variety of information
sources, opinion, voices etc. in order to form their opinion without the undue influence of
one dominant opinion forming power”.

In my view, it is useful to identify three broad approaches to securing media plurality:
structural interventions, behavioural regulation, and direct public support. Structural
interventions include limits on ownership and concentration. Behavioural regulation focuses
on the conduct and content of news providers. Public support uses direct and indirect
funding to secure new provision which the market, left alone, would not deliver. These
approaches should be seen as complements rather than as substitutes. Their relative

importance is likely to change over time as markets change and public expectations evolve. There is no silver bullet which will guarantee plurality, but taken together, aspects of these different approaches should help secure a more plural news media than would be available in the absence of intervention.

3.2 Structural interventions

Rules aimed at preventing undue concentration or influence in news media are found throughout western democracies. The most common approaches outside the UK are either to limit the number of media enterprises that can be owned in any single medium (no-one can own more than one TV station in each market, for example), or to establish caps on market share in each medium, typically set with reference to some measure of readership or audience share (for example no-one can own more than, say, 25% of the national newspaper market). These might be “bright line” limits (i.e. limits which cannot be breached), or thresholds above which some form of review is triggered. They are sometimes complemented by limits on cross-media ownership, especially across print and broadcast media.

Such limits are typically applied only in the event of a proposed merger or acquisition, but in a few countries, triggers/thresholds are set such that if a company becomes too big through organic growth, regulatory action could also then be considered.

3.3 Behavioural regulation

In parallel, various types of behavioural regulation are sometimes used. These can include obligations placed on news media to provide certain types of coverage. For example, commercial public service broadcasters in the UK are required to broadcast specified amounts of local and national news each week, and to observe due impartiality rules. Newspapers are currently being encouraged to establish clear and effectively policed editorial codes of conduct which cover areas such as right to reply and fair treatment. In some countries, news media mergers are allowed to proceed only after guarantees have been given by the merging parties to invest in certain types and volumes of news content – such as investment in local news. Other measures might include requirements on merging parties to make space available in their newspapers or on television for the inclusion of alternative viewpoints.

3.4 Direct public support

Where commercial markets cannot provide sufficient plurality and regulation on its own is not enough, direct public support for high quality news may be an option. Many western democracies for example, have used a mix of direct public funding and other forms of support for broadcasting and, in some cases, the press.

In Europe, public funding for public service broadcasting is common. Publicly funded broadcasters are typically charged with providing high quality, diverse and impartial news.

---

189 A summary of international comparisons is given in a Communications Chambers report for the BBC, of which I was the joint author, attached as an annex to the BBC’s submission to the Ofcom consultation on measuring media plurality.
Other examples of public support cited in a recent Reuters Institute report\(^{190}\) include general VAT exemptions for newspaper sales (e.g. in the UK and Finland), distribution support for national newspapers (e.g. in Finland, France and the US) and targeted subsidies for national minority or regional language newspapers (e.g. in Italy and Finland).

### 3.5 Plurality and competition

It is worth noting that plurality is not the same thing as competition, although they are linked. Competition law helps protect the economic interests of individuals as consumers and acts to secure a reasonable level of choice and value in any commercial market. Insofar as competition law can prevent the emergence of monopolies, it will also have some positive effect on plurality. Society as whole, however, may take the view that the outcome of a competitive market does not fully serve the interests of individuals as citizens. For example, markets might provide high quality news to only the most commercially attractive segments of a population, society would prefer all to benefit. Markets might focus only on the most popular types of news; society would like a much deeper and more diverse range of news and views to be widely available, reflecting minority as well as majority viewpoints. Markets might tend towards an oligopolistic structure (with only a few big suppliers) while society would prefer a larger number of different suppliers.

### 4. Market context

Before turning to the Inquiry’s specific questions, it is important to reflect on the market background against which any proposed plurality measures need to be assessed. Drawing on my recent research, I would argue that there are two important, contradictory but related trends affecting the UK (and worldwide) news market at present, which have complicated consequences for market concentration: economic pressures facing established news providers, especially in the print sector, and continued growth in popularity of new digital and social media. The former is partly but not wholly caused by the latter. Economic pressures may adversely affect investment in newsgathering and push news markets towards further concentration. Digital media could, in contrast, lead in some areas to greater plurality. We will be in a difficult transitional period for some time to come. We should therefore treat with caution the idea of tighter plurality rules, which would risk making it harder for established news providers to sustain a viable business into the future.

### 4.1 Economic pressures on print media

Established news media are facing multiple competitive threats as traditional revenue sources dry up and consumers slice and dice their content with the help of new digital media. It is not guaranteed that commercial news markets will always provide financial support for the quality and range of news and analysis demanded by a properly functioning democratic society. Some of these threats are:

- An increase in competition for readers/audiences and advertisers, as previously distinct markets converge and new entrants emerge.
- Changing demand as lifestyles change and consumers find other uses for their time and money.

\(^{190}\)“Public Support for the Media”, Rasmus Kleis Nielsen with Geert Linnebank, Reuters Institute, August 2011
• Fragmentation and disaggregation, with consumers selecting stories that appeal (e.g. through search and social media) rather than reading their favourite newspaper brands from cover to cover.
• Rapid move of classified and now display advertising to other more effective media.
• As yet no clear sign that enough consumers will be willing through direct payment to make up the gap in lost advertising revenues in order to support a “full service” news proposition.

Even markets the size of the UK may not in future be able to support the range of competing local or national news brands that have been available to date: consolidation, not diversity, might be the dominant future trend.

4.2 Digital developments

Convergence may at the same time create opportunities for new forms of digital news services, offering more sources of news, opportunities for multiple sourcing by consumers, and greater participation by citizens in setting the news agenda.

More news

Digital media already provides access to a wider range of news than has ever been available before. In addition to the websites offered by established UK news media such as the Guardian, BBC or Telegraph:

• Alternative internet-only news sources are available – ranging from generalists such as the Huffington Post, to specialists such as Gawker (entertainment) and TechCrunch (ICT).
• News aggregators – such as Yahoo – provide users with easy access to a much wider range of news material from many different sources than they could ever have easily accessed in the analogue world, and also increasingly invest in their own content.
• All online users now have easy access to a vast number of websites produced by local news media in countries around the world, from the NY Times, to the Sydney Morning Herald.

However, mainstream news brands still account for a large share of digital news consumption and online-only investment in news origination is still comparatively small\(^{191}\).

A wider debate

If news supply of direct relevance to the UK itself is only modestly improved by the internet, there is a much greater increase in the volume and diversity of discussion, commentary and opinion. Some of this is, of course, uninformative babble, but that should not devalue the importance overall of the internet in providing a much more open and democratic forum for debating the big (and small) ideas of the day. Blogs and niche discussion sites can have an

\(^{191}\) In a recent report for Ofcom, for example, consultants Mediatique estimate that UK online spend on news provision was only £111m compared with around £2bn for the whole news market. (“The provision of news in the UK”, Mediatique, June 2012). In the UK, Ofcom’s public interest test report shows that in terms of share of page views and minutes, the top 50 news sites are dominated by old media news brands.
important influence on the way in which their users form their own opinions on the main political issues. The importance of blogs can also extend beyond their direct audience because they are so widely read within other news organisations.

Multi-sourcing of news

Arguably a bigger impact on plurality arises from the ways in which digital media change both patterns of news consumption and how users debate and discuss the news. A world in which everyone accesses a range of news sources is inherently more pluralistic than one in which most people watch only one TV news channel or read only one newspaper.

Here the data are encouraging. Ofcom’s cross-media audience research suggests that the average number of sources consumers use for news is 4.8, drawn from 2.4 platforms. 77% use three or more sources.

Search and social media

Most recently, social media – especially Facebook and Twitter – are bringing another sea change in the way users find out about news stories and communicate them to each other. New Facebook apps enable mainstream news providers to access a new demographic and achieve much wider circulation of their news content than might otherwise have been the case. Social media also has the potential, through the engagement of large numbers of users, to create an alternative news agenda, with different priorities to those selected by mainstream news editors, and allows individuals in the news to communicate directly with news users in an unmediated way. Most recently, the process has been seen with great impact in the so-called Arab Spring and now in Syria.

5. Specific questions

I now turn to the specific questions set out in the Committee’s Call For Evidence.

5.1 Objectives and definitions

As noted by the Committee, Ofcom have provided a working definition of plurality:

- Ensuring there is a diversity of viewpoints available (to the public) and consumed across media enterprises
- Preventing any one media owner or voice from having too much influence over public opinion and the political process/agenda.

This is a helpful starting point and could sensibly be used as a basis for future policy and regulation. However, there is scope for debate about the relative importance and practical implications of each these two aims.

For example, it is one thing to try to ensure that there is a diversity of viewpoints available, it is quite another to require the public to consume those viewpoints. The first priority should be to focus on ensuring the public has at least the option of finding a diversity of viewpoints, even if in the end it chooses not to take advantage of them.
The second aim implies intervention to prevent any single media owner from becoming “too powerful”, through restrictions on ownership and concentration. This again raises significant practical difficulties in implementation. For example:

- Ownership rules may well ensure the existence of a number of different news providers, but they cannot in themselves ensure that a diverse range of news is supplied.
- They ignore the nature of the content being supplied. Some news organisations take pride in representing different perspectives and opinions (so-called internal plurality); others take a more partisan line. Simple market concentration measures do not distinguish between these approaches.
- They say nothing about the ethics and conduct of the news media. Structural rules would not necessarily have prevented illegal phone hacking or any of the legal but unpleasant conduct apparently pursued by some UK newspapers.
- They may be counter-productive in a market which is facing serious economic challenges, by preventing consolidation which could secure a stronger future for the sector.

Mergers or acquisitions can be stopped, but at the risk of harming long-term market prospects. Consolidation – both within and across media - may increasingly be necessary to secure on-going viability of news provision (and to provide a better product to consumers). If a news provider becomes “too powerful” through organic growth, options for intervention are even more limited. It is hard to imagine much public good coming from mandating a successful media company to close titles, divest parts of its business, sell fewer newspapers, or make its product less attractive to consumers. If plurality has diminished not because one company has become too successful, but because one or more have declined or dropped out of the market, then it is even harder to conceive of appropriate remedies. This is not to say that nothing can be done to promote diversity or to prevent undue influence, but that caution should be exercised when searching for simple solutions such as ownership caps. A range of measures is more likely to be effective than a narrow focus on ownership.

5.2 Scope of media plurality

There are two key aspects to this question:

- Should plurality focus on news and current affairs or more widely on cultural diversity?
- Should the scope of any policy and regulation be extended to include new digital news sources alongside more traditional broadcast and print journalism?

Focus on news

Should we be interested in all types of media content, or more narrowly in coverage of news, current affairs and related matters?

My view is that the focus, as a matter of priority, should be on news and current affairs. News most directly affects what we know about political and economic issues and how we form our own views about the key matters of the day. News media have most scope to
influence public and political opinion. The provision of high quality news, especially in traditional journalism, faces significant economic challenges and pressure for consolidation, which could in turn affect plurality.

This is not to dismiss the importance of other non-news media. Broadcast drama, comedy and documentaries, for example, contribute to the way we see ourselves as a society, can provide a commentary on the lives we live and how we are governed, and help form our cultural identity as communities and as a nation. From time to time, major contemporary TV dramas have had a significant impact on public debate. Satirical shows like *Spitting Image* and *Have I Got News For You* form a backdrop to how we think about business and politics. From lifestyle and property shows to talent contests and reality documentaries, TV can help shape our values and aspirations.

Although arguably of less impact than popular TV programmes, press and magazine features likewise express opinions and offer perspectives on many different cultural and social topics and can influence the way in which we think about our lives. Film and theatre can be powerful media in which to make political points.

In the UK, however, we are fortunate that media markets in this widest sense are characterised by a reasonably open and plural supply, with many different types of institution (both public and private) and many different means of accessing cultural content. In the broadcast environment, this results partly from the presence of a publicly funded BBC with a remit to reflect the interests, perspectives and lives of all of its licence payers. But other aspects of broadcasting regulation also make an important contribution, including a not-for-profit Channel 4 which is charged with sourcing content from a diverse mix of independent suppliers, and a healthy commercial television sector which is encouraged to commission high levels of original UK content. More widely, digital media are creating new markets and allowing content providers to find different and lower cost routes to their audiences, hence lowering entry barriers.

On balance, the state of play in the UK media marketplace does not suggest that plurality of cultural content is under any immediate threat. Unlike news media, it does not need to be a priority for policy action.

Inclusion of digital media

Current plurality rules were designed with old media – newspapers and broadcasters – in mind. They do not easily accommodate the effects of online news in their application. Online-only enterprises are not ‘media enterprises’ for the purpose of the Communications Act\(^\text{192}\), and therefore do not contribute directly to the number thereof. However, clearly the number of traditional ‘media enterprises’ that would be enough to create ‘sufficient’ plurality will be lower if there is vibrant provision of news and/or opinion online from non-media. More consumers report that the internet is their main source of news than say the same about either newspapers or radio. Ofcom in the past has argued that the internet has less relevance to plurality than traditional news media because (it believes) it primarily “extend[s]”

\(^{192}\) A consequence is that an acquisition of a broadcaster or newspaper by a large online player would not directly trigger the public interest test of the Act (since the number of ‘media enterprises’ would be unchanged by the merger). However, it would be theoretically possible to argue that though the number of media enterprises had not changed, that number was no longer ‘sufficient’ given the common ownership of off- and online news providers.
the reach of established news providers”. However, this is precisely one of its great virtues for plurality. By exposing consumers to a greater range of views, it contributes to diversity and political discourse.

A key feature of the web is that it makes far greater specialisation viable. ‘Old media’ outlets online may have larger audiences online, since (based on their offline product) they cover a wide range of topics. However, on any given topic they will compete with multiple specialised internet providers. (To a lesser extent, the same applies to multichannel TV). While these specialist players may be small relative to the audience of integrated news providers, that does not mean they are small within their particular specialism. On a topic-by-topic basis they represent important plurality.

Online news aggregators also have an important role to play. From the consumer’s perspective, they certainly are key sources of news, and even if all they do is introduce (say) a Guardian reader to a reproduction of the Telegraph’s coverage, that is a valuable contribution to plurality. Moreover, any aggregator will take its own perspective on the news agenda, adding plurality in this way too.

Like news aggregators, bloggers generally are not news gatherers, but they nonetheless contribute to plurality. Plurality measures are aimed (in part) at ensuring a wide range of views and perspectives is available, and such sites can have an important influence on the way individuals form their own opinions about the main political issues of the day. Indeed, in drawing on a third party for facts, but delivering their own angles and comment on a story, a blogger is very little different from much main-stream media coverage based on Press Association or Reuters news feeds. It is also worth noting that the importance of blogs can be out of all proportion to their direct audience, because they are so widely read within other news organisations, and thus have an influence on the wider news agenda.

Finally, social media such as Twitter and Facebook are growing in importance as a news source, and they contribute to plurality in a number of ways:

In some instances they (or more accurately their members) break news stories.

Social networks contribute to the reach of stories (even if initially covered by traditional media), both by simple rebroadcast of the facts and by the posting of links to stories Social media creates (crowd-sources) an alternate news agenda, since stories are not tweeted or discussed in Facebook in the same proportions as they are covered in traditional media

Tweets and Facebook posts give users an opportunity to broadcast their own take on events, providing new ‘editorial’ angles.

Clearly, any review of plurality must therefore take into account the rise of digital media. Online news providers should be included in the plurality metrics used to assess plurality, although careful thought will be needed in selecting which types of online provider are most relevant to UK plurality. Online news providers should also be brought within the scope of any future public interest test – so that mergers/acquisitions between established media players and new online news providers would be properly captured.

5.3 Reviews and triggers
The Call for Evidence asks for views on reviews and triggers. Here I suggest we can look to improvements in a number of areas, many of which have already been recognised by Ofcom and others.

**Mergers/acquisitions**

As now, a major merger/acquisition in the news media could be used to trigger a review of its potential impact on plurality. In future, though, the definition of media enterprises which would be used in assessing whether a merger/acquisition should be reviewed should be extended to include digital enterprises, as discussed above, and plurality should take into account online as well as traditional news consumption.

**Organic growth**

Currently there are no available tools for dealing with excessive media concentration that arises through, for example, organic growth of a particular company, or because other companies exit the market. There are good reasons for this, as noted above: intervention in such cases might penalise success or act as a disincentive to growth and innovation. Given market volatility, there would be a risk of constant reviews, which might then have a chilling effect on investment and innovation.

It is not, in my view, sensible to introduce caps or triggers which would apply automatically to media concentrations arising from organic growth/exit of companies from the sector.

**Periodic reviews**

Nevertheless, there are grounds for considering whether our approach to plurality could be modified in a way which would allow proportionate responses to such changes in market concentration over time, without imposing high costs on the sector.

It would therefore be sensible to introduce, as Ofcom has recently proposed, periodic reviews of plurality alongside existing provisions for a public interest test.

These reviews should take place as a matter of course every 3-4 years, and be formed of 2 stages: a quick preliminary review to assess whether there are grounds for significant concern/major changes since the last review, and then (if concerns/changes are identified) a full review. It is my sense that, if Ofcom were to put in place a process for on-going collection of data on agreed metrics, a full review would require in the region of 6 months, and Ofcom would be the organisation best placed to carry it out. The review would be charged with assessing whether or not plurality is sufficient, using transparent and widely understood indicators and informed by guidance from Parliament.

**5.4 Sufficiency**

We do not have a clear sense of what a “sufficiency” of plurality would look like. There is no objective measure, and Parliament has offered no guidance on this matter to Ofcom. In the absence of any such clear view, any assessment of whether, for example, a merger leads to “insufficient” plurality, will be problematic.
Ofcom sets out some thoughts on this in its recent report, and argues persuasively that sufficiency cannot be reduced to a single metric. However, neither is it sensible to leave this important issue to the regulator alone.

Rather, there would be value in Parliament providing more guidance to Ofcom in the next Communications Act on what is meant by “sufficiency” and the criteria to be used by Ofcom in assessing whether it exists, either in applying public interest tests or in its periodic reviews.

For example, in defining sufficiency, Parliament might wish to establish some guidelines or benchmarks for the different market share indicators which Ofcom could then use to inform its plurality assessments. Alternatively, Parliament could express sufficiency in the terms suggested by Ofcom in its recent report, which included a diverse range of providers, high reach, active multi-sourcing and low barriers to entry. Reflecting economic realities, there may need to be different expectations for national and local media – local news markets may be unable to sustain the same degree of plurality as national markets.

5.5 Inclusion of the BBC in assessing plurality

The BBC is without doubt a major news provider in the UK, and also achieves a high share of UK news consumption. Any discussion of news in the UK therefore needs to consider the role of the BBC and how it should be factored into a plurality assessment. Based on crude market share measures, the BBC might seem at first sight like an early candidate for scrutiny. There is, however, a strong case for thinking about the BBC differently from other news providers in any discussion of plurality, because of the nature of its overall objectives, editorial approach and governance.

Importantly, in providing news (alongside all of its output) the BBC is expected to operate in the public interest. As the BBC’s Charter explains, the BBC exists to “serve the public interest”. The BBC Trust, which oversees the BBC, is the guardian of the licence fee revenues and the public interest in the BBC. As such, it must respect the interests of licence fee payers and secure the BBC’s independence.

This makes the BBC very different from most other news providers in the UK, which exist to serve the interests of their proprietors or shareholders as well as satisfy advertisers and consumers. Its provision of news must be seen in this broad context.

The BBC is also subject to a special governance regime. The BBC Trust is expected to ensure that the BBC acts in the public interest through detailed regulation of its news and current affairs output. According to the Agreement, the BBC must do all it can to ensure that controversial subjects are treated with due accuracy and impartiality in all relevant output. Of course, other broadcast TV news providers must observe Ofcom codes which require due impartiality and due accuracy, but the BBC has the added safeguard provided by the Trust acting explicitly in its capacity of guardian of the public interest.

In itself, the scale of the BBC’s news output and consumption should not be a reason for initiating a review of news plurality or news market concentration. Having established the BBC with a clear set of public purposes, and securing public funding for those purposes, it is surely sensible to encourage the BBC and in particular its news services to strive to reach as many licence payers as possible with its output, hence delivering the greatest public value.
possible for that investment. If there is a concern about the scale and scope of the BBC’s news operations, that should be considered as part of periodic Charter Reviews.

In assessing the sufficiency of plurality in the rest of the news market, it is however vital to take account of the BBC’s contribution. The success of the BBC, indeed, could be an important safeguard should market forces lead to either greater consolidation in news supply, or a reduction in quality of commercial news provision. Equally, the extent to which the BBC is meeting its obligations to deliver “internal plurality” of news and views would also be a relevant factor in any wider review.

5.6 Measurement

There is no widely accepted common currency which can be used in assessing and measuring plurality, or lack of it, in the provision of news.

As Ofcom’s recent report concludes, there is no single metric or indicator which can capture plurality effectively. Consumption shares describe which news providers are most used, but do not necessarily explain relative impact. Revenue shares capture economic power, but do not necessarily say much about ability to influence the news agenda. Measuring the number of news suppliers tells us that news is available but not whether it is actually consumed. An understanding of how many different news sources are accessed by users (multi-sourcing) can offer a significant insight into levels of plurality not captured by simple market share data.

Nevertheless, it should be possible through use of a small set of indicators to build up a good picture of the different aspects of plurality, which can be used to gain consensus for any review process and its outcome. Ofcom’s proposals to focus on availability, consumption (reach, share, multi-sourcing) and impact (importance) seem a sensible start, but I would suggest that more work needs to be done in two areas:

- First, to improve our understanding of how audiences/readers use their different sources of news, and how they use news sources to form their views on matters of public debate.
- Second, to develop further thinking on how to create a robust way of comparing consumption across different media on a consistent basis.

5.7 Remedies

There has been little considered analysis of the range of “remedies” or actions which might be available to the regulator should plurality be found in any review to be under threat. If caps on single or cross-media ownership are thought to be counter-productive, then what other regulatory approaches are available?

In the News Corporation/BSkyB case, the merging parties were asked to propose undertakings, which the regulators then assessed. A better approach might be to have greater visibility in advance of the range of such remedies which regulators might consider, their benefits and costs, together with a clear assessment of how they might work in practice.

In the absence of effective structural tools, we will need to take a closer look at so-called “behavioural” interventions which might be used to improve the range of content available,
or to place constraints on the extent to which owners can influence the editorial decisions made by their news media. For example, in the case of a media merger, or if one owner is considered to have become too powerful through organic growth, then behavioural interventions might include:

- requiring the relevant party or parties to put in place content investment commitments,
- requirements to make space available for the inclusion of alternative viewpoints,
- effective right of reply procedures,
- independent editorial boards.

A weakness of some behavioural remedies is that they can be hard to enforce if they are clearly not in the interests of the parties to which they have been applied. Nevertheless, it should be possible to specify and track performance against specific requirements if carefully formulated and capable of being measured – as has been the case to date with public broadcasting obligations.

Consideration should also be given to the more positive or pro-active tools available to government and regulators to secure continuing availability of high quality and impartial news. Currently, public support for news in the UK is focused on the BBC (via the licence fee), and commercial PSBs (via certain privileges given to Channels 3, 4 and 5). Zero-rating of VAT for printed newspapers can also be seen as a form of public support. The role of these interventions in helping to secure news plurality should not be underestimated. Future policy could focus on:

- **Securing existing provision** – for example by ensuring the BBC licence fee is sufficient in the longer term to support high quality news, and requiring continued provision of national and regional news on Channel 3.

- **Addressing local news shortfalls** - pressures on the commercial supply of local news are particularly acute, so a high priority could also be given to exploring opportunities for more ambitious cross-media approaches to local news provision, building on existing local TV plans and perhaps in partnership with local news media and the BBC.

- **Plurality and the BBC** – as Ofcom suggests in its recent report, the BBC could be given a more explicit responsibility to deliver plurality through its extensive news outlets, and to report periodically on how it is achieving that goal.

### 5.8 Accountability

The Call for Evidence asks with whom the power to deploy remedies should ultimately reside. At issue is whether it is appropriate for the Secretary of State to retain final responsibility for taking a decision in the event of a media merger or- in future – should Ofcom find in a periodic review that plurality is at risk. Those who believe that it should be the case, argue that such decisions, which are inevitably judgmental, should be democratically accountable and not left to regulatory technocrats. Others argue that plurality decisions should be taken out of the political arena to avoid perceptions of bias.
My view is that both sets of concerns could be addressed by securing a greater role for Parliament in setting out the parameters within which Ofcom can reach any plurality judgement, but then allowing Ofcom or the relevant competition authority to take the final decision on individual cases. Consideration could be given to setting up an appeals process, which might involve the right to appeal to a specially-convened body of individuals with expertise in plurality issues. Such a group would not need to sit permanently, but could be drawn together as needed on a case by case basis.

5.9 New digital intermediaries and access rules

As I explain in my 2012 report for the Reuters Institute, plurality in future may be affected by another key development - the rise of new digital intermediaries or gatekeepers, who are playing an increasingly important role in helping news providers get to market and news users find and access news content on a range of digital devices. Their role should be a key part of any future plurality policy deliberations.

If they wish to reach the widest possible audience, news providers now need to find ways of distributing their content via these digital intermediaries to ensure they reach their intended market:

- Via content aggregators like Yahoo and MSN
- Via search engines like Google and Bing
- Via social networks like Facebook and Twitter
- Via digital stores linked to specific consumer devices, like Apple’s iTunes, Amazon and Google Play.

These digital intermediaries can have a significant and potentially positive role to play in news plurality. They help us find news stories from a wider range of sources and play a big role in enabling multi-sourcing of news, with friends sharing news stories through social media more widely than would otherwise have been possible. Smartphone and tablet apps help sustain news brands, improve access to existing product, and provide a platform for improved product features, as well as making charges for news more acceptable to users. These more compelling news products may help sustain and build future demand for high quality news. They may also give rise to future public interest concerns, though:

- They occupy an increasingly influential “gatekeeper” position for news, which could allow them, if they chose to do so, to determine which sources of news we have easy access to, through search engine ranking of news stories, for example, or the degree of prominence given to different news sources in app stores.
- Although few intermediaries are active in producing their own news content, they do make editorial-like judgements which, at the margin, might affect the nature of news content which we can access in the UK.
- Whether or not intentionally, they could have a big impact on the economics of news provision, and the way in which they do business with news providers has implications for the longer term viability of high quality news in the UK.
- Their capacity and appetite for engaging in the wider political debate is an important issue for the future: although they have no sign of wanting to behave like the press barons of old, they could wield significant power of they chose to use it, especially if
they at some stage also decided to invest in or acquire news and other content provision.

Perhaps most of all, there are questions about the level of engagement with local sensibilities and concerns, and the accountability to the public and politicians in the UK of companies that see themselves as more global than national. A new plurality framework needs to consider how it would address those challenges for the next decade and beyond. In my report for the Reuters Institute, I suggest a four-tiered approach for addressing these issues:

- Securing effective competition. Active use of existing competition rules to ensure that news consumers and suppliers are protected from any anti-competitive behaviour.
- A new “plurality dialogue”, involving government, intermediaries and other relevant parties, to ensure that intermediaries understand and are fully engaged with UK citizenship priorities, and are properly accountable to the public. Effective self-regulation should be the first priority in this area.
- Incorporation of digital intermediaries within the new plurality review framework proposed recently by Ofcom, so that their role is periodically reviewed.
- In the event that Ofcom identifies problems in such reviews, consideration of remedies or backstop regulatory approaches, particularly in the area of access rules, that might be called on should intermediaries over time prove to be a threat to plurality.

Approaches might include:

- A requirement that digital intermediaries who account for a significant share of news access should guarantee that no news content or supplier will be blocked or refused access, unless for legal or other good reason, such reason to be explained with reference to publicly available criteria.
- A requirement that such digital intermediaries should link to or carry in a prominent position a range of news content deemed to be in the public interest.

Such steps could be taken after Ofcom has carried out a plurality review and in the event that there are significant concerns, or by introducing ex-ante regulation if thought necessary. 193

1 May 2013

193 A precedent for such access regulation is found in the existing application of “must carry” and “appropriate prominence” rules to broadcast content on digital transmission networks and electronic programme guides.
Mr Robin Foster and Professor Robert Picard – oral evidence (QQ 15-28)

Evidence Session No. 1  Heard in Public  Questions 1 - 28

TUESDAY 11 JUNE 2013

Members present

Lord Inglewood (Chairman)
Baroness Bakewell
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Bishop of Norwich

Witnesses

Robin Foster, Communications Chambers, and Professor Robert Picard, Reuters Institute, University of Oxford

Q15 The Chairman: Thank you for waiting patiently. I am sorry we have slightly overrun by a minute or two. Can I first welcome Professor Robert Picard? We have a full CV, which you have kindly supplied, and we have seen your evidence, for which we are most grateful. I do not think Robin Foster needs an enormous amount of introduction from me.

Robin Foster: It is good to be back.

The Chairman: They do not always say that. I will ask each of you for some preliminary thoughts before we go into the questioning proper. It is really over to you, whichever of you wishes to start first.

Robin Foster: Thank you very much. Good afternoon. I will not, in my opening remarks, plunge straight into the details of objectives or measurement, but perhaps I could just make a brief observation and highlight what I think are a couple of challenges for the Committee, just to set the scene.

The observation is a simple one: I think media plurality is all about the art of the possible. By that, I mean not just that it is about getting a set of metrics that are easy to understand and to use—although possibly not perfect, because I think the search for perfection is going to lead to failure—but it is also about understanding that media plurality depends largely on commercial organisations investing in news and journalism. You cannot force organisations to invest if they cannot make money out of it. It seems to me there is always going to be a balance in thinking about plurality between the desire to have a diversity of opinions and media owners, and what is practically possible in the marketplace. It is worth always bearing that in mind in thinking about these issues.
The challenges that follow on from that are, first of all, for the Committee to have a really good understanding of the way in which the market is going to develop over the next decade or so. The work you have done on convergence, I know, means that you understand the very significant changes that are about to take place and that will affect the provision of news alongside all other content. That may have—as I set out in my evidence—both positive and negative effects on plurality. The second challenge is to think about approaches that go wider than the traditional focus on media ownership and concentration and, as the previous speakers were arguing, think about those other types of remedies: behavioural remedies and, indeed, positive interventions to secure high-quality news provision, as well as negative constraints on the market. In a nutshell, what that means is that the challenge is to try to design a model that will work in the future, rather than addressing some of the problems of the world that we are already leaving. We can come on to the details of that as we go through.

The Chairman: Yes. Professor Picard, what would you like to say?

Professor Picard: Thank you very much. For the past three decades, I have been wrestling with issues related to media pluralism, studying them in democratic countries around the world. I was, in fact, one of the principal authors of the European Commission's report on measuring pluralism. Essentially, there are three things I would like to highlight out of some of the evidence that I get.

First, the UK policy approaches primarily focus on political pluralism in the printed press. The methods used to do that have not increased political pluralism, but they have kept it from getting worse. There is some effectiveness to it, but it has created some problems. It has not been particularly effective in dealing with the issues of pluralism arising across media or the broader issues of pluralism involving voices that are not heard in the London-based press, if you will. It has not addressed the ability of citizens in the regions, for instance, to have their ideas and opinions heard very well. It has not done very well in terms of helping citizens who have less well embraced political or social views being heard. Those are some of the limitations of the current approaches in the policy.

Secondly, it is important that plurality measures not simply be thought of as competition policy, because addressing plurality as a competition policy issue gives you a rather crude instrument to use along the way, and it can achieve only limited goals. The reason it does not fit very well in the current world is that all media markets in all democratic nations are highly concentrated in both print and broadcasting, to begin with. They are far more concentrated than in other industries, primarily because of the economics of it and because of structural constraints that are there as well. Secondly, the existing competition policy approaches really do not deal very well with the proliferation of digital platforms and the cross-media activity that is under way. That creates huge problems.

Thirdly, pluralism really does not fit well into existing administrative frameworks for UK policies. The Committee might well consider how that can be addressed, and I know that you are thinking in those ways. There are too many cleavages now between the interests of different players and players with different kinds of competencies to address the issues. Most of them lack a lot of competency from Parliament to be able to make the kind of determinations that need to be made. Clearly, you have your work cut out in that regard. Thank you.

Q16 Bishop of Norwich: Thank you for those helpful introductions. I just want to go straight into what the objectives for media plurality policy should be, and whether you would
say that the two desired outcomes in Ofcom’s advice to the Secretary of State last year are sufficient; whether you would want to add to them; or whether you would be critical of those desired outcomes. Should we take them as a sensible basis for working out the objectives of our policy?

**Robin Foster:** The Ofcom working definition is a really good start. The good news, looking through some of your written evidence at least, is that the same words keep cropping up from a number of different contributors: “diversity of voice”, “no undue concentration”, and so on. It does not seem to me that there is a lot of disagreement about what plurality in a broad sense means. In fact, in some ways, we could spend too much time debating that, because I sense that we all feel we know what a plural system would look like.

I would add a couple of things to what Ofcom suggest, which they do start to include when they talk about their desired outcomes, which elaborates on their twin-track definition. Those are, picking up the point I made earlier, about having a healthy and sustainable media sector, because without that, you do not get investment in news; and, following on from that, the notion of high-quality news, and news and media organisations that observe high and accepted ethical standards. It seems to me that although diversity is the key part, there are also those extra dimensions that need to be added into the pot.

To pick up my earlier point, if you can think about plurality as a spectrum between two extremes, at one extreme you would have a highly fragmented sector with lots of small providers of news and journalism, which might provide you with diversity but would probably not provide you with high-quality, well invested and well resourced journalism; and, at the other extreme, you would perhaps have a single large organisation that did have a lot of money to invest but would be unacceptable in terms of undue influence. What we are seeking is to see how far we can move the sector away from the single-owner extreme towards the other end of the spectrum without losing the benefit of investment and quality. That is always going to be a question of judgment, rather than a scientific, quantitative definition.

**Professor Picard:** One of the fundamental problems with the whole concept of plurality is that we tend to define it by its absence. We know it when we do not see it, and we know the effects when we do not see them. It is very difficult to always apply quantitative measures to deal with these. You have countries with very highly concentrated media markets—with, in many cases, two major players—that have great plurality. You have others that have half a dozen players that have very narrow plurality when you look at the content. That becomes part of the problem. You cannot just measure it in numerical terms.

**Bishop of Norwich:** Does that relate, then, to the first desired outcome of Ofcom, about the diversity of viewpoints being consumed? That is the interesting phrase they use.

**Professor Picard:** The much more interesting thing is what is there and what is being consumed. You cannot measure that with traditional structural measurements of the market. You have to look at who is speaking and who is able to have their voice heard. It is not always a matter of ownership, because not all proprietors must control the content to a narrow space.

**Robin Foster:** Another key part of Ofcom’s desired outcomes is this concept of multiple sourcing of news, so that individuals do not just use one news source; they use three, four, five, or however many. Even if you have one organisation with a reasonably high market share in that context, if the people who use that news source are consulting lots of other
sources as well, that is much less of a concern than if they just stick with that single source, as Robert was implying.

**Q17 The Chairman:** They say it is difficult to define an elephant in words, but you know it when you see it. In terms of plurality, and referencing the recent remarks you have made, are there any particular things that one should either look out for or look out for the absence of when homing in on this topic?

**Robin Foster:** I think Ofcom makes quite a good stab at it in talking about the desired outcomes, which include range and diversity of supply but also this point about consumption. They include the point about multiple sourcing of news. They talk about sufficient investment and low entry barriers to allow new news providers and news media to enter the market. I do not think there is one aspect, but there is a whole group of things to look out for. I would add to Ofcom’s list the idea of different funding and institutional models in the media market, because it is quite important not just to have a commercial, profit-motivated sector, but to have not-for-profit organisations, publicly funded organisations, trusts and the like, because the institutional plurality can deliver different perspectives and different approaches in the provision of news. There are several dimensions to plurality, and the institutional dimension would be one I would add to the list.

**Professor Picard:** In many countries, they look at issues such as whether the views of all the political parties are adequately being represented by the existing media, or whether the view and opinions of various important social groups and minorities are being represented in the debate. You can look at those as other measures to ensure that you are having a degree of plurality and diversity of viewpoints put into the mix. Those can be accomplished in a variety of ways. It is not necessarily just ownership. It is by having a very vibrant concept, as was said; by having a variety of different kinds of ownership; and even by having positive measures to support development of media, particularly in the digital world, that allows these voices to be increasingly heard.

**Q18 Baroness Fookes:** I wonder if we could just continue from that for the moment. If one is looking to see that the individual citizen is getting a wide variety of news from different sources, you cannot make that person choose to read or absorb all of those, can you? It is a bit like the horse: one can lead it to water, but 20 cannot make it drink.

**Professor Picard:** There is a certain amount of unintentional consumption that occurs in the media world. We know what is in the Mail today. We know what the viewpoints of certain media are, even though we do not necessarily read them on a regular basis, because they come to us by hearing people discuss them, as we pass news-stands or as we pass their sites on the digital aggregators that we have. There is no way you can force consumption, but you want to make it readily available to everybody, make it readily available to people at a price that is acceptable for them, and make sure that you are not excluding them in some way along the way. But you are absolutely right: the horse will not drink if it is not thirsty.

**Robin Foster:** I absolutely agree. The good news about the changing media world and convergence is that news is becoming more readily accessible on an everyday basis through lots of different media. I sometimes feel you cannot move without seeing the news headlines on the front page of your browser or on apps on your phone. The BBC news is everywhere. One of the benefits of convergence and digital media is that, although it probably is true that the different sources of well resourced news may not have increased that much, the opportunities to consume it have multiplied by a huge amount. Not only have the opportunities increased, but the way in which news is consumed has changed -
through social media, and the sharing of stories, with users in effect setting their own news agenda rather than taking what the newspapers are giving them. There are some positive aspects to all these developments.

**Professor Picard**: The position of strength of the providers in print is not replicated online. In the digital environment you have news providers that are fifth or sixth in the offline world that are now third or fourth and have moved up on digital provision in terms of the consumption of the public. Some of the advantages that were inherent in one have been overcome in the digital world, because they provide better news on mobile platforms of some sort than some of the traditional players. That means you are more likely to have consumption in a different platform from different types of medium.

**Baroness Fookes**: If one is going to have a review of plurality, what exactly do you include?

**Professor Picard**: It depends on what you are looking for. If you are looking at news and public affairs, then you would definitely look at print; you would look at broadcast; and you would look at digital distribution of news. You would look at providers on all of those platforms. Presumably you are dealing with domestic providers, which would primarily be your interest. If you are looking in broader terms, you might include other kinds of content that were not necessarily news and public affairs.

**Robin Foster**: I would agree that digital media have to be included in any assessment of plurality. Just to steal Robert’s thunder, the Reuters Institute offered a sneak preview of their latest survey, which I found on the internet this morning. It has not even been published yet, but it is available on the internet.

**Professor Picard**: It is being launched next week.

**Baroness Fookes**: That tells us something, does it not?

**Robin Foster**: One interesting finding that has been leaked is that, for the under-45s across all of the countries they have surveyed, the internet is now a more important source of news than television or newspapers, probably for the first time. There is a real split in the market between the over-45s, who still like print and television, and the under-45s, who rely much more on digital media. That just shows it has to be included in any assessment.

**Baroness Fookes**: The digital media might include newspapers online, might they not, or what is provided by newspapers?

**Robin Foster**: Absolutely.

**Baroness Fookes**: Do they go into that?

**Robin Foster**: I do not know whether this survey does, but certainly some of the Ofcom data has shown that, if you look at the top 50 news websites, traditional news media still account for quite a large share of those top 50 sites, which I guess is not surprising, because they are the ones that have the investment, the resources, the journalists, and so on. As Robert was saying, there were some surprising new entries in that list as well, which shows that the number of sources is diversifying as a result of new forms of access.

**Professor Picard**: In a number of countries, there are new players that are entering the list. In France, for instance, Mediapart has completely altered the environment of news, because it does not play the games that the traditional print media did with the Government. They tended to be rather close to the Government and to industry, and they tended to avoid
worrying about the personal behaviour of Ministers and other such things. That has changed with Mediapart coming in. It is now a major player in terms of breaking news in France.

Q19  The Chairman: Does it follow from the finding that you have just described, Robin, that, in thinking in terms of plurality policy, it is a mistake to think you can have a single policy for the whole of society? Really, ought we to look at it discretely, with one for over-45s and one for under-45s? Consumption is completely different in those two sectors. It poses some quite interesting problems, does it not?

Robin Foster: It sounds like that might add an additional layer of complexity to the layers that we heard about from the previous speakers. I suspect that, if an organisation like Ofcom is reviewing plurality, they would need to take these issues and these patterns of consumption into account in reaching a view, but I am not sure that you would start having different approaches for different population groups. Those pictures or patterns will change over time, I am sure.

Baroness Fookes: It might be that a single individual might change their pattern of consumption over their lifetime.

Bishop of Norwich: I can recognise that, because I get a lot of news off this thing now, but I am so wedded to newspapers that they are still delivered at home, even if I do not read them. It might be that, if you are like me, you read newspapers online during the week and in print at the weekend.

Professor Picard: There is a big difference in people and the way they consume news. There are heavy news readers and there are light news readers, essentially. The heavy news readers read on every platform. They want it all the time; they want to access it. That is about 25% of the population. Then there is a larger group that is less interested and reads occasionally on different platforms. One has to recognise that both of those are occurring.

The Chairman: Is there any evidence that various digital media, other than possibly the French example you have given, have increased access to news?

Professor Picard: The audience for news overall is increasing in all countries.

The Chairman: What is “news”?

Professor Picard: News, as traditionally defined, is rising on all platforms. Digital news has brought about 15% new readers, or users, to news sites—even news sites of traditional newspapers. These were people who never read the papers before, or never watched television news on a regular basis before, and they are now regularly consuming in the digital environment. This is increasing consumption.

The Chairman: Are people treating things as news these days that, for example, a generation ago they might not have been thought of in those terms?

Professor Picard: There is certainly a great deal of interest in sports, celebrity and other such things, but the press has not been particularly stellar in that. The entire business model of the general circulation press for 100 years has been based on giving those things to get people to read the newspaper, and only about 20% of the newspaper is “hard news”, if we will. That has been part of it all along. There is a widening of the definition of news now to include much more analytical or commentary-based reporting of the news than has been
traditional in the UK. It has been more traditional in countries like Spain, France and Italy in the past.

Q20 Lord Dubs: If one looks a bit ahead and one sees electronic newspapers expanding and print newspapers going down, would you still see an equivalence between media control or media ownership as between electronic and print? In other words, suppose that the good guys of this world, like the Guardian and so on, faded away, and the bad guys of this world—I use my words not very carefully—like the Daily Mail came increasingly to dominate the hard newspapers, and the others were all electronic. Would you see that as okay, provided the numbers were equivalent?

Professor Picard: It depends on consumption issues more than anything else, and what the consumption patterns behind it are. It is not merely the ownership of it and where it is available, but who is consuming what and what level of consumption is coming from the digital as opposed to the print.

Lord Dubs: So you would assess how much they read of the digital, compared to how much they read of the hard copy.

Professor Picard: At some level, you have to combine supply and demand measures, or you will not have an effective measure of what the plurality is that is actually reaching the public and affecting them.

Lord Dubs: You would be left with a very complicated set of equations, perhaps.

Professor Picard: You can look at time spent, and other such measures, that are fairly good measures. Ofcom currently has very good measures of those. Those would need to be put into it. Most of the measures of pluralism that have been used in the UK up until now have primarily been market based, looking at ownership, titles and revenues. Those are not very good measures to deal with these broader issues of pluralism.

Robin Foster: To add to that, what you are identifying is one of the critical issues for measurement going forward, which is being able to examine and assess consumption across these different media. We will be in a world for some time where there is consumption of print newspapers alongside online and alongside television and radio. Plurality needs to be considered against that background, rather than—in my view—on an individual medium or platform basis, because consumers use all of those platforms, more or less. As Damian and Rachael mentioned, Ofcom has started to do this with its share of references work, which is a good start. The challenge is building on that in future to make it a more refined and sophisticated tool to use in thinking about plurality across media.

Professor Picard: I should also note that the industry is working on this; not for the purposes of plurality, but for measuring audience across platforms, for commercial purposes. Some of the ideas of how you would measure audiences across the platforms are coming together in a very interesting way.

Q21 The Chairman: Do you think there is a risk that it is all going to get too complicated? I think it was Robin who was talking about the art of the possible, which in this debate infers “keep it simple”. Is the risk going to be that we are going to make it too complicated, or is the risk that, in seeking certainty, we are going to make it too simple and therefore misleading?

Robin Foster: Those are the risks. The proposal that Ofcom has made, which is to look at a relatively small number of measures or indicators—the number of providers, consumption,
and importance—seems to me to be about right. That would suggest perhaps four, five or six different measures they would use as their primary focus. That has to be the right approach, because if you just take one measure, like audience share or revenue, for all the reasons that we have discussed this afternoon, those are not going to give you a terribly helpful indication of whether there is enough plurality or not. It really depends on so many other things in the market.

It is easy to talk about these things in abstract, but just to bring us back to the facts, looking at Ofcom’s share of references data from last year is really interesting. If you ask people where they got their news from yesterday, in terms of market share the BBC is top of the list, with 47% of the market by share of references, then ITV, then commercial radio, and then all of the rest are down at 4%, 5% or 6%. It is a very distributed marketplace in terms of share of references, which is sometimes not the impression we get when we look at traditional measures of either newspaper market share or even television market share. These metrics can deliver quite a bit of insight into the discussion as a starting point, as long as we recognise that there are all sorts of other factors that then need to be taken into account.

Professor Picard: You need a number of metrics and a number of principles for interpreting their usage. That becomes important for two reasons, one of which is that you really do need to measure pluralism widely in its broader view of how news and public affairs are affecting society. On the other hand, it needs to be clear enough to the companies, quite frankly, so that they know whether they are going to be walking close to an edge or not. We are asking companies to make large-scale investments to improve communications in society, and they need to know that those are not at risk simply by having made them. There is a balancing act there. There needs to be sufficient clarity so that, if they make the strategic decision to do something, they know it is okay, or that it is likely to be challenged and, if they choose to go ahead, they take that risk on their own as a business risk but the ultimate outcomes should not be a surprise. That is why there have to be clear measures and very clear principles about what it is going to stop: expansionary behaviour, mergers, or other kinds of activity.

Q22 The Chairman: Are there any particular points that are especially thrown up by digital intermediaries?

Robin Foster: Shall I answer that first, seeing as I—courtesy of Robert and Reuters—was commissioned to write a report for the Reuters Institute on it last year, called News Plurality in a Digital World? That identified several real concerns around digital intermediaries—or at least potential concerns, as opposed to existing concerns. By “digital intermediaries”, I mean a range of different types of organisations. There are the news aggregators like Yahoo; search engines like Google; the digital stores like Apple; and the social networks like Facebook. Each of those is slightly different, so it is probably wrong to talk in general terms about digital intermediaries without recognising that each of those has slightly different characteristics and a slightly different role to play.

The big issue that generally came out of my research was that of access to news sources. All of these intermediaries are quite important in their own way as a means of getting access to news. In particular, as I was saying, as the internet becomes more important as a way of getting access to news, so those intermediaries who control or manage our access to the internet will become important as conduits to news. The public interest concern is whether they have an incentive and an ability to decide what sources of news we can get to through their platforms and gateways. At the moment, I suspect this is not a major concern, but you
can see that in future, the way in which Google operates or the way in which Facebook or Apple operate could start to determine which news sources get priority treatment and which get pushed down the list; which news sources they are willing to carry and which they are not. These sorts of decisions could well be based on commercial agreements rather than on public interest. While I do not think the solution is to start chopping away at, for example, Google's market share, it is to ask Google and other digital intermediaries to think about their responsibilities in these areas, and to engage in a dialogue with the regulator and with Government to make sure that we understand how they make those decisions and that there are sufficient safeguards in place to ensure that, if there is a valued source of news in the UK, we can all easily access it through Google or through one of the other gateways.

The Chairman: Would that possibly be by suggesting that the algorithms should have certain characteristics, or perhaps should not have certain characteristics, for example?

Robin Foster: I am not so sure it is about designing the algorithms. It is about making sure that Google—or, indeed, any search engine—has some sort of process in place that can reassure both its users and its news suppliers about the transparency and the fairness of the search process. Search engines, quite rightly, say that their algorithms are designed to make sure that we as users get news (and other content) that is relevant to us, and they take into account lots of characteristics in doing that. I think Google has something like 200 different equations in working out its search results. What would be a concern would be if the algorithms were designed so that only Google-friendly sources of news got through, for example. That would be an issue.

Professor Picard: I do not think we will ever get to a point where the search engines will stop news from coming through because it is advantageous for them to do so. The problem with the news searches is essentially that 90% of users go to the top 10 results, and in the top 10 results are always those organisations that have paid search money to Google, or those most visited sites. What it tends to do is underscore those dominant voices that already exist in society or those voices that have paid for access. That becomes a little bit problematic. They will give you those other 10,000 results, but they are just down there on page 25 where you really have to want to work to get to them. Most people do not work that hard.

Robin Foster: Google would, probably fairly, argue that its algorithms push up the sites that most people want to see in the top 10, which I guess is fair enough as a consumer service, but may not always fully reflect the public interest.

Q23 Baroness Healy of Primrose Hill: This is clearly a knotty area, as has been said before, but could you summarise what, in your view, a review of plurality would measure, or where work needs to be done to improve our understanding of what much be measured?

Professor Picard: One of the strangest things I have ever done as a researcher was the European Commission's measuring pluralism report. We came up with about 170 measures. It can be done by a regulatory agency; why they would want to spend six months doing it, I do not know, because in the end you can actually do it with half a dozen measures or so. Essentially, what you want to make sure is that the viewpoints being represented in the media represent across society. The French CSA, for instance, does this with its broadcasting. It looks to see how many people from each party appear in the news, on the talk shows, and other such things. It looks to see whether civil society groups are being represented there, whether unions are being represented, whether NGOs are being represented and whether minorities are being represented. It looks to all of those kinds of
things to see, “Are they appearing?” It can do that in broadcasting and make that work. You could do it in print, if you wanted to. It would be a lot harder to do, but you could. That is one kind of measure.

The other kind of measure is to try to look at what kinds of approaches are there. You have press that are highly politicised, and you have press that are less politicised. You have press that are overtly supporting a particular party, and you have some that are not. You do have a range, and you can look to measure: “Do we have some reasonable range that is matching what we see in society?”—or what you see in Parliament. The Swedes, for instance, essentially provide a fund that will fund a newspaper supporting every one of the political parties. Given that right now they have 13 in Parliament, it is important for them to do so. Whether it is effective, I am not sure, because two of the papers are dominant papers, and the others are then read by a few thousand. At least the voices are there. There is debate on whether there is a better way to do that or not.

Those are ways to begin to look at whether we are getting the views that are there, and if not, what can be done otherwise. Those become the kinds of things you want to look at. The Dutch, for instance, have a media subsidy board that has provided start-up funds for digital media, and also for some print media, for minority groups in society, to try to give them a voice, because they are rarely represented in the large-scale media and the dominant society and their voices are not heard. It has made a great difference to that society. They still have a lot of problems, but it helps to give a voice.

There are things that can be done. There are countries that are making a great effort now to ensure that you have local voices being heard and that you have local and regional media being well funded in different kinds of ways, or given certain advantages along the way. In some cases, you are seeing advantages being given in spectrum allocation to ensure that you have localism starting to come into broadcasting, where they have traditionally had very strong capital-level broadcasting or something. There are lots of measures that can be used. You want to look at how is the spread of media; how is the ownership of media; how is the consumption of media; where is it being consumed; under what kinds of platforms are things being consumed; and who is providing it on all the platforms. You want to see if, across it all, you have a reasonable dispersion. For all the talk of the problems of plurality in the UK, quite frankly, the UK has one of the most diverse systems across all of Europe. There are problems, yes, but there are problems everywhere. Some of the better things that can be done are probably not with competition enforcement-type approaches, but with more positive behavioural approaches, or incentives to incentivise behaviours that would be very useful.

Robin Foster: All I would add to that is that, from my experience as both a regulator and working with media organisations, once you get past five or six metrics or indicators, there is huge scope for using them to reach any answer you would like to reach. The aim should be, notwithstanding the complexities, to try to focus on a few key metrics and then have a general discussion around these other issues.

Q24 The Chairman: When things are not quite right, you need to have remedies. The evidence we have had has divided them up into structural, behavioural and hybrid remedies. In the simplest of terms, what is your view about these kinds of remedies in systemic terms?

Robin Foster: The idea of having different types of remedies is a good one, and it takes you away from what I think is an undue concentration on media ownership and structural remedies. The structural remedies, in my view, would be the nuclear option. They are very interventionist and quite tricky to design, and in a very fast-changing world could have all...
sorts of unintended consequences, of the type that Robert described. That is where the focus of plurality policy has been to date. Refocusing attention to, first of all, these so-called behavioural remedies, which involve requiring organisations to do certain things to improve plurality, and pushing up the list of priorities the scope for public intervention to support news in those areas where the commercial marketplace is just not going to provide the right range or diversity or quality, are welcome moves. In the latter area, the BBC has quite a critical role to play, both in ensuring its own internal plurality and in providing well resourced news to as many people in the country as possible.

Professor Picard: I would generally agree with that. Essentially, you need a range of remedies. Structural remedies alone are a problem because, essentially, you often measure the wrong thing. You measure business units that may be very, very different in their constructions, and you measure revenues that may be very different in where they are coming from. To suggest that the revenues coming from a pay-television operation are the same as the revenues coming from a newspaper just does not make sense in terms of trying to measure what you are getting in terms of news plurality, if you will. There is the ability, particularly, to put behavioural requirements on anybody broadcasting—that is very easy to do—but also one has to look at what financial incentives might be offered. One of the problems of most news and public affairs is that it is not financially viable for most operators, whether it be in print, broadcasting, or in the digital forms. Finding ways to incentivise producing more content by new people, and even by old people who are already players in the market, is a useful way to increase the amount of discourse that is going on. That is really what you want in society.

Robin Foster: Structural remedies are particularly difficult where we are talking about any organic growth that might lead to plurality concerns. Presumably, that organic growth has arisen because the organisation involved has been successful in developing its business; has perhaps made investments in improving the quality of its product, as Robert was suggesting earlier; has succeeded in attracting more users; or, indeed, it may just be that other news providers have been pretty bad at attracting customers and have gradually lost market share or exited the market. It is very hard to see what positive gain you would have from intervening structurally in that sort of circumstance.

It is slightly different with mergers and acquisitions, where there is something that has not yet happened and where you can say, “That looks pretty undesirable from the plurality point of view. Let us not allow that at this particular stage.” Even there, there may be issues about the sustainability of the organisations involved if the merger does not go ahead. Certainly in terms of organic growth, structural remedies are a problem.

The difficulty with behavioural remedies is that, quite rightly, people point out that they are sometimes difficult to monitor and enforce. I would favour looking at the more concrete sort of deals you can get—as you were saying, Robert—in terms, for example, of investment in news trusts or new training of journalists: benefits that are quantifiable, that you can measure, and that you clearly would not get unless you got that deal with the organisation. I am not so sure about the long term effectiveness of measures to ensure editorial independence and transparency, but those are worth discussing as well.

Q25 Lord Dubs: You talk about “deals”. Is there not a problem that these cease to be transparent, and that the criteria for them are to do with the way the industry operates, or the weak players in the industry, and so on, and that that rather shuts the public out of understanding what is going on? I know it is how it has been done.
Robin Foster: You are right to raise that as an issue. The worst type of deal, to use my term again, is that which you cannot then monitor or show is being enforced. If you are talking about concrete trade-offs, like, for example, “You can stay at this size or grow further, or you can merge, but in return we want you to commit so much money each year to invest in new journalism or support local media” or whatever it might be, those are the issues that you can make transparent and make stick for a time. These are never going to last forever, but they may be useful alternatives to saying “No” to a particular proposal.

The Chairman: If you are wanting the independence and to keep active politicians at arm’s length, the more deals that are on offer, the more hazardous it gets. Is that not right?

Robin Foster: I am not sure we could possibly comment.

Professor Picard: That occurs with regulatory agencies as well. The essential problem is who makes the deal, how is it made, and how transparent it is. That then comes down to what mechanism it would take for ensuring and answering these kinds of questions in the process.

The Chairman: You were talking about incentivising news gathering. Some years ago, this Committee looked into that and concluded that it was one of those ideas that sounded grand on paper, but working out how you did it in order to get results of the kind you were looking towards achieving was harder, perhaps, than it looks. From your experience of seeing things happening elsewhere, have you got any particular places that you suggest we look at?

Professor Picard: There are a number that have done different things, ranging from particular tax reductions for news operations to reducing fees on certain services along the way or actually providing funding. We now see more and more discussion of having internet service provider levies, or having some sort of tax-based fund to promote certain kinds of journalism in many countries. We are exploring all of these kinds of operations at the moment. Nobody has it completely right, but the idea is that if you want good journalism to survive, and if that is important to the political and democratic processes and for society to work out what it is, you have to provide the effective means to do it, not merely say, “You are free to do it”. That is part of the problem with a lot of approaches to press freedoms.

Robin Foster: Germany is probably a good example to look at, where behavioural remedies, including investments, have been proposed in the event of media mergers.

Q26 Lord Dubs: We have heard of roughly three models as to who should decide on whether to intervene in the public interest. One of them is an electorally accountable politician; the second one is an independent media regulator; and the third one is a special plurality commission, which has been recommended, I think, by Professor Picard. Would you like to comment on those, and their appropriateness?

Professor Picard: The reason I have talked about the idea of some sort of commission is simply because the two other options have not worked very well along the way. That is not just a criticism of the UK; it is a criticism generally. As you are well aware, politicians—and particularly governments—can sometimes manipulate it to their own ends. On the other hand, politicians also tend to think of it in political terms: “What is it going to do to my party? What is it going to do to my ability to get elected in my district?” and all of these normal things that a politician would do.

The regulators, on the other hand, while they do have independence, are very often very tightly focused in their competencies to deal with things, or in the methods that they can use
to analyse things, or in the remedies they have. If it gets thrown to a competition authority, they are going to deal with it as a competition issue. If it gets thrown to a media regulator of some kind, it is going to be dealt with as media regulation, but it may not deal with the consumer interests that are there that the competition authority might deal with, or its effect on other companies. Both of those create problems, and so ultimately if you are really talking about plurality—if you are really talking about having some organisation that does not merely react to events, but anticipates them and works in a proactive way to try to improve things—you need a way to do that that crosses the interests of a number of regulatory agencies, and crosses political and social interests in a variety of ways. That is why it behoves organisers of regulation in pluralism to start thinking outside of the traditional regulatory thing of saying, “Oh, yes, here is the proper administrative place to put it in” and start saying, “No, we need to bring these various perspectives to bear on the problem and work it there”. That is why I tend to think that some sort of special commission needs to come together that really is interested in pluralism; that reflects competition policy; that reflects broadcast regulatory policy; and that reflects political and social interests in a broad way. Otherwise, all of those voices will not be heard in the process.

Robin Foster: What I said in my written evidence was that I thought there is a way of securing the independence of a regulator like Ofcom in making the final decision, but within a framework set by Parliament, which would spell out more clearly the sorts of issues that the regulator has to take into account when reaching that decision. I did also suggest that it might be appropriate to have some sort of route to appeal those decisions to a body which actually, quite interestingly, is not that far removed from that which Robert is suggesting, although we had not spoken about this beforehand. I was suggesting that perhaps there could be some sort of ad hoc appeal body set up if parties decided they did not like Ofcom’s decision. Given that these things do not happen that often, I am not sure it needs to be a permanent council or body, although clearly it would need to have some sort of relevant expertise. This might be something that could be set up periodically as and when needed to respond to an event, if there is an appeal, rather than being something that is a standing body.

The problem with this whole question, though, is whichever route you take it will be a highly charged and sensitive decision that has to be made, and there will be no really perfect answer. You can see the pros and cons of both routes, and I can see why Lord Justice Leveson reached the conclusion that he reached, which was “more or less as it is now, but tighten up the explanation of the rationale for any decision taken by the Secretary of State”. That might be the first step to take.

Lord Dubs: So you are quite confident that, whichever of the models you go for, they would achieve the right mix of accountability, competence, and ethos.

Robin Foster: I am also confident they will achieve a huge amount of controversy, debate, and disagreement. I am not sure it can be avoided.

Q27 The Chairman: I think that is undeniable. We are getting now towards the end of the session. When you were both sitting at the back of the room, there was a bit of debate about Europe, and I just wanted to ask you again about that. How far—if at all—do you think that European competence should go in this area?

Robin Foster: This is not an area that I have great expertise in, but I have two or three thoughts. One is that, because the whole assessment of plurality seems to me, from the
conversation today, to depend on very careful understanding of the specific market situation here and in other countries, plurality feels to me much more like a set of issues for member states, rather than for the EU as a whole, although there are probably a couple of exceptions where an EU approach might help. One is with the digital intermediaries or gateways that we talked about earlier, where most of these issues are access issues rather than editorial issues. The EU already has well-developed competence in telecommunications access regulation, and these are big pan-global companies that operate at European scale. There may be some scope for encouraging thinking at the European level about how access regulation could be developed to apply to these digital gateways.

The other area, which I think Rachael mentioned, is that of state aid. What both Robert and I are suggesting is that there is a more important role for public funding of high-quality journalism in future, which might raise issues of state aid. It also raises issues of trade agreements between the EU and the US. We need to make sure, working at the EU level, that proposals that seem to make sense here and no doubt in other member states do not fall foul of those sorts of constraints.

Professor Picard: At the European level, their greatest competence involves competitive activities. Where I see them acting most under the banner of pluralism in that regard will mainly be not in news operations but primarily in pan-European satellite operations or some digital intermediary activities along the way. At that level, I do not see them engaging radically in that area, at least not in the near future and certainly not in the mid-term. The interesting thing has been the approach of the high-level group. When you read their report carefully, it really has very little to do with pluralism and more to do with administrative control over media, particularly broadcasting, and primarily in south-eastern states, if you will. I do not see them trying to make rules that will apply across the states. It would be too difficult for them to do so, and I do not think they would be comfortable doing so.

The issue of state aid is as not as difficult as it might have been, primarily because of the decisions that were made involving public broadcasting, and because of some of the cultural and social exemptions that are in the rules on state aid. For news, it would fairly easily come under those exemptions. If it was well crafted and not highly discriminatory, there would not be a problem there.

I am not so worried about the trade issues, because the trade issues—particularly in news and public affairs—are fairly low. Quite frankly, most of the trade issues involving things that would be news, cultural programming and social programming are covered by the existing exemption in the world trade agreements, so I do not see that those would be a particular problem.

Q28 The Chairman: That is helpful, and an interesting complement to what we heard from the previous speakers. Before we release you, there has been this tendency to criticise the existing pluralism regime in this country. Do you have any thoughts about what is good about it? Is there anything you think it is really important that we keep?

Professor Picard: It strikes me that it has worked in the press. It has kept a balance of diversity within the press. Where it has started to get in trouble has been as we have moved outside of merely a sector that was easily defined. As we have got into cross-media and as we have got heavily into multiple digital platforms, the current arrangements do not at all provide direction on how to deal with those kinds of issues in a very reasonable way. The definitions of pluralism are weak, and it is not specifically in the public interest test that pluralism be there. There are issues there that have to be dealt with if it is going to be dealt with as competition policy. On the other hand, the biggest weakness now is that the
current policy is only reactive, rather than proactive to try to promote and ensure that we have a better outcome.

Robin Foster: I would agree with that, and I would disagree with the previous witnesses, who were suggesting going back to caps or ceilings. We probably took the right approach in dismantling some of that apparatus 10 years ago, for the reasons we have discussed: the rapid change in the market, the economic pressures, and so on. At the same time, what we have lost in the process is a good understanding of what it is important to protect in terms of plurality. In terms of the current approach, the signs are quite positive, because of the work that Ofcom has been prompted to do as a result of the proposed News Corporation/Sky merger. They have been prompted to think much more carefully about how you measure plurality, and have come up with some sensible proposals; they have proposed periodic reviews of plurality, which seems to me to be an entirely sensible approach; and they have recognised that you have to take into account economics as well as diversity in reaching a balance. That is perhaps not the existing system, but it is the system that is being developed. The challenge for this Committee is to try to push that forward and take it to the next level.

The Chairman: Unless anyone has any further questions, I will say thank you very much indeed to both of you. We are sorry we have kept you a little bit longer than we originally planned, but we are extremely grateful. Thank you.
Lord Fowler: Norman Fowler. I started as a journalist on the Times in the 1960s. I was home affairs correspondent there, and—in the Evelyn Waugh way of newspapers—I was sent off to cover the Middle East war in 1967, the only home affairs correspondent, I think, who was covering that war at the time. I returned, and I had a rake’s progress in the Commons and in government. I was released in 1990, came out and I was chairman of two regional newspapers: the Birmingham Post group of newspapers, and then the Yorkshire Post group of newspapers. Obviously, my greatest achievement was to become the first Chairman of this Select Committee. This is a naked attempt to get you on my side. Shall I go on and then hand over to David?

The Chairman: Yes.
Lord Fowler: Why does this matter? I think the danger of one organisation, or even one man, having a dominating position in providing the public with news and views is almost self-evident. At the moment, we have News International with the *Sun*—I was going to say the *News of the World*, but it has now changed to the *Sunday Sun*, the *Times* and the *Sunday Times*—and we know that Mr Murdoch runs the policy of the *Sun* himself. He told us so when the Select Committee went to New York and interviewed him. He said, in terms, in a minute—which he agreed—that he was responsible for saying how that paper should have its policy and which party it should back in general elections. We also know that he heavily influences the *Times* and the *Sunday Times*, in spite of all the guarantees given back in—whenever it was—1981.

Again, as you can read in our report, *The Ownership of the News*, the ex-editors of the *Sunday Times*, and the *Times* for that matter—ex-editors are much franker than the editors who are actually in position—for example, Andrew Neil said, in terms, that basically they do what is expected of them. They know where the tramlines are. So, you have one organisation, one man with a lot of power, and we are just fortunate in this country that we have competition from other newspapers.

There are perhaps two other points. The Leveson inquiry showed the corruption within the press, in terms of the phone-hacking that there was. It is possible—I put it no higher than that—that some of the people responsible thought that they were not bound by normal regulation—in other words, that their organisation had become too powerful. I think that is another danger as far as the press is concerned.

Let me come on to the political consequences. Prime Ministers court the media, they court newspapers and they court the proprietors, and the more powerful the proprietor, the more they court. Leveson has put a bit of a dampener on that at the moment, but I remember the story that I was told about Margaret Thatcher. A friend of mine became a media chairman at some time and, as such, he was called into No. 10. In No. 10, Margaret Thatcher turned to him and said, “Why are you so critical of Rupert? He is going to get us in”, and “get us in” meant the Conservative Party getting in. That was a pretty clear indication of what the position actually was not just of Margaret Thatcher but of Tony Blair, Gordon Brown, John Major and all Prime Ministers. The danger for the public of that is that laws get passed and deals get done that are influenced by that need to get them on your side. The *Times/Sunday Times* decision is perhaps an example of that. Tony Blair dropping reciprocal arrangements as far as ownership is concerned is also an example of that. I do not think there is any doubt that we may be in a new media age, but the importance of the area that you are looking at is undoubted, and plurality certainly does matter.

Q141 The Chairman: Thank you very much. Now Lord Puttnam.

Lord Puttnam: Thank you very much indeed, Lord Chairman. I am the son of an Associated Press photo-journalist. To an extent I was brought up in Fleet Street and, if at times I am guilty of being somewhat idealistic, it is what I learnt from my dad about the relationship between journalism and the world in which we live. I entered the film industry in 1970 after a dozen years in advertising, later I became a non-executive director of Anglia Television, a post I held for 16 years and I was subsequently deputy chairman of Channel 4 for six years.

I also have the honour of being vice-president of the Hansard Society, which, each year since 2003, has published its highly authoritative *Audit of Political Engagement*. This study has consistently revealed that most citizens are observers of rather than active participants in the political process, and that the media is the principal conduit through which they conduct
their observation of politics. Therefore plurality, the subject of your inquiry, is essential to
the functioning of an informed plural democracy.

I would argue that over the past 30 years a ‘toxic triangle’, between the media, politicians
and the police, was allowed to take hold, and that insufficient plurality of voice allowed that
to fester for far too long. As Lord Fowler has said, the tip of the iceberg became exposed
during the Leveson inquiry. I am sure even more will be revealed in the course of the
criminal proceedings that will begin in the autumn.

You can now add online to this increasingly complex media mix. The huge challenge that
confronts us as legislators—you as a Committee—is to get from where we are now, based
on legislation framed principally in an analogue age, to where we ought to be in a digital age.
Even our concept of what constitutes news is, to a great extent, changing. By way of
example, the digital offshoot of the Daily Mail attracts a growing audience of more than 50
million unique visitors every month, right across the globe—according to comScore, that’s
far more than the China People’s Daily, the New York Times and the Guardian. Here is a form
of cross-promotion that was never envisaged when we were framing the public interest test,
in which Tim Suter played such a very important part. However, without the Daily Mail’s
physical brand, the question is whether their online site would generate anything like these
numbers. After all, in essence, it is little more than an aggregator of other media stories,
most of them entirely celebrity-driven.

The power of the tabloids to cross-promote online brands has become a serious concern, in
the context of which the Hansard Society published last year, alongside that annual Audit of
Political Engagement, an additional section to the 2012 Report: Part Two, The Media and Politics,
devoted exclusively to the whole area of politics and the media. Here are a couple of rather
depressing observations from that survey: “tabloid newspapers do not appear to advance the
political citizenship of their readers, relative even to those who read no newspapers at all”; and
“tabloid-only readers are twice as likely to agree with a negative view of politics than
readers of no newspapers. They are not just less politically engaged; they are consuming
media that reinforces their negative evaluation of politics, thereby contributing to a fatalistic
and cynical attitude to democracy and their own role within it”. That report certainly
stunned me, and is one of the reasons why this is such a very important inquiry.

The Chairman: Thank you both for that. A number of the top points that arise from those
remarks will be touched on later, but I will make one point arising out of something that
David Puttnam said when he was talking about the Mail’s website. Looking at it as an
individual, it struck me that, while it has the brand of the newspaper, it bears no relationship
at all to the Daily Mail as the newspaper that we know in this country. A vast amount of its
readership is in fact outside our jurisdiction. It is just basically a celebrity pin-board.

Lord Puttnam: But it is illustrative of the power of brand.

The Chairman: That is right. It is the power of the brand that is interesting and important
in that, although, in terms of plurality, that may be slightly different, but we will come on to
that later.

Q142 Lord Clement-Jones: David, you mentioned the public interest test. I want to take
both of you back to when the Communications Act was going through Parliament. The
public interest test in the Act is really the result of an amendment to the Communications
Bill—I think promoted by you, David—now called the Puttnam amendment, if that is right. I
want to ask both of you what you would say about those provisions. Where do you think
we are now in relation to the public interest test? Do you really think it stands the test of
time or do you think it has been compromised?

Lord Puttnam: I think the test was well designed and—certainly I think Tim Suter would
agree—seemed fit for purpose at the time. But it needs to be significantly revised to take
account of the digital world we are now living in, something that was interestingly enough
declared outside of our terms of reference when the Scrutiny Committee was established in
2002. I am not sure whether that was a good or bad judgment. We would probably still be
sitting had it been included in our terms of reference!

There is now an obvious need to consider media in the round, including of course the
power of ‘online’. I would argue that each week brings the opportunity for new forms of
cross-promotion, such as in the case of the Daily Mail that we have just been discussing.

Another example might be Google, which is under investigation by the European
Commission for the way in which it may have used its search engines to prioritise results
relating to other Google products, such as YouTube and its shopping services. At the time
of the 2003 Communications Act, we argued that the Secretary of State should commission
a cross-media economic impact assessment, in order that our Scrutiny Committee could
make rather better-informed recommendations. Sadly, that never happened. So, to an extent
I think we have been flying blind for the last 10 years. We have not actually understood what
it was that we had created.

Lord Clement-Jones: So, if we could have done, we should have amended that test in the
course of the last 10 years.

Lord Puttnam: Without any question.

Lord Clement-Jones: Norman, you were chairing this Committee when it produced the
report The Ownership of the News. Do you resile from any part of that, or do you still broadly
support its conclusions?

Lord Fowler: I totally support its conclusions. It was one of our better reports, I thought.

Just to go back to 2003, the back story of 2003 was that the two Front Benches were
clutched in a warm embrace between them. So the opposition and questioning in that time
came from a few of us: David Puttnam, myself, Lord Crickhowell and a number of Liberal
Democrats. But it was the fact that the two Front Benches totally agreed with each other—
which we might come on to at a later stage—which cast a bit of a shadow.

In our report The Ownership of the News, I think that our diagnosis was correct. You have
seen increasing consolidation of the press and you have seen the same kind of trends
certainly in television overseas. The consolidation has continued, but it has not led to a
collapse of the press. We had one figure in our report that in 2006—I do not know what
the figure is today—65% of the public still received their news from television, old-fashioned
television, and 6% received their news from the new media. Doubtless that 6% has gone up a
bit, but I doubt if the fact that television is still ahead has changed.

The thing that gave us most cause for concern was the demise of news-gathering. You saw
overseas offices of newspapers and television closing down. You saw the era of “news
firemen” coming in, whereby people are stuck in London but, when something breaks out in
Africa, they are sent in with no background on it.

The Chairman: A bit like you going out to the Middle East war.

Lord Fowler: Totally like me going out to the Middle East war, yes, with a map and just,
“Where the hell are we?”
One of the things this does—and we tried to make something of it in our report—is underline the vital importance of the BBC. If it were not for the BBC, with its correspondents and standards of reporting around the world, this country would be in a rather sorry position. I think that anything that can be done to strengthen the BBC in that respect should be done.

My only regret is that we said at one stage—we were not really asked to look at the Press Complaints Commission, but we could not quite pass it by—“The Press Complaints Commission is an internal complaints body, which lacks independence from the industry. It was never designed or established to proactively promote journalistic standards or ethics”. I think we got that diagnosis absolutely right. It is just a pity we did not take it on and try to do something about it.

Lord Clement-Jones: Nevertheless, would you take on David’s point that the public interest test should be reviewed in the light of developments over the last 10 years?

Lord Fowler: Yes, absolutely. The first principle is this idea that you can conceivably pass something—it is my argument against the royal charter of the BBC, for example—and then for 10 or 15 years the thing remains absolutely there in concrete. In this fast-moving media world, I do not think you can do that. So, yes, I back that entirely.

Q143 Lord St John of Bletso: David, you mentioned that the public interest test should be refined in the light of the digital era. The younger generation are increasingly seeing their news through BuzzFeed, Twitter and YouTube. In your written evidence you express concern that, with the digital era, there was a threat to privacy. You went on to say that the extent to which large corporations collect large amounts of data on individuals could increasingly be a threat to privacy. How can we raise public awareness on these privacy issues?

Lord Puttnam: I think it is an enormous problem. My own answer is that we have to get far more active, probably at the latter stages of primary and particularly the early stages of secondary education. In the Act—Tim (Suter), you may have to remind me of this—we had quite a long piece on media and digital literacy. Do you remember? We talked at some length about the fact that this was a ‘new world’ that was beginning to emerge, and that young people had to be helped to understand the implications of that world. I do not think that ever really got delivered. It was given as a responsibility to Ofcom, but I am not sure it ever really got delivered. Possibly the final wording of the legislation was too loose. I certainly think there is an enormous job that can be done, in a curricular sense within secondary schools, to arm young people to deal for the digital world, which is a very complex and quite dangerous place. Just today the Prime Minister was talking about the issue of pornography on the net. Pornography on the net has become a plague. Unless we actually address it, it will only get worse. It is not going to solve itself. We are not going to have a generation of young people who, when they grow up, will somehow have become oblivious to it. These are real issues and they have to be wrestled with and dealt with. It means possibly upsetting some fairly powerful people in the large new media organisations. We have to be prepared to take that on.

Baroness Bakewell: Start in primary schools, even; in secondary schools it is too late.

Lord Puttnam: It may be. I get very nervous talking about what should go on in primary schools. First of all, for the most part, the standard of our primary education is rather good. Secondly, in my experience, primary teachers are already under unbelievable pressure and I do not want to be accused of adding to it. But you are right; of course you are right.
Baroness Deech: Whatever we recommend, whatever you push for, how do we politicians avoid the impression being given that we are fed up with the newspapers investigating expenses and—as I think both of you said—being disdainful about the world of politics, generally, and we are just trying to hit back? Although I know it is not, it is beginning to look like tit for tat between politicians and the media.

Lord Fowler: I was a journalist and a chairman of two newspapers, so in many ways that is a question that I have to answer. One thing I can say is that I went into journalism, as did most of the people who did so at the same time, to expose wrongdoing and to campaign for those things that were good as much as possible. If you see a complete reversal of the role—and first of all it is not all newspapers and it is not all journalists, remotely—and you see some journalists who are allowed to use wrongdoing themselves and to intrude on the public, then it is the clash between them doing it and the public that we should be concerned about. I think that, if it was in any other area, you would find journalists and newspapers condemning this practice. It is simply that it has been carried out by the press that everyone is going very soft on it. There is no neat answer to your question, because the fact is that whatever we say is not going to be reported particularly easily in the press itself as being a response. We are accused of wanting statutory controls and goodness knows what else. For me, it is this contrast between where I started and having a position where it is the newspapers who are doing the wrongdoing themselves and need exposing. I think that is absolutely scandalous.

The Chairman: Can we move on?

Lord Puttnam: Could I quickly answer that question?

The Chairman: I am sorry, yes.

Lord Puttnam: All I want to add is to what Baroness Deech just said—that is, on the way the debate is being framed, I would not blame us if we have failed to deal with that, but the truth is that in the last 20, 30 years I have had any number of dealings with the NUJ. I have never had any kind of serious issue with the actual practitioners. The problem lies with the owners. It is not the practitioners. Most practitioners would sit here—and perhaps you are going to call some of them, Lord Chairman—and explain that they work under enormous pressure, and that the image that has been developed of our national newspapers is the last thing in the world that they either believe in or feel themselves part of.

Lord Razzall: Can I come on to the other highly controversial issue that emerged from the 2003 Act? As you both know, that is the abolition of the restrictions on foreign ownership. I do not think this is a moment to go over the history. We know that the justification given was that the Americans would reciprocate, which they had no intention of doing, and that Rupert Murdoch had to become a US citizen in order to control Fox News. The past is the past.

You are both on the record as strongly opposing the abolition of those restrictions. Norman, in 2012 you wrote an article saying that this was a challenge for the coalition as to what the coalition was going to do about it. Do you think that the world has moved on in the last 10 years on this issue in relation to media developments? The obvious ones are Al-Jazeera, controlled from Qatar, which nobody suggests is not a perfectly satisfactory news outlet but which would not have been permitted under the old rules and, secondly, the introduction of the new media and the ability of everybody in new media to access foreign-controlled media if they wish to. Do you think the issue has gone away, or do you both feel as strongly as you did 10 years ago?
Lord Fowler: I still feel strongly on it, and I think the Al-Jazeera point is a good one. I am not sure about the digital, because that is something which is almost worldwide. I think that what—

Lord Razzall: But you could watch Fox News on this machine, if you were so misguided.

Lord Fowler: You could, yes. It is not so much whether you could watch Fox News; I think the point at issue was the previous policy that overseas companies in the United States were restricted on the percentage of a television company they could take over in this country because there were no reciprocal arrangements between the two countries. As late as 2001, the Government were saying that they were not going to change policy because of this, and then they did. If you remember, it was at the 11th hour—a little after the 11th hour—of the House of Lords' consideration, and was pushed through, regrettably with the support of my party. I think what was claimed to be the advantage of it was an increase in productivity inside British television. I am not sure that that has actually come about.

My view is that that was a deal. It was a deal that was done for the benefit of one organisation, and that was the Murdoch organisation. When it came to the BSkyB bid, that was why it was able to be done, because you would get full ownership under those circumstances. I still feel strongly on that. It might be very good for this Committee to ask the DCMS what progress it has made in the past few years on improving the position. I do not think it will take you very long to find out the answer. I do not think the answer will be very long either.

Lord Razzall: It will be one word, will it not?

Lord Fowler: I do not see why it should be that this country gives absolutely total freedom for anyone to come in and take over anything in the media business in Britain, without even saying we should try to get reciprocal arrangements with the other country. Murdoch said exactly the same thing to this Committee—well, this Committee under my chairmanship—when we were in the United States. What he said was that it was his belief that “US foreign ownership limits will be abolished very soon”—very soon—as United States companies want to buy into foreign markets and will need to be reciprocal. That is what Mr Murdoch feels and who am I to challenge that particular view?

Lord Razzall: Do you have a view, which you are prepared to say on the record, as to what the real reason is why the two Front Benches gave into this argument in 2003?

Lord Fowler: I think that they both wanted to cosy up to News International and Mr Murdoch. There is absolutely no question about that. That is what happened and, regrettably, that is what Parliament passed. That is the really sad thing. I do not think Parliament would pass it today. If it was attempted today, I think it would get thrown out.

Lord Razzall: That is in the light of Leveson.

Lord Fowler: Yes, but even before Leveson, I think.

Q146 The Chairman: Can I ask one point in the context of this? I can understand the reciprocity argument—the commercial argument—but is it a matter of nationality here, or is it personality and track record that really matter?

Lord Fowler: I think it is a straightforward commercial argument. If one country and the companies in that country have the ability to come over here and take anything over, we should have the same. I think Lord Rothermere was making that point in the evidence that he gave to our Committee saying that—
The Chairman: I am just clarifying the point. I am not passing any judgment. Just to be clear, that essentially is a commercial reciprocity point rather than a morality kind of proper person-type point?

Lord Fowler: Yes.

Baroness Bakewell: It is also a sovereignty issue, is it not? Does it not have a dimension that is not strictly commercial? It is more to do with sovereign integrity. Surely that played into the argument.

Lord Puttnam: That is entirely the American view. Americans see it as a sovereignty issue, whereas we have interpreted it as—

Baroness Bakewell: Yes, we do not.

Lord Puttnam: Without any doubt at all, Americans see it as a sovereignty issue.

Lord Fowler: We had two amendments on this: one was Lord Crickhowell’s and the other was mine. We lost them both; Lord Crickhowell’s quite narrowly. What do you think, David?

Lord Puttnam: There are two questions that we have been asked. To the first question my answer is unequivocally yes, I do believe there should be a very specific and, indeed, well reasoned case for the reintroduction of restrictions on foreign ownership. I would like to get this on the record. I allowed myself to be misled at the time over this issue of reciprocity. I was assured that discussions were being held with the US Government that would result in a clear reciprocity agreement on ownership restrictions. I now know that not to have been the case. I very deeply regret my failure to support Lord Fowler, Lord Crickhowell and Lord McNally in their amendments. It is almost certainly the greatest single political mistake I have made during my 16 years in this House.

As to the second question, media markets may be porous, but that does not mean that people necessarily have a world of choice. The online world is increasingly dominated by a small number of very large companies, in particular Amazon, Apple, Facebook and Google, all of which have developed enormous power as gatekeepers. To varying degrees they are in e-commerce, they are in tablets, they are in smartphones, they are in apps. For a variety of reasons they also happen to be US-owned. Their success is at least in part related to the scale and relative affluence of the US market and the prevalence of the English language on the global internet. It is no coincidence that, like the Hollywood studios before them—the gatekeepers of another age—they have been able to build enormous power off the back of a favourable investment climate and a strong domestic market. In such a world I tend to think that foreign ownership restrictions will remain necessary for some considerable time, to help ensure that the competitive advantages enjoyed by these companies does not mutate into plain old-fashioned monopoly.

At the beginning of the last century, Theodore Roosevelt recognised the dangers of large companies building themselves to an ungovernable scale in a given market sector, and realised that was unacceptable within a viable democracy. My judgment is: why should that realisation have changed even in a global environment?

Take the industry I know best. The US has long dominated the mostly unregulated UK film industry and yet the UK television sector, with a more complex history of regulation, remains a success story both in this country and overseas. You have to ask yourselves: which outcome would you prefer for the still nascent online world, the unregulated history of film or the more closely regulated history of UK television? In my judgment, we should
decide on what is best for UK jobs and the UK economy, and we should then legislate accordingly, exactly as they do in the United States.

Q147 Baroness Scotland of Asthal: Just taking up David’s point, because I think it is quite clear what you say in terms of sovereignty and the position you set out as to the need for us to reintroduce this. Do you not also think there is a secondary issue that if someone is going to come from another country they should be subject to our jurisdiction? For example, had Mr Murdoch decided not to submit himself to this jurisdiction, the legal consequence was there was relatively little we could have done to compel him to do so. Wisely, he did subject himself to this jurisdiction. Do you think we also need to look at, first, whether the fit and proper person test should apply; and secondly, if—which is not admitted—we are going to have a non-UK national owning any part of the media, that as part of the deal of ownership they should be willing to submit themselves to the jurisdiction of the UK?

Lord Puttnam: I am very clear on this. For 40 years I have listened to discussions that have argued that the media is just “another business sector, like any other”. I have never accepted that argument. The provision of information is quite separate from other businesses. As such, of course those who control it, those who are dominant in it, must be subject to every single regulatory hoop that can be justified.

Lord Clement-Jones: So, reciprocity is not enough, in your view?

Lord Puttnam: Reciprocity is only the beginning. I think Baroness Scotland set it out very well. They must comply with the way in which we, as a sovereign Parliament, have decided to run this country. One of the most upsetting things about the current situation, post-Leveson, is what we have now is a stand-off—for the first time in my memory—of a significant business sector saying that they are not prepared to acknowledge the sovereignty of Parliament.

Baroness Scotland of Asthal: Can I just finish this point? Do you think it is also very unfortunate that the fit and proper person test only comes after the ownership? Literally you could have someone who was a total rogue, and the fit and proper person test is only applied after they have acquired and after they seek to get a greater dominance. Would it not be judicious for us now to think about what the qualities should be of the people we want to own our media?

Lord Puttnam: We are coming to the fit and proper person point, Chairman. Do you want to deal with it now?

Baroness Scotland of Asthal: But it is to do with ownership; it is whether we make the time.

The Chairman: Indeed, this is a point for consideration.

Baroness Deech: It is a consideration I was going to raise about statute.

Q148 Lord Razzall: Perhaps I could ask one follow-up. Do you think there is an argument on this issue for distinguishing between the ownership of the written and printed media and the ownership of the broadcast media? After all, we heavily regulate the broadcast media in the news and current affairs area. BSkyB does not churn out endless anti-European propaganda because it would not be allowed to by the regulator, whereas the Times and the Sun newspapers can churn out whatever they want, so long as it does not defame people. Do you think there is an argument in this area to differentiate between ownership of the broadcast media and ownership of the print media?
Lord Puttnam: One of the reasons we were so insistent at the time we failed to get a cross-media impact study commissioned was because of what, in 2003, we believed to be the impact of convergence. I do not think it is possible to make those separate arguments any longer. We are talking about a “media” that has to be looked at in the whole. I am sure your judgment at the end of this inquiry is likely to be exactly that, that you cannot continue to view it sectorally.

The Chairman: Undoubtedly, there is a media. The question is within it and, in particular in that media, the traditions of the different bits are clearly very diverse.

Lord Fowler: That was exactly the point I was going to make. One needs to look quite carefully at that because the tradition, for example, in newspapers has been for quite a long time. If you go back to Beaverbrook, for example, Beaverbrook was not exactly born in the UK but he had a profound impact upon this country. Are you going to bar him from owning a newspaper? In a sense, as long as one can get the proportions right—the proportion of voice that a newspaper has—I am not quite so concerned about that as I am with television companies. Perhaps I am out of date, but I think there is a warning there that the tradition of newspapers has been to allow foreign ownership, and it has not necessarily been entirely against our interests in the past.

Lord Razzall: Roy Thomson, the Sunday Times.

Lord Fowler: Roy Thomson. If I may talk as someone who was taken over by Roy Thomson, it was hugely beneficial to everybody who worked on the Times at the time. When I started to work there it was high on prestige and very low on salary, and you needed special permission to take anyone to Southend. Once Roy Thomson took over you regarded it as such privilege, you could take a team to Mexico. He was a tremendous owner. So, I think you need to prod around that a bit.

The Chairman: In the context of this discussion, there is also an important point that, increasingly in the online world, vast chunks of what in the widest sense falls within the definition of “media” are operating entirely outside our jurisdiction. So, whatever we might think, in terms of our own jurisdictional area, our own rules on sovereignty, the reality is that an awful lot of what is going to be absorbed in this country is outwith our capability of doing all that much about it, is it not?

Lord Skelmersdale: The new media in particular, yes.

Lord Fowler: It comes quite a lot into the underlying theme of this whole investigation: that one should look at what one can do, and accept that there are other areas where—at this moment, given our knowledge and understanding and probably lack of creative thought—there are things that we cannot do. I do not think that should be used as an argument against doing things that we can do.

The Chairman: Absolutely. I was not suggesting that for a moment. But clearly what you can do and what you should do are determined by both those things. In the new world it may be that you should approach it in a different way, albeit that the legal tools at your disposal may remain the same.

Lord Fowler: Excuse me for repeating this point, but I do not think one should go absolutely overboard in 2013 on the new world. The new world has obviously had a big impact. It has had a big impact in terms of regional newspapers, taking away the advertising on the internet and things of that kind. In terms of the people who are reading the news, it has had less impact than one might have thought.
The Chairman: Yes. Except digital intermediaries are the ones who are both very influential and much further away from the grip of our law than perhaps some others.

Lord Fowler: Yes, of course, that is true.

The Chairman: They are perhaps the ones that I have immediately in mind. Let us move on.

Q149 Lord Skelmersdale: May I suggest to both of you that there is a pretty good consensus of what media plurality is but there is much less about its scope? For example, should it include drama with a message, which you could argue is political in your terms, could you not?

Lord Fowler: I think the two of us are going to disagree on this. Regarding what I was saying to the Chairman, I think you do what it is possible to do and you also do what is most important. I think what is most important is news and current affairs. As we have established in the first part of this discussion, it is going to be difficult enough to do that without getting into new areas, like drama with messages, let alone other things; areas that have come into it, like children’s programmes or things of that kind.

I am not saying that the British Government should not do various things to help, for example, animation, children’s programmes and areas of that kind. I think they should, but I am not quite sure if it gets into this discussion, frankly. It is a separate one. My own feeling would be to concentrate on what we can achieve. I think that what we can achieve, and what has the most impact, is news and current affairs. That has the most direct effect on the proper functioning of a democracy. If we can achieve that, we will be achieving a vast amount.

Lord Skelmersdale: Surely children’s programmes, which you have just highlighted, might indeed have an effect on democracy?

Lord Fowler: They might, yes. All kinds of things might.

Lord Skelmersdale: Therefore, why cut them out?

Lord Fowler: First of all, what is most important? I think it is news and its impact on democracy which is most important. Secondly, we get into a pretty hopeless barrage of things that you are going to do, that you are going to consider, if you take it on and take it on from there. We have already demonstrated that it is not going to be that easy to do it for news and current affairs. Then to take it into children’s programmes might be a step too far.

Baroness Fookes: Would you also exclude the docudrama where you get that blend of the documentary, of the factual, with people’s imaginative approach to it in a dramatic form?

Lord Fowler: I am going to be a hard line and say, “I would”. My compatriot will almost certainly argue the other way.

The Chairman: Do you want to argue it?

Lord Puttnam: In essence, what Lord Fowler says is true. If that is all we can get then there is no question that the win that both of us are seeking is well worthwhile. On the other hand, if we are serious about developing a cultural economy and sustaining a recognisable cultural identity, we could begin to at least look a little wider.

By way of an obvious example, one of the reasons we fund and support public-service broadcasters is to secure plurality beyond simply news and current affairs. We rightly concern ourselves at the possibility of a narrowing taste of the market, for example, in
relation to music and drama, when the clear solution, surely, is to achieve a plurality of offering, so that audiences have an optimal opportunity to access the widest possible range of works.

On the issue of children, some very, very encouraging noises are coming out of the BBC at the moment indicating that Tony Hall intends to step up their entire offering in the area of education; that is very good news. It is not necessarily mandated, but it would be extremely welcome, and certainly we, as parliamentarians, should do all we can to encourage and help with that.

Q150 Baroness Bakewell: It does bring the whole nature of the BBC inside this vast offer, does it not? It would be legitimate to say that, in total, the BBC represents a national culture. To isolate news and current affairs within the BBC picture would be to misrepresent the enormous cultural sway that the various entertaining dramas, docudramas, present to the public. Do you think that the BBC’s contribution should be simply defined by the licence fee agreement and the Charter, or should it come within the considerations that we are giving today?

Lord Puttnam: I think I believe the latter. I am not quite sure. We all learnt a big lesson—if you are as old as me—in 1956 when we discovered that actually the BBC was quite dull. The day that ITV started the fact of having competition was very, very good for the BBC.

Baroness Bakewell: Yes, it was.

Lord Puttnam: I certainly would not want to diminish that fact. But I do think that, as legislators, we should be constantly urging the BBC to do more and be better.

I spent five very happy years advising the Singapore Government. What impressed me hugely about the Singaporeans was that, when I would go back every six months or so and listen to a report that, “This is happening and that is happening”, no matter how well they were doing, what they would always say to me was, “How could we be doing this better?” It was very, very impressive. Anthony is nodding, he has probably had the same experience. We quite quickly seem to grow complacent in Britain. There are countries, very competitive countries, which constantly look around the world and say, “You know what, they are doing it better over there; and they are doing it better over there”. I think we could get our act together a little better in that direction.

Baroness Bakewell: Does that address where the BBC comes in this report? Where is it considered in media plurality?

Lord Puttnam: Exactly as Lord Fowler said, I think the BBC is the jewel in our crown. But I do not think we should be blinded into believing that, because we have the BBC, everything else is okay, because it is not.

Lord Fowler: I do not think that it totally fits easily into media plurality in this sense, that you mentioned the Charter and the Charter does govern it; and several of us bear the scars of having gone through the BBC Royal Charter process. It does go into every detail, and that process goes into every detail of policy. There is an issue about it, inasmuch as Parliament can look at it and can issue a report, and the Government and the BBC can say, “Well, it is very interesting, but, frankly, we are going to do something entirely different”. It never comes to Parliament, of course, the Royal Charter. It is just a deal.

Baroness Bakewell: No, but it is not quite free of political influence, as you know well.

Lord Fowler: It is free of political influence, but what it substitutes instead is government influence. Frankly, I would prefer, if I was a BBC producer, to have Parliament on my side
rather than a Minister because you could never be absolutely certain what Minister is going
to be there. But we digress. What I do think is that the BBC gets sufficient examination in
the Royal Charter process to enable it to know what, broadly speaking, the public expect of
it. I am not sure that media plurality helps us very much.

**Baroness Bakewell:** It does, in so far as the BBC is a target of Murdoch on a vast scale. He
mobilises all his forces to attack the BBC. When it comes to discussing plurality he has a
case to make, which he would make very loudly: the BBC is the place that is paralysed.

**Lord Fowler:** He can make that case and does make that case. What you say is entirely true.
If one of his papers manages to get a page with an attack on Leveson at the top, an attack on
the BBC at the bottom, that is bingo. Presumably someone gets a bonus for doing that, I do
not know. He can do that, but what the critics have to accept is that the BBC is subject to a
degree of control and regulation that they would fight against to the nth degree. They
cannot frankly have it both ways. But you are never going to prevent—

**Q151 The Chairman:** Presumably, a lot of the critics would go further and say that their
freedom of speech was being curtailed if they were to be made subject to that kind of
regime. Is that not correct?

**Lord Fowler:** It might well come into the Leveson argument if that was the case,
absolutely—entirely correct. I will not go on about the BBC, but I happen to think it is a
matter of deep regret that there seems to be a consensus, certainly among a number of
newspapers, that the BBC is a target, when you do not have to go very far abroad to
understand that it is regarded very highly. In my humble view, it has the best journalistic
resource of any of our organisations. Doubtless that is to do with the licence fee and the
rest, but it is true. If it was not for the BBC, in this country we would not know what is
happening around the world in the way that we are at the moment.

**Baroness Deech:** I do not want to hold things up, but I would point out that plurality is
held back by our fair-trading laws. I do not know if you remember the episode called Jam,
when the BBC was going to have what I thought was a magnificent education service. The
private providers would not let them, they complained about fair trading and it was closed
down.

**Lord Puttnam:** It was a total disgrace. Worse, it was closed down because the private
providers were claiming that they were going to commercially replicate what the BBC were
doing, and they never did. So, we ended up with nothing at all for a decade.

**Baroness Deech:** So, our fair-trade laws need to come into this.

**The Chairman:** Can we move on? We are getting terribly behind. Unless you are going to
up sticks and walk away, you are going to be here a bit longer than you banked on, I fear.
Graham, we talked a little bit about digital intermediaries; do you want to go into that any
further?

**Q152 Bishop of Norwich:** I think you have covered what I was going to ask you about
the BBC, except that, of course, we are going to call the BBC here and I would quite like to
know a bit more about how you think we ought to deal with the BBC in the report, just by
recognising it is a rather different organisation because we will be criticised if there is not a
significant section in this report about the BBC. I wonder if you could say a bit more about
how we should approach it before I go on to the digital intermediaries.
Lord Puttnam: My view is that the BBC—and it happened again yesterday—have done quite an extraordinary job of self-examination. When they get something wrong they have learnt, first, to put their hand up; and secondly, to analyse it. I do think it is an organisation that is going through an extraordinary cultural change, which was probably overdue to an extent. As a Member of this House, I think we are all massively fortunate to have Tony Hall there as Director-General at this particular moment, and the BBC need to be given reassurance that the legislature is absolutely behind it. It does not mean we will not slap its wrist from time to time but that, broadly speaking, the BBC is secure in our hands. I am not sure we have always got that message across.

Lord Fowler: The BBC comes from an entirely different stable to the press. It is not the same as the press. The history is not the same as the press. It is perhaps sensible that the press understand that that is the position as well. As we have said, terms of restrictions and regulations on the BBC are very great. I am certainly not arguing that the BBC is beyond reform. On the Royal Charter examination we spent a lot of time on the structure of the BBC. We argued very strongly against having two organisations at the top of the BBC: one, the executive; and the other, the BBC Trust. Most people think now that is a pretty silly way of running an organisation as big as the BBC. It showed in some of the responses that the BBC gave at times to crises that came up. In my view—and you really need the old governors, in a sense—what you need is a chairman and a board, as you have in any other organisation. I very much hope when we come to the Royal Charter discussion again that we will go back to that position, rather than the position that we have now. There is a whole range of things that I could say about changing the BBC and things that they can do more. I very much agree with what Baroness Deech said, a moment ago, about them being prevented from doing things, which I think at times is totally absurd. Nothing takes away from the fact that, when it comes to news, and when it comes to particularly overseas news but political news as well, it is the only organisation that provides objective news in this country, and thank goodness for it.

Q153 Bishop of Norwich: Let us go on to the digital intermediaries and how we deal with them, because Google, for example, is a means of access to news rather than necessarily exercising any editorial control over news. Twitter seems to provide you with access to all sorts of opinions, which are not news at all, yet which become news, even in the print media, which puzzles me. There seems to me a great deal of difference between those organisations that exercise editorial control and those that do not. In relation to media plurality, how do you deal with organisations that, at least for the moment, do not exercise much editorial control, even though they have plenty of knowledge about you—as Lord Puttnam suggests—which seems to me a rather different issue from one to do with balance of opinion?

Lord Puttnam: I have thought about this a lot. I personally thought that we were quite weak over the position of the ISPs last time we were discussing what their role might or might not be. Somehow we managed, collectively, to throw up our hands and think they were a vagrant group or nothing to do with us. The analogy I have drawn—and the more I think about it the more I think it works—is that if you go into Boots the Chemist, 90% of the products available are on the shelves. You walk in, you pay cash and you take them out. However there is a different counter at the end, which is where you take your prescription. You need a piece of paper and you probably have to say who you are, and an entirely different transaction takes place because of the nature of what it is you are buying. I see no reason at all why the new media should not organise themselves, with our encouragement, in such a way that they acknowledge that they have a dual retail role: one of which is an
over-the-counter role, and one of which is a more subtle and more carefully considered role.

Technologically it can be done, and I am looking at Anthony when I say this. It may not have been possible five years ago, but today it can be done. I think we have reached a point now where we are entitled to ask for a lot more responsibility from these organisations, which are growing so fast it takes your breath away.

**Bishop of Norwich:** What sort of things should be on prescription, then?

**Lord Puttnam:** We have touched on the area of pornography. I think our whole attitude to pornography should be much the same as our attitude to drugs.

**The Chairman:** Although, is it inherent in your reply that that is something that we cannot legislate to bring about but must bring about through negotiation?

**Lord Puttnam:** Yes, thank you, Chairman. One of the points I wanted to make is I think, as legislators, we sometimes do not value negotiated ‘trade-offs’ as much as we could. We do have powers. It does not mean you have to exercise them, but we do have powers. I look at what is happening, and I sometimes think we do not always utilise the appropriate type of negotiation with those who would seek our help, and often it is help we genuinely and legitimately can give. We do not do enough about asking for something back. I do think that the area of trade-offs in this digital world is colossal, and we are not even beginning to exercise the role that we could in fact be playing.

**Lord Fowler:** It is worth saying—and frankly it is difficult to lay down total rules on this—that people like Google, in terms of news, do live off the other media, and particularly live off newspapers and television. It is not unreasonable to say at some stage that they might make some contribution for that. Having said that, that is going to be very complicated to work out. So perhaps we should concentrate first on getting Google to pay their taxes and then we can go on to the other things.

**The Chairman:** Can I move on? Lady Fookes, is there anything you want to talk on about sufficiency of plurality?

**Q154 Baroness Fookes:** Yes, Lord Chairman. I would be interested to know how you would define what is sufficient plurality, and how that could be incorporated in any laws or should that be subject to the trade-offs we have just been talking about?

**Lord Fowler:** Very shortly, if it could be made to work, I am very attracted by Claire Enders’s 15% of revenue test. That is a very neat way of doing it. Doubtless there would have to be some flexibility at the margins, but I think that is quite a neat way of dealing with this position.

**Lord Puttnam:** I would agree with that. I do believe there is a need to measure sufficient plurality, both in individual sectors and in the overall media market. This means that share should be measured by the percentage of total revenues, just as Lord Fowler has suggested, in the particular sector or overall market that are under the control of one company.

If you are looking for an answer, my advice—which is exactly why I used the movie—is to ‘follow the money’. This is a content business. Those who are generating sufficient free cashflow can, in the end, swamp the buying ability of anybody else. I was very vocal about my concerns in the run-up to the possible BSkyB merger, which fortunately got scuppered a year ago, that their free cashflow would have afforded the new merged company the ability to turn the BBC and Channel 4, quite quickly, into little more than R&D operations for Sky. At the time I was deputy chairman of Channel 4. All we would have been doing is creating
new products, series, and programmes which, if successful, would have been simply purchased away from us.; and if unsuccessful would have left us eating the losses. That was the direction we were heading in. That is why that particular merger would have been a catastrophe for content creators all over the UK.

Baroness Fookes: I think the Enders proposal took in every form of revenue, did it not, whether that was mainstream or the digital approach? You would agree with that?

Lord Puttnam: Yes. Be it 15% or 20%, yes, I think it is the right formula.

Baroness Deech: Just very briefly to both of you, I wonder which form of intervention you would favour, if it is agreed by whoever that there is insufficient lack of plurality, whether you favour structural remedies or behavioural remedies or hybrid ones. In particular, can one positively promote plurality and diversity rather than just stopping people?

Lord Fowler: I certainly would not favour—these are lovely phrases, all of these—behavioural remedies, if I think that what that actually means is things like independent directors of that kind. That has been proved not to work. It has not worked with the *Times* and the *Sunday Times*. I see no reasons why it should work at all. I thought what Andrew Neil said in our report is, if you need to go into those sort of remedies, then probably you should not go ahead with the merger in the first place. I think that is probably correct.

Therefore, I suppose that puts me into the structural remedy position. It is lovely to think that you can appoint a body of independent directors and they will be a bastion against everything, but it does not work and has not worked.

Baroness Bakewell: So, it at least has to be statutory right through; this has all to be based in statute?

Lord Fowler: Yes.

Q155 The Chairman: I think you are saying that if you put some great and good people into a den of thieves, they will not reform the den of thieves. Is that not right?

Lord Fowler: Yes. I was not actually calling the *Times* and the *Sunday Times* “a den of thieves”, just to make it absolutely clear.

The Chairman: No; just a rather specific analysis.

Lord Skelmersdale: You have to be so careful nowadays.

Lord Razzall: They wanted to appoint John Witherow as editor of the *Times* and Martin Ivens as editor of the *Sunday Times*, which should be approved by the independent directors, so they just went ahead and called them “acting editors”. It is just making a laughing stock of—

Lord Fowler: I do not see why one should be surprised that that is the position. It does not work, as I was saying before, because of the indirect influence that the proprietor has. I am sure that Mr Murdoch did not—I know he did not—stand over the editor or the journalists and say, “Do this, do that”. But everyone knew what they were expected to do. To think that independent directors, however good and charming they might be, are going to be able to insert themselves in that is, I think, a mistake.

Lord Puttnam: I do not entirely agree with Lord Fowler. I think a mix of behavioural and structural remedies is probably the optimal solution. In my judgment, the 20/20 rule should be maintained, which prevents any organisation with more than 20% of a national newspaper from holding a share of more than 20% of the Channel 3 licence; that has already saved us
once—I think am I right—from a serious problem. Where I do absolutely agree with Lord Fowler is that newspapers and television remain very powerful media forms and will continue to do so for the foreseeable future.

The 1990 Broadcasting Act does not define “fit and proper” in any way whatsoever. That surprised me when I went back to look at it. There is no definition. It simply refers to the need for a person to ‘be fit and proper’. But both the Financial Conduct Authority and the Prudential Regulation Authority—successors to the FSA—now have definitions of a fit and proper person, which ultimately stem from the Financial Services and Markets Act 2000. They have detailed guidelines that I would recommend are well worth taking a look at. Such tests have regard to criminal or civil penalties that may have been incurred but the tests also, and correctly in my mind, take into account wider issues of honesty, integrity, competence and capability. While the encouragement of a diversity of views—for example, through the continued funding of public service broadcasters, including the BBC—is important, I still believe it is vital that a separate legislative backup that is in place to curb significant and damaging reductions in overall plurality of voice.

**The Chairman:** Are you saying that the fit and proper person test should apply to anybody who owns a newspaper and/or a television station and/or a radio station and/or an online news presence, or would you only apply it in part of the landscape?

**Lord Puttnam:** I think it applies certainly to public companies. I cannot imagine that anything that did apply quite stringently to a public company would not apply to the owner of a television station.

**The Chairman:** No, but a public company may be registered abroad or something.

**Lord Puttnam:** We are back to the same issue, exactly the issue that Baroness Scotland raised. Whatever we have in our legislative armour should be deployed in this area.

**Lord Clement-Jones:** When can you invoke the fit and proper test—at the outset, during ownership, at any particular time? When can you use this instrument?

**Lord Puttnam:** It is the sort of question, Tim, I’d come along to your chambers to ask, and I get a much more informed answer.

**Lord Clement-Jones:** But I am asking the questions.

**The Chairman:** Can we move on, then? Lady Scotland, I think you were next.

**Q156 Baroness Scotland of Asthal:** Dealing with the issue in relation to discretion, I know historically both Norman and David have taken a different view as to whether the Secretary of State should retain any element of discretion. Norman has always said absolutely not. David, you have been more equivocal. Would you like to indicate to the Committee whether you are in the same position, have changed your position, have mediated a position, or now have a joint position that you would like to advocate?

**Lord Puttnam:** I will answer first on the grounds that I might influence him. It is a very serious question, and I wrote my answer quite carefully. As far as possible, individual decisions should be removed from politicians, but the determination of the general nature of these remedies must ultimately, of course, reside with elected politicians and not the regulator.

**Lord Fowler:** Thank you, David. I think I will need to study that for several days. I do not think it should be in the hands of a politician, and if I was ever confirmed in that view, it was by the process that we have had with BSkyB. First of all, we had Vince Cable telling two
people, who just happened to be Daily Telegraph reporters but could well have been constituents, in a sense, “I am going to get Murdoch”. I think that is not exactly the most encouraging thing to hear from someone who is meant to be sitting in judgment. So, we then push it over to the DCMS, and then we get into all kinds of mess with the special adviser being in touch with the special advisers at News International. If ever you needed a demonstration of where you get it wrong if you have politicians in there, I think that was it.

It goes back a long time. I remember sitting around the Cabinet table when the Sunday Times thing came through, and I remember Margaret Thatcher looking round very sternly and saying, “This is simply the decision of John Biffen”, who was the Secretary of State for Trade, “and none of us are entitled to say anything to him”. Well, up to a point, Lord Copper. But I think it was quite clear that she did say it. If he did not know what her view was I would be totally and utterly amazed, but it certainly silenced us.

The fact is there is a great conflict of interest. As politicians, we are trying to get the support of the media and then sitting in judgment on them. I do not think it can work. So, I am afraid, in spite of David’s formula, I am for an independent regulator and taking it out of the hands of politicians.

The Chairman: Is the basic proposition one that the relationship between a very dominant proprietor, who has editors who know what he wants, and a very dominant Prime Minister, who has Cabinet Ministers who know what he or she wants, is basically the same?

Lord Fowler: As I understand that; it is certainly the case that if you have a strong Prime Minister, and perhaps any Prime Minister, in the cases that I have seen, the Prime Minister will make it known what their view is. If the quid pro quo of that is that you are going to get electoral support, or you hope you are going to get electoral support, all those considerations should not be in this particular equation. I do not see how you can get round it either. I know the argument about it being only politicians who are accountable to the people and so on, but I think the greater danger is that you get deals done that none of us wants.

Q157 Baroness Scotland of Asthal: Norman, I have literally only just thought of this, and no Attorney-General will thank me, so just forget for the moment that I was an Attorney. Would it be one of those roles where, on the recommendation from the regulator, the Attorney-General could be asked to make the decision as the guardian of the public interest and the rule of law? Also, the Attorney-General is the person who, in the event of the press transgressing, has to authorise the prosecution or litigation taken against them?

Lord Fowler: I think that is a very interesting idea, and on first hearing it sounds a very attractive one. I had not thought of that one. As long as one takes it out of the hands of practising politicians—and the Attorney-General gets about as far away as you can do from that—I would accept that that is the case.

Lord Puttnam: It is a slightly disappointing answer in a sense. Nicholas Lyell—who you will remember was the Solicitor-General at the time—was given the job of adjudicating over whether or not the Sky signal was UK-based or foreign-based, because there is this issue of the millisecond when it hits a satellite and then bounces back down again. He decided, I suspect under some encouragement from the then Prime Minister, that in fact it made Sky a completely legitimate UK domestic broadcaster. There was some quite serious controversy at the time.
Baroness Scotland of Asthal: The position is that the Attorney has to act independently of a Government in all those areas where he or she acts in the public interest. The role that the Attorney plays in relation to the press is separate from any Government role, so I think you would have to be really clear as to where you put it. I am literally thinking out loud now. If you have the regulator, which both you and Norman are clear should be the person making the recommendation, it would have the Attorney to scrutinise that recommendation in accordance with the law, as opposed to making a political decision. So you would have someone who would be able to review it and see whether it was sound.

Lord Puttnam: So long as the Attorney-General was not seeking promotion at the time!

Lord Fowler: I think all this rather demonstrates the difficulty and, therefore, I think on balance, even hearing this attractive proposal, I would still leave it with an independent regulator who owes nothing to anybody, and that is really what one wants.

Baroness Fookes: I found Lord Puttnam’s argument so subtle that I did not quite follow it.

Lord Fowler: That was the intention.

Baroness Fookes: Could you clarify this process?

Lord Puttnam: I worked very hard on this. I really do mean that as far as possible individual decisions should be removed from politicians—this is my problem with the sovereignty of Parliament—but the determination of the general nature of those remedies must ultimately, of course, reside with elected politicians. So it is not the detail of it; it is to do with the general nature of what is a very important decision.

The Chairman: I do not think there is much dissent from the fact that the rules should be made through the political process. It is the specifics of particular facts against those rules, and that determination is the crucial one.

Lord Puttnam: I was quite scarred by the Nick Lyell experience because I was at Anglia Television when we appealed it and we were told that it was being made in the public interest. It clearly was not in the interests of the regional television broadcasters at the time.

The Chairman: Yes. That is all food for thought. We are just about to finish but, Anthony, do you want to ask your one question?

Q158 Lord St John of Bletso: Yes, I will be very quick. To what degree should plurality be seen in the wider European Union context? David, in your written evidence you believe that there is a strong case for a Europe-wide public-interest test, in your words, which would offer additional protection for plurality of voice and serve as a barrier to market abuse and political interference. How far should European competence in this area go, and how should it marry with national responsibilities?

Lord Puttnam: I think it is more to do with European concerns and the fact that things can be raised to a point in Europe where they become to an extent depoliticised. As I obviously failed to make clear in my written evidence, I think there is a case for intervention at the European level. This is necessary to prevent abuses, such as the kind of things we now see happening at member state level in Hungary, as a consequence of the government—as opposed to the private sector in this case—riding roughshod over accepted notions of plurality and freedom of expression. Very quickly, concerns regarding Hungary include, for example, the lack of independence of their media authority, the provisions of their fourth amendment to the constitution that now bans political advertising in the commercial media, and the creation of the state-owned Hungarian media agency as a single news provider for
public service broadcasters, which also provides news free to private broadcasters, thus effectively generating a monopoly market.

I would be very happy to supply the Committee with a more detailed note on the present situation in Hungary and the reasons that they should be causing great concern to the Commission; the Commission I think acknowledge this. There were certain assumptions made at the time of accession that had they actually questioned these—

The Chairman: The Copenhagen criteria.

Lord Puttnam: Yes, exactly. Unfortunately, these were not sufficiently clear. There is a belief among the Commission that these contravene the Copenhagen criteria, but the argument from the Hungarians is that they do not. So I do think it is an issue. In my judgment, one of the reasons that much of the media in the UK remains Eurosceptic stems from their realisation that they are unable to undermine, or even intimidate, the European Commission in the way that they can undermine and sometimes even intimidate elected representatives. I do think you can attach a benefit of things rising up to the Commission level where you can depoliticise them in a sense, or make them issues of principle.

Lord Clement-Jones: I am looking at Norman’s face. I agree with you.

Lord Fowler: I should make it clear that I am an unusual thing, a Tory enthusiast as far as Europe is concerned. But I have to say that I am slightly sceptical on this one. I am not sure that I would touch it. I think this area is already complicated enough for this country, the UK, without adding a European dimension to it. David, with his great skill, can doubtless persuade me, but at the moment I am not persuaded indeed.

Q159 The Chairman: Unless there are any other questions, I would like to say thank you very much indeed to you both for going on for half an hour longer than you had booked in for. Before leaving, is there anything else you would like to tell us that you feel we should know that we have not touched on?

Lord Puttnam: I would, if I may. I have thought long and hard about this, because there is something important that is missing, and it has certainly been missing in my evidence. What I think is missing, as we seek answers to what is an unbelievably complex issue, is an almost frightening lack of imagination. We sometimes seem to resemble rabbits caught in the headlights of our current reality, but if we look back 80 years, it must have taken enormous courage and imagination to conceive of and create what we now know and celebrate as being the BBC. I would argue that it took similar imagination 60 years ago to create the regional ITV structure that was legislated for in 1954, after a fascinating debate in your Lordships’ House, a quite extraordinary debate. It took another leap of faith by Willie Whitelaw, as Home Secretary in 1981, when he signed off on what became the unique funding structure of Channel 4, which I would argue has released the talents and inventiveness of literally thousands of programme makers, and built a devoted audience of young people that were not at the time being serviced by other channels.

An adherence to market orthodoxy destroyed the fabric of regional television and programme-making in this country, and I would argue who today does not really regret the passing, after 40 successful years, of what were distinctive regional companies? I concede that I have an interest in this—I was a very happy director of a very good company at Anglia. We paid a dividend every year, we served our region rigorously, and I think we served the wider public well.
I think we need to apply similar serious and sustained imagination to the way in which our media environment now develops. We need to be very sure, as were the framers of that 1954 Television Act, of what we do not want. They promoted the concept of regional identity whilst avoiding the dangers and pitfalls that were inherent in accidentally creating local and regional media monopolies. All the debates that took place at the time were about the dangers inherent in what was then termed the second channel. But it was the really imaginative answers to that problem—to what became Channel 4, to what became the BBC—that I think drove us forward. So I think we can all agree on one thing: a responsible and sustainable media could hardly be more important.

Perhaps I could finish with a quick quote: “Independence is sustained by true accountability—the accountability owed to customers. People who buy the newspapers, open the application, decide to take out the television subscription—people who deliberately and willingly choose a service that they value. And people value honest, fearless, and above all independent news coverage that challenges the consensus. There is an inescapable conclusion that we must reach if we are to have a better society. The only reliable, durable and perpetual guarantor of independence is profit”.

If you happen to believe that the only guarantor of independence is profit, then you can cease to worry about plurality of voice because the market will undoubtedly take care of that. If, however, you question that belief, then the conclusions you come to regarding the importance of plurality could, as I say, hardly be more important. The passage I just quoted was James Murdoch’s conclusion to his 2009 Edinburgh television lecture. So, finishing with that movie, just as Deep Throat suggested, I believe that, in finding a solution to the problems you are wrestling with, follow the money.

**Lord Fowler:** Just a couple of sentences, really. I do think you should recognise what I call the different stables that newspapers and broadcasting come from. Television in the United Kingdom has grown up in a very different way and with an acceptance of rules and regulations that would be extraordinary as far as the press is concerned. I think you can require the press to be accurate, and hopefully post-Leveson that will be done. You can certainly require them to be honest in their dealings with the public, and self-evidently, as Leveson points out, that has not been the case.

I do not think you can expect the press to be impartial, which some people argue for. I once worked for a newspaper, the *Times*, that in the early days was reckoned to be a newspaper that was impartial. I greatly enjoyed those standards, but I think that those days and those times have passed. They were getting pretty infrequent even when I was working for them. But you can ask the press to behave honestly. As I said, I am an ex-journalist, an ex-newspaper chairman, and I want to see newspapers campaigning because I think that newspapers have this duty to expose wrongdoing and to campaign against the exploitation of the public. But activities like phone hacking go smack against those journalistic principles, smack against the public interest, and that really is the answer to Lady Deech’s point. I think one has to recognise the differences between them, but I think one also has to be outspoken when the press do get it wrong, because if we do not do it, no one else will.

**The Chairman:** Thank you both very much indeed. We are very grateful.
Google and Facebook – oral evidence (QQ 381-393)

Transcript to be found under Facebook
The Chairman: Good afternoon, ladies and gentlemen, and welcome back to the Committee's deliberations this side of the Summer Recess. It is particularly a pleasure for us to have Steve Hewlett and Roy Greenslade to give us a journalist's view of journalism in our first evidence session. We have had brief CVs for you, so I see no need to go through that again, but—starting on the left with Steve Hewlett and then I will go on to Roy Greenslade—is there anything you would like to say as a brief opening statement before we go into some of the questions that we would like to ask you?

Steve Hewlett: First of all I should apologise, Chairman, if I start burbling loosely about royal charters and apologies in advance for that. I will say only a couple of things. It did strike me that, in the course of the debate that kicked off about plurality, we were looking at a unique set of circumstances. News International, News Corporation, had built up a substantial position in the newspaper side of the media in a time when newspapers remained massively influential; arguably more than they are now and more than they ever will be again. What we then saw unfold: I can remember David Cameron standing up in front of the Commons and saying, “Mea culpa”. I cannot remember the precise words but, “In pursuit of favourable treatment, we took our eye off the ball”—that sort of thing. I was left wondering whether that situation could ever occur again. Even if
no one did anything about it, could that ever happen again? I think it could not, or not in quite that way.

There may be more issues to do with Google and their algorithms in terms of the delivery of news and information and the impact of the selection of news and information, of agenda-setting and all the rest of it. New technology might be more influential going forward, certainly on a 10 to 15-year basis, than anything that had gone before. One could see that this had been a dreadful turn of events, but I was not sure it could reasonably happen again in quite that way, even if no one did anything.

The only other thing is that I do not think that the BBC can be left out of consideration when it comes to matters of media plurality. I do not say that because I think the BBC should necessarily be cut back or restrained or constrained, necessarily, where there are arguments about that, but to consider the full picture I do not think one can sensibly look at that without taking account of the BBC as a big and influential—nothing wrong with that, either—presence. It is the elephant in the corner of the room if you choose to ignore it.

**The Chairman:** Fine. Thank you. Now, turning to Roy Greenslade.

**Professor Greenslade:** Steve comes from a broadcasting perspective and I come from a newspaper one, and I think his point about the BBC is fantastically interesting because it dominates the broadcasting sphere and, to an extent, the online sphere as well. Because I come from a newspaper background, I am reminded of AJ Liebling’s famous aphorism about the freedom of the press being available only to those who own one. Newspapers continue to dominate what we might call the national conversation and, therefore, in their domination of what we might call a daily agenda, they have a big effect on what the BBC go on to report. For me, when we talk about plurality, we are still looking at what is now called the mainstream print media as having enormous power. That is just where I think I am coming from and where the Committee should be coming from.

**Q262 The Chairman:** Thank you both very much for that. Do you think it is ever possible to find a set of proposals that will basically suit everybody or do you think it is inevitable that, if you are involved in this kind of political analysis and conclusion-making, somebody somewhere is going to have a real go at you, come what may?

**Professor Greenslade:** Yes. I take that view because every attempt—many of them valid and sincere—that tries to measure where we draw lines is fraught, and fraught for a number of reasons. First, and that is why I started by saying that newspapers were so dominant, no one is ever going to agree where the share of voice, as it might be called, should be curtailed and that is problematic. The other is about organic growth and, equally, its opposite, which means that the shift in voice occurs sometimes fantastically rapidly. Then the third problem, of course, is the rise of the net and predicting how that will go is virtually impossible. Yes, the task of measuring and, therefore, setting definite parameters is virtually impossible.

**Steve Hewlett:** I would echo that to an extent, in the absence of any meaningful media consumption metric. When I say that, one could measure consumption, of course, but comparing and contrasting consumption of one media: what is a minute reading an internet page versus a minute reading the *Sunday Times*, versus a minute listening to Radio 4, or a minute watching ITV national news, or a minute watching Sky? I have no idea how one begins to equate that.

You can measure consumption, but in the converging world what is really needed is some way of understanding, first, how consumption might be understood across media, and, secondly—this is even more difficult—what influence particular sorts of consumption carry
with them, because in one sense, if no consumption brings influence then you probably would not worry about it at all. The metrics question is—

**The Chairman:** Do you think in a sensible, common-sense sort of way it is possible to devise metrics to do this sort of thing?

**Steve Hewlett:** Within market segments, you can say, “Provided there are a number”—pick a number—“of newspaper groups that own the national press then, provided there are that many, we do not care what happens, but there have to be that many and they have to be of at least a certain size”, or something. It is very rough and ready and, when you consider media consumption, you see that broadcasting trumps the rest by a mile. I take Roy’s point about the newspapers having a very significant agenda-setting role while broadcasting does not. They are all licensed to be impartial and so on. That does not mean, however, that in their attempt to be impartial they do not represent a particular way of looking at things. I am not saying you can equate it to a tub-thumping *Daily Mail* editorial or something similar from the *Times* or the *Telegraph* or whatever. It is not a political position in the big P sense—absolutely quite the opposite—but it is a way of looking at things and I am not sure, in this connection, it can be simply discounted.

The only thing I would say is that I feel that we are in the land of unintended consequences. Around every corner another one jumps out at you and we will come on to discuss this, but it is just taking the notion of a cap on newspaper ownership measured by circulation. You can imagine the absurdity of: I have a newspaper, he has a newspaper; we are both at 18%. I am an idiot because I sack my best editor, whom I catch in bed with my boyfriend’s whatever and fail to get the right one back. The newspaper goes down the tubes and loses a third of its circulation. He just carries on doing what he has always done, being pretty good and so on. I drop down to 15%; he goes up to 22%. Bang, off you go. He has done nothing. It seems to me that the notion that he should be penalised because I am an idiot is not great for business, I would have thought. Everywhere one looks, one sees unintended consequences that bounce out at you.

**Professor Greenslade:** We have always said that you must not punish success. If we think back to 1969 when Rupert Murdoch acquired the *Sun*, he took it from a circulation of 750,000 that year to, in 1978, 3 million-and-something, overtaking the *Daily Mirror*. Without anyone getting into any bed at all, there was that switch between those two newspapers. We would not have punished Rupert Murdoch at that point for being successful. We have to build into any system—it seems to me the very word “system” does not suit it—a way of ensuring that we do not punish successful media entrepreneurs for doing what they should be doing.

**Q263 Baroness Deech:** Could I just take issue? I think I agree with Mr Hewlett about most people getting their news from television. We have had some statistics on that. But you, Professor Greenslade, said that the newsprints are the most influential in your view. That just reminded me of last week—was it last week?—when the *Daily Mail* was criticised for the Miliband issue, it then turned out that vast swathes of the population had not heard about this and were not influenced by it anyway, which rather surprised me. I began to wonder whether this whole issue of plurality goes much further than Westminster village.

**Professor Greenslade:** The point about an individual paper’s misbehaviour is that if the rest of the press do not take it up then inevitably, and this is what is so good about a public service broadcaster like the BBC, it will. The point about the *Daily Mail*’s incursion into the life of Ed Miliband’s father was that that was just the kind of example where plurality is
fantastically useful but also, most importantly, the *Daily Mail* in a sense was setting, with its story, an agenda that was picked up by the BBC. No doubt this happens time after time after time: a political story is broken by a single newspaper and then that is reported on “Newsnight” or on the bulletins of the BBC, on its radio bulletins too. It is not that BBC takes it on further or they get the interviews, but it is the fact that the story itself and many stories like that begin with the BBC.

There is research, by the way, to show you, in a less contentious matter than the *Daily Mail*, about the coverage of the European Union—I think the Wilson report showed this—in which most of the stories that appeared on the BBC about the European Union were responses to stories, whether they be myths, whether they be true or not, in newspapers. In that way, I think what the Wilson report was saying was that that is the problem for the BBC and I think Steve used this phrase too: it is reactive to newspapers. That is not problematic in that newspapers are setting the agenda. It becomes problematic, by the way, down the line, when we have fewer newspapers being published or they are being published only online. That is something we can discuss.

**Q264 Lord Clement-Jones:** You have talked about the issues of measurement and unintended consequences and so on, but I am assuming that you both think that plurality is desirable. On that basis, I want to ask you what you think are the most serious threats that need to be addressed that threaten plurality. It has been put to us by Professors Richard Collins and Martin Cave, a rival set of professors, that market trends are the most serious threats to address in the context of plurality, including the general pattern of market consolidation and the demise, as they put it, of the advertiser-supported business model. What do you think are the key threats?

**Professor Greenslade:** I will go first. Yes, of course it is a threat. The market trend is that the business model of newspapers is being wrecked before our eyes. They depended on advertising. They continue to depend on advertising. It is still the only main way to get revenue and that is in a state of collapse, perhaps more pronounced. Perhaps we can talk briefly in a minute about the special problems, because there are segments of the market here, of regional newspapers, but right now it would be true of nationals too. If you look at the circulation, say, of the *Independent*—it is 70,000-odd for the main *Independent*; the little one is selling many more but is largely devoid of premium-rate advertising—you must believe that at some stage, I do not know when, those titles and others, perhaps the *Daily Express* and *Daily Star*, would be in real danger of going to the wall. That would be due to market trends, and that would narrow the number of outlets. We would not be able to hear Mr Richard Desmond’s view of the world and the place would be sadder for it, I am sure.

I think you started off by saying that Steve and I would agree that plurality is a good thing. I think we all think that. It is fair to say that we have not lost any national titles because of that trend at the moment, but the possibility must be there. Certainly, if I were to spend just one minute on the regional press, we are seeing gradually closures, mergers, daily newspapers in the provinces becoming weekly newspapers, weekly newspapers finding it extremely difficult to survive, and there is no plurality in most towns and cities, of course. That long ago stopped happening.

The good thing about the regional press is that it is largely an impartial press—beloved by politicians, therefore—but it would also be the case, when we move on to remedies, that I think we would need to do something to step into the market—in other words, to do something about these market trends that are undermining the business models of our newspapers.
Steve Hewlett: I think it is pretty plain that, in a declining market, consolidation is a perfectly understandable survival strategy that newspapers will follow. I am sure you have heard all this and know more about it than I do but, again, it strikes me that, by an international comparison, the UK has a remarkably full and vibrant national press. There is an awful lot of it. Most countries do not have anything like this number of national newspapers, partly because of politics. They are often more regionalised in the UK. How many national papers does the United States have? Wall Street Journal—just about, in business terms—USA Today and the National Enquirer. I am a bit stuck for it. Most countries do not have this level of national press. They have a much more vibrant local and regional press.

Again, I am not an economist either but, not only do I think it is likely that there will be further consolidation in the UK national press market, I think it is probably overdue. There is probably a red top and there is probably a broadsheet, if you will forgive the terms, which are going to go. I do not know that that necessarily means we are absolutely the poorer for it. Do not get me wrong. I am in favour of more journalism and more newspapers, but in terms of: is the nation’s access to plural supply and information undermined by the demise of a couple of newspapers or the consolidation of a couple of newspapers? Pick a number. Provided there are at least three national newspaper groups operating, or possibly four, I feel reasonably comfortable that we are pretty well served, especially when you take an international comparison. The only other thing I would say is that—

Professor Greenslade: Can I just interrupt and interfere?


Professor Greenslade: Sorry. I cannot agree there. I think that if you narrow down too much, the fear of an oligopoly are just as bad as that of a monopoly. We have seen in the whole saga of the post-Leveson outcome that the publishers together, and there are more of them around at the moment, provide a mighty lobbying force to bring about their wishes as against those of politicians. Only one newspaper—and I am talking about my own newspaper, the Guardian, which must be imperilled in terms of continuing to print beyond maybe five years—stood out against the publishers. The narrower it gets, I think the more problematic it gets in terms of voice.

Q265 Lord Clement-Jones: Can I just pick up the points you have made by reference to online journalism? You have obviously talked about the narrowing. You have said perhaps it is slightly less threatening, Steve, than Roy does. Is one solution to that narrowing of diversity online journalism? I have a quote here from Avaaz, which told us in written evidence, “Online media, like open democracy, do not have either the salience and authority or the resources yet to challenge effectively legacy media”.

Steve Hewlett: I think that is true, but we are looking at various things in the mix here. One is the plurality: plurality in terms of points of view, attitude, approach, agenda and so on. The other is the capacity to do challenging journalism and defend it. The flipside of having media organisations that are big enough to be a worry is that they are strong enough to defend themselves.

Professor Greenslade: You cannot hold power to account unless you are powerful.

Steve Hewlett: I do not, by the way, think the Guardian is going anywhere fast in the sense that it is losing circulation and so on, but it has a pretty big resource base behind it and its online efforts are not only interesting but potentially all sorts of things are happening in that
space. No one has quite sorted it out yet, but the *Guardian* is far from out of the game yet. If one were to identify the paper most likely to go, it would not be the *Guardian*.

**Professor Greenslade**: No, it would not be the *Guardian* right now, I agree, but I am merely using that as—

**Lord Clement-Jones**: Is there a powerful online player that really counts? *Huffington Post*? Do any of them really count?

**Steve Hewlett**: In the UK, again, what is interesting is that I just do not see it quite happening yet. The *Huffington Post* makes a huge impact in the United States, partly because they do not have a national press, as we have discussed, and partly because their press is much more straight-laced than ours. They are the big, posh newspapers, as it were, seeing themselves as the inheritors of the First Amendment and all the rest of it. It is a profession. Frankly, when you come to read some of it, it can be quite hard work. They do not have the same tradition in their press of rival, argumentative, bash it out, adversarial. It is much more straight-laced than that. With the arrival of the *Huffington Post*, with its “liberal” approach, there was nothing like it in the States.

One of the reasons that the *Huffington Post*—it is there and I have no reason to be against it in any sense at all; the more the merrier—is not having the same impact in the UK, and nor is anyone else, is because it is already there in the press. Compare a *Times* columnist with a *Guardian* columnist, with someone in the *Independent* and someone in the *Sun* or the *Sunday Times*. There is loads of it and it is very argumentative. The *Huffington Post* finds a niche in the US that I do not think is quite as free or open in our marketplace.

**Professor Greenslade**: I often say that we are in the foothills of a digital revolution. I think we have reached first base, but we are not there yet. The important thing for all of these newspapers to do is to build up online audiences who, when the time comes and print is no more, will be there for them to service and will appreciate the service and will form, therefore, an online conversation, which currently takes place in print. It is important for them to build big audiences, however they go about it—whether they build a paywall or whether they are entirely open—but the important thing is that if they are to maintain their role as holding power to account then they have to build the audiences that were once theirs in print and transfer them. They are all, in various degrees, trying to do that.

**Bishop of Norwich**: Can I pick up and take Lord Clement-Jones’ point rather further? Some witnesses have argued that the debate on media plurality is far too focused on measuring and limiting the major players on whatever platform and we should be thinking about how to encourage the new smaller players online or more experimentation or indeed new streams of funding for public interest journalism in some way or another. Do you have any sympathy with that point of view and, if so, what should we do to encourage market entry?

**Professor Greenslade**: We should take away some of his licence fee. There are vibrant regional groups that are suffering for all sorts of reasons that I discussed earlier about the business model. Some of them have other problems, debts and pension fund problems and so on, but what is true is that we do need to encourage start-ups locally, I think—not nationally right now—and we also need to do something to preserve the good journalism that exists in the towns and cities across Britain.

After much soul-searching on this subject, I do believe that there ought to be funding for public service journalism. I think you are going to be speaking to the Press Association after you have spoken to us and they did have a fantastically interesting model for that, which
never got quite off the ground but was a damn fine attempt to plan it anyway. I think we ought to think about whether or not we should have a public subsidy available, rather than let these newspapers go to the wall. At the moment they are all subject to cuts and some of those cuts have been sensible, but some of them have begun to cut away at what we call the news-gathering activities. These are too important.

If we believe that journalism is a public good and a public benefit, which happens to be my point of view, then it seems to me that we take the same line that we did all those years ago, 1920 in setting up the BBC, and say to ourselves, “This is too important to society to simply let wither on the commercial vine”, and then that means public subsidy. I know. As I said, it was a heartfelt journey I had been on. It is because, of course, I am worried that every time you do that you allow the possibility of state involvement. We have found an arm’s-length method to do that with the BBC. I think we need to find an arm’s-length method to do that to preserve what you rightly called “public service journalism” or what John Lloyd in his book called “civic journalism” and that is a good phrase, too.

We could lose our local newspapers across Britain suddenly—and the rapidity with which it could happen would take us all by surprise—and then we have nothing in place. We have not thought about it. This Committee has this opportunity at this moment to turn history around.

Steve Hewlett: I would offer merely an observation that is a counterview to that, which is that if you fund things like the BBC, eventually you get the BBC. The BBC has lots of characteristics that are surely attractive—its independence, its impartiality, or it strives to do all those things—and that is the price you pay for public funding. I do not see any easy way of bringing public funding with the necessary accountabilities and all the rest of it that brings.

In my part of the forest, broadcasting, this argument raged for years about Channel 4: whether Channel 4 should be gifted in some form licence fee money to keep it going in the face of commercial competition. As it happens, that has not proved necessary. That is not to say the issue will not come back at some point. When you get down to it, the fact is that if you fund it like that you are going to get things that have to be accountable in those sorts of ways. The risk you run is that you might have more words on the page or more pages or more papers, but you have more papers in the same vein.

The only other point I would make is that—there is no easy answer to this—commercial sustainability is the cornerstone of what passes for press freedom in the UK and you have to go back a long way to find government-financed newspapers; the secret slush fund used by Governments to pay for what—

Professor Greenslade: Yes, but I am talking about the Widnes something-or-other and the Wigan whatever and the Exmoor, Yeovil, whatever. I am not—

Steve Hewlett: Yes, but the question was asked more broadly than that.

Q266 Bishop of Norwich: Is it not true in relation to regional newspapers, I think as Professor Greenslade said earlier on, that they are not anything like as partisan as national newspapers? They have a bit of the spirit of the BBC about them because they are so accountable to their local communities and, therefore, they cannot afford to—

Lord Razzall: You have obviously never been a local councillor.

Steve Hewlett: I am not sure that they are like the BBC in that sense and I think that is by and large a good thing. If it is just like the BBC; you have the BBC so why bother? I am not advocating that, do not get me wrong, but more BBCs does not necessarily produce the
outcome that you want. Whether there are things that can be done to enhance their commercial sustainability—Roy knows this better than I do. Some newspaper groups—and Peter Preston at the Observer continually points this out—surprise everybody by being remarkably robust, by managing to put in reasonably credible financial performances to survive.

One of the longer-term issues with the local press, of course, is that the rush to consolidation when returns on investment were supernormal because of the effective monopoly over classified advertising, which has now been destroyed by the internet almost completely, led to groups taking on huge amounts of debt to finance the consolidation. Some of them are still wrestling with that problem.

I think another question to ask about the local press, and not dismissing it as an issue for a second, is: shorn of what might now look like historic financial mismanagement, how sustainable might it be? Possibly more than it appears to be.

Q267 Lord Razzall: If we just come back to the plurality issue. I think, having heard what you have been saying, you both are of the view that plurality in some way needs to be controlled or encouraged. We have had in this Committee completely diametrically opposed views—no surprise—between those who say, “In order to control plurality you should have a cap either on market share or revenue”, and those who say, “Looking at the future, that does not work and we need to have some sort of structure of review”. I think, from your opening remarks, I know where you two stand. I think you both agree that you are not in favour of caps. Would you like to expand a bit as to where you think the lines should be drawn as we look forward?

Steve Hewlett: I am in the privileged position of being able to say that I do not have an answer. I can see the difficulties, but I do not have an answer. As discussed, the problem with caps on either revenue or market share is that they are difficult enough anyway because they produce unintended consequences—

Lord Razzall: One of you gave the example of—

Steve Hewlett: It penalises success. Also, in a declining market, multiply it by 10. Without doing anything, people go out of business because there is no advertising revenue. I just go out of business for not even my own fault. I just go out of business and suddenly he tips over the cap. It is difficult. The advantage of caps, of course, is that they give to certainty to investors and to media, and they know what they are doing. Although, in a declining market I am not sure that they would give that certainty because things can happen pretty quickly and you suddenly find you have hit a cap that nothing told you that you would. The upside of reviews is that they can take all things into account much more easily and, therefore, probably reach more reasoned judgments. The problem with reviews, of course, is that, unless the timing of them is at least preordained—in other words, it has to be every three years, five years, four years, something—if there is discretion, and I remember this came as a proposal, I read somewhere, in which Ofcom was to be given discretion or the ministry discretion about when to—

Lord Razzall: Ofcom was the idea.

Steve Hewlett: From an investment point of view, that is a complete nightmare because you invest the money and suddenly you find yourself subject to review. The politics of deciding when to call a review is too ghastly. If there are going to be reviews, my feeling is they should be pre-programmed on a regular basis or possibly, in addition, to be triggered by
specific circumstances that are specifically identified so that everybody knows the rules of
the game. The risk here of—

**Lord Razzall**: That is just another way of establishing a cap, is it not? The cap triggers—

**Steve Hewlett**: No, it is not. Hitting a cap or a metric might trigger the review.

**Lord Razzall**: No, but that will trigger the review. Yes.

**Steve Hewlett**: Yes. The problem with a cap is that it says, “Once you hit that, you are out. Sell”.

**Lord Razzall**: Or it triggers a review.

**Steve Hewlett**: That is a more reasonable proposition because it could distinguish between
the rapacious growth of a potentially worrying concentration of media ownership from one
of those things that happens in a declining market.

**Professor Greenslade**: I am broadly in favour of review. The only trouble is, of course—

**Lord Razzall**: What triggers it.

**Professor Greenslade**: No, the reviewers, about which there is often a problem, too. It
seems to me that if you set a series of dates on which it would occur or it would be
triggered by an acquisition—mergers and acquisitions would have to trigger a review—that
would be fine, but we have seen even that system come up against problems. A small deal
that was to be done between the then Northcliffe Media and the Kent Messenger Group
failed because the OFT were working to rules that most of us now think are rather out of
date.

**Lord Razzall**: I think that is generally accepted in that case.

**Professor Greenslade**: That is generally accepted and, of course, it did not hurt, in my view,
plurality in any way. All that happened is you lost a title. They then started their own title
and you achieved the same ends, but with an annoying amount of money spent in the
process.

**Q268 Baroness Deech**: I wonder if both of you or either of you have a preferred model
for plurality policy or, conversely, if there is a model that you think would be a backward
step.

**Professor Greenslade**: Can I offer a one-word answer? No. That is your problem, not ours.

**Baroness Deech**: Yes, that keeps our Committee in business. Can you steer us either
forwards or backwards? Maybe there is something you do not like, or maybe there is
something you do like?

**Professor Greenslade**: It seems to me that the consistent problem we have, that we face all
the time, is that we want to be absolutely certain that there are as many views in the
marketplace as possible. We have seen a fragmented television environment, which probably
has been a little bit useful until you analyse who is watching what and you see that there are
decaying audiences for the news component of virtually every one of those fragmented
stations, in spite of the fact that people say they get their news from TV mainly.

It seems that we would have to simply stay roughly where we are and only hold reviews
when necessary, because I do not see that you could come up with a rounded—if you are
going to have plurality that you measure, and we have already discussed that measurement is
virtually impossible—Steve gave a very good example at the beginning there about: what
does one minute time of this equate with one minute time of that? So that is impossible. I would not have thought that there is a definite model that will work. I am sorry to be so negative about it, but I have been wrestling with this over 20-odd years and never found a workable way of doing it.

Steve Hewlett: I do not have a solution either, but I thought, during the News Corporation proposed purchase of 61% of Sky they did not already own, the attempt by Ofcom to come up with a share of voice was interesting. It was imperfect and I do not know that—

Professor Greenslade: And disputed.

Steve Hewlett: And disputed, but at least it tried to get to grips with the notion of seeing how a particular organisation with a particular editorial or common ownership or whatever, editorial stance, looked in a cross-media way. It may be that a metric is not completely beyond us; maybe something that is approximate but that would command some sort of consensus as something that might be used as at least a trigger for an inquiry, rather than as a hard cap that results in direct consequences. It is very difficult.

The other thing, of course, that is going to happen in a declining market, as we can already see, is newspapers and other media organisations moving into other media as they begin to converge, sometimes following their readers and other times trying to find new markets. As that happens, one wants to encourage, I would have thought, as much private investment as possible. Therefore, it is important that any regime that is set up to look at plurality issues has half an eye at least on the commercial consequences of what it does, because the easiest thing in the world would be to come up with a regime that chokes off investment and in five years’ time, with the best of intentions, everyone is worse off.

Baroness Deech: Can I just ask you, because it is in the forefront of our minds today, will a fairly strict regime of press regulation affect plurality in any way? Will it diminish it or will it frighten people out of the market?

Professor Greenslade: That is a wonderfully topical question, is it not? Personally, I do not think it will. I do not think this is a matter of a draconian regime scaring anyone at all. I think, in fact, what was said at Leveson endlessly was that this is a fix for old media and, as we move into new media, it becomes less problematic than it is now. When we move to an online environment these questions of availability of voice, of plurality, change altogether. We are going to have a million voices. Of course, they will not be equal voices, which is a problem but at least they are there and people are taking advantage of that already.

Steve Hewlett: I think there is a risk, and I would not put it more strongly than that, that a new system of press regulation—let us say a much tighter system of press regulation involving penalties that might be much more serious for transgression, whether it be exemplary damages or costs in libel actions that you have won, or whether it is fines from the self-regulator in that you are wanting to turn over £1 million—that that sort of regime induces less adventurous behaviour. Some adventurous behaviour one wishes to see stamped out anyway. Let us think no further than phone hacking, I suppose, and all of that. But there is a risk that the press is cowed by a regulatory system with penalties that are too high. I put it no stronger than a risk.

There was a discussion, for example, about whether or not exemplary damages in libel and privacy cases would ever pass a European test. Some people argue on that side of the argument that if ever it came to it and such a fine was imposed then Europe would overturn it. Of course, the principle that would operate—and there are people who would know more about this than me—is if the penalty for getting it wrong is too high then the chances
are that lots of things that are right will not be said. It is the worry about what happens when it goes wrong.

Funnily enough, Tony Hall, in his speech at the BBC this morning, put it quite nicely when he said he wanted it to be an organisation where people thought, “Just how good could this be if we get it right?” as opposed to their first reaction being, “Just how bad could this be if we get it wrong?” These are relatively subtle attitudinal questions, but there is a risk, of course, that if the press regulation thing goes wrong—I am not suggesting it has done, by the way, but “if it goes wrong”—you could end up with a press that is less adventurous than it is, and that is probably not a good thing.

Professor Greenslade: But not a less plural press. There is a problem with the arbitration and whether that would be costly, but—

Steve Hewlett: Maybe no less plural, but all less adventurous and that is not necessarily a good thing.

Q269  The Chairman: One thing that is related to this but is slightly tangential is that some of the evidence we have heard has suggested that in some way or other, in order to ensure a plural press, there should be a certain behavioural remedies or rules imposed on certain bits of the media. Is that an idea that has any attraction?

Professor Greenslade: Such as?

Steve Hewlett: I do not know. What do you mean?

The Chairman: You would have to carry certain types of story or give various people affectively the right of reply in extenso and that sort of thing.

Professor Greenslade: The only people who get rights of reply are people who put enough pressure on that now. There is no statutory right of reply, Chairman, no.

The Chairman: No, but it is the kind of thing that some people say is a way of expanding plurality. It has been suggested, floated.

Steve Hewlett: Is this the argument that says once you reach a certain size, at that point you begin to inherit obligations?

The Chairman: Perhaps. It is a variation on it. Do you see what I mean: the idea that there should be outside impositions?

Steve Hewlett: I have not thought that through, but if a reasonably sensible way could be established of working out how you measure size, which goes to the metrics question, that may be an argument worth considering.

Professor Greenslade: I think we cannot rule on what content should be. That would be an inhibition of a free press. It would be wholly wrong to go down that avenue.

The Chairman: Fine. We have heard evidence at this end and we were interested in thoughts about it.

Q270  Lord St John of Bletso: Clearly the online environment and digital revolution has irreversibly changed the whole communication sector and newspaper sector, but digital intermediaries, more specifically search engines and social networks, are clearly a major medium in which the public are addressing news. Increasingly, the younger generation are accessing their news from Twitter and BuzzFeed. With these intermediaries promoting
specific content and delivering consumer-useful search engines, to what extent do you think that there should be some editorial control over these intermediaries?

**Steve Hewlett:** Again, I think it is a commercial question. My sense is that, up to now, search engines, Google being a lot of them, and Twitter have the effect of massively expanding my access to information that I previously would have remained blissfully unaware of. I think I am much better informed as a result of the bit.ly or whatever, the shortened URLs that you can get on Twitter. Stuff is now sent around and I find myself reading articles, sometimes from a journal I have never heard of—stuff that is genuinely interesting. Up to now, I think it has massively expanded my access to news and information.

Is there a worry? I think the worry is one for the Competition Commission and the OFT. The problem is that it is in the nature of services like Google that the better they get, the better they get. The bigger they are, the bigger they get. At some point, there must be questions about how that is managed. I do not think you can intervene. It is hard to see how one intervenes at the level of Google and says, “You must now operate—”, because in time the problem is that its algorithms are, of course, partial almost by definition. Even if they are impartially inspired, they deliver only certain things to you. The risk you run is that Google becomes so dominant that its algorithms come to dominate the agenda in ways that—there is no individual sitting there doing it, but it is happening. Just as you need a plural supply of newspapers and organisations capable of doing journalism, setting agendas and looking at things their own way, at some point you need to feel comfortable that there are search engines or at least algorithms doing it that are also, to some extent, plural. I do not know whether it is possible to do that in the context of discussing it with Google itself or whether it is a competition question about the dominance of Google in the marketplace.

**Professor Greenslade:** But Google depends on plurality of the media to offer you a choice of 10 things on the front page. I hear publishers say consistently, “Google are robbing us. They are stealing our copyright. They are making our life more difficult”. There have been copyright actions against Google for that, but I think the whole creation of the net was to make information freer, if not free, and that Google and the other search engines—of course they are not as successful, although they are different in different countries—is a wonderful phenomenon. It is a terrific help to the public.

In fact, if you think about it—take away from just Google being a single company—the whole search engine thing and the way you can Twitter links and so on, all of that is plurality in action, in a sense, and is something to be applauded. It will continue to expand. It is going to be the next generation’s method of converse and is already that for many teenagers who do not read newspapers at all. We will be King Canute if we try to stop this process.

**Lord St John of Bletso:** Yes. Clearly it has a very important role, but I suppose I am looking at the business model here. Earlier, Mr Hewlett, you said that the business model of newspapers is being wrecked before our eyes. Earlier, Mr Hewlett, you said that the business model of newspapers is being wrecked before our eyes and, quite clearly, this is the case. Professor Greenslade, you said that there should be a possible subsidy to promote public sector journalism. We are seeing, increasingly, local and regional newspapers crumbling before our eyes. I suppose the question is: do you think the intermediaries’ role should be kept under review or that tougher measures be introduced, possibly subjecting them to some form of levy to redistribute advertising revenues to support journalism?

**Professor Greenslade:** My gosh, that is an interesting question. In other words, we do not take the public—obviously, we start taking some money away from Google because they benefit. Hey, it is a good one to float, but I do not think we need to go down that route. What we want Google to do is doing brilliantly and it does that on behalf of everyone. It is
the case that if you want to know about news in Durham or Cardiff or Birmingham, you can put that into Google and discover it and you will then be pointed to the relevant local newspaper. That is to the good of the paper. This is a consistent problem, is it not, that publishers say, “It is not to our good because they are then reading it for free”. Okay. In other words, the thing to do is to subsidise those newspapers, or subsidise at least the news-gathering activity that leads to it, but I think that if you try to demand that Google give money back for that, even if you ask for it as a gift, you are interfering in the wrong end of the market.

**Steve Hewlett:** Although there are models, are there not? The YouTube model, which of course Google owns, has a way of sharing revenues generated by particular bits of video or whatever with the people who originated them. It also has the copyright thing, because of the recognition system, whereby if somebody puts up a piece of your content, if they have taken it from somewhere and put it up on YouTube, YouTube scans all this stuff, spots the connection and then gives you, the copyright holder, the choice: take it down, share the revenue, or something. I do not want to misquote myself here, but I have a vague recollection of somebody from Google talking about partnership models with the press along similar lines.

**Professor Greenslade:** In Britain, or in France?

**Steve Hewlett:** In Britain, I think. As Google distributed it around, in so far as Google raised revenue from it by selling advertising on the pages that Google serves to its users. I think, on balance, I am with Roy. I think it is plurality in action. So far it has been hugely positive and massively liberating, the whole thing, but that is not to say that there are not some issues that you will need to keep an eye on. One of them is Google’s dominance in the market, full stop, where the risk is at some point its algorithms come to predominate in terms of agenda and choice and all the rest of it. That might become problematic. Revenue-wise, my impression is that Google is much keener these days on being seen as partners rather than pirates.

**Q271 The Chairman:** Is there a case for saying that, while one will never know the detail of algorithms, there should be some kind of code of conduct that certain attributes that you might find in an algorithm should not be applied?

**Professor Greenslade:** The algorithms are set up, are they not, to ensure that what is the most popular gets to the top? That tends to then, of course, reinforce what becomes the most popular. You could set them up any which way you liked, to be absolutely honest, but they have found, in my view, a very fair way of organising which content—

**The Chairman:** If you were in this game and you were slightly sinister, in the way that some of the great owners of the printed press have been thought to have been slightly sinister, you could introduce elements in the algorithm and make sure that, for example, views that you did not subscribe to were kept rather lower down the list.

**Professor Greenslade:** Yes, you could, but they do not is the point.

**The Chairman:** Well, they have not yet.

**Professor Greenslade:** The great thing about Google being a global organisation is that there is less pressure on it to conform to some kind of political pressure from within its base to do so, although, as soon as I say that, it did fall foul and make deals in China that I think it regrets.

**The Chairman:** It has to be based somewhere, though.
Professor Greenslade: Yes. Ireland is a good place.

The Chairman: Apparently that is what they think in their own case.

Professor Greenslade: That is why it is there.

The Chairman: Yes.

Q272 Baroness Fookes: We have already had mention this afternoon of the BBC as a major player. Should it be doing more to increase its own plurality within its own organisation?

Professor Greenslade: I will let Steve start.

Steve Hewlett: These are purely personal views, naturally. Let me preface it by saying that. The natural order of things in the BBC is for bits of it to compete with each other in ways that might be regarded as distinctly unhelpful from the financial point of view, bordering on fratricide. That is the natural order of things and it is something that BBC regimes have consistently had to, at some point, face up to and either manage or try to eliminate. It goes through phases. When the BBC is in the mode of supporting and embracing, to an extent, internal competition it is pretty plural; not in the sense that this programme is impartial and this one is not, but that you have programmes in competition with each other trying to get the best guest or the best story or this or that. That, by and large, is good. I do not think I want to see the BBC necessarily being more plural than that, but in another—

Baroness Fookes: Do you want it to be less?

Steve Hewlett: It has been through one of those, I think, in the last decade or so. In the other phase, the BBC becomes more highly centralised. That is partly about cost-saving, the bean-counters’ revenge. They hate internal competition, so they seek to eliminate it. You get less plurality. Internal competition is suppressed. Sorry, that is the wrong way round. Internal competition is suppressed. You get fewer different views taken on the same thing. For example, even as an independent producer—which, with another hat on to try to make a living, I also do—you notice that once upon a time it was possible to take an idea to the controller of BBC1 and to BBC2 at the same time, neither knowing that the other had been offered it, and, frankly, play them off against each other. It gave you some sense of being in control of your own destiny. More recently, the BBC has been almost the opposite. Internal competition is eliminated and so decisions are made. It is more efficient, but it is much less interesting.

In terms of its news and information, similarly, the regime needs to embrace the natural order of things and accept that there is a degree of internal competition. It is very distinctly my impression that Tony Hall and James Harding in news are doing precisely that. I sense, in there, there is more competition between outlets. Now, again, you have to be careful they do not go mad and start beating each other up and, of course, you run the risk that you start seeing two camera crews at the same event, rather than one. Next, cue Daily Mail with a BBC waste story. But you cannot have plurality without a degree of what can appear as the bean-counters’ nightmare.

Q273 The Chairman: Is the proposition you are putting to us that, let us say, taken too far, cuts and savings damage plurality?

Steve Hewlett: I do not think there is any doubt about it and I think they have done. I think it has led to a much more centralised machine that delivers the same output to be used on different—rather than different outputs generating their own outputs. You do not get as
many perspectives brought to bear. I do not mean that these will be radically different or wildly out there.

It is not like you suddenly turn the BBC into the whole of the press together, with the Sun at one end and the Guardian at the other. It does not happen like that, but you do get different views and different perspectives, different editorial judgments, and it makes the BBC's offering much richer. I think the BBC does need to embrace that level of internal plurality and you would have to decide to do it. Especially in straitened times, and they are pretty serious at the minute in terms of what it has to save, the natural tendency is towards efficiency, elimination of duplication, elimination of internal competition. If that goes too far, and I think you can argue that it might have done, it produces bad outcomes.

Baroness Fookes: But presumably you cannot legislate for that precisely either within the organisation or from the outside.

Steve Hewlett: No. I think that parliamentarians and others who have some oversight—the Public Accounts Committee, et al—of what the BBC does can beat the efficiency drum so hard. I am not saying that the BBC should not be more efficient; of course it should. That is always a “how long is a piece of string?” question, but it is important that people who look at the BBC, who comment on it and who have some oversight of it, would do well to think about the consequences for plurality of being too hard on them.

Professor Greenslade: If it is a public service broadcaster then internal plurality is essential, because we know there is not a single view about anything. If I remind the Committee of the battle between Newsnight and Panorama over Jimmy Savile, here was one programme holding another programme to account. I think that that was a fantastically good exercise for the BBC. It did not seem like that if you were on Newsnight at the time, but it certainly was a valuable exercise and showed that internal plurality and there being more than one voice is part of the duty of the broadcaster itself not to be a monolith, which many people happen to think it is.

Lord Razzall: But that was not so much about internal plurality as about a programme criticising the BBC.

Professor Greenslade: No, but it showed that the director-general at the time could not say to this programme, “Do not cover that because that will be an embarrassment to the BBC”.

Lord Razzall: That is true.

Professor Greenslade: The most important thing was that it allows that freedom. One of the unique things is to watch senior BBC personnel be very critical of the corporation itself. You have heard Jeremy Paxman say that. You have heard David Dimbleby say that.

Lord Razzall: John Humphrys got an award.

Professor Greenslade: John Humphrys. People like Paul Dacre back at the Daily Mail think, “I would sack anyone on my paper who did that to my organisation”, but they do not at the BBC. It is encouraged to be rebellious against the organisation itself. That is terrific.

Lord Razzall: Well, it is tolerated.

Professor Greenslade: I know they do not love it, but they tolerate it. They tolerate it because they have to, because there would be a stink if they did not. I think that is very valuable.
While we are on the *Daily Mail* for a second there, and Steve made reference to it, there is a consistent press view. The press see themselves in competition with the BBC when they say, “Too much money is spent on this particular event by the BBC”, and, “Why are all these same people from the BBC around?” Obviously, the bean-counters have a point. They must control it as much as they can, but that competition at current affairs and journalistic level is essential for our broadcaster.

**Baroness Fookes:** Would you want to see that introduced in some form of duty in, say, the next Royal Charter or is that a step too far?

**Professor Roy Greenslade:** I think it is there. I do not think it needs to be enshrined. I think we are too keen in laying down rules, “You have a duty to compete.” I think that would be wrong. It just happens. It is part of the organic growth of the BBC. It would not have happened in 1921 under Lord Reith. That is for sure. That is the great thing: as it has grown there have been much more tolerant liberal attitudes.

**Baroness Fookes:** But we are told that the Director General would like to go back to the Reith standards.

**Professor Greenslade:** Knowing Tony Hall, I do not think he is Lord Reith in waiting.

**Steve Hewlett:** Hopefully, he will not commission anything like the same sort of sculptures to put outside the building anyway.

**Q274 Lord Dubs:** In what you have been saying we have been talking about reviewing, capping or promoting plurality in some positive way. There are a number of different ways in which, between you, you have talked about moving forward. From what we have learnt, there seems to be a number of possible models for this: another Minister, doing it as now; we could have Ofcom, the regulator; we could have a special plurality commission, perhaps inside Ofcom, perhaps not; or we could have something coming out of Leveson. Which way do you think we might go forward, if any?

**Professor Greenslade:** I would be rather keen on Ofcom myself, but I am not quite certain, because of everything I have previously said, what they would do except on those occasions when we felt a review was necessary. It still seems to me that one must avoid laying down rules that have no chance of being obeyed. Say next week the *Daily Mail* came up for sale and that Rupert Murdoch bid for it. We would expect that to trigger an investigation of some sort. It would disturb what we would regard as share of voice. At a lesser level within Ofcom, we could think that this kind of problem could be kept under review without there being, in my view, hard and fast rules.

**Steve Hewlett:** I understand the argument, but I think that is problematic. I remember Greg Dyke, when he was in between jobs, made a speech at the Edinburgh Television Festival. He was talking about broadcasting freedom and he said that in his observation, having worked in ITV for ever, broadcasting freedom was most at risk when the legislative or regulatory programme was in full swing. In other words, when broadcasters needed things from regulators or politicians or whatever, because there was a communications act or a this or a that coming up, that is when things were most at risk because that is when broadcasters would begin to moderate their behaviour in line with what they perceived to be the best corporate outcomes.
The risk you run with the way everyone goes about this is that, without meaning to, you induce behaviour based upon corporate best interest that does not suit plurality in practice. People will start gaming whatever scheme you put in place, I think. On one hand, I think that the more definite one can be about the rules and the circumstances from an investor’s point of view—I would favour being as clear as possible. I can readily see that no one predicts the future so, in extremis, there has to be discretion, of course, somewhere or other, but the more likely discretion is to be used, the more likely you are to find media organisations gaming that and corporate interest and editorial interest will collide in a rather unhealthy way. I do not think it is good for freedom of the press or freedom of expression or free access to information.

I think, whatever you do, you need to stay as far away as you possibly can. It may be that in the end, if one can find a metric, it is just done on competition grounds. I do not know. I am guessing. The closer one gets to defining the terms, the harder it gets. Again, I do not advocate a position. I can see it is hard and you have to come to a view and I am fortunate in that I do not. I think one can see quite a lot of examples where regulatory and other schemes impact on the behaviour of the regulated in ways that do not necessarily produce the best outcomes. They start gaming the system.

If you put in place something that is going to be always there, liable to act on a whim, on a moment’s notice, it is not good. It might protect plurality in the sense that it might protect a number of owners, but it does not protect journalism or freedom of expression because corporate interest begins to override editorial objectives, I would say.

Lord Dubs: If you went down the Ofcom path that would just be the fall-back position.

Steve Hewlett: I do not have a problem with Ofcom per se. My experience of Ofcom and my observation of Ofcom is that when it is at its best it is pretty evidence-based. It is pretty straightforward. It sets its terms out. It does a pretty thorough job, and so on. Undoubtedly that is true. I am not suggesting that Ofcom is the wrong body to do it. The bigger question is: what triggers it? If Ofcom can decide whenever it chooses or the Minister can decide whenever he or she chooses, I think it is not good because people’s corporate survival begins to override editorial objectives and purposes in a way that is not very helpful.

Lord Dubs: But you would have to have a fairly rigid sort of formula, would you not, to decide what triggers it off?

Steve Hewlett: I think you probably would, yes.

Professor Greenslade: That is the problem.

Steve Hewlett: At least you can all see it coming. At least you would all know.

Lord Dubs: Provided the rigid formula can anticipate some of the other changes that are taking place across the media.

The Chairman: I think what you are saying to us is: that is our problem.

Steve Hewlett: Precisely how one does it, yes. Discretion makes me very windy because I have worked in organisations. If you have ever worked in any commercial organisation anywhere and the prospect of regulatory intervention rears its head—look at the way the education system deals with Ofsted. Whenever you put these things in place, people start reacting to them. We are fortunate with the BBC that, through custom and practice over many, many decades, there are quite a lot of red lines that, by and large, the BBC does not cross and, by and large, regulators and politicians do not cross either, but it is not easy for organisations to get used to being regulated in that sense.
Professor Greenslade: It would be the case that in the preparation for every royal charter there is a year-long planning about that.

Steve Hewlett: And the rest.

Professor Greenslade: And the rest.

Steve Hewlett: Indeed, it has been said on occasion that even the BBC, God bless it, has been subject to internal pressure to mind its Ps and Qs when seeking a new charter.

Q275 The Chairman: I have heard it suggested, too, but again I have no evidence to support it. We are getting really to the end of the time you have kindly given us. Is there anything you would like to say beyond what you already have, that you think is important or might help us, please?

Professor Greenslade: I will make just one general point and that is that the thing about the media is that it is so vibrant and, now that we are in this digital revolution, it is more vibrant than ever before. Whatever solution you try to impose—the word “impose” is probably pejorative—it must be the case that you have to allow for the changes that will come. All news organisations, for reasons that Steve and I have both said, are under fantastic financial pressure. We have not even mentioned that nearly half the national newspapers are not even making any money, but we do think the preservation of the number of voices that we have is worth while because that is why we enjoy plurality. What needs to be done is to ensure that no one is pushed out of the game; that those who are successful at the game are given a chance to be more successful and that for those who are really suffering, the ones I mentioned earlier, there should be due consideration given to finding funding mechanisms to ensure that we have public service journalism across the United Kingdom.

Steve Hewlett: I do not think I have anything to add, to be honest.

The Chairman: Can I just say to both of you then, on behalf of the entire Committee, thank you very much for coming along this afternoon? We have much appreciated it and enjoyed it.
Executive Summary

1. GMG welcomes the Committee’s inquiry into plurality – an important issue that has been investigated several times in the past, without substantive reforms ensuing. It is because of this lack of past action that we are so pleased that the Committee’s inquiry is taking place, and we strongly believe that there is a need for genuine solutions and action from Government.

2. As the Committee is well aware, the issue of media plurality shot up the agenda in 2011 following News Corporation’s attempts to acquire BSkyB. Senior politicians across political parties – including David Cameron, Nick Clegg, Ed Miliband and the former Secretary of State for Culture, Media and Sport, Jeremy Hunt – have identified the importance of media plurality and the inadequacies of current regulations that attempt to protect it. The regulator, Ofcom, has already looked into the issue on a number of occasions. And Lord Leveson’s report supports our long-held position that there are deficiencies in the current rules protecting plurality and, moreover, it goes some way to suggesting potential remedies.

3. Plurality is a complex subject, as Ofcom’s 2012 review made plain. But we would contend that it is every bit as important as the remodelling of regulation for the press, if not more so. National news has a crucial role to play in public debate and is therefore a bedrock of a functioning democratic society. As such, plurality considerations warrant special priority and protection above conventional competition thresholds.

4. In its 2012 report, Ofcom set out what a plural outcome should look like. GMG supports all of the criteria but ultimately believes that the last is most important:

   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.194

5. We would stress that, fundamentally, plurality needs to be protected for the good of consumers of news in a democratic society. All other criteria and objectives such as encouraging multi-sourcing, low barriers to market entry, commercial sustainability and high reach and consumption should contribute towards protecting consumers from a restrictive set of news and opinions.

6. As the independent regulator, Ofcom should have enhanced powers of review. For example it should be required to review plurality at regular intervals, not just at the point of a transaction, thereby enabling emerging threats to plurality to be fully identified.

---

194 Measuring media plurality, Ofcom, 6 June 2012. Pik
7. We support the position set out by Ofcom in its report, and highlighted by Lord Leveson, that instead of fixed caps there should be a concept of sufficiency of plurality against which to conduct a market review.
About the Guardian and Guardian Media Group

8. Guardian Media Group (GMG) is one of the country's leading commercial media organisations. It is one of the few British-owned newspaper companies and is one of Britain's most successful global digital businesses, having recently launched in USA and soon to launch in Australia.

9. GMG's core business is Guardian News & Media (GNM), publisher of guardian.co.uk, guardiannews.com, and the Guardian and Observer newspapers. As well as being a leading national quality newspaper, the Guardian and The Observer have championed a highly distinctive, open approach to publishing on the web and has sought global audience growth as a critical priority. The latest National Readership Survey Print and Digital Data (NRS PADD) research reveals that Guardian News & Media's titles - the Guardian and The Observer and guardian.co.uk - continue to be the most read quality newspaper combination in Britain for weekly and monthly reach. The Guardian and The Observer are read - either in print or online - by over 5.4 million people per week and over 13 million people per month in Britain.195

10. Rapid technological change and the financial challenges facing all newspaper publishers were triggers for GMG to drive a significant evolution in its business strategy. In 2011 GMG moved to a strategy which saw it looking forward towards the converged media consumption of the future. In June that year, GNM revealed plans to become a 'digital-first organisation', placing open journalism on the web at the heart of its strategy. The 'digital-first' strategy involves making the Guardian's content freely available via its website and reaching new audiences via social media and other channels. The fundamental premise is that the advertising model will be built on a multidominance.

11. form approach with a very engaged audience in a global market. The first fruits of this strategy were evident in the results for 2011/12. It has a global digital audience of 39 million unique users per month, is the third largest newspaper website in the world. 1.3 million of the Guardian's unique users are based in Australia, making it the Guardian's fourth largest market.196

12. In November 2011 the Guardian opened a digital newsroom in the US to grow its share of the growing online audience there. In January, the Guardian announced record-setting US traffic, which topped 12.5 million monthly unique users and is growing at a year over a year rate of 31%.197

13. The Guardian continues to diversify and evolve its income streams in response to the decline in print advertising and growth in digital consumption of media. In addition to

196 comScore MMX, October 2012
197 comScore MMX, March 2013
digital advertising revenue the Guardian has been able to monetise digital content through subscriptions on different platforms.
Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

14. In his report in November 2012, Lord Leveson called for a wide-ranging debate on plurality, stating that:

*Ofcom and the Government should work, with the industry, on the measurement framework, in order to achieve as great a measure of consensus as is possible on the theory of how plurality should be measured.*

15. Before Lord Leveson published his report, the regulator, Ofcom, had already looked into the issue on a number of occasions: it completed one specific report in June 2012 (which was fed into the Leveson inquiry) and previously has examined plurality in the context of a number of transactions, including the BSkyB/News Corp merger.

16. GMG welcomes the Committee’s inquiry into plurality – an important issue that has been investigated several times in the past, without substantive reforms ensuing. It is because of this lack of past action that we are so pleased that the Committee’s inquiry is taking place, and we strongly believe that there is a need for genuine solutions and action from Government.

17. The current framework for safeguarding plurality is the Public Interest Test, which was introduced by the Communications Act 2003 (which in turn amended the Enterprise Act 2002), and resulted from an amendment made during the Bill’s passage through the House of Lords. As the Committee is well aware, the issue of media plurality shot up the agenda in 2011 following News Corporation’s attempts to acquire BSkyB. Senior politicians across political parties – including David Cameron, Nick Clegg, Ed Miliband and the former Secretary of State for Culture, Media and Sport, Jeremy Hunt – have identified the importance of media plurality and the inadequacies of current regulations that attempt to protect it (see Annex 1). Non-political actors, such as Ofcom and Lord Justice Leveson, recently echoed these sentiments following in-depth inquiries into the issue (see Annex 1). All of these individuals and groups rightly identify that a crucial component of a democratic state is citizens’ ability to access a wide range of news sources.

18. The DCMS originally set out a time frame for the publication of a Green Paper by “early 2012”, a White Paper by “mid 2013” and Bill by the end of the current Parliament. The Government’s action has been progressively delayed, resulting in a framework that doesn’t adequately protect plurality, which is one of the most important safeguards to free speech in the UK. The assurances of politicians that they will reform plurality and media ownership rules, and reviews by Ofcom and Lord Justice Leveson, have been pushed into the long grass and there appears to be a reluctance by Government to confront these challenges.

---

19. This is evidenced by the lack of a Communications Green or White Paper and the cancellation of a DCMS seminar dedicated to plurality issues. At the time, the department explained the cancellation of the seminar was due to the change in Secretary of State but has not signalled that it will be reinstated.

20. We were pleased to see the importance of plurality acknowledged by the Committee in its previous report into media convergence and support the Committee’s recommendation to tackle related issues, such as broadcast competition powers, in the White Paper:

   It is clear to us that Section 316 of the Communications Act [which deals with broadcasting competition powers] as currently drafted is flawed, and hence requires either clarification or modification in any new communications Bill… 199

21. It is clear from the Prime Minister’s response to Lord Justice Leveson’s report that the Government has chosen to downplay the full implications of Lord Leveson’s assessment of current provisions to safeguard media plurality. In his response to the Prime Minister’s statement on the Leveson Report, Ed Miliband said:

   Let me also say—the Prime Minister did not touch on this—that Lord Justice Leveson also reaches important conclusions on the need to prevent too much influence in the media from ending up in one pair of hands. He proposes that there should be continuous scrutiny of the degree of media plurality and a lower cap than that currently provided by competition law. When the Prime Minister gets up to reply, will he take that forward? 200

22. In his response to Mr Miliband the Prime Minister failed to deal with the specific question around continuous scrutiny, simply stating:

   This point was raised by the Leader of the Opposition. Lord Justice Leveson does address concerns about plurality and media ownership and does say we need to make sure there is more plurality than would otherwise be guaranteed simply by competition policy. That is important, because we want to have not just a vigorous press, but a press that is in different—in wide—ownership as well.201

23. In his reply the Prime Minister effectively answers the Committee’s question: yes we do need a clearer policy on plurality because legislation governing competition policy

---

199 Select Committee on Communications, 2nd Report of Session 2012–13, Media convergence, 27 March 2013
200 http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121129/debtext/121129-0003.htm; 29 November 2012; Col 453
201 Ibid.
does not provide sufficient safeguards. However, to date, the Government has failed to bring forward any proposals to tackle what it has accepted is a problem.

24. Part of Lord Justice Leveson’s brief was to think about plurality and how to prevent media power being concentrated in a few hands, to the detriment of democracy. It is a complex subject, as Ofcom’s review on measuring plurality made plain. But we would contend that it is every bit as important as the remodelling of regulation for the press, if not more so.

25. Lord Justice Leveson explained that, due to the very broad remit of his inquiry, there was insufficient time for a full scale review of media plurality or to look at reforms in detail. Nevertheless, he gave his support to some firm proposals for strengthening plurality, such as periodic reviews of plurality (including online content), and lower thresholds for plurality tests than currently exist for the competition test both of which GMG would support as going some way to avoiding the problem of organic growth in media concentration.

26. GMG has been calling for a public debate on plurality since the BSkyB/News Corp deal first emerged. Despite our position being echoed by numerous other publishers, politicians (with a small number of notable exceptions) have largely manoeuvred away from the subject. We were grateful that Lord Leveson used his report to identify the weaknesses in the current system and supports our position that reform is needed.

27. It is therefore disappointing that very little of what Lord Leveson had to say in his report on the subject of protecting media plurality has been publicly discussed or debated in Parliament. Furthermore, it has been suggested in some sections of the media that Lord Justice Leveson’s report concludes that the status quo is acceptable in terms of safeguarding plurality. For example, the Sun reported that Lord Leveson’s conclusion that he could not put a fixed cap on market share as complete dismissal of the need to reform plurality laws:

The report also dismissed new laws to limit how much media one company can own in Britain, saying “no compelling evidence was put forward to support arguments for any fixed cap on media market share”

28. Whilst Lord Leveson states that the “inquiry has no basis on which to reach a conclusion on what constitutes sufficient plurality” he does say, "it is, in my view, important that the Government should find some way of ensuring that there is a medium for protecting media plurality in relation to organic change ... I also believe that there should be clarity on what is meant by plurality and how it should be

measured”. In addition, he recommends that the cap should be lower than the threshold applied to the competition regime - currently 25% of goods or services supplied in the UK (or in a substantial part of the UK). He also makes firm recommendations that the government should consider periodic reviews to plurality or an extension to the public interest regime in competition law, as well as strengthening the regulator’s role in the assessment process.

29. Lord Leveson’s report therefore supports our long-held position that there are deficiencies in the current rules protecting plurality and, moreover, it goes some way to suggesting potential remedies. The Government, reinforced by some sections of the media, has allowed media plurality to fall by the wayside, thereby failing to act upon a number of Lord Justice Leveson’s key recommendations. We contend that Lord Justice Leveson has created a platform to move the debate on plurality further up the political agenda and would urge the Committee to use its inquiry to build greater urgency for the need to deal with this issue.

30. The Guardian has used its editorial column to push plurality up the news agenda and stimulate a public debate about the issue. We are disappointed, however, that other publications have done less to engage their audiences. In June 2012, Alan Rusbridger, editor-in-chief, the Guardian, produced seven key questions to gauge the power of a news group, some of which (e.g. “Does it overtly try to exert public political influence?”204) should, we believe, be factored into any public policy tests.

In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition, or should it be improved?

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 process/agenda.”

31. In its report Ofcom set out what a plural outcome should look like205. GMG supports all of the criteria but ultimately believes that the last is the most important:

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.

32. We would stress that, fundamentally, plurality needs to be protected for the good of consumers of news in a democratic society. All other criteria and objectives such as encouraging multi-sourcing, low barriers to market entry, commercial sustainability

---

204 http://www.guardian.co.uk/media/2012/jun/24/overwhelming-case-media-plurality
205 Measuring media plurality, Ofcom, 6 June 2012. P11
and high reach and consumption should contribute towards protecting consumers from a restrictive set of news and opinions.

a) Diversity of Viewpoints

33. We support the inclusion of this in the definition. However, when setting up the inquiry, the Secretary of State limited Ofcom’s remit to five key questions which resulted in the definition of ‘diversity of viewpoints’ being limited to reach and news share of consumption. We note that it is possible that, had the scope of the remit been wider, Ofcom would have formulated a wider definition - we would argue that the current definition only makes provision for two of three key areas, distribution being the third.

34. News market share. This is already used today, as part of the public interest test set out in the Communications Act 2003, and should continue, applying both within channels such as TV or the national press as well as across digital channels. This would have to take account of the difficulties involved in measuring the market share of digital news sources and also the presence of cloned content. We should recognise however that only measuring news market share, while necessary, is not sufficient in measuring media plurality.

35. Platform dominance. This measure, which recognises dominance in media platforms (e.g. companies with social media platform dominance might include Google, Facebook, Apple and others), is already recognised in pay TV, for example with Sky constrained on its use of the Electronic Programme Guide (EPG), but may soon be relevant for large digital players who attract larger audiences than television.

36. Distribution dominance. This may take several forms and relates to the methods of distribution of content, including commercial partnerships between providers and dominant distributors, and multiplatform bundles. For example, News Corp looking to bundle newspaper content of its titles with pay TV packages. Indeed, in his memo to the Prime Minister Jeremy Hunt asserted this was News Corporation’s plan – “Essentially what James Murdoch wants to do is to repeat what his father did with the move to Wapping and create the world’s first multiplatform media operator available from paper to web to TV to iPhone to iPad. Isn’t this what all media companies have to do ultimately?” 206 Another example might be internet search engines permanently preferring one newspaper source over another as a result of a commercial alliance. This final factor is becoming increasingly important in an age of converged media.

---

206 Memorandum from Secretary of State for Culture Media and Sport, Jeremy Hunt to the Prime Minister, 19 November 2010
37. These three factors can all lead to deterioration in plurality either in and of themselves or by accelerating the market exits of others and creating barriers to new entrants.

38. Because of the significance of news provision to a functioning democratic society we would contend that it should not be completely exposed to market forces, even with the protection provided of conventional competition law. Even in functioning markets this regime results in a handful of dominant players, which we would contend would be a highly dangerous scenario for the provision of news.

b) Excessive influence over public opinion.

39. Though explicit and implicit in statute, this has only been measured to date through the proxy of news market share. However the stark events of the summer of 2010 reveal this is an inadequate way to measure this influence. The News Corp takeover of BSkyB was only averted because Parliament exerted enough pressure to delay the judgement, at which point the existence of the phone-hacking scandal at The News of the World came to light. The threat of supra-parliamentary powers had to compensate for weak media ownership rules. There are wider public interest factors at stake which should be taken within the regime.

40. The publication of all of the correspondence relating to the News Corp takeover of BSkyB only occurred because the Leveson inquiry was triggered by the Guardian’s exposure of phone hacking at the News of the World. Lord Justice Leveson commended the role of the Guardian in exposing wrongdoing at the News of the World, stating, “That is, indeed, the function of the press: to hold those with power to account. It is, in fact, what the Guardian did in relation to the News of the World”. If it were not for this we would know very little of the close relationship between Jeremy Hunt’s Special Advisor and News Corporation. As Lord Leveson states, this additional transparency is required to ensure that there can be no accusations of any referral being made for political reasons.

41. We support Lord Leveson recommendation that the Secretary of State be required to make public his reasons for referral; and further, that all correspondence relating to a transaction be published, serving to remind interested parties and politicians of the quasi-judicial status of the process.

What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?
42. Plurality, like freedom of speech, is a crucial part of our media in a democratic state, as it ensures that citizens are informed and influenced by a variety of sources. Although there are provisions for ensuring plurality of media ownership in the Communications Act 2003, the word ‘plurality’ has not been adequately defined in UK legislation.

43. While we are concerned about the plurality of news and current affairs, we are also concerned that the scope of plurality policy should not be too narrowly construed, so that the definition of plurality should not be limited to the number of news providers or the audience share that they have. What must be protected is the plurality of media ownership across the board so that no one media organisation has too much financial and distribution dominance that will result in its dominance of media output.

**What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic?**

44. As the independent regulator, Ofcom should be required to review plurality at regular intervals, not just at the point of transaction, thereby enabling emerging threats to plurality to be identified. In its report on plurality, Ofcom stated that an appropriate timeframe was a periodic review of plurality every four or five years.207

45. If Ofcom finds that there is insufficient plurality, it would have the power to ask the Competition Commission to investigate further and devise remedies. The new framework would also allow Ofcom to initiate public interest interventions in media mergers as well as the Secretary of State, as recommended by the Lords Communications Committee in its 2008 First Report. Ofcom has suggested that a review of media plurality take place every four to five years, which would provide certainty to the market, and prevent a decision on whether to review being subject to the discretion of a politician or Ofcom.

46. We also believe that Ofcom’s ability to review media plurality should not fall victim to the Government’s attempts to reduce the regulator’s powers. For example, the duty of Ofcom to review the media ownership rules every three years (section 391 of the Communications Act 2003) was changed through the Public Bodies Act 2011 so that a review will be conducted at the discretion of the Secretary of State. This regime negates the significance of natural growth or attrition and fails to provide a framework that can cope with more significant shocks such as the closure of a title. The requirement that Ofcom reviews plurality periodically, not just at the point of transaction, is the only suitable way to deal with this.

---

207 Measuring media plurality, Ofcom, 6 June 2012.
47. Periodic reviews should not detract from the requirement that Ofcom initiate an immediate review upon a proposed transaction. This is dealt with in greater detail in the answer to the next question.

Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

48. If a transaction is proposed then Ofcom should assess the impact on plurality based on the four criteria that it uses as part of periodic reviews as set out above:
   i. News market share
   ii. Platform dominance
   iii. Distribution dominance
   iv. Influence on public affairs

49. Some of the factors above are principles-based, some might be more suited to objective testing and others not. The respective role of elected politicians and regulatory bodies is not straightforward. However we should bear in mind the balance in the roles played by the regulator and the Secretary of State in the proposed takeover of BSkyB by News Corp. Ofcom should, we believe, have responsibility for establishing what are the circumstances that (a) best promote plurality; and (b) produce efficient and effective decision-making processes.

For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?

50. We do not think it is viable to set a numerical threshold for what constitutes “sufficient” plurality and it should not simply be limited to share of news. However, we do believe that because of the public policy implications of plurality any setting of market share threshold should be lower than the threshold applied to the competition regime - currently 25% of goods or services supplied in the UK (or in a substantial part of the UK). This position is supported by Lord Leveson.

51. Instead of an absolute number it is a matter for assessment against a set criterion, as we set out in detail in our answer to the question below.

How should ‘sufficient plurality’ be measured?

52. Lord Justice Leveson concluded that Ofcom and the Government should work with industry stakeholders in order to achieve as much consensus as possible on how
plurality is measured.\textsuperscript{208} We support the position set out by Ofcom in its report, and highlighted by Lord Leveson, that instead of fixed caps there should be a concept of sufficiency of plurality against which to conduct a market review.

53. Ofcom suggest that a first step could be to set it out in qualitative terms:

i. There is a diverse range of independent news media voices across all platforms.

ii. Overall reach and consumption is relatively high among all consumer demographics and across all of the UK’s nations and English regions.

iii. Consumers actively multisource – such that the large majority of individuals consume a range of different news sources.

iv. Sufficiently low barriers to entry and competition between providers that spurs quality and innovation in the gathering and dissemination of news.

v. Overall investment and commercial returns which are sufficiently high to ensure sustainability, and guarantee high quality coverage, extensive newsgathering and investigative journalism.

vi. 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.

54. This should provide sufficient framework for the regulator and then the Secretary of State to make an appropriate judgement. It will then fall to Parliament to provide scrutiny on that decision.

55. GMG has consistently stated that too much power resides with the Secretary of State in media mergers leaving them open to political interference. In his report Lord Leveson stated that in the case of a media merger the Secretary of State should be required to accept the advice provided to him by the independent regulators or explicitly explain why he has chosen to reject that advice.\textsuperscript{209} We support this process as a method of ensuring that media transactions are subject to the appropriate scrutiny and the Secretary of State is not allowed to waive them through for political reasons.

56. We would contend that this model should not be limited to reviews triggered by a transaction but should be extended to cover periodical reviews by the regulator. That is to say, if the regulator signals that the level of plurality is dangerously low then the Secretary of State should be compelled to accept the remedies devised by the competition authorities or explicitly set out his reasons for not doing so. This is the most effective way of ensuring that ultimate decision making is accountable to Parliament, whilst being free from political interference.

\textsuperscript{208} The Leveson inquiry into the culture, practices and ethics of the press, Volume 3, Pg 1476

\textsuperscript{209} Ibid.
Should the BBC’s output be included in a review of it?

57. We believe that the BBC’s conduct in relation to plurality is already addressed adequately in the regulatory framework for the BBC and see no need to include them in a new framework.

58. The governance of the BBC and its public service requirements ensure that it provides consumers with a plurality of views and a range of content in a way that other media organisations are not obliged to. The BBC Trust is responsible for ensuring the BBC meets these standards and is accountable to Parliament in this respect.

59. Given these factors, the existence of the BBC can be ‘taken into account’ by regulators as a factor, but not as one which makes an express contribution to thresholds.

How can internal plurality be sensibly measured against external plurality?

60. We do not believe that internal plurality is a strong enough concept to protect the overall requirement of plurality in a democratic society, or that it provides an adequate safeguard in the absence of robust external plurality. We have struggled to provide any examples of where it can genuinely be seen to work. The one plausible exception to this is where there has been shown to be some degree of internal plurality at the BBC, where editors with different jurisdictions sit genuinely independent from one another. However, it is arguable that, given recent events at the organisation, this is not necessarily as strong as it should have been. However, this is a matter for the new DG and the BBC Trust to resolve.

61. As the trend towards consolidation of news rooms in commercial newsgroups continues, in particular shifts towards 7-day operations, we believe that internal plurality will be an increasingly scarce concept.

62. At News Corp, the so-called independence of the Times and the Sunday Times are the main provisions to safeguard internal plurality. However, the failure to appoint a permanent editor of the Times whilst John Witherow remains as acting editor for almost 3 months amid a reported standoff between Rupert Murdoch and the independent directors only serves to highlight that they are not a strong enough balance to the management’s power. This was highlighted in numerous outlets, for example the BBC

63. There are numerous other examples of the systems put in place at News Corp to protect internal plurality proving to be inadequate. For example, it was reported that

http://www.bbc.co.uk/news/business-21096570
the editors of all 175 significant News Corporation titles were supportive of the
decision to go to war in Iraq, a degree of consistency which shows not just the
dominant force of the proprietor but the limits on internal plurality. Additionally, it
was also reported that after the Guardian revealed the phone-hacking story at the
News of the World, Rupert Murdoch personally attended editorial conference at the
Times.

64. The weakness of the internal plurality provisions was acknowledged by the
Committee in its report on Media Ownership in 2008:

*It is questionable how effective the Independent National Directors have been, even
with the increased powers that Rupert Murdoch agreed to give them.*

What structural and/or behavioural remedies are appropriate if insufficient
plurality is found?

65. We have, in the course of our involvement with the Alliance of media organisations,
(BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc,
Northcliffe Media and Telegraph Media Group), proposed four high level principles
which should guide the imposition of remedies:

i. Editorial independence
ii. Financial independence
iii. Commercial independence
iv. Operational independence

66. The application of these principles in the case of the proposed takeover of BSkyB by
News Corp is discussed in further detail below. That proposed takeover exposed the
current system for devising and agreeing undertakings in lieu (UILs) as completely
inadequate and subject to a totally unacceptable level of political interference. The
proposed UILs involved divesting Sky News into a separate company, however the
provisions to protect its independence were a mere smokescreen. As the Alliance
pointed out at the time, the new structure meant that Sky News would be:

i. Dependent upon contracts with News Corporation for 85% of its revenues
(and 25% of its costs);

ii. Dependent upon News Corporation for effective distribution of its TV news
output; and

iii. Dependent upon News Corporation for its future existence – since Sky
News would be unviable if the Carriage Agreement was not renewed.

67. The inadequacies can broadly be divided into two separate areas: process and
outcome:

Process

68. The Secretary of State informed News Corp that he was minded to refer the BSkyB merger to the Competition Commission but agreed to enter into a discussion with News Corp to avoid this if suitable undertakings could be offered that would allay the issues raised by Ofcom in its initial report. A series of closed negotiations between News Corp, their lawyers, Allen & Overy and DCMS began on 18 January and only on 27 January were the OFT and Ofcom consulted. In his report, Lord Leveson stated that:

At a meeting between lawyers on 21 January 2011, Allen & Overy advanced arguments which appear to have been designed to reduce the role of OFT and Ofcom, or even to dissuade the Secretary of State from reverting to them.212

69. Repeated requests from the Alliance to be involved in the process and make representation to DCMS were rejected. After a number of unsolicited letters to DCMS, the Alliance was granted one meeting with the Secretary of State and his Special Advisors only after the Secretary of State had indicated he had accepted News Corp’s UILs in draft form. Interested parties were only formally consulted by DCMS on one occasion, again only after the UILs had been accepted in draft form. The lack of engagement with other sources of expertise contributed to the ineffectiveness of the UILs to achieve the desired result (as discussed below).

70. Rather than playing a genuinely constructive role in an open process, all other interested parties, including but not limited to the Alliance, were simply consulted when the Secretary of State had reached a decision as a tick-box exercise. It is evident that this process of closed negotiation between the Secretary of State and the purchaser lacks sufficient transparency and opportunity for other interested parties to participate in the process. Considering the high level of public interest involved in a merger of this nature GMG would contend that this is a totally inadequate and undemocratic process.

Outcomes

71. Given the high level of influence on public opinion exerted by News Corp and the bespoke process designed for them by the Secretary of State, it is unsurprising that the UILs were totally unfit for purpose and would never have safeguarded Sky News’ independence.

72. For the Committee’s interest we attach the original letter sent to DCMS by Slaughter and May on behalf of the Alliance (already published with the Leveson report) which explains the inadequacies of the UILs in detail (Annex 2).

73. As the Alliance stated at the time, in order for a remedy to have been sufficient it

---

212 The Leveson inquiry into the culture, practices and ethics of the press, Volume 3, Pg 1358
must have passed 4 key tests:

i. **Editorial independence** – this would require Sky News to have freedom from direct or indirect editorial influence.

ii. **Financial independence** – this would require Sky News to have access to sufficient sources of income to funds its own news-gathering and distribution without reliance on News Corporation.

iii. **Commercial independence** – this would require Sky News to have its own market presence and a sustainable third party customer base.

iv. **Operational independence** – this would require Sky News to be free from any ability for News Corporation to impede the operation of Sky News or the distribution of its content.

**How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?**

74. National news has a crucial role to play in public debate and is therefore a bedrock of a functioning democratic society. As such, plurality considerations warrant special priority and protection above conventional competition thresholds. Therefore the Government needs to be absolutely certain that all the above criteria are satisfied before it accepts any structural or behavioural remedies.

75. Of course, if a newspaper becomes financially unviable and is facing closure, then the regulator and competition authorities must balance the impact on plurality of a merger versus that newspaper no longer existing. Therefore as part of safeguarding test iii (commercial independence) the Competition Commission and the regulator must be satisfied of commercial viability.

**With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?**

76. Currently, too much power is vested in the Secretary of State, which, as events of the past couple of years illustrate, results in a lack of market, political and public confidence. Jeremy Hunt, the former Culture, Media and Sport Secretary, has himself stated that he does not believe one person should have the power in relation to media plurality investigations. He told the Leveson Inquiry:

> There is an argument that politicians should make decisions on media plurality because any such decision is, by its nature, more subjective than an economically based competition test. There is also a view that because of the importance of media plurality decisions should only be taken by elected politicians. I do not share this view. This is not because I believe it is impossible for politicians to act in an impartial manner – I believe I did. But even when they do it is almost impossible to
persuade elements of the public that justice is being done and being seen to be done.

“I note that decisions on competition issues where there are no public interest considerations are now no longer taken by the politicians but by independent regulators, presumably to address the same issue. I believe serious consideration should be given to adopting the same approach with respect to decisions on media plurality.”

77. In his recommendations Lord Justice Leveson calls for more transparency in the decision making process both in respect of the reasons why that decision was taken and the publication of submissions from outside parties. We support this recommendation as it will go some way to removing the risk of bias or the appearance of bias.

78. In the first instance, it should be up to the relevant commercial entity to make the case for a viable UIL, which should then be tested against a robust framework by the regulator, Ofcom, and the Competition Commission (or Competition and Markets Authority from 1 April 2014). This process should involve a number of stages for full and open consultation with interested parties and not be designed to allow the purchaser to cut a deal behind closed doors with politicians and their advisors.

79. Only when this process is fully worked through should a recommendation be put to the Secretary of State who should be required to accept the advice provided to him by the independent regulators or explain to Parliament why he has chosen to reject that advice. This should trigger an automatic inquiry by the relevant Select Committee.

80. We would contend that this model should be extended to cover periodical reviews as set out above. This is the most effective way of ensuring that ultimate decision making is accountable to Parliament, whilst being free from political interference.

To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

81. We believe that Europe could have a role to play, short of having full adjudicatory legal powers.

What should the UK learn from international approaches to media plurality?

82. As GMG primarily operates in the UK we do not have the international experience to offer an extensive answer to this question. However, we note that there can be
no international universal approach as different nations have different sensitivities driving media ownership and plurality issues. There are widely differing existing levels of media plurality in different jurisdictions, which makes direct comparison difficult – for example, there is a high level of state control in Hungary and Italy.
Annex 1 – quotes on need for reform of media plurality regulation

“A couple of other things from the News Corp bid: at the moment it’s only possible for a public interest intervention when there is a corporate transaction. This is different to competition law, where the Office of Fair Trading can order an inquiry by the Competition Commission at any stage, for example if they think someone has grown too big organically. That isn’t the case for media plurality and I think there is an argument for extending the similar protection that we have in competition law to media plurality law.”

“I think it is incredibly important that we have a structure that makes sure that in a vibrant, open democracy – such as we are proud to have - no one person or organisation has undue control of our media…And the truth is that, as technology has changed, the laws on media plurality have not.”

Rt Hon Jeremy Hunt MP, RTS Cambridge Convention, 14 September 2011

“[the] challenge is how we address the vexed issue of media power. We need competition policy to be properly enforced. We need a sensible look at the relevance of plurality and cross-media ownership. Above all, we need to ensure that no one voice—not News Corporation, not the BBC—becomes too powerful…never again should we let a media group get too powerful.”

Rt Hon David Cameron MP, House of Commons, 20 July 2011
http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110720/debtext/110720-0002.htm#110720110000003

“…diversity of ownership is an indelible liberal principle because a corporate media monopoly threatens a free press almost as much as a state monopoly does. For liberals, a cacophony of dissenting and conflicting voices is a prerequisite for healthy competition and vibrant debate. Some say that the rise in social media and internet news means we should worry less about plurality. It is true that the media landscape is changing, but it simply is not the case that traditional media no longer matters.”

Rt Hon Nick Clegg MP, Speech on freedom, accountability and plurality of the media at the Institute for Government, 14 July 2011

“The [Communications] Act needs to be updated as such a concentration of power is unhealthy. If one thing comes out of what we have seen in the past two weeks and over many years, it must be that we understand the point about concentrations of power in our society because large concentrations of power are more likely to lead to abuses of power.”
“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.”

Ofcom report on Measuring Media Plurality, 19 June 2012

“It is essential that the UK retains a plural media with a genuine diversity of ownership, approach and perspective. In my opinion, the competition authorities should have the means to keep levels of plurality under review and be equipped with a full range of remedies to deal with concerns.”

Lord Justice Leveson, Statement to Queen Elizabeth II Conference Centre, 29 November 2012

"The plurality regime as it currently stands is deficient because it fails to provide protections from developments such as organic growth in market shares or market exit."

Ed Richards, Chief Executive, Ofcom

The text above is a natural representation of the content extracted from the document.
Annex 2 – Letter sent to DCMS by Slaughter and May on behalf of the Alliance

SLAUGHTER AND MAY

Strictly Confidential

RESPONSE TO NOTICE OF CONSULTATION ON THE PROPOSED ACQUISITION BY NEWS CORPORATION OF UP TO 0.9% OF BRITISH SKY BROADCASTING GROUP PLC

1. Introduction

1.1 This paper contains submissions made on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror Plc, Northcliffe Media and Telegraph Media Group (together, the “Concerned Parties”) in response to the Department for Culture, Media and Sport’s Notice of Consultation on the proposed acquisition by News Corporation of up to 0.9% of British Sky Broadcasting Group PLC (“BSkyB”).

2. Executive Summary

2.1 The Secretary of State’s proposed remedy (and the process through which it has been formulated) represent an unprecedented departure from normal standards as applied under the UK’s merger control regime. Furthermore, the Secretary of State has departed from the advice of the Office of Fair Trading (the “OFT”) in accepting a proposal which offers no effective or lasting solution to the plurality concerns raised by the merger.

2.2 OFCOM found that News Corporation’s proposed acquisition of BSkyB (the “Takeover”) would give rise to serious plurality concerns and threaten to operate against the public interest. It therefore recommended that the Takeover be examined by the Competition Commission (“CC”). Detailed consideration by the CC could only legitimately be dispensed with if any undertaking in lieu (“UIL”) of reference addressed the concerns in a clear-cut manner that removes all material doubts.

2.3 The UIL proposed by News Corporation entirely fails to address the plurality concerns. To be effective, the remedy would need to ensure that Sky News remains independent of News Corporation. In reality, the UIL will make Sky News almost entirely dependent on News Corporation. For example, Sky News will be:

(i) Dependent upon a contract with News Corporation for 85% of its revenues (and 25% of its costs).

(ii) Dependent upon News Corporation to distribute its TV news output on the BSkyB network.

(iii) Dependent upon News Corporation for its future existence – since Sky News will be unviable were the carriage agreement not to be renewed.

2.4 In these circumstances it is fanciful to expect that Sky News will enjoy any meaningful independence allowing it to offer a separate contribution to news plurality. Instead, the editors and directors of Sky News will be acutely aware that the viability of the company (and therefore their own job security) depends entirely on maintaining the approval of News Corporation.
2.5 The Secretary of State’s answer to these concerns appears to rely on governance provisions. As the Secretary of State is aware, however, such behavioural obligations are ineffective in the absence of genuine structural independence. James Murdoch, Chairman of BSkyB, expressed the position succinctly as follows:

“[W]e must have genuine independence in the news media. Genuine independence is a rare thing. No amount of governance in the form of committees, regulators, trusts or advisory boards is truly sufficient as a guarantor of independence…On the contrary, independence is characterised by the absence of supervision and dependency.”¹

2.6 Over the “short and medium term”, the remedy contained in the UIL is therefore deeply flawed. But over the longer term, it is simply non-existent. The likelihood is that Sky News will cease to exist after 10 years unless News Corporation decides to extend the carriage agreement. The CIFT expressed the problem clearly when it stated:

“[T]he UIL are unlikely to be effective over the long term; the finite duration of the carriage agreement is a practical and financial issue which poses a significant risk to the operation of the UIL beyond 10 years (and possibly earlier).”²

2.7 Nonetheless, the Secretary of State is proposing to accept News Corporation’s proposal despite its failure to include a lasting remedy. He appears to do so simply on the basis that the current plurality problems might disappear over the next few years. There is, however, no apparent evidence to support such an assessment (indeed, the Secretary of State himself does not explain how it might occur). In effect, he is risking the general public (rather than News Corporation or BSky B) to take the risk that it does not occur. Again, this approach is entirely out-with the normal standards as applied under the UK’s merger control regime and, indeed, contrary to the Department of Culture, Media and Sport’s role as being “responsible for representing the public interest in media industry mergers”.³

2.8 In sum, the proposal completely fails to address the serious plurality issues raised by the Takeover. Any such decision to accept the UIL would fail to meet basic public law requirements of reasonableness and would show a cavalier disregard for the public interest in maintaining news plurality in the UK.

¹ James Murdoch – MacTaggart Lecture (2009).
² Paragraph 1.18, OFT report dated 11 January 2011.
³ See http://www.culture.gov.uk/what_we_do/media_mergers/7736.aspx
3. The Plurality Concerns

3.1 The Takeover gives rise to plurality concerns which have been recognised by both OFCOM and the Secretary of State. The core of these concerns is that News Corporation (as the largest supplier of national newspapers in the UK) and Sky News (as one of only three suppliers of TV news and one of only two suppliers of national radio news) are two of the most important voices in the UK’s media, such that combining them would result in an insufficient plurality of news suppliers post-Takeover.

3.2 It follows that the plurality concerns can only be addressed by ensuring that News Corporation and Sky News remain as separate contributors to news plurality in the UK. Any UIL which allows News Corporation to influence Sky News will not achieve the key requirements of ensuring that they remain as separate and independent contributors to news plurality.

4. Key Requirements for a Genuine Remedy

4.1 Any genuine remedy must ensure that Sky News is a viable, independent operator post-Takeover. Sky News can only be an independent source of news plurality if it has (i) editorial, (ii) financial, (iii) commercial and (iv) operational independence from News Corporation. Some of the implications are as follows:

(i) Editorial independence – this would require Sky News to have freedom from direct or indirect editorial influence.

(ii) Financial independence – this would require Sky News to have access to sufficient sources of income to fund its own news-gathering and distribution without reliance on News Corporation.

(iii) Commercial independence – this would require Sky News to have its own market presence and a sustainable third party customer base.

(iv) Operational independence – this would require Sky News to be free from any ability for News Corporation to impede the operation of Sky News or the distribution of its content.

4.2 Any UIL must ensure Sky News’ independence on each of these parameters if it is to provide a genuine remedy to OFCOM’s plurality concerns. It is unrealistic to expect editorial independence in the absence of the other forms of independence.

4.3 Importantly, to fulfil the OFT’s standard for a “clear-cut” remedy, there “must not material doubts about the overall effectiveness of the remedy in solving the problem.”

---

4 Paragraph 5.8, OFT Merger: Exceptions to the duty to refer and undertakings in lieu of reference guidance (December 2010).
5. Proposed UIL will Remove Sky News’ Independence

5.1 News Corporation’s proposal fails to ensure the independence of Sky News on any of the above parameters.

5.2 Currently News Corporation does not exercise control over Sky News or its output. BSkyB previously reported to the CC, in the context of BSkyB/ITV that “neither News Corporation nor any of its subsidiaries has the ability to influence BSkyB’s...news content.” Similarly, News International reported that it “did not intervene or influence the presentation of news content, choice of stories or editorial stance taken by Sky News...”6 In addition, the CC has reported that “we received no evidence from third parties to suggest that senior executives at BSkyB or its parent companies exerted influence on the Sky News agenda.”

5.3 This is in stark contrast to the position post-Takeover, where under the Secretary of State’s proposal, the relationship between Sky News and News Corporation will be characterised by almost total dependence. For example, Sky News will be:

(i) Dependent upon a contract with News Corporation for 85% of its revenues and 25% of its costs.

(ii) Dependent upon News Corporation to distribute its TV news output on the BSkyB network.

(iii) Dependent upon News Corporation for its ongoing existence, since Sky News will be unviable if the carriage agreement is not renewed.

5.4 Furthermore, while the UIL offers a weakened and dependent Sky News in the short term, it offers absolutely no remedy to the plurality concerns in the longer term (in the lead up to and following the expiry of the 10-year carriage agreement). In effect, the Secretary of State’s only proposal for the plurality concerns in the long term is to hope that they will disappear over time.

5.5 We now consider each of these fundamental defects in more detail.

---

5 Paragraph 5.29, CC report into BSkyB/ITV.
6 Paragraph 35, Appendix I to CC report into BSkyB/ITV.
7 Paragraph 5.67, CC report into BSkyB/ITV.
6. Dependence

(A) Revenue Dependence

6.1 The viability of Sky News will depend on a single carriage agreement with News Corporation. Ofcom stated that about 85% of Sky News' revenues will come from News Corporation. Ofcom itself notes that this will make Sky News "commercially dependent on its relationship with the merged News Corporation/Sky entity." Furthermore, rather than Sky News becoming increasingly independent, it is expected that its dependence on News Corporation revenues will actually increase over time. It is clear that Sky News cannot be considered financially or commercially independent of News Corporation where the latter is by far its largest customer and its main source of revenue.

6.2 Indeed it is as well-established as a matter of UK merger control policy that a divestment remedy is unlikely to be effective where the divestment business has an ongoing supply relationship with the merged entity. The OFT's guidance states that it is rare for it to accept even interim purchase/supply arrangements between the merging parties and the divestment business given the requirement for a clear-cut remedy in lieu of a CC reference. It is therefore highly irregular for the Secretary of State to propose accepting a UJL where the ongoing commercial viability of the divestment business is based almost entirely on a contract with the merged entity and where this state of affairs will persist for the foreseeable life of the divestment business.

6.3 Underlying the OFT's standard policy is the valid assumption that in a close commercial relationship (especially one which creates dependence) there will be a multitude of means through which the merged entity could influence the divestment business and therefore nullify the purported rationale for divestment. Given the range of means that a major customer could use to influence a dependent supplier the OFT generally considers that it is simply not possible to ensure the independence of the divestment business in these circumstances.

6.4 Consistent with this, it is entirely fanciful to consider that Sky News would be able to disregard the views of News Corporation given the range of means by which News Corporation could, as its major customer, cause difficulties for Sky News. For example, the carriage agreement will inevitably contain a range of obligations which Sky News must perform to be entitled to payment. While editorial stance is not to be one of the

---

8 Paragraph 6, Ofcom letter dated 11 February 2011.

9 Paragraph 10.3, OFT report dated 11 February 2011. This is based on News Corporation's own forecasts.

10 Paragraph 5.23, OFT Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (December 2010).
relevant conditions, News Corporation could easily pursue complaints on other grounds in an attempt to discourage editorial policy of which it disapproved.\(^\text{11}\)

6.5 These issues are further compounded by the absence of any real clarity over defined terms used in the UIL. For example, BSKylB is entitled to terminate the carriage agreement upon a “material breach” by Sky News of its obligations under the agreement – the UIL does not elaborate, however, on the interpretation of this phrase.

6.6 The dependence of Sky News on News Corporation was confirmed by the OFT who stated that “the successful operation of Newco relies to some extent on the incentives of News/Sky”.\(^\text{12}\)

6.7 News Corporation appears to consider that this departure from normal UK merger control standards is justified on the basis that Sky News and News Corporation will not be competitors and, therefore, that News Corporation will have an interest in the ongoing success of Sky News.\(^\text{13}\) It is important to note that were the OFT’s normal standards to be applied, the merged entity’s incentive in respect of the divestment business would be irrelevant – as remedies are supposed to create independent divestment businesses (visible regardless of the incentives of the merged entity). The fact that News Corporation had to resort to its own incentives to argue that Sky News will be viable is in fact confirmation that Sky News will not be independent.

6.8 Furthermore, even if it were factually correct that News Corporation has a commercial interest in the ongoing success of Sky News,\(^\text{14}\) the argument entirely fails to address the plurality issues. Specifically, it is false to assume that an interest influencing the editorial content of Sky News would involve any commercial sacrifice on the part of News Corporation. First, given the unequal bargaining position of the two companies, even a threat by News Corporation to use its financial and commercial leverage could change Sky News policy without necessarily endangering the success or ongoing operation of Sky News. Secondly, it may simply be the case that the benefits of influencing editorial policy (e.g. increased exposure for News Corporation newspapers) outweigh any costs involved in disciplining Sky News. It is therefore wrong to assume that an interest in the success of Sky News acts as a safeguard against editorial influence.

\(^{11}\) Other examples of how News Corporation could discipline Sky News might include degrading the quality of services provided under Clause 5 of the UIL or degrading the scope or quality of distribution (see fn below).

\(^{12}\) Paragraph 1.13, OFT report dated 11 February 2011.

\(^{13}\) Paragraph 6.4, id.

\(^{14}\) It is not even clear that this factual assumption is well-founded. For example, there is no restriction on News Corporation setting up its own broadcast news business. Therefore, it may well be the case that News Corporation will have a commercial incentive to hinder the success of Sky News. The OFT noted that News Corporation may not always have an incentive to promote the success of Sky News (see paragraph 1.13, OFT report dated 11 February 2011).
6.9 Accordingly, it is clear that there is no basis to suspend the normal standards as applied under the UK’s merger control regime. These standards would clearly indicate that a remedy that leaves the divestment business fundamentally reliant on the merged entity is not an effective remedy.

(B) Distribution Dependence

6.10 Sky News will lack operational independence. Crucially, Sky News will rely heavily on the BSkyB network for almost all of its TV distribution activities (and therefore access to audience) – this proposal represents a significant departure from arrangements typically applied in divestment scenarios under UK merger control policy.\(^\text{13}\) The UIL gives no detail on what (if any) obligations will be imposed upon News Corporation to distribute Sky News on its network (see further below). Moreover, whatever distribution obligations might be imposed upon News Corporation, it would not be possible to devise obligations which deal with every possible parameter upon which the scope or quality of distribution could be degraded.\(^\text{14}\)

6.11 Sky News’ dependence on News Corporation for distribution is critically important to news plurality for two reasons. First, the ability to degrade or reduce distribution of Sky News gives News Corporation the ability to reduce directly Sky News’ capacity to reach the audience and therefore contribute to news plurality. Secondly, the threat of degrading or reducing the distribution of Sky News gives News Corporation leverage which could be used to influence Sky News’ editorial policy.

6.12 Therefore, it is clear that far from establishing Sky News as an independent news voice, the UIL makes Sky News operationally dependent upon News Corporation.

(C) Dependence on Contract Renewal

6.13 Even if one sets aside Sky News’ inherent dependence on News Corporation as outlined above, Sky News’ lack of independence is further exacerbated by the fact that its continued viability will depend upon winning a renewal of the News Corporation carriage agreement.

6.14 It is obvious that non-renewal of the carriage agreement would have severe (and likely terminal) consequences for Sky News, since around 95% of Sky News’ revenue will derive from News Corporation. The heavy reliance on the carriage agreement was described in stark terms by the OFT:

\(^{13}\) The UIL states that BSkyB will continue to provide IT support services, broadcast operations and creative services to Sky News. In addition, the UIL also assumes that Sky News will rely on News Corporation for, inter alia, maintaining and technical support.

\(^{14}\) For example, OFCOM notes the likelihood of changing consumption habits over the next ten years. It is not clear, however, that News Corporation will be under any obligation to distribute Sky News through new channels such that it remains relevant.
6.15 It is clearly unrealistic to expect that Sky News will provide an independent news voice when its directors and employees know that failure to win the approval of News Corporation (and thus renewal of the carriage agreement) would result in such severe financial consequences. The absolute imperative to win contract renewal will profoundly influence decision-making at all levels within Sky News. For example:

(i) Directors of Sky News (including the independent directors) will have a legal obligation (as well as a commercial incentive) to act in the best interests of the company. Maintaining the approval of News Corporation must therefore be the directors’ first priority, since renewal of the carriage agreement will be essential to the continued viability of the company. The scope for these directors to be influenced by News Corporation is clear. However, the proposed UJL makes these same directors responsible for ensuring the editorial independence of Sky News.

(ii) The senior editorial staff of Sky News will be accountable to the directors with the incentives outlined above. Thus staff will be aware that choosing to adopt an editorial policy disapproved by News Corporation would run counter to the clear incentives of those responsible for hiring, firing and promotions within Sky News. Moreover, even if editorial staff could be expected to ignore the wishes of their bosses, they will also have a direct personal interest in contract renewal - since non-renewal will place the financial viability of Sky News (and therefore their jobs) in grave danger.

6.16 In light of the above incentives, it is clearly unrealistic to expect that Sky News will be able to offer an independent news voice. For example:

(i) Were another News of the World phone-hacking scandal to arise before or during the renegotiations of the carriage agreement, is it realistic to expect that Sky News would rigorously investigate and report on any such illegal activities within News Corporation?

(ii) Were there to be a general election campaign before or during the renegotiation of the carriage agreement and all of the News Corporation newspapers supported one party, is it realistic to expect that Sky News would rigorously investigate and report on a major scandal affecting that party?

17 Paragraph 1.10, OFT report dated 11 February 2011.
6.17 In each case, Sky News could only be expected to provide an independent news voice if its directors and editorial staff are expected to act with complete disregard for their own job security and success of the company.

6.18 Both the OFT and OFCOM have recognised that contract renewal is likely to have an impact on Sky News during the 10-year term. The OFT stated that “uncertainty about the prospects for renewal of the carriage agreement or equivalent terms may begin to affect Newco some years before its term date”\(^\text{18}\) and OFCOM stated that the effectiveness of the UILs “may start to diminish in the run up to the end of 10 year period”.\(^\text{19}\) The Secretary of State appears to ignore this advice and to assume instead that the UIL will be effective for 10 years.

6.19 In circumstances where Sky News will be dependent upon News Corporation for its continued existence it is irrational to conclude that Sky News can be expected to act as an independent source of news plurality.

7. Governance Provisions do not Address Dependence

7.1 As outlined in Section 4 above, editorial independence is impossible if Sky News does not also enjoy financial, commercial and operational independence. For the reasons outlined in Sections 5 and 6 above, it is clear that given Sky News' lack of financial, commercial or operational independence, it is entirely unrealistic to expect that it would have sufficient editorial independence to constitute a distinct news voice. This analysis is not altered by the governance provisions contained in the UIL.

7.2 The two main governance elements of the UILs which are intended to safeguard independence are:

(i) the appointment of independent directors, and

(ii) a commitment in the articles of association to abide by the principle of editorial independence (together with a governance and editorial board to oversee such matters).

7.3 Neither of these elements will be effective given Sky News' lack of financial, commercial or operational independence.

7.4 First, as regards the independent directors, the structural dependence of Sky News upon News Corporation means that, even if a director has no other relationship with News Corporation, he will have a clear incentive to maintain the approval of News Corporation. Any independent director will have a commercial incentive (and legal obligation) to promote the success of Sky News. Since Sky News will be dependant

\(^{18}\) Paragraph 1.13, id

\(^{19}\) Paragraph 24, OFCOM letter dated 11 February 2011.
upon News Corporation any director will therefore have an incentive to maintain the approval of News Corporation. Accordingly, the independent directors who are supposed to police the editorial independence of Sky News will have to do so in circumstances where taking a stand against News Corporation would be contrary to their other incentives and duties.

7.5 Second, the safeguards for editorial independence as contained in the UIL are weak and of the nature that News Corporation has previously being able to circumvent (see further below). In particular:

(i) Only one of the independent directors will be required to have editorial or senior journalistic experience; and

(ii) The effectiveness of the UIL relies on an unspecified “principle of editorial independence and integrity in news reporting”. As noted above, senior editorial staff of Sky News will be accountable to Sky News’ directors who also have incentives to maintain the approval of News Corporation. Thus staff will be aware that choosing to adopt an editorial policy disapproved by News Corporation would likely be considered an extreme and risky step. Moreover, in practice, true editorial independence is exerted on a day-to-day basis and operationally rather than in extremis. The proposal to establish a committee to oversee the safeguard of such editorial independence would therefore likely fail to provide an adequate means to police whether such independence is in fact being maintained on a day-to-day basis.

7.6 Third, even aside from the lack of genuine independent oversight, experience demonstrates that behavioural obligations are entirely ineffective in ensuring editorial independence. In particular, since editorial independence is difficult to define it is very difficult to identify and prove clear breaches of the principle. Precedents suggest that News Corporation has previously taken advantage of this fact to circumvent editorial independence undertakings.

7.7 Fourth, were News Corporation to attempt to influence (directly or indirectly) the editorial independence of Sky News, for example by objecting to the reporting of and/or investigation into another News of the World phone-hacking scandal, there is no explicit right of redress provided for in the UIL in order to address such concerns. The relevant obligations in the UIL merely require the editorial committee to “consider representations made by the head of Sky News...and report any such representations to the board of Newsco”.

7.8 For example, the Concerned Partiess have previously provided OFCOM (and the Department of Media and Sport) with a range of evidence on the ineffectiveness of the editorial independence undertakings provided by News International when it purchased The Times in 1980. This includes evidence from two editors and one of the independent directors that the undertakings were ineffective. This evidence is
consistent with the view of the House of Lords Committee on Communications which stated that "it is questionable how effective the independent National Directors [the system required by the undertakings] have been...". Indeed, similar deficiencies can also be identified with the commitments given to ensure editorial independence in the context of the acquisition of the Wall Street Journal by News Corporation in 2007.

7.9 The ineffectiveness of undertakings and committees to ensure independence in circumstances of financial dependence was perhaps most eloquently expressed by James Murdoch, Chairman of BSkyB, when he stated that:

"We must have genuine independence in the news media. Genuine independence is a rare thing. No amount of governance in the form of committees, regulators, trusts or advisory boards is truly sufficient as a guarantee of independence... On the contrary, independence is characterised by the absence of supervision and dependency."

7.10 Accordingly, it is clear that the governance provisions are wholly ineffective in the context of Sky News' dependence upon News Corporation.

8. News Corporation's shareholding should in fact be reduced

8.1 As discussed in the preceding Sections of this paper, it is clear that News Corporation's continuing 39.1% shareholding in Sky News after the spin-off will therefore result in Sky News remaining heavily dependent on News Corporation. As a consequence, News Corporation will have the ability to influence significantly Sky News' editorial policy in direct contradiction of the key objective of the UIL to address any such plurality concerns.

8.2 Indeed, News Corporation may argue that, since the proposed ownership structure of Sky News mirrors the current distribution of control over BSkyB, the remedies envisaged by the UIL would ensure that there is no change in the degree of influence that News Corporation holds over Sky News (i.e. that when compared to pre-Takeover, the remedy merely preserves the status quo).

8.3 Any such argument is, however, deeply misguided. It is clear from the above discussion that News Corporation will in fact hold increased influence over Sky News post-Takeover. In particular, through the Carriage Agreement, News Corporation will gain further influence over Sky News as a result of Sky News' financial dependence on News Corporation for c. 85% of Sky News' revenues. Moreover, it is clear that the governance provisions envisaged by the UIL fail to alyze these concerns.

26 Paragraph 217, House of Lords Select Committee on Communications: "The Ownership of the News" (2008).

27 See submission to the OFT and OFCOM by Enders Analysis, entitled "The use of a behavioural remedy to rectify the loss of plurality resulting from the purchase of BSkyB by News Corporation", for further details.

8.4 In light of the above, therefore, instead of maintaining the status quo with regard to News Corporation’s shareholding in Sky News (by reference to the present ownership structure of BSkyB), any remedy envisaged by the UIL should in fact reduce News Corporation’s shareholding in Sky News post-Takeover in order to ensure the remedy is adequate and takes account of the increased influence that News Corporation will enjoy over Sky News through, *inter alia*, the Carriage Agreement.

9. No Lasting Remedy

9.1 Even if one sets aside all the concerns (as set out above) as to Sky News’ dependence upon News Corporation during the 10-year term of the carriage agreement, the UIL suffers from another profound defect: it makes no provision to protect news plurality on an ongoing basis. Instead, the UIL simply leaves it to News Corporation to decide (by virtue of the carriage agreement renewal decision) whether Sky News should continue to exist after 10 years. Therefore, while over the “short and medium” term the remedy contained in the UIL is deeply flawed, over the long term it is simply non-existent. This is completely contrary to normal merger control standards which require a divestment remedy to effect a lasting change in the market structure.\(^{23}\)

(A) **OFT/Ofcom Advice**

9.2 There is no doubt that the viability of Sky News will be in severe jeopardy if the carriage agreement is not renewed after 10 years. The OFT explained that:

> "In the context of ensuring the long-term viability of Newco and the UIL, it is important to consider whether Newco can continue as a standalone entity on a permanent or lasting basis. It is clear that, absent the revenue stream provided by the carriage agreement, Newco is effectively loss-making. As a consequence, absent renewal on a similar basis, an alternative revenue stream, or being acquired, there is a real risk that Newco may not survive as envisaged by the UIL beyond the term of the carriage agreement."\(^{24}\)

9.3 The OFT states that this threat to the survival of Sky News threatens the efficacy of the UIL: “the finite duration of the carriage agreement, in particular, entails a material risk to the long term viability of Newco and hence the UIL.”\(^{25}\) The OFT went on to describe the finite duration of carriage agreement as an “essential structural limitation of the UIL”\(^{26}\) and stated that it had been unable to identify any improvements to the UIL which would address this flaw.

---


\(^{24}\) Paragraph 1.10, OFT report dated 11 February 2011.

\(^{25}\) Paragraph 1.15, id.

\(^{26}\) Paragraph 1.17, id.
9.4 OFCOM agreed to characterise the carve-up agreement as “long term”. The Secretary of State’s press release dated 3 March 2011 implies that this amounted to advice from OFCOM on the appropriate time-frame for assessment. In reality it seems to be nothing of the sort. Whilst offering the semantic categorisation of 10 years as “long-term”, OFCOM says absolutely nothing as to whether 10 years is an appropriate frame of reference nor does it endorse the Secretary of State’s view that there is no need for a remedy in the later period. On the contrary, OFCOM pointedly agreed with the OFT’s analysis of limitations created by the finite duration of the carve-up agreement and stated that “the proposed UUs are not a permanent solution.” 27 The Secretary of State should not seek to disguise the fact that: (i) he is proceeding with a UU which the OFT has advised would be ineffective within 10 years; and (ii) OFCOM has not endorsed his view that a 10 year contract is an appropriate lasting remedy.

(B) No Remedy Provided

9.5 If we consider the basis upon which OFCOM characterised 10 years as “long-term”, it is clear that this semantic classification could not be taken as answering the OFT’s concerns over the viability of the UU. After noting its agreement with the OFT’s assessment, OFCOM stated:

“We consider that a carve-up agreement of a 10-year term in the context of industry dynamics in this sector is long term. This is because we consider there is likely to be significant evolution of the market and consumers’ use of news and current affairs over the next decade. As a result, the situation with regard to plurality may be significantly different in 10 years time.” 28

9.6 Not only does the OFCOM report omit to state that a 10-year contract is therefore an adequate remedy, its explanation contains important points of fact and principle which highlight that the “long-term” epithet does nothing to answer the plurality concerns.

9.7 As a matter of fact, the prediction that consumers’ use of news and current affairs will evolve speaks only of demand for news. It does not even address the supply side much less suggest any basis for believing that there will be significant new entry into the supply of news content over the next few years. 29 Since plurality is driven by the number of suppliers, the evolution of demand is not directly relevant. Given the high fixed costs of entry and financial challenges facing the news sector, the prospects for

---

28 Paragraph 24, id.
29 As outlined in the Concerned Parties’ submission to OFCOM dated 19 November 2010 (which was also provided to the Department for Culture, Media and Sport), although demand for news has changed radically over the past decade, the supply-side structure of the market has remained largely unchanged. For example, while demand for news delivered over the internet has increased significantly – this news is predominately delivered by existing suppliers – with five established titles accounting for 65% of all online news traffic.
significant new entry are uncertain. As such, the prediction fails to address OFCOM’s concerns as to plurality.

9.8 However, aside the factual point, OFCOM’s statement raises a critical point of principle. OFCOM notes that the situation with regard to plurality may be different in ten years. Therefore, OFCOM is not saying that that market will have evolved to a degree that the UIL is no longer necessary but only that it sees some uncertainty. In other words, OFCOM is not sure whether or not it will be necessary to have an independent Sky News in 10 years. The critical point of principle is that the risks in this uncertainty should be borne by the parties giving rise to the plurality concerns (i.e. the merging parties) and not the public who will be affected by a reduction in plurality.

9.9 The standard approach in merger control is for a remedy to be put in place in perpetuity (or at least for a very long term, e.g. 25 years) so as to guarantee that the concerns raised by the merger are remedied on a lasting basis. If market conditions change such that the remedy is no longer required, then the merged entity has the option to apply to the CMA for the obligations to be released or modified.

9.10 Again, the Secretary of State has departed from normal standards as applied under the UK’s merger control regime and allowed News Corporation to transfer to the general public the risk that a temporary remedy may result in insufficient plurality in the future. In effect, while recognising that the merger raises plurality concerns, the Secretary of State proposes to attempt to remedy those concerns for only a few years. His only answer for the longer term is to hope something might happen which causes the concerns to disappear.

9.11 It is not clear why the Secretary of State considers (contrary to standard UK merger control policy) that the general public rather than News Corporation should bear the risk of uncertainty over the future outlook. This approach is not only at odds with standard UK merger control policy, but is also irrational and shows insufficient regard for the seriousness of the issues at stake.

10. Insufficient Consultation

10.1 As noted above, several aspects of the review process have been highly irregular. Rather than follow OFCOM’s advice and send the Takeover for review by the CMA, the Secretary of State added an additional stage of the review process. During this stage the Secretary of State opted to afford News Corporation privileged access and negotiated a deal in private without input from third parties.

10.2 It appears that this defect is to be repeated: the current public consultation is taking place without information on many of the key elements of the proposed arrangements. For example, the key terms of carriage agreement are essential to the assessment of the UIL, including details of the financial commitments agreed between the parties. The OFT states: “It is clear that a Sky carriage agreement in place on sufficiently long and
financially viable terms is fundamental to Newsco’s ability to cover its costs from the outset, and hence to its viability.” Yet, despite the key importance of the terms of this contract, it seems that third parties will be given no opportunity to comment. The genuine viability of Sky News as an independent business remains unproven to the general public.

10.3 Some of the key unknown elements of the contract are as follows:

(i) Distribution – as outlined above, it is not clear what (if any) obligations will be placed upon News Corporation to distribute (as opposed to simply purchase) Sky News. Since Sky News’ ability to contribute to news plurality depends on its widespread distribution, this omission is clearly unacceptable.

(ii) Ability to Invest – OFCOM has noted that the consumption of news is likely to evolve over the next few years. As a result, it is possible that Sky News will need to make significant investment in order to continue to make viable contributions to news plurality. Without more information the Concerned Parties cannot comment in an informed manner on how the UIC will affect Sky News’ ability to invest. For example, while the OFT report suggests that the payments will allow Sky News to cover its costs, it is not clear whether payments match the historic subsidies previously granted to Sky News by BSkyB. If not, the proposals will result in Sky News being less able to invest than pre-Takeover. This is particularly important given the concerns raised by the OFT that Sky News may face difficulties in raising finance for investment: “the smaller size of Newsco, compared with being a part of Sky, could create challenges if significant funds are required to finance investment in new technology.”

(iii) Public Listing – In its report to the Secretary of State, the OFT indicates that, given the limited time available to provide its views, it is unable to advise on the prospects of success of the shares of Newsco being admitted for public trading. Although the OFT’s report (in its redacted form) goes on to suggest that a legal opinion submitted by News Corporation addresses any potential concerns over the feasibility of a public listing, no visibility has been provided as part of the public consultation process as to the grounds on which News Corporation’s opinion is based. Consequently, it is impossible for the Concerned Parties to examine the legitimacy of any such grounds.

Moreover, to the extent that Newsco’s shares could not in fact be listed for public trading, this would likely result in the financial independence of Sky News being diminished even further. In particular, the financial strength of Sky News would be harmed since, without such public listing, it would be significantly more difficult for Sky News’ to raise, if necessary, additional (equity) capital. As a

30 Paragraph 10.6, OFT report dated 11 February 2011.
31 Paragraph 12.13, id.

15
consequence, this would likely result in Sky News becoming even more dependent on News Corporation through its key revenue generating contracts (without the Carriage Agreement, Sky News “would be significantly loss making”) and would likely also have similar negative effects on news plurality for the same reasons discussed further above.

10.4 In addition, other apparent deficiencies in the content and scope of the UIL can be identified. For example:

(i) The limited restrictions on ownership of the remaining share of Sky News not already owned by News Corporation fail to address concerns over parties that are somehow allied with News Corporation acquiring these shares. For example, the UIL does not appear to prevent the acquisition of shares in Sky News by Rupert Murdoch (or other members of his family) acting in a personal capacity.

(ii) The obligations imposed on News Corporation will largely be enforced through the Articles of Association of Sky News. It would remain possible, therefore, for a number of these protections to be circumvented through a simple amendment of the these Articles.

10.5 The Secretary of State’s failure to provide information on key terms of the arrangements undermines the public consultation. This is the latest in a succession of procedural and substantive irregularities.

10.6 The Concerned Parties strongly urge the Secretary of State to reconsider his provisional decision and instead ask the CC to provide the thorough review required properly to address the Takeover’s threat to news plurality.

Slaughter and May
11 March 2011
The legislation clearly provides for intervention on the basis of cross-media plurality — in particular in the provision of news. Such plurality is widely recognised to be a key part of the democratic process.

Plurality in the provision of news is already limited and is widely expected to become more concentrated. Three suppliers (BBC, ITN and BSkyB) account for virtually all of the UK’s broadcast news supply. Two suppliers (BBC and BSkyB) account for virtually all UK national radio news supply. News Corporation accounts for a 37% share in the supply of national newspapers.

The Takeover would therefore combine one of the three TV news suppliers and two radio news suppliers with the largest supplier of national newspapers. The Takeover would also undermine the reporting of newspaper stories in the broadcast media (a key additional source of plurality).

Intervention is also consistent with the Government's own guidance (on any reasonable application). There is a statement in the Guidance which suggests that, save in exceptional circumstances, the Secretary of State will consider intervention only in cases where media ownership rules have been removed by the Communications Act 2003. However, this statement is not expressed as an absolute rule and to interpret it as such would be at odds with the overall Guidance and the clear purpose behind the public interest regime. It would also fail to meet basic public law requirements of reasonableness.

The legislation specifically provides for intervention in circumstances like these i.e. where there is a move from 39% to 100%. Such a move would clearly change the nature of control over BSkyB — in future its operations would be directed not for the benefit of a wider group of shareholders but instead for the benefit (financial and/or political) of News Corporation.

6.2 It follows that the only appropriate course of action is to ensure proper assessment of the Takeover by issuing an intervention notice.

Slaughter and May
7 October 2010

EC103070043

48 The Takeover would give BSkyB the ability and incentive to favour stories in News Corporation newspapers and incentivise News Corporation newspapers to favour the stories and actual output (e.g. video via the newspapers' websites) of BSkyB.

49 Paragraph 6.2.
Guardian Media Group – oral evidence (QQ 160-181)

Evidence Session No. 5   Heard in Public   Questions 160 - 181

TUESDAY 9 JULY 2013

Members present

Lord Inglewood (Chairman)
Baroness Bakewell
Lord Clement-Jones
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Bishop of Norwich
Lord Razzall
Earl of Selborne
Lord Skelmersdale

Witnesses

Mr Alan Rusbridger, Editor-in-Chief, Guardian News & Media (the Guardian and the Observer), Mr Andrew Miller, Chief Executive, Guardian Media Group, and Ms Sarah Davis, Commercial Legal Director, Guardian Media Group

Q160 The Chairman: I extend a warm welcome to a trinity from the Guardian: Alan Rusbridger, Andrew Miller and Sarah Davis. Thank you for coming along and giving evidence. We have got from you the written evidence that you submitted. In addition to that, we have got details of who you are in particular, and so on and so forth. I do not think that there is any need, unless you particularly want to go over that, to repeat it. I think you know that we make a note of what is said. A transcript is taken, and you will have a chance to see that. This is also being filmed. Perhaps you could just begin by stating, for the record, who each of you are, and then we will move into the evidence session proper. I invite each one of you to say who you are.

Ms Davis: I am Sarah Davis. I am Group Commercial Legal Director at Guardian Media Group.

Mr Rusbridger: I am Alan Rusbridger. I am Editor-in-Chief of Guardian News & Media.

Mr Miller: I am Andrew Miller. I am CEO of the Guardian Media Group.

The Chairman: Thank you very much for that. In the evidence that we have had from you, which we have looked at, you have made some interesting and thoughtful recommendations, albeit some that are pretty complicated. Perhaps it might be useful if, at the start, you could briefly recap the substance of what it is you are suggesting. I do not know which of you would like to begin with that.
Mr Miller: Thank you, Chairman. It is great to get the opportunity to address the Committee today. In my capacity, I am going to speak on behalf of the commercial side of the business, while Alan will speak for the editorial side and Sarah will talk to any legal points that may arise. As we set out in our submission, plurality has major implications right across the commercial, editorial and legal aspects of our business, which is why the three of us are keen to present today and to talk about it.

We really welcome the inquiry and we really welcome the work of the House of Lords Communications Committee generally in such an important area for the UK at the moment. As we made clear in our submission, it is a real matter of regret that media plurality has ended up as a bit of a Cinderella issue in the context of what was, 18 months ago, a pretty heated debate about whether media ownership was over-concentrated in the UK, a debate triggered by the question of whether plurality would be impaired by the prospect of News Corporation’s taking entire control of BSkyB. What the regulatory review of that transaction revealed all too painfully was that the substance and process surrounding our existing law on plurality are materially deficient from a public interest perspective, especially when such a fundamental change is going on in the media landscape in the UK because of the internet and digital implications in the sector.

Our submission makes clear that we believe that there is a need for genuine solutions and action from government in order to safeguard the UK’s democratic and economic interests. Putting plurality in the “too difficult” box is, in our view, simply not an option. Likewise, proclaiming “Let the market decide” is clearly, in our view, insufficient as a response, given that the sector is going through such fundamental change. We need action on plurality and we need it now. With that in mind, we are very open to your questions today.

The Chairman: Thank you. Just one small point: do you think that the huge changes in the media which you refer to mean that there is a greater or lesser need for specific rules about plurality than was the case previously? Do you think the change makes the need for plurality greater, or does it diminish it?

Mr Miller: I think it is essential. If Parliament believes that plurality is essential to democratic debate, with the changes going on and the pressures that are imposed on media companies like ourselves, I think it is fundamental that that is enshrined so that, as we navigate our way through and find the models in the new world, that is borne in mind and we have an ability to follow and to keep that enshrined in what we do.

Q161 Baroness Healy of Primrose Hill: In addition to periodic plurality reviews, you suggest that they should also be triggered at the discretion of either the Secretary of State or Ofcom at the time of a media transaction. I was wondering: which media transactions are relevant in this context? Only those involving news and current affairs providers, or wider? Further, could you say why you recommend that the discretion to trigger reviews be shared between the Secretary of State and Ofcom? Could this lead to some confusion of responsibilities?

Mr Miller: Traditionally, the response has been to look at a very narrow definition of news within verticals, and that is the Ofcom approach—and to look at the media sector within verticals of radio and so on. In our view, the change that is going on about how media is consumed by individuals—in the old way, you tended to follow the platforms of the ownership—means that we have to look at a much broader base. That means that what were perhaps traditionally consumer media companies are increasingly doing a lot of news, and news companies are doing a lot more consumer. Our recommendation is that it is a
much broader definition of the market that is used here, and that has definitely extended outside the usual areas of news.

The Chairman: How far?

Lord Skelmersdale: And how come?

Mr Miller: That is the challenge. It is really hard. In the sector we are in, is someone like Google a news provider? I would argue that they are a core platform on which our news is consumed, but they are not a news provider, because they do not do editorialship and so on at the moment. Over time, that could change. At the moment, there is no mechanism to protect UK plurality from someone like Google changing their business model or changing the way they do it. The dominance they have is such that it could really kill something like our organisation and the voice that we have in the marketplace if they decided to invest in that. It is a sector going through really fundamental change.

Q162 The Chairman: What do you think is the impact of Google on your business? On the one hand, they obviously generate advertising revenues to themselves. On the other hand, they generate eyeballs on your products, which in turn helps to enhance your advertising revenue. How do you see that relationship?

Mr Miller: Google are an essential partner for us. Most search in the UK is done through Google. Therefore, it is critical that we engage with Google in a positive way and work with them to find a way to get our news broadcast on Google platforms. About 20% to 30% of our traffic comes from Google referrals, if not slightly higher. Therefore, they are someone we must work with. The idea that one can isolate, leave and ignore Google is not the case. It is integral to our business model, as it will be increasingly into the future.

Mr Rusbridger: They are a classic frenemy. They are partly nice, but they are potentially menacing. They are enormous. They do not pay much tax. They aggregate news in a way that is helpful, but they have the potential to be very destructive, too. We are respectful partners, are we not, Andrew?

The Chairman: In a sense, a lot of the concern in a plurality context about Google and suchlike relates to the way in which they carry out their activities, rather than the fact that they provide access to information. I am trying to be clear about what you are telling us.

Mr Rusbridger: Yes. By and large, they are helpful to us. They are a fantastic distribution mechanism and way of promoting content, but they are also vast.

The Chairman: And they could skew things.

Mr Rusbridger: Yes. They are like Twitter. At the moment, Twitter is broadly beneficial to us, but they have ambitions to be a news organisation as well as a distribution and social mechanism—and they are nowhere like as big as Google. They have the potential to be menacing, depending which way their business takes them.

Lord Clement-Jones: Do I get this right? The trigger is there so that, if there is a media transaction involving somebody who may not be in exactly the same space but has enormous influence over your space, so to speak, that triggers a plurality review in those circumstances, because it will not be covered by competition law in the ordinary course of things.

215 This figure fluctuates month on month. In June 2013, 23.1% of all guardian.co.uk page views were Google referrals. As an example of this fluctuation, the figure was 27.2% in January 2013.
Mr Miller: Exactly right. We are recommending that there is a review for plurality on several events. One is an acquisition or merger within the sector. The second is about an exit from the sector, which changes the share in the sector. Thirdly, there is a discretionary review on a periodic basis, because this is a sector going through such fundamental change and it is critical to UK democracy.

Q163 Baroness Blackwell: I would like a bit more detail about this triggering. It seems a bit woolly whether it is the Secretary of State or Ofcom. I wonder whether they might find it woolly too. Who is going to decide? Legally, does one have priority? Is it just who gets to the phone first, like the charters that have been put to the Privy Council?

Mr Miller: It is interesting. In the Leveson inquiry, Leveson recommended that this be delegated to Ofcom. If I recall, even the Secretary of State, during the BSkyB process, suggested that it should be delegated to Ofcom, because that makes it lacking in questions of political bias. Our view is that Ofcom, as a non-political organisation, is able to carry that out and make recommendations to the Secretary of State, on the parliamentary side, to implement. Is that correct, Sarah?

Ms Davis: Yes. That is right. Currently, it is only the Secretary of State. The Secretary of State can be petitioned, or referrals can be made to the Secretary of State. The comments of the Secretary of State, Jeremy Hunt, to the Leveson inquiry made it quite clear that he felt that it was a pretty unfortunate position to be in, because it would be hard to show that there had been no bias. It was an unwinnable position to be in. We agree with that: it should be the ability of a non-political actor like Ofcom. However, you would not want to lose the ability of the Secretary of State also to take on—

Baroness Bakewell: Do you think it needs to be made clearer, or should it be left between the two of them to decide?

Ms Davis: Our view is that you could have both of them being able to do it, so the Secretary of State may be petitioned, and Ofcom themselves could instigate.

Lord Clement-Jones: As Secretary of State, you might only do it on the recommendation of Ofcom, because that is the safest place to be, politically, in that sense.

Ms Davis: Yes. To go further than that, we have a proposal that the Secretary of State either comply or explain why he or she has not carried out the regulator’s recommendation in the event of an investigation.

The Chairman: Would it follow that a complier’s explanation would be judicially reviewable?

Ms Davis: I think it would.

The Chairman: Depending on whether or not it was a proper—

Ms Davis: It is the process.

Lord Clement-Jones: Exactly. It would depend whether he really was complying and explaining.

Ms Davis: Yes.

The Chairman: Let us move on.

Q164 Earl of Selborne: Are you going to need a definition for sufficiency in plurality assessments? We have agreed that you are going to have an input from Ofcom, and that the
Secretary of State has a role. You have argued that, instead of an absolute assessment against a set of criteria, there should be some qualitative element. Is that going to stack up if you do not have a definition? How will you define sufficiency?

Mr Miller: We debated this long and hard before we put in our submission. Obviously, we would prefer to have a very definitive and clear view, because that would be the easiest way to operate it, but I again stress that the change going on in this sector is so fundamental and so fast that we believe that there should be a less objective basis on which to review it. That is why we agreed with the six criteria that Ofcom laid out and that it could be a sufficiency test.

There are examples in other areas, particularly on competitor reviews and competition review, when one is asked to explore dominant positions in certain industries and sectors. It is not necessarily written down how that dominance is enforced, but they seem to be able to find a way to deal with it. Given the nature of change, which may settle down over the coming years—this can change the definition at this stage—it feels right to keep it relatively loose to allow that kind of process to happen.

Earl of Selborne: So you do not think this is a recipe for an absolute legal quagmire. You will be aware that Enders have taken the view that, whatever the decision is, it should be arbitrary and mechanistic, which at least seems to give you a clear decision.

Mr Miller: I would love it if it could be. To give an example at the moment, the legislation currently envisages that we print a newspaper, yet our news is more heavily consumed on tablet devices and mobile devices, and we are competing on those kinds of devices with people who are traditional broadcasters. Therefore, to try to ring-fence and set arbitrary ways of looking at it is extremely difficult at the moment. Therefore, unfortunately, it has to be fluid if the core principle which is being discussed and is being followed is around plural voices—to make sure enough voice is heard.

The Chairman: The inevitable consequence of what you are suggesting is that the Secretary of State is going to have much more of a pivotal role than if it was mechanical.

Mr Miller: That is why we are recommending that that is delegated to Ofcom, to try to depoliticise it and so that it is looked at agnostically, regarding the principles and the decisions that are being taken in the sector.

The Chairman: Do you as businesspeople think that this gives you a sufficient degree of legal certainty about the way the world is going?

Mr Miller: It is really difficult. The main thing that I want, as a UK company that is succeeding very strongly in the digital space, with a lot of engagement in our news on a global basis, is to get a fair voice and a fair chance to work our way through this model in a business sense. What I do not want is for our commercial model to be sideswiped because of a lack of plurality in the UK. Unfortunately, therefore, there has to be a lot of flexibility at this stage to allow us to find our way through that.

Ms Davis: The clear trigger criteria, such as a disposal or a merger or a review—as Ofcom said in its “Measuring media plurality” paper last summer, in June last year—that review would be, say, every five years. That creates a certainty for the industry. One knows when the review is coming. It is not arbitrary—it is not a discretionary review in between that period of time. There would be sufficient certainty there for business.

Q165 Lord Skelmersdale: Before we leave this subject, you talk about competition: are you talking about competition for news, or are you talking about competition for income?
Mr Miller: Competition for—sorry?

Lord Skelmersdale: For income. In other words, the Times online charges, but I do not think that you do yet, do you?

Mr Miller: No, we do not.

Lord Skelmersdale: One assumes that, sooner or later, you are going to have to because, otherwise, the operation will go bust, will it not?

Mr Miller: I disagree. We continually monitor whether or not we have to charge for our news directly to consumers. As we will show in our results in the coming weeks, we are getting some very strong digital revenue growth through advertising in other areas. We believe that the opportunity, particularly globally, is for as many people as possible to access our content and for us to build a business model around that access and move it through.

Unfortunately, in the current circumstances, one cannot distinguish very easily between plurality and the business model. That is why I disagree—letting the free market per se decide is a dangerous thing for losing voice in the UK. At this stage, we are trying to find our way.

I will give you an example. In the News Corp discussions, as we said, along with the other partners in the alliance who were objecting to it, there was a real risk. One of the biggest drivers to the news category is sport. As everyone in the news industry knows, sport is notoriously difficult to advertise around, but it is the biggest driver of traffic online, and it is one of the biggest drivers to people coming to a newspaper. By buying up rights to sports, one can, rightly, make sure that people come to your brand in a news environment, but that locks others out. That is an economic decision, as an indirect knock-on to plurality. That is why I think that the two cannot be decoupled. That is also why one cannot just let the free market reign at the moment.

The Chairman: In terms of the way in which the media industry works, it seems to me that what you might call traditional competition policy considerations and plurality issues get very close to blurring on occasions.

Mr Miller: It is incredibly hard, yes.

Q166 The Chairman: What I really want to ask you touches on something that we talked about earlier—talking about the business model. When you are talking about people like Google, do you think there should be some kind of revenue-sharing arrangements between them and you in circumstances where they draw people through their search engine to the information you have produced? I gather that, in France, some arrangements have been entered into along those lines. Is that a direction that one should go towards?

Mr Rusbridger: That is not quite right. What has happened in France is that there has been a one-off payment of, I think, £60 million, or possibly €60 million,216 which is intended to subsidise the newspaper industry through this transitional period. I do not think that it is a permanent revenue-sharing model. I am sure you would like to share that revenue, Andrew.

Mr Miller: In theory, yes, but I would much rather have a level playing field to get on and build a business as I am currently doing in the digital space, rather than spending my time trying to work through artificial mechanisms to subsidise—

---

216 The sum was €60 million.
The Chairman: Do you think that what has happened in France is something that we should be contemplating in Britain?

Mr Rusbridger: I am staggered that we have not asked for it. I interviewed Eric Schmidt about this on stage in Delhi. I said, “If France can have it, why can’t we?” He realised that he would have to say yes, but it would require the newspaper industry here to get together and apply some pressure. They are not going to volunteer it without some kind of pressure. I cannot see why we should not have it in Britain if they can have it in France.

Ms Davis: In France, it was a settlement to an intellectual property dispute. Essentially, there were challenges that Google’s use of their content was an infringement of their IP.

The Chairman: Under French IP law?

Ms Davis: Under French IP law, yes.

The Chairman: We do not have the same levers here.

Ms Davis: Yes. It was essentially a settlement to a legal action, rather than an altruistic gift to the publishing industry.

Q167 Lord Clement-Jones: I thought it sounded rather bountiful.

Taking the issue of the plurality review, however it is triggered, you have stated that there are really four pillars that you need to look at, or four considerations, by which to judge plurality, and you see whether there is sufficient for each of those different areas. I think that you use news market share, platform dominance, distribution dominance and explicit attempts to influence public affairs. One could argue—that is probably the traditional way of arguing—that it is really all about news market share. Could you explain why you have added in another three elements, and why each of them matters when you are judging plurality?

Mr Miller: About half our traffic comes direct to our own browser, but over half our traffic, half the people who consume our news, comes from other means, whether that is Twitter, Google, Amazon, Facebook or Apple. A concern in the UK would have to be that one media owner gets to dominate the news consumption across one of those platforms, which cuts out other people. That is what we meant by platform dominance. In turn, one of those platform providers could decide to preclude us from coming on to their platforms.

By distribution dominance, what we mean there, referring to the example that I was giving about sports rights, is that one media owner manages to get the full distribution of content in certain areas, which allows them to preclude other people from participating, which indirectly hurts the economic model and, again, reduces the share of voice. Alan can talk about the attempts to influence public affairs.

The Chairman: In a way, what you are saying is that, if you look at access to broadband networks, for example, you want fair, reasonable and non-discriminatory access to your products across the waterfront of delivery mechanisms that people use. Is that, in layman’s—

Ms Davis: That is right, essentially, yes.

Lord Clement-Jones: It partly depends on what you are looking at. Do you need to use all these four tests for every case that you are looking at the plurality of? In some cases, surely platform dominance is not going to be an issue.
Mr Miller: In most instances it is unlikely that these things will be triggered, but it is an ability to use and to understand if plurality—not a competitor position, but plurality—is there. I see no issue at all with one media owner buying up rights in certain areas. On an economic basis, that is fine. It is when it then reads across to start cutting out the share of voice and reducing plurality that it becomes an issue.

Lord Clement-Jones: You are not a dominant player in the news and current affairs, but you are on a dominant platform. How does that work?

Mr Miller: Again, it is the same challenge. On an economic basis, that may not be an issue, as long as there is a parliamentary backstop to investigate it to make sure that voices are not being cut out in the process. That is why we are recommending that plurality is enshrined much more strongly and is referred to Parliament.

Lord Clement-Jones: You do not think that competition law gets to it as regards platforms. You do not think that it is adequate.

Ms Davis: Not necessarily. The News Corp-BSkyB deal was one where competition law concerns did not arise, but plurality did. It was passed by the European Commission on a competition assessment. You can have these mergers of media entities where it does not raise competition law issues, but there are still plurality issues.

Lord Clement-Jones: Yes. That is the exact issue.

The Chairman: Will you forgive us? As I mentioned might happen before we started, we are going to go off now, but we will be back shortly. You can think further about these questions.

The sitting was suspended for a Division in the House.

Q168 Lord Clement-Jones: This is very interesting. I think that you are going to come on to talk a bit more about distribution dominance and attempts to influence public affairs in a minute, but we have started teasing out this question: why do we not deal with platform dominance and distribution dominance via competition law? Are we saying that it is not possible because it was illustrated by the Sky case? Are there ways in which we could amend competition law in order to do that? What is the issue there? Why do we have to erect these two new considerations for plurality when perhaps we could deal with it in a different way?

Mr Miller: Because I do not think that the competition framework can protect a share of voice and make sure that there are distinctive voices in the debate. As a businessman, I have no issue with certain media companies owning certain parts of or having a strong position on platforms or other areas, or having a good, strong commercial relationship with people like Google and Twitter and so on. That is not the issue for me. It is the unintended consequence of that very legitimate competitive position and very legitimate financial position unintentionally precluding or cutting out voice as time marches on.

On the example that I gave on distribution dominance and rights around football, if we were not able to do football because of rights decisions made by other parties, it would not matter for one year economically, and it would not matter for two. It would clear a competition hurdle, and rightly so but, over time, that would necessarily drive traffic away from us and it would drive—

Lord Clement-Jones: Would they go through the competition hurdle, though?
Mr Miller: I am sure they would do, yes. It would be no problem at all. As a businessman, I
do not want to have to worry about that all the time, thinking that there is a backstop all the
time around plurality that I have to worry about in the negotiations that I have with—

Lord Clement-Jones: The knock-on effect of other things.

Mr Miller: Yes. It is so important to the democratic voice that there has to be some way of
protecting and of making sure that, as the market develops and as the media sector develops
over time, there is a check-in every so often to make sure that unintended consequences or
very legitimate commercial transactions do not adversely impact on plurality across the UK.

The Chairman: Just so that I am clear about your concern: if you have some sort of
football channel with downloaded football streaming, the rights would be distributed by the
rights owners however they wanted, subject to competition law. Is it your concern that, if
you have a website that, as part of a news website, is covering football, you could not have
moving images on it? You could have still images on it, could you not, under the current set
of arrangements? I am trying to get to the bottom of your concerns.

Mr Miller: Under the current regime, it is absolutely fine. At the moment, one of our largest
drivers of traffic to our website, quite consistently, is soccer. We know from analysis that
soccer drives people to other parts of our website, which is why it is such a great way of
supporting our business model and keeping it going. If certain media companies were able to
buy all the rights, or negotiations were done and we could not get in there, we could still
write about football, I am sure, and we would still have other arrangements but, over time, it
would gradually start putting pressure on our audience and on our commercial interests,
which would risk reducing our voice.

The Chairman: What you are saying is that the point of football is the moving image.

Mr Rusbridger: It is not just moving images. Sporting bodies are increasingly trying to
control all the rights, including live blogging. People quite like following a live blog of a match
in text. Over time, you can see the sporting bodies trying to control the rights to that as
well. If you are a small player up against the multi-billions that some organisations have, we
could be frozen out of that.

Q169 Lord Clement-Jones: So you might have competition between two or three
entities for that kind of material, and there might be competition in the market, as defined,
but it would affect you because you would not get access to it, and that would affect
pluralism, so to speak.

Mr Miller: Yes. It might be a perfectly legitimate and fair competitive position—

Lord Clement-Jones: Yes, I get you. It is not necessarily that they have to control all the
rights, which would obviously mean that competition law would then come into it.

Mr Miller: The flip side of football might be something like Glyndebourne, which we
broadcast and have a good arrangement for. Imagine, over time, someone buying up the
rights for Glyndebourne and locking out opera from people who want to get opera. We
have a large amount of traffic coming to us from opera. It does not just apply to the obvious
areas like football; it applies to other areas. That is why we are making the point around
distribution dominance and corporate dominance.

The Chairman: This particular concern seems to focus, principally, on activities that are
ews but also have a kind of commercial entertainment value, using that word in its widest
sense.
Mr Rusbridger: A lot of what we are talking about today is in the field of cross-subsidy. There can be somebody cross-subsidising a news organisation from another organisation or another part of an organisation, but a newspaper has always worked with a kind of internal cross-subsidy mechanism, too. The bit that many people think matters most—foreign news and investigations—is always going to be unprofitable, but that can be subsidised by cooking, fashion or sport. There is a kind of internal cross-subsidy within a newspaper. Sometimes, the bits that are most commercial are the bits that apparently matter least.

Q170 Lord Clement-Jones: Could you come on to this even more intriguing area of explicit attempts to influence public affairs?

Mr Rusbridger: My colleagues here are the experts on what is a highly technical subject. From my point of view, as editor—can I talk about the phone-hacking case?

Lord Clement-Jones: Anything you like. Tell us what you want to say.

Mr Rusbridger: For me, it was a kind of case study in why pluralism matters. To me, this was a more important bit of the regulatory discussion than even Leveson. There was a massive dominance of newspapers by one particular proprietor, with about 40% of the market and with a lot of cross-subsidy going on. You can have nothing but praise for Murdoch for the way that he sustained the Times and the Sunday Times, for instance. Nevertheless, it was a massive dominance of the market. That was combined with weak internal governance, as everybody now recognises. It was combined with weak external regulation. It was combined with a disregard for the law. That, in itself, bought a form of immunity, I believe—that is what they felt—from the normal kinds of scrutiny that everyone else has to undergo. The press laid off them, the police laid off them and, to a certain extent, Parliament laid off them.

At the same time, you had a company that was intensely interested in influencing politics and in having a voice in the public debate and, at the same time, they wanted influence over the regulatory framework that was most beneficial to their own business.

Incidentally, they were employing criminals to dig into the private lives of anybody. Put all that together and, in common-sense terms, that was a democratic disaster for this country. If you had been editing The Guardian at that point, which was not only the only paper but the only institution in British public life that was prepared to lift up that stone and look underneath it—I do not believe that it is a coincidence that this was a small paper with its roots in Manchester that is, to some extent, an outsider—no one else was willing to do that. I think that was because of the issue that we are discussing today, in that something had gone horribly wrong with the plurality regime to allow that to happen.

That became not just an issue about media plurality, which is quite a dry, dusty and technical issue. It became something that began to leech into policing, Parliament, the press and regulation in ways that were very unhealthy. That is what we mean by influence. Sometimes, people try to throw in the BBC, which is a nice, separate debate to have, but the BBC does not try to influence politics. That was the reason why we put the influence of politics there, as that was a crucial bit of the picture.

Q171 Lord Clement-Jones: It is interesting, the way you have used the umbrella of explicit attempts to influence public affairs. You include covert attempts to influence public affairs, I assume. Otherwise, what you have just said might not be followed through.

Mr Rusbridger: It is a terribly slippery issue. Any Murdoch editor will always tell you that they are free to edit and all that. If, by “covert attempts to influence”, you mean—
Lord Clement-Jones: You may have to do some digging. When you are doing a plurality review, you may have to—it cannot just be on the record. There will have to be some investigation involved, presumably.

Mr Rusbridger: Yes.

Lord Clement-Jones: That may give rise to finding that there have been covert attempts and so on.

Mr Rusbridger: I thought that Leveson would reveal the whole picture. It was the use of criminals and very nasty methods to dig into people’s private lives, including those of politicians and including the police, that created a climate of fear, in which people felt that this was an organisation that it was bad to make an enemy of. You saw the prodigious, highly professional attempts of their lobbyists to change the regulatory framework. You saw the multiple contacts between politicians and their advisers and the corporation and their advisers.

Lord Clement-Jones: By “explicit”—sorry to be picky—you really mean “deliberate”, in that sense.

Mr Rusbridger: Deliberate? On the corporate side or the influence aside?

Lord Clement-Jones: In terms of the corporate attempting to influence public affairs.

Mr Rusbridger: What emerged through Leveson was that it did not have to be explicit. It hung in the air. When the big proprietor met the Prime Minister, nothing had to be said, but they both knew what they wanted and they both knew the power that each had over the other. Nothing had to be said, so it was impossible for Leveson to find the piece of paper, because it did not have to be said.

The Chairman: Was that not Jim Molyneaux and John Major? “Nothing was asked for and nothing was given.”

Mr Rusbridger: Yes. There is a sort of common-sense way of looking at this, where you know that all of that was bad, and it quickly gets into the weeds of—

Q172 The Chairman: Can I drill down a bit further into this? You have said—I do not think that anybody would dissent from it—that in a particular quarter of British public life, the rule of law simply broke down. From a plurality point of view, you as a newspaper—and all credit to you for doing it—exposed a lot of this wrongdoing. A number of other newspapers, which we all know about, for one reason or another did not. Do you think that the fact that they did not had anything to do with plurality as such?

Mr Rusbridger: There are a limited number of publishers. There were a mixture of motives behind why other papers did not cover it.

The Chairman: It must have been known among people like you that this sort of thing was going on, I assume.

Mr Rusbridger: Yes. That is indisputable now.

Lord Clement-Jones: There is something that I do not quite understand. Say that you have a very vibrant press and that you have more than six owners—you have eight, nine or whatever. You could still have a particular media owner attempting to influence public affairs. Are you saying that you can have legitimate attempts to influence public affairs, provided there are enough players who are all interacting or counteracting each other, but it is just
when you have this absolute heavyweight of a player who is acting in a particular way, as you have described, Alan—

Mr Rusbridger: If you go back to the last Royal Commission in 1948, there were multiple owners of the press in Britain, and there was a kind of balance of power. There were the Beaverbrooks and the Northcliffes, but there was a sense of counterbalance. During the phone hacking thing, because this subject is so technical, with all these discussions about what constitutes a market and questions such as, “Should it be Ofcom?”, “Should it be the Competition Commission?”, “Where does Europe come in?”, people felt defeated by it.

We got to a position where we were within days, if not hours, of everyone waving through this BSkyB deal, which would have doubled the size of Murdoch, because nobody could think of a way of stopping it. If you read the lobbying efforts of Fred Michel and so forth, they were weaving their way through Europe, and nobody could stop it. Everyone knew instinctively that it was wrong, but no one could work out how exactly to frame it. That is the challenge.

Baroness Bakewell: When you say that nobody could stop it, do you mean that they did not have the mechanism, or that they did not have the insight, or both?

Mr Rusbridger: Europe had waved it through, but Leveson found that in the end Jeremy Hunt had played it by the book, despite all the best attempts to wine and dine your way through, and there was nothing there to stop it. A position that you just know is wrong according to common sense was somehow defeated. This is what you are discussing. You so quickly get into these incredibly tangled weeds, which are there almost to defeat anybody trying to come up with a common-sense answer.

Baroness Bakewell: If plurality had been otherwise, that would have avoided it happening, would it, or would it simply have made it more detectable? Would somebody have stepped forward earlier to expose it?

Mr Rusbridger: Yes. You had one enormously dominant, and in the end menacing, presence, which nobody was prepared to—for perfectly understandable reasons. It was not just his influence in newspapers. Sky takes you on to sports rights and entertainment rights.

Sometimes, I would get my reporters to ring up people and get them to say things on the record. People from a wide variety of life, from politics through to entertainers, people who worked in these industries and people who wanted to work in those industries, all said, “Sorry, but we can’t make an enemy of this man”. That is what you are up against.

Baroness Bakewell: You spoke about the times of Northcliffe and Beaverbrook. Their power structures balanced each other’s out. Is that what you are saying? Is it because there were two such empires that they somehow kept the balance?

Mr Rusbridger: There were multiple owners. Turning back to the 1948 commission, there were hundreds of newspaper owners, and the provincial press was much more dissipated. That is one of the reasons.

Q173 The Chairman: Can I ask you a question, although it may be a slightly unfair question? You have described the way in which the Murdoch press—I am not being ad hominem at all here in my remarks—wanted to exercise influence over politicians. The proposition that you have put to us is that they were, at least to some extent, successful in doing this. Would you, as the Guardian, like to be as successful in influencing politicians as you suggest that other news company was? Is it not inherent, to some extent, in the partisan newspaper tradition that we have that people who run newspapers want to exercise
influence over Governments and politicians? The BBC is possibly the only one that is outside that.

Mr Rusbridger: The short answer is yes. We own 16% of the broadsheet market. We have a small voice and an influential voice at home, but it is a small voice in newspaper terms, compared with 40% of the whole market.

The Chairman: We all accept that there comes a point when somebody is too big. Everybody would agree that however you configure the measurements of it all, that is a phenomenon that is undesirable.

Mr Rusbridger: Yes, but I cannot think of an occasion when the Guardian Media Group has lobbied Parliament in order to change or create a regulatory environment for anything that we are doing. When you are doing that with one hand and you are seeking this with the other hand—unless anybody wants to correct the record; we discussed this before—we cannot think of an occasion when the Guardian Media Group has actually sought that.

The Chairman: Just to make it absolutely clear, the thing that you think is so wrong—and I use that word deliberately—is the big players using this kind of influence to further their own corporate ends, rather than trying to do things in a wider sense from the public perspective and in the public interest.

Mr Rusbridger: Yes, and I agree with you. It is a shame that it has to be about Murdoch because otherwise it appears like one is attacking the man, but it just so happens that he was the guy who ended up with all this power. That is one of the problems. If you add in criminality and weak regulation, you have a very dangerous situation.

Q174 Lord Razzall: Can I come back a bit to the position of the large digital players such as Google, Facebook and Apple? For the reasons that you described earlier, you have rejected competition law as a way to deal with potential plurality issues with them. You reject the Enders analysis that there should be a rigid economic test so that everybody knows where they stand. As far as your position is concerned, unless you are fortunate enough that they breach your IP, you are unlikely to get any compensation or ongoing revenue from them.

What slightly concerns me is that, having rejected all those potential remedies, where do you think the possible interventions against the large digital players could arise, were they to be found to have infringed the rules as you set them out?

It is easy to see where interventions can happen. If the Guardian Media Group had 50% of the market, it is quite easy to see what the intervention would be, but it is harder for us to see what interventions would apply for the large digital players’ platforms.

Ms Davis: There are two points to make here. The competition law—the antitrust, breach of dominance position—applies in a commercial context. Those laws would apply to the large digital players, should they breach them. The point that Andrew was making earlier was that situation can arise where there is no competition law infringement, but there is a plurality.

Lord Razzall: There is platform dominance.

Ms Davis: Absolutely.

Lord Razzall: I can see that. Our concern is that assuming that it was found that there was platform dominance, what could the intervention be against them in relation to that platform dominance?
Ms Davis: That is one of the remedies that Ofcom might have against them, which might be a divestment of some of their interests—

Lord Razzall: It is hard to see how that could happen, though.

Ms Davis: Or there could be a must carry obligation.

Mr Miller: These are essentially broadcast platforms in the new world. The core remedy would be a share-of-voice type of remedy on those platforms in the country. That is the only way that I can think of. Again, this is incredibly difficult, because of the space that we are in.

Lord Razzall: Quite. That is one of the difficulties of our inquiry.

Mr Miller: Sadly, there is no lovely remedy that I can drop.

Just to follow up on the point about Enders submission, I would love there to be an arbitrary mechanism. I am a businessman, and I would much rather have that, but I cannot think that there is an easy way to do it right now.

The Chairman: Basically, the big platforms should have to carry what comes up behind them, for want of a better way of putting it, subject to it not being pornographic or contrary to their public duty.

Lord Razzall: It depends what the platform dominance is.

The Chairman: That is right, but you can use the dominance of your platform in order to squeeze out people’s opinions, in terms of political plurality, which is the main focus of our inquiry, and it is potentially very serious.

Mr Miller: To be clear, there is absolutely no implication that any of them are doing that.

The Chairman: No.

Mr Miller: It is a great opportunity for us. That is why we are growing so strongly. We had 82 million unique browsers last month across the world consuming the Guardian—in one month. That is because these platforms work agnostically and let us all have a fair go at trying to get abroad, which is why it is so strong.

Q175 Lord Clement-Jones: That is why, when you normally talk about a dominant position in competition law, you talk about abuse. Do we not keep having to add that back in? It is not just dominance that is the issue; it is the abuse that is the key thing.

Mr Miller: That is a fair point—it is both dominance and abuse—but another version of platforms might be mobile devices. As you well know, there is an ongoing battle between who is going to own the mobile space. If media companies manage to ally with, say, Samsung, on one side, or with Apple on another, they could squeeze out people like us there, too.

There are whole other platforms developing. Again, that proves why this is such a moving feast—it needs a bit of latitude in the regulation if we think it is important enough to enshrine plurality into legislation. That is a question for you and Parliament.

Lord Razzall: The major platforms could have distribution dominance, could they not? Google probably does have distribution dominance.

Mr Miller: If they wanted to.

Lord Razzall: They do have dominance.

Mr Miller: They certainly do on search, and they are certainly a place where we must be for people to access our content. As I said earlier, one does not know how this is going to evolve. Who would have known, several years ago, that AOL was going to buy the
Guardian Media Group – oral evidence (QQ 160-181)

Huffington Post and be one of the core players in the media space for news in the UK and the world? That, again, proves why this is going to change a lot.

**Lord Razzall:** Who would have known that BT was going to run the Premier League soccer games?

**Mr Miller:** Exactly, that is right.

**The Chairman:** That is closer to your heart.

**Lord Razzall:** I have always liked Huffington.

**The Chairman:** Let us move on.

**Q176 Baroness Bakewell:** If Ofcom finds the concept of sufficiency breached, can you explain, on your model, what it would do next? What happens? What are the options, and what would you favour?

**Ms Davis:** We only favour asking the Competition Commission to investigate and to devise remedies, because a breach, in and of itself, may be containable and liveable with, for want of a more elegant phrase, so the finding of breach, or rather of insufficient plurality, is the start of a further action or engagement. That is rather like the way it would work now. There is a reference to the Competition Commission if the Secretary of State, on advice, considers that there is insufficient plurality.

**Baroness Bakewell:** What would you like to see happen next? Given that it is referred to them, is that fine? Do you just leave it to them, or are they under constraints that you wish to see move in a certain direction?

**Ms Davis:** If there is a finding of insufficient plurality, we would like to see plurality restored. It may be that a certain remedy is required. I know that there are behavioural remedies, which have a bad press, and rightly so, because they are easily breached. The experience that we have of behavioural remedies shows that to be the case. There are also structural remedies such as divestments. In some cases, that will be easier than in others. It is to restore the plurality. Ultimately, the absence or insufficiency of plurality is the problem here. The prize is that we have enough media sources and we have a plurality of voice and a diversity of voice. I do not think there is a situation where one identifies an insufficiency of plurality and does not try to remedy it.

**Baroness Bakewell:** So, Ofcom has this task, it is trusted with that task—and it is answerable to whom?

**Ms Davis:** Ofcom would refer to the Competition Commission. They would refer the issue to the Competition Commission to investigate, and in our world it would be for the Competition Commission to devise remedies.

**Baroness Bakewell:** I am interested about the point at which this might knock into the political world. We want it to be independent and not prone to any of these subterranean powers that Alan outlined. So, Ofcom are answerable to the commission.

**The Chairman:** I have a question arising out of your response to Baroness Bakewell. You bracketed plurality and diversity together. I am not sure that they are necessarily the same. If you take Monday morning’s newspapers, they are separate titles, but I bet a penny to the pound that every front page had Andy Murray’s victory at Wimbledon on it. That is hardly diversity.
Ms Davis: You are absolutely right in terms of content, but diversity of voice is different. It is more than semantic. Diversity of voice is different from diversity of content.

The Chairman: I happen to think that, if you have plurality, you are much more likely to get diversity. I do not think that it automatically follows, however.

Ms Davis: I would agree.

Q177 Lord Skelmersdale: You appear to find inadequacies in the current process for considering undertakings in lieu. Can you identify them?

Ms Davis: Specifically in the BSkyB-News Corp merger, the undertakings in lieu that were offered there gave cause for concern. I will deal with this in two parts. The first part was the actual process in which those undertakings were negotiated. There was an initial period in which the Secretary of State engaged with BSkyB’s lawyers, Allen & Overy, before then handing the undertakings in lieu over to Ofcom to negotiate. In competition law activity or actions, it is right that the undertakings are negotiated, and there will always be a period of negotiation with them, but we had concerns about that period, when the Secretary of State was engaging with BSkyB’s lawyers directly. From their point of view, as one can understand, the intention was to encourage the Secretary of State not to include Ofcom and the OFT in negotiating the undertakings.

Furthermore, and as was supported by Lord Justice Leveson, there was the idea that that should really have been done in the open—this speaks to the whole issue about media plurality not being completely on all fours with a competition law case: it deals with stuff that is of such importance to democracy that you want these things to take place in the open.

Lord Skelmersdale: Earlier, you were calling for a dual approach between the Secretary of State and Ofcom, but in this case you are going for exactly the opposite, are you not?

Ms Davis: I do not see that it is the opposite.

Lord Skelmersdale: What you are saying now is that there was this time lag—in your view inappropriate “behaviour” is perhaps going a little bit far—by the Secretary of State before Ofcom undertook the negotiations. Is that not what you are saying?

Ms Davis: I am not saying that there was inappropriate behaviour, but it is unfortunate, and it raises concerns that these negotiations of the undertakings in lieu did not take place in public, in the open and transparently from the outset. Perhaps I have failed to understand, but I do not see that that is the opposite from what we were saying before, which was that you could have both the Secretary of State and Ofcom triggering a review.

Lord Skelmersdale: I see. Tell me what happens in normal competition law. Say that you have a motor company, where UILs would be given in order for them to exercise the takeover that they dearly want to achieve. What happens then?

Ms Davis: There are negotiations with the authority.

Lord Skelmersdale: Indeed there are, but who does the negotiating? I am trying to get a parallel scenario, if you like, between other industries and the media.

Ms Davis: Yes, but the point that I am making is that this is of a different character and quality, because of the sensitivity around media mergers and the idea that they should be in the open. In normal, straightforward competition cases, I do not think that an all-fours parallel necessarily works, because of the sensitivities around plurality, particularly the sensitivities in this case.
It is absolutely right that the undertakings are negotiated. This is a business trying to come to something that is going to work for it. All that I would say—and I put it no higher than that—is that in the absence of that taking place transparently from the outset, we had concerns with those undertakings in lieu.

Lord Skelmersdale: We are saying that there is something particular about the media that requires transparency. Leveson, at the end of his report, says that the one thing that should take place from the moment of publication is that these private discussions between politicians and the media should stop, and that everything should be done transparently. That is precisely what did not happen. Immediately, the press started having private conversations with one party. I think that is what we are saying.

The Chairman: Is it possible to argue that one of the problems in this area is the fact that for reasons that were understandable at that time, the approach to dealing with issues of plurality was, to put it in crude terms, bolted on to the competition legislation that was in place at the time? Would it be better to start by looking at it from a slightly different perspective?

Ms Davis: That is right. Regarding the public interest test and the plurality that was shoehorned into the Enterprise Act, that takes you right back to the whole genesis of this piece of regulation and this legislation. That sits somewhat uncomfortably in the competition regime. It is not quite competition, but it is close enough, and we try to follow and apply the same rules. Actually, we are dealing with something of such a different nature that it is imperfect.

The Chairman: Do you think it would be worthwhile—if not, to go further, wise—to stand back and wonder whether that should continue: that Siamese twin relationship?

Ms Davis: My personal view is that it does not sit well within, and bolted on to, the competition regime.

Q178 Bishop of Norwich: I want to come on to the four key tests for the remedies or interventions that you helpfully set out in relation to the News Corp-BSkyB case: editorial, financial, commercial and operational independence. I wondered what caused you to focus on these four and how you would know that what you wanted in relation to each area of independence had been achieved. These are clear areas of independence that you would expect in relation to Sky News in the case in question, but I was wondering, in relation to each of them, how would you know that they had been achieved, other than just through assurances of one sort or another, which you might not trust?

Ms Davis: That is a fair challenge. In each case and in each situation where these remedies were applied, there would need to be a period to see whether or not these are being borne out.

Bishop of Norwich: So you would determine it after the event?

Ms Davis: To some extent. It works in order to enable us to say from the outset, “Have you structurally enabled this entity to stand alone?”. Essentially, that is what we were trying to get to. Can this entity stand and exist alone, free from influence, editorially, financially, commercially and operationally? In practice, we would need to stand back and ask, “Has that worked?”

The problem is that there is no case law and no precedent for this. The only other action in relation to plurality was in the BSkyB-ITV action, which was also a competition action and ended up with a divestment of some of the shares in that business. We do not have a body
of case law to see what this looks like and to see how it works in practice, but on those four key tests our thinking and our rationale was: how do you genuinely create a standalone entity?

**Bishop of Norwich:** Are they actually remedies or are they preventive? If I was Rupert Murdoch—I am not very likely to be—but looking at this lot, why would I want to take over Sky News if it was still going to be editorially, financially, commercially and operationally independent? It does not seem that there would be much in it for me. Would there be profit, perhaps? I do not know.

**Ms Davis:** One might say that that was the point.

**Bishop of Norwich:** In other words, is it preventive, rather than something that you would test after the event? If these were the tests, it would put off such a takeover in anyone’s mind. Is that what lies behind the test?

**Ms Davis:** No, it was not that. The tests were born out of our response,217 with the other news organisations, to the undertakings in lieu that we had seen were offered. That is where they came from. It genuinely was a response to those undertakings. It was that these do not offer a structural remedy that gives the sector confidence that this is a standalone entity. One extrapolated that to think, “Could they serve as remedies?”. Perhaps you are right in that this is where one is trying to get to with the remedy: if we felt that there was insufficiency of plurality. That is closer to where one is trying to get to.

**The Chairman:** I can see, given the way you have described it, and indeed the way the Bishop put it, that the thinking behind what you have said lies with the fact that the *Guardian* itself has a slightly unusual ownership structure, does it not? The great strength of the *Guardian* is that Mr Scott decided to devote his very considerable fortune to this particular project. It is not necessarily the case that you will find many other people who will look at it in quite this way. Is that a fair comment?

**Mr Rusbridger:** You could argue that that is what Mr Murdoch does with the *Times* and the *Sunday Times* or what the Lebedevs do with the *Independent*. History shows that there is no shortage of people who will step forward in order to try to enter the British media market. It is not exactly the same as the Scotts, as the Scotts gave away their ownership, but there are people who are willing to step into this space.

**The Chairman:** They tend, however, to be people of such wealth that, when they do it in the way that you have slightly implied, it is more like the gilded finial on their empire rather than the main body of what they are doing.

**Mr Rusbridger:** That is fair.

**Q179 Lord Dubs:** Sorry that I had to come in late. Just as a tangent to what you are saying, does it make any difference if the media are owned by people who are not resident in this country—or, put it this way, who are not resident in this country or in the EU? Do you think that foreign ownership—people owning papers here but sitting in New York or in the Channel Islands—makes a difference?

**Mr Rusbridger:** I do not think that it is something that we feel strongly about. We have a considerable presence in North America now, and also in Australia, so it would not befit us to lecture other people about that. If the Lebedevs, who are Russian-born and partly Russian-resident, want to come in and keep the *Independent* alive, that is good.

---

217 This response can be found in [GMG’s written evidence](#).
Lord Dubs: So you do not think that it matters if the proprietor happens to have a particular view about British politics, which he, as it were, imposes on his newspapers?

Mr Rusbridger: That is a different issue. If there is one person who has that much influence over that much circulation and you get a homogeneity of views in some ways through his papers, that is undesirable. As for the fact that he is foreign, as long as readers can see what is going on, it is up to them to respect that or not.

Baroness Bakewell: If you are indicating that the future of the press is likely to depend on rich individuals, and yet you are setting up a system of limitations and tests for them to pass, you are demotivating them, are you not? Are you not taking away from them the very things that they would seek as a reward for spending this money, if they have to face all these constraints?

Mr Rusbridger: I do not think that Murdoch’s motivation in buying Sky News was to influence the political agenda of Sky News. It was separately—

Baroness Bakewell: It is empire building, is it not? People build their empires and want them to go on getting bigger. Even you do that. Setting them about with many circumstances, I just wonder whether you are not changing the dynamic. I am with you in much of your argument, but it strikes me that you speak of these people as though they are eternally unchanging figures who will pour money into enterprise, but that might not be so.

Mr Rusbridger: They might not, but as long as they are they are there and as long as they behave as they have been able to do in the past, there have to be rules. If that is a demotivating thing for them, so be it, but the dangers for democracy of flipping the other way are so severe that you have to have the rules.

I think that everything that Murdoch said about Sky was quite the opposite. It was not about his personal influence on Sky—it was quite the opposite. His whole selling point was, “I have no influence. That is not my motivation. That was a purely financial thing”.

Lord Dubs: But he would have liked to own something like Fox in this country, would he not?

Mr Rusbridger: Yes, I am sure. If he had got Sky, the next battle would have been over weakening the regulation over impartiality.

Lord Dubs: Exactly.

Baroness Bakewell: But there would be an issue. You want diversity. You want lots and lots of newspapers and presumably a great tranche of different owners. I am just wondering whether, if you hedge about their financial opportunities too much, you might actually have less diversity.

Mr Rusbridger: You might do. At the moment, the Times, the Independent and the Guardian between them are probably losing about £100 million a year. People are not going to enter this market because they see a great financial opportunity. Referring to Lord Skelmersdale’s comments about paywalls, we are in an experimental period at the moment, and it might all look very different in five to 10 years’ time—in fact, it will look very different in five to 10 years’ time. However, during this period while it all shakes down, in 10 years’ time there might be a shorter queue to own these traditional media outlets.

There are great dangers at the moment in this thing, which is half on the old model and half on the emerging model, that the big beasts could still come and crush the life out of people because of the way in which the regulation works.
Q180  The Chairman: I have a small point that arises tangentially from what we have been discussing. Do you think that there should be a fit and proper person test for owning newspapers?

Mr Rusbridger: There kind of is at the moment, is there not?

The Chairman: You have one abroad.

Mr Rusbridger: It has not been used for a long time. I think the Bristol Evening Post was the last time it was invoked.

The Chairman: Do you think that is a good idea?

Mr Rusbridger: I do not think that we have a corporate view on that.

The Chairman: Fine, that is okay.

Mr Rusbridger: The criminal law is probably enough if applied to directors as well as to the people at the bottom of the organisation.

The Chairman: Fine, thank you.

Baroness Fookes: I wonder whether you could clarify for me the question of who does what in imposing remedies. On the one hand, you say that the Secretary of State should decide, following the advice of the regulators. On the other hand, you say that Ofcom itself should have powers to intervene directly. Could you explain that more fully?

Mr Miller: Our view is that the review should be undertaken by Ofcom, and the ability to investigate impartially should be that of Ofcom. However, given that plurality is ultimately about democracy and so on, it should be the Secretary of State who decides the method of how that is then invoked and followed through into remedies, based on recommendations from Ofcom.

Baroness Fookes: I am still not absolutely clear.

Mr Miller: Basically, the review is carried out by an impartial body, but the recommendations that follow from that review and how it is implemented sit with the Secretary of State, given that it is a review of plurality and essentially the democratic voice. It ultimately comes back to Parliament, through the Secretary of State, to decide how to interpret and implement the recommendations that come from the impartial body.

Baroness Fookes: Okay.

Q181  Lord Dubs: I have another question arising from what you have just said. It seems pretty alarming that the three best newspapers in Britain are losing £100 million. That puts them in an almost unsustainable position, does it not? Competition and plurality will suffer if there is any weakness in our three most important broadsheets. Is there anything in the environment that could improve the position? Is there anything that is holding the thing back? Perhaps this goes a bit wider.

Mr Rusbridger: This is a period of transition. We have always known that print is on a gradual downward path and digital is on an gradual upward path, but I do not think that anyone ever assumed that those two lines were going to meet neatly. As bad luck would have it, that moment of transition coincided with a world economic crash.

From about 2008, all newspapers that look a bit like the Guardian—the Frankfurter Allgemeine, the Süddeutsche Zeitung, Le Monde, El País, the Washington Post, the New York Times, or wherever you turn in the world—were all hit by a series of market forces, economic
recession and technological change, with people moving their advertising from one medium to another. That has been a very difficult transition. We are all seeing different ways through it. Lord Skelmersdale refers to the Times paywall, which is one model. Ours is, in a sense, the opposite, so we have an approach to open journalism that I think adds considerably to diversity, because we allow many more voices into the Guardian than would have been there in the past. We have a business model that we are currently beating, which gets us to comfortable sustainability within five years. If we succeed as we are at the moment, you will not have to worry about the Guardian—we are going to be fine.

Lord Dubs: Thank God for that.

Mr Rusbridger: It is going to be a difficult transition, and you are right to worry, because although we are beating our business model at the moment, it is a very uncertain time for journalism.

Mr Miller: The perverse thing is that news has never been consumed by as many people at all. In the plurality sense, news is being consumed even more broadly because of the opportunities that are created around the internet. We are read by 12 million people a month in the UK, on an objective basis, across all devices. The challenge to us as media owners is to find the new business model rather than spending our time whingeing and protecting an old model. Plurality has to play a very important part in that, so that we find our way through.

Lord Dubs: I have you on my tablet here.

Mr Rusbridger: The Guardian is tucked in just behind the New York Times now. To think that the Guardian, with its Manchester roots, the ninth biggest paper in the UK, is now vying with the New York Times for dominance among newspapers on the web, that is a huge British success story for exports in a way. That is why we have some optimism, although there is still a delicate thing in which just over two-thirds of our income—or about 70%—is still in print. The next five years are going to be very delicate ones.

The Chairman: That is for sure.

We are now drawing to the end of our discussion. Thank you for that. Is there anything else that you would like to say to us that we have not touched on but that you think is important?

Mr Miller: No, thank you.

Ms Davis: I have nothing to add.

The Chairman: I thank each of you very much indeed. We are extremely grateful for your thoughts.
Examination of Witnesses

Rt Hon Harriet Harman QC MP, Shadow Secretary of State for Culture, Media and Sport and Shadow Deputy Prime Minister, and Ms Helen Goodman MP, Shadow Minister for Culture, Media and Sport, with specific responsibility for media reform

Q298 The Chairman: Can I extend a warm welcome to Harriet Harman and Helen Goodman? Before we start, could each of you introduce yourself?

Ms Harman: I am Harriet Harman, Shadow Secretary of State and Deputy Leader of the Labour Party.

Helen Goodman: I am Helen Goodman and I am the Shadow Minister for Media and the Arts.

The Chairman: Thank you. First of all, if either of you want to make an opening statement, please feel free to do so. As far as the questions are concerned, please bat them between you in whatever way you would like.

Ms Harman: Thank you very much, and thank you very much for inviting us along to give evidence.
The Chairman: You will be off in a moment.

Ms Harman: I think we had better run down and vote.

Sitting suspended for a Division in the House.

The Chairman: You have obviously dashed back from participating in the democratic activities of the nation. Thank you. If we can then start all over again, is there anything you would like to say as an opening statement or shall we go straight into the evidence?

Ms Harman: Perhaps I could say a couple of words.

The Chairman: Of course you may, yes.

Ms Harman: Thanks very much for inviting us to come along to this investigation that the Committee is undertaking because it gives us the opportunity to say that the work that is being done is very important. It is pivotal to something happening at the end. We all know that for a long time people have felt that things need to be changed and they need to be sorted out. Various events, including Leveson, have given us the opportunity, possibly, to make some change against the background of huge change in the way the media works and the internet, but it is difficult. I think that the work of the Committee, coming as it does now just a bit ahead of the DCMS work and in much greater depth, with very good, broad terms of reference, is pivotal to whether or not we all just stand back doing as we have done for the last 25 years, wringing our hands and saying, “It is not right but there is nothing we can do about it”, to where we might be in a position to build a consensus to tackle something that is hugely important to our democracy but also very complex and very changing. We have come along to say no pressure but a lot really rides on your work. The evidence that has been gathered and the process that you are applying to it is incredibly important.

The Chairman: Thank you very much. That is a nice place to start. You mentioned the evidence we have had. We have had over 300 pages of written evidence, 25 oral witnesses, and almost every possible perspective on the topic has been given to us and explained to us. Do you think there is anything that is likely to emerge as a kind of reasonable set of recommendations, or do you think it is absolutely inevitable that whatever we, and for that matter any successive Government, may come up with in this area, it is going to prove to be pretty controversial?

Ms Harman: It is difficult and challenging, but there are differences that can then build into an agreed solution. I think it is like that. I would not want to underestimate the technical and policy challenges, but I do not think it is an impossible task at all. It will not be uncontroversial. The other thing is that quite often in many of the things that have come forward from people who have given evidence to you is there is not so much a right and a wrong. Each proposal has some upsides and some downsides. The point is to try to work out where the best answer is and then have a process whereby everybody has contributed and all chewed it over. Then you are in the right place to come out with the answer. There is no perfect answer, but there is no real justification to stay with the status quo. I think you can do it and come out with it without everybody being heated and atavistic about it.

Helen Goodman: Can I add a couple of things? Obviously the fact that the Secretary of State has issued a consultation document shows that she is also thinking about this and thinks that this matter is worth considering. She asked some very pertinent questions in her consultation document. The Committee might also want to think about the views of the
general public, because we know from, for example, a YouGov survey that three-quarters of the British population do think that this is an issue that needs to be addressed. That is something that all the political parties have in mind.

The Chairman: Do you think it will evolve? I am tempted to say “come out in the wash”, but that may be perhaps too relaxed an approach.

Ms Harman: I think that because it is difficult technically and because there are a lot of different ranges of views, there needs to be an epicentre for bringing it together for creating the outline. You are slightly ahead of the DCMS on this and you are cross-party, which I think is quite important. You are doing it in slightly more depth, so I think yours is the next step, and then hopefully the DCMS will take forward what you have said. Hopefully it will include your saying that if this is to be sustainable, it does need to be a cross-party issue. If you are dealing with things that are quasi-constitutional, which this is, it is much better to have a cross-party approach. If you want it to be sustainable to give some certainty to the industry, then you definitely want a cross-party approach that will sustain beyond changes of Government. We think that the most important thing is to work cross-party on this rather than have it as a dividing line to fight on the next general election. Otherwise, that is just a recipe for the status quo.

Q299 Baroness Deech: Before I get to my question proper, what Ms Goodman said reminded me of something. I saw a YouGov survey—I am not sure if it is the same one—that said that 75% or 80% of the population approved of press regulation as currently available. Perhaps it is a different one. I was just thinking, “Let us imagine that there is a newspaper that is read by millions, is very powerful, and is behaving in a way that the Government do not like and maybe that the population at large does not like”. Is the answer regulation or a plurality policy, or both?

Ms Harman: Rather than looking at it by way of regulation or not regulation, I think it is about promoting plurality and diversity and guarding against monopoly. I do not regard the complaints system in the first part of Leveson as regulation either. I regard that as redress for complaints, but I seem to be the only person making that argument, which is not usually a good thing since the terms of reference say regulation and the big heading on Leveson is regulation. I think, truly, that it is about redress for complaints. This is not about regulating the broadcast media or regulating newspapers; it is about having a proper regime for guarding against monopoly and too much power, which is bad in any market but is particularly pernicious in the market of communications, and about providing that space for plurality and diversity, which allows for the policies to promote that to have some space to operate in.

Baroness Deech: So your answer to my question is: what is the purpose of plurality policy? Is it to avoid too much power per se?

Ms Harman: Except that you could be avoiding too much power without having a plurality policy, an active diversity and a plurality policy. Probably it is a good idea to have both.

Helen Goodman: Ofcom put in some rather good evidence on this. They have pointed out that there are really two legs. One is the prevention of monopoly, which is about avoiding having over-mighty subjects, particularly in this area. We are going beyond an argument about competition in the market to an argument about plurality in a democracy. The second argument is about ensuring that citizens have available to them a wide diversity of sources of information and that gatekeepers are not in a false way narrowing the choices available to people.
Baroness Deech: Is the importance of those gatekeepers in the media because of the influence they have on the readers, or possibly on politicians, or is it because of their economic domination of the market? In other words, what exactly is it that is wrong that has to be addressed by a plurality policy?

Ms Harman: All those things, really. You have seen from the evidence given by David Cameron, as well as Tony Blair, the sense of the kind of over-mighty media empire with them looking over their shoulder. Do you want to add to that?

Helen Goodman: Yes, I think that is right. Obviously we already have a competition regime that operates, but what we are looking at is seeing ways of strengthening the plurality aspect of it, which up to now people have been very hesitant to examine.

Q300 The Chairman: Do you think there has been capture by the media of both Government and political parties, or do you think we have not got that far?

Ms Harman: I think that if you have one man effectively owning 38% of the circulation of the national newspapers, even if that person asserts that they are not attempting to override the elected Government or Parliament, that perception takes root in the minds of politicians, who after all have to get elected by the people who are receiving all the communication to the extent of 38%. I think it is too much. It unbalances the system.

Baroness Deech: Would you include the BBC, because their audience and possibly influence greatly overshadow any figures you have mentioned so far?

Ms Harman: I think the BBC is in a very different position from a newspaper because they not only have obligations for impartiality but have a very highly regulated regime. What we are talking about is newspapers that are allowed editorial independence and freedom, and that is a different situation from the BBC, which is highly regulated.

Lord Skelmersdale: What about ITN? It sounded as though Ms Harman was discounting television in general in her remarks.

Helen Goodman: I think it is important to distinguish between two things. One is that at the point at which we are examining shares in the market, of course we want to take into account the BBC because it has a very significant share, as Baroness Deech just said. What we think about the BBC is that because it has different governance arrangements, any remedies that need to be taken do not need to apply to the BBC in the same way. The BBC operates through a charter and through the trust and has accountabilities to Parliament, and the same issues do not really arise with the BBC as arise with other large media organisations.

Lord Razzall: Supposing BSkyB won the contract to run the news for ITV, Channel 4 and Channel 5, which of course ITN currently have, would you think that would raise plurality issues?

Helen Goodman: We already have rules about the Channel 3 television licences and the newspapers, do we not? I do not think that to say that—

Lord Razzall: No, but you would have one person providing the news for everything, for all the major channels other than the BBC. You would have one company doing it, as ITN do currently.

Helen Goodman: I would like to draw a distinction between ITN in its wholesale role as the company and the different broadcasters that have the editorial responsibility. I think the current situation is acceptable because the editorial responsibility lies with the broadcaster.
In the eventuality that you are describing, obviously it is something that one would want to look at.

Lord Razzall: Yes, the ITN answer is because their contractual commitment with ITV, Channel 4 and Channel 5 is such that each of those brands wants to have a different sort of news so they do not provide the same sorts of news. But we are relying on that contract rather than any form of regulation of that.

Lord Clement-Jones: Which provides for the channels to whom the news is supplied to have editorial control, basically.

Lord Razzall: Yes.

Helen Goodman: Yes, exactly.

Q301 Lord Clement-Jones: But is the concern you are describing not really more exacerbated in the case of the local media? I declare an interest: I am chairman of a local media company just over the hill from where Helen Goodman is MP. Indeed, my cousins own the Teesdale Mercury.

Helen Goodman: The great Teesdale Mercury.

Lord Clement-Jones: There you have probably in most constituencies one local paper and the BBC and possibly an independent radio station. That is, in a sense, at one level a very serious problem. On the other hand, if you tried to introduce much plurality there you would end up with all newspapers going bust.

Helen Goodman: Do you want to say something about that?

Ms Harman: I think that the issue has particularly come to the fore because of the national media. We are in a quite unusual situation as a country in that we have very strong national media as well as local media, which provide a local newspaper role that is, in many ways, often quite different. Obviously, we are very well aware of the difficulties that they face. Indeed, that is why in the Leveson royal charter we have changed the arbitration system. We have a distinctly different regime that applies to local papers. Yes, it is a difficult circumstance for them, but I think the main thing is to get the situation right within the sector at national level and across media.

Helen Goodman: We have been thinking about ways in which we could support local media, because obviously people want to be informed about their local communities. There is a democratic accountability issue about the reporting of the courts, the reporting of local councils, so local media are extremely important. One possibility that has been floated is the possibility of enabling the local newspapers, if they are under severe economic pressure, to be deemed local assets under the localism legislation. Clearly, they do play an important role in local communities, especially in Teesdale.

The Chairman: It sounds like it. Is the problem with that not going to be that the local newspaper will stagger on probably for so long that it is really dead commercially, full stop, or do you think that potentially there will be enough good will to refinance the thing?

Helen Goodman: There are some interesting examples around the country. Some of the large chains, which have bought up a number of newspapers, have been extracting very high returns of 30% or so. Clearly, that is not sustainable, and we can see that is not sustainable if we look across at other economic sectors. But there are some places—one in south Wales, one in Port Talbot I think, and one in Camden—where they operate on a co-operative
model and are not having so much equity extracted from them every year, yet they can remain completely commercially sustainable and perform a useful public function.

The Chairman: It was about three years ago when the *Camden New Journal* came and gave evidence to us and it was very interesting. You are absolutely right. The key to its success appears to be that money is not drawn out of it. All I can say as chairman of a local newspaper group is that I wish we had been able to pay a dividend during the last three years.

Q302 Lord Skelmersdale: This is not a complaint, by the way. Although we have not received written evidence from you, reading the runes of what you have been saying lately to and on Leveson, the Charles Wheeler lecture and to the press, I think you believe that there ought to be a single media market where thresholds trigger public interest obligations and caps, perhaps triggering a more nuclear option. This fits in with the evidence we have had from Enders, for example, who believes in a 15% cap. First of all, have I read the runes correctly? Secondly, what approach, in a nutshell, do you advocate?

Ms Harman: I think you have read the runes correctly, but I do not think that they are—if this is not to mix the metaphor—tablets of stone. I do think that it is helpful to create certainty but also to guard against pressure being brought to bear that is difficult to withstand, to have actual limits that are there and clear in law rather than having triggers that then prompt haggling. That is the suggestion: that there should be clear lines.

You can either have one line or you can have two lines. One line is simpler because everything below that line is fine, everything above that line is impossible, and you have to have divestment. I do not see divestment as a nuclear outcome; I think it is just divestment. The attraction of having a lower line and an upper line, if that is what you end up thinking it is, is that it provides you with the opportunity to do something between the top and the bottom line, which is not about leaving everybody to their own devices or about requiring divestment. It just gives a little bit of flexibility. It might be more trouble than it is worth, but it seems appealing to us and it provides a zone whereby you know you are operating where—yes, I think those are the arguments about the upper and the lower and about being quite specific.

Lord Skelmersdale: Are you not immediately opening up an argument as to where the cap should be?

Ms Harman: Absolutely. I think the argument about where the cap should be is well and truly joined. We are looking at the evidence that is coming to you and how you are going to deal with that, because at some stage there has to be a decision about where it is. There are pluses and minuses, but I think there is a big downside of not having that clarity and allowing it to be too high.

Lord Skelmersdale: Which markets would you apply it to, across the board or limited?

Ms Harman: I think we have seen that if you just deal with cross-media ownership and you do not have something that can look, for example, within the sectors, you can have a problem. Obviously, the News Corp-BSkyB issue was triggered by the fact that it was cross-media but, as I have said, 37% of newspaper circulation in the hands of one person, even if there was no owning of broadcasting, would be a problem. I think the answer is it has to be within the sector because newspapers are very influential. Even though they are very up against it financially and are finding things very difficult, they still are very influential.

Lord Skelmersdale: What about the internet—
Q303 Lord Razzall: What do you say to people who argue against caps that the problem is that they penalise success? Somebody could be hugely successful because of what they do and everybody else could be unsuccessful, and they are penalised for that success without acquisition or without doing anything else.

Ms Harman: But in a way that is an argument you come up against in relation to any policy against monopolies. If somebody is frightfully successful and manages to get 100%, you then have a situation where the market is not working. I would just apply the general argument.

Lord Razzall: No, but the monopoly argument or the competition argument works in relation to abuse of that dominant position. The plurality test is purely about size if you have caps. I sympathise with your point of view, but I wondered what your answer was to those who say you are likely to penalise success.

Ms Harman: That is the price that is paid for making sure that you have space in the market and that you do not have over-mighty power in something that is so important for democracy. Is that what you are thinking?

Lord Razzall: No, the argument that was put against caps from one of our witnesses last week is that the problem is potentially, in theory, that you could penalise success because without anybody doing anything other than just being successful they could have a much bigger market share because other people were doing badly. They have done nothing other than be successful, without any abuse, without anything, and because of their success they get a bigger market share. This may be a theoretical argument, but that was the argument against caps that was put to us last week.

Ms Harman: But it is not success in terms of a public interest outcome. It might be that they have been successful—

Lord Razzall: No, financial success.

Ms Harman: It might be successful in how they have gone about their business, but if there is a downside to that then that is the framework within which they would be required to operate. They could be successful doing whatever it is, but up to a certain point. There may be changes in the market. Obviously if you wait for an event such as a takeover you can miss organic growth. I think it does need to take organic growth into account. I can see the point about penalising success, but there is a responsibility, I would have thought, to make sure that something does not grow too big, even if it is not their fault they have grown too big.

Q304 Baroness Bakewell: You were remarking about the caps issue and that that battle was already engaged. Who do you think the main protagonists are going to be?

Ms Harman: I do not mean battle in terms of—

Baroness Bakewell: Well, the argument.

Ms Harman: No, I mean the intellectual battle and discussion, because there is how you measure it as well as where you put it. I mean that the intellectual battle is joined.

Baroness Bakewell: In terms of ideas.

Ms Harman: I do not mean that the big behemoths are fighting over it. I think there is important work to be done.

Baroness Bakewell: How broad do you think the intellectual divisions will be? Are they more or less round a consensus, or do you think there are extreme views out here that will have to be drawn into your consensus?
Harriet Harman QC MP and Helen Goodman MP – oral evidence (QQ 298-311)

**Ms Harman:** I do not think it is our consensus. I think it is yours.

**Baroness Bakewell:** Well, the consensus to which you aspire, the consensus to which we all agree we aspire.

**Ms Harman:** You mean: where do we want the consensus to end up?

**Baroness Bakewell:** Where it might end up.

**Ms Harman:** I do not know where it might end up.

**Baroness Bakewell:** Are there libertarians out there who just say, “No regulation, no regulation.”?

**Ms Harman:** Yes, of course there are.

**Baroness Bakewell:** Do you give them every credence?

**Ms Harman:** No, because of the arguments that I think do hold sway. There is a consensus around the agreement that this is very important, that the current framework is not right, that it is a very big changing background and that makes it even more complex and challenging, but that we need to make sure that we do what we can to prevent monopoly and protect and promote diversity and that we need some numbers. Otherwise, we will not solve the problem by creating certainty because we will just create haggling. We need numbers in the legislation.

**Helen Goodman:** Even the Swedish Pirate Party wants some rules of the game at an international level. That leads me on to remind the Committee of something I am sure you are perfectly aware of. We do also need to think about the increasing convergence of different platforms and the growth of new media and look at what is happening there. As we explore this area of policy, that is something we think definitely we need to embrace in it. For example, apparently 41% of people sometimes go online to get their news and a fifth of those people are using Google News. A fifth of 40% is a very small number at the moment, but it is on a very steep upward trend.

I think that means that we do need to start asking questions about the behaviour of those companies as well. How transparent are their algorithms? Are their algorithms truly open or not? Is endlessly steering people back to what they have looked at before being an open gatekeeper or a closed gatekeeper? We know that they have had to answer for their behaviour to the commission about promoting their own products as opposed to other people’s just on competition grounds, so that part of the forest does need to be part of the examination.

**The Chairman:** Do you think the European Commission’s views on developing a European aspect to plurality policy is a direction in which we should go?

**Helen Goodman:** This is not something that we have discussed and come to a view on, but obviously these are international markets. Competition policy is held by the EU, so not to discuss it with our European colleagues would not make any sense at all.

Q305 **Bishop of Norwich:** We have already touched on this. It is to do with the scope of plurality policy. Let me try to be clear. You really do want the policy, if I have understood it correctly, to focus on news and current affairs rather than going much wider. If that is to be the case, how do you determine market share? The great virtue of the Enders approach in an age of media convergence and so on is to look at the whole of media market share. That is what she was talking about. That is where the 15% came from. How would you focus the dominance in news and current affairs if it was to be looked at more widely than simply...
newspaper circulation alone? That in a way seems to belong to an old world that Helen has already said is passing away.

Ms Harman: The Enders formulation has a lot to recommend it, but just because the newspapers are in difficulty and are themselves predicting that they will soon not be operating in the way that they are at the moment does not mean that we should not recognise what the situation is now and have a good application of preventing monopoly as things are now. I think you have termed it a hybrid model where you have cross-media and within sectors, which might well be the answer to that.

Bishop of Norwich: But it has also been argued by some of our witnesses that it is not simply news and current affairs; it is drama, satire and all the rest in relation especially to broadcasting, which is rather more influential with people than necessarily the editorials in newspapers.

Ms Harman: But the Enders methodology would understand and capture that.

Bishop of Norwich: So you would go with that?

Ms Harman: Yes, unless you came up with a better idea.

Bishop of Norwich: Right, a vote for Enders, then.

Ms Harman: That is quite genuine. This is not tablets of stone and we should not rule it out. It is very good to have people coming forward with good proposals, but they need to be sorted out and somebody at some stage has to get a grip of it and say, “It looks like we are all about here”. That will help the DCMS and we can all work together on it.

Helen Goodman: Can I add a point on measurement? The Enders approach of looking at revenue is a good approach for cross-media where it is very difficult to decide how to compare half an hour reading the newspaper with half an hour listening to the radio. That does not mean that we would necessarily need to use that approach. You could use a more traditional market share based on time spent or circulation or whatever within the markets.

Bishop of Norwich: Some of the evidence that we have received suggests that if you look at the market as a whole, the time spent reading newspapers, listening to the news and so on is 60% the BBC and rather a small element in relation to News Corporation and the Murdoch world in terms of time-consuming news and current affairs. If you went on that sort of model of consumption, it would be rather different from just looking at circulation figures, for example.

Helen Goodman: I think the point is that people are concerned about dominance across the board, and the Enders approach of looking at revenue provides a good way of making a comparison, which is putting every medium on the same footing. But I think people are also concerned not just to have one newspaper and not just to have one television channel. We need to take account of that as well.

Bishop of Norwich: Apart from the BBC. We are discounting the BBC in relation to this, are we? If you do not include the BBC in terms of what people receive—and it is, of course, highly regulated—then you are talking about a minority of the market in news and current affairs, according to some of the statistics we have received.

Helen Goodman: The point we were trying to make—perhaps we were not making it clearly enough—was that when we are measuring we want to include the BBC because obviously it is a major actor and has a very significant impact on people. What we are interested in is the impact on real people of what is going on in the market. Then we take a different perspective when it comes to the remedies and how they should be applied.
Q306 Lord Dubs: I think I know what your answer to this may be because you have come very close to answering it, but some of our respondents have argued for a shift towards positive promotion of diversity rather than focusing on the prohibition of mergers and establishing a floor level for media concentration because they think that is unlikely to be effective when the economic base of the mass media is fast eroding.

Ms Harman: Is that the point about whether you have to choose between whether you focus on tackling monopoly or promoting diversity?

Lord Dubs: Almost, yes.

Ms Harman: I am not sure whether I know what I mean by zero-sum game, but I probably think that it is not a zero-sum game. Should you not be trying to deal with both? Why should one preclude the other? They are both ways of achieving the same objective.

Lord Dubs: If you are saying that you can set a cap and at the same time promote diversity, then your answer, of course, is yes.

Ms Harman: Yes, and one of the possible benefits of having a lower line and a top line is that the public interest obligations within those two lines could include things that help promote diversity.

The Chairman: Do you have any ideas about how you promote diversity? I suppose writing out a cheque may be one of them.

Helen Goodman: Yes. At the moment in television we are already promoting diversity. We require the PSBs to source 25% of their programmes from independents, to put a certain proportion of their production outside the M25. There are things that we can do that are not taking us to a place where we have not been, in fact, for the last 30 years. Take the establishment of Channel 4 and the particular remit that Channel 4 has. That itself is strongly committed to diversity.

The Chairman: You have the broadcasters that operate by virtue of a licence. In the age of the internet, and in the past in the age of newspapers, you did not need to license these suppliers of media products. Therefore, the instrument, the hat on which you would hang these positive requirements, does not quite seem to be there. It would be quite a brave person who said we should impose a series of positive obligations in any extensive way on the printed press, and I am not sure if you could do it on the electronic media.

Ms Harman: Your space for doing that, as I say, is between the top line and the bottom line. The question is whether you could construct something that is sufficiently legitimate, but that is your space to do it because you are allowing people to go over the bottom line and still operate but on certain conditions.

The Chairman: Yes, I got the argument and, perfectly fairly, you have not worked out the detail.

Ms Harman: I think the detail is quite difficult to work out because we can all think of examples that could then be quite problematic, so we are staying at the conceptual level at the moment. I would not want any example I gave to kind of—

The Chairman: I would hate to be accused of pushing you in a direction you did not want to go.

Ms Harman: I do not want to derail the argument by using an example that then makes people think, “We do not like that example and therefore it is not a good idea”.
Lord Dubs: May I follow that up? Perhaps you will give the same answer. If we go back to the bottom line, how do you think that should be set? There are a number of ways of doing it. It could be in terms of revenue, audience share or whatever.

Ms Harman: It could be different for cross-media than from within sectors. You have had people proposing that there should be a bottom line of 20% and a top line of 30% for the newspapers. Enders, as we have said, says 15% across—Enders is measuring revenue whereas the newspapers are looking at circulation. I think there are lots of methodological issues here. When I say they are complex, they are probably not that complex. They just involve a choice at some point and looking at the upsides and downsides. In a way, it is difficult because there are quite a few choices, but at some stage everybody collectively has to get off thinking of the range of options and discussing them all and just go snap on a group of them.

Q307 Lord Clement-Jones: Just to keep kicking the tiles, really, on the thresholds issue—it is a slight variation on the success theme but is just slightly different—it has been put to us by quite a number of witnesses that fixed thresholds are unsuitable for markets as dynamic as the media. The exit or decline of one company is inextricably linked to the increasing share of others, for example. It does seem possible with fixed thresholds that relatively arbitrary conclusions could be reached about the plurality concerns raised by a company between one day and the next, with inevitable consequences for innovation and investment.

Ms Harman: That is obviously a very clear argument, but the downside of not having fixed, clear lines is that you can then find yourself in a situation where you are not sufficiently in a strong enough position to stop the accumulation of the power. The danger is that you leave it open to pressure and that it is therefore much better to have fixed lines, although they do have downsides. The difficulty of not having fixed lines is that those who are building up power are then in a position to exercise that power and you are not able to have a framework in the way that you want it to be.

Helen Goodman: Indeed, from their point of view, if you have fixed lines you have more predictability, so the authorities cannot behave in a way that they might perceive to be capricious.

Lord Clement-Jones: At the end of the day, if you do have concerns about the economic impact or impact on innovation or investment, is that a price worth paying in order to get plurality?

Ms Harman: I think the cost of allowing a monopoly is too high a price to pay and I would look at it from that way round. Therefore, you should not allow that to happen and you need fixed lines.

Baroness Bakewell: You will know that in a creative world there are huge breakthroughs that change the destiny of companies. The invention of “Big Brother” had a transformative effect, which of course led a lot of other people to copy that kind of thing. Given that that represented a huge success and a huge growth in the regime of that company, it is quite difficult to say, “What a pity you made such a success of something because it has landed you over this line”.

Ms Harman: That is the same for any argument in relation to competition. I am sure that they felt the same in relation to the airports. That is the problem with any structure that seeks to keep a balance within the market.
**Baroness Bakewell:** What I am saying is that we should be trying to find a way of ameliorating the pain or the contradiction of that. Is there not some way in which one can ameliorate it? I cannot think of one but I think it is worth exercising our minds on what you say to people who have done something like that. Airlines and airports are big, hard stuff. Ideas are tender plants and we want to see them flourish rather than crush them at a certain point.

**Helen Goodman:** It is not clear, though, that large media organisations are the places with the most creativity. The smaller independents, I would suggest, have in fact been extremely innovative. I am not convinced that protecting monopoly is a way of protecting innovation, invention and creativity.

**Lord Razzall:** Indeed. “Big Brother” was created by an independent company. Channel 4 distributed it.

**Baroness Bakewell:** Yes. I am only inviting you to say that we also need to protect ideas. That has to be part of the mix somewhere that ideas are what makes civilised—

**Baroness Deech:** If you have a new tough plurality policy now and it coincides with press regulation—maybe you want to call it complaints—are the public not just going to say, “The Government do not like the popular media. They are cracking down in all directions.”? There is an unfortunate coincidence here, I think.

**Ms Harman:** If it is characterised like that, I think that we would have to argue against that characterisation, because I do not think that providing redress for complaints where the press breached their own codes is an anti-press thing.

**Baroness Deech:** That is not how they see it, of course.

**Ms Harman:** Will that argument be made? Possibly. Is it justified? No, I do not think it is. We are trying to make some progress to provide a proper independent press complaints system. After all, there have been so many times after scandals when the press have said, “Do not worry, we will sort it out and we will do it right this time”, and then it slipped back. All we are trying to do is make sure there is no slipping back by having a mechanism for checking it once every three years.

What we should not do is allow the fact that we are engaged in that to then make us think that we should not deal with this issue. Far from it. The cross-party working that arose out of the discussions around the royal charter was Back-Bench cross-party working as well as Front-Bench cross-party working. I think we can keep that zeitgeist going in order to build on the work that is going on and deal with the question of ownership.

**Q308 Lord Clement-Jones:** Finally on this section, you were talking quite a bit earlier about market power and so on. We had a master class from Professor Cave in our earlier session on the difference between competition aspects and plurality. Is it necessary to have all these thresholds, blocks and caps and so on in the light of the fact that competition policy is the area of policy that addresses economic and market power but plurality is a rather different animal?

**Ms Harman:** I am not sure I know what the question is. Basically, have we not argued that competition policy is fine as far as it goes but that when you are dealing with the media you have additional considerations around communications and our democracy? Therefore, you have to have a particular framework in addition to that.

**Lord Clement-Jones:** Yes, but if you have competition law, do you need to have thresholds and so on? The competition law already deals with market power in those...
circumstances and choice, not of opinion in the plurality sense but nevertheless in terms of economic power.

Ms Harman: But do we think that the current competition regime has proved itself to work in respect of media ownership? I do not think it has. Whereas you can have a level that triggers in relation to competition, it can be higher than you would perhaps want to afford in the media, and you can have triggering a further process rather than definitive lines. The problem with that has been evident, so you need definitive lines rather than triggering a further process.

Lord Clement-Jones: Yes, I am with you. Do you want to add to that?

Helen Goodman: All I was going to say was that had it not been for the phone hacking scandal, the News Corp-BSkyB merger would have gone ahead and had been cleared by the European Commission on competition grounds. There was widespread opinion across both Houses that that would have been unfortunate.

Q309 Earl of Selborne: To go back to the public interest obligations and the threshold that will trigger them, we have been told by a number of witnesses that public interest obligations and behaviour remedies may be an appealing idea but difficult to agree, monitor and enforce. Could we be clear how these obligations are to be made to work without any discretion involved? What sort of obligations do you have in mind, and what would trigger the imposition of each obligation automatically if there is no discretion? Who would administer and monitor them, and how would you ensure that they are seen as proportionate?

Ms Harman: The discretionary point goes to the fact that over the bottom line there would be no discretion but a range of public interest options would be considered. Basically, there would be discretion as to which of those public interest objectives would be chosen, but there would have to be some. That is where the extent of the discretion would be. I think they would be difficult to shape, enforce and monitor, but it is worth trying to work out whether that is possible. I do not want to say, “Here is how it would work and it would definitely work and everybody would agree with it”. It would have to have legitimacy, but it is worth trying to see whether that is possible for the sake of the gain that you might get.

Earl of Selborne: You say there would be no discretion, “but”—so can we be clear about what the “but” is? Does the Secretary of State have discretionary powers and, if so, what are they?

Ms Harman: That begs the question as to who is going to be doing it, whether it is going to be the Secretary of State or someone else. I know that one of the issues you have been looking at is how much should fall to the regulator and how much should fall to the Secretary of State. Perhaps I should mention at this point that I think that just having regulators without any political accountability can be problematic, but just having political decision-making without any professional regulatory input is problematic. The key will be to get both engaged, not to push out Ministers but to get them engaged at the right place in the right way. I know that Jeremy Hunt said at the end of the Leveson inquiry, “It is just hopeless. Ministers cannot be engaged because it is impossible”, but you will see what Ed Miliband said. He said that he thinks there is a role for Ministers but that it needs to be absolutely clear and to be appropriately circumscribed. As to the point about how it is done, I should imagine that at that point we have to consider a range of options that might be available for the regulator to do it.
Earl of Selborne: If there are a range of options, would you be willing to concede that there might be flexibility on the threshold, for example? We have just had an example of how a bright new idea has boosted the fortunes of one particular media company. Would that necessarily, therefore, trigger this threshold?

Ms Harman: The reason why I am appearing to be inflexible about having flexibility around the lines is because of my scepticism of the ability of those, whether they are regulators or Ministers, in the face of media power to feel robust enough to get a fair settlement on a day-by-day basis. My sense is that you need the lines drawn. There are downsides to lines being drawn, but there are much worse downsides to having all the pressure, the arm-twisting and the building up of the power that then operates in a bad way. It is a downside, but I cannot see that the option not to have it takes you away from where we are right now anyway.

Baroness Fookes: There has been a great deal of concentration on regulation and what form it should take, but I want to pursue a point initially raised by Lady Bakewell on the encouragement of creativity and good ideas. How can we encourage the media to offer a better service to the consumers of that service? I think that perhaps you, Helen, had some ideas on this.

Helen Goodman: British television in particular is very good and it is interesting that it is very good because it is a mixed economy. We have the BBC, we have the commercial public service broadcasters and we have a lot of small, private independents. It is interesting that you have an ecology with large organisations, small organisations, organisations subject to one regime and organisations subject to another regime. I think that tells us that having some standards can really help the media. It is one of the reasons why British television is quite a lot better than television in many other European countries.

Baroness Fookes: Are there any other points you would like to make on this? I am trying to look at the positive as well as the negative.

Helen Goodman: In protecting and promoting the creative industries generally, it is really important to have a proper intellectual property regime so that the incentives exist for people to make new things and to make money out of their product. That is all part of it. It is not part of your inquiry this afternoon, but obviously if one is going to get the whole thing right we have to address that as well.

Baroness Fookes: Yes, that is a useful and helpful point to make. Even though it may go slightly beyond our remit, nevertheless, as you say, it is an important point and does have a bearing on our own work.

The Chairman: Lord St John, I think we have covered much of this.

Q310 Lord St John of Bletso: Yes, you have already covered my question because clearly there are several options as to who should intervene in the public interest, more specifically on decisions going to divestment and the imposition of an obligation: should it be Ofcom, should it be the Minister or a special plurality commission? You said there should be a mix between the two, Ofcom and the Minister. In fact, the Leveson hybrid was that the Minister is obliged to accept the regulator’s advice. What do you think is the best option? Could you possibly elaborate on that?

Ms Harman: When Ed Miliband was giving evidence to the Leveson inquiry, he said that if the regulator disagreed with the Minister, it would have to be subject to appeal. Again, there are no tablets of stone about how Ministers and regulators both play into this system, but I think it is a question of rendering unto Caesar what is Caesar’s and making sure that each
are playing their proper role. It is definitely a hybrid, but the hybrid can take quite a number of different forms and be all right.

**Lord St John of Bletso**: Do you think that Ofcom has the right mix of competence and accountability?

**Ms Harman**: Yes, I think it does and it is there already. I thought the evidence that they gave to you was very comprehensive. They are in the right zone.

**Lord St John of Bletso**: Taking it a bit further, some have argued that there is an increasing role for Europe to take on matters of public interest and media plurality. How far should European competence in this area go?

**Ms Harman**: I think we should decide what we want to do here. Obviously we have to understand the global situation and the European-wide markets, but we have to do a bit of subsidiarity here and start with our own media ecology and work out what is right for us in the protection of our democracy, looking out all the time to see what is going on. Will Brussels know better than you on how to do this? The answer to that is very easily no.

**Lord Razzall**: Brussels looked at the BSkyB proposals on the competition issue, not on plurality but on competition.

**Ms Harman**: Yes.

**Lord Razzall**: I suspect the newspapers are different from other broadcasters in this field, too. I am not sure the *Daily Mail* has European issues, but Google probably does.

**The Chairman**: It is a question of the relevant market in any particular circumstances. We have just about got to the end of our time. Thank you. Despite starting a trifle late—that was nobody's fault—we are just about there.

You told us at the outset how you saw this evolving with the DCMS work and then you advocated using a precedent of what went on over the discussions between the political parties about the Leveson report. You also said that you thought it was important in any decision-making that if there was a particular issue there was political accountability. Is there not a case for saying that if this is all cooked up by political parties—I am tempted to say in smoke-filled rooms but they do not exist any more—before you know where you are the whole of this policy area has left the arena of public accountability and it is just politicians fixing it and running it through Parliament on the whip system? Is that desirable?

**Ms Harman**: It seems to me that what you are doing here is not that at all. You are doing it on a cross-party basis. It is completely open and transparent. You are all bringing your thoughts to bear on it. Somewhere there has to be the epicentre of dealing with what everybody for a long time has been wringing their hands about and saying that something needs to be done about it. In a way, as I said at the outset, because you have a track record on this, because you have embarked on it, it feels quite comfortable that that should be where the epicentre is. Therefore, potentially the evidence that you are bringing together on this and your report could be the very pivotal, more important role than anything the Government could go away and do. I am sure that they would respond and take forward what you are doing, but it just feels to me as if there is an opportunity for progress to come from your discussions.

**The Chairman**: We clearly hope that we will produce a report that is positive and constructive and will have a beneficial impact on this important thing.

**Ms Harman**: If you could, you should put in your report that the Government should work on a cross-party basis and that that is a way of making sure it is all sustainable, not to cook it
up in a smoke-filled room. These questions of legitimacy are quite difficult here, so we all have to do our absolute utmost to make sure that it is as legitimate as possible.

The Chairman: I entirely agree with you that it is necessary for there to be an emotional buy-in to the outcome that emerges from the process.

Ms Harman: Exactly.

Q311 The Chairman: This is a House of Lords point. I hope I am not considered too cynical by saying it. I was not aware the House of Lords played much of a part in the deliberations in the run-up to the proposals for the royal charter, but I am not asking you to comment.

Ms Harman: No, the only point I am making is that we managed because there was the trigger of Leveson that then precipitated a cross-party effort, which was then completely open and transparent and supported by Parliament. All I am saying is that it seems to me that what you are doing is creating the possibility of a trigger for the work on media ownership.

The Chairman: Let us hope that it will be.

Lord Razzall: I think that Lord Wallace of Tankerness might disagree with you about the role of the House of Lords in these deliberations.

The Chairman: Well, he might, but anyway do not let us quibble.

Ms Harman: He played a very good role as part of the cross-party, but I call it the parliamentary charter not the cross-party charter, because what we did was all in discussions. When you are talking about a royal charter, there is nowhere else to do it except behind closed doors. You do not have a committee process.

The Chairman: No, and therein lies a problem. It is a different problem, but it is a real problem in respect of this kind of issue if you wish to go down that constitutional avenue.

Ms Harman: That was a particular problem that came out of that particular constitutional path. I do not think you need to worry about that because you are on a much better track, because you are not, hopefully, going to suggest that the solution to dealing with media ownership is a royal charter. If you do, I think Lord Wallace, Maria Miller and I might throw in the towel at that point.

The Chairman: I do not think I am giving any secrets away. This is not one of the options that is currently under consideration.

Ms Harman: Put me out of my misery. Do not say another royal charter.

The Chairman: I am tempted to say not in my lifetime, but that is probably a poor phrase to use in the circumstances. Anyway, all I can say is thank you both very much for coming. We have enjoyed listening to you.
Q126 The Chairman: I would like to extend a warm welcome to Will Hutton, who has patiently waited outside. Thank you for that, and apologies for being a bit delayed. It is very good of you to come along and talk to us. I think you know what the inquiry is all about: media plurality. We have had a certain amount of material that relates to what you have said and done in the past in this area. I hope we can start with that knowledge in our minds. You have obviously had a long and distinguished career in the media and are now the Head of House at Oxford. We all know who you are, so, rather than a further big introduction from me, is there any kind of introductory statement you would like to make to us? In particular, are there any examples that you would like to highlight to illustrate the problems associated with what you see as a lack of media plurality in the country at present?

Mr Hutton: Thank you for the invitation to come and talk to you. As an opening, there is a rather helpful set of questions that you send to all your interviewees. I have done this once or twice before and this a particularly good structure, I think. You get more out of your interviews if you do this.

You open up by setting the scene. You probably know my career: I began in the BBC in 1978 in radio; moved to television is 1981; worked on “The Money Programme” and “Panorama” and then “Newsnight”, as its Economics Editor in 1988; I had a brief spell editing the
European Business Channel, which went bust some years afterwards; then came back to a career in the Guardian, culminating in editing the Observer. I stepped down from that in 2000 and I have been writing a column ever since.

Over that period, which broadly spans 30 years now, I have watched—a kind of retreat from the best enlightenment conception of what a media should be. I have watched the fusion of news and comment increasingly, where the boundaries between comment and news are now nearly totally fungible. I think you have seen that the impact of that on our national conversation is there all about. There are multiple ways in which it manifests itself. For example, I think we live in a more peaceful, less violent country but you would not know that from the reporting in our media. There is no doubt that the weather is more variable but the complicated side of the arguments about that, and about the degree or not to which it is all due to carbon dioxide emissions, has become completely clouded. You do not have to be for or against the European Union to be keenly aware that the reporting on it is more by omission now. Maybe all of you will know this—although you would not know it from reading the British media—that about a fortnight ago there was a major deal struck on the common fisheries policy. Only two media outlets in Britain reported on it. One was the BBC online and one was the FT online. That was largely because it took place at two or three o’clock in the morning and it was already being superseded by a much more exciting story, which conformed with where people collectively think the story is, which is over-mighty Brussels being too zealous in going after the British Government over the rules for EU citizens getting benefit claims in the UK. Both were good stories, both were important stories, but one was completely neglected because it was a good-news story and one was a story of the hour.

Over the last 20 years, people have become increasingly more sceptical about the idea of a social settlement, some kind of social bargain, between the classes. I think that is impossible to explain without looking at the way our national conversation has been constructed by our media. In area after area after area, you look in vain for a plurality of voice for debate. You do not find it. You find that there is a narrative, which is the story: it can be the story about a politician; it can be the story about the management of the English football team; it could be a story about the way the BBC cover the National Health Service. Whatever the story might be, it becomes the prism through which collectively the media interpret an event or what is going on around us. You search in vain for countervailing arguments. You can see it, I think, in the way that discussions are cast on television and radio to throw up passion and heat rather than illumination. So I think they are hunting as a pack. There is kind of avalanche treatment of whatever story it might be. There is the fusion of news and comment, and a retreat from any kind of what I call enlightenment, the kind of Reithian view that you should try to separate news and comment: that you had some kind of obligation if you own a media outlet, either as a public or a private owner, to inform and educate as well as to entertain.

I noticed in your prompt—I will finish off—that Professor Barnett suggested in evidence to you, that it may be an apprehension or perception of influence over the electorate that supplies media owners with currency among politicians. I thought that it is true that, notwithstanding all the efforts—

The Chairman: I am afraid we are going to ask you to finish.

Mr Hutton: I have just one sentence and then I have finished with the preamble. Do you want to hear it?

The Chairman: We will get it when the bell stops, and I have one question.

Mr Hutton: Then you will all go, and I will sit here by myself.
The Chairman: I am going to leave you with a question to think about, which is: was there ever a golden age?

Mr Hutton: Gosh, it goes on for a long time, does it not, the call for a Division?

The Chairman: Particularly when you are waiting. Yes. Over to you.

Mr Hutton: I just want to say that, in the best sense, I think there has been a retreat from the enlightenment. To pick up your point, there was never a golden age but there was a less bad age.

The Chairman: We will have a break and then we will be back.

Sitting suspended for a Division in the House.

Q127 The Chairman: Sorry about the interlude.

Mr Hutton: Not in the slightest. The legislature has to legislate and you have to do the—

The Chairman: Sometimes I think it is better if it does not.

Mr Hutton: Yes. I looked at it from Professor Barnett’s point of view. I was trying to say that over a three-week election campaign it is probably true that the media does not move opinion noticeably, but that is not the point. As I came in this afternoon, I was thinking that, whatever Government, you get regime change. In a totalitarian state, the first thing they do is go for the radio and television station. The first thing they do after that is control what happens in the newspapers. I know China quite well, and the idea that the politburo does not regard the ideological part of the apparatus as the single most important part of the state machinery they control. That is what they think and they think it with very good reason.

I think that the relationship between what the media say and the formation of a culture and the formation of opinion is not linear. It is full of iterative feedbacks. It is not mechanical and it does not exhibit itself over two or three weeks, but to deny it is not there or deny it I really think it flies in the face of everything we know. Someone who says that, or can suggest it to you, is showing a rather serious level of naivety in my view.

Q128 Baroness Bakewell: Will, given that we are going to have a Government policy on media plurality of one sort or another, where would you draw the limit? Where do you want it to focus? Where is its conception? Is it just news and current affairs? I do not think you believe that.

Mr Hutton: No. As the Committee should know, part of my views on this on this are informed by what I think constitutes “good” capitalism. There are important reasons why the media is different. But it is not so different from any other part of a good capitalist economy, in that you do want a lot of runners and riders. You do want the capacity for incumbents to be challenged by new entrants. You do not want your market economy to silt up by having an incumbent who has so much market power that they actually control the evolution of technologies or routes to market or whatever.

With plurality sits a view of having multiple actors. I am not a Hayekian, I am a Keynesian, but, whether you are on the left or the right, one thing that anyone who thinks about the economy for longer than a nanosecond is that you need multiple sites of experimentation, multiple sites of opinion formation, multiple sites in which scientific experimentation takes place in another field. Plurality is essentially trying to capture that. You say how broad it should be. I think it should be informed by that vision. It is partly about structures. It is partly
about making certain that you never get overweening market control, market dominance. It is also about behaviours.

I notice in your prompt you talk about the Enders proposal. Of course it matters who owns video game revenue, because that is a potential cross-subsidy to those who provide news and current affairs. For me, I would keep this broad. Yes, I have made my answer so I will not witter on.

Baroness Bakewell: What do you think of the Enders proposal, the 15% cap across all media?

Mr Hutton: I respect Claire Enders, she is not right on everything. I think she and her company have been very brave on these questions because it is not in her interest particularly, given her clientele, for her to say these things. In that sense, she is an independent voice and her own woman in a way that a lot of the people in this conversation are not. So I attach weight to what she says because of that.

Baroness Bakewell: Do you agree with it?

Mr Hutton: I am not certain I would set it at 15%, but I am happy for that to be my starter for 10, yes. I would put that on the table. That is where I would start, yes.

The Chairman: You think it is a good place to start from, this concept?

Mr Hutton: Yes.

Q129 Baroness Bakewell: What about this idea that it should really focus on news and current affairs and not take the broader cultural attitude, that the concerns should focus on the coverage of news and current affairs as who divines it?

Mr Hutton: Of course, that is important. You want the British citizenship to have access to plurality of news and current affairs sources because you want them to be able to be equipped with the essential data content to mount argument. That is the essence of a vital democracy, but I do not think it stops there. I would make the same argument for theatre, for art. I would make the same argument for sport. Some of the features of hunting in a pack and extreme disproportionality in the way things are covered, some of what goes on—it is close to impossible, I think, to manage the English football team. That may not matter to this Committee very much, but to a lot of people who are football fans it does matter that when things go badly it is utterly disproportionate. The turnover of managers in the football league is just incredible, and partly that is because of the almost-impossible-to-live with media pressure of just a uniformity of view, off this kind of narrative being thrust down your throat that XYZ decision only demonstrates that ABC manager has lost the plot completely and must go tomorrow.

Baroness Bakewell: But you speak of hunting with—

Mr Hutton: This coarsening, which I have discussed in crime or the European Union or climate change or these high-level things, they matter profoundly to people like myself, but what matters to the ordinary man or woman in the street is, for example, the debate about MMR jabs. By the way, that was another good example of where I felt that the media went very, very badly wrong. The incidence of measles in south Wales recently was the direct consequence of the way mothers were persuaded not to take their babies in for MMR jabs as a result of the absolutely disgraceful anti-enlightenment narrative developed by the British media that was insufficiently challenged by insufficient people.
When you say, “Should the focus just be news and current affairs”, I suppose health is a subcomponent of news and current affairs but I think of sports coverage, I think to move on to the way culture in the round is discussed is also. We have to have a plurality of voice.

Baroness Bakewell: What would prevent a plurality of voices simply each producing the hunting-with-the-pack attitudes that you deplore? Why would the multiplicity not simply repeat the same type of—

Mr Hutton: Because there are two dynamics in the media, are there not? Dynamic one is the pack mentality and dynamic two is to differentiate yourself. You can either differentiate yourself by shouting louder than the other person or by making up a more extreme element of the story you question. That is one way it can happen. Another way it can happen is that you take a different tack. By taking a different tack, you aim for that to build a constituency, a brand loyalty, and you can see it. One of the things I am very confident about is that in 20 years’ time two national titles in Britain will one way or another, I am sure, still be trading. One is the Daily Mail and one is the Guardian. They both have their well-developed constituency and loyalty, and everyone wants to try to be in that place. The more plurality you have, the more we have everybody trying to develop their own franchise, their own brand loyalty, particularly—and we will come to this later—as I think the business model of newspapers and media more generally is going to be much more about membership and subscription and affiliating to the brand. You affiliate to a brand or a kind of cluster of notions. If you are the editor or the owner, the question that you will always be asking as a board is, “Have we done sufficient to differentiate ourselves?”. Hunting as a pack, doing “me too” journalism, does not help you.

Q130 The Chairman: Is there not a problem in that once you have become the club, then the club wants to have its own “prejudices” pandered to?

Mr Hutton: Of course, you are between a rock and a hard place here. I think the same is true, by the way, of the growth of new media. You short cut it and you follow people in the Twittersphere whose views you are going to find agreeable or you might want to challenge, but it is not exactly broad. Similarly, the blogs. If you are going to give time to follow a blog, it is somebody whose views you think you are one way or another going to find congenial. One of the aspects of this growth of customised news, where you yourself say what you are pre-interested in and that is served to you, is that you have never come across things that are unexpected. One of the pleasures of magazines and newspapers is the diversity of content that you come across. It is the unexpected.

One of the things you mandate your editors to do is to continue to do that for you. One of the geniuses of both the Mail and the Guardian, and to a degree I think the Telegraph and the Times, which are good newspapers in this sense, is that they offer their readers a quite broad diet. The trouble is that the diet is increasingly served up to conform with the prejudices of the readers. It is in retreat, so as a Committee you are trying to find ways in which you can help the good editors in these newspaper groups, and in television and radio, hold the line better.

Baroness Bakewell: Is a cross-media revenue cap the best way to sustain diversity and plurality?

Mr Hutton: There is not one magic bullet. We are going to discuss ownership later on. There was a very important book out recently by a professor of Oxford called Colin Mayer, who is at the Said Business School. He has written a book called Firm Commitment discussing how the constitution of firms can much more incorporate mission and values over time. I
Mr Will Hutton – oral evidence (QQ 126-139)

strongly agree with him. I think it is particularly true of the way newspapers and the media groups should be owned, that the purpose of a media group is they should be constitutionally obliged to put the purpose of journalism and the purpose of cultural formation and discussion at their hearts. Elisabeth Murdoch I thought made a very good speech at the Royal Television Society in a MacTaggart lecture in September—which I am sure the Committee has read and looked at—in which she made precisely this point about her father’s company. In her view, it had lost its way because it did not exhibit business purpose.

One part of the story is about, yes, regulation for pluralism. One part of the story is once you have that what the dynamic is, what the ownership and incentive dynamic is of the plural actors that you are creating. You cannot just think of it as: load your gun, fire the bullet, solved it. There are multiple things you have to do.

Q131 Baroness Scotland of Asthal: I just want to pick up a couple of things that you raised earlier. You clearly said that you thought one of the big problems was the fusion of news and comment so that you no longer can differentiate between the two. I want to know how you think that could or should be addressed. That is one. Secondly, you clearly thought in 2010—and by the tenor of what you are saying you still think now—that Britain is dumb to the importance of controls and media ownership. If that is still what you think, how do you think we can change that? We have had a little exploration about what Enders and other people think, but what do you think?

Mr Hutton: All right. This is a preamble then a straight answer there. The preamble is this. As some of you may know, I chaired for 18 months on the Ownership commission, which was looking at the diversity of ownership structures in Britain and why the plc was so dominant, why other forms of ownership were so weak, and what could be done to fix the plc and promote more stewardship in all forms of British ownership. On that commission sat Charlie Mayfield, who is the chair of John Lewis, and at that time President of CBI, Roger Carr. There was a widespread view that in the round, before we even get to talk about the media, we are just far too casual about embedding stewardship and all that it means to be a good steward of what you own in our legal obligations on British owners.

There is a lot of concern at the minute among economists about why the response to the devaluation of the pound has been so poor among British business. The answer from the Bank of England is that British business is integrated into global supply chains more than other countries. Why should it be that British business is more integrated into global supply chains than other countries? It is obvious: it is so damn easy to take over our companies; 70% of companies who employ more than 1,000 people are owned by non-British companies. What they have to do once they are owned by a Japanese or a French or an American multinational is play a part in that multinational’s big story, and it is normally to supply European markets and not actually global markets, hence the devaluation and you get a very poor supply response.

Your Committee, when it says what it is going to say about ownership, will be playing into a national conversation in which actually almost nobody—there is a chap called Alex Brummer, city editor of the Daily Mail, who has written something—worries about it, and we are completely dumb to the consequences of having a fire sale of our assets to the non-British. It is exactly the same story in the media. We simply do not take enough care about who owns the content that is going to delight us and inform us and entertain us. We just assume that it is of no interest. One should not be surprised that the consequence of that is as it is.
Baroness Scotland of Asthal: You would say that we had to look at the nationality of those who own our media?

Mr Hutton: We have to do two things. We have to look at the nationality of who owns our media, and, if you do not want to do that, I think we have to lay particular obligations upon companies that incorporate in the media space. I see absolutely no reason why we cannot oblige companies that incorporate to say that their job is to produce content to certain standards, to separate news and comment, and that that is the deal. That is your licence to operate in a UK context. There are several ways you could do this. You could either hardwire this into the DNA of companies, or you can try to regulate them, or you can say, “It is of no interest whatsoever, they will come to the right answer left to their own devices in free markets”. I think the evidence is overwhelming that what you want to do is you want to hardwire certain behaviours into media actors, in exactly the same way—by the way—you want to hardwire it into banking. There is a read across from some of the observations that have been made by the all-party inquiry into British banking, the Vickers commission. Some of the concerns they have expressed about that, how bankers are remunerated and the amount of capital that banks have to hold are saying, “Look, there is a public interest in banks being run in certain kinds of ways”. I think exactly the same logic applies in the media and I urge you as a Committee to follow through that logic.

Q132 Baroness Scotland of Asthal: Would you expand the fit and proper test and apply it here together with the public interest test?

Mr Hutton: We want certain capital requirements on banks, certain liquidity requirements on banks. We want bonuses of bankers to only be paid in full after 10 years, we take a keen interest in how bankers are paid, particular legal obligations on bank directors to know what is going on inside their bank; there are a raft of things and some of those do not apply to a media company, obviously. The basic philosophy, what legislators want to do, is to hardwire into the DNA of actors, in a particular marketplace, certain kinds of behaviours and then let them be free to play. That is my philosophy and I have been trying to argue it for the best part of 30 years. I think it is a much more intelligent approach to this than trying to rely overly on regulation where you are always going to be behind the curve and they will always move faster than the regulator. But you have to do that because you cannot have no regulation, but accept there is going to be an embedded structural weakness in regulation. Also sometimes the regulation that was fit-for-purpose 50 years ago, or five years ago, is not fit-for-purpose now, so there is always that irksomeness about it. You try to keep it as smart and as minimal as possible but, at the same time, compensate for that by making it clear what the expectations are of people who have the privilege of providing news and comment. It is a privilege to do that, for God’s sake.

The Chairman: Is it not the problem that certain people who appear to have big roles in the media are more interested in enriching themselves from what they are doing, rather than providing a top quality media from which they will thereby be enriched?

Mr Hutton: Are you talking about presenters’ salaries, are you talking about share options in some of the—

The Chairman: Talking about everything and nothing.

Baroness Bakewell: Given that we do not have that now, how would Government policy bring about that hardwiring?

Mr Hutton: I think there should be an all-party inquiry into ownership modelled on the all-party inquiry into banking. I think there should be a Companies Act in the new Parliament
drawn on the conclusions of this all-party inquiry, rather as I very much hope George Osborne will implement the recommendations of the all-party inquiry on banking. I think that we should get back to basics about company formation. When companies incorporate they should have to declare their purpose, non-executive directors should hold executives to account for the delivery of that purpose, and I set it all out in the Ownership commission. One can define what the fiduciary obligations of directors are so they are broader. I think you can safe-harbour directors for the delivery of purpose, so they do not get letters from a New York hedge fund telling them they have to maximise and show the value in some takeover bid. There are a lot of things to do.

I do not want to spend the little time I have to rehearse the argument and views in the Ownership commission, but you can borrow those and then, within that overall structure, you can have sub-plots for five or six key sectors, sub-plots for people who are providing energy, sub-plots for people in the media business, people in the finance business. In the Enterprise Act, we do say that defence companies in the UK are particular, so are banks and so are media companies, but we do not build on it. It is kind of there, there is this architecture around on which we could build as a national community, and I think we can get a cross-party consensus on it.

Q133 Baroness Scotland of Asthal: You do not think the new digital age has mitigated any of the aberrant effects you have just spoken about? Some people say there is an anxiety about ownership and anxiety about plurality but it is all right now because we have 10,000 people.

Mr Hutton: I do not know how much you know about the business models of Google and Amazon, but they are very interesting. They are using network effects to get increasing returns. One of the things about Economics 101 used to be that at some point diminishing returns, so that when a company scales up at some point unit costs of production actually rise. The big point about the new world—the Google and the Amazon effect—is they never rise. It is increasing returns, not diminishing returns, and the first mover effect is fantastic. There is an ideology that says that, “It is all free at the moment but it is changing the rules of the game”. What you are watching is the emergence of awesome concentrations of power and unlikely, which are close to unchallengeable, and who here when you are doing a search use any other search tool but Google? Who buying a book online does not use Amazon? These are increasing return effects.

This stuff again, it is rather like Steve Barnett saying that media ownership is irrelevant, so when you have the revolution it does not matter who controls the television and radio. They are just silly things to say. I think this is also an equally silly thing to say. I know why people say it. When you say where you are when you do a search, how Google tends in its algorithms to show who comes up, one, two, three, four, five, six, seven, it is absolutely fundamental. How many of us get beyond whatever blogs or sites we feel comfortable with, or how many of us use our mobile apps and our laptop apps just to more quickly access brands we know, that we trust, that are going to help us navigate this world?

I think what is happening—and by the way you can see it in lots of areas—is that the new world is accentuating the importance of big brands, which help you navigate and act as a long tail of tiny brands that have short-lived and ephemeral lives. That is what I see.

Interestingly enough, over the last 10 the BBC news and radio, as a source of news, has become more important, not less, and you can see the numbers.
Q134 Baroness Healy of Primrose Hill: We heard from Professors Collins and Cave, and they call for a conceptual shift away from ownership regulation towards positive promotion of market entry and viewpoint diversity, and you clearly see ownership regulation as playing a role. But is too much focus placed on precautionary rules rather than positive measures to promote media plurality? You mentioned the BBC: does the BBC have a greater role to play in promoting access to viewpoint diversity? By the way, I did hear the fish story but I think it was in the middle of the night on the World Service.

Mr Hutton: That is right. It broke at three o’clock in the morning. There you are, I do not know what you were doing at three in the morning listening to the World Service—

Baroness Healy of Primrose Hill: Not sleeping.

Mr Hutton: An insomniac. Perhaps it helps. I know that a colleague of mine, an editor of a national newspaper—I will not tell you who—listens to the World Service while he sleeps. Incredible, to soak up information through serendipity. You do not do that.

Light Touch have such a bad name now, but someone I got to know quite well recently, a chap called Andy Haldane who is the Director of Financial Stability at the Bank of England, and I think he has some very interesting ideas about banking regulation. He gave a speech about the Frisbee recently. In the same way that you can throw a Frisbee and a dog can catch it, because it can anticipate where it is going to land, so you want your regulatory structures to be as simple, and as obvious as that and as few as that. You do not want to overload it.

I would like to see you recommend three or four big things rather than 20 small things. One of the things I do think is important is separating news and comment, so that is a precautionary rule rather than hear it like that. Of course I do think the BBC is enormously important. I think the BBC itself has lost its way a bit. I think the new Director General is of that view as well. I do not personally like to listen to David Cameron or George Osborne, or whoever it might be, and then having Nick Robinson coming on to tell me what I have heard and what I should think about what I have heard. If I was an elected representative I would say, “I am not going to do the interview unless it is clear and clean”. They are good journalists, but what mandate do they have? And of course they embed into your coverage something quite subtle. Nick, who I like, always has to keep his distance from whoever. George Osborne could have given a fantastic interview that even convinces me that he might not be completely wrong, and then Nick Robinson comes on and says, “Well, of course da, da, da, da, he did not say that”. He always has to retain his independence and objectivity as a journalist—it has to be critical—but you embed in the BBC’s coverage the sense that, whatever a politician says, it is never the complete truth.

I sometimes hear politicians give great interviews on the “Today” programme at 8.10 am, and then at 8.20 am up comes Nick or Robert Peston or whoever, to tell me what I have heard and what I should think about it. I think to myself, “I know”. By doing that you are embedding an attitude in my mind that what I have heard is not quite straight, that there was stuff that could have been said that was not said.

Q135 Baroness Deech: In the interests of diversity, it is not time to move on John Humphrys? No, it does worry me, seriously. If you are talking about a monopoly of points of view, year after year after year, the same person, no matter how brilliant, is shaping that agenda.

Mr Hutton: I do not want to be ad hominem, but I notice that in organisations that I respect, like the FT, nobody as a reporter or an editor stays in place. They have a rule that
they can stay for three to five years. You never get to be whatever it is for a longer period than that. I think that is very important. You grow to love certain voices but, equally, they have an incumbent effect and you want some insurgence so, yes.

The Chairman: I am getting terribly embarrassed, we have overshot the time.

Mr Hutton: You want to get shot of me?

The Chairman: No, I do not want to get shot of you, but I feel we ought to just slightly—

Mr Hutton: There is a lot to say, and I will keep my answers very short. Any answer longer than a minute you censor me.

The Chairman: I am not going to censor you at all. I want to give you the opportunity to go as fast as you like because, as I said, we are way over the limit thanks partly to our legislative activities, but if we could just move on.

Mr Hutton: I will move through quickly, let us get to the end, yes, and then come back to stuff.

The Chairman: Perhaps we could move on to Baroness Scotland again.

Q136 Baroness Scotland of Asthal: In the advice, and we have covered some of it already through the Secretary of State, Ofcom talked about desired outcomes and dealt with media plurality policy and expressed the intention to ensure that the diversity of viewpoints is consumed through encouraging media literacy and multi-sourcing. Is that the sort of thing that you agree with? Do you think they were right? What do you think?

Mr Hutton: Of all the questions here, this is the one that pulled me up hardest. I could not imagine what you would do that would not feel nanny-ish. I am not also certain what media literacy means. How do you understand it? Can I ask the Committee what you think this means?

Baroness Deech: We have a background of having looked at media convergence and broadband, and we have heard repeatedly of the millions in this country who never access and are incapable of accessing the internet at all. Again, I am sure many of us—and I certainly know of people that only buy the one local newspaper and that is it—never look at any of the major dailies at all and only listen to local radio as well. I always find that odd but there must be millions who do that, and then we do not have the same conversation at all.

Mr Hutton: I get it. I do think that. But again the markets tend to come up with answers to this and I myself would love to have a regular app update. It is quite difficult. It is all done by word of mouth, and if you are not under 25 it is quite tricky to find out which are the real hot apps in emerging time. I am in the game and you are saying that we need to get more people in the game. I am not certain how the British public would respond to this, and it would have to be done very cleverly. When they have worked, these things have tended to be things like anti-smoking campaigns, or to be careful about putting your kid in some child carrier in the back of your car. This seems to me to be a public education campaign. For it to come off, it would have to be very well done. I can see there is a problem. If I was in your shoes drafting this, I would make this a sub-plot rather than a major thing. You have some big game to go after and I suppose, if you create a world of media plurality, you want to make sure that the providers of this content are going to have as big an audience as they possibly can. If you want to encourage insurgents, the people you know who just listen to one local radio station and buy one paper need to be persuaded that they should experiment. So in that sense I am with this. What I am struggling with is trying to find something that I think would really work, but if you come across it then go for it.
Baroness Deech: I think there is an anxiety because the people around this table are all of a certain age, bar a couple of us. Younger people use a multiplicity of media forms to get the information. I wonder whether you think that we need to explore with them the media avenues that they utilise to get through this media literacy and multi-sourcing.

Mr Hutton: I chair a thing called the Big Innovation Centre. If you want, before you finish your conclusions, we will organise a hack day for you. We can organise a hack day for 250 kids between 12, 15 and 20, or some such. You could do that and see how they are using media.

Q137 The Chairman: Is it not the problem that they use it differently from the 35 to 45 year-olds? They use it differently from us and probably they will use it differently from the generation coming on.

Mr Hutton: Yes, but they are the change agent.

The Chairman: I am not disagreeing with that. I am just saying it is not the importance of what they are doing, it is the way in which you draw the conclusions from what they are doing, is the difficult one.

Baroness Deech: I think there is a growth of group-think among the young. They are selective. They have a plurality of sources, but they are very selective and they miss out on the serendipity that you referred to—I think it was you.

Mr Hutton: Yes, it was me. Yes.

Baroness Deech: That of turning a page and finding an article that you would not otherwise have looked at. They just go for what they are interested in, and they corral each other in. I think it is worse.

Mr Hutton: There is that herd effect, yes. I think your Committee should answer the question, “What can be done to lift levels of media literacy?” in an innovative way which would surprise the public at large. It would not be expected of a House of Lords’ Committee, and I would organise an Open Innovation hack day in which you ask that question. You can ask that question of the three groups—12 to 20, 35 to 45 and 55-plus. It is a very smart way of getting answers. We are going to use this when you come to your “What is measured?” question. I do think that there are some fantastic techniques for getting at the answer to these questions that are not top down but bottom up.

The Chairman: It does pose the whole problem with plurality that, if you are going to use the media in one way, as opposed to somebody else who uses it in an entirely different way, your plurality and the thing you are looking at are, effectively, apples and pears.

Mr Hutton: Yes, but you want multiple actors because otherwise what is the point of beginning? To have multiple actors you have to maximise a chance for entry, so Cave and Collins are on the money. People are not going to want to enter unless they have a chance of getting to scale fast, capturing these increasing return effects I spoke about. If they are going to do that they have to have as big a market as possible; your case for media literacy. You then have to make certain that when they incorporate, and they get licences to trade in this, they do so around certain obligations. Because they are in the business of the media, in the same way that, if you incorporate as a bank or if you incorporate as an insurance company, you incorporate as a defence contractor, there are other obligations upon you. You probably run your Enders test as a kind of cut-off, and I think you are moving towards a really intriguing report. You can also inform how you are going to increase your media literacy by doing something innovative yourselves. It is pretty cheap; you can organise hack
days for a couple of hundred quid. It is not going to break the bank. I am sure there is budget to do that in House of Lords.

**The Chairman:** You would be surprised at how small the budget is.

**Q138 Baroness Healy of Primrose Hill:** Who in your view should be included in any review of plurality, and how should the BBC be taken into account on the one hand and the international digital intermediaries on the other? I know you talked about the Google business, but that is my question.

**Mr Hutton:** I think the answer is clear. To exclude either Google or the BBC would be a first-order mistake. You have to include them. The BBC always like to say that it is definitely something apart, and so on, but actually plainly it is part of the ecosystem of the British media. I am pro-BBC, although—no, no “althoughs” I am very pro-BBC. I think it comes nearer to separating news and comment than anyone else. But even it has been pulled into the vortex. So, yes, you certainly include the BBC.

In terms of public service broadcasters and as a news content provider, I wish the BBC had more challenges. You have a weak ITN. You have Reuters moving towards financial news coverage, where all the money is, and pulling its competence out of PA. News gathering in Britain is not strong. We rely too much on one organisation.

**Baroness Deech:** Who should make the decision about whether to intervene in the public interest? Should it be a politician or should it be an independent media regulator, like Ofcom, or should it be a special plurality commission deciding? Which of these would you favour?

**Mr Hutton:** Here you are getting into the kind of Leveson dilemmas, are you not? Given the debate over how the planned new press commission is going to be back-stopped, who guards the guardians? The push-backs and having an independent media regulated by the British press was there for all to see. Of your choices it has to be either the media regulator or a plurality commission. I have thought about this a lot and I have swayed, but I have come down with the independent media regulator because I think that the plurality commission in the end is just not arm’s length enough from Government. With an independent media regulator, if you get the checks and balances in properly, it feels like the direction in which we are going, like the independent governance, like the independent Bank of England. It is like the independent Office of Budget Responsibility. It is the direction of travel of British institutions, so my sense would be to go there.

**The Chairman:** To keep it as far away from anybody to do with political office is concerned as you can.

**Mr Hutton:** I think you set up the criteria, which the politicians do. The Office of Budget Responsibility, or indeed the Bank of England, is not completely independent. It has an inflation mandate and has to deliver it, and that can be changed by the Chancellor of the Exchequer. There are lots of things wrong with this process but, in an imperfect world where you are always ending up with second best solutions, this seems to be the least bad.

I am with you on this. I think it is what sits behind your question, Lord Inglewood, and in this sense I am with Jesse Norman and his recent book on Burke. I am Burke: elect our representatives; there is the check of the House of Lords, and that is where we legislate and that is where the public interest in a democracy is decided. You keep removing things to deliberate on—whether it be what interest rates should be, what the economic forecasts are on which the Budget is based, and what is the big story about content in our
Mr Will Hutton – oral evidence (QQ 126-139)

democracy—and just give them to somebody independent. Perhaps one is giving too much away and one is actually gutting public life of its purpose. An independent media regulator, subject to systematic accountability to elected politicians, is where I would go.

**Lord St John of Bletso:** We have heard arguments that the European Commission should have competence to review media plurality and public interest. Is this realistic and how should European competence in this area go?

**Mr Hutton:** I am struck that in the end I was against the News Corp takeover of BSkyB, but it was nodded through by the competition authorities because the commission has to look at who has market power in a single market. BSkyB in a single market was a small player, but that depended on, in this sector, there being a fiction that Bertelsmann and Springer and News Corp, BSkyB were all competing head to head for European citizens to buy what would be their staff. It is a complete fiction. In this part of the forest it is so cultural that it is bounded by national jurisdictions. So I think to look to Europe for a solution to this is not the same as the motor industry or the defence industry. It is a very distinctive industry. Secondly, there is the brute reality that, with the Conservative Party committed to a referendum on reform of the EU membership, one of the areas you could be certain would be taken out of the treaties that we had stayed in would be this. I think it is a cop-out. Both in practical terms and in practical political terms, looking to Europe to save the day is, I think ill advised. I do not think the commission can take the burden of this. We have to take responsibility for our media.

**Lord St John of Bletso:** I entirely agree with you. Thank you.

**Q139 The Chairman:** Time is drawing to a close. Before saying a big thank you, is there anything else you would like to put to us that you have not touched on already that you think is important?

**Mr Hutton:** I will look at my notes. You were going to ask me about what is measured.

**The Chairman:** Yes.

**Mr Hutton:** When I was at the Work Foundation we did some work on a public interest test that was put in the charter in 2005, I think it was. The BBC has never taken that part of the charter, in my view. It was required to systematically try to get a sense of what its view is as public service broadcasting, and we strongly advised it to establish iterative kinds of processes with large parts of its viewers and listeners, which would allow it to gather that information, to publish it, to test it and to feed it into programme-making judgments. That did not happen, so I think the charter renewal in 2015 would be very important in the context of this plurality story and how you want the BBC to act, and what you want hardwired into its DNA, that it has a much more clear sighted view of what public service broadcasting is about as the other public service broadcasters should have.

There is quite a sophisticated body of theory and practice now around public value generation. There is chap called John Benington at the University of Warwick. I think he is still there. He has been leading a charge on this, and you might want to call him as a witness perhaps or get some written evidence from him.

**Baroness Fookes:** But you are in front of us, so could you tell us what you think?

**Mr Hutton:** I think that at least every five years the BBC should reality test what viewers and listeners consider to be public service broadcasting. David Attenborough and the “Galapagos” is plainly it; “Newsnight” is plainly it; I think that Jools Holland is plainly it. I am not certain about some of the quiz shows, but I am not certain about “The Great British
Bake Off” and all this kind of thing. For me it starts to get dodgy. As for some of the Saturday night broadcasting, I think “Dr Who” is plainly public service broadcasting but some of the other stuff is not. The BBC would copper-bottom itself better if it could honestly say that the suite of programmes it is offering correspond to what it knows to be viewers’ and listeners’ conception of public service broadcasting. Asking the question and monitoring what the answers are, and developing some qualitative and quantitative metrics around that, I think would be good for the BBC and would help it, in defence of a licence fee, to make such a commitment. It would also permit people, like Channel 4, and that element of ITV that still has a public service dimension, to be informed by that. It does not have the resource to do it as the BBC has. Perhaps it wants to ask Channel 4 the same thing. Some of the wilder parts of Channel 4’s output seems to me should either be on cable channels or on Sky.

There is an open question as to whether you want to bring Sky into this remit. I do not believe any longer that Sky should be outside the regulatory input. It has big and growing viewers. It is very influential. It is massively influential in sport. I think it is going to become increasingly influential in culture, and BSkyB should be part of this story, part of the plurality story. Part of the exemptions that were made when it got going in 1990 to help a challenger, an entrant, an insurgent were quite right. Now it is an incumbent and there is lots of evidence that it throws its weight about in an extremely aggressive way, obstructing insurgents. I think the media is too frightened to challenge Sky, for all the reasons that we know, but I think that you should be thinking in those terms.

Otherwise, I think I have set out my stall and I am very grateful to have an opportunity. Thank you very much.

The Chairman: We are very grateful that you came and did so. Thank you very much indeed on behalf of all of us. We appreciate it.
International Broadcasting Trust – written evidence

Executive Summary

1. The International Broadcasting Trust (IBT) welcomes this opportunity to respond to the request for evidence from the House of Lords Select Committee on Communications as part of the Committee’s inquiry into Media Plurality.

2. While addressing some of the broader policy questions raised in this call for evidence, IBT’s focus is on the plural provision of broadcast content which tells us about the world outside the UK because this is where IBT’s expertise lies.

3. IBT is concerned by the decline in international content on mainstream UK television since 2005 and wants to ensure that a framework is in place to ensure the public has access to a diverse range of information about the world around them.

4. IBT urges the Communications Committee to consider how to ensure that there is range and diversity of content provided by the public service broadcasters, rather than focus primarily on plurality of supply which doesn’t guarantee plurality of content.

5. IBT believes that all genres should be covered by plurality policy.

6. IBT is concerned by a current failure of plural supply in international current affairs on the commercial PSB’s and this issue needs attention.

7. We wish to emphasise the importance of qualitative as well as quantitative analysis in establishing whether there is a plurality of content available.

8. We agree with Ofcom that there should be a periodic review of media plurality every four or five years.

9. One aspect of plurality which IBT believes needs to be addressed in this inquiry is the wholesale provision of news content.

10. Public service media such as the BBC and Channel 4 should be included in any assessment of media plurality.

11. It is IBT’s view that politicians should be removed from decisions on mergers and plurality. The final decisions in this policy area should be made by an independent media regulatory body such as Ofcom.

Background

12. IBT is a membership-based organisation. The views in this submission reflect the concerns of IBT’s member agencies regarding adequate common understanding of the world in which we live. These concerns are shared by millions of UK supporters of these organisations.
13. IBT’s position, reflected in all our policy work since 1997, is that television coverage of the wider world should not just focus on images of suffering which is more often than not what is presented in news coverage. It is IBT’s view that an international dimension should be an integral part of all programming.

14. While addressing some of the broader policy questions raised in this call for evidence, our focus is on the provision of a plurality of international broadcast content because this is where our expertise lies.

15. IBT’s research shows that since 2005 there has been a 41% drop in new first-run international content on the five main public service channels, BBC One and Two, Channel 3, Channel 4 and Channel 5.

16. While there is a proliferation of digital channels available to the majority of households now in the UK, IBT has evidence that engaging content about the wider world is being marginalised onto niche channels and not an element of mainstream broadcasting, attracting mass audiences.

17. IBT is concerned about this decline in international content on mainstream UK television channels and we want to ensure that a regulatory framework is in place to ensure that the British public have access to a plural and diverse supply of engaging, entertaining information about the world around them in the years to come.

18. We make this submission in the belief that a wide variety of engaging content about the world outside the UK should be available free to air on all the mainstream public service broadcast channels. Plurality in this type of broadcasting is essential if we are to have a rounded picture of Britain’s role in the world and what life is like in other countries.

19. If we want to be a well-informed society, able to do business effectively with other countries, then we need access to engaging content which tells us about other cultures in a rounded way (i.e. not just disaster news). Live television viewing is still dominant despite the growth of the internet and it has huge influence over mainstream audiences. If public service broadcasters deliver a diverse range of high quality international content which engages us with the wider world then we can live in a society where the population has the opportunity to acquire an accurate and up to date understanding of the world outside the UK.

**Does a clearer objective for plurality policy need to be thought out?**

20. We note that Ofcom has highlighted the inadequacy of current legislative framework and suggested new rules should be introduced to deal with threats to media pluralism arising not only from proposed mergers but also from the ‘organic’ growth of specific media companies.

21. IBT defines the issue of media plurality not simply in terms of the numbers of providers or channels available in the market place but rather in terms of the range, diversity and quality of accessible **content**.
22. IBT agrees with Ofcom when it states that plurality as not a goal in itself but a means to an end. Quoting the Ofcom Measuring Media Plurality Report (June 2012):

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”.

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” 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”.

23. IBT notes from these comments that the widely accepted objectives for plurality policy are to ensure a range of voices, to avoid concentrated media ownership and to encourage vibrancy of democratic debate.

24. Current legislative framework to a certain degree delivers these outcomes, but it has been shown to have weaknesses. One weakness is that by ensuring plurality of supply one doesn’t guarantee range or diversity of content. Again, quoting Ofcom:

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.

25. In agreement with Ofcom, it is IBT’s view that having a number of distinct voices under separate control does not guarantee variety and range. There is a real danger if plurality is conceived primarily in terms of number of channels or outlets; many of these may have a similar range of content, often being syndicated or repeated, and such channels may not have the budgets or an interest in producing material that is challenging and thought-provoking about contemporary issues.

26. We note the comments made by Patricia Hodgson in 2008 when she pointed out the paradoxical narrowing of choice despite a proliferation of media sources:

… so much choice and nothing to watch…We seem to be losing genuine intellectual diversity and a shared cultural experience of which we can all feel proud. (The Price of Plurality: 46)

27. IBT urges the Communications Committee to consider the issue of how to ensure that there is plurality, range and diversity of content provided by the public service broadcasters in its enquiry, rather than focus primarily on plurality of suppliers.

28. During the debate about supporting public service content many incentives and regulatory levers have been discussed – such as positioning on the EPG, tax-breaks

\[\textit{Ofcom: Measuring Media Plurality, June 2012}\]

\[\textit{ibid}\]
We believe these should be employed as widely as possible to encourage all the PSB’s to deliver a wide range of public service content which will ensure plurality and diversity of content for the future.

**What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?**

29. IBT agrees that a plurality of supply in news and current affairs is essential for a well-functioning democratic society, however we do not believe that plurality policy should be limited to these two genres.

30. Other genres, such as drama, factual or light-entertainment, can be a powerful force in influencing the agenda or debate. They can also engage a different audience from that which watches news and current affairs programmes and should be included in the scope of media plurality policy.

**Current Affairs**

31. IBT is concerned that there has been a reduction in the plurality of supply of international current affairs on the public service channels in recent years partly because international content is no longer monitored by Ofcom.

32. From recent Ofcom research it is clear that there has been a decline in the spend on current affairs programming in general by the PSB’s and a significant reduction in the amount international current affairs programmes, ie ones which tell us about the world outside the UK. This is especially noticeable on Channel 3 where there has been negligible international current affairs coverage over the past 12 months. We believe that even though there is already a regulatory framework in place to encourage plurality of supply in international news and current affairs (the Communications Act 2003 and the commercial PSB licences) that this is not working effectively. IBT believes that if Ofcom were monitoring the amount of international current affairs transmitted each year, as it used to, that broadcasters would take their obligations with regard to this commitment more seriously.

33. Channel 3 and Channel 5 should play an important role in providing plurality in the PSB current affairs landscape. They are able to provide useful competition to the BBC to ensure that quality is maintained and that programme makers constantly seek to break new creative boundaries.

34. Channel 3 and Channel 5’s current affairs provision is very different from that of the other PSB’s. Both channels have the potential to engage audiences who often don’t watch current affairs. Their programming is designed to be popular, engaging and accessible. This is its primary value – that it can engage an audience not necessarily interested in the wider world. It is complementary to the other PSB channels in this regard and therefore highly valuable. On Channel 3 Tonight is the most watched current affairs programme on UK television with audiences frequently averaging over 3million compared with, for example, Dispatches on Channel 4 which typically attracts half that audience. Tonight also appeals to a different demographic, with an audience
which is female dominated, typically in their 30s, 40s and 50s. They do not usually watch current affairs programmes. Additionally, ITV is now broadcasting Exposure.

35. We agree with Ofcom’s statement in its Second PSB Review that their contribution to mass audience content is essential:

The commercially owned networks such as the ITV service and Five play an important role today in delivering popular, entertaining programmes. Their mass reach enables them to invest in original British programmes which are both popular and culturally relevant. That mass reach also gives these networks the ability to play an important role in delivering alternative provision of national and international news and in reaching audiences not necessarily addressed fully by the BBC or Channel 4.

36. High quality international current affairs programmes are essential to ensure people are well informed about the world around them. This is a service which facilitates civic understanding and fair and well informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs in, and in the different parts of, the United Kingdom and from around the world. (Communications Act 624(4))

37. Current affairs programming is important because it provides information and context in more detail than is possible in the news. News agendas are dominated by breaking, often negative, stories and it is only through current affairs programing that these stories can be analysed and unpicked, often revealing complexity, humanity and nuance which is not possible in a 3-minute news story.

38. In IBT’s recent report, An Uncertain Future – the Threat to Current Affairs, it is stated: Current affairs producers are particularly concerned about the future of two sub-genres: investigations and international stories. They say that foreign-based films are at the back of the pack and there’s a real danger that the picture of the world we get from TV is shrinking. Investigations are also under threat because in straitened economic times broadcasters inevitably reduce their exposure to this expensive, labour intensive and risky form of journalism.220

39. IBT is concerned by this decline in current affairs, especially international episodes on the commercial PSB’s, and therefore we would argue that regulation to ensure a plural provision of current affairs is more essential than ever if we are to ensure diversity and range of content in this genre.

Other Genres

40. It is IBT’s view that it is essential that there is a plurality of supply of international content across all genres because, as stated above, news and current affairs tend to focus on negative stories. This means that our perceptions of the wider world are dominated by images of suffering which is obviously not the whole story. We therefore need to ensure access to other genres of programming where stories can be told which provide a balanced view of what is going on in the wider world.

220 An Uncertain Future – The Threat to Current Affairs (IBT 2013)
41. IBT’s research shows that trends in broadcasting have remained static for a number of years – the same countries are covered each year and the same subject matter. This leads to a stereotyping and narrowing of perspective rather than a broadening of horizons which is what one would hope from content which tells us about the wider world. There is a real need for a wider range of content and diversity of voice in international content in genres other than news and current affairs.

42. Quoting IBT’s 2011 report *Outside the Box*:

Despite the growth of factual entertainment formats, international factual programming tends to adopt a documentary approach and is dominated by ‘softer’ topics, such as travel. The regions of the world which receive the most coverage are North America (28%) and Europe (25%). The Middle East and North Africa (5%) and Latin America and the Caribbean (6%) receive the least coverage. While this concentration of international coverage on certain regions of the world may be of concern to some people, it should not come as a surprise because it is almost identical to the pattern of coverage noted in previous research….Given the recent dramatic political changes in the region, perhaps the most significant lack of coverage is for countries in North Africa and the Middle East. Egypt and Tunisia did receive some coverage but Algeria, Bahrain, Lebanon, Libya, Saudi Arabia and Yemen were not the main focus of a single factual programme [in 2010].

**Regulation in Europe**

43. We note regulation in other European countries, such as Germany, France and Norway, tends to focus on media content as a ‘whole’ rather than just on news and suggest that this practice should be adopted in the UK.

44. Thus we would suggest that the scope of media plurality policy should encompass all genres of programming and content.

What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

45. We agree with Ofcom that there should be a periodic review of media plurality every four or five years.

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.

46. In addition, we agree there could be merit in an “exit trigger” but only if a mechanism can be designed that avoids subjecting the market to continuous review, and avoids too heavy a reliance on discretion.

---

221 IBT – *Outside the Box*, 2011
222 Ibid
How should ‘sufficient plurality’ be measured?

47. We agree with Ofcom that 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. 223

48. IBT does not believe that measuring the number of suppliers, owners or broadcasters ensures sufficient plurality of content and, as stated above, urges the Committee to consider how to measure plurality of content rather than suppliers.

49. We wish to emphasise the importance of qualitative as well as quantitative analysis in establishing whether there is a plural range of content available to the public. We believe it is vital that public policy makers analyse the detail of content delivered in order to assess the actual diversity (or stereotypical sameness) of specific content examples. It is not sufficient, in our view, to restrict analysis to the counting of the number of owners, important though this is.

50. One aspect of plurality which IBT believes needs to be addressed in this inquiry is the wholesale provision of news content. It is an issue which has been raised by a number of commentators and in our opinion deserves some attention. In our view it is misleading to conclude that there is a plural media supply if multiple services provide information obtained from a single source such as a news agency. As the costs of international news become prohibitive with restricted news budgets there is an increasing tendency to use agency content or user generated content. This could lead to a homogenisation of news with one crew supplying all the footage on an international story. This would represent a significant lack of plurality in news.

51. We agree with Ofcom’s recommendation: 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. 224

Should the BBC’s output be included in a review?

52. The output of public service media outlets such as the BBC and Channel 4 should be included in the assessment of media plurality to ensure a proper evaluation of the content available in the market but they should not be subject to control because of their extensive existing plurality obligations and degree of insulation from political and commercial pressures.

223 ibid
224 ibid
With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

53. It is IBT’s view that politicians should play no role in deciding individual cases involving media competition or plurality issues. The final decision on such issues should be made by an independent media regulatory body such as Ofcom.

What should the UK learn from international approaches to media plurality?

54. As stated above, we note that regulation in other European countries, such as Germany, France and Norway tends to focus on media content as a ‘whole’ rather than just on news and suggest that this practice should be adopted in the UK.

Background: About IBT

55. IBT is a membership-based organisation. The views in this submission reflect the concerns of IBT’s member agencies regarding adequate common understanding of the world in which we live. These concerns are shared by millions of UK supporters of these organisations. IBT’s members, being intimately and operationally concerned with the effects of ‘globalisation’ on communities and environments around the world, and with communicating across the world, welcome the advent of the global information society.


57. IBT is a registered charity, number 1150778.

25 April 2013
TUESDAY 8 OCTOBER 2013

Members present

Lord Inglewood (Chairman)
Lord Clement-Jones
Baroness Deech
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Bishop of Norwich
Lord Razzall
Lord St John of Bletso
Earl of Selborne
Lord Skelmersdale

Examination of Witnesses

Mr Clive Marshall, CEO, the Press Association, and Mr John Hardie, CEO, ITN

Q276 The Chairman: For the second half of our session, a big welcome to John Hardie and Clive Marshall from ITN and the Press Association respectively. Thank you for coming along. We have had CVs from you, so I do not see any particular reason to take up time going through all that. Just so we are clear, could you just tell us who you are, because the meeting is being broadcast?


Mr Hardie: I am John Hardie. I am the chief executive of ITN.

The Chairman: Thank you for that. That has cleared the system. Perhaps I might just open the session with a general question. Both of your businesses, albeit that they are different, are sometimes described as news wholesalers, rather than other users of information that you supply being retailers. Do you think it is a fair description, an accurate description, and how do you see yourselves in the wider ecology of news provision in this country and more generally, for that matter? I do not know who would like to start.

Mr Marshall: From the Press Association’s point of view, we are very happy with the description of wholesaler. Our role is to provide the building blocks of the news for our news subscribers. If you think about the Press Association service, we are providing everything from news alerts to tipping services to backgrounds to archive material to
photographs to videos to illustrative graphics, and then we are leaving our customers to make the selection from those different elements that they then use in their news output, whether that is for a newspaper, radio station or a TV station. We, as the Press Association, have absolutely no interest in owning the relationship between the content that we provide to those customers and their readers, their viewers and their listeners. I think in every case we would say that we—

**The Chairman:** Just by happenstance, the way you present material to the people who subsequently use it, does it positively—using that word not in a moral sense but in a commercial sense—influence the way your stuff is used?

**Mr Marshall:** I do not think so at all. I think it is a series of ingredients that different media use in different ways.

**Mr Hardie:** At ITN we are rather unhappy with the expression “wholesalers” being used about us. I think it is a poor analogy for what we do. A wholesaler to me implies the middle man in the distribution chain; a large warehouse that sources from hundreds of original producers and amalgamates those products into consignments to retailers who then sell on to the consumer. That is nothing like what we do. ITN is an originator of television news. We are television news producers. In fact we do not think there is a good reason for an analogy at all. We are a television news producer who produces on commission and on contract for broadcasters.

**The Chairman:** May I stop you there? How much of your activity as a producer is purely mechanical? How much is it in response to the final user? How much is it you exercising your judgment because, for whatever reason, you think this is the way it ought to be done?

**Mr Hardie:** Okay. Let me describe the flow of work. First of all, sometimes we are put in a chain of wholesaler between the likes of Press Association or Reuters and others and in between the broadcasters. We do, of course, buy material from Reuters, from Press Association and from APTN, as do BBC, Sky, CNN, NBC and every news broadcast producer in the world. It is very useful material but constitutes a fraction of the output of the programmes that we make for the broadcasting clients.

We work on the basis of commissions that are usually multi-year contracts with the broadcasters. The broadcasters control, first of all, the selection of us or anybody else as their producer of choice and that has obviously been a subject of some competition over the last few years. They set the budget. They largely provide the audience because the audiences we see for the programmes we produce are, to a great degree, a function of the size of the audiences of the channels that are hosting them. They set the funding, of course. They set the editorial specification to which we deliver and they set very different ones, and I can come on to that presently if you wish. They have the ability to hire us and fire us and they consider that on a regular basis. When I say “regular basis”, it is every few years.

We have the day-to-day operational responsibility for delivering those programmes to the specification that is set by those broadcasters. On a day-to-day basis, of course, we hire the staff, we set up the operations, we make the daily choices on the prospects of what stories we will pursue and how we build those stories. The broadcasters normally give us the budget and the editorial specification. They hire their own professionals who oversee the work that we do. That is not the same thing to say that day-by-day they are executive editors, but they are giving constant feedback to what they think about what we are doing, critical and praise, and they are assessing us against a specification that we have agreed with them.
We are, in a straightforward sense, producer and broadcast commissioner. What is a little bit different about us versus many other producers out there is, of course, that we are responsible for putting, on ITV, Channel 4 and channel 5, one hour of live news broadcast every night of the year. Therefore, as a matter of practicality, you do not produce the programme, show it to the client first of all and then it gets broadcast. We are one of the few producers who comply our own material, although there are protocols for informing the broadcasters if there is anything of particular note; for example, if we are about to make a serious allegation about a public figure or some other things.

That is how it works. We have a contract, usually for a number of years, against a specification and we go about the business of producing those programmes every day; exercising great care, of course, because we are responsible and on the hook for making sure those programmes meet all legal standards, all compliance standards, all regulatory standards, and they are in keeping with the specification as set by the broadcaster.

Lord Razzall: You are making the choice of what you broadcast?

Mr Hardie: Day by day, our editors on news and the other teams decide, from the prospects available to them and also from long-term planning of investigations we choose to do, what we do, but there is a constant iteration between us and the broadcasters of what we are doing and what we planning.

Q277 Earl of Selborne: I am going to follow that up first. You have described quite clearly the function you have as ITN in supplying what are called retail broadcasters, but could you describe what the retailers themselves are contributing to the feast? What is it that they are doing to help inform your own process?

Mr Hardie: First of all, apart from selecting us and supplying the cash and the full funding to make these programmes, each of them has an editorial specification, which means that we create in those three broadcasters, I think, the greatest diversity and plurality we see on television news. For example, ITV’s mission and its requirement is to create a comprehensive news service that is fully competitive with the BBC. We are funded and we are required to cover news from all the UK and all over the world and to conduct investigations from all the genres available to news. We are required to conduct thorough analysis and explain the world and explain the news to the audience and we are required to have consideration to the impact, both the impact that stories have on people that we are reporting and the impact back to people who are watching our news programmes. That is a shortened version of a very detailed editorial specification.

Channel 4 is quite different. The headline of Channel 4’s editorial specification is to make “the most distinctive news programme in the UK, one which follows the particular remit of the overall channel, which, in particular, seeks to bring news stories that other outlets are not reaching”. It also has a particular emphasis on covering international stories, not just those that are the hot spots of the day but stories from around the world that are not currently in the public eye, and, in particular, to seek also to cover stories from those parts in the world from the perspective of people living there, in addition to journalists that we send there. You see, between those two, two very distinctive strategies and specifications for the news.

Then to complete with channel 5 news: channel 5’s specification is to focus more on a domestic agenda, to follow those stories that are of more obvious interest to the UK viewer, to be concise, to be approachable and to provide a story that is for the channel 5 news audience.
The consequence of that, I believe, is that you see, among the three programmes that we provide, a distinctive tone entirely determined by the channel. What you do not see is an ITN editorial flowing through them. There is no such thing as an ITN editorial voice. There are standards for compliance and safety in many of the practices in journalistic ethics, but not an editorial tone of voice. As a consequence, I would argue you see far greater diversity and plurality within the commercial public service broadcasters than you do in the entirety of the BBC.

Q278 Lord Razzall: If I could go over to Mr Marshall, you are happy to describe yourself as a wholesaler. You describe how you are passing over a whole range of news items, clips, news in various shapes and forms for your customer to make a selection. How would you define, therefore, the function of your retail customer and how do they differentiate?

Mr Marshall: First, perhaps, just picking up on the point that John made. I do not think he meant to refer to the Press Association, but in the definition that he gave of a wholesaler, we do not take other people’s information, store it and then deliver it. We are an originator of content and we seek to be an originator of content that provides absolute balance, independence, impartiality and trust in the content that we provide.

I think back to the previous session. The thing that was perhaps missing from that debate is that people consume media in the ways that they wish to consume their media. The recipients of our content then make their own particular direction and selection in order to package our content and their content in order to give their readers, their viewers, their listeners, the type and style of delivery that they are looking for.

In each and every one of our customers’ production of their news and information, there will be different styles and different approaches because people choose their daily papers, they choose their radio consumption and their TV consumption to support the way that they, in many cases, wish to receive that information. That would be the way I would see the retail part of the process.

Lord Razzall: Also, presumably a differentiation within the market. Determining the retail market is the key to survival in a time when news is available online undifferentiated.

Mr Marshall: Absolutely. I think it is important also not to see these as separate processes. It was interesting, again, listening to the previous session. If I think about my young daughters, even though they are in their teens and early 20s, they do not just consume news online. My daughter goes to university in London, so if she is taking public transport she consumes all of her news that day through the Evening Standard but she will consume, in other environments, her news through Twitter, through Facebook, through perhaps the Daily Mail online, although perhaps not the news section, perhaps by just looking at the showbiz and celebrity section because that is the part that she is interested in. Although it would be very disappointing for John, if I asked her about ITN I do not believe she would know what ITN was because for her generation—

Lord Razzall: You had perhaps better not ask her then.

The Chairman: Where do you get the stuff from, the news, because you are obviously putting this material together? In the ways any other journalist does or——

Mr Marshall: Yes. We employ around about 200 journalists, photographers and video journalists and we originate that content. I think it is fair to say that around 80% of everything that the Press Association does is driven by the diary, whether that is the sittings of the House of Parliament or House of Lords, whether it is the courts, whether it is the
agenda around sport, press conferences and then, of course, the remainder comes from breaking news and all of the other elements of news that occur day in and day out.

But it is our own journalists and when we think about the way that we operate, the key element for us is in the training of our journalists to ensure that they understand that we never take an angle, that we do not have an opinion, that we provide that balanced reporting that allows our subscribers then to take a particular opinion or a perspective or a direction or to promote a particular view of the world. We provide the building blocks, but none of our customers would use all those building blocks. They would take a different perspective to suit their own particular audience.

Lord Razzall: You do not editorialise at all?

Mr Marshall: We do not editorialise at all, no.

The Chairman: You do not do any editorial—

Mr Marshall: We do not editorialise. We would not produce opinion columns. We are fact-based. We are also source-based. When we put out a news story, we confirm the source. We normally identify the source in the news story. That would be completely different often from news stories that you would read in the media.

The Chairman: Have you ever been criticised by anybody for not behaving like that?

Mr Marshall: Thankfully, running the Press Association, it is very rare that we would get complaints.

The Chairman: I am not suggesting it does happen. I was just interested if the reality of the way it goes is that you do get complaints that you are skewing it.

Mr Marshall: I cannot recall. On occasion we will get complaints, like everybody.

Baroness Deech: Do I have this right to say that you are sending out the cakes and the newspapers put the icing on top?

Mr Marshall: I would have said we are sending out the ingredients of the cake and that our customers take selections of our ingredients and selections of their own ingredients. I think it is fair to say that sometimes, if you took, say, a regional newspaper, if we are delivering a national news story or a world news story, they may take the entire piece verbatim. They may take our pictures and our editorial and, if it is on their website, our video, and they may run that in its entirety because they would see the way that they differentiated their newspaper from their competitors about doing the local news or the regional news to the very best of their ability and leaving the national or international news to the Press Association and, through the Press Association our relationships with people like Associated Press or Reuters or Agence France-Presse.

Q279 Lord Clement-Jones: I just want to get on to the editorial control aspect that we have touched on as we have gone through, almost throughout every question. We have had some witnesses who have suggested that pinpointing the precise point at which you exercise control in any particular news organisation is quite difficult to identify, but it sounds as though ITN, in terms of conforming to a specification for its different consumer or different retail brands or the different retail brands for whom you deliver news, has to exercise editorial control in order to conform with that spec, so to speak. In your own way, the PA, because you, in a sense, do not editorialise, therefore have to exercise editorial control to make sure that you deliver the product in the way that you always deliver it. Do you just
want to comment on how you exercise editorial control as part of your news gathering and delivery?

Mr Hardie: Again, the rules of engagement between us and our clients are pretty well set out. Sorry, I am being repetitive, but they set the specification standard we meet. Day-by-day we are making the editorial choices, consulting with them. They get to see what our running order may be and so forth, but we are not debating on a day-by-day basis: what is first up tonight? The editor of Channel 4 News and the team are deciding the prospects, the order, how many resources to put against each story and how to shoot packages. All those things are being done day-by-day with Channel 4 news, ITV News and channel 5 news. Then there is an ongoing dialogue and the dialogue we have with the broadcaster may indeed reflect on next week or the next month’s programming. It is kind of an ongoing conversation that reflects how we do things and we will adjust and, of course, correct as we see fit through that.

On the day, if there is something of particular interest, we will definitely involve the broadcaster specifically on that. Not just an allegation about, say, a public figure, but if we are about to do something that could potentially lead to a claim for defamation or so forth, we consult with the broadcasters and those sort of things before we put them to air.

Lord Clement-Jones: Where does that go within the broadcaster?

Mr Hardie: Of course, each of the contracts is similar but a little different because they have been done at different times. Each of the broadcasters has, by one title or another, a head of news and current affairs. Each of them usually has decades of experience themselves in news and current affairs, so the first port of call is that it would go to those individuals. They may consult internally depending on the issue. They must just say, “That sounds fine, look forward to it”. They may say, “Could we possibly just consult and have our own lawyers understand this?” All with a view to simply expressing an opinion about it or being informed about it, not with a view to saying, “We do not want you to do that”. That has not happened. As I say, even in those instances, we will go to the broadcaster and inform them.

These are the great minority. We are not making serious allegations against public figures on such a regular basis, but it does happen.

Lord Clement-Jones: More is the pity.

Mr Hardie: Perhaps I agree.

Mr Marshall: At the Press Association, the editorial control rests with our customers, so at the retail part of the process. For completeness it is worth just saying that, in the same way that John has described the way his customers specify the look and feel of that news service and then they provide that news service for them. More and more, particularly in the digital environment, we will have customers, particularly if they are new entrants, who do not necessarily want to set up large editorial departments to sit at the end of a PA news feed and start to make those choices themselves. A good example of that would be a recent contract that the Press Association won from British Telecom, which has recently won part of the Premier League broadcast rights. It has supported that with an awful lot of new digital products and we are providing, to a great extent, its news and information services to those websites, to their specific specification, but the editorial choice for that bespoke service came from BT.

Q280 Lord Dubs: I want to go back to something that John Hardie said, or at least direct my question to John Hardie. I understand when you talk about the remit of news on 5 and
Channel 4, but if we take a straightforward comparison between the main ITN news and the main BBC News, do you assess how you differ? I have to say, I can see how the other two referred to are different, but as far as the main ITN news and BBC News are concerned, they are much of a muchness.

**Mr Hardie:** First of all, in this day and age, I probably should just be clear, what you are talking about is ITV News and one of the reasons ITN is not so well known as a consumer brand is that in, I think, 1999 ITN changed from being the ITN news to ITV News.

**Lord Dubs:** I am so sorry.

**Mr Hardie:** No, I do not want to be pedantic. It is because when people say, “My daughter has not heard of ITN”, that is because it is not the brand name of the news programmes that we produce any more. I just took the opportunity to clarify that matter.

BBC1 and ITV are obviously the two largest broadcasters in the UK. ITV’s largest programme is by far the largest news programme on commercial television and has to serve the entire UK. It is not surprising, therefore, that in a selection of the major news stories of the day there is probably a regular overlap between what ITV’s news team is selecting and what the BBC is selecting. There is a fair bit of difference within ITV, Channel 4 and channel 5 news, which I can describe and so forth. But I will say this: I think they are quite different programmes in so far as, first, ITV News has a mission to connect to its audience and to be totally competitive to BBC and Sky news investigations, to analyse in a way that by never talking down—the expression usually is, “Gets Britain right”. We are more on the wavelength of a larger audience and I think we care more about the impact of stories on people’s lives.

I think that if you are watching two programmes, while I cannot argue that the top three items on “News at Ten” and the BBC “News at Ten” may overlap for most of the time, I think there are genuine differences between them but the obligation for ITV News is to be completely competitive with BBC with vastly fewer resources to do so. It does a pretty good job of punching above its weight in that comparison.

**Lord Dubs:** I think that is right and I apologise if I slipped up, because my friends at ITV will never forgive me for that.

**The Chairman:** In a way is it right to say that at ITV News that your business is selling news point to point while, Clive Marshall, at PA you are selling news point to multi-point?

**Mr Marshall:** Yes.

**Mr Hardie:** Yes, we broadcast news and it goes directly to your television screen.

**The Chairman:** Exactly, but your customer is, in fact, one person, namely the television company that is subsequently broadcasting it.

**Mr Hardie:** Just to be clear, we talked here about news but we survive only through our commercial interests working alongside and so the raw material pictures that we create are broadcast on news broadcasters all over the world. If you go to Australia, the USA or all across Europe and you are watching stories about the UK, there is a very good chance what you are watching are pictures created by ITN.

**Q281 Lord Skelmersdale:** There was a time, was there not, when BSkyB performed for channel 5 the jobs that you are now doing and Ofcom began to get rather overexcited wondering whether this should affect its plurality interests, for want of a better word. What is your view on that?
Mr Hardie: I think what happened there is an interesting example of the difficulties of trying
to reach simple aggregated expressions of market share. At the point of News Corp’s
proposed acquisition of BSkyB, the assessment was looked at as Sky News along with
obviously News International, as it was called then. As part of the calculation that was done,
Ofcom looked at the audience size of Sky News plus 5 News and, I think, IRN. The
difference there is that Sky News is totally within the control of BSkyB as both a producer
and a broadcaster, whereas Sky News was, like ITN at that point, simply the producer
working on behalf of channel 5; where the ultimate control rests with channel 5, but they
were aggregated together in the assessment of market share.

It is interesting that News Corp withdrew its attempt to take over BSkyB in, I think, July
2011. Only four months later ITN won the contract to get back channel 5 after another
competitive process. I think it shows a little bit of “apples and pears” between the true
control broadcaster and producer and the producer in that regard, but also look how the
market operated. ITN originally had the channel 5 news contract. After a competition, it
went to Sky. After another competition, we won it back again against other players there,
too. I think that market seems to operate quite well.

Lord Skelmersdale: Do you see any problems that need fixing in the current
arrangements by Ofcom?

Mr Hardie: The biggest concern I would have, and I do not have great concerns, is more
that interventions might be made whereby we lose more in the swings than we gain in the
roundabouts. The arrangements that work today work pretty well from a point of view of
pluralism for television news. Considering we have the BBC with its remarkably larger
resources, Sky, and then three commercial service public broadcasters, I think at least
among the five of those you get a great breadth of plurality and a great service of television
news to the market. Within the specific confines of public service broadcasting, the balance
has been set so that ITV, Channel 4 and channel 5 have not just the regulatory requirement
to do news but so that a balance is struck in terms of value of those licences so that they
can invest sufficiently in news and still have to provide distinctive services. I think that works
pretty well.

The caveat to me—and this may sound a little like special pleading—would be if you were to
redefine things and say there is a market called wholesale news provision, which we do not
recognise, and that, because ITN is currently providing the news at the choice of ITV,
Channel 4 and channel 5, therefore we have 100% share of some market, you can
understand our concern if that were to lead towards some intervention. Would it not be
pervasive that the only impact this whole debate on plurality—which has been amplified by
corns about the excessive influence first of all of News Corp and BskyB and, secondly,
about the size and the governance of BBC—had was an impact on ITN.

Just to complete that process: ITN has to compete with BBC. In a recent e-mail to staff, the
director of news, James Harding, quoted that he has 8,000 staff and a budget of £650 million.
£650 million, by the way, is nearly 10 times the total of money ITN has for the provision of
national news for ITV, Channel 4 and channel 5—and that is Apple and Google and other
things—and so do the other companies. Given the system whereby the commercial service
broadcasters can choose to either go for self-provision or to outsource, they choose ITN
because they get the benefit of the shared resources of ITN to do the core news gathering.
They are then able to have entirely distinctive separate services. So we have our cake and
eat it in this regard.
I think “mess with that at your peril” would be the caveat. My concerns are more about what intervention might lead to in unintended consequences than the problems that we face today.

**Lord Skelmersdale:** May I ask you a yes or no question?

**Mr Hardie:** I will do my best.

**Lord Skelmersdale:** Looking at this subject as we are—we are looking very generally at it—should we include documentaries or not?

**Mr Hardie:** I think there has to be a requirement from a licence point of view that the broadcasters do news and current affairs. I believe, in terms of assessing impact for plurality, that should be certainly news and current affairs; narrowly documentaries, which is maybe like a sub-strand. I am not sure I would go that far. The thing you want to look at is: is there sufficient plurality in supply at what you call the retail level of news and current affairs? That is the appropriate way to look at this thing. But I do not think I would have a specific—

**Lord Skelmersdale:** Thank you. You have made your point.

**Mr Hardie:** That is the closest I can get to a one-word answer.

**Lord Skelmersdale:** Not quite yes or no, but still.

**The Chairman:** Do you want to say anything about that? Otherwise we will move on.

**Mr Marshall:** No, I have nothing to say.

**Q282 Lord Razzall:** As you know, we are looking at plurality and you will gather from the questions that we are all struggling a bit to see what the relevance of PA and ITN is to these plurality issues. If we just take PA first, I suspect your answer would be that PA is not relevant to the plurality issue because you are a virtual monopoly in the provision of what you do but nobody seems to ever argue that you are an unhealthy monopoly or that there is a plurality issue with you and whoever your competition is. I would struggle to think who your competition would be.

**Mr Marshall:** If we pick up the competition piece first, I think these days everybody competes with the PA, particularly if you think around the breaking news piece, around Twitter.

**Lord Razzall:** But I do not think anybody is doing what you are doing, which is basically collecting a huge amount of factual information and disseminating to your retail clients.

**Mr Marshall:** Maybe people have looked at the commercial outcomes that flow from that type of activity. I would say that we believe that we play a very significant role in plurality because if you think about the way I described that the Press Association operates and the type of service it provides to its news customers, what we allow our customers to do is to focus on the things that make them different. That then supports that desire for plurality.

**Lord Razzall:** I know you are assisting plurality—

**Mr Marshall:** We are assisting plurality.

**Lord Razzall:** —but as an organisation yourself you do not feel that you come within the plurality issues.

**Mr Marshall:** The definitions, no.

**Lord Razzall:** ITN, your last answer gave some indication of your views. I think you would say you would be subject to plurality considerations. I detected that you were saying that but
you rather hope that nobody takes an adverse view on the plurality issue. I guess what you are saying is that the protection that the public has is under the contracts and the requirements that you negotiate with ITV, Channel 4 and channel 5, because you do put out different news programmes for all of them. Presumably you do so because that is what their requirement is for their brand. ITV want a different brand from Channel 4, Channel 4 wants a different brand from channel 5 and they are requiring you to provide different programmes for each of them. That, in a sense, is where your plurality role comes in because they are requiring you to be plural and different.

Mr Hardie: Yes. I think you are right. In terms of assessing this, the appropriate way to assess it from citizens and viewers is at what we will call the retail level because it is the broadcasters that have the budgets, the spectrum, and the requirements to do this. I think we are relevant to plurality from the point of view that the commercial service broadcasters should be allowed to make the choice, if they so wish, to outsource to one company so that they can get the benefit of aggregated resources. Again, if the definition of plurality is a diversity of viewpoints that are both available and consumed you can only hope to be consumed if you create a high-quality news programme which has a breadth of coverage. When you are up against something as large as the BBC, you had better find the most efficient way possible of doing that. I think the relevance is to allow the commercial service broadcasters, at their choice, to use one service to do that.

Lord Razzall: Supposing in the next round of negotiations ITV, Channel 4 and channel 5 all decided to award the contract to Sky rather than to you, would you still take the same view on that?

Mr Hardie: So be it.

Lord Razzall: You would still take the same view on the plurality issue?

Mr Hardie: We ask no favours whatever. We are an entirely commercial organisation. We make no requirements any more for special treatment. We make no requirements for subsidies whatever. We only say, “Let us go about our business”.

Lord Razzall: I suspect, because of the particular role of BSkyB and Sky, people would take the view that the plurality considerations were rather different if that were to happen with those three news channels.

Mr Hardie: I see your point, but we would not advocate that that was disallowed.

Q283 Baroness Healy of Primrose Hill: Obviously you both have made a major contribution to plurality by what you do, but I am just wondering: do you each have the right policy approach, for instance at a local versus national level, and for TV or radio or print? I would be interested to hear if you have something to say on that.

Mr Marshall: As has been said by previous people, the issue in the regional media is that there probably is not a lot of plurality, particularly around the newspapers because of the dedicated circulation and readership areas for the individual products. I think if we look at plurality as a whole across the United Kingdom—and it has been said on a number of occasions by different submissions—you have to look at the BBC as part of that piece. There have been a lot of discussions about the plurality of the BBC within the BBC, but there is also the impact on plurality of the tremendous success of the BBC’s news footprint. I think it is the case that 85% of the UK citizens consume news from the BBC in an average week.
If I take our offices in London where our headquarters are, and I travel to our big operation in Yorkshire, a journey of 198 miles, I have the opportunity to consume 38 different BBC products where I could get access to news and information across the web, across local radio, across local television and across national products as well. That has an enormous amount of impact, in my opinion, on the opportunity for commercial providers to make commercial outcomes out of the provision of news and information. It is very successful. We should be very proud of what the BBC does, but we should not ignore the impact that has on this whole debate around plurality.

Mr Hardie: I have very clear views on television broadcasting. Looking at the wider field, I do think that in looking at media you have to include online, probably online publications. If we are going to do this, let us make it fit for purpose. To arrive at a place in five or 10 years when there was no assessment made at all or attempt made to include the world of online will seem rather anachronistic by the time we get there. I appreciate the differences between looking at an online publication like Huffington Post and what that means for a search engine. It is as misleading to group those two things together as it is TV and newspapers, but online should be included.

In terms of the genres, we should focus on news and current affairs and I would not say we need plurality of satire programmes and so forth but I will leave others to comment on that. The BBC has to be included. From a citizen's point of view about assessing plurality, just to argue that because the BBC has its own set of governance and charter it is well looked after, and that means we would assess plurality only for the commercial sector, seems hopelessly misleading to me.

This is not intended to be any kind of criticism of the BBC. I am not advocating for any cutbacks at all to the BBC, but when you see that Lord Hall today has announced that the BBC's ambition is to expand its global audience from 250 million to 500 million, to invest more in mobile and in social media and to make the BBC News website video led, that is a wonderfully ambitious plan for a great British institution. You can imagine perhaps some people out there who are trying to scrape a living in these nascent markets thinking, “I am trying, as a newspaper, to publish and migrate my readership to mobile devices and I am investing. What will happen next?” I do not even mean that to say, “Stop the BBC”, but at least assess it along with everything else that is going on.

Q284 The Chairman: We are getting towards to the end of the session. I hope it will not be too much of a relief to you. To just wrap up: is there anything that we have not touched on or you feel we have not covered fully that you would like to say to us? We would like to hear what you feel about the issues we are debating and considering, please.

Mr Marshall: It is hard to have a discussion about plurality without taking some time to think about the impact of search engines on plurality. In that case Google would be the main focus of that process. If we think about the way the news media and media in general works, it works by selling access to its content through cover sale or through subscription and it works by selling advertising. If we think at the simplest level how Google works, they work by providing advertising around search but they do not recognise the value in the content that they provide through that search and no money flows from Google to the originators of that copyright.

I am not suggesting for one moment that we think about a levy around Google but, when you look at Google, they could be a tremendous force for good around intellectual property and copyright. They have tremendous ability around their technology at the very least to flag that material may be copyright and may be owned by somebody else and to use their
algorithms to identify very quickly when material that has perhaps been put up on the web for access by others should not be made available free of charge because people do not have the right to access that information. Clearly in certain cases that is already happening around things like Premier League, video and the like.

The Chairman: Have you had problems with your organisation in this respect?

Mr Marshall: A very simple example, your Lordship, would be if you looked at Google Images and you look at the way that that service is now provided and you think about the party conferences. The PA along with many other news organisations would have spent considerable sums of money in covering that from both words and from pictures. If you search on the party conference, on David Cameron for example, on Google Images, you would get a complete page of those images. Those images would have originally resided on the individual websites from the news providers of those services, many of which we would have provided to them.

But there is an opportunity at that point to either click to go back to the original source of that information so that you then see the picture on the Daily Telegraph website or the Mail website or, alternatively, just to go to the picture. At which point you can download that photograph. There is no warning about the fact that it may be copyright material and, once store and retrieved subsequently, you would have no knowledge whatever that that was a piece of copyright material that had originally originated elsewhere.

The Chairman: Do you spend time thinking about how you can stop that?

Mr Marshall: We spend time thinking about it. As you may well know, Google’s simple approach is to say, “Well, use the software that stops people being allowed to link”. But, as a business like the Press Association that relies on selling content, it would be very hard for us to sell our content and then stipulate to the recipients of that content that once you put it on to your website nobody should be allowed to link to it. I think there is a role for Google to play, which at the moment it seems they are reluctant to get involved in. We can have great debates about media pluralism, but if the commercial media cannot make a commercial return from the journalism and the investment they make in that journalism then in the end Google will have less content to link to.

Mr Hardie: I want to emphasise the value of the current model in commercial PSB allows for the ambition to expand greater plurality. The examples of that are it is the commercial service broadcasters’ news services that have broken some of the most important stories in the last few years, including “plebgate”. ITV led the way on the Woolwich murders and many others that I could cite for you. But also ITN as a producer has been able to expand into current affairs. From a standing start almost, ITN produces for ITV “The Agenda” and a lot of the Channel 4 “Dispatches” documentaries. We have also been into the new media world. There was some discussion I heard earlier about: do we need to provide funding for new voices? I commend you to take a look at something on YouTube called Truthloader. Truthloader is a channel on YouTube and it is—

The Chairman: Sorry, what is it called?

Mr Hardie: Truthloader.

The Chairman: Loader.

Mr Hardie: Truthloader. It is a channel on YouTube. It combines investigative journalism with citizen journalism from all over the world. It is a very serious service allowing for all kinds of new voices. That is ITN doing that. We work with YouTube, who provided the
initial funding. There are ways where organisations, if you allow them to thrive as when we have ambitions, can expand the number of voices out there. At Channel 4 News we have a budget to commission independent news organisations, producers, and some of our investigations have worked in parallel with those. There is much to commend in the existing ecology of public service broadcasting and the commercial service that I just ask you to consider before making any changes.

Q285 The Chairman: Can I just ask you about Truthloader then? As far as stuff that goes up on to it, how is that, if at all, controlled by you or anybody else?

Mr Hardie: This is a proposition where we encourage people from all over the world to send in their video pieces. It may be about anything from somebody in Damascus who has a camera and is doing some of their own journalism on the field, or anywhere around the world, or has made a little film. We have a team that look at those and then, first of all, assess them for veracity, because you know the old Mark Twain expression, “In the time that a lie travels around the world the truth is still fastening its boot straps”. We put a lot of attention on to checking that, so we do not just put it out there. We then have journalists who will follow up with some of those people out there, do follow up stories and then host Google hangout discussions. This is absolutely the leading edge of what is going on online. I could give you more examples of what we are doing in that area.

There is a great recognition, by our broadcast clients as well as ourselves, of the need to not only continue to supply the power of television news because it is still does dominate in terms of viewing and viewer appreciation, but also to migrate to a new generation of mobile and social media who are looking for something additional and different.

The Chairman: Does it work the other way around? Do you then use some of the stuff that has originated in Truthloader back in your main bulletin if it becomes topical enough?

Mr Hardie: It can do. We collaborate or we share on those things that are appropriate to share and then we are entirely exclusive on those things that are enterprising journalism. It may indeed happen that a video is seen on Truthloader and someone from Channel 4 follows up on the story, as any organisation can.

The Chairman: Yes, I am just trying to figure it out. Are you seeing Truthloader as a form of crowdsourcing or are you seeing it as doing something that is in the public good more widely? One of the arguments we have heard in the past about funding for additional investigative journalism, or whatever it might be, is that this is something that is in the public interest and, for example, philanthropic organisations might care to fund it. There are examples in America and indeed some from this country, too. Are you seeing Truthloader in that context or as part of your crowd sourcing, information gathering for your own purposes? I am just interested.

Mr Hardie: This is a completely nascent brand and nascent business. It is quite a challenging business model because the business model on YouTube, of course, is depending on advertising views and pretty well advertising before you see a piece. The kind of material that we are putting on is not a dog chasing a chair across a room. This is hard-core stuff.

The Chairman: It is serious stuff, yes.

Mr Hardie: It is not easy to see that pure advertising alone will be able to fund this and it may be that the future funding of that could be a sponsored relationship or something like that. So we do not know yet.
The Chairman: That is fair enough. I am just trying to probe your thinking surrounding it. As you say, you are experimenting and that seems absolutely fair to me. Anything else? All I can say is a big thank you. We have enjoyed having you here this afternoon.
Introduction

ITV is the UK’s largest commercial television network and programme producer. As well as holding the Channel 3 PSB licences, making up ITV in England and Wales, it broadcasts a family of digital channels - ITV2, ITV3, ITV4, CITV, as well as high definition and time shifted channels.

ITV invests around £1 billion per annum on programming, with the vast majority spent on original UK content. ITV is also the second largest news provider in the UK, investing over £100m per year in national, international, regional and nations news coverage.

As a commercial broadcaster, ITV’s investment in high quality programming is not only a driver for UK economic growth it is provided free to 98.5% of viewers throughout the UK at no direct cost to the taxpayer. This is underpinned by the PSB regime.

ITV’s services have significant reach and impact, providing strong competition to those of the BBC and Sky:

- In 2012 more than 42 million people tuned into ITV in a typical week, 74% of the viewing population.
- The ITV Family share of viewing, including ITV, is 22.3% (the BBC family is 33.2% and Channel 4 11.5% and Five 6.0%).
- Broadchurch, broadcast in Spring 2013, is ITV’s highest rating new weekday drama series since 2004.
- ITV News enjoys a 27% share in peak.
- 18% of viewers only watch ITV News.

ITV makes a significant contribution to plurality in UK-originated content and high quality, impartial news services. In our view, the primary short-term objective of Government and Ofcom should be ensuring that existing news plurality continues to be viable rather than becoming immersed in highly complex issues such as attempting to define and measure media plurality. This is particularly the case given that the policy choices which tend to present themselves at the end of such analysis often appear relatively uninviting or are very hard to realise in practice.

Commercial broadcasters like ITV need to develop business models for the future and we are clear that self-help is critical for continued success. Nevertheless to suggest that news plurality in the TV sector can depend entirely on market mechanisms is probably misplaced. Existing policy and regulatory levers are available to policymakers to maintain plurality for original content production and news on television in the future. So, for example, we welcome the decision by the Secretary of State for Culture, Media and Sport to set in train the process for renewing the Channel 3 licenses (which expire in 2014). The C3 licenses will carry obligations around the amount of original UK content, including news and current

---

225 Channel family shares based on all time for the full year 2012.
226 Communications Chambers, Informing the UK, p.28
227 Communications Chambers, Informing the UK, p.24
ITV – written evidence

affairs, and will guarantee ITV’s continued contribution to news plurality in the UK for the next 10 years.

However, as we outline below, the commercial TV news market is very challenging and there are other areas where the government and Ofcom can work to help secure plurality in TV news for the long term. We suggest that a strong intellectual property framework, a fair regime for PSB channels carried on major TV platforms and modernising the EPG prominence regime are areas on which policymakers should focus.

The importance of TV news in terms of influence, viewing and trust.

In 2011 ITV commissioned Robin Foster of Communications Chambers to examine the role of TV news in the digital world. A copy of the report, Informing the UK, is attached and can also be downloaded from: http://www.commcham.com/publications/tv-news.

The report concluded that:

- There is substantial evidence that TV news has a continuing central role to play in future news provision in a converged world.
- TV news could in future perform a vital role in filling a predicted gap between high-priced specialist news for those who choose to continue to pay for it and free/low cost commodity or infotainment news for the rest.
- To secure its future, one challenge for policy makers is to ensure that plurality of supply is maintained, delivering TV news of real audience impact and profile outside the BBC.
- ITV news has a particularly important role to play. It is valued by viewers and has a very broad reach. Furthermore, the resources it draws on and the policy levers to secure its future role are still available.

These conclusions about the role of TV news are broadly consistent with many of the findings of Ofcom’s own research which shows, for example, that consumers rank TV news highest (in terms of both personal and social importance) over any other content genres on the main TV channels.

Other Ofcom research shows that 79% of adults stated that they regularly use TV as a source of news, with 29% of regular news consumers saying that they source their news only from TV on a weekly basis. Moreover, Ofcom’s research also shows that a large proportion of consumers place significant trust in TV news. 74% of viewers trust TV news to present unbiased coverage compared to 5% for the internet. Ofcom’s research also shows that older consumers and those from socio-economic groups C2DE were far less likely to use the internet as sources of news compared to traditional media such as TV.

There is also very significant public support for plurality in news programming (both national news and “news about my nation/region”) – with Ofcom’s PSB Review research.

---

228 See Figure 4 of Ofcom report on public interest test on the proposed acquisition of BSkyB Group plc by News Corporation, 31 December 2010.
229 Ofcom’s cross media audience research (2010) cited on page 29 of the Ofcom report on BSkyB/News Corporation. This reflects similar findings in research for the second Ofcom PSB Review.
230 Communications Chambers, Informing the UK, p.4.
231 See para 4.57 of the Ofcom report on BSkyB/News Corporation.
demonstrating that 86% of viewers considered it important for more than one of the main channels to provide news, and 76% of viewers taking the same view about nations and regions news. This conclusion was also reflected in the deliberative survey work commissioned by Ofcom for the second PSB review which found that participants regarded PSB plurality in UK network news, Regional/nations news as “crucial”.

**ITV News**

While the BBC is the market leader in TV news provision, ITV News acts a key competitor and counterweight to the BBC. Outside the BBC ITV is the main mass audience TV news choice and has a far wider audience reach than Sky or Channel 4.

ITV accounts for 20% of all viewing to national and international news in the UK (with Sky at 7% and Channel 4 at 3%). ITV’s share of peak hour news viewing is 27%, compared to 5% for Sky, and one third of peak weekday hours (6-10.30pm) are taken up by regional, national and international news. 232

ITV News also plays a significant role in reaching parts of the news audience which are not as well served by other broadcasters. Women, younger viewers and C2DE social groups account for a high proportion of its audiences compared with the BBC’s main news.233

In the nations and regions ITV is also the only competitor to the BBC in the provision of regional TV news. ITV currently provides regional news via 10 primary news programmes in England, the Borders, Wales and the Channel Islands with an average 19.2% share in 2012 (with STV and UTV providing bulletins for Scotland and Northern Ireland.)

As part of the Channel 3 licence renewal process we have provided detailed proposals to Ofcom that are intended to make our regional news services more localized and economically sustainable for the next licence period, catering to audience needs. The proposals entail more locally targeted news providing 16 services. With Ofcom’s approval, they will put ITV regional news on a secure and sustainable footing for the next license period, continuing to provide viewers to an alternative to the BBC at the regional level.

In the last few years ITV has also increased its commitment to current affairs. At the heart of ITV’s current affairs output is the *Tonight* programme which offers in-depth coverage of the important issues of the day. To complement *Tonight*, *Exposure*, was launched in 2011 which continued to explore significant domestic and international stories in depth. There is perhaps no better recent example of the vital importance of plurality than ITV’s decision to run *The Other Side of Jimmy Savile* which saw *Exposure*’s highest audience of 2012 with 1.9 million viewers and 23% share.

**TV News in the wider media landscape**

Plurality and competition in well resourced, accurate and impartial free to air television news is critical in a democracy, particularly where print news models are under increasing strain. It is difficult to understate the scale of the challenge in the news market at present.

---

232 Communications Chambers, *Informing the UK*, p.28
233 Communications Chambers, *Informing the UK*, p.6
While the cost of newsgathering hasn’t changed significantly, exceptional economic pressures on news media generally, and on the printed media in particular, mean that, without great care by policymakers over the coming years, the UK could find itself without a plural and trusted news media in the long term.

At this stage it is far from clear whether digital media will offer an effective substitute. Even if there are sustainable new models, the risk is that news will polarise in future between a few high cost elite providers of specialist news and many free providers of infotainment.

In this context, television news has maintained its relevance and popular appeal and, as outlined above, is consistently acknowledged by a majority of those surveyed to be their main source of news.

**ITV’s future contribution also depends in part on commercial success**

It is important to be clear that it is ultimately ITV’s commercial success that will determine its contribution to plurality.

ITV is a commercial company listed in the FTSE-100 index with around one third of our shares held by international investors. We are competing in a global market for the capital we need to continue to invest in original UK content. We can only sustain this investment, and fulfil our PSB role, if we are a successful - and profitable - business, making an attractive rate of return for our shareholders, while contributing to the growth of the wider economy. This is a world away from the old model for PSB where analogue licenses worth many hundreds of millions of pounds supported many different genres of programming. Today the digital PSB licenses are worth in the region of £40m.

ITV is three years into a transformation plan to create a business model fit for the digital age. Our business strategy is to continue to make more of our own content, make it famous in the UK, on TV and online, and then sell it to multiple platforms both in the UK and around the world. This return on our investment allows us to re-invest in original UK content at scale.

This strategy is starting to bear fruit. For example ITV Studios’ (ITV’s production arm) revenue grew by 16% in 2012 and *Mr Selfridge* has been sold to 36 countries. Online, pay and interactive revenues were up 26% and the ITV Player is now available on 15 platforms – up from just 2 in 2009. *Broadchurch*, broadcast in March/April 2013, is ITV’s highest rating new weekday drama series since 2004.

It is ultimately the success of this strategy which will allow ITV to continue to produce such a well-resourced schedule, available free-to-air across the UK. Our continued mass-audience appeal means we are not only able to fund news, but we are able to bring it to millions of viewers during peak viewing hours. The fact that TV news is often scheduled after very popular programmes - whether it’s the latest hit drama or entertainment programme - increases its audience and hence its impact.

**Public policy can help to underpin the contribution of commercial TV**

It is our view that the role of Government and Ofcom in supporting media plurality should be ensuring that existing plurality continues to be viable in fast-changing media markets.
We believe this is of greater public value than becoming immersed in complex and abstract tasks such as attempting to define and measure media plurality.

As outlined above, ITV’s continued contribution to media plurality depends on our commercial success, which is based on self-help. However, as we set out below, we also recognise the role of both regulation and subsidy (direct and indirect) in affecting and in some cases sustaining plurality in the UK TV news market.

The Channel 3 Licences

The fact that television news has continued as a key part of the UK’s news ecology, even in the rapidly changing commercial environment, is to a significant extent the result of direct and indirect subsidy – both public and private. The BBC has the guaranteed licence fee, Sky news effectively (we understand) relies on internal subsidy – with ITV’s overall contribution to news plurality guaranteed and, in the case of regional news, effectively indirectly subsidised via the Channel 3 licences.

The role of the Channel 3 licenses in underpinning a significant proportion of the UK news ecology was outlined by Ofcom in its report for the Secretary of State on the Licensing of Channel 3 and Channel 5 in May 2012. The regulator suggested that renewal of the Channel 3 licenses would:

- create market certainty for the Channel 3 companies at a time of economic instability;
- ensure continuity and prevent the possibility of significant disruption to regional services;
- secure a system which delivers plurality of news in the Nations, including the future of UTV and STV;
- potentially lead to a renewed contract for the provision of Channel 3 national news by ITN, which would be likely to bring stability to ITN which is the current news provider for Channel 3, Channel 4 and Channel 5.

The impact of the Channel 3 licensing process on ITN is a particularly important issue given that ITN is one of only three significant suppliers of wholesale broadcast news in the UK alongside the BBC and Sky. Through its contract with ITN, ITV helps sustain this “third force” in TV news. ITV’s investment in news in effect also cross subsidises Channel 4 News by meeting large part of ITN’s fixed costs and allowing Channel 4 news access to ITV’s regional newsgathering network.

Therefore ITV welcomed the Secretary of State’s recent decision to set in train the C3 license renewal process. Licence renewal will guarantee the provision of impartial national, international and regional news, alongside a wealth of other high quality originated content, free-to-air, to 98.5% of the UK population on Channel 3. In turn, this ensures competition to the BBC and Sky in high-quality, impartial national and international programming, and helps to secure the future of ITN.

Renewal will also provide the regulatory certainty that ITV and its investors need when reaching funding decisions. Without licence renewal, or significant extension, it is difficult to justify the investments that we and our partners – such as ITN or independent producers - need to make.
However, there are other areas where policymakers should ensure that the legislative and regulatory framework (a) ensures that TV content investors are able to make a return on content that is successful and (b) encourages investment in television content by the commercial PSBs in particular. The net effect of this, as we explain below, will be to help maintain plurality, particularly that provided by the commercial PSBs.

**A strong intellectual property framework**

Intellectual property underpins investment in creative content. Without a strong intellectual property framework, that ensures that investors and creators can make a good return on their talent and investment, ITV would not be incentivised to create new content, fund innovative ideas, build new distribution platforms or re-invest in future growth.

This is more important than ever as secondary revenue from content sale and licensing is becoming a more and more important element in the overall financing of original TV content. Secondary revenue is ultimately key to continued effective competition (and plurality) to the BBC and Sky from commercial PSBs such as ITV.

We are therefore very concerned by the apparent desire of the Government to weaken copyright protection in the UK. In particular a combination of the existing time-shifting exception and the proposed private copying exception, to be introduced later this year, is likely to continue the transfer of economic benefit from the content industry to commercial and technological intermediaries. The risk is that platform operators and large US based technology companies will be able to appropriate a significant proportion of revenue that would otherwise flow to UK-based content creators.

**A fair regime for PSB channels carried on/received via major TV platforms.**

For many years the policy priority in the UK TV market was to encourage competition to the analogue PSB incumbents. The result was a series of measures to encourage new platforms to enter the market to provide competition to analogue terrestrial television. These measures were effective in encouraging cable and satellite platforms to develop.

However in today’s digital world there is no longer an analogue monopoly. Instead there is strong competition between platforms. Yet many of the measures designed to encourage competition in the analogue era continue to this day and allow platforms to extract value from PSB content without having to pay for that content.

So, for instance, the current regulatory regime assumes that at best the most popular UK TV services provided by the PSBs can be legitimately taken and retransmitted on cable without the consent of (or a licence from) the relevant PSB and at worst that the PSBs should have to pay substantial sums to a platform operator (Sky) for the technical platform services that enable viewers to effectively receive the PSB services (with the correct regional news programme) via that platform.

The normal commercial channel response would be to commercially negotiate upstream supply of channels to platforms. However, the regulatory regime makes this impossible as it requires PSB channels to supply content to major TV platforms for free:
The must offer/Technical Platform Services regime means that broadcasters pay £millions for access to the satellite platform with no recognition of the increasing value to the platform from supply of PSB channels.

Section 73 of the 1988 Copyright Designs and Patent Act was introduced to encourage roll-out of the cable network in the UK. It allows the cable platform operator Virgin to take and retransmit the main PSB services without agreement, payment or even copyright consent from the PSB broadcaster. The PSB linear services are an integral part of the overall Virgin offer to its pay-TV subscribers (who still watch the PSB services in large numbers). Instead of encouraging investment in content, it represents a subsidy to a distribution/aggregation business model.

Section 73 also allows aggregator websites to generate significant revenues from PSB content without permission from or payment to the creators. Further detail on this is provided in the attached note produced for the Culture, Media and Sport Select Committee by ITV, BBC and Channel 4.

The scale and seriousness of this value transfer from channels/content providers to platforms has intensified with the rise of high capacity PVR devices. These are rented/sold by platforms to their subscribers as added value services, taking advantage of existing copyright exceptions, such as time-shifting. This allows pay-TV platform customers to record and keep copies of very significant amounts of PSB content as well as allowing them to skip the advertising in such content. The time shifting exception to copyright was introduced in a world of video recorders (VCRs) and tapes. But in the digital era its scope has expanded way beyond the intention of legislators as a result of the advent of hard drives and personal video recorders (PVRs).

For the avoidance of doubt, our difficulty is not with PVRs per se – they are a great enhancement to consumer choice - but rather with the fact that the IP regime, which underpins their use, now allows platform operators to extract further value from PSB content which is supplied either for free (or for payment to the platform operator) in the first place.

Regulatory arrangements such as these effectively tilt today’s very competitive market in favour of platforms. This means it will become harder to continue to invest in high levels of UK originated content, made available to viewers for free, in the absence of a clear ability to be paid fairly for doing so. Ultimately, this can only have a long term impact on plurality in UK broadcasting, including in news.

Modernising the EPG prominence rules for PSBs

Media plurality depends not just on the production of content that represents a diversity of viewpoints, but also on the opportunities for people to access this content. In the case of TV, this means that programming should be widely available and easy to find.

To date, prominence rules have played an important part in this process – providing a backstop to ensure that the main PSB TV channels have appeared at or near the top of EPGs on all TV platforms.

In future it is likely that that more and more content will be consumed on-demand and accessed through new gateways and user interfaces (UIs) such as connected TVs. The commercial incentives of these gateways (operated by global players) may often collide with
the public interest in achieving a high profile for and high consumption of original, high quality UK content from the PSBs.

Securing future prominence for PSB content will therefore require updating the existing framework. This could be achieved by amending the Communications Act 2003 and the Ofcom Code to:

- Extend the current definition of EPG to cover new user interfaces that are used by a significant number of end-users to access TV-like content, where a linear EPG/UI is part of the overall UI or service offering;
- Expand the list of PSB services entitled to prominence and enabling the list to be revised by the Secretary of State by order.

The scope of the application could be subject to thresholds. So only services with a significant audience share would be caught and only aspects of the UI which were the principal means of accessing on-demand content would be regulated.

These changes would ensure the continued discoverability of high quality, original UK content and a high level of investment in that content.

8 May 2013
ITV, Channel 4 and Channel 5 – oral evidence (QQ 234-247)

Transcript to be found under Channel 4
ITV Scotland – written evidence

We noticed that the Communications Committee recently held an oral evidence session on media plurality in Scotland as part of its wider inquiry into media plurality. We therefore thought it would be useful to give you an update on ITV’s provision of regional news and current affairs in the Border Scotland area.

As a Public Service Broadcaster, we are committed to high quality and impartial regional news across the UK. We provide a regular service of news and analysis to viewers north and south of the Scottish border in the ITV Border licence area.

ITV Border is absolutely committed to providing a more localised news and current affairs service to viewers. We recognise very clearly the issues associated with serving a region parts of which are in England and parts in Scotland, and are particularly conscious that our programming in Border should offer appropriate coverage of Scottish issues.

We recently launched the new Lookaround news programme, a full half-hour of news at 6pm for southern Scotland and Cumbria. We also announced plans for the launch of new current affairs programmes for viewers in the Borders and Dumfries and Galloway.

Before the end of this year we intend to have completed engineering work that will allow us to split the terrestrial transmission of ITV Border between Cumbria and Scotland. This will allow us to show some Scotland specific current affairs programmes to ITV Border Scotland viewers and let ITV Border viewers in Cumbria continue to watch the same programme schedule as the rest of England.

By the end of January 2014 we will start to broadcast an hour and a half a week of current affairs and other programmes in ITV Border Scotland. These programmes will cover Scottish political affairs with a particular focus on southern Scotland. We will include coverage from the floor and committees of the Scottish Parliament, the House of Commons and the House of Lords.

We hope that you find this information useful and please do not hesitate to contact me if you would like further detail.

8 November 2013
We read with interest the HOL Communications Committee's oral evidence session on media plurality in Wales as part of its wider inquiry into media plurality. In particular we were interested to read comments about ITV Cymru Wales' coverage of politics and public affairs. We therefore thought it would be useful to update you on our provision in these areas.

We provide regular and comprehensive coverage and analysis of politics in both Westminster and the Welsh Assembly in our daily news output and in our weekly politics show Sharp End, presented by our highly respected political editor, Adrian Masters. This is supplemented by additional-political coverage and analysis on our news website [www.itv.com/wales/politics](http://www.itv.com/wales/politics).

In recent weeks, our political coverage has included a live studio interview with the Prime Minister on the UK government's plans to devolve some taxation and borrowing powers to Wales. This story was also covered on the ITV network news.

Other recent coverage includes the standard of care in the Welsh NHS, the cuts to local government spending in the recent Welsh Government Budget, exclusive details of the deal between the Welsh Government, UK Government and European Commission on regional aid to Wales, and evidence by the former Welsh Secretary Rt Hon Cheryl Gillan MP to the House of Lords Constitutional Committee.

We are also the only news organisation to publish regular opinion polling on Welsh voting intentions. And next month we will be broadcasting, for the ninth year, the annual Wales Yearbook Political Awards.

On the wider point of media plurality, ITV serves as a substantial counterweight to the BBC in Wales and also as a contributor of programmes for S4C. Each week on ITV Wales we provide four hours of Welsh news plus 90 minutes of current affairs and other programming, mostly shown in peak time.

ITV's commitment to broadcasting in Wales is reflected in our new licence agreement that will see the continuation of ITV news and programmes for Wales well into the 2020s - given further weight by the significant investment of our move next year to modern new premises at the heart of political life in Cardiff Bay.

We hope that you find this information useful and please do not hesitate to contact me if you would like further detail.

12 November 2013
Johnston Press – written evidence

Lord Justice Leveson acknowledged in his report the exemplary behaviour observed by the local and regional press and among his recommendations he urged that nothing be done that would adversely impact on their business.

During the evidence-taking he heard and acknowledged the financial challenges the press was facing, the declining advertising revenues, the growth of digital that was impacting on the business.

Finally, he urged the Government to do what it could to support the regional press and to help to ensure its financial viability.

It is important within this context to stress that Johnston Press has experienced financial challenges but as an agile business it has adapted well to them and through constantly looking at its earnings potential, revenue streams and costs base, it is emerging from a difficult period in reasonably good shape and is a profitable business.

That said, it is not immune to the impacts from changes in Government and public authorities’ approaches to advertising, the growth in alternative digital publishing formats and from declining print advertising volumes.

We believe that the deliberations of the Select Committee on Communications should take into account a number of issues when considering media plurality.

Firstly it should consider in a supportive and proactive way the needs of newspaper businesses to be able to own multiple titles in the same geographic footprint. Previous cases have seen proposed acquisitions of newspaper titles by larger groups rejected on the grounds of one media owner having “too much influence” over public opinion and the political process.

The media landscape has changed and the concerns over influence are exaggerated. Why is it different today? The committee should take into account the much wider publishing environment that exists today that allows for far more opinions to be published in ever-increasing formats, from social media, blogs, village pamphlets, YouTube etc.

Equally, public opinion can find a voice on many different media platforms. The newspaper voice is an important one and will still play a role in shaping public opinion but it is more diluted than it has been previously.

In addition, newspapers are receptacles for public opinion from many sources, listed above by way of example, which means that many more opinions across a spectrum are now more readily publishable than previously.

Hence concerns about a diversity of viewpoints should today be far less than in previous years.
One tenet that has not changed and remains true today is that regional newspapers have independent voices not governed by party politics. Ownership of many titles in one geographic area should not mean that there is “too much influence” over the political agenda.

Johnston Press protects editorial independence and does not allow editors to take a party political stance in its own code of conduct.

Turning to whether the BBC should be included as part of a review. Our opinion is that the BBC already plays on an unfair playing field with the commercially-dependant regional press. It is able to apply more resources, even with the tougher financial climate it faces today, to give it a competitive advantage over the commercial press industry.

Its voice remains a strong one and its output via local TV, radio and as importantly the resources it has for its internet and digital operations poses a competitive threat to the press industry while not being constrained by the same commercial conditions that impact on our industry.

Therefore, any review should include the role of the BBC, its output and should make recommendations that its content should be made readily available to the local press.

The committee should have due regard to future trends in news provision and take a more relaxed view about media ownership of printed titles because of the proliferation of platforms for news, current affairs, opinion and comment to be published.

We note that the inquiry will look at media convergence and its previous inquiry “underlined” way in which convergence has created new threats and exacerbated long-standing concerns about pluralistic provision of news etc”. This may be the case in the context of the aborted BSkyB acquisition bid, but is not the case in terms of regional media ownership. We can point to evidence within Johnston Press where multiple titles are owned within a geographic area and operate with editorial independence. Therefore prospective acquisitions by media companies should be viewed not with a concern about plurality but positively in light of the recommendations from Lord Justice Leveson that the Government should do what it can to support the regional press industry.

It would be useful for the committee to review its objectives on plurality policy and bring it up to date reflecting the diverse array of publishing platforms that exist today. What is it trying to achieve by ensuring plurality, what impact will its policies have on the commercial viability of a traditional press and how could its policy encourage and support media diversification, growth and therefore employment opportunities.

Its scope by necessity now has to cover every publishing platform, from print, web, digital, forums, social media, TV, ultra local TV, radio as they all play in the same marketplace, reflecting and capturing public opinion.

We trust that this submission is helpful to the Committee and are happy to try to assist further if required.

21 May 2013
Robert Kenny – written evidence

Robert Kenny – written evidence

Introduction

1. My name is Robert Kenny. I am a founding director of Communications Chambers, an advisory firm specializing in telecoms and media strategy and policy. My clients are regulators, policy makers, trade bodies and corporations in the UK and internationally. I have held senior roles in various consulting firms and also headed strategy and M&A for Hongkong Telecom and Reach (large Asian telcos), and headed M&A for Level 3 (a US telco).

2. I have written extensively on plurality, both in academic journals and otherwise. I have prepared submissions regarding plurality for Sky (in the context of its investment in ITV), for News Corp (in its bid for Sky, and in its evidence for the Leveson Inquiry) and for the BBC (in response to the recent Ofcom consultation). I also advised Global Radio on plurality matters in the context of their bid for GMG Radio. References for my papers on plurality (where they are in the public domain) are available at the end of this evidence.

3. In this evidence I first make some general observations. I then provide responses to many of the questions raised by the Committee. I offer this evidence in a personal capacity.

General observations

4. With each passing year, the case for ownership-based plurality regulations grows weaker. There are three reasons for this — plurality is rising as consumers change their mode of news consumption; ownership is increasingly linked to the news content consumed from the outlet in question; and the costs of plurality rules are increasing.

Increasing plurality

5. Fundamental to an understanding of news plurality is the concept of multi-sourcing — that is, the number of sources of news used by the typical individual. This is important because an individual consuming from multiple sources is far less likely to be captive to the world view of any one source. They will be exposed to multiple news agendas, hear different angles on the same news story and so on.

6. Multi-sourcing is a vital complement to the market share perspective on news consumption. To take a simple example, a market where one half of consumers only read newspaper A, and the other half only read newspaper B, is clearly less plural than one where all consumers read both titles. In the latter case, everyone is exposed to diverse views. However, both scenarios are identical from a market share perspective — in each case it is 50/50.

Further information available at www.commcham.com
Robert Kenny – written evidence

7. Plurality is rising because multi-sourcing is on the increase, thanks to the Internet. In 2010 the internet overtook newspapers and radio to become the second most important UK news source\textsuperscript{235} – and the internet has a high degree of multi-sourcing. It is easy and (mostly) free for consumers to switch between numerous news outlets. Conversely, newspaper reading, which has a low degree of multi-sourcing, is declining, and consumers report than newspapers are fading as a primary source of news.

8. Online consumption also increases plurality because market shares are very different online, which ‘rebalances’ share of overall consumption. For instance, the Guardian website is used four times as much as the Sun website\textsuperscript{236}.

9. Finally plurality is also rising because the media, while still important, are no longer the gatekeepers they once were. The internet creates a direct channel between those with a message and audiences. To take a simple example, @Number10gov has 2.3m Twitter followers (a number greater than the readership of all but the very largest newspapers). This allows Downing Street to communicate directly, and to do an ‘end run’ around news outlets. A consumer’s perspective on Cameron is no longer in the media’s gift.

Decreasing influence of proprietors

10. The very concept of ownership-based plurality regulation implicitly assumes that there is a causal chain, from the proprietor, through editorial staff to the content offered by the outlet and finally to the content consumed by the consumer. However, this chain is weakening.

11. Increasingly the content in a news outlet is directly influenced by consumers themselves. Stories that receive heavy internet traffic tend to get additional coverage from that outlet, as editors respond to the evidence of what interests their audience. Further, the tone of audience response can change coverage. Stories that attract violent objections from readers can be pulled entirely. Social media are also an increasingly important source of stories. As Lord Rothermere recently noted: “Twitter is a major form of primary source material for us and the guys on Mail Online try and turn around stories from Twitter in about three minutes”.\textsuperscript{237} This may or not be a good thing, but it indicates a transformation in the drivers of the news agenda, and a waning of influence of traditional media proprietors.

12. Editors are not only ceding some control over what content is available, they are also losing control over its hierarchy. Traditionally, an editor’s view of the news agenda sets what stories are on the front page or at the top of a bulletin. However, online consumers can (and very frequently do) bypass the home page. A consumer arriving at bbc.co.uk following a link to a financial story may be blithely unaware of the political splash on the home page – put another way, the BBC is no longer in control of the news agenda as experienced by their audience.

Increasing cost of plurality regulations

\textsuperscript{235} Ofcom, \textit{The Ofcom Media Tracker survey: 2010 survey results}, July 2011
\textsuperscript{236} Ofcom, \textit{Annex 4: News consumption in the UK}, 29 June 2012
\textsuperscript{237} “How the Guardian inspired Mail Online to become a global brand”, Press Gazette, 23 April 2013
13. Another word for plurality is fragmentation, and an excessively fragmented news market will be increasingly unviable.

14. In many cases news is already loss making. The costs of news are largely fixed, regardless of audience size, and if news consumption is spread amongst a large number of players, very many of them will be unprofitable (as are The Times, The Guardian, Sky News and ITV News, amongst many others). The trajectory for newspapers is also very concerning – last year alone, the nationals lost 7% of their readership, an acceleration of a long-standing downward trend. Today only one in three adults read any national newspaper.

15. Under severe budget pressure, all newspapers have significantly cut budgets for investigative reporting, international coverage and so on. Even in far more concentrated markets, such as the US, newspapers are closing down in large numbers.

16. This is the prime reason that plurality regulation comes with very heavy costs. To the extent that it prevents the merger of two news entities, there is no certainty whatsoever that the result is that those organizations carry on healthily as independent entities. They may both be weak, under-budgeted news gatherers, or one may simply close down.

17. Further, plurality rules give diversified organisations with news operations a strong incentive to shut down those operations. Sky has been subsidising Sky News for many years. How would you now convince an independent shareholder to continue to support Sky News? It has effectively become a poison pill, an impediment to a merger with the most obvious buyer. The only rational decision is therefore to shut it down.

18. Thus plurality rules can have material negative unintended consequences, damaging the very things they are intended to support.

19. Overall, the benefits of plurality regulation are falling, and its costs are rising. This should be the context for any consideration of changes of scope or substance to plurality rules.

Responses to questions

Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

20. The objective of plurality should be “informed citizens exposed to a spectrum of views”. Note that media plurality is only one means to this end – direct communication from (for instance) politicians to citizens also contributes to this objective.
In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition, or should it be improved?

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 process/agenda.”

21. Part (b) of the above language is an objective of plurality, rather than an attempt to define it. Part (a) seems to be a reasonable definition of media plurality (though as noted in paragraph 20 this is only part of the overall picture). Clearly availability by itself is insufficient, and it is appropriate therefore to include ‘consumed’. Ofcom is right also to include ‘within’ media enterprises. Internal plurality (diversity within one organisation’s output) is an important part of the overall spectrum of views available to consumers.

What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?

22. The focus should be on news and current affairs. Firstly, market developments (including mergers) which lead to a material lessening of plurality of, say, drama, but do not also lead to a loss of news plurality are likely to be rare. Secondly, the potential harm caused is likely to be less. Thirdly, assessing plurality in this wider, softer context is even more challenging than within the context of news, where it is already difficult. Given these issues, the cost/benefit trade-off applying plurality rules to general cultural content is unlikely to be attractive.

What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic?

Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

23. The idea of potential reviews in the context of M&A is not controversial. Beyond this I am wary of ad hoc reviews, not least because it is not clear what plausible remedies they might apply, even if they were to find insufficient plurality. However, periodic ‘state of the nation’ reviews, assessing whether plurality was ample, marginal or insufficient (but not with the objective of intervention) would be valuable for all stakeholders. Not least, they would provide guidance to media organisations as to the prospects for approval of consolidation.

24. Any periodic review should also assess the financial health of news provision. ‘Sufficient plurality’ must be considered in the context of what is economically feasible.

For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?
25. This is a fundamental question, and one that has been repeatedly ducked. Ambiguity on this issue causes great uncertainty for those contemplating media mergers. The problem is two-fold. Firstly ‘sufficient’ is undefined. Secondly, applications of the plurality tests are infrequent enough that there is not a material body of ‘case law’ to guide market participants.

26. It is tempting to seek a simple, single metric with a ‘bright line’ threshold for sufficiency. Italy, for example, sets a maximum share of revenues (across a wide set of media related industries). However, such tests are too crude. In particular it unfairly penalises those with interests beyond news. For instance, why should ITV’s ability to acquire other entities be blocked because it happens to have substantial revenue from Downton Abbey and other general TV? Clearly these revenues are quite unrelated to influence over the news agenda or the debates of the day.

27. While it is hard to set a quantified metric of sufficiency, that does not mean that it is impossible to give guidance on this point. For instance, some have sought to use the level of plurality in 2003 at the time of the Act as a benchmark. Presuming that there was sufficient plurality then, if today’s plurality is at least at that level, then it is by extension still sufficient. (Lower levels of plurality could of course also be sufficient, depending on the ‘margin of sufficiency’ in 2003).

28. As noted above, a periodic review could give guidance as to whether plurality was ample, marginal or insufficient at a given point in time, providing a reference point for future reviews.

29. Regarding digital intermediaries, ‘gateways’ is a somewhat loaded term to describe such entities, since it implies one must pass through them to reach your destination. A consumer may choose to use Google News en route to bbc.co.uk, but they certainly are under no obligation to do so. They can go direct, and in practice a great majority do.

30. Indeed, digital players such as Google, Twitter and Yahoo are all very positive for plurality. Google and Twitter introduce audiences to news sources that a given user might not normally see, and they have a different ‘agenda’ than other outlets (albeit not one set by a single editor). Players such as Yahoo are not intermediaries for other news outlets but rather a place of news consumption. Yahoo makes heavy use of wire services, but offers a different news agenda and angle on individual stories than appears in other news outlets (though of course they too make use of the wires for at least some of their stories).

31. Against this background, the pure digital players must absolutely be taken into account, for the positive contribution they make.

How should ‘sufficient plurality’ be measured?

32. I am broadly supportive of Ofcom’s recent statement on this. A variety of metrics should be used, covering availability, market share and multi-sourcing.

33. The crucial perspective is that of the individual, not of the market. By this I mean that what matters is that citizens are exposed to a diversity of views, not that they get a diversity of views from a single medium (say newspapers, or TV), nor indeed that
they get a diversity of views from traditional media alone. In forming their worldview, people do not segment their brains between what they learnt online and what they learnt on the evening news.

34. For this reason, in almost all circumstances it will be appropriate to consider plurality from a multimedia perspective. To take a practical example, a high share of the newspaper market is less and less important as consumers abandon newspapers as a source of news.

35. This is not to say that all media are homogenous – they are not. Nonetheless, it is this wider multi-media perspective that is appropriate, and more generally a view of the full range of news influences, including the many ways in which the internet enables traditional media to be bypassed entirely.

Should the BBC’s output be included in a review of it?

36. The BBC’s output should categorically be included. Firstly, the BBC is an enormously important source of news, leading by some margin on TV, on radio and online. Secondly, given its impartiality obligations and the associated balance of opposing views it offers, its output includes valuable internal plurality.

37. Given the BBC’s enormous voice in news, it would be strange to suggest that another player had too large an influence simply based on its consumption relative to other non-BBC players. Clearly, for the large number of consumers for whom the BBC is their prime news source, it is a powerful counterbalance to whatever worldview may be presented by their other sources.

How can internal plurality be sensibly measured against external plurality?

38. It is no easier to measure internal than external plurality. However, while internal plurality is potentially more vulnerable than external plurality, it nonetheless makes meaningful contribution to overall plurality. The news agenda of The Times is less like its stable-mate The Sun’s, and more like the separately owned Telegraph for instance. It is a mistake to simply assume away the contribution of internal plurality by focusing purely on the ownership level.

What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

39. This is a critical question. In the context of M&A, in extreme cases the merger can be blocked, or at least the merger of the relevant news operations (effectively the outcome in News/Sky before the bid was withdrawn).

40. Outside M&A, it is far more problematic to develop appropriate remedies. Firstly, there is the question of to whom they should be applied. Let us say that all newspaper readership has declined, but The Sun has declined more slowly than other papers and so gained share. Should The Sun have remedies applied to it in such circumstances? If a local newspaper goes under, will the (likely struggling) local radio station now be deemed to be a plurality problem given its suddenly larger share of news consumption? Perhaps remedies should be applied to the largest player in the market? But this is almost certainly going to be the BBC. Presuming we do not wish
Robert Kenny – written evidence

to throttle the BBC, do we apply remedies to a commercial player for being second largest?

41. Secondly, what might those remedies be? Is a newspaper to print fewer copies to ensure it is less read? How might (say) ITV reduce viewership of its bulletins? In local markets, both local radio and newspapers are already in financial difficulty. What remedies might be applied to them? In some cases a media entity may have particular outlets that could be divested, but requiring this would be a radical step, with no guarantee of buyers for what may well be a loss-making company. It also seems inequitable to reserve remedies for entities that happen to organise themselves this way, but expect not to apply them to integrated organisations.

How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?

42. As discussed above [paragraphs 14 to 18], this is a vital issue. In this context, the very concept of ‘sufficiency’ is problematic. Sufficiency implies an absolute level, but in practice the question is how much plurality can we ‘afford’ (not in a direct cash sense, but in the sense of still sustaining viable news operations). This is more than an abstract issue. In local markets we accept levels of plurality that are far below those in national markets. This not because there is no benefit to greater plurality in local markets – rather it is because our view on what is ‘sufficient’ has been strongly tempered by what level of plurality is in practice possible.

With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

43. [No comment]

To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

44. [No comment]

What should the UK learn from international approaches to media plurality?

45. A review of plurality regulation in a number of countries239 shows wide variation in the detail. However, there are some common themes. Firstly, with limited exceptions (in practice, only Germany) regulation only addresses M&A rather than organic growth. Secondly, state broadcasters do not have remedies applied to them (though, where tests consider market share, they are taken into account).

239 Australia, France, Germany, Italy, Ireland, Norway, United States
References

I discuss in detail the issues covered in this evidence in the following papers (as author or co-author):

*Plurality Regulations – still a wise market intervention?*  
[Article for *Competition Policy International*]  
Sep 2012

*News consumption and provision transformed -the implications for plurality*  
[Submission to the Leveson Inquiry, on behalf of News Corp]  
Feb 2012

*Legislating for Plurality*  
[White paper]  
Aug 2011

*Past and future trends in plurality and the setting of the news agenda*  
[Submission to Ofcom on behalf of News Corp re News/ITV. Co-author with Robin Foster & Tim Suter]  
Nov 2010

These are available via the links above or at [www.commcham.com/publications](http://www.commcham.com/publications).

30 April 2013
TUESDAY 5 NOVEMBER 2013

Members present

Lord Inglewood (Chairman)
Lord Clement-Jones
Baroness Deech
Baroness Fookes
Baroness Healy of Primrose Hill
Bishop of Norwich
Lord St John of Bletso
Baroness Scotland of Asthal
Earl of Selborne
Lord Skelmersdale

Examination of Witnesses

Professor Justin Lewis, Professor of Communication, Cardiff School of Media, Journalism and Cultural Studies, and Dr Colm Murphy, Head of School of Media, Film and Journalism, University of Ulster

Q364 The Chairman: I extend a warm welcome to Colm Murphy, from the University of Ulster, and Justin Lewis, from the Cardiff School of Journalism, who have come to talk to us today about the attributes and characteristics of the media, particularly as it relates to media plurality in Northern Ireland and Wales respectively. Thank you for coming all this way. As the proceedings are being recorded, if at the beginning each of you in sequence could give us your name, who you are and what you do, that helps that process. We are grateful to you for coming. I begin by saying to one or other of you, whichever would like to start, please do that and if there is any introductory statement that you would like to make, please do so.

Professor Lewis: Thank you. First of all, thank you for inviting me. I did note that the recent DCMS consultation on media plurality did not mention Wales, so it is very nice that you have invited me here to talk about Wales. Thank you for that. A very brief opening statement from me, if that is okay?

The Chairman: Yes, of course.

Professor Lewis: The main point I would like to make about Wales is that, as you will all know, there has been significant devolution of political powers to Wales, but we have not
seen any flow of news either about or for Wales that has gone in parallel with that. If anything, news is probably more London-based in Wales now than it has ever been. Something like 85% of newspapers bought in Wales are produced in London and are London-based titles. I think the figure might be worse than that because that figure is a few years old now, but the trends are not going in a very good direction on that one. We no longer have any Welsh editions of national newspapers. We used to. We do not any more. Unlike both Northern Ireland and Scotland, in Wales we do not have any strong mass circulation daily newspapers. The recent Ofcom review of news consumption showed that among people who do rely on newspapers, there are strong titles, albeit suffering at the moment, such as the *Daily Record* in Scotland and the *Belfast Telegraph* in Northern Ireland, both of which over a third of newspaper readers get their news from. In Wales, our most national title, the *Western Mail*, has only 2% of newspaper readers, so we have nothing to compare with Scotland or Northern Ireland.

In broadcasting, I was involved in the BBC Trust impartiality review a few years ago, which fed into the King report. That looked at network broadcast coverage of the four nations, post-devolution, to see whether news reporting had kept up with the new reality of devolved power in the UK. Our research showed very clearly that it had not. There was very little coverage of policy, politics or public affairs outside England. Worse, all the major broadcasters would use England as a kind of default for the UK, often without telling the viewer or listener that was what they were doing. We would hear a story about, say, the health service in England or a story about education policy in England, but the reporter would forget to tell you that this was only in England, so a viewer in Wales, Scotland or Northern Ireland would probably have been very confused if their own Governments were not following those kinds of policy regimes.

Following that report, the BBC committed to improving. We did a follow-up that showed that the BBC had improved somewhat. Personally, I still think there is a bit of a way to go. I notice all the time how much coverage education and health stories in England get and how little Wales, Scotland, and Northern Ireland are covered, even in a compare and contrast kind of way. While both BBC Wales and ITV Wales do a good job, you cannot expect them to provide balance for the main broadcaster all the time and to say, “Okay, earlier on in the bulletin you would have heard this story about England. Here is what happens in Wales”. It is perhaps unfair to expect them to do that. So I do think that when it comes to plurality in Wales there is a problem, and the problem is not just a lack of plurality but a lack of news generally about politics and public affairs for the people of Wales. As a result, there is something of a democratic deficit.

I am a little tired, as I am sure Colm is, of going to conferences where we all moan in despair about the decline particularly of press journalism and the decline of the business model. We are trying to do something about it in Cardiff. We have set up something called the Centre for Community Journalism. As local newspaper business models start to suffer what we are trying to do is provide support for an emerging hyper-local sector, through training, networking and various other ways that we can help. One of the things we are trying to do is set up new hyper-local news services in Wales as a way of providing a little bit of plurality, but even in our most optimistic moments we do not think that is quite going to create the kind of plurality that we would like to see in Wales. That is my main point.

Q365 The Chairman: Before Colm Murphy comes in, can I ask you about your strictures about the absence of coverage of things like Welsh healthcare issues? Can anything be done about it, or do you think the answer really lies in the local media’s hands?
Professor Lewis: There are some things perhaps. I am aware that the BBC has done something. Other national broadcasters could perhaps do more. What we are talking about here is good journalism, not having a quota system for necessarily covering things but just making clear that if you are talking about England that is what you are talking about. I think that the other broadcasters—ITV, Sky, Channel 4—could raise their game, and there is absolutely no reason for them not doing that. That would be one way of improving things. It is harder to get the national newspapers to do that because they are operating less on public service principles, so it is less obvious to see how one would persuade them to do that, given that their main markets are in England, although they have big audiences outside England too. Some things could be done. It is a difficult one, because there is not really a clear economic market for the production of news in a country the size of Wales that would sustain a healthy news media. So it is a difficult one I think.

The Chairman: Colm Murphy, things will not necessarily be the same in Northern Ireland.

Dr Murphy: No, the position in Northern Ireland is slightly different. First of all, diversity of media in Northern Ireland is far better served. That is really because you have three different sets of media operating in the market. The first one is the same as the one you have in Wales where you have London-based media, but the London-based media that are successful editionise for the Northern Ireland market. For instance, the best selling paper in Northern Ireland is the Sun, but it is a local edition of the Sun, so it would probably have about 10% to 15% of the local content that you would have in the edition of the Sun that you get in London, and the same with the Mirror, which is roughly the second largest selling newspaper on a daily basis. Again, it is a localised version of the Mirror.

It is similar then with the BBC channels. There is BBC Northern Ireland, which again would be very popular and it has about two to three hours a day of local input into that. Then the ITV franchise in Northern Ireland is held by Ulster Television. Again, you have two to three hours worth of local input there. It is far more popular than the BBC channels for various different reasons. In addition to that, there is a very high uptake of cable television subscriptions and very high uptake of broadband. That is what you have on a national level.

Secondly, you have the indigenous media. They would be led by the Belfast Telegraph, which, although its circulation has been in freefall for the last decade, would still have a substantial market share, selling close to 48,000 copies a day. That is followed by the Irish News and then the News Letter. In addition to that, you have BBC Radio Ulster, BBC Radio Foyle and 13 commercial radio stations in operation.

The other success in Northern Ireland has always been the local newspapers. There are 53 local newspapers in operation. All these local indigenous news sources are also trying to develop—to various different extents with various different successes—online versions, so from that viewpoint they are trying to compete.

Finally, you have the Dublin-based media that you do not tend to have in other parts of the UK. There is always an overspill of the RTÉ signal into Northern Ireland. You have three stations coming from RTÉ—Raidió Teilifís Éireann—the national radio and television service for the Republic of Ireland. That signal always overspilled into Northern Ireland. It was particularly strong in the border areas. But in parts of Northern Ireland you could not pick it up until 2012, when the new digital service came in and RTÉ were able to broadcast within Northern Ireland as part of the Good Friday agreement and were given places in the masts in Northern Ireland to broadcast. They would broadcast two of their own stations, RTÉ One and RTÉ Two and, in addition to that, Teilifís na Gaeilge, which is an Irish language
station, so roughly 10% of the population of Northern Ireland would be watching one of those stations at least once a week. That shows that there is good penetration there.

In addition, you have the overspill of the radio signals from the Republic of Ireland. Depending on how close they are to the overspill, quite a substantial part of Northern Ireland would have that overspill signal coming in.

In addition, the *Irish Independent* and the *Irish Times* are widely available in Northern Ireland, and a couple of the other papers like the Irish edition of the *Daily Star* and the Irish edition of the *Daily Mail* are available there as well. They would see themselves as being all-Ireland newspapers, if you know what I mean. They are not producing particular editions for Northern Ireland but they would still be quite popular publications there.

In total, the news stands in Northern Ireland would have a very broad range of newspapers on them. That is beginning to shrink as newspapers, like the *Independent*, find that is it not economically viable to distribute in Northern Ireland any more. They have pulled their editions out of Northern Ireland in the last six months, and the fear is that others will follow suit because it is just not economic to distribute.

**Q366 The Chairman:** Unlike the rest of the United Kingdom, you have this sectarian divide. Does that impact on the way the media operate?

**Dr Murphy:** Yes. The media reflects the sectarian divide. The partisan media would reflect it, but the broadcast media would not because obviously impartiality rules are attached to it. With regard to the print media, in some cases they would fall along sectarian lines. For instance, the *Belfast Telegraph* traditionally would have had what we call a moderate union stance. It would now see itself as being much more of a neutral paper and being the impartial newspaper of Northern Ireland. The *Irish News*, again, would see itself as being the nationalist newspaper—“nationalist” with a small “n”, if you get what I mean—a very moderate nationalist newspaper. Then the *News Letter* would be very staunch in that it is a unionist paper and it is for the unionist community.

In a sense, three major indigenous newspapers would split down sectarian lines. Although, in fairness to them—and we have done analyses of their coverage of news stories—they would tend to be quite impartial in the news coverage, but obviously their story selection is more reflective of their population. The type of issues that they cover is more reflective of the culture of the two different populations. A very important part that people do not often realise is that the sports coverage splits down the sectarian lines as well because the two communities would generally have different affinities to different sports. That is one way you can very often tell where a newspaper or publication is coming from because, as devotion to religion and so forth has diminished, what differentiates the two communities is very often the sports that they would follow or the institutions, and that is where the newspapers can define themselves as well.

**Q367 Baroness Fookes:** I want to ask you about the print media in Northern Ireland and Wales. You have probably given a fair indication already but, to each of you, is there a sufficient diversity of views available to the citizens?

**Professor Lewis:** I would say that in Wales, no, partly because of the weakness of the print sector. We have two newspapers that claim to be nationals: the *Western Mail* in the south and the *Daily Post* in the north, but they split in their north-south view. Their readerships, though, are very low. Compared with equivalent titles in Scotland and Northern Ireland, they are tiny. In terms of the presence of various news companies, Trinity Mirror is the most
conspicuous. It has most of the bigger titles in Wales. There is a bit of a presence of others but not much. You have Newsquest in Newport, Local World in Swansea, and a few other titles scattered about. It is hard to see anywhere much where you get a bit of a plurality. Perhaps in Cardiff you could argue that there is a little. Of course, you have the Welsh language dimension as well, which offers a plurality to those that speak Welsh and English.

**Baroness Fookes:** Are there newspapers to cater for that?

**Professor Lewis:** Not many, no. There is an online paper called *Golwg360* that caters for the Welsh language. There are traditional newspapers called the papurau bro that are very traditional, often produced on Gestetner-like things with lots of people putting them together in local community halls. There is a strong tradition of that in very local areas, but nothing like the level that you would get in broadcasting, of course, where you have S4C. There is not really the same in print. There is a bit of it. We have just set up a Welsh language news service through the Centre for Community Journalism in Cardiff, but nothing existed before. I would say that the picture is not one of plurality really; it is one of scarcity.

**Baroness Fookes:** Yes, you are not even getting the news, let alone the views.

**Professor Lewis:** Exactly. Oh to have lots of competing views about what Welsh Government are doing. One view would be nice, yes.

**Baroness Fookes:** Northern Ireland is rather different?

**Dr Murphy:** As I mentioned earlier—I do not want to repeat myself—I think there is general plurality there. The difficulty that some people would complain about is that there is no neutral paper in the middle, in the sense that the papers are one way or the other.

**The Chairman:** You were saying that the criticism of Northern Ireland is that there is no neutral paper in the middle, and I just muse really by asking whether there is a neutral paper in England.

**Dr Murphy:** I suppose the issue is that a certain number of the population do not particularly like going to the newsagent and basically having to declare their interest when they go in, if you understand that point.

**The Chairman:** Yes. I can understand that.

**Dr Murphy:** With regards to the local media, we have 53 local papers. Very often for traditional reasons, a town or a certain region would have what we would call its nationalist paper and its unionist paper at a local level. In a sense, there used to be that balance. Over the years they have neutralised. You still have some pockets where you might have a small unionist population in an area, and they would have a very small circulation newspaper that catered for their interests and their culture and so forth, and then perhaps you would have a much bigger and more dominant generally nationalist paper. But because of the market shrinking and because of the economics, both are now trying to get into that middle ground and trying to neutralise their middle ground on a local level.

In general terms there would be good diversity in views and so forth, but I would caution that the economic model, which a lot of these newspapers are working on, is disappearing very, very fast. We could see a situation within less than a decade where in a lot of these small areas or within certain counties that second paper, which perhaps covered the protestant/unionist issues, could disappear and the question is whether the bigger paper in that area would take up those causes.
Q368 Baroness Fookes: You know in England that we have this preoccupation with whether one owner or type of media is having too much influence? That is probably not true in your respective areas, or is it?

Dr Murphy: If we take the papers on a national level, the Belfast Telegraph is owned by Independent News and Media, which is a Dublin-based quoted company. It would also own the largest number of free cheap newspapers in the Belfast area, so in a sense in the Belfast area it would have dominance there. The Irish News is a family-owned newspaper and the News Letter is owned by Johnston Press, which is a quoted Scottish-based company. At that level there is diversity in the ownership.

At a local level, of the 53 papers, 30% are owned by the Taylor family through their Alpha Newspaper Group. Another 30% are owned by the Johnston Press group. Of the other papers that are there, there is another family, the North-West News Group, which owns about five local papers there, which is another 10% or so of the market. Then Anotron, which is a Belfast-based company, would own another three newspapers.

There is something that you have to be wary of in a sense: that at the moment there does not seem to be that influence on the papers there by the owners. The Johnston Press in particular would have strong editorial policies. Very often they would have two papers within one area: one that would be the nationalist paper and the other that would be the—well, that is the theory. For commercial reasons they keep them that way, so they are kind of competing against each other even though it is the one owner. Again, it is not unusual for that to happen in certain areas. The dominance of owners in some areas would always have to be monitored and kept under watch, particularly the cross-media ownerships, because again some of the local newspaper groups are also heavily involved in the commercial radio stations. In certain geographical areas you have to watch out for a monopoly across media, between radio and online and also in print, and an economic monopoly in the sense of advertising rates and so forth. The building up of barriers to entry for new people coming into that area can be a thing to watch for as well.

Baroness Fookes: And in Wales?

Professor Lewis: In Wales, Trinity Mirror is the big newspaper group. As a result the Mirror itself does significantly better in Wales than it does in England or Scotland, which means that the battle between the Mirror and the Sun is much closer in Wales than it is in England and, indeed, with the Daily Mail, so you get a greater split of those three newspapers in Wales than in England where the Daily Mail and the Sun do much better. They are obviously part of large groups, so one can see where questions about plurality and dominance of ownership occur in England in a way that in Wales is perhaps mediated by Trinity Mirror’s strength in Wales.

You could argue that Trinity Mirror therefore owns an awful lot of the Welsh media, but stopping Trinity Mirror owning it and having nothing in its place would not be much of a solution because then we would have nothing at all. The Western Mail does a pretty good job of trying to be reasonably neutral as a newspaper. It is not as partisan as the London-based media, in fact.

Q369 The Chairman: Can I just raise a point with Colm Murphy before we move on? I chair the CN Group, which is a media company based in Carlisle. Our main title, the Cumberland News, was once upon a day known as the Cumberland Conservative Newspaper Company and its rival was the Carlisle Journal, which was a liberal paper. When the Carlisle Journal went bust—this was long ago—we bought it, so the two titles are now in the same
ownership. We changed the name to Cumberland News, but the idea that the newspaper is in any way partisan has really died. The editorial line is independent. The interesting point I want to raise is that commercially, if we started getting too partisan, we would cease selling copies even faster than we are now. Do you think that process could or might occur in Northern Ireland vis-à-vis the large and smaller local newspapers on each side of the sectarian divide?

**Dr Murphy:** Yes. We have certainly seen evidence that that has been happening over the last 20 years or so, particularly since the ceasefires, and there has been more of an effort across the board to try to have better integration of the two communicates. There is probably a lot less hostility between the two communities than there used to be. Where traditionally the family would always have bought a certain paper in the area, there is now a lot more willingness to consider buying a different paper, because that paper is much more neutral and is covering the type of issues and concerns of that group. For instance, the Alpha Newspaper Group would cover both communities and purposely market themselves now as being a neutral newspaper group. To an extent, that is where the Johnston Press Group has tried to go with its local papers as well. So that is happening and it is reflecting what is happening in the broader community as well.

The other thing is that as the advertising base decreases, there is obviously merit in not only selling to one side of the community or the other. You need to try and basically be like Tesco and in a sense sell to everybody in all categories of the market.

**Professor Lewis:** Just to comment on that, I think that is absolutely right. We have been doing some work on the whole hyper-local news sector across the UK and looked at what is in it, what they are producing. One of the things that is striking is the absence of conflict in their news reporting. In terms of news, the smaller the market you are in the less you can afford to annoy certain sections of that public by being partisan. Probably in larger markets, partisanship is possible. In a smaller market it is much more difficult, other than being partisan towards your local football team or whatever it is. That is acceptable partisanship. So I think there is definitely something in that.

**Q370 Baroness Deech:** I had thought that perhaps there was more plurality in Northern Ireland than Wales because you have the benefit of the availability of the UK-wide press as well as your own local press, but it sounds from what you are saying as though this is not the case. Does the consumer in Northern Ireland and Wales face an array on the stand from the Times, the Telegraph, the Mirror and the local press, and is able to benefit from both or is that not the case?

**Professor Lewis:** I am not sure that “an array” would be the way to describe it. You have the choice of the Western Mail, but of course in England one would also have the choice of a decent regional newspaper as well, so it is not that different. The key difference for me is that in England you get the same array of newspapers but in England the UK-based media would give very good coverage to the political system in England, whereas in Wales most of them, apart from the Welsh one, will give very poor coverage.

**Baroness Deech:** Is there no Welsh edition of any of the UK-wide papers?

**Professor Lewis:** No. There used to be a Welsh Mirror. There is no longer.

**Baroness Deech:** Certainly the Times online has a whole section on Scotland.

**Professor Lewis:** Yes. In Wales, there is none now.

**Baroness Deech:** No. And in Northern Ireland?
Dr Murphy: Yes. Because you are getting three sets of media in the market, it is a very crowded marketplace and a very competitive marketplace. That is good from the point of view of producing good journalism because there is strong competition for all the different parties there. You particularly see the influence where you have a broadcaster from outside the state broadcasting into the state as well. That can make a difference because you are getting a very different view of things. You are getting a Dublin view of world affairs and you are getting a Dublin view of different events. Even events within your own country, you are getting a different view. For instance, they will not call Londonderry “Londonderry”; they would call it “Derry”. Whereas among the local media, depending on what stance they have taken, some will call it “Londonderry” and some will call it “Derry”. Even small things like that can be a big thing and signifiers as to where the media company is coming from and what their political stance is.

Baroness Deech: Do you know whether people buy UK-wide press or local or both?

Professor Lewis: I would like to see more buy both. Some people will often just rely on the Western Mail. The Western Mail gives some coverage to the UK and international news as well, so you could just buy the Western Mail. I certainly buy both, but then again I would, I suppose. Some people like me would do that, but I think the majority probably do not.

Baroness Deech: In Northern Ireland, do you think they buy both or just local?

Dr Murphy: Most people buy the local paper on a weekly basis, and I am talking about the local paper for their region in a sense, the Coleraine Times, the Tyrone Courier or whatever. It is the paper local to their particular area. Most families will buy that paper. Up to 70% of families will buy the paper or see a free paper in their area, which is a very high percentage. In terms of what we would call the Belfast-based papers, the Belfast Telegraph, the Irish News, whatever, about 20% of the population will actively get to read one of these, so that means 3.5 readers for each edition. If you add up the circulation figures, the calculation would be that about 20% of Brits would get their news or information from those papers.

The circulations of the Sun and the Mirror and the local editions of them have gone down in Northern Ireland, but not as fast as the circulations of the local papers, which is an unusual phenomenon.

Baroness Deech: Yes, so we are talking about the other media. Okay. Thank you.

Q371 Earl of Selborne: Moving now on to the broadcast media and the coverage of news and current affairs, to what extent is story selection and the presentation of views well struck in Northern Ireland and Wales?

Professor Lewis: In Wales, BBC Wales and ITV Wales both do a pretty decent job. Personally—this is my own view and it is not necessarily shared by others—I think they cover too much crime, which I do not think necessarily enhances public understanding of the world in any particularly positive way. Therefore there is less coverage of politics and public affairs than there might be. On the whole they do okay. The problem is that they do not have the time or the space to fill the gaps of the British news bulletins that they either follow or precede. There might be a big story about, for example, the free school policy in England, but then there is a different policy in Wales and there is probably not the time or the space for BBC Wales to say, “Oh, by the way, what you heard earlier actually does not apply”, or, “It applies in these ways”, or, “There are these differences”. It would be very useful for people in Wales to know that. I do think they have a difficult job from that point of view. They are heavily relied on. Most people across the UK do get their news from them, but especially in Wales they rely on the broadcast media.
Earl of Selborne: Your specific concern in Wales is the lack of news that is generally specific to Wales?

Professor Lewis: Yes, in the British bulletins. The British bulletins all too often are English bulletins.

Earl of Selborne: Thank you, and in Northern Ireland?

Dr Murphy: For historical reasons, 30 years of civil war, the broadcast media tend to be very, very conscious of their impartiality and of the regulatory regime around them, perhaps overly so in a sense of trying to ensure that there is impartiality. That feeds through into story selection in the sense that they will always try to balance. From a journalistic viewpoint that is probably not the best way to do it, but from the point of view of balance they will try to balance a bulletin so that you have stories that will be applicable to the unionist community as well as stories that are applicable to the nationalist community. If they have one story that is perhaps to do with something of particular interest to one side of the community as opposed to the other side, they will often try to balance that within that bulletin by having a story that might appeal more so to the other side of the community. In a sense, it is an artificial way of doing things but in general terms in the story selection it tends to be quite fair.

In terms of presentation of views, again, the same thing can happen, and they will always try to be as open as possible. Obviously in Northern Ireland you still have active terrorists groups and people who could be incited to violence, so you would have the views on the extremes on both sides of the community, both on the unionist side and on the nationalist side. These views are not taken up by the media in the sense that they will not broadcast extreme views from either side. There would be a feeling within certain communities that their views are not necessarily being given airtime because of this, but obviously the broadcasters are constrained there because they are caught between the Ofcom regulations and what they can do and what they cannot do or broadcast. That certainly leads to a feeling particularly, let us say, on the extreme unionist side that their views are not being represented on the national media. It even led them holding events during the summer and barring all the media from the events as their own protest against not having proper air time. Similar instances have happened in the past with regards to the extreme side on the nationalist side as well, where they barred media from certain events because they felt that they were not getting their—

Q372 Earl of Selborne: The fact that in Northern Ireland much of the country has the opportunity to have access to Dublin-based broadcasts must add to the plurality.

Dr Murphy: Yes, and that is a really important part, because a lot of the community would see themselves as being more Dublin-facing than London-facing, and having access to Dublin-centred news bulletins is very important to them. RTÉ would consider itself to be an all-Ireland broadcaster, so very often information, even very local stories about Northern Ireland, will be broadcast nationally on the RTÉ news. They would cover what is happening in Derry/Londonderry just as much as they might cover something that might be happening in Meath or Athlone. They would give it the same type of coverage. In a sense, the people living in those areas are not losing anything. They are not missing out on their local news by listening to bulletins coming in from outside of their area.

Earl of Selborne: Of course, it must work the other way, in the south and the Republic they have access to the Northern Irish-based bulletins.
Dr Murphy: Yes, they do. First of all, there was always an overspill of the BBC signal into the Republic, so depending on how close you lived to the border or how close you lived to Wales as well, you could pick up BBC Wales in certain parts of the country as well or BBC Northern Ireland. There was always an overspill, but in addition to that you had cable television going back for the last 35, 40 years broadcasting on the BBC signals to up to 40% of the population in the Republic so they would have always had access to BBC services. There was always a greater plurality in the media in the Republic than perhaps there was in England.

The Chairman: Is the regulatory framework around the Irish broadcasters in very general terms more or less the same as ours? I ought to know the answer but I do not. For example, how does impartiality relate to whatever rules they may or may not have in Ireland to what we have in this country?

Dr Murphy: They would be similar rules on impartiality of the broadcast media.

The Chairman: The point I am interested in is whether the material that is broadcast into Northern Ireland from southern Ireland in the most general sense applies the same sort of rules that apply to the stuff that is indigenous.

Dr Murphy: Yes, precisely, if not more tightly controlled in a sense, particularly when it comes to terrorism and putting people who might advocate terrorist activity on air. The rules there would be far stricter in the Republic than they would be in the UK.

The Chairman: Lord Selborne, any more questions? Done. Thank you. Lord St John.

Q373 Lord St John of Bletso: Thank you. With increasing numbers of the younger generation getting their news from online medium, such as Twitter and BuzzFeed, Huffington Post and YouTube, what role are the online voices in Wales and Northern Ireland playing in the overall mix?

Professor Lewis: It is interesting. When I looked at Ofcom’s recent data on where people get their news from, Wales and Northern Ireland have the highest uptake of a lot of the online news services in the UK. More people in Wales use Facebook for news. More people in Wales use Twitter for news than anywhere else. That may be partly because of the rural nature of the population rather than any particular Welsh love of online. The trouble is that the people who do, as you said, tend to be skewed not just by age but by social class. There is a very clear digital divide between social classes A and B who tend to use those sources. The people who do use those sources for news tend to be those who already use other sources too, rather than those who only use those sources.

My worry is that if you dig a bit deeper into that data, the places they are getting online news from are the mainstream places, the BBC being by far the most used web news service across the UK, and in Wales especially so. The others are things like Google News and Yahoo News that, with all fairness to them, do not plough the kind of journalistic resources into the production of news in the way that we might hope for for a quality news production. Yes, it is there. I was surprised—as many were, because by 2013 we all expected online to be a bigger source of news for people than it actually is—that it is still fourth. It is still behind radio. It is still behind print. It is still way behind television, which 10 years ago we would not have predicted. We would have predicted it would be bigger.

There are still a lot of potentially exciting things that could be done in this area. Through our Centre for Community Journalism, we are doing a lot to think about creating new online fora for news, new online spaces, ways of encouraging people to get involved. But it is slow
and at the moment the real users of online tend to be those who already get their news from other places: young people who say they get their news from Facebook, which actually quite a lot do, especially in Wales. How much news they get on Facebook and what the quality of that news is is an interesting question.

Lord St John of Bletso: What about Northern Ireland?

Dr Murphy: There would be a similar situation in the sense that the most popular online websites for news consumption would be extensions of existing brands. The BBC Northern Ireland website would be the most popular, followed by the UTV one, followed by the Belfast Telegraph, followed by News Letter, followed by the Irish News. Others that are popular would be the Sky sports news, Mail Online and the Guardian sites, so effectively you are almost seeing a reproduction of what is there in the traditional media as opposed to anything new. There has been a growth of what we could call very partisan websites or blogs. For instance Slow Grow 2 would be a popular one. But from both sides of the community, at those extremes, you see blogs growing up. Where people see that they are not getting their voice heard within the mainstream media, blogs or a type of news service tend to develop in relation to those.

There have also been attempts by people in a number of areas to set up their own independent news service online, and they are aimed towards the younger population. Again, they have had extreme difficulties in making them sustainable. A number of them have started and have done very good work in the first instance, but then have closed because the model and the advertising revenue were not there to sustain them. That is not to say that the quality of the product that they produced was not extremely good for the resources that they were putting in to it. Although you would think that the barriers to entry into online news provision would be quite low from a commercial viewpoint—in a sense it is quite easy on a technical level to put that together—and just making the news service sustainable, we have not seen those types of new entrants coming into the market. They have come in, but unfortunately they have gone back out again because it has not been sustainable.

With regard to Facebook and Twitter, the University of Ulster has done specific research on this. We did a study of under-25s in two towns, one in Donegal and one in Northern Ireland. We compared and contrasted exactly where they were getting their news from and looked at Facebook and Twitter. When we drilled down into it very deeply and analysed exactly what it was, although they were saying they were getting their news from Facebook and Twitter, what they were getting was links on Facebook and Twitter from existing online news sources, so perhaps the local radio station was putting news online and then Facebooking people or putting those as links. There was some what we would call citizen journalism going on there as well, where people were putting their own local news into it. So it was a mix of things, but overall it was a repackaging of news that was already being generated by original news sources, traditional legacy companies. Although younger people were believing that they were getting their news source from somewhere else, when you drilled down most of it was coming from the traditional news source that was already there but was just repackaged in a different way.

Professor Lewis: Can I just add to that very briefly? We do a lot of work with emerging hyper-local news outfits in Wales. One of the interesting things that we are finding is that for them to get the advertising revenue from local advertisers, local merchants and so forth, they have to go to print. For example, we are working with the Port Talbot MagNet, which emerged to fill a gap when the local newspaper closed. They were an online news service
and they found that to get the kind of advertising revenue to support journalism everybody says, “You need to go to print”. The advertisers do not take it as seriously when it is online as they do when they have something in their hands. That may change, but at the moment that is still the case. Surprisingly, a lot of these outfits are feeling the need to go to print.

Q374 Lord St John of Bletso: I have two brief supplementary questions. You mentioned, Professor Lewis, the digital divide. To what degree would affordable, reliable access to internet be a constraint to greater take-up of those wishing to get their news online? That is the first question. The second is that it is easy to measure printed readership statistics but more difficult to measure online readership. I am interested to hear your views on that as well.

Professor Lewis: Measurement is difficult because in a way it is so easy to click your way around. Whether you have actually paid any attention to where you are clicking is a very difficult thing to do, whereas buying a newspaper suggests a degree of commitment that going online does not. That is a problem.

Sorry, can you remind me of your other question?

Lord St John of Bletso: It was about broadband access.

Professor Lewis: In Wales, it is an issue. There are still a lot of people who do not get access to broadband. I think 29% was the last figure I saw of people who do not get access to broadband. I do not think it is just that, though. Clearly it would be good to see universal access to broadband, but going online to get your news requires a degree of savvy and a degree of being informed already. To know where to go to get things requires a degree of knowledge that some people feel much more comfortable with than others. In Ofcom’s recent data about where people get their news from for the people going online, the most striking divide was actually not age. In fact, there is very little difference between the really young age group—the 18 to 25s—who are not getting their news online any more than the 25 to 40 year-olds. They are both getting their online news in the same proportion. The divide is really between social classes, and is pretty dramatic. Getting around that is clearly difficult, but it gives us pause for thought around this issue.

The Chairman: Do either of you have any feel for where the stories start? One of the things that we have been told is that of course television and broadcast journalists read the papers. Have you any idea where stories begin, or is it just completely out there in the mélange?

Professor Lewis: We have done some research on this where we have literally counted. We did a piece of research where we looked at a whole series of stories in a huge amount of detail. We literally thought, “Okay, we are going to investigate where this story came from”. It was a very difficult piece of work to do. We wanted to see how much came from, say, public relations and how much of it came from news wires. In some ways you would expect more to go from broadcast to print because broadcast is more immediate, they get the stories first, but we found that slightly more stories still come from print to broadcast than the other way around. It is still true that the print media play a very important agenda-setting role for broadcast. I was surprised that that was still the case, because print cannot be as immediate. It is more about doing opinions, features, that kind of thing, but it is still setting the agenda to a surprising degree.

Q375 Baroness Scotland of Asthal: I want to ask you a general question, Professor, picking up from that, because I was very struck by what you were saying about there being
very little information about what is happening in Wales, the Welsh Government and so on. Can you help me as to why that is? Are people just bored by what is happening in Wales? Are they disinterested? Why do you think that has occurred?

**Professor Lewis:** It is a bit of a legacy, because we have never had very strong mass circulation newspapers from Wales. That has never been the case. It is not that people are turning away from it. It has never really been there. We have seen a shift of political power but there has been no accompanying shift of communication information, so there is as much information about Welsh government as there was before there was a Welsh Government, if you see what I mean.

**Baroness Scotland of Asthal:** If, from what we have just been discussing, you are saying that it is becoming more print to broadcasting as opposed to the other way around, I wonder whether you would say what if anything could be done to stimulate more local newspapers. In Northern Ireland we have 53. In Wales you have a much fewer number. Could anything be done to aid that level of plurality so that you would get a better take-up and a better exposure?

**Professor Lewis:** I think there are things. We have to realise that the business models for local newspapers are suffering, clearly, as advertising shifts online and as online creates a culture in which people expect to get things like news for nothing. News is an expensive business. To produce good-quality news requires resources. It makes it extremely difficult, so we need to find clever ways of supporting that kind of activity. Obviously the best ways are not necessarily through direct government support, because as we all know that brings with it a lot of potential problems. One area that we could think more about—and this is an area I particularly know about because of where I work—is a model that has worked quite well in the US and uses universities to some extent. In a way, universities are honest information brokers. They are there. They are independent. They do not have a particular axe to grind. They may well be tied to local communities. That is certainly something that we are doing in Cardiff a little. Of course you would not want universities to be using student tuition fees to do that, so there need to be independent sources of income. Students do not want to feel that they are subsidising the local newspaper when they study microbiology or whatever it is. That is a potential mechanism, but of course it works only in areas where there are universities.

I do think that we need to think of other forms of support, because currently it is not clear to me that the current business model will produce a rich diversity at the local level. It clearly is not. Newspapers at the local level are closing. They are not opening. I would love to see the hyper-local sector blossom, but I do not think it is going to do it unaided. That is partly why we set up the Centre for Community Journalism, because we wanted to help the sector. I do think there are other mechanisms we need to think about. It is not going to happen with us doing nothing.

**Q376 Bishop of Norwich:** As you probably know, among the suggestions that we have received for reform in this area is the idea of having periodic plurality reviews. Ofcom has suggested that. Do both of you think that that is a sensible proposal? If so, what sort of considerations ought to be included in any plurality review so that Northern Ireland and Wales do not get left out?

**Dr Murphy:** First of all, yes, there is sense in that suggestion to review it because we are looking at a marketplace that is moving very fast. Technology is moving very fast. The economic models are moving very fast. We are perhaps going to see a bit of a shakeout, because once the economy recovers, owners of newspapers in particular are going to take a
hard look at whether or not there is a structural problem that would make certain titles
unprofitable forever or whether, once the economy recovers and advertising comes back in,
that will put them back on an even keel. Decisions are going to be made in the not too
distant future in relation to a lot of different things. That would make sense, as would having
periodic reviews as well, because the market is changing.

With regard to the questions you might ask, some questions are very specific to the regions
and may be different to what you might ask from the point of view of England. The first
would be to make sure that the political views of all sections of the community are being
responded to, and not only on a news level. As I mentioned before, the cultures of different
sections are being responded to in terms of news and the sports that they are interested in,
and their other interests are covered as well because that is an important aspect for people
and the media.

The second thing is to ensure that indigenous languages are catered for in the review,
particularly in Northern Ireland, where we are talking about the Irish language as well as
Ulster-Scots, and obviously in Wales you have the Welsh language. In Scotland you have
Scots Gaelic, and there could be other indigenous languages as well that are in danger of
being made extinct. The effect that having broadcasts, print publications and online
publications in these languages has in helping to revive the language or keep it alive cannot
be underestimated. It is a really important thing from that point of view, as is introducing a
new generation of people to the language so that it is not an historical language but a
language that is in day to day use and is developed.

The third thing is the availability of broadcasts from outside the state. As I mentioned
before, this is particularly an issue in Northern Ireland. Where a demand is established in a
country to have those facilities provided, if a broadcaster outside the state wants to
broadcast within that state, provision should be made to allow them to do so. They would
generally be areas that I would say would be more specific to Northern Ireland and would
perhaps apply as well to Scotland and Wales but perhaps not to England.

**Professor Lewis:** Wales absolutely welcomes plurality reviews. Of course, the BBC Trust
does impartiality reviews. It would be nice to see that extended across broadcasting,
because I am aware that there are areas where it would be good to give advice and guidance
to other broadcasters, and they may take it willingly. They may not, but they all work within
a public service remit and it would be good to extend those. But, no, I would very much
welcome plurality reviews, and I think a longitudinal look at plurality would be very helpful
because it would allow us to see whether plurality was declining or increasing. We all hoped
in the internet age that it would increase, but it is not clear that that is necessarily happening.
Perhaps it will. As Colm said, things are changing so rapidly that we really do need to look at
this. So, yes, I very much welcome that.

**Q377 Bishop of Norwich:** Is there a possible problem with these sorts of reviews that
you would paint quite an informative picture but the question would then be what sort of
policy changes could address the sorts of things that you have both mentioned as issues in
relation to Wales and Northern Ireland. Are there plurality policy proposals that you could
bring that would address some of the problems you have outlined?

**Professor Lewis:** For me it is to do with funding. The problem for Wales is a lack of plurality
of news and news production and a business model that is not going to sustain that many
journalists reporting in and about Wales. We need to think of imaginative ways of doing that
that do not have any kind of dependence upon government but perhaps do provide forms of
subsidy to a sector that really needs it. Journalism might not always behave that way, but for
me it should be a public good. Without it democracy withers and dies. We need to pay very
careful attention to areas where that might be happening. Some of the data about levels of
knowledge of what is going on in Welsh Government in Wales are truly worrying. There are
very basic things that people are not aware of. That cannot be good. That is not healthy in a
democracy.

**The Chairman:** Do you think it is worse than England?

**Professor Lewis:** I think it probably is in the sense that it includes even basic questions like
knowing which parties are in government. Several months after the establishment of a
Labour-Plaid Cymru coalition in Wales, a majority of people in Wales were not aware that
that had happened. I suspect that most people in England would know that there is a
coalition Government in Westminster and who is in it. I very much hope so anyway. So I do
think it is worse in Wales. Certainly, there is far more information about these things in
England than there is in Wales.

**Q378 Bishop of Norwich:** Can you watch the Welsh Assembly in Wales other than
through the BBC Parliament channel, which puts it on at about midnight when there is
nothing else happening here? Is that the same? Is that all that is available?

**Professor Lewis:** Yes, but it would be the same if you got hundreds of people tuning in.
Journalists will complain about the way in which the Welsh Parliament is not very exciting to
watch because people sit there with their laptops out and do not look very engaged. It does
not have the kind of rough and tumble that you have in Westminster, which is better
television. That is clearly a problem as well. That would help, but the key, though, is
journalists basically to be able to say, “Look, these are the important things that happened
today that you do need to know about”, rather than having to spend huge time and energy
watching it all and working it all out for yourself. It is not an easy thing to do.

**Bishop of Norwich:** Whatever the plurality policy, who do you think ought to have
ultimate executive responsibility for any interventions? Ought it to be the Minister, as it is
now? Ought it to be Ofcom as the regulator? Ought there to be some specialist plurality
commission or a Leveson hybrid? What do both of you think about that?

**Dr Murphy:** There are a number of suggestions. The last thing the industry wants is another
regulator. It is already very hard to understand who is making the rules and trying to comply
with them as well, and every time you have a rule book that is an extra course, in some
ways, to comply with. From my perspective, it would be to have an independent commission
that is within the umbrella of Ofcom so that you have a one-stop shop of regulation, but
because of the issues, particularly when you look at Northern Ireland’s sensitivity to
plurality, you need to have people on that commission who are sensitive to the particular
areas of the different markets and who have a good feeling on the ground for what is
representative of the people, as opposed to perhaps having just one or two officials in
Ofcom perhaps looking at it from London and trying to impose policies on a region. To have
people who have a good feel for what is happening on the ground who are up-to-date with it
is the best type of policy: one that is responsive.

**Professor Lewis:** I do not have a particular preference for a post-Leveson versus an Ofcom
option. For me, the key issues are that it be absolutely independent both of the media and of
politics. I do not think having citizens involved in such things—

**Bishop of Norwich:** Not the Minister, as now?
Professor Lewis: I would prefer not. No matter how impartial a Minister tries to be, there will always be an appearance of political partiality that I think is unavoidable. Something that avoids that is preferable. My other preference would be for an entity that has some teeth. Both the independence and the respect to carry out the reviews, and then some teeth to do something about it, is key, rather than simply bemoaning a lack of plurality. The ability to do some things about it is key to that. Whether it is a post-Leveson being or Ofcom, I do not necessarily have a strong preference. It is to do with the powers they get and the independence that are seen to have.

Bishop of Norwich: You talked about funding being key. Ought that independent body to have some access to funding itself?

Professor Lewis: I see absolutely no reason why not. The funding could be a form of lottery funding or whatever it is, where again it is seen to be completely non-partisan and doled out in a non-partisan way. That would be a tremendous thing. We already indirectly subsidise media in all sorts of ways, so I do not think there is a principle or a Rubicon that we are crossing here. The question is: can we do it in a way that maintains political independence? There are ways of doing it and we need to think more imaginatively about that, otherwise—if you look at how many journalists are losing their jobs—we will face a danger where there is less and less good reporting in the UK. It is particularly acute in places like Wales, but you find it across England as well. We need to do something about that, so I would favour both regulatory and carrot and stick, I suppose, from that point of view.

Q379 Baroness Healy of Primrose Hill: Turning to a different way to approach the diversity of voices available in the nations, you have spoken about funding, especially in Wales, and about your Centre for Community Journalism. Are there any other good ideas that you are aware of for positively intervening to stimulate market entry and diversity of voice in both Wales and Northern Ireland? I am particularly interested in the funding issue. Obviously you are wary of any state influence, but could there be an independent body, equivalent to the Arts Council or something, that does some funding for start-up, both in Northern Ireland and Wales, where you talk about the blogs and websites that are failing because they do not have the economic backing?

Dr Murphy: There are models that are working very effectively in Northern Ireland for state funding for broadcasting. The first would be the Irish Language Broadcast Fund. It is done through competitive tender, and it would spend about £2.5 million a year producing programmes for BBC Northern Ireland and for television that are broadcast. Some of the programmes are not broadcast in off-peak times but are broadcast in Friday peak times. Their audience is not massive, but it is an important audience, particularly for children who are learning the language. It is very important for them to see that.

That is done in a very convoluted way, but it is quite easy to apply for that funding. The funding originates within the BFI—the British Film Institute—and that goes to Northern Ireland Screen. Then Northern Ireland Screen puts it out to tender, effectively, and it would support about six or seven major productions a year. There has never been a question about impartiality or state influence on that, but again you are dealing with very small audience figures and very specialist areas. I suppose if that was to become any larger, you might have a bit more influence on that.

A similar scheme operates in parallel with that for Ulster Scots as well. That is generating about £1.5 million a year of Ulster-Scots programming, which would come through that fund. Again, that is the same kind of mechanism, so it is separate to the state, although it is effectively coming from the BFI. So it is state funding but it comes through a different way.
That has certainly stimulated a lot of independent production companies to start looking at moving into Irish language broadcasting and moving into Ulster-Scots broadcasting, and it has stimulated supply in companies and so forth.

The thing about plurality that I would always argue is that you are trying to stimulate supply. If supply is stimulated, you do not have to worry about a lot of other things because the market will look after itself. There are other models. One is to use part of the BBC licence fee competitive tender where you see gaps of plurality in the market and places that are not being serviced by news services.

The other option would be to put a levy on broadband, so you would put a small percentage on everybody’s broadband subscriptions and that would create a fund that could divide up. That would make a lot of sense, because if you have broadband you are getting something back for that money you are paying. You are getting an impartial news service on that broadband service through your local area and you are getting something back straightaway.

Also, to address the point that Professor Lewis made, it is more of an issue that some of that fund might have to be spent to avoid social exclusion from broadband and to try to encourage people or subsidise people to get on to broadband, and then, as you said earlier, for people to put in for skills development to give them the skills to go online. It is not as straightforward as just saying, “We are going to have this news service and everybody will come on to it”. It is a much more complex issue that will have to be drilled down into. It needs a lot more research than you would have, but there is plenty of scope for these types of models. As I said, there are models that are working very well with regards to our Irish Language Broadcast. Some of the programmes that are produced are far superior to what you will see on other channels, and it does stimulate a market. Where producers see an incentive, it certainly stimulates the market and supply where you have not had it before.

Professor Lewis: I absolutely endorse those points. Those are all excellent thoughts and ideas. The risks of political interference that we all fear are lessened, of course, when you support journalism at a more local level, because you are less likely to get intervention at that level. It is probably easier and there are more opportunities to stimulate a healthy, new network of local newspapers at that local level. We could do that through a cross-subsidy, such as a levy on broadband, or some other source of funding. Those are all good ideas. I suppose the key is that we make sure that the money goes to good journalism and to funding journalists who do their job. That is where the bulk of the money goes. I think that is key.

There are other things I think we can do. We can support good journalism through other means such as by subsidising training and all kinds of things. One of the things that we are doing at Cardiff is helping to provide hyper-locals with a set of skills which they might not have to allow them to survive and to be sustainable on their own. Other forms of indirect support can also be given. There are lots of possibilities here, and some of them are quite exciting.

Q380 The Chairman: The time is coming to an end, but before finally thanking you, do either have anything that we have not touched on that you would like to say to us that you think is relevant and important to our inquiry, please?

Dr Murphy: Just one point. You were asking about the news agenda and where it has been set. We have done some research into that in Northern Ireland, and one worrying thing that needs to be taken into consideration in this inquiry is that because there is a depletion of resources within newsrooms, far more news sources are coming from what we would call
public relations, government press releases or parliamentary press releases. They are dressed up as news whereas in reality they are not news, they are a form of advertising.

I think people have a sense that they are getting news from the news media, but they are not because of the lack of resources. That is being depleted continuously and I am sure it is the same across the sector. For instance, we looked at when the Northern Ireland Executive was set up. We looked at all the news coverage of politics in Northern Ireland when there was direct rule, and something like 20% of all the news about politics in Northern Ireland was coming from press releases from the director of government departments. When we looked at that for 2013, in the same sample period we found that 38% of all the news about politics in Northern Ireland was coming from press releases and from direct translations of those. That might not seem a huge shift, but it shows that a huge amount of coverage is now coming from non-journalistic sources, which is being dressed up as news and it is not.

**The Chairman:** Is that because of the lower turnover of money in the journalist sector and fewer journalists, rather than that they have got better at stories?

**Dr Murphy:** No. We compared the resources within the newsrooms in those two periods and the newsrooms were operating on 40% less staff in that time period than they had been before. When we interviewed journalists about it, they directly attributed that to why they were using so much more of this information than before. The second reason was obviously that once direct rule finished and there was a devolved Government, the number of press releases increased by fourfold as well. Obviously local politicians had their own machine working and producing press offices and press releases, because they had much more incentive to try to promote themselves and what they were doing, which is not a bad thing: that is what devolution is about.

One thing that is perhaps not looked at in research as much is your point about the source of news, what is setting the news agenda, and where we are getting it. Does our research indicate a worrying trend of it being sourced more and more from the gap created by the lack of resources that are being invested in journalism? That gap has been taken up by what we would call populations, and that is something that we need to safeguard against.

**Professor Lewis:** Just to add to that, I suppose my plea would be that we do not just look at plurality. I think it is worth us looking at the health of British journalism generally, and there are lots of indicators of that. We have done similar research that looks at the number of stories that come from press releases, and it is disturbingly high how many times we have found what was simply a press release, with a by-line underneath it as if it had been written by an independent journalist when clearly it had not. We are finding more and more of that. Looking at the number of journalists employed in newsrooms and in various beats, I think they are all part of the picture. We do not just need plurality reviews; I think we need reviews of the whole sector, and of the health of the sector, because we all want a healthy, dynamic sector. I suppose that would be my plea.

I think we are better equipped to do that than we have ever been. I work quite closely with a computer scientist at Bristol, and we are beginning to use artificial intelligence techniques to track news flows in a way we never could before, with massive samples of millions of news articles so that we can begin to see where news is coming from. We can begin to see where it is appearing and what the sources are in a way that gives us a better picture for our information flows than we have ever had. The research materials are there, but we need to look at the whole picture.

Plurality is clearly an important part, but so is impartiality. There are impartiality reviews for the BBC. There are not for others. I would like to see those things extended. I think it is
worth us looking across the piece. So, yes, more information about our information providers can only be a good thing.

**The Chairman:** Good. Time is up, so thank you both very much indeed. We have enjoyed it. At least I certainly have, and I am sure that I speak for the others when I say that.
The Media Reform Coalition was established in 2011 to consult and coordinate responses of various civil society groups to the Leveson Inquiry and the Communications Review, and to draw up policies designed to sustain the public interest and foster a more democratic media system. As such, media plurality has been a core concern from the outset and a key feature of our evidence and testimony submitted to the Leveson Inquiry. Since then, the Leveson Report has called for the development of a new system for both measuring and tackling media concentration of ownership (pp. 1461-1476). It is a tacit acknowledgement that existing and preceding regimes have allowed some media groups to accumulate vast amounts of revenue and influence with adverse consequences for ethical journalism and democracy. One such consequence has been the development of intimate relationships between political and media elites in a way which, according to Lord Justice Leveson, “has not been in the public interest” (p.1956). We believe that a new system of effective ownership thresholds and remedies applied both within and across media sectors is possible. Indeed, it is the only way to ensure that regulation of media plurality is fair, free of discretionary power vested in ministers, and impervious to capture by dominant media groups.

It is clear that plurality concerns have not been offset by the promise of diversity associated with the spread of digital media. Online news consumption has been converging around traditional news brands for some time and testimony presented to the Leveson Inquiry demonstrated the enduring capacity of dominant media groups to pressure and influence the policy agenda in surreptitious ways.

We need a new approach to plurality that recognises (but does not shy away from) the complexities in both measuring and remedying media concentration. Furthermore it should adopt a twin focus on both the ownership and funding of news and current affairs. The following page is a summary of our recommendations. This is followed by detailed evidence and justification in response to the questions listed in the call for evidence.

Summary of recommendations

1. We need a system of clear ownership thresholds, established in law, and applied both within and across key sectors for news and current affairs. These should act as triggers for intervention rather than definitive market caps.

2. The key sectors for news and current affairs include newspapers, television, radio and online news. Plurality should be measured based on standard audience share indicators. For newspapers, television and radio, these should be derived from established regular industry audits. For online news, audience share should be based on traffic to the top 50 news websites (as adopted by Ofcom’s public interest test report on News Corp’s proposed buy-out of BSkyB).

3. A first level threshold within sub-markets should be a 15 percent audience share, triggering behavioural remedies in the form of public interest obligations. These should be aimed principally at ensuring journalist and editorial autonomy within dominant news organisations so that owners and shareholders cannot exert undue influence over news output.
4. A second level threshold within sub-markets should be a 20 percent audience share, triggering structural remedies in the form of **shareholder dilution** or **equity carve-out**. These should be aimed at ensuring that no individual or entity has a controlling share in an outlet, or group of outlets, that commands more than 20 percent of a given audience.

5. At the cross-media level, measurement of plurality should be based on the core industry revenues of the aforementioned key sectors. A 15 percent threshold should trigger a structural remedy in the form of enforced divestment.

6. A fund should be established along the lines agreed recently between Google and news publishers in France and Belgium. This should be administered by an independent **Public Media Trust** with a clear set of funding criteria, transparent procedures and an accountable system of appointments and administration. The body will support local and niche news providers either directly, or via established media organisations (for whom funding will be contingent on recruitment of entry-level journalists or commissioning content from independent providers).

**Responses to Consultation Questions**

1. **Does a clearer objective to plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?**

   We believe that plurality policy should be geared towards two broad objectives. First, it should ensure that dominant providers within key sectors have public interest obligations which will guarantee a degree of internal plurality both in terms of shareholdings and journalist autonomy. Second, it should ensure a minimum number of providers across sectors.

2. **In the absence of a definition of plurality in statute, Ofcom have provided a working formulation. Is this the best definition, or should it be improved?**

   There has long been a broad political consensus both in the UK and elsewhere concerning the principles of media plurality which are invoked in Ofcom’s definition, i.e. that there should be ‘a diversity of viewpoints available and consumed across and within media enterprise’ and that plurality policy should ‘prevent any one media owner or voice having too much influence over public opinion and the political process/agenda’. Our research suggests that if such principles are to be effectively upheld, we require remedies which will reverse as well as prevent further concentration of media ownership. The primary challenge in plurality policy therefore resides not in defining the problem, but in designing and implementing both workable and effective solutions.

3. **What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?**

   We believe that plurality policy should focus on the provision of news and current affairs due to its particular role in holding power to account and fostering an informed citizenry. But policy should also acknowledge the importance to democracy attached to wider cultural
4. What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

We welcome recent recommendations by Ofcom for periodic plurality reviews in addition to existing triggers based on merger activity under the Public Interest Test. Lord Leveson has similarly recognised that plurality policy ought to address the threat of dominance stemming from organic growth within and across media markets, as well as ad hoc mergers and acquisitions.

But in order to identify what Leveson refers to as “levels of influence that would give rise to concerns in relation to plurality” (p. 1470), we need to establish clear ownership thresholds. We believe this is the only means by which plurality can be maintained in a consistent, fair and effective way. It is particularly important if remedies are to address concentration as a result of organic growth as well as merger activity. To shy away from establishing ownership thresholds is to place unnecessary powers of discretion in the hands of regulators and ministers.

In the absence of clear ownership thresholds, established in law, the door will always be open to both commercial capture (politicians may be induced to take certain decisions under pressure from media groups) and/or politicization (certain media groups may be unduly favoured or disadvantaged by political decisions).

Lord Justice Leveson has recommended that discretionary power remain with the Secretary of State in respect of public interest decisions over media mergers (p. 1476). But this is in conflict with much of the evidence and testimony submitted to his Inquiry. Evidence of a tacit ‘deal’ between political leaders and media industry lobbyists may never be substantive but we did learn a great deal about the pervasive nature and influence of industry lobbying. This was particularly evident in the run up to key decisions by the Secretary of State such as Jeremy Hunt’s near-approval of News Corp’s bid to buy out BskyB, prior to the unfolding of the phone hacking scandal.

5. For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in section 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?

We welcome Lord Justice Leveson’s affirmation that triggers for intervention should be “considerably lower” (p. 1470) than those appropriate to ordinary competition concerns. But the precise number of providers needed to guarantee sufficient plurality is a difficult question and one which invokes concerns about sustainability in news markets (an issue which we address in question 10 below). Our proposed thresholds are based on both international precedent and established principle. In the US, for example, at least eight remaining independent voices are required for newspaper/television mergers to be
acceptable in the largest media markets. Although such a threshold might be unrealisable under current market conditions in the UK, we believe that less than seven providers within and across sectors is an appropriate trigger for intervention. Though this in itself may not guarantee a sufficient diversity of viewpoints (it is worth noting, in this respect, that six out of the seven largest national newspapers in the UK are currently editorially aligned with the Conservative Party), it will nevertheless ensure appropriate checks to the dominance of individual providers and proprietors.

In regards to the growing role played by digital intermediaries acting as gateways to content, we believe this is a moot point since they produce relatively little original news and do not exercise editorial control over third party content. And contrary to common assumptions, they have enhanced rather than diminished the reach of traditional media brands. Whilst the Daily Mail had an average daily print circulation of just over two million in 1997, today it is reaching just under ten million taking into account average daily unique visitors to its website. The majority of this traffic is driven by intermediaries such as Google, Yahoo and Facebook (Alexa.com 2013).

6. How should ‘sufficient plurality’ be measured?

One of the historical stumbling blocks in media ownership regulation has been the inherent difficulties in measuring media plurality. What is needed is an approach which takes account of both the enduring agenda setting power of dominant news outlets within traditional media markets, as well as the growing significance of cross-media concentration in an increasingly converged media environment. With regard to the former, the Media Reform Coalition has established a clear framework for measuring and identifying excessive market power in four designated sectors - national newspapers, television, radio and online news.

Since Ofcom’s plurality formula is intimately concerned with the ability of individuals or groups to dominate public conversation, any system of measurement must take into account audience share. In the case of newspapers, television and radio, audience share can be deduced from the regular industry surveys of ABC, BARB and RAJAR. Respectively, these provide comparable data as follows:

- National newspaper circulation
- Multichannel television audience ratings*
- Radio listening shares*
- *(Since a large proportion of broadcasting news services are outsourced, market share should be attributed to wholesale news providers rather than channel/station).

Measuring audience share in online news is more complex since there is no comparable regular industry audit and there are considerably more providers compared to conventional platforms. However, patterns of news consumption online have been converging around traditional news brands for some time. According to a recent Ofcom report, the top five online news providers are the BBC, Daily Mail and General Trust, News Corporation, Guardian Media Group and Telegraph Media Group. Collectively, they account for more than 70 percent of traffic to the top 50 news sites, by both page views and browsing time (Ofcom 2011). Ofcom should commission regular surveys such as this in order to provide a clear and sensible measure of audience share for online news providers.
Finally, when it comes to measuring cross-media power we clearly need a single, one size fits all approach. To this end, we support proposals put forward by Enders Analysis to base the measure on a share of total cross-media revenues (Enders Analysis 2012). This is the simplest and most effective indicator of overall dominance.

7. Should the BBC’s output be included in a review of it?

There is a long-established policy principle in the UK that public responsibilities should be attached to significant media power. To date, this principle has been invoked in respect of broadcasting – and the BBC in particular – but as media markets and services converge it is increasingly applicable to other platforms. There is a need to ensure that dominant media voices which are not subject to public service regulation are nevertheless committed to maintaining a degree of internal plurality and accountability. Media plurality reviews and intervention should therefore be focussed on dominant commercial media groups, rather than the BBC.

This does not mean that commercial media should be subjected to forms of intervention that threaten their independence or free speech rights, and the exclusion of public service broadcasters is not to confer favour on these providers over purely commercial groups. On the contrary, we do not think that commercial media groups should be subject to the same onerous form of regulation as PSBs and it is for this reason that we are advocating a distinct regime based on dominant market shares and a limited prescription of remedies outlined in section 9 below.

8. How can internal plurality be sensibly measured against external plurality?

Any comprehensive attempt to measure internal plurality would have to take account of the structures and cultures of production specific to large scale media organisations and will inevitably fall back on subjective interpretations of media output. However, we can measure internal plurality quantitatively in terms of shareholdings, and qualitatively in terms of the relative autonomy of journalists and editors from senior management and proprietors. These should be factored into structural and behavioural remedies respectively, as outlined below.

9. What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

Our proposals stipulate that media groups with a dominant audience share within markets of between 15 and 20 percent, (based on the principles outlined in section 5 above), should be subject to a new set of public interest obligations to ensure editorial and journalist autonomy, as well as a commitment to supporting original newsgathering and those sectors of journalism currently being squeezed out of the market. These obligations are akin to behavioural remedies which have strong and growing precedent under current anti-trust regimes adopted in both the EU and US.

It should be emphasised that what we are proposing falls well short of imposing editorial standards. An example of a public interest obligation in this context would be an undertaking to protect journalist and editorial autonomy. One of the chief concerns emerging from the hacking scandal is the extent to which both the independence and integrity of journalists can be compromised by a chain of command and institutional culture fostered by senior management. One way of addressing this issue is to introduce institutional arrangements that limit the absolute prerogative power of proprietors and senior management. As a
minimum requirement, this should ensure that qualifying news organisations set up an
editorial panel, including a minimum of five staff journalists, which is empowered to oversee
key decisions affecting editorial policy as follows:

• The appointment and dismissal of the editor-in-chief, or equivalent, by management
  or proprietors must be approved by the editorial panel on the basis of majority vote.
• The panel must be consulted on decisions taken by management or proprietors
  which affect the definition or direction of editorial policy and content, including
  editorial codes and guidelines.
• The panel must have the ability to pass a motion of no confidence in an editor-in-
  chief, or equivalent, by majority vote.
• The panel must have the capacity both to hear and air grievances of staff journalists in
  relation to particular assignments, and to consult the National Union of Journalists or
  the new independent regulator.

Commercial press groups enjoy a significant public subsidy through VAT exemption so, in
addition to the above, it is entirely appropriate that they make a commitment to support
minimal levels of investment in original newsgathering, either directly or through the
commission of content from third party providers (examples of the latter include the series
of recent exclusives commissioned by both national newspapers and broadcasters from the
Bureau of Investigative Journalism).

In tandem with these behavioural remedies, we have also proposed a structural remedy to
be triggered by a system of cross-media and sub-market thresholds. But each type of
threshold warrants a distinct form of structural intervention. The objective of forced
divestiture is usually to create a new viable competitor, or to strengthen the position of
existing competitors through the break-up of a company’s assets. In the case of the media,
this might be feasible and sensible when a company has acquired a number of assets across
sectors such that it commands a dominant share of cross-media market revenues. To this
end, we support proposals put forward by Enders Analysis (see section 6).

But this will not solve the problem of concentrated power within particular media markets
and we recognise that monopoly control policies based on divestment can raise difficulties
when applied to these cases. We are therefore proposing a different structural remedy to be
applied in these cases based on shareholder dilution or equity carve-out. Where a single
outlet or group of outlets breach a given threshold of 20 percent, steps should be
undertaken to ensure that no single entity or individual has a controlling share of that title or
group of titles. The particular advantage of this approach is that it is aimed specifically at
limiting the influence of powerful interests. That is, after all, the primary concern attached to
media plurality and is precisely the kind of intervention that is most needed - especially in
the UK where individual proprietors are still dominant and to some degree resurgent in the
newspaper industry (in contrast to the US for instance). Furthermore, a remedy based on
shareholder dilution will not deter growth or interfere with consumer sovereignty within
media markets; and it can be implemented relatively easily based on Ofcom’s existing criteria
for measuring ‘de facto control’ of media companies. We also believe that it will meet
Ofcom’s objections to market caps—that they are a disincentive to innovation and are
unduly inflexible—that were noted by Lord Justice Leveson in his Report (p. 1468).

Recent examples of shareholder activism in many industries, including shareholder pressure
at News International, demonstrate that there is a growing appetite to exert influence on
large companies on the basis of shareholdings. This trend indicates that shareholder dilution or equity carve out could genuinely increase internal plurality, as civil society groups and socially-oriented investors (such as pension funds) may well take up the opportunity to buy released shares in order to hold media companies to account.

Although the above remedies target news organisations operating on the national level, Ofcom should also have powers to intervene on public interest issues at the local level. Given the added complexities in measuring local news concentration, intervention should be triggered by public concern via the Sustainable Communities Act which is uniquely fit for this purpose, based on “the principle that local people know best what needs to be done to promote the sustainability of their area.”

10. How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?

It is no secret that newspapers are in the midst of structural decline and revenue models have experienced an unprecedented assault in recent years as a result of both cyclical and technological pressures. But there are two widely held misconceptions about the funding crisis affecting the news industry.

First, it is often assumed or asserted that the crisis threatens the sustainability of professional journalism across the board. In fact, the volume of professional news output is increasing as outlets proliferate across platforms. But particular areas of journalism have faced the sharp end of resource cuts for some time. What’s more, it is precisely these areas of journalism that are central to the ability of news to serve democracy: to hold power to account and to produce well resourced, innovative and relevant news stories. In particular, the funding crisis in both investigative and local journalism has been well documented (House of Lords 2012, Media Trust 2010). Our proposals for plurality policy have been designed with a view to safeguarding these vital sectors of public interest journalism, rather than offering blanket protection to traditional media business models that, if anything, risk exacerbating plurality problems.

This leads us to the second common misconception which is that further consolidation of media markets can preserve the sustainability of news in the face of technological disruption. It is on this basis that Ofcom recently recommended the lifting of remaining cross-media ownership restrictions on local and regional news providers. But there is simply no evidence that consolidation of ownership improves the prospects for sustainability and some evidence to the contrary. It is worth noting in this respect that both consolidation and structural decline in newspapers long predate the internet. The graph below illustrates the steady trajectory of decline in the paid circulation of national newspapers since 1960, unaltered by either consolidation trends or the spread of the internet:

http://www.communities.gov.uk/publications/localgovernment/sustainablecommunitiesact
Total national daily/national Sunday newspaper paid circulation as % of households, 1960-2010

At the local and regional level, revenue declines have been considerably steeper and accompanied by consistent long-term patterns of ownership consolidation. Far from preserving sustainability, resource cuts and rationalisation accompanying market consolidation may in fact have a deleterious impact on consumer demand, a point underlined in a recent consumer survey of US news consumers (Pew Research 2013).

But a truly effective policy on plurality must address both the ownership and funding of news in the public interest, as emphasised in the Committee’s recent report on the Future of Investigative Journalism. Like the problem of media ownership, the need for policy to address the funding crisis in journalism is a point of broad consensus among journalists, editors and campaigners.

Outside the UK, there is both well-established precedent and a wind of change blowing across Europe in favour of new methods of funding for journalism beyond the state-corporate framework. One pertinent example is Google’s recent announcement that it has agreed to create a ‘digital fund’ to the tune of £50million to support French publishers and new digital news initiatives. The move was in effect a settlement following several years of lobbying by publishers and murmurings by legislators. This threatened to force Google to ‘pay’ for the content it appropriates from news providers in its search listings. Such arguments were given added force by the fact that Google itself is effectively afforded a huge public subsidy by virtue of the tax loopholes it exploits. According to one analysis, Google pays less than 3 percent of the tax it would have to pay if these loopholes were closed.

Google is also the prime beneficiary of digital migration by newspaper advertisers, a process which has fatally undermined the models that have traditionally paid for both local and investigative journalism.

In principle, the idea that Google should contribute to supporting those areas of public interest journalism increasingly under-served by the market need not threaten the free flow of information online, nor amount to a form of state-sanctioned protection for ‘old’ media revenues. It reflects rather a longstanding tradition in European democracies of cross-subsidising journalism in favour of its ‘merit good’ attributes in which both consumers and producers tend to under-invest. From the creation of Channel 4 to the licensing of local TV stations, this principle has been invoked in UK media policy for several generations and it is the sole reason why a newspaper such as the *Times* has survived for as long as it has.

But cross-subsidies cannot be left solely to the discretion of conglomerates such as News International or indeed Google. Without proper and transparent public oversight, the Google ‘settlement’ with news publishers risks enhancing the former’s gatekeeping power online and/or amounting to a ‘blank cheque’ to newspapers that will do little more than slow down an already painfully slow demise. Worse – like the blanket subsidy the UK government gives to the press through VAT exemption (to the tune of half a billion pounds a year) – it risks directing any redistributive proceeds to sustaining ‘bad’ journalism practices, exemplified in the phone hacking scandal.

Some will argue that any form of public oversight in respect of third sector media funding will intrinsically compromise the independence of grantees. But such claims are not borne out by the evidence in relation to international examples. All of the top five countries in rankings for press freedom conducted by both Freedom House and Reporters Without Borders (2011) have long had in place systems of direct public subsidies to support diversity in the press. The UK ranked only 26 and 19 respectively in the two reports. And if we are prepared to accept the Arts Council as an independent funding body for non-commercial cultural initiatives, there is no basis on which to reject journalism from that equation.

Arguments concerning the need for independence of the arts and cultural industries from the state are no different from those pertaining to journalism. Indeed, the distinction of journalism from broader cultural pursuits is increasingly unclear in the age of convergence. For those outlets that remain committed to investigative journalism, its inherent risks and uncertainties are adding to acute pressure on their business models. At the same time, several new news initiatives have emerged in recent years that exploit hybrid models of funding, multi-platform strategies and crowd-sourcing techniques in an attempt to revitalise public interest news. The example of the Bureau of Investigative Journalism demonstrates a growing willingness on the part of traditional news organisations to commission this kind of content from third party providers. At the local level, there are several examples of digital initiatives such as the *Caerphilly Observer* which has established itself in an area not served by a local newspaper and recently announced commencement of a print edition supplement. The *West Highlands Free Press* and the *Camden New Journal* are examples of local news providers that have succeeded as independent, co-operatively owned outfits in radically different markets. We need more of these initiatives, and we need to shore up the ones that already exist. Google’s recent announcements in respect of the settlements in France and Belgium suggest that it is amenable to a solution that positions it as a supporter of diversity, innovation and niche providers – exemplified by the aforementioned titles.

There is therefore an unprecedented opportunity for a way out of the prolonged stand-off between Google and traditional news providers that could be amenable to all players as well as serving the public interest. A digital fund should be established along the lines agreed in
the French and Belgium settlements. This should be administered by an independent Public Media Trust with a clear set of funding criteria, transparent procedures and an accountable system of appointments and administration. Organisations such as the Arts Council England offer appropriate models for structuring and instituting such a body. The body will support local and niche providers either directly, or via dominant media groups for whom funding should be contingent on commissioning content from independents.

Funding could also be targeted towards subsidising entry-level journalism jobs. Helping young trained journalists gain a foot in the door in established news organisations – large and small, national and local – will go some way to easing the funding crisis affecting substantial parts of the news market. It may also serve to reinvigorate newsgathering and help to free up existing journalists from desk-bound, copy-paste reporting – a practice that has been well-documented in recent studies (eg Davies 2008).

11. With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

Given its existing statutory footing and its relative autonomy from both government and industry, Ofcom, advised by a range of stakeholder and civil society groups, is better placed to intervene in media markets on plurality grounds. We believe that ministerial powers should be eliminated in respect of plurality policy and that discretionary power afforded to Ofcom should be minimised by establishing a clear and comprehensive system of measurements, guidelines and remedy prescriptions. This is the only way to ensure that plurality policy is not compromised by the well-documented lobbying influence of media conglomerates.

12. To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

We welcome recommendations made by the EU High Level Working Group for Media Plurality, and are encouraged by the prospects of the recently launched European citizens’ initiative for media pluralism. However, we recognise that there are distinct contextual factors applicable to individual member states. Whilst the development of EU standards might provide impetus and a framework for policy reform at the national level, it is unlikely that a ‘one size fits all approach’ would be either workable or sufficient to meet plurality goals across the board. In view of recent developments, we believe the UK Parliament is in a unique position to lead by example in reform of media plurality rules and establish new precedents appropriate to the current economic and political climate.

13. What should the UK learn from international approaches to these areas?

We believe there is much to learn from international approaches and have produced a comprehensive and up-to-date overview of media ownership regimes in a range of western democracies (Media Reform Coalition 2013). There are some well-established international precedents for our proposals, particularly in the context of funding mechanisms to promote greater media plurality. But the overriding picture is one of progressive liberalisation of ownership rules. Much like the UK, plurality concerns in other countries have not been offset by the promise of diversity associated with the spread of digital media. We need a new approach that recognises (but does not shy away from) the complexities in both
measuring and remedying media concentration. In particular and in conclusion, we need a system of clear ownership thresholds applied both within and across key sectors for news and current affairs, accompanied by appropriate and workable remedies.

References


May 2013
Media Reform Coalition and Avaaz – oral evidence (QQ 322-338)

Transcript to be found under Avaaz
Introduction

1. The Media Standards Trust (MST) is an independent, non-partisan charity (number 1113680) established in 2006 to foster high standards in news on behalf of the public. It does this through research, development and campaigning.

2. Its research publications include: *A More Accountable Press* (2009), *Can independent self-regulation keep standards high and preserve press freedom?* (2010), *Shrinking World: the decline of international reporting in the British press* (2010), and *A Free and Accountable Media* (2012). It also makes regular submissions to Parliamentary inquiries, including the inquiry into investigative journalism, and the joint inquiry into privacy and injunctions. In 2011 it won a Prospect Think Tank award (‘One to Watch’).

Summary

3. With regard to limits on media ownership, the Media Standards Trust:

   a) Believes that there should be limits on media ownership in order to prevent over-powerful media corporations distorting the market and causing harm to individuals, public discourse and the political process
   b) Supports the use of share of revenue of the total UK media market as a measure of plurality – as proposed by Enders Analysis (Media Ownership Rules 2012)
   c) Believes 15% share of revenue of UK media market is a suitable upper limit
   d) Proposes that Ofcom carry out an annual audit of the UK media market and, if a company has breached the 15% ceiling, it should be obliged to divest parts of its media holdings

4. With regard to the promotion of plurality in news, the Media Standards Trust:

   a) Notes the decline in plurality of provision of regular and sustainable sources of news and current affairs at a local level in the UK
   b) Considers that this decline is leading to a democratic deficit of news and accountability
   c) Believes action needs to be taken if we are to avoid further decline in plurality and the development of local news blackspots
   d) Commends the initiative taken by central government to open information and data to enable greater access to information
   e) Disparages the failure of many local authorities to build on this initiative
   f) Concludes more needs to be done to promote plurality in news and information at a local level
   g) Proposes that large media and communications organisations contribute to the promotion of plurality, sustainability and innovation in news and information at a local level

Limits on media ownership
5. Evidence revealed by the Leveson Inquiry showed the damage that can be done to individuals, public discourse, and the political process by over-powerful media organisations. As the Prime Minister said when announcing the Inquiry in July 2011, “The relationship [between politicians and the press] did get unhealthy. It was too close and, as I have put it, too much time was spent courting the media and not enough time confronting the problems” (HC Deb, 13 July 2011, c325).

6. In the MST submission to the Leveson Inquiry we argued that only large media organisations should be subject to regulation. ‘Large news publishers have voices far louder,’ the submission said, ‘with significantly greater impact, than any individual. They have the power to frame and influence opinion and public understanding. They also have exceptional power to seriously harm private citizens through their influence’ (A Free and Accountable Media, 2012).

7. Regulatory mechanisms are, we believe, necessary once a media organisation exceeds a certain size since, above this threshold, there is a significant disparity of power between the organisation and the individual. Seeking to regulate individual expression – as expressed in blogs and on social networks – we believe would be invidious and impractical. However, when an organisation reaches a certain size it ought to have decent complaints and compliance mechanisms, and be part of a self-regulatory system.

8. Above the regulatory threshold there should, we think, be an upper plurality limit, above which a media company is considered too powerful. The rationale for this is that, over a certain level, accountability mechanisms only serve a limited value because they cannot address wider concerns (for example regarding political influence).

9. We recognize that it would be difficult to come to a definitive determination of media power. Such a definition would, as Lord Justice Leveson noted, be complex. He wrote that such a measure, ‘should be a materiality threshold based on influence’ (Vol.IV, p.1,793). However, we do not believe such a determination has to be complex, and think there is significant value in a straightforward approach that uses existing criteria for measuring size, most notably revenue.

10. For determining whether a media organization ought to be within the jurisdiction of a self-regulatory system, we proposed using the Companies Act. Any organisation larger than the threshold of ‘small company’ as defined by the Companies Act (2006) ought, we said in our Leveson submission, to be part of a self-regulatory system.

11. Using a definition that is based on size (as defined by revenues, assets and employees) maintains the purpose of regulation – to address disparities in power. It also, with regard to media regulation, avoids being platform specific. This means that it is as applicable in a converged digital media world as it is in a platform specific analog one.

12. For the upper limit on media ownership we support the use of a cap on the share of the revenues of the total media market controlled by any one company, as proposed by Enders Analysis (Media Ownership Rules, April 2012). Using share of revenues is consistent with our approach to using the Companies Act threshold for regulation, adapted to account for plurality concerns. It is also, as with the Companies Act threshold, suitable to an evolving, converged digital world.
13. 15% is a suitably high limit which would only catch the very largest media concerns. Based on 2010 figures (which include the BBC), Enders Analysis found that the BBC’s revenues would represent 12% of the market, that Google’s would represent 5%, and that DMGT’s would represent 3%. News Corporation revenues in 2010 represented 11% market share. This would have risen to 20% had the BSkyB deal gone through.

14. We do not agree with Ofcom’s assessment that such a cap ‘is likely to be disproportionate as a means of ensuring media plurality’, due to its lack of flexibility and difficulty of measurement (Measuring Media Plurality, June 2012). If the limit is set high enough then measurement will not be overly difficult. Moreover, though the line creates a trigger, it does not specify exactly what action is necessary once trigger has been exceeded. The alternative to a straightforward cap is regulatory or ministerial discretion. We believe this is less satisfactory, and more likely to lead to confusion and inaction, than a clear line.

15. Ofcom should carry out an annual assessment of the media market which includes an assessment of market share based on revenue. This will enable Ofcom to take changing market context into account, including new entrants and organic growth.

16. Organisations that are found to exceed the 15% share of the revenues of the total media market should be told they must divest part of their holdings by the time Ofcom starts its next annual review.

17. We therefore support the establishment of a clear cap on share of revenues of the total media market by Parliament, after a public consultation and proper debate.

Promotion of plurality

18. There has been a decline in the plurality of provision of regular and sustainable sources of news and current affairs at a local level in the UK. Research by Press Gazette found that 242 local papers closed between 2005 and 2011, compared with 70 launches over the same period (http://www.pressgazette.co.uk/node/49215). Revenues amongst four of the largest local news groups dropped by, on average, about 40% between 2005-2010 (Competitive Pressures on the Press, Enders Analysis, October 2012). This has led to job cuts at many local publishers. Johnston Press, for example, cut more than 1,300 positions between 2011 and 2012 (not all editorial positions). Trinity Mirror reduced the number of editorial and production staff at Media Wales from 700 to 136 between 1999 and 2012 (and announced it would be cutting another 92 editorial jobs nationwide in February).

19. This decline is, we believe, leading to a democratic deficit of news and accountability. There are fewer professional journalists regularly covering local authorities, local courts, local health trusts and local businesses. The reduction in the number of beat journalists covering local issues is leading to the development of news blackspots – areas where issues that are in the public interest are going almost entirely unreported. The 2012 research by Press Gazette identified five news blackspots that are no longer served directly by a local paper: Rugeley in Lancashire, Cannock Chase in Staffordshire, Leominster in Herefordshire, Long Eaton in Derbyshire, and Port Talbot in Wales.

20. This deficit is only partly being addressed by new forms of journalism and accountability. There is, as yet, minimal research on the provision of news and information at a local level. However, a recent study by NESTA found that a total of on 35% of UK adults have so far
accessed hyperlocal media in relation to where they currently live (UK Demand for Hyperlocal Media Research Report, April 2013). Separately, a joint research project led by Cardiff University JOMEC and the Media Standards Trust in Port Talbot – one of the news blackspots, has shown how difficult it is to sustain a regular digital only news service.

21. Positive action needs to be taken if we wish to avoid further decline in plurality and the increase in more unserved areas. There is no evidence to suggest the decline will be reversed – except in specific areas (such as large cities) without some public, private or third sector intervention. Such intervention, which could take a range of forms, needs either to lower the cost of doing journalism, or provide investment in journalism, if it is to stem the decline.

22. The initiative taken by central government to open information and data is an important and valuable approach to enable journalism. For example, access to the COINS database of government spending enabled The Guardian to display spending in an accessible graphical format. This is just the sort of approach that central and local government need to take if they are to facilitate journalism and reduce the cost of information access and accountability journalism.

23. Unfortunately, local authorities have not been as active as central government in becoming more transparent. In some cases they have been the opposite (notably the case of the blogger arrested for filming her local council in Carmarthenshire). This is despite certain new transparency requirements (such as making much of their spending records accessible). If local authorities do not become more open, and make their meetings and data more accessible and usable, then it will not be possible to do the sort of accountability journalism that we rely on as part of the democratic process.

24. Even with greater local transparency, more needs to be done to promote plurality in news and information at a local level. Other countries have seen considerable investment in local and community journalism over the last decade. In the US, a single Foundation - the Knight Foundation – has invested more than $150m since 2007, in ‘new technologies and techniques, including hundreds of community news and information experiments’. In France the government gave all 18-year-olds a free year’s subscription to a newspaper of their choice. Sweden has, for many years, provided subsidies to the press. In the UK the interventions have either been misguided (e.g. the DCMS Local TV Framework), good but limited in scope (e.g. Talk about Local), or stopped before they have started (e.g. IFNCs).

25. We propose that, amongst other measures, large media and communications organisations ought to contribute to the promotion of plurality, sustainability and innovation in news and information at a local level. Large media and communications organisations should include new media organisations that rely on fresh content (such as Google) as well as ISPs. It is in their interests, as well as that of large publishers, to have a healthy, vibrant media market that nurtures young talent and that produces diverse, high quality content.

26. A variety of ways have previously been suggested to oblige large media and communications organisations to contribute (see, for example, proposals by Steve Morrison to the Communications Committee 2009). In addition, one can look to other democratic countries for methods of intervention that do not compromise publishers’ independence. To a certain extent, of course, this is already happening through top-slicing of the BBC’s license fee to fund the local TV plan.
27. We therefore support efforts to invest in plurality at a local level, particularly those that require a contribution from large media and communications companies that rely on a vibrant local media.

May 2013
Dear Lord Inglewood

Inquiry into media plurality

Your Committee’s inquiry into media plurality is to be welcomed. The unhealthy concentration of ownership in the UK media market was at the root of the misconduct by newspapers that led to the Leveson Inquiry.

As well as Lord Justice Leveson’s recommendations on media plurality (Recommendations 85 to 92), much of the evidence presented to the Leveson Inquiry by victims of press intrusion, and by politicians and media proprietors, is directly relevant to your Committee’s inquiry.

It should be taken into account in any consideration of a new Communications Act, and other reforms to regulation.

The Leveson Inquiry was necessary not simply to examine criminal conduct by some newspapers, but to investigate why the relationships between the press, the police and politicians prevented that conduct from being dealt with earlier.

Many of those who gave evidence to the Inquiry believe that the culture of impunity at News International was a direct result of its market dominance, controlling as it did almost 40 per cent of national newspaper sales. As Rupert Murdoch’s newspapers crossed boundaries of acceptable behaviour, other papers soon followed.

The Prime Minister acknowledged that politicians had failed to deal with that behaviour when he announced the Leveson Inquiry, saying: “because party leaders were so keen to win the support of newspapers, we turned a blind eye to the need to sort this issue, get on top of the bad practices, to change the way our newspapers are regulated” (July 2011).

Because of the Leveson Inquiry, we now have more evidence of the damaging effects of market dominance than was available when the Public Interest Test for media ownership was introduced in the Communications Act 2003.

This includes evidence about the harm caused to private individuals and about the influence of newspaper corporations on politicians and the political process, exerted by means of editorial columns and direct contact, in the form of lobbying and social relationships.

In addition to your Committee’s consideration of competition law and technical measures of plurality, I would urge the Committee to examine the effects on public life, and private individuals, of the excessive concentration of ownership in the UK media market.

This is because I believe that in order for your recommendations to address the corrosive effects of market dominance, the Committee should understand their real human impact.
Max Mosley – written evidence

A new Public Interest Test should go further than the current criteria of accuracy, free expression and plurality and add new tests related to editorial independence, conduct, financial transparency, criminality and membership of a recognised independent regulator. These would take the lessons of the Leveson Inquiry into account.

I attach the relevant passages from my first witness statement to Leveson, and also observations about media plurality regulation in two areas only:

- The need to update the Public Interest Test in the Communications Act 2003 and to apply it in all considerations of plurality
- The need for automatic plurality reviews every five years, so that the decision to start a review is not subject to political interference and lobbying by vested interests.

I would urge the Committee to invite individuals who were recognised by the Leveson Inquiry as Core Participant Victims to give evidence. If the Committee thinks it helpful I and others would be available to give evidence in person.

I would also be happy to expand on the points attached, citing more sources of evidence, if that would be helpful to your Committee.

Yours sincerely

Statement of Evidence from Max Mosley

1. Extract from my witness statement to the Leveson Inquiry dated 31 October 2011: 242

1.1. “Media Plurality

1.2. “The degree of influence which, until recently, News International was able to secure over government and the police shows quite clearly how dangerous it is to allow concentrations of media power in a few hands.

1.3. “It is essential that (i) no one should be allowed to own both a newspaper and a television network, (ii) the percentage of the UK newspaper market owned by any one company should be severely limited and (iii) newspapers with a significant circulation should be compelled to demonstrate editorial independence backed by an independent board.

1.4. “It is well known that Rupert Murdoch exercised a degree of influence over successive governments which was truly a threat to democracy. When an

unelected foreign individual living in the United States becomes arguably the most powerful man in the UK, there is something seriously wrong.”

2. Arguments for periodic reviews

2.1. The regulation authorities should conduct an automatic review of plurality in the UK media market every five years, to be initiated within six months of a General Election.

2.2. Although Ofcom in June 2012 recommended a periodic plurality review “every four or five years,” 243 the advent of Fixed Term Parliaments allows for a timetable for periodic reviews that is tied to the electoral cycle.

2.3. Under the Enterprise Act 2002, interventions and reviews of media competition and plurality are decided by the Secretary of State.

2.4. This inevitably leaves the political process open to influence from media corporations, with the risk that they will use all the lobbying, litigation and political weapons in their armoury to prevent an intervention.

2.5. The answer is to remove the element of ministerial discretion and establish periodic reviews.

2.6. Two developments in the recent period make the case for periodic reviews:

2.7. Editorship of the Times and Sunday Times

2.8. In December 2012 the Editor of The Times, owned by News International, and ultimately Rupert Murdoch’s News Corp, left his job apparently because he had advocated a positive response from the newspaper industry to Lord Justice Leveson’s recommendations on a new independent regulator. This was contrary to Rupert Murdoch’s declared views on the Leveson recommendations.

2.9. Subsequently, the board of independent directors at News International refused to endorse the appointment of new editors for the Times and Sunday Times. The independent directors have the responsibility of overseeing the editorial independence of the Times and Sunday Times in keeping with undertakings given to the Government by Rupert Murdoch in 1981. These undertakings smoothed the path for Rupert Murdoch’s takeover of the two papers, which was in breach of competition law.

2.10. Despite the refusal of the independent directors to endorse the new editors for the Times and Sunday Times, they have been appointed anyway with the title of ‘interim’ or ‘acting’ editors.

243  http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/statement
2.11. This state of affairs is apparently not sufficiently serious to trigger a review under the Enterprise Act, even though it appears to be in breach of the 1981 undertakings given by Rupert Murdoch.

2.12. It is probably impossible for Ofcom, the Competition Commission or any Secretary of State to predict every possible circumstance and future event that might trigger a plurality review, because of the general difficulty of predicting future developments in a changing media market.

2.13. An automatic review would allow the regulation authorities to comment on and make recommendations about Rupert Murdoch’s undertakings and the editorship of The Times. Knowledge and foresight of an automatic review might have positively influenced Rupert Murdoch’s decisions in this matter.

2.14. **Fixed term Parliaments**

2.15. Another development that makes the case for periodic reviews is the advent of fixed term Parliaments. Periodic reviews themselves will be subject to media influence and lobbying while they are in progress. When the future date of General Elections was not known there might have been a risk that this lobbying and editorial influence around an automatic review would coincide with the approach of an election. The newspapers’ General Election campaigns would be more than usually influenced by commercial considerations, and politicians would be more than usually susceptible to that influence.

2.16. This risk can now be reduced if periodic reviews are to start, say, six months after each General Election.

3. **The need to update the Public Interest Test in the Communications Act 2003 and the Enterprise Act 2002**

3.1. As regards the newspaper industry, the Public Interest Test is only engaged when takeovers for certain broadcast licences are reviewed and is currently limited to:

   - The need for accurate presentation of news; and free expression of opinion, and;
   - The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom ...  

3.2. In relation to broadcasting and newspaper/broadcast cross-media mergers the considerations are:

   - 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;
the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and
the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003⁴⁴

3.3. After Leveson, I believe that the Public Interest Test should be reformed and extended for use in any consideration of questions of plurality in the newspaper market.

3.4. I provide here a brief summary of the areas that should be considered for extensions of the Public Interest Test, with indications of supporting evidence. I would be happy to provide further evidence if the Committee indicates this is an idea it is interested in.

3.5. Membership of a recognised independent regulator

3.6. The Public Interest Tests should take account of whether newspaper publishers are subscribers to a recognised independent regulator, and their track record of compliance with its codes and complaints procedures.

3.7. The newspaper industry is committed to some form of independent self-regulation based in part on Lord Justice Leveson’s recommendations, although there is no agreement as yet within the industry, or between the industry and the political parties in Parliament, on its precise form.

3.8. Nevertheless, it seems likely that a successor to the Press Complaints Commission will be formed in due course.

3.9. Membership of the new body by a newspaper publisher will require acceptance of a code of conduct and the complaints procedures and sanctions that enforce it. The new regulator will also publish an annual report including the number of complaints it has dealt with for each newspaper that is a member and an assessment of the effectiveness of each member’s own complaints procedures.

3.10. Non-membership of a regulator would indicate that a newspaper publisher was not a suitable participant in any merger that was being examined on grounds of plurality. For members of the press regulator, a poor record of compliance with the regulator’s code or its complaints procedures would also be taken into account when plurality issues were considered.

3.11. Conduct, criminality and financial transparency

3.12. The Public Interest Tests should take account of whether newspaper publishers or their employees and contractors have engaged in criminal activity in the UK

---

⁴⁴ Section 319 Communications Act 2003:
http://stakeholders.ofcom.org.uk/broadcasting/broadcastcodes/broadcast-code-2008/ca2003/
or in any jurisdiction. They should also take account of adverse findings in commercial and civil law in the UK or any jurisdiction, particularly in relation to competition law or failure to comply with disclosure and transparency rules in any jurisdiction.

3.13. Since 2004 there have been eleven convictions of employees or contractors working for newspaper publishers, or serving and former police and prison officers who had sold information to newspapers.

3.14. Regulation authorities examining questions of plurality should also take into account the financial transparency and corporate governance of any newspaper publishers concerned.

3.15. Editorial independence

3.16. The Public Interest Tests should include a requirement for demonstrable guarantees of editorial independence from proprietorial influence.

3.17. The current situation at the Times and Sunday Times (referred to at 2.7 above) demonstrates that even where it has been felt necessary to give undertakings about editorial independence, there is currently no mechanism available to see that these are honoured.

3.18. A combination of periodic reviews and an extension of the Public Interest Tests would make this possible.

3.19. The “fit and proper person” test

3.20. The Public Interest Tests should include a “fit and proper person” test that applies to the proprietors and directors of news publishers.

3.21. Although the “fit and proper person” test applies in broadcasting mergers it does not apply to questions of plurality involving newspapers (or online news publishers).

3.22. A “fit and proper person” test is applied to the owners of Premier League football clubs, landlords for private housing in multiple occupation, charity managers and even managers of amateur sports clubs.

3.23. It seems astonishing that this test is not required of national newspaper proprietors.

4. The need to apply the Public Interest Tests in periodic reviews

4.1. Under the current legislation, the Public Interest Tests are only engaged in a limited set of circumstances. They can only be triggered by the Secretary of State for Business and only apply to certain broadcast mergers and takeovers. At present they would only apply to newspapers if a newspaper corporation is attempting the acquisition of a certain broadcast licences.
4.2. The evidence heard at the Leveson Inquiry showed that for the period under examination some newspapers were beyond the reach of the law, and had unaccountable influence over the political process, and that their ability to do so was related to market dominance. The risk that this situation will be repeated has not gone away.

4.3. Because of this I believe that media plurality in the UK news market should be reviewed every five years, with the automatic inclusion of Public Interest Tests applying to all news publishers and reformed as suggested.

30 April 2013
Chris Mullin – written evidence

1. I note that your terms of reference include the plurality and independence of the media and its relationship with politicians. It is this that I wish to address. It is a regrettable fact of British public life that the power of the individuals and corporations who own much of what we see and read is now so great that the leaders of the two main parties live in fear of them. Rather than confront the media oligarchs and their representatives, they have sought to appease them. This has had a significant impact on government policy, both in relation to the commercial interests of the corporations concerned and in relation to government policy in general. It has also resulted in the trivialisation and debasement of our culture. Successive prime ministers have each, with varying degrees of success, tried to ride the tiger. Usually this has ended in tears. Witness, David Cameron’s employment of Andrew Coulson. Or the extraordinary lengths to which Tony Blair and Alastair Campbell went to keep the tabloid media onside. The following passage from the introduction to the diaries of Piers Morgan give a flavour of the problem: “Bored one evening, I counted up all the number of times I had met Tony Blair. And the result was astonishing really, or slightly shocking – according to your viewpoint. I had 22 lunches, six dinners, six interviews, 24 further chats over tea and biscuits and numerous telephone calls with him…” (The Insider, p x)

2. A free press is the life blood of democracy. Regrettably, so far as most of the written media are concerned, we do not have a free press. Instead we have one to a large extent owned by a handful of oligarchs and corporations who frequently abuse their power to advance or protect their political and commercial interests. While individual proprietors vary in the extent to which they interfere in the editorial line of their newspapers, they do not have to tolerate views significantly different from their own and, by and large, they don’t. In recent years, helped by the erosion of the cross-media ownership rules, the oligarchs have begun to extend their ownership into the broadcast media. Only the fact that our broadcast media is more strictly regulated prevents it being debased and abused in the same way as many of our newspapers have been. One has only to look at Fox News in the USA for a glimpse of what might happen were the regulation of our broadcast media ever to be relaxed. It is, however arguable, and I will argue, that the tabloid virus is gradually spreading beyond the tabloids.

3. Consider who owns our media. The Times, Sunday Times, The Sun – and until recently the News of the World – are the property of News International which is controlled by Rupert Murdoch and his son James. In addition Murdoch has a controlling interest in Sky Television which appears in a majority of British homes. Over the years Murdoch has used his relationship with successive prime ministers to extract significant commercial advantages. Those that come most readily to mind include (a) the Thatcher government’s decision to allow him to purchase Times Newspapers without a reference to the Monopolies Commission. (b) The hugely advantageous exemption of Sky-TV from the obligation, which applies to its terrestrial rivals, to broadcast a fixed percentage of domestic or EU-made programmes. (c) The Labour Party’s abandonment in the mid-1990s of support for limits on cross-media ownership. (d) During the late 1990s the government turned a
blind eye while Murdoch pursued a policy of predatory pricing, clearly intended to sink or inflict serious damage on his competitors.

4. Andrew Neil, a former editor of the Sunday Times, has eloquently described how Rupert Murdoch exercises control over his empire. It is worth quoting at length: “When you work for Rupert Murdoch...you are courtier at the court of the Sun King – rewarded with money and status as long as you serve his purpose, dismissed outright or demoted to a remote corner of the empire when you have ceased to please him or outlived your usefulness...All life revolves around the Sun King. All authority comes from him...The Sun King is everywhere even when he is nowhere. He rules over great distances through authority, loyalty, example and fear. He can be benign or ruthless, depending on his mood or the requirement of his empire. You never know which; the element of surprise is part of the means by which he makes his presence felt in every corner of his domain. He may intervene in matters great or small: you never know where or when, which is what keeps you on your toes and the King constantly on your mind. ‘I wonder how the King is today’ is the first thought that springs to a good courtier’s mind when he wakes up every day.” (Full Disclosure, p214)

Murdoch, of course, is merely the most successful contemporary media oligarch. In years past, much the same might have been written of Lords Northcliffe, Beaverbrook or Conrad Black.

5. The Mail, the Mail on Sunday and, until recently the London Standard, are or were the property of Associated Newspapers which is controlled by the Harmsworth family. Although previous generations of Harmsworths have been notorious for the extent of their interference in British political life, the current generation are content to leave day to day editorial control in the hands of Mr Paul Dacre. The Mail’s interference in the political life of this country for more than 100 years is a matter of record. Less well documented is the extent to which successive prime ministers have been willing to dance to its tune on social issues: the government’s announcement last year that, notwithstanding the crisis in the public finances, it has somehow found up £250 million to fund the restoration of weekly bin collections is one recent example example. The principal plank of the Mail’s marketing strategy appears to be directed at keeping its’ readers permanently apoplectic. Words like “Fury” and “Outrage” occur frequently in Mail headlines.

6. The Daily and Sunday Telegraph, previously the plaything of the Canadian businessman Conrad Black is now owned by a couple of tax avoiders who live on a rock in the Channel Islands, since when much of its political coverage, often eccentric, has become doo-lally.

7. The Daily and Sunday Express and the Daily Star are owned by a pornographer who has demeaned everything he has touched. He has taken the Daily Express to depths unplumbed by any British newspaper since Lord Rothermere’s Daily Mail briefly flirted with the Blackshirts in 1934. As to the modus operandi of the Express, I refer you to the statement of the former Express journalist Richard Peppiat in the earlier part of your inquiry. Recently Mr Desmond has acquired Channel Five television.

8. The Daily and Sunday Mirror and The People, formerly owned by Robert Maxwell who grievously abused his ownership thereof, are now under the relatively benign
ownership of Trinity Mirror. Arguably, Rupert Murdoch has had as great an impact on the Mirror, a once great newspaper, as it did on The Sun, as the Mirror plunged down-market in order to compete.

9. Which leaves only The Guardian, owned by a trust, The Independent, owned by a Russian Oligarch, and the Financial Times, owned by a large corporation. They all pursue independent editorial policies and are examples of British journalism at its best. In fairness, I should perhaps add that The Times, despite being owned by Murdoch, is generally a fine newspaper.

10. There are those who argue that, whatever the quality of our written media and the depredations of the oligarchs or their employees, the impact on our politics and culture has been negligible. I disagree. The impact is considerable.

11. First, the growth of corrosive cynicism, to which Tony Blair referred in his "feral media" speech. "This relationship between public life and the media is now damaged in a way that requires repair. The damage saps the country's self-confidence and self-belief; it undermines its assessment of itself, its institutions and, above all, it reduces our capacity to take the right decisions in the right spirit for our future". (Reuters Institute, 12 June, 2007)

12. Second, it is a sad fact of British political life that there is a growing range of issues on which no rational discussion is possible, especially in the approach to a general election. I list them in no particular order: tax, prisons, asylum and immigration and drugs policy -- and, of course, relations with the EU. These are all areas of policy where mainstream politicians fear to tread for fear of the hysteria than can be organised if they stray from the received wisdom.

13. Third, the hounding of dissidents. Any politician or other public figure who takes a stand on a controversial issue risks what is known in tabloid parlance as "a monstering". I speak from experience, having been repeatedly monstered by The Sun for taking up the cases the people wrongly convicted of the Birmingham, Guildford and Woolwich bombings. MPs who opposed the Falklands war, the first Gulf War or the invasion of Iraq found themselves pictured in the tabloids under banner headlines proclaiming that they were "traitors". This inevitably generates a considerable hate mail. Indeed the tabloids have among their readers a pool of poison pen writers willing to send letters, or worse, to the hate-figure of the hour. This was brought home to me in the early '80s when, following a strike by train drivers, I was invited by Ray Buckton, general secretary of the train drivers' union ASLEF, to view the large pile of abusive letters, some containing death threats and even excreta, he had received during the course of the strike. Some were delivered direct to his house since at least one newspaper had printed a photograph of his house – a thatched cottage in Essex – with a signpost outside giving away the location. Many of the letters contained the press cuttings that had aroused the ire of the writer and some were scrawled with threats such as "won't this thatch burn nicely".

14. Fourth, the tabloid virus is spreading to the broadsheet newspapers and to the broadcast media. Even the BBC is not immune. When Gordon Brown attended the UN General Assembly in New York in September 2009, the political media as a whole decided in advance of his departure that the story would be "Brown snubbed
by Obama”. The story raged fiercely for a day or two, but quickly burned out after Brown moved on to Pittsburg for the G20 summit where he had plenty of one-to-one contact with Obama. On an earlier visit to the US, Lobby journalists decided to amuse themselves by seeing if they could get Brown to apologise for allegedly causing the global recession. To the astonishment of the Americans, they pursued this foolish game into the Oval Office of the White House. “Why do you take the Lobby with you”, I asked a friend who worked in 10 Downing Street? Why not just leave the reporting to Washington-based correspondents?” He replied, “because they would cause even more trouble, if we left them at home.”

15. Finally, it is my view that decades of tabloid denigration, have created a corrosive cynicism about politics and politicians that is generally unjustified and which long predates the great parliamentary expenses meltdown (which, I readily concede, was to a large extent self-inflicted). In particular, our media have established in the minds of a fair swathe of the British public three unshakeable falsehoods: (a) that when Parliament is not sitting all MPs are on holiday; (b) that MPs were allowed to ‘buy’ a second home using public money -- whatever abuses may have occurred, that has never been the case; (c) that MPs expenses are part of their salary and that MPs, therefore, had incomes of over £200,000 a year. This figure was achieved by lumping together the salaries of our employees, the office rent and utility bills, the cost of travel to and from Westminster and adding it to our salaries. This was not implied. It was explicitly and repeatedly stated. And not only in the tabloids. An article in the financial pages of the Daily Telegraph on April 4, 2009, by Ian Cowie argued ludicrously and at length that all MPs owed the taxman £54,000 on account of their supposed £200,000 incomes. A theme to which he repeatedly returned in subsequent weeks. See also the Daily Mirror of March 31, 2009, a front page lead article by Bob Roberts headed “THEY ARE ALL AT IT”: “Greedy MPs pocket an average of £144,176 in expenses on top of their bumper salaries, shock figures revealed yesterday…. These falsehoods are so deeply engrained as to be not worth rebutting. Many local as well as national newspapers report the annual publication of MPs’ expenses in similar terms. Such reporting has become an annual event following the Freedom of Information Act. “Our MPs cost £1m” was the headline over one such story in my local paper. A similar headline appeared the previous year. This figure was achieved by aggregating the office costs, travel and London allowance of the half dozen or so MPs in the paper’s circulation area and then implying that it was income. In case anyone was in doubt, the final line of the report slyly added, “The national average wage is…..”

16. “OUR GREEDY MPS DEMAND A MASSIVE PAY RISE” (Daily Express 18 June, 2008)) is another is another favourite theme. The trick here is to find an MP, usually anonymous, willing to assert that in his or her view MPs salaries should be at least £100,000 and then to present this as if it were the norm. In fact the pay rise subsequently agreed was 2.25 percent, in line with the rest of the public sector. I have not checked, but I would be surprised if the outcome was reported by the Express. Such chicanery is not confined to the tabloids. “MPs set to claim £40,000 perk” was the heading over a front page lead in the Sunday Times of June 22, 2008 by the paper’s Whitehall Editor, Marie Woolf. This was much the most fanciful of a number of options considered by the Members’ Estimates Committee for reforming MPs’ remuneration and expenses. In fact the option chosen was at the opposite end of the scale: to leave the system unchanged, but to require greater scrutiny. Again, I
have not checked, but I would be surprised if the outcome was reported in the following week’s Sunday Times.

17. What, if anything, can be done? Should we just shrug our shoulders wearily and accept the debasement of our culture and our politics as a fact of life? And even were we to diminish or even eliminate the influence of the oligarchs, what guarantee is there that anyone better would replace them? If we accept that, like the banks, the key problem with News International (and other media empires) is that they have been allowed to grow too big, then part of the solution is surely to make them smaller. This is an issue I have pursued for some years. On January 18, 1995, I moved a Bill which would have confined national newspaper ownership to one daily and one Sunday per proprietor. It would also have imposed strict limits on cross-media ownership and required that only EU citizens should be allowed to acquire a significant stake in a British media corporation. There were no takers for this at the time, although in the mid-1990s John Major did, very quietly, examine the possibility of limiting ownership of British media to EU citizens. He dropped the idea after concluding that it was not, at that time, politically possible. I respectfully submit that now, for the first time, it is politically possible to contemplate limits on the size and nature of ownership of British media and I invite you to recommend accordingly.

18. Specifically, I suggest:

(i) that no corporation or proprietor be permitted to own more than one daily and one Sunday newspaper and that those who do should be obliged to divest;

(ii) that ownership be confined to EU citizens -- in line with the rule in the USA that confines ownership of the US media to US citizens;

(iii) that no individual or corporation that has a controlling interest in a British national newspaper should be allowed a more than ten percent interest in our national broadcast media and vice versa;

(iv) that consideration be given to devising a test as to who might constitute a fit and proper person to have a controlling interest in any part of the British national media – and that it be somewhat more rigorous than that currently applied by OFCOM in relation to the broadcast media.

19. That NewsCorp should be allowed to acquire a larger holding in Sky-TV subject to the following conditions:

(i) That the company is obliged to relinquish control of its national newspapers;

(ii) That Sky-TV is obliged to compete on a level playing field with commercial terrestrial channels – in particular that it is obliged to broadcast a similar proportion of British or EU-made programmes and to continue funding an independent news service.
20. Desirable though it is, merely obliging the largest media corporations to downsize, will not by itself put an end to the abuses which your inquiry has documented, though it may have some impact on the culture of impunity that has thus far existed. **Any lasting change will require a set of ground rules providing for a minimum standard of integrity.** To be effective these would have to be **statutory.** It will, of course, be objected that any such proposal is an affront to the notion of a free press. This is, of course, nonsense. Because (a) much of our written media is not free, it is owned by a handful of corporations and oligarchs who have grievously abused their powers; and (b) we already have statutory regulation of our broadcast media and that, by and large, works well.

31 May 2012
Dr Colm Murphy and Professor Justin Lewis – oral evidence (QQ 364-380)

Transcript to be found under Professor Justin Lewis
National Union of Journalists – written evidence

The National Union of Journalists is the voice for journalism and for journalists across the UK and Ireland working at home and abroad in all sectors of the media as freelances, casuals and staff in newspapers, news agencies, broadcasting, magazines, online, book publishing, in public relations and as photographers. The NUJ was founded in 1907 and has more than 30,000 members.

Summary

- The NUJ believes that media plurality is vital for a healthy, functioning democracy. Citizens need to hear a range of arguments and have equal access to information and opinions to participate in local and national democracy. Countries which have a large number of newspapers and an independent media are less susceptible to corruption by politicians and business.

- The media landscape in the UK is typified as one of merger, takeover and agglomeration of major media groups. During the past two decades, deregulatory legislation has been imposed on the media and attempts to limit media power have been dismissed. The imperative has been to open up media markets, promote light touch regulation and competition. Public interest concerns have played second fiddle. The NUJ believes that limits should be set on news market share. The democratic process is curtailed if one person, or media group, with a particular political or ideological viewpoint has an excessive share of news coverage among and across media platforms. We want to see the maximum market share set at 25 per cent on all platforms and on each of the following platforms: radio, television, newspapers and online. The maximum share for news should apply to UK-wide provision, in Scotland, Wales, Northern Ireland and in regions throughout the UK.

- The NUJ believes that any market share that reaches or is liable to reach 15 per cent should be subject to a public interest test. Private firms would be required to divest so that their share does not exceed 25 per cent. Alternatively, relevant holdings may be organised as public trusts or other publicly governed and accountable structures, following a public interest test review and agreement.

- If Rupert Murdoch’s BSkyB deal had gone through, which it would have done if News Corp had not withdrawn following the phone hacking scandal, this merged company would have had a reach of 52 per cent of the adult population. The NUJ believes Ofcom should review plurality at regular intervals and also when organic threaten changes to the market. The power to invoke the public interest test should be assigned to Ofcom rather than the secretary of state.

- The NUJ agrees with the Leveson Report that there should be greater transparency at each stage of political decision making in relation to media mergers and decisions should be open to public scrutiny.
• The NUJ is concerned that merger after merger has put regional papers in the hands of a very small number of companies. This is coupled with the present economic situation which is unable to sustain a vibrant, well-staffed sector. The loss of journalists’ jobs means that courts and council meetings are not being covered and this is creating a democratic deficit. For example, the Johnston Press’s annual reports from the five years from 2007 to 2012, reveal the number of full-time journalists was down by 44 per cent from 2,774 to 1,558. Lord Leveson praised the quality of journalism and ethical practices of local papers.

• The NUJ believes the government must step in to change regulations to allow local newspaper to become community assets and be protected under the Localism Act 2011. There is also need for legislation which would prevent newspaper owners from refusing to offer their titles for sale before closing them. The government should also investigate provision of subsidies, levies and tax advantages to help preserve a plural, independent local press.

• The NUJ believes that the citizens of a democracy should have full access to varied and high-quality choices in culture, entertainment and sport as well as news.

1. Any functioning democracy needs its citizens to have access to a wide variety of views and information - and they need to know the sources of those views and information. Any investigation of media plurality, in terms of its democratic function, must include an analysis of its reach in terms of geography, political diversity, cultural diversity and the access available to different age groups.

2. To ensure there is media plurality there needs to be a range of media enterprises, but there also needs to be access to a range of views. It is possible to have a large number of newspaper owners who share similar political views. To ensure media plurality measures must be taken to prevent one media organisation from becoming too powerful and being able to dominate the political agenda.

3. Modern technology has radically changed the way the world has access to news and information – in the ways news is generated and the way it is received. In theory, the greater the sources of news and the wider the plurality of media, the better it is for a functioning democracy. Yet, cross-ownership and deals between news organisations and online services and networks and mobile telephone companies can confuse the consumer about the source of the information and fool them into thinking that a news service is “neutral”. The capacity to create bundles – with deals with a telephone company, online publisher or social networks – gives media organisations the opportunity for a far greater reach on a number of platforms. It also becomes more difficult for the consumer to disentangle the connections and influence.

4. Digital communications have transformed the media landscape since the Communications Act 2003. People are receiving news and uninformed gossip very rapidly via Twitter and other messaging services. However, most news is being generated by the same companies.
and media players. The market is still being dominated by these companies, for example one of the world's most popular websites is The Daily Mail Online with its celebrity schlock and infamous sidebar of shame, showing pictures of stars with cellulite. To quote media analyst Clare Enders: “The internet has not thus far created highly trusted mass media and we believe that it will not.”

5. The increasing consolidation of media ownership and the disproportionate power and influence this brings is a matter for concern for the NUJ. When newspaper titles, television rights and other media are bought and sold, there should be a rigorous public interest test. The highest bidder should not be allowed simply to walk away with parts of the media industry in their pocket and the accompanying power and influence that brings. Currently there is a dearth of genuine scrutiny: most sales are usually completed on the basis of a secretive sealed bid where it is only the money that talks.

6. The NUJ welcomed the public interest test inquiry into News Corporation’s proposal to take total control of BSkyB by acquiring the remaining 60.9 per cent of BSkyB shares it did not own. News Corp already owned a third of newspaper circulation. The merged company would have had a reach of 52 per cent of the adult population, with profound consequences not just for media plurality but also for our democracy. It was only the unfolding scandal of dubious workplace practices at Rupert Murdoch’s News of the World, along with the public campaign of opposition that helped halt the merger bid. Jeremy Hunt, the then culture secretary, was just about to let the merger go ahead.

7. The evidence given during the Leveson Inquiry provided a devastating insight into the influence that Rupert Murdoch has had on successive governments because of the power he wields through his media operation in the UK. John Major said that Rupert Murdoch had told him that he would withdraw the support of his newspapers unless the prime minister changed his policy on the UK’s membership of the EU.

8. Robert Jay, lead counsel to the Leveson Inquiry, took David Cameron through a set of meetings, social and otherwise with Rupert Murdoch, his son James and trusted executive Rebekah Brooks. He then tried to match them with timings of specific issues close to the Murdoch empire’s heart, namely the BBC licence fee deal and the £8 billion bid by News Corp to buy the 61 per cent share of BSkyB that it did not already own. He looked at how James Murdoch’s scathing attack on the BBC in his MacTaggart lecture and his desire for the BSkyB deal fitted in with a discreet meeting over a gin and tonic with David Cameron at the George club when he revealed that the Sun would be backing the Conservative Party at the general election. During his evidence Mr Cameron said there had been no overt nor covert deals with the Murdochs. Mr Jay said there was “a perception that we had the coincidence of two things, at least in terms of time: a shift in support and policies which don’t precisely match what we see in the MacTaggart lecture, but are not a million miles from them, and the public thinking, ‘Well, there’s some sort link between the two’.”
9. The Leveson Inquiry also showed the extent of the access provided for a lobbyist acting on behalf of News Corp to the office of the Department for Culture, Media and Sport, during the time when the BskyB deal was being adjudicated.

10. Rupert Murdoch maintained that he does not dictate an editorial line. If that is the case, then why did all but one of his 175 newspapers have the same pro-war line on Iraq?

11. In Italy, the political career and the corruption within the political system is attributed to the immense media power of Silvio Berlusconi, who controlled the three biggest commercial TV networks as well as the public broadcaster RAI in his capacity as the country’s longest-serving prime minister.

12. The BBC has a huge presence in the media landscape and justly has a reputation as one of the premier broadcasting organisations in the world. According to Ofcom figures, the BBC had a 74 per cent share of national and international news consumption in 2011, and produced 31 per cent of all TV news. It is bound by its charter to be politically impartial and therefore, it can be argued, that it does not present a danger to plurality. It is accountable to Parliament and policed by Ofcom. Industry expert Mediatique argued that it also represents a bulwark of quality, which influences the rest of the media sector, particularly in these times: “The short term pressures will make the news eco-system even more heavily reliant on the BBC; it is likely to be a crucial source of balance in any transitional period, making it all the more important that its own commitments to quality journalism are maintained, even against the challenges of operating with a frozen licence fee and additional, new claims on its resources.”

13. This view was echoed during the DCMS’s Communications Review seminars. Alex Graham of Wall to Wall, the production company responsible for the hit BBC programme Who Do You Think You Are?, said that a well-funded, accountable BBC was a central plank of the UK ecology [in broadcasting] in terms of provision of high quality content being exported around the world.

14. The NUJ is concerned that the 20 per cuts to the BBC, as part of the Delivering Quality First programme, which will result in the loss of 2,000 jobs, will have a detrimental effect on this quality. The NUJ has called on the director general to impose a moratorium on the cuts while a more strategic approach to the cuts is drawn up.

15. As a public service broadcaster the BBC is also responsible for the World Service, orchestras, the Proms, Open University and other events that are culturally enriching and available to all.

16. Ofcom’s Public Service Broadcasting Annual Report shows that, despite the proliferation in channels, 46 per cent of all programming shown is by the five PSBs. The good news is
that public confidence in the quality of service they provide is high. Eight in 10 adults rated news programmes as trustworthy and other programmes as high quality. But total spending on PSB network programming across the five main channels and the BBC’s digital channels dropped by 8 per cent in real terms in 2011 to £2.8 billion. In the past five years there has been a 20 per cent decrease in spending. A similar trend was evident for first-run originated programmes, with expenditure 6 per cent lower than 2010 at £2.4 billion. Over five years, spending was down by 18 per cent in real terms – and this is before the effects of the BBC’s DFQ come into play.

17. Many people who live beyond the M25, have to make do with a London or South East-centric news service. This is becoming injurious to local democratic accountability and that is why it is vital that the BBC is seen as being outside the parameters of a commercial market-share based media model in order to provide a UK-wide service.

18. Following a hugely successful Olympics and excellent coverage on the BBC, the NUJ believes there should be an investigation into the effect of the market on bids for sporting events. The BBC has been gradually priced out of rights to show major events in the sporting calendar. The NUJ is not suggesting that the BBC has a God-given right to show premium sporting events, other channels (for example Channel 4’s coverage of Test cricket) have proved they can provide an innovative service. **However, the government should investigate the consequences of the sporting market premium. If young people are to be inspired by the example of our sporting heroes, they should be able to watch them as part of the public broadcast service.**

19. **Local TV:** The NUJ is concerned that these news stations will not improve media plurality. Mustard TV in Norwich is part of Archant, which intends to use newspaper journalists to produce broadcast material. The Ledbedevs in London, who already own *The Independent* and the (London) *Evening Standard*, won the contract for the capital. Made TV has, through subsidiary companies, won four franchises, in Bristol, Cardiff, Leeds and Tyne & Wear. The Leeds operation is expected to take its local news service from Aire FM, a Leeds-based commercial radio station that is part of the Bauer media empire.

20. **Wholesale newspaper distribution** has effectively become a duopoly between WHSmith and Menzies, whose arrangements significantly influence production. Deadlines of regional morning papers have been set so that press times meet the requirements of the wholesalers’ distribution schedules. Any new entrant faces having to deal with these wholesalers or setting up their own (costly) distribution network.

21. The major regional newspaper publishers have been closing presses rapidly over the past 10 years or so. In the north of England, for example, Johnston Press has closed presses in Halifax and Leeds. Newsquest prints the *Northern Echo* on Trinity Mirror’s *Middlesbrough
Gazette presses. The Yorkshire Post was printed in Sunderland for a period before – like all the company’s northern titles – it was transferred to a major new press plant at Dinnington in South Yorkshire. It is understood that Morton’s in Lincolnshire own the only independent newspaper press between the central lowlands of Scotland and the Midlands of England. Any new entrants to the regional newspaper market must choose between the (probably prohibitively) expensive cost of buying a new press, entering into contract arrangements with potential competitors (who already dominate the market locally) or arranging printing outside the UK and building import costs into their overheads from the outset.

22. Media plurality is promoted by a media which is representative of its consumers. Research from 2006, by the education charity Sutton, showed that more than half (54%) of 100 leading news and current affairs journalists were privately educated, an increase from 48 per cent in 1986. Seven per cent of the population are educated privately. Just under two-fifths (37 per cent) of the top journalists in 2006 who went to university graduated from one institution, Oxford. The National Council for the Training of Journalists report, Journalists at Work 2012, said: “There remains concern that that journalism is an occupation where social class impacts on the likelihood of entering the profession. As in 2002, young people entering journalism are likely to need financial support from their families.” The Cabinet Office paper, Fair Access to Professional Career: a report by the Independent Review on Social Mobility and Child Poverty, which examined access to the professions concluded that the media is one of the most socially exclusive. Unions have a role in promoting equality policies in the workplace, unfortunately many media organisations refuse to recognise the National Union of Journalists.

23. International comparisons show most countries recognise that media ownership needs to be regulated in a different way to other assets because of its role in a democratic society and, likewise, competition law cannot be applied in the same way. The European Charter on Fundamental Rights recognises the importance of media plurality. In 2007 the Council of Europe recommended that countries “limit the influence which a single person, company or group may have in one or more media sector”.

24. The Media Reform Coalition’s report, The elephant next door: a survey of international media ownership regulations shows that:

- France, Australia and Canada all restrict ownership at national and local level.
- Germany measures market share from different types of media and applies a complicated system of weightings to determine overall cross-media holdings.
- Denmark places strict stipulations on the boards and corporate management of local broadcast companies.
- The USA applies a complex sliding scale of thresholds for radio ownership across regional markets.
25. The NUJ supports the European Initiative for Media Pluralism which promotes the idea that European institutions should safeguard the right to independent and pluralistic information as sanctioned by the European Charter on Human Rights.

References:

May 2013
Witness

Professor Christopher Frost, Chair of the Ethics Council, NUJ

Q199 The Chairman: Can I extend a warm welcome to Professor Chris Frost, who has been listening to the previous session? You were originally going to come with your colleague Michelle Stanistreet, but she is unfortunately not able to be with us.

Professor Frost: She sends her apologies.

The Chairman: We entirely understand that she has family difficulties to deal with, so that is entirely accepted. If you would like to make an opening statement, perhaps you could tell us who you are for the purposes of the record. Then I might start the questioning. Would you like to make an opening statement, or would you like to just go on to the questions?

Professor Frost: I will introduce myself first, as you suggested. I am Professor of Journalism at Liverpool John Moores University where we run journalism programmes. I worked as a newspaper journalist for about 20 years before moving into the Academy where I have worked for another 20 or so years since, teaching the newer generations of journalists, and very exciting it has been.

I am a member of the National Union of Journalists and have been throughout my working life and held a number of positions within the union, including president some years ago. I am a member of the National Executive Council now, and chair of the union’s ethics committee.

Having been a member of the NUJ for virtually 40 years now, I have seen throughout, and my own research has allowed me to see, that this has been a matter of considerable concern to the union since the first royal commission in 1948. In the 1948 commission on the press, plurality is raised as a big issue. Of course, that has not gone away, and there is no reason
why it should, given the shrinking number of newspaper organisations. Things are also more
confused now with broadcast organisations and, of course, the internet. We are particularly
concerned obviously about media freedom. Journalism, gathering news, is our trade. We see
it as incredibly important for all the reasons I need not bore you with because I know
you are all entirely familiar with them. But at a time when we have become super-sensitive
to it with the Leveson inquiry, it is something that we particularly want to follow up.

That is probably enough for the opening statement. We do think it is incredibly important.

**The Chairman:** Thank you. You have obviously said that this is something that has been of
concern to the NUJ ever since the first public inquiry, but if you take both the sector as a
whole and your members in it, are most journalists current members of the NUJ?

**Professor Frost:** No, probably not. I think we would accept that we are around 50% or 60%
now.

**The Chairman:** Of your members, what are their particular concerns? Do any stand out?

**Professor Frost:** Obviously having a job next week is a major concern, and matters like
bullying in the workplace and the fact that they do not feel that they are able to do their job
as well as they should do, but I am not sure that is—

**The Chairman:** That is not quite plurality, is it? I understand the concerns.

**Professor Frost:** No, it is not, but what I am trying to get to is that they feel very strongly
about media freedom and about journalism, but at this stage most of them are more
concerned about their jobs and how to do it day by day, and the fact that they do not have
the resources to do it well. Part of that feeds into media plurality. When I talk to journalists
as I go around and meet members in various places, they do not instantly say to me, “Media
plurality, that’s a big issue”. But it is when you follow the trail back through because they are
concerned about their inability to use the resources they have to go out and get stories that
people want.

I think we say in our evidence, for instance, that one newspaper group was reporting the
number of journalists they have employed over the last 10 years has been cut in half. That
means they are having to do twice as much work or they are only gathering half as much
news—of course, it is probably somewhere in between the two—which means we are not
gathering the kind of stories we should. The regional press is what I know best. We are no
longer holding democracy to account. We are no longer doing the kind of jobs that
journalists traditionally do, such as covering local events, telling people what is going on
locally, but that feeds all the way through up to the national press and up to national
broadcasting as well.

Media plurality has its role there because the number of companies now dealing with
newspapers, broadcasting and the internet has reduced significantly to a very small number.
That means that they are able, in pursuit of high profits, to cut back the number of staff and
cut back the ability to gather news. So there is a direct effect, but I am not sure that is
necessarily what—

**The Chairman:** I am not going to go down the argument that maybe increased new
technology means that individuals can produce more journalism. I am much more interested
in you appearing not to think that the advent of the net, blogging, websites and social media
has had a beneficial effect. Is that right?

**Professor Frost:** I think it has had a very mixed effect. If we look at the kind of news that is
appearing there, certainly if you have the time, the inclination and the interest to track
information down, it is there for you, but that is not generally what most people tend to do. They tend to concentrate on the kind of celebrity sites, because that is what in the end interests them day to day. One of the questions that you are coming on to, I think, is why we concentrate on news-related genre. It is because news is what people need to know to make decisions. It is not necessarily what they want to know.

**Q200 Earl of Selborne:** In your written evidence to us you say, “We want to see the maximum market share set at 25% on all platforms and on each of the following platforms: radio, television, newspapers and online. The maximum share for news should apply to UK-wide provision, in Scotland, Wales, Northern Ireland and in regions throughout the UK”. Why do you exclude non-news from this comment?

**Professor Frost:** For the reason I just gave. News is an important commodity in that it feeds people’s understanding of the world they live in. It feeds their understanding of democracy. It holds power to account. The market is much better at driving material that is pure entertainment and allowing people different choices in that. We also have to remember that we are a national union of journalists, so that is where our particular interest lies.

**Earl of Selborne:** Do you make a distinction between what is considered news and what is put into the news programme that might not, by a normal state of events, be considered straight news but is there to influence other parts of the media’s activities?

**Professor Frost:** That can certainly happen and it can be quite difficult at some levels to decide: is this news or is this factually-based material that is in an entertainment programme? We would concentrate on news. Those of us with a more traditional background tend to look at news—this may just be me, of course, coming from a background of newspapers—and say that the news bulletins should be in a position to say, “This is the news”, and while there will inevitably be factual material in other programmes, we would not normally count that.

I think there is quite a good definition certainly for newspapers, which could easily be expanded for broadcasting, in the Crime and Courts Act, which describe how you can identify what is and what is not news-related. I think something along those lines would be a useful way of doing that.

**Earl of Selborne:** You make a powerful case in your evidence against the disproportionate power and influence that comes with increased media ownership. Surely when you have this cross-media interest of newspapers, television, radio and all the rest, there is a danger that more than news will lack diversity.

**Professor Frost:** There certainly is, and we are likely to see considerable changes over the next few months with local TV starting to come in much more, where local newspaper groups very often provide the news for companies that are otherwise providing other programmes, so the cross-over will become more difficult. I go back to what I said before: I do think there is quite a useful definition in the Act that can be picked up to use in these circumstances.

**Q201 Lord Razzall:** Does your 25% test-aggregate all news broadcast and newspapers?

**Professor Frost:** Yes, where possible.

**Lord Razzall:** So you include the BBC?
Professor Frost: I do not think we would include the BBC. There are specific rules already that limit what the BBC can and cannot do. A 25% threshold—frankly, the BBC is heading that way already—I would exclude.

Lord Razzall: But if you exclude that, there would be an automatic trigger for the Murdoch-operated—

Professor Frost: Quite likely.

The Chairman: What about websites and social media? We have heard evidence that a lot of news is derived pretty directly from those sorts of places as much as from newspapers, television, radio or whatever.

Professor Frost: Absolutely. This is a very difficult circumstance. Again, the evidence that we gave to Leveson would largely cover this. We believe there is one way of testing whether a website is news-related in the terms that we talk about; if it is a commercial entity—and it is perfectly possible to say that any website that either pays VAT, for instance, or possibly comes under the definition of a small business—it could be included in that. Any website that is not would not be. We do not want to get to the ridiculous extremes where every parish magazine, every website, every fanzine becomes involved in this. There has to be some cut off at the lower end, I think.

The Chairman: Fine, but as of now you do not have—and I do not see why you should have—a fully articulated template for deciding that.

Professor Frost: No.

Q202 Baroness Bakewell: Can we focus on this 25%, because we have had a number of submissions that pitch for different caps and different percentages, and there are lots of people who criticise these different bright-line caps? Can I take you through the criticism and see how you answer it?

The first criticism is that they ignore the relative impact and regulatory environments of the different media, so that one set operates on one and the other—

Professor Frost: Indeed. That is a problem in that there are already considerable restrictions in broadcasting in the way there is not in press, but I see no reason why there cannot be some harmonisation of those. At the end of the day, the reasons why those regulatory differences are there have largely gone. The airwaves are more open now. It is much easier if you want to start a broadcast station now, for instance, than it is to start a national newspaper.

Baroness Bakewell: You would negotiate around your 25% cap?

Professor Frost: We are saying that that is an absolute cap. We want to start the trigger at 15%, so that you start to look at public interest tests much earlier and can have these kind discussions before you get anywhere near 25%.

Baroness Bakewell: Another criticism is that the caps in general tend to be so high that they permit the unacceptable levels of concentration that you want to see limited to 25%.

Professor Frost: It can be a problem. Clearly the kind of figures that people are talking about, us included, are to a certain extent plucked out of thin air. It is almost impossible to come up with any entirely reasoned discussion about why. Twenty-five per cent would be a maximum, because at the end of the day that could mean that four companies owned the entire media in the UK, and you would limit that maximum. That, in my personal view, is way too small a number. Even if every company owned 15% of the media, there would still
be only six or seven. We are scarily close to that if you look at who owns what in the UK, but it does give some ground between.

**Baroness Bakewell:** Only the big players would have 15%. It is not likely that all the different players will have equal shares.

**Professor Frost:** They will not have equal shares, no, indeed. There will be some on 12%, some on 13% and some on 14%.

**Baroness Bakewell:** So there will not necessarily be four or six.

**Professor Frost:** No, but I am just saying there could be in theory. The other question, of course, that we have to consider is whether there is enough of a percentage for things to be commercially viable for a company. We accept that there is not much point in saying, “You cannot own more than 1%”, because a number of companies would not find it possible to make that commercially viable. There needs to be a balance between the two.

**Baroness Bakewell:** That seems to me quite a serious matter—

Professor Frost: Absolutely.

**Baroness Bakewell:** —because you are threatening the viability of companies. Good companies grow and we want them to grow. What happens there?

**Professor Frost:** That is why we do not want to have an absolute cut-off at 15%. You start to have the public interest test. You can start to make those arguments. The company can start to say why it should be allowed to expand and there may be perfectly good reasons. Your previous witness is probably much better at putting some of those than I am—indeed, he did while I was there—but you then have that room for negotiation manoeuvre between the 15% and 25%, which is why we are not being absolutely dogmatic about a figure.

**Baroness Bakewell:** If a company is extremely good at what it does and gets to 25%, you are going to penalise their success?

**Professor Frost:** Yes, because we are talking about news. We are not saying whether they are very successful as a company. That is quite good in that it provides jobs for people and all the other things that we know are good, but we are talking about something very specific with news, which is not about commercial necessity; it is about ensuring that people get a range of views, an understanding of what is happening in this Palace and elsewhere, and that needs plurality to ensure that we get the different views. If we look at the national newspapers of today, for instance, I would say that there is far too little a range of views and too much similarity already. It could get a lot worse.

**Baroness Bakewell:** Yes, but your answer refers only to news. It is clear from the evidence we just heard from BSkyB that BSkyB News is the jewel in their crown. It is something they are enormously proud of. It has won a raft of awards. It would be a substantial part of a successful enterprise, would it not?

**Professor Frost:** It would be, but it is taking only one particular line. Inevitably, a company would see the way their news is presented as taking a particular line. Inevitably, that is going to happen.

Q203 **The Chairman:** But it is likely, I suspect, that sometime this week there will be a royal baby, and I do not think you need to be a very great prophet to anticipate the chance that will be the lead story in every newspaper in the country, possibly. There is nothing wrong in that, is there?
Professor Frost: No, there is not, and of course there are bound to be times when all the various news outlets are going to cover the same story. Whether it is a royal baby or a plane crash, something along the lines of 9/11, or whatever it might be, the story is so big that everybody is going to cover it. But one of the problems that we have identified, particularly over the last 10 years but probably over the last 20 years, is there has been quite a substantial reduction, so we are starting to all read the same stories, even though they are quite minor. They are not of the sort of depth of story that you identify there.

The Chairman: As a matter of interest, is there any factual evidence to suggest that, say, 30 years ago, newspapers—to take just those—carried a different, wider range of stories than are carried now?

Professor Frost: Before, yes. Certainly there is some evidence from Cardiff University that in most of the national newspapers about two or three years ago, more than 50% of the stories that were carried had come almost directly from press releases issued by companies. That would not have happened 20 years ago.

The Chairman: But in terms of the stories covered as opposed to where they got them from?

Professor Frost: But where they got them from is quite an important part of it, because they are not going out and covering the range of stories that people deserve. They are just carrying what amounts to material that a particular company wants them to carry: in other words, advertising.

The Chairman: I think we covered this some years ago, did we not? Did you give evidence to us on The ownership of the News?

Professor Frost: Very likely.

The Chairman: There is another thing I just want to be clear about; I was not certain from your reply to one of the earlier points that Lady Bakewell made about broadcasting. Are you advocating a loosening in the rules around broadcasting? Bearing in mind that you were talking in the same breath about newspapers, were you suggesting that there should be any reduction in the amount of “impartiality” in broadcasting?

Professor Frost: No.

The Chairman: I did not think you were, but I thought it could have been interpreted that way.

Professor Frost: No. We certainly accept that it would not be appropriate to bring impartiality rules into newspapers, but we are not suggesting that they should be relaxed on broadcasting.

The Chairman: No, fine. I just wanted to be absolutely sure.

Q204 Baroness Deech: Why do you think plurality matters? Is it because it is going to influence the politicians, or because it is going to influence people in the way they vote?

Professor Frost: Mainly because it is going to influence people in the way that they vote. I saw something in the Independent the other day, which I cut out. Here it is: “British public wrong about nearly everything survey shows. Research shows public opinion often deviates from facts on key social issues, including crime, benefit fraud and immigration”.

The Chairman: It is in our circulation, you will be glad to hear.
Professor Frost: Excellent. In which case I will not read through it, but the figures are quite staggering. People simply do not know what is happening on a whole range of issues on which they will be voting come 2015. That means that my profession has failed because we have not got that information through to people for a whole variety of reasons.

Baroness Deech: It is not quite the same as diversity and plurality, is it? Everybody has failed.

Professor Frost: Everybody has failed because there is such a small group of newspapers in particular. We come back to what I was saying before; if every news outlet carries the same story—I accept they do not do it all the time, but they do it far more than they used to—the range of material is going to be limited, as it will because the number of news outlets has been reduced. If only five or six companies are sending reporters to cover whatever the event is, it is hardly surprising if three or four of them either take very much the same line. More to the point, another issue that is equally important in some people’s mind does not get covered at all because they are all at the royal birth or whatever it might be.

Baroness Deech: But does this survey not show that issues that are widely covered by the newspapers and television simply have not sunk in? Was it about crime rates and so on? People believe that crime rates are higher, but that is not necessarily what all the papers are telling us. If you look at things such as climate change, or immigration, you get a variety of views. There is a variety of views. I am not convinced that people’s attitudes are shaped by a narrow range or even a wider range.

Professor Frost: This is always one of the most difficult things as an academic researcher. We always have to try to show that and show that people’s attitudes have been changed. It is obviously impossible to prove it one way or the other, but surveys like this are extremely interesting as they show the kind of stories that are appearing in the more popular papers—and we have to remember that they are particularly important here because of the amount of material that they are able to put in. What the Daily Mail, for instance, can put in a paper, compared with, say, the BBC’s 10 O’clock News, or even Channel 4’s News at Seven, is hugely greater, so what it puts in has a disproportionate influence. The national press, certainly all the more popular press, is tending to take the same line.

It is no real surprise to those of us who read the press regularly looking for these things that despite the fact that crime has been falling—and it has been widely reported, as you rightly say—that most people either do not believe it or have just not seen those stories. They are fed a constant diet.

The Chairman: Is it your experience as an academic—obviously you told us you followed this kind of thing—that the kind of misunderstandings that are enumerated in the particular report that we are looking at have become more extreme of recent years, or are people always pretty wrong about a lot of things?

Professor Frost: It is very difficult to say. I cannot honestly think of any research that would support that one way or the other. I do not have a view on that.

Q205 Baroness Scotland of Asthal: First of all, was there not a discrepancy between national news and local news? When there was a proliferation of local news, local people could independently assess whether the news they were being told reflected their experience. Therefore, they tended to trust local news more because they knew when it was wrong and when it was right, whereas national news is absorbed as if it is happening locally. That is why we have a great problem with perceptions, and maybe influences, and why we need greater plurality.
Professor Frost: Yes, I think that is largely right. Local people are able to look at their local press, and as you say they very often look to read a story about an event for which they are already aware and so they can judge much better whether it is likely. The difficulty now is that the local press is also starting to face similar difficulties, partly because they simply do not have sufficient journalists to go out and give the kind of coverage that, again, used to be pretty common 20 years ago.

I do not know any of your local papers off-hand, for obvious reasons, but if you were to look at your local paper and try to find court stories or stories about your local council, it is much more difficult to find those kinds of stories now than it was 20 years ago. That means, not surprisingly, that people are not that interested in their council elections, and as we know the numbers voting in local councils now are quite small. They just do not see it as important because it is never reported in the paper.

Baroness Bakewell: That is also true of the BBC. The late Charles Wheeler raged about being abroad reporting for the BBC and the BBC were using press releases because he was out in the field and he could not get his news story back. The BBC has cut down on lots of its foreign correspondents. Now, that is not because of the commercial pressures of the outside world. That is within the public service.

Professor Frost: No, I would say that it was because of the commercial pressures. They have cut back because they cannot afford to have the number out in the field, because the competition that they are up against also does not put the number out in the field. We know that one of the big problems now is that you get an international story. All the news gatherers—BBC, Sky, ITN—will send their correspondents out. They no longer tend to have one already there, you are quite right, and the same is true for national newspapers. Of course, they get there and it all goes quiet. Therefore, we have to use stories from them because there is nobody else and these stories are often not always all that brilliant, but we are getting them on all the channels until they are eventually pulled back.

Baroness Bakewell: It is a problem of the industry, not just of the commercial players.

Professor Frost: That is true because it flows across. The BBC is facing a number of problems at the moment, as well know, but one of those is why they should be able to continue having the large number of correspondents they have when their competition does not. Their competition does not because they are trying to cut costs all the time and one of the easiest costs to cut is news.

Lord Dubs: It is not always because of the number of reporters; it is just that they cannot be bothered. For example, the paucity of news about what happens in the EU is not a function of the cost of reporters; it is just a complete lack of interest, or a deliberate lack of interest, in what is going on, is it not?

Professor Frost: It is certainly a view that an awful lot of the readers, listeners or viewers are not that interested in what goes on in the EU. As you all know better than I do, Britain has a very odd relationship with the EU for various reasons. If it is not seen as newsworthy, it will not be covered. On the other hand, if it clearly is significant and if there was sufficient money, there would be people there reporting. After all, we have websites now, which means that there is almost inexhaustible space in any real terms to send material back. It is quite bizarre that we get websites that allow you massive access to people, to put out all sorts of news, yet we have fewer reporters, fewer journalists, getting fewer stories.

Lord Dubs: But for all the alleged plurality in our media, the fact is that we do not bother covering what goes on in Brussels and Strasbourg. They may say that people are not
interested, but it is a bit of a chicken and egg situation. If we do not know, we are not going to be interested except when the papers get hysterical about it.

**Professor Frost:** I agree, but a reduction in media plurality will not help that. It will make it worse.

**Q206 The Chairman:** I should say that I chair a local newspaper company. Clearly, the financial pressures on that bit of the industry are such that there are fewer journalists than there used to be, but you yourself said that now there is an infinitely wider range of sources at the flick of a keyboard, so to some extent, in terms of the provision of news, the problem of fewer bodies on the ground with notebooks going around and finding stories is mitigated. Is not the real problem, possibly, that what the editors think is newsworthy may be changing to a significant extent? I was a member of the European Parliament for 10 years and I found getting press releases published extremely difficult. Now that I am chairman of the newspaper group to which I sent press releases, I now entirely understand why my very high-minded stories about Brussels never got anywhere other than being spiked, because they were not considered to be of interest to the readers. It is not quite as straightforward perhaps as you put it, is it?

**Professor Frost:** I hate to be accused of being simplistic, but you are quite right. At the end of the day, a local paper is a filter and one of the major ones is the editor. As an academic, I have to say that it is always surprising to me that we do not get newspaper groups—and perhaps I can encourage you to take this up—saying to academics, “Can you do more research into what our readers want?” It is still driven by what the editors think their readers want, and that might be right, but of course it might not be.

As we cut back on the number of journalists in a newspaper—and I am sure yours is no different to most others in having cutbacks—of course you are not delivering the product. The product is readers, because you are delivering these readers to the advertisers. That is what makes money for a newspaper group, and we are certainly not opposed to newspaper groups making money, because a successful newspaper group should be employing more journalists and it should be able to pay them much better. They are both aims that we would welcome. If it is not delivering the product—the readers to the advertisers—there need to be cutbacks. When there are cutbacks, you cut back on the journalists because it seems the easiest way to go, and then you are not providing any news, which draws the readers in, and therefore the advertising reduces. It is a vicious circle that we see in quite a lot of local newspapers at the moment.

**The Chairman:** The advent of web news obviously has a bearing on that, because people are also looking elsewhere.

**Professor Frost:** I do not accept that. There is no real evidence to suggest that web news is any kind of serious competition to newspapers. Certainly newspapers, local newspapers in particular, do not use web news particularly well, and they need to do much more on that. There is no real evidence that web news is a serious competition to the local paper. There is just too much out there for people to sift through and they like to go to the standard, trusted gatekeepers. The question is whether it is a trusted gatekeeper providing what they want, because if it is not they will not use it.

**The Chairman:** Up to a point.

**Professor Frost:** Up to a point.
Q207 Baroness Healy of Primrose Hill: I would just like to return to the public interest test so that I am clear what the NUJ is saying. The PiTs are triggered, on your model, either by the 25% cap being breached or at the discretion of Ofcom. To clarify, will Ofcom will be able to use its discretion to trigger a review even if no entity were at the 15% cap that you had suggested was the bottom line?

Professor Frost: We would say that the 25% is the absolute. We should be triggering the public interest test at 15%, and there would be a number of things that we presumably would need to do to give Ofcom guidance on what is appropriate and what they should be looking at.

Baroness Healy of Primrose Hill: What definition of sufficiency would Ofcom go by in doing so, because that is quite a tricky question?

Professor Frost: It becomes complicated, but certainly 15% would be the trigger. At that point Ofcom would need to start looking at introducing the public interest test. We have not gone into the details of what exactly should be in those public interest tests, and we are certainly quite happy to look at that in more detail, if that would be of interest to the Committee, and come back to you. A company might well come back and give all sorts of good reasons why they should have more than 15%, and we would say, “Provided that had had a public interest examination, that might well be okay”. It is only when you get to 25% that we would say, “No, you cannot go past that”.

Baroness Healy of Primrose Hill: It is at an absolute. I see. Thank you.

Baroness Scotland of Asthal: I was just going to ask you about remedies, because you have said that one of the remedies could be divestment but another could be creating alternative structures. Can I just ask you about the shape of those alternative structures, who would run them, and how they would be chosen?

Professor Frost: Again, I am afraid, I would need to go back and discuss those in more detail. I think it is a very important question, but I am not able to give you any immediate answers.

Baroness Scotland of Asthal: Can you think of other systems in other countries that might assist us looking at modelling?

Professor Frost: I cannot. No.

Baroness Scotland of Asthal: Alternatives that we might use?

Professor Frost: No. I would rather leave it if that is okay with you. Sorry.

Baroness Scotland of Asthal: Absolutely. That is fine.

The Chairman: If you do have any further thoughts with your colleagues—obviously you are by yourself—or if you have any further detail we would be interested to hear it, please let us know.

Professor Frost: Yes.

Q208 Baroness Fookes: We have spoken before this afternoon about local newspapers and worries about their disappearance. I wonder if we could explore this rather novel idea that you have put forward about local newspapers becoming community assets through the medium of the Localism Act 2011. This is rather intriguing. Could you explain precisely how you think this would work?

Professor Frost: There are a number of ways, including local people coming together to set up some kind of association that would run the newspaper. We are also relatively keen on
the idea of small co-operatives of workers, but again that would probably need support from local people. To a certain extent that almost takes it back to the roots of local newspapers 100 or 200 years ago. That is how many of them started. I suspect one would need a certain amount of investment from some of the people who would come in to set up an organisation, which would be commercial but would not need the kind of profits that most commercial companies that presently run newspapers require. It is not unusual for local newspaper groups to require 20% to 30% profit. I am not quite sure why they need so much, but that has been pretty standard for the last 10 years.

Clearly a company that was given a decent return on investment, especially in the present circumstances, paying salaries again at a commercial rate, could operate on 2% to 5% profit without any problem at all, and that would be perfectly sustainable.

Baroness Fookes: You will need finances for this whether they are modest or not. Who is going to come forward? It is not going to come from Government, is it?

Professor Frost: You say that. An awful lot comes from government now, of course. Public announcements are paid for by government. It is quite a substantial part of the advertising revenue of local papers. Papers are VAT-free, so they are not paying VAT or at least not having to claim it on their sales. There is some support already, and that presumably would continue. There is no reason why it should not. Yes, people would have to pay, but the costs for running a newspaper are not that high any longer—not to set it up. You no longer need to buy your own press. It is all done on computers, much of which people already have. We are not talking about big investments.

Baroness Fookes: You still have to have that incentive on the part of people to come together.

Professor Frost: That is true, but there is already plenty of evidence that people locally, either on websites or physically, are prepared to do that. There are a number of alternative newspapers about. There are a number of alternative websites. I suspect it would be much more useful to give it some kind of kick-start and decide whether it would be appropriate to have some kind of loan scheme that the Government might start off—I think something like that could help to prime some of these—but it is more about saying, “This would be a good idea. Why not give it a try?”, than about investing large sums of money.

Baroness Fookes: You genuinely think there are people out there who would be interested in coming together?

Professor Frost: Absolutely.

Baroness Fookes: They are there already, I think you are suggesting.

Professor Frost: Yes.

Baroness Fookes: Can you give any names?

Professor Frost: I certainly can send them to you. I do not have them at my fingertips. My memory is not as good as it used to be, I am afraid, but we can certainly arrange to get some suggestions to you.

Baroness Fookes: I certainly would not expect you to produce names and addresses and details right now, but if there are these people out there, I think it would be interesting to know about them.

Professor Frost: Yes. There are certainly a number of alternate newspapers out there and websites providing small local news—hyperlocal news, as it is often called—which is just a
small website. I reach state retirement age in two years and you might find me in three years’ time doing precisely this myself.

Q209 The Chairman: Is there not, in fact, a slight difference between the hyperlocal, which you can do on a website very easily with a man and a dog, and something that has a catchment or footprint, probably, of what we now call a local newspaper?

Professor Frost: Yes. Clearly, if you are physically printing something, you have to have a particular readership and you need to justify that, and there is a significant expense in that, but it is still not that huge provided you can sell some advertising to cover that kind of cost.

Baroness Fookes: Are you perhaps thinking more of online?

Professor Frost: I think that is where a lot of people certainly would start and start to build up a following online. The difficulty with online is letting people know that it exists, that it is not some fly by night operation, and that it is worthwhile their continuing to return to it. It is much easier to do that with a physical paper, but things are changing all the time. Looking around the table now, virtually all of you have iPads, and clearly that would be the way most people would take their news in five to 10 years’ time. Indeed one of the problems local newspaper groups have is whether to stay as a physical entity or move entirely into web.

Lord Dubs: We are a paperless Committee, which is why we are using iPads. You will notice we do not have stacks of paper, so it does not contradict what you said.

Baroness Fookes: It is supposed to be cheaper.

Lord Dubs: Certainly on paper. Going to the guts of this, you have called on the Government to investigate the provision of subsidies, levies, tax advantages, to help to support a plural independent local press. What model of support do you have in mind?

Professor Frost: Again, that is the detail that we would hope would be picked up elsewhere. I have already mentioned some of the things that exist now. Public announcements, for instance, bring quite a lot of revenue into the average newspaper. We are concerned about the possibility of changes there. There could easily be other subsidies available, but again I think we would need to discuss in more detail exactly what we mean by that. If that is something that particularly interests you, I am quite happy to take that back to our policy committee.

Q210 The Chairman: Is it not a bit of a problem here that there are two slightly separate issues? One is that if you are going to have some sort of new newspaper product—using those words in a very general sense—somebody first has to set it up and get it going, and then it has to trade at worst at a break-even position because otherwise it goes bust. Much of the problem that the local press is facing is that the circumstances are such that it is less and less easy to trade profitably. We have seen this with the West Highland Free Press and, I think, Maidenhead Advertiser, which is some kind of charitable trust—there are a few local papers of this kind. If you can find somebody to put the money up—and possibly then kiss it goodbye—the thing can get going, but the problem, as I said, is that the local press are at present finding it difficult to trade profitably.

Professor Frost: Yes and no. It is difficult for some to trade profitably, but there are a number that are trading quite happily. It is difficult to say because there are a large number of local newspapers, and if you try to apply what happens on one local newspaper to all of them, quite clearly people can say, “Well, that is not a fair criterion”. Certainly some are trying to maintain the local news in the way that I described earlier: covering the courts, covering what council is doing, picking up the kinds of stories that people know have
happened and want to know about. Those papers do seem to be able to retain their profitability and have done that because they retained their circulation.

The interesting part about local newspapers in particular is that there are people available who want to advertise who do not have that many other options to go to. If you provide your local community with double glazing, where else can you really advertise except the local newspaper? You might go to a local website, but you cannot guarantee that many people are reading it unless it has made an effort to make itself attractive. The local papers that are doing reasonably well have managed to hold on to the advertising because they are delivering the readers, and they are delivering the readers because they are providing the content they want to read. That might be because the editor is more in tune with their readers in that area, going back to the point that you made before, or they might have a much wider coverage of the kind of news people want to read.

Q211 Baroness Healy of Primrose Hill: You are in a perfect position to talk about young journalists, but you suggest in your evidence that in order to support media plurality journalists themselves should be diverse and representative. How representative are journalists of the wider UK public, and what would you suggest should be done to address that?

Professor Frost: This is a big problem. I am talking with my academic’s hat on and as someone who runs several programmes of journalism and therefore deals with admissions. There has been quite a significant change in the way journalists are trained and taken into the industry over the last 10 to 20 years. Twenty-odd years ago you started on the local newspaper, you did two or three years, you did your NCTJ exams and then you went wherever you wanted to go. Now students join as graduates and either come through a journalism programme of the sort I run or do a more general degree and then a postgraduate diploma in journalism. They have journalism training at university. The difficulty with that, particularly with the postgraduate route, is that it has become noticeably more middle class to the point where it is extremely rare to get people from a more general background. It has always required A-levels, certainly going back as far as I can remember. Now, of course, because it requires a degree, you are much more likely to be white, middle class and female; 70% female is pretty typical coming into a university journalism programme now.

I do not have any figures on the number in different social classes, but again I would expect it to be sort of 80% coming from a background of AABC1. Ethnic diversity is pretty poor, I am afraid. Again, I would guess that it is around 2% to 3% non-white.

Baroness Healy of Primrose Hill: With social media and the greater democracy of access to that from young people, most of the young people I know do not seem to read papers at all. Everything is online and on the web, and lots are trying to put up their own copy and things like that. Do you think that might open up journalism?

Professor Frost: I only wish it would. No, because they just seem to be tweeting about what they had for dinner the night before or how drunk they got—things of that sort. I was watching Pointless, the BBC programme, last night, and there was a question, “Name an Office of the Cabinet”, and they struggled. Some of them could name the position of Treasurer and one or two the Chancellor of the Exchequer, Home Secretary, Foreign Secretary. It was quite clear that, of the average population, no more than 40%, knew any of these people. Not the names of them, not who held the office, just that the office existed. I find that pretty terrifying, I am afraid.
Baroness Bakewell: It is a programme about the catchphrases of unknown comedians, is it not?

Professor Frost: No. This is the one where they ask quite sensible questions and you have to—

Baroness Bakewell: No, but its fodder tends to be—

Professor Frost: Yes, I accept that is true.

Baroness Bakewell: —self-selecting audiences.

Q212 Baroness Deech: I have heard it said that the majority of journalists, certainly from the BBC, are privately educated. Do you think that is true? Do you think that matters, or does it matter more that they all read the Guardian, if I can generalise wildly?

Professor Frost: There were certainly some surveys a couple of years ago that suggested that the number of journalists working on the quality nationals and the BBC who were privately educated was extremely high compared with the general population. I think that is probably true. The number of students coming through courses like mine who are privately educated is considerably lower, but then, as I say, quite a lot of journalists are coming in having done a general degree somewhere and then, perhaps, doing the postgraduate programme. The number coming through Oxford and Cambridge, having come through a private school, who then get a job on a national newspaper is quite high. One has to accept that journalism is, for some reason or another, a trade were nepotism is a pretty high way of getting a job. You know somebody and you get into the newspaper. Often a lot of the better jobs, for want of another word, would be dealt with in that way. It does not surprise me at all.

The Chairman: Do you think that this phenomenon—disregard precise details; we have identified a series of, for want of a better way of putting it, unrepresentativeness—has an impact on plurality in general?

Professor Frost: I do not think it has an impact on plurality, but it does go back to an impact of the type of news. You were saying that the editor has to choose whether to cover a story or not. I think it does impact on the way stories are covered, the type of stories that are chosen. If every single national newspaper and every single major broadcast bulletin is being run by those kinds of people, that is going to affect what is covered, but I am not sure that plurality would necessarily help that. I think this is a different problem.

The Chairman: Is there not a case for saying if you get to the level you described, you are almost by definition the kind of person that you were saying again was partly representative.

Professor Frost: There is an inevitable risk that having become a journalist you then, whatever your background, become middle class and all the things that go with that.
The Chairman: It is not like the House of Lords. Wherever you started you tend to have a generally similar perspective by virtue of whatever you have done to get there.

Baroness Deech: We now have 50% going to university, so you would be dealing with 50% graduates now. You mentioned A-levels as a requirement years ago. When I was young, probably only 5% of the population did A-levels. It could be that the base is broader now that you are dealing with 50% rather than the very small handful who did A-levels years ago, who probably, I am guessing, were predominantly male as well.

Professor Frost: Yes. I am not suggesting that the diversity now is any worse or any better than it was. Having said that, there is some evidence that one got people who came from a background that was not like that because you did not have to go through university. You could just join at 16 and work your way up from being a messenger boy to a journalist—and there are plenty of examples of people who did do that. Larry Lamb is one who springs to mind. I am sure Jane knows just as many as I do.

Baroness Bakewell: Steve Waterhouse is another.

Professor Frost: Absolutely. There were plenty of examples of people who did do this, but that is less likely to happen now because the people who are taken in in that way are going to come more from the private school background. I accept that an awful lot of people who went in through the traditional route into the local newspaper had done A-levels. Therefore, you are probably right.

Q213 Baroness Scotland of Asthal: Can I just ask you about your impression of the number of women who are coming in? Anecdotally, I have heard that a number of women train as journalists but then choose not to continue as journalists because of the way that craft is now exercised. You have to concentrate, it appears, on the negative as opposed to the positive. Have you noticed that, or is that just an anecdotal impression given by those to whom I speak?

Professor Frost: No, I do not think it is anecdotal. Certainly you are right that more women are coming in. In universities the number can be as high as 70%. In my own courses it is a bit lower than that. We are talking about 60%, but that is because we are based in Liverpool. One would expect by now that, as it has been running at those kind of levels for 10 or 15 years, an awful lot of people now working in the industry would be women, but a lot do seem to drop out. The kind of continual complaints we get from our members about bullying do seem to suggest that it is a bit harder on women and they do decide to leave; whether to go into public relations or some related trade, I do not know. I do not think it is just anecdotal, but I would need to get more evidence.

Baroness Scotland of Asthal: The thing I am quite interested in—and, of course, it comes back to plurality—is that if you have fewer people in the market and the culture generated by those entities in the market is aggressively macho and hostile to fairness, openness and true objectivity, you are likely to get a less diverse pool of journalists to pick from.

Professor Frost: I think that is absolutely right. You have less diversity in terms of who you start with, but also those who stay are well aware of what is expected of them, particularly at national level. I think this is probably less so on a regional paper, but certainly on a national level they know perfectly what is expected of them and they either provide those kinds of stories, which tend to be negative or intrusive, or they get out. It is not possible to stay unless you are prepared to do that.
Q214 The Chairman: This is not a justification or an excuse, but if you have, as we do in this country, a tradition of television and radio that is essentially based around impartiality and a tradition in newspapers that is partisan, by definition the kind of environment that Baroness Scotland was talking about is more likely to be prevalent in the newspaper sector. I do not think anybody much pretends that the *Daily Mail* is, for example, terribly even-handed in its treatment of the European Union, just to quote one. That is the nature of the beast, is it not?

Professor Frost: To a certain extent that is true. There is certainly quite a significant difference between journalists working in the BBC and those who are working in, say, the *Daily Mail* or one of the other popular national papers. When I meet journalists, as I obviously do quite often, you can very quickly tell those who are working for the BBC. There is a different feel to the way that they behave.

Baroness Scotland of Asthal: Can I just follow up one point? One of the concerns that has certainly been raised repeatedly with me is the merging between fact and comment. In the past, it was always understood that a newspaper would have a policy, a line, an approach, and you would be able to differentiate between the facts asserted and the comment made on the facts, but now there is a combination of fact and comment, so you cannot differentiate between what is fact and what is comment. That is what has changed.

Professor Frost: I think that is right. You regularly see plenty of examples in most of the popular newspapers where the two are brought together and it is very difficult to tell which is what. Of course, there have been some quite celebrated cases over the last few years, some of which have cost the newspapers quite a lot of money. The Joanna Yeates case and the way Christopher Jefferies, her landlord, was treated quite clearly mixed those two in a way that was just outrageous.

The Chairman: The time is drawing to a conclusion, so thank you. Before finally wishing you goodbye, is there anything else you would like to say to us about the generality of the topic we are talking about this afternoon?

Professor Frost: No, I think we have covered everything that we wanted to raise. Thank you very much.

The Chairman: Thank you very much indeed for coming. We are grateful.

Professor Frost: Thank you.
News Corporation – written evidence

1. Introduction to News Corporation's submission

News Corporation (News) welcomes the opportunity to submit its views to the House of Lords Select Committee on Communications (the Committee) in connection with the Committee's inquiry into media plurality announced on 28 March 2013.

The Committee has published a number of specific questions in its call for evidence, on which it invites written submissions. News sets out its responses to those questions in section two below. For the convenience of the Committee, News sets out in the rest of this section the general points which it believes should be borne in mind when considering how the plurality of the media can be protected.

In summary, News' views are as follows:

Key principles

i. Plurality is and can be delivered through market forces. Before considering additional regulatory or legislative intervention in the supply and consumption of news and current affairs it is vital that a dispassionate analysis is carried out on whether such intervention is truly desirable taking into account the potential impact on: (a) consumer choice and demand for content; (b) free competition between providers to meet consumer demand; and (c) innovation and investment both by existing providers and new entrants to reflect changing consumer tastes.

ii. Any consideration of plurality must consider both all providers of news and current affairs, whatever their legal status, and all distribution channels used by them. Otherwise, any conclusions on plurality will inevitably be distorted, being based on a partial analysis of the range and variety of voices available to consumers.

The news and current affairs sector today

iii. The trend since 2003 has been towards greater plurality in the range and variety of views available to consumers and a steady increase in plurality of consumption, thanks to the extraordinary growth of digital media.

iv. Consumers are now increasingly likely to sample news and current affairs from a greater range of providers than ever before, fuelled both by the growth in the number of providers and the use of aggregator services such as Google News or social media sites such as Facebook and Twitter.

v. In addition, the increasing ubiquity of internet access and the explosion in the number of smartphone users encourages consumers to actively engage in distributing news content and commenting on stories of interest to them which might originate in a wide variety of news sources, as well as adding their voices directly by distributing their own user-generated content.
vi. In other words, if the main concern of the Committee’s inquiry into plurality is that it is under threat, the prima facie conclusion is that plurality has increased, is increasing, and will continue to increase in the UK news and current affairs sector.

The plurality framework

vii. There is no straightforward way of measuring plurality and no practical, robust way to fix mechanical limits on news market shares in cross-media markets, particularly given the way in which the media marketplace continues to develop.

viii. Regulatory inquiries and court decisions have established a framework for a qualitative assessment of plurality. What matters is the range and variety of voices available to consumers, including the range of voices within a single organisation.

ix. Media plurality is most appropriately regulated at the national level and is recognised as a legitimate national interest in European competition legislation. EU-level involvement should be limited to a complementary application of the competition rules, which already prevent media companies from trying to restrict competition or exploit market power, and advocacy in monitoring the national framework in those Member States that have less developed regimes.

Conclusions

x. It is desirable for there to be plurality in the supply and consumption of news and current affairs in the UK. Fortunately, this is currently the case and will continue to be so.

xi. The current regulatory and legal regime covering plurality issues has worked because it is largely flexible and allows an in-depth qualitative consideration of all relevant factors. If it were replaced by a crude single measure the market would be distorted and investment and innovation in a sector in which the UK has traditionally been world-wide leader would be discouraged, risking the perverse result of a more narrow range and variety of views on offer to consumers.

xii. The role of the BBC cannot logically be excluded from any plurality assessment (whether qualitative or based on a market share limit). A news provider is a news provider. The BBC accepts that it is logical for any review of the sufficiency of plurality to take into account its share, voice and key role in audiences’ news diet.

xiii. News would be happy to submit further evidence on these points should the Committee wish.
2. responses to the specific questions raised by the committee

i. Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

ii. In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition, or should it be improved?

(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 process/agenda."

In News’ view, it does not follow from the absence of a statutory definition that the objective of plurality policy is unclear. Rather, a clear explanation of the public interest underlying media plurality policy has developed through the competent UK authorities' application of the media plurality provisions of the Enterprise Act 2002 in the two cases in which the Secretary of State has referred a merger to the Competition Commission in exercise of his powers to intervene in mergers based on media plurality public interest considerations, namely: (i) the acquisition by Sky of shares in ITV (Sky/ITV), which was reviewed by the Competition Commission and subsequently considered by the Court of Appeal; and (ii) News’ proposed acquisition of the remaining shares in Sky (News/Sky), which was considered by Ofcom before News withdrew from the transaction for unrelated reasons following its referral to the Competition Commission. In News' view, it does not follow from the absence of a statutory definition that the objective of plurality policy is unclear. Rather, a clear explanation of the public interest underlying media plurality policy has developed through the competent UK authorities' application of the media plurality provisions of the Enterprise Act 2002 in the two cases in which the Secretary of State has referred a merger to the Competition Commission in exercise of his powers to intervene in mergers based on media plurality public interest considerations, namely: (i) the acquisition by Sky of shares in ITV (Sky/ITV), which was reviewed by the Competition Commission and subsequently considered by the Court of Appeal; and (ii) News’ proposed acquisition of the remaining shares in Sky (News/Sky), which was considered by Ofcom before News withdrew from the transaction for unrelated reasons following its referral to the Competition Commission.245 This explanation locates the objective of plurality policy in the need to ensure that there is a sufficient range and variety of voices available to UK audiences.

In Sky/ITV, the public interest review required the Competition Commission to engage in an assessment of the sufficiency of plurality of persons in control of media enterprises in the UK.246 The Competition Commission recognised that an assessment of the overall sufficiency of plurality required a qualitative assessment of the range and variety of views available:

"We concluded that a plurality of control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences."

"We took the concept of plurality of persons with control of media enterprises to refer both to the range and number of persons with control of media enterprises. We concluded that a plurality of

245 The Secretary of State also requested advice from Ofcom on the application of the media plurality public interest consideration in relation to the acquisition of Guardian Media Group’s radio stations by Global Radio (Global/GMG), however, following receipt of that advice the Secretary of State announced on 11 October 2012 that the acquisition would not be referred to the Competition Commission on media plurality grounds. The Competition Commission is currently reviewing the competitive effects of the acquisition.

246 In accordance with section 58(2C) of the Enterprise Act 2002, which specifies the relevant public interest consideration for media mergers other than newspaper mergers. For newspaper mergers, the relevant public interest considerations are specified in sections 58(2A) and 58(2C) as: “The need for – (a) accurate presentation of news; and (b) free expression of opinion; in newspapers” and “The need for, to the extent that is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom.”
control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences.\footnote{247}

The Competition Commission's understanding of plurality as a qualitative test involving an assessment of the range and variety of voices was supported by the Court of Appeal in the appeal of the Competition Appeal Tribunal's decision in the same case:

"We agree with the Commission on this [...] The word plurality can connote more than just a number exceeding one. It may carry an implication of range and variety as well. Certainly it has that meaning in subsection (2B). We consider that it does so in subsection (2C)(a) as well."

"The Secretary of State, Sky and the Commission submit, and we agree, that the Commission's task is not just to count the number of media enterprise controllers, but also to make a qualitative assessment of the position following from the [relevant merger situation]."\footnote{248}

The Court of Appeal's explanation of plurality in terms of range and variety of voices was adopted by Ofcom in its report on the News/Sky transaction.\footnote{249}

Thus while a consideration of the extent to which different "voices" (titles/news broadcasters/radio news providers/internet news providers) are under separate control is of course a key aspect of an assessment of plurality, it is the overall sufficiency of the range and variety of voices available to an audience which is the ultimate goal. That assessment must take into account qualitative aspects which go beyond a mechanical analysis of ownership.

News does not believe that a statutory definition of plurality is needed and this would risk calling into question the clear interpretation developed by the Competition Commission and confirmed by the Court of Appeal.

The two aspects which contribute towards an overall assessment of plurality have been acknowledged in the previous cases where they have been referred to as "external plurality" (media groups within separate control) and "internal plurality" (distinct voices within a media group). The contrast was made explicit in Sky/ITV:

"We thought it important to draw a distinction between the plurality of persons with control of media enterprises and the implications of that plurality for the range of information and views made available to audiences. We also thought that it was appropriate to distinguish between the range of information, and views that are provided across separate independent media groups (external plurality) and the range that are provided within individual media groups (internal plurality)."\footnote{250}

Again, the Competition Commission's analysis was supported by the Court of Appeal:

\begin{itemize}
\item \footnote{247} Competition Commission Report, Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc, 14 December 2007 (see \url{http://www.competition-commission.org.uk/rep_pub/reports/2007/fulltext/535.pdf}) (the Competition Commission's Report), at paragraphs 30 and 5.10.
\item \footnote{248} British Sky Broadcasting Group plc v Competition Commission, 21 January 2010 ([2010] EWCA Civ 2) (available at \url{http://www.bailii.org/ew/cases/EWCA/Civ/2010/2.htm}), at paragraphs 90 and 118.
\item \footnote{249} Ofcom, Report on the public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation, 31 December 2010 (available at \url{http://stakeholders.ofcom.org.uk/binaries/consultations/public-interest-test-nov2010/statement/public-interest-test-report.pdf}), at paragraph 2.25.
\item \footnote{250} Competition Commission's Report, at paragraph 30.
\end{itemize}
"[...] it seems to us that the Commission was correct to hold that, whereas in reckoning the number of controllers of media enterprises for the purposes of section 58(2C)(a) only one controller is to be counted in respect of both or all of the relevant enterprises (here Sky and ITV), nevertheless, when it comes to assessing the plurality of the aggregate number of relevant controllers and to considering the sufficiency of that plurality, the Commission may, and should, take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another, whether it is a case of deemed control resulting from material influence under section 26 or rather one of actual common ownership or control."

As to Ofcom’s "working definition" of plurality, News welcomes the recognition implicit in limb (a) of the definition that plurality must be assessed on a qualitative basis. However, News considers that limb (b) of the definition is both unnecessary and potentially confusing. Because limb (b) contains no explanation of what constitutes "too much influence" it adds little of substance (beyond an explicit focus on the political process) to the explanation of plurality in terms of a sufficient range and variety of voices. Furthermore, in focusing on the influence of media owners, it risks neglecting the need, recognised by the Competition Commission and Court of Appeal and acknowledged in limb (a) of the definition, to take into account the distinct voices within a media group alongside an analysis of the ownership of media groups. Moreover, it uses concepts such as "public opinion" and "political agenda" that have no clear or recognised meaning in a regulatory context, thereby adding confusion and uncertainty.

iii. What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?

News considers that the policy goals underlying the concept of media plurality are best served by focusing exclusively on news and current affairs content, as the type of media content which is most significant for the formation of public opinion on important issues. That news and current affairs content is the appropriate focus of plurality assessments for this reason was recognised by the Competition Commission in its review of Sky/ITV (and a similar approach was also adopted by Ofcom in its review of the News/Sky deal):

"The parties overlap in a broad range of content, but news and current affairs are the genres most closely connected with the formation of public opinion about issues of national significance through the communication of a range of information and views. National news is an important genre of programming for both ITV and BSkyB. Considering all content genres, including current affairs, documentaries and satire, viewers rank news first in terms of 'societal importance', with a majority of the public saying that news helps them feel part of the democratic process. We also believe that news provision is a reasonable indicator of, and better defined than, a wider range of other content relevant to the formation of public opinion about issues of national significance. We therefore focused on national news and refer to the range of information and views communicated to audiences through the news as the 'plurality of news'."

This position has recently been confirmed by Ofcom’s June 2012 advice to the Secretary of State for Culture, Olympics, Media and Sport on measuring media plurality (the Advice on Measuring Plurality), by Ofcom’s report on Global/GMG and by the Leveson Report,

---

251 British Sky Broadcasting Group Plc v Competition Commission, at paragraph 121.
252 Competition Commission’s Report, at paragraph 5.3.2.
253 Ofcom, Measuring Media Plurality: Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport, published 19 June 2012 (available at
which recommended a continued focus on plurality in news and current affairs subject to on-going review.255

News is aware that occasionally the concept of plurality is used to encompass wider considerations such as protection of minorities or cultural diversity. However, it would be a serious mistake to seek to include policy considerations relating to these issues in the concept of plurality. The pursuit of these policies should be kept separate.

iv. What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

News believes that the current system, which triggers a review only in case of a merger, is the correct one. Normal competition rules are the appropriate mechanism to monitor organic market developments.

News does not believe that it is possible to design a system for reviewing media plurality in the absence of a merger that would not significantly increase regulatory uncertainty, deter investment into the media sector in the UK and, consequently, reduce innovation.

v. For the purposes of a review of media plurality, what should 'sufficient plurality' mean as described in Sections 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?

News believes that "sufficient plurality" should be defined in qualitative terms as a sufficient range and variety of voices available to UK audiences, taking into account all voices available to UK audiences, across all media and within all media groups, including digital intermediaries. In particular, online news provision, in all its forms, is a highly relevant factor in the overall assessment of media plurality.

While News does not believe that the concept of a "digital intermediary" can be defined with any degree of precision, or even that attempting to do so would help to clarify the issues relating to media plurality, it is clear that in recent years there has been an explosion in the number of online news sources accessible to most consumers. Most UK consumers now have access to broadband internet – increasingly via 'super-fast' fibre optic connections – which facilitates access to this wealth of content. Moreover, as online access increasingly involves access via mobile devices, dedicated news applications are an important mechanism for media companies to reach their audience. It is important to note, however, that online news sites include not only traditional UK news organisations (broadcasters and newspaper publishers) but also non-UK news sources such as the New York Times which have a considerable readership in the UK, online-only news titles such as the Huffington Post, news agencies (such as PA and Reuters) and news aggregator sites.


254 At paragraphs 3.4 to 3.6.

255 Leveson Report, Part I, Chapter 9, at paragraph 2.8.
In particular, news aggregators, such as Yahoo!, MSN, AOL, CNN and Google News, bring a vast range of sources to their audience, including many they would otherwise likely never come across. In addition, as companies such as Google, Facebook and YouTube move further into the content sphere they may start to overlay a more clearly distinct editorial voice to their news content in addition to facilitating the proliferation of third party views. Online blogs are also an important, and plural, source of news and contribute greatly to the genuine plurality of views available on the internet. Online bloggers and political websites have been able to break stories that were subsequently picked up by traditional media outlets.

Twitter must also be taken increasingly seriously as a direct source of news and commentary. Twitter now has well over 100 million active users worldwide and plays a number of roles in the new media landscape. Traditional media organisations use Twitter to generate interest in their stories and content and individual journalists use Twitter to generate interest in their more formal journalistic content and to communicate directly with audiences. Moreover Twitter also provides a mechanism for key individual players to communicate directly with the public and to add their voices directly to the public debate. Indeed it is striking to note the rapid rise in the number of Twitter users following key UK politicians over just the last fifteen months. In February 2012, for the purposes of its submission to the Leveson Inquiry, News analysed the followers of ten leading accounts of UK politicians (not necessarily the ten largest). The picture below shows how the growth in number of followers for these 10 leading accounts in only 15 months.

**Figure 1, Twitter follower count of UK Politicians, February 2012 to April 2013**

Source: Twitter, as of 17:00 on 29 April 2013

---

256 As at 17:00 on 29 April 2013.
With this significant proliferation of direct channels of communication for information, consumers are exposed to an increasing variety of sources. In addition, the increasing degree of ubiquity of internet access and the explosion in the number of smartphone and tablet users encourages consumers to consume more content and to actively engage in distributing news content and commenting on stories of interest to them which might originate in a wide variety of news sources. In this respect, social media platforms such as Facebook, YouTube and Twitter are increasingly important as a source of news and enable consumers to directly influence the news agenda by posting links to content or re-Tweeting stories of interest as well as adding new contributor voices directly by distributing their own user-generated content.

Online news consumers have a tendency to be much more promiscuous in terms of their propensity to consume news from multiple sources than those who rely primarily on more traditional media. This is only to be expected as the internet makes it much easier to access multiple views immediately on a topic of interest, without having to wait for specific broadcast times. Most news content is also available free of charge and consumers can also use search engines to search for a variety of stories about topics of particular interest. The increasing use of the internet as a source of news therefore leads to increasingly plural patterns of consumption. In particular, comparing the position of internet news today with the position when the Communications Act entered into force in 2003, many more people are online, the news consumption of those online is up significantly, and online consumers are using a range of news sources dramatically greater than that used by a typical news consumer in 2003.

The need for a cross-media assessment taking account of all platforms through which consumers source news content has been recognised by Ofcom, most recently in its report on Global/GMG. This was also made clear by Ofcom in its Advice on Measuring Plurality: “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”.

“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.”

vi. How should ‘sufficient plurality’ be measured?

Consistent with a qualitative definition, the sufficiency of plurality should also be measured on a qualitative basis, as recognised by the Competition Commission and Court of Appeal.

---


258 Ofcom, Advice on Measuring Plurality, at paragraph 1.6.

259 Ofcom, Advice on Measuring Plurality, at paragraph 2.13.
News believes that this case-law has established certain parameters appropriate to a review of the sufficiency of plurality which are broadly accepted by all regulators having responsibility in this area:

(a) on the supply side, all providers of news/current affairs content within the relevant media environment (e.g. newspapers, television, radio or online) should be considered;

(b) on the demand side the audience potentially impacted by any threat to plurality must be considered and in order to do this it is necessary to take account of that audience’s patterns of consumption. In so far as sources of news are available to all consumers across the UK, an appropriate audience will usually be a UK-wide audience; and

(c) a qualitative assessment of the range and variety of voices available to audiences should be carried out taking into account both "external plurality" (distinct media groups) and "internal plurality" (the range of distinct news/editorial voices within a single media group).

Considerable care should be taken in any attempt to replace such a qualitative analysis with specific quantitative metrics to assess the sufficiency of plurality. In practical terms, while the superficial attraction of a market-share test is the expectation that it might provide a "bright line" for intervention, the considerable difficulties involved in defining appropriate markets and in measuring market shares – particularly in a cross-media environment – make the application of such a test in any real-life scenario challenging. Indeed, the appropriate way to measure market share is likely to be almost as controversial as a qualitative assessment of plurality in terms of the range and variety of views available to consumers. News is not aware of any reliable and robust metric for measuring plurality on which consensus has been reached either in the UK or elsewhere. Seeking to identify quantitative measurements of plurality carries clear dangers – in particular the risk of missing the complexities of the media landscape.

Measuring plurality is even more challenging on a cross-media basis taking into account divergent sources of news content. For example, when the Federal Communications Commission in the US attempted to base its cross media ownership rules on a quantitative assessment by way of a "diversity index", its approach was subject to extensive and detailed criticism on appeal and the attempt was ultimately abandoned. There are limited sources of data available which can assist in cross-media comparisons and each source of data contains serious flaws which make it very difficult to draw reliable conclusions.

As such, a quantitative measure of plurality based on absolute limits on news market share would be neither practical nor desirable. Such thresholds are unlikely to be workable in practice given the heterogeneous nature of news provision and the consequent uncertainty would be detrimental to a regulatory regime that should remain vibrant and attract investment and innovation.

vii. Should the BBC’s output be included in a review of it?

The BBC is by far the most important source of news content in the UK. The position of the BBC should be taken into account alongside that of commercial players. In the UK the BBC is the largest provider, by any measure, of news on TV, over the radio and over the

---

internet. It is therefore difficult to imagine that any cross-media market share test that would be adopted would not already be triggered by the BBC’s news provision. It is equally difficult to conceive of any sensible regulatory regime which would ignore the role and position of the BBC. To assess UK media markets as if the BBC did not exist would be to fundamentally underestimate the level of plurality which in fact exists. The role played by the BBC has also been recognised by Ofcom in its 2006 review of media ownership rules, which noted that:

"The BBC provides a further safeguard for plurality by acting as a source of news across all media except newspapers, alongside commercial news sources."\(^{261}\)

Ofcom was equally clear as to the critical role played by the BBC in its Advice on Measuring Plurality:

"The BBC has a leading position in television, radio and online news and should be included in any plurality review."\(^{262}\)

"The BBC is estimated to have spent £430m 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…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."\(^{263}\)

"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."\(^{264}\)

The BBC itself has accepted that it would be appropriate to consider its role in any plurality assessment, stating in its response to Ofcom’s consultation on measuring media plurality that:

"The BBC accepts that any assessment of plurality might take into account its share, voice and role in audiences’ news diet. The BBC’s contribution to supply and consumption of news is significant […]"\(^{265}\)

viii. How can internal plurality be sensibly measured against external plurality?

As News has consistently maintained and Ofcom now accepts,\(^{266}\) while internal plurality is not a substitute for external plurality, it must nevertheless be taken into account as part of a qualitative assessment of the range and variety of voices available to UK audiences. Again,


\(^{262}\) Ofcom, Advice on Measuring Plurality, at paragraph 1.9.

\(^{263}\) Ofcom, Advice on Measuring Plurality, at paragraphs 5.139 to 5.140.

\(^{264}\) Ofcom, Advice on Measuring Plurality, at paragraphs 5.139 to 5.143.

\(^{265}\) BBC’s response to Ofcom’s Invitation to Comment on Measuring Media Plurality, 21 October 2011.

\(^{266}\) See Ofcom’s report on News/Sky, 31 December 2010, at paragraphs 5.101 to 5.102 and, more recently, Ofcom’s report on Global/GMG, 11 October 2012, at paragraph 5.31.
Ofcom’s Advice on Measuring Plurality is unequivocal on this issue in line with the position consistently held by News:
"Plurality needs to be considered both within organisations (i.e. internal plurality) and between organisations (i.e. external plurality)."267

An assessment of internal plurality should take into account both regulatory aspects (e.g. rules on impartiality) as well as cultural/behavioural aspects relating to independence of editorial functions with a media organisation.

ix. **What structural and/or behavioural remedies are appropriate if insufficient plurality is found?**

News believes that a review of plurality should be triggered only by consolidation and therefore that remedies are only appropriate where offered by the parties to a merger in order to remedy competition or media plurality concerns that would otherwise result in its reference to or prohibition by the Competition Commission.

It would be unprecedented for a regulator or politician to be given the power to impose remedies on the media sector in the absence of a merger. Even disregarding concerns around undue political influence over the media through the threat or exercise of such powers, the result would nevertheless be to create considerable regulatory uncertainty and deter investment and innovation in the UK media sector.

An intervention of this type (or the prospect of such an intervention) would carry a serious risk of undermining the independence of the media.

x. **How should the deployment of these either structural or behavioural be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?**

Please refer to News' response to question (ix).

xi. **With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?**

Please refer to News' response to question (ix).

xii. **To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?**

News believes that it is broadly acknowledged that media plurality policy is an area appropriately left to Member States. In this respect, News notes that media plurality is one of the few “legitimate interests” recognised by the European Commission as potentially justifying national intervention in a merger where the competition issues have been dealt with by the European Commission (alongside national security and prudential rules).268

---

267 Ofcom, Advice on Measuring Plurality, at paragraphs 1.3.
268 See Article 20(4) of Council Regulation 139/2004/EC on the control of concentrations between undertakings.
News Corporation – written evidence

News considers that the role of the European Union authorities should continue to be a complementary and partially overlapping one, in the application of competition rules, which already provide a significant control on any media company that might attempt to restrict competition or exploit market power, and advocacy in monitoring the national framework in those Member States that have less developed regimes.

xiii. What should the UK learn from international approaches to media plurality?

News notes that, by its nature, the appropriate approach to protecting media plurality will be specific to each individual country.

1 May 2013
1. The Newspaper Society represents the regional newspaper industry. The regional media companies in membership of the NS publish around 1100 local and regional newspaper titles, with 1600 associated websites, 400 niche and ultra local titles. Some companies own local radio stations and have interests in Local Television.

2. Local newspaper businesses continue to evolve into local media businesses delivering local news and information across print, online, mobile and broadcast platforms. Britain’s local media comprises 1,100 core newspapers, 1,600 websites, hundreds of niche and ultra local publications and a range of other digital and broadcast channels, including local radio stations and Local TV. The industry employs over 30,000 people, with a third (10,000) in editorial roles. The local press is read by 31 million people a week and 62 million unique users rely upon their local newspapers’ websites every month. Over 60% of people act on the advertisements in local newspapers.

3. Local publishers are reaching new and growing audiences across a range of platforms and a variety of distribution methods – print, digital, part-paid, part-free – as they develop strategies to meet consumer demand for local news and information at a time and place that suits them. There have been launches of new local newspaper titles. Audited website traffic figures are also available for many of the sector’s flagship sites and are released alongside print figures.

4. The local press remains the most trusted source of local news and that trust translates to the industry’s digital extensions. The investment in new platforms, special interest and ultra local publications, converged multimedia newsrooms, video journalism, UGC, mobile sites, Smartphone apps and other digital and print innovations means that local newspapers are now reaching more of the population than ever before as well as attracting new online advertising revenues. While print still accounts for around 90% of total revenues, digital revenues represent a significant and growing proportion.

5. As the Committee is aware from past Inquiries, the NS and regional media industry has consistently advocated deregulation of the media ownership regime at local level, not least because local newspaper transfers and mergers have barely raised plurality concerns, let alone triggered refusals or restrictions under the public interest or other plurality tests prescribed by media ownership controls, before or after the Communications Act 2003.

6. The industry’s stance has been not just that local media transfers and mergers should be governed by competition law alone, but that the reformed competition authorities must also radically revise their approach to local media transactions. As the Committee has previously heard from our members, the industry needs their guidance, process and decision taking to be fast, clear, reliable and inexpensive, with reference to the realities of the ever expanding and ever intensifying competition for audience and revenue faced by regional and local media companies. This includes the BBC, which the NS and its members consider must be taken into account in assessments of local and regional media competition and plurality.

7. As the Committee knows from previous inquiries, the Newspaper Society and its members sought the progressive liberalisation of local cross-media ownership restrictions as
effected by the Broadcasting Acts 1990 and 1996 and warmly welcomed the final abolition of local cross-media ownership restrictions in 2012.

8. The Newspaper Society responded to Ofcom’s consultations on measuring media plurality. The NS response included the European Newspaper Publishers Association submission on ‘Preserving Pluralism in a Rapidly Changing Market’ and both these representations are set out in full at the links below and may be read as part of this submission:


9. The Newspaper Society and its members warmly welcomed Ofcom’s recommendations to the Government in respect of regional press exemptions in its supplementary advice:

‘Measuring Media Plurality: Supplementary advice to the Secretary of State for Culture, Media and Sport and the Leveson Inquiry published 5 October 2012’
http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/?a=0

10. Ofcom recommended that the local media should be exempted both from its proposed periodic plurality reviews, and from the existing provisions governing public interest grounds in media mergers under the Communications Act 2003 and Enterprise Act 2002 as amended. These were set out at para 2.22- 2.26 of its Supplementary Advice:

‘2.22 Our June report considered plurality primarily in the context of a UK-wide news media market. We acknowledged that plurality may vary at the level of the devolved nations, and in relation to local media.

2.23 The supplementary questions we have been asked by the Secretary of State remain focused on how to design and implement a UK-wide framework. We have not been directed to undertake a local, regional, or nations-specific review of how the framework would be applied.

2.24 However, our view is that there is merit in undertaking specific analysis for the nations as part of the periodic review. The devolved nations represent distinct democratic units within the UK, with their own democratic institutions. Media plurality in news and current affairs provision is likely to play a vital role in ensuring a well-functioning democratic society in these nations, as well as across the UK as a whole.

2.25 For local areas (below the level of a nation), we believe the issues facing local media are more about sustainability than plurality. In our June report, we said there was a tension between plurality and commercial sustainability that was exacerbated at smaller geographic units. The same may be true of the English regions. In this context, we would not recommend that a periodic review of plurality considered local or regional media, except insofar as they contribute to plurality at the level either of the UK or of one or more of the devolved nations.
2.26 In making this recommendation we note that the existing regime to deal with the competition issues raised by local media mergers is widely perceived as being too onerous. This is not the place to address that concern, but we do believe it is important that it is not exacerbated by the plurality framework. We therefore recommend that the Government considers whether the public interest grounds associated with mergers should be modified so as to have the same focus as the periodic review; namely, on those mergers which might affect plurality at the level either of the UK or the devolved nations.’

http://stakeholders.ofcom.org.uk/consultations/measuring-plurality/?a=0.

11. We would welcome the Committee’s endorsement of Ofcom’s recommendations as set out in paras 2.25 and 2.26.

12. Ofcom’s recommendations were also submitted to the Leveson Inquiry.

13. We would also therefore welcome the Committee’s endorsement of the statement by Lord Justice Leveson set out in the Executive Summary of the Report:

‘19. As to the commercial problems facing newspapers, I must make a special point about Britain’s regional newspapers. In one sense, they are less affected by the global availability of the biggest news stories but their contribution to local life is truly without parallel. Supported by advertisements (and, in particular, local property, employment, motor and personal), this source of income is increasingly migrating to the internet; local councils are producing local newsletters and therefore making less use of their local papers. Many are no longer financially viable and they are all under enormous pressure as they strive to re-write the business model necessary for survival. Yet their demise would be a huge setback for communities (where they report on local politics, occurrences in the local courts, local events, local sports and the like) and would be a real loss for our democracy. Although accuracy and similar complaints are made against local newspapers, the criticisms of culture, practices and ethics of the press that have been raised in this Inquiry do not affect them: on the contrary, they have been much praised. The problem surrounding their preservation is not within the Terms of Reference of the Inquiry but I am very conscious of the need to be mindful of their position as I consider the wider picture.’

14. The March 18th draft Royal Charter and Recognition Scheme proposal contravene the recommendations of the Leveson Report in respect of the regional and local press. The Leveson Report stated that the new regulatory model “should not provide an added burden to the regional and local press.” It said that “local, high-quality and trusted newspapers are good for our communities, our identity and our democracy and play an important social role” It said the Government should “look urgently as what action it might be able take to help safeguard the ongoing viability of this much valued and important part of the British press.”

15. The Government should honour these recommendations, instead of ignoring them.
16. The Committee should recognise the strength of the regional newspaper industry’s opposition to the proposals for press regulation agreed by the three party leaders and the combination of controls to be imposed by way of the draft 18th March Royal Charter proposal, Enterprise and Regulatory Reform Act 2013 and Crime and Courts Act 2013. These were instigated without consultation of the regional newspaper industry and without assessment of the economic or financial impact that they will have upon the regional newspaper industry.

17. An application is therefore being made to the Privy Council for the Royal Charter for the Independent Self-Regulation of the Press, which addresses the deep concern of the regional and local press about the draft 18th March Royal Charter. This is a positive and constructive step forward in the process of implementing a tough new system of truly independent self-regulation for the newspaper and magazine industry (see www.newspapersoc.org.uk).

18. It is therefore vital that the Committee heeds the recommendations of both Ofcom and Lord Justice Leveson on support for the regional press, including exemption from any new regulatory measures and removal of existing regulatory burdens upon the regional press. It is crucial that unfounded fears about media plurality do not lead to yet more unnecessary curbs and regulatory burdens upon regional media companies. A vibrant, viable, independent regional and local press is surely integral to media plurality, not a threat to it.

19. In relation to EU issues, the European Commission does not and should not have legislative competence in this area. We refer you to ENPA’s submission above. The Commission’s past attempts to frame EU legislation on media ownership were based upon its antipathy to global media moguls, without regard to its proposals’ actual effect at national, regional and local level upon the media of its member states. Indeed, they would have required the immediate reversal of the local cross-media ownership provisions of the Broadcasting Act 1996 which had just been passed by the UK Parliament. The European Parliament has been even more extreme on occasion—there have been past calls from some members for anything from outlawing profit from news dissemination to demands for the election of editors by employees rather than appointment by employer. The EU legislative bodies should not seek to restrict press freedom and impose press controls by way of press regulator or press codes or other controls, under guise of media plurality or otherwise. Any EU attempts to force any such new pan European restrictions upon the national, regional and local press of individual Member States must be opposed.

30 April 2013
The Newspaper Society – oral evidence (QQ 339-352)

TUESDAY 29 OCTOBER 2013

Members present

Lord Inglewood (Chairman)
Baroness Bakewell
Lord Clement-Jones
Baroness Deech
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Bishop of Norwich
Lord Razzall
Baroness Scotland of Asthal
Lord Skelmersdale

Examination of Witnesses

Mr Adrian Jeakings, Chief Executive, Archant, and President of the Newspaper Society,
Ms Geraldine Allinson, Chairman, KM Group, and Mr Ashley Highfield, Chief
Executive Officer, Johnston Press

Q339  The Chairman: Can we get the hearing under way, please? I ought to declare and
put on record, which I have already declared in the documents, that I am chairman of the
CN Group, which is a member of the Newspaper Society. I will be conscious of that in the
role that I play chairing this Committee.

A very big welcome to Adrian Jeakings, who is chief executive of Archant, which for those
who do not know is the erstwhile Norwich Eastern Daily Press and East Anglian Daily Times
newspaper group, and president of the Newspaper Society. Also welcome to Geraldine
Allinson, who was the previous President of the Newspaper Society and is the Chairman of
the Kent Messenger Group, and finally Ashley Highfield, who is the chief executive of
Johnston Press. We have had short CVs of you so, unless you want to specifically say
anything about yourselves, I do not think there is any need to add more on that. I would like
to ask, because we are being recorded, each of you in order to tell us who you are, which
helps the recording process. Then I will ask each of you whether you want to make an
opening statement. Do not feel, please, that everybody need reply to a particular question. It
is entirely up to you how you want to handle it. Starting with Geraldine Allinson, could you
tell us who you are and then pass on to your colleagues?

Ms Allinson: Yes. I am Geraldine Allinson, chairman of the KM Group in Kent.
Mr Jeakings: Adrian Jeakings, chief executive of Archant and president of the Newspaper Society.

Mr Highfield: Ashley Highfield, chief executive of Johnston Press plc.

The Chairman: Do one or all of you want to say anything at the outset?

Ms Allinson: I would like to try to lay in context the sort of company we are, because we are very local, based only in Kent. We have interests across different local media platforms. We have nine paid-for newspapers and seven free titles and the readership of those is around 457,000 readers a week. We also have very local radio stations, seven of those and one digital station. There are 156,000 listeners to those each week. Then we have a website, which is KentOnline, which has about 637,000 unique browsers a month. All that is in the context of the adult population of Kent being 1.4 million. So we already have interests in several different platforms of media, not just newspapers.

The Chairman: Just to clarify, is Kent in this context the current administrative county of Kent rather than the traditional county of Kent?

Ms Allinson: It is Kent County Council area but also Medway Unitary Authority area, the two added together.

Mr Jeakings: If I could just add to that, we are slightly more diversified. We cover a larger area of geography than the Kent Messenger Group, but we would describe ourselves as multilocal. Although we are present in most counties in England, we do not operate all of that business as a single monolithic structure. We still regard ourselves as being very local. We, too, are in many different media channels. We do a lot of exhibitions and events. We won one of the first local city TV licences, which will be going on air early next year and is already available over the internet.

The Chairman: Ashley Highfield, do you want to say anything?

Mr Highfield: No. You have had the CVs.

The Chairman: Yes, and Johnston Press is a slightly different sort of local newspaper group with lots of titles right across the country, is it not?

Mr Highfield: Yes.

Q340 The Chairman: As an opener, one of the things that we have heard a lot about from the witnesses is that there are concerns, particularly in the context of local media, on the one hand about media concentration, for all the obvious plurality reasons, and on the other about the fact that journalism has to be sustainable, because if it is not you do not get it. I would be grateful if you could summarise your response and attitude towards these conflicting pressures and what impact they are having on you. Particularly as representatives more widely of the local newspaper industry, how do you see the problems and probable threats of the immediate future, and do you have any thoughts about them? Could I start with Adrian Jeakings on the right?

Mr Jeakings: There has been a process of media fragmentation for many years. The arrival of the internet accelerated that process and the more recent arrival of mobile, although not in north Norfolk it has to be said, is further accelerating that process. That means that there is now much more competition, both in content generation, although not all of it completely professional, but also in people taking marketing budget away from commercial operations, which previously might well have gone to a local newspaper business. There are myriad ways to respond to that. Creating our own online assets is clearly one of them, whether it is
mobile websites, fixed websites, apps or any of those sort of things; more innovative and integrated advertising campaigns, for example; content creation, e-commerce and a variety of things. While the easy days of the early part of this century are gone, we are very positive about the prospects for our particular sector of media. We would define it as media, incidentally, not just the press.

Ms Allinson: We have been hit by structural and cyclical change over the last few years and this is the thing that our company has been challenged with, along with everyone else in the industry. We have had to look at better ways of organising people and using technology so we can do more with less, if that makes sense.

One of the ways in which KM Group has approached this is a little similar to the way Adrian has described. We have three main areas of the business. One is the editorial department. We believe in very good quality journalism. We have the sales teams, the commercial side, and then obviously the rest we call business support. It is about trying to ensure that we provide good services to consumers of our media but also to those that want to advertise across our media. We have done that by reorganising ourselves so that the good journalism is spread across the different platforms. It is not only used in the newspapers, it is put online and on the radio stations, although in very small, quick bites. Also, we are looking at local TV. A licence is being advertised in Kent as well. The skills have changed hugely in our commercial department because people have had to learn to sell across the different media. We still have specialists who sell just one type of media, but they help the generalists to go out and speak to clients so that we can deliver a decent local audience across the different platforms to local businesses. That is what we see that we need to be able to do going forward into the future.

Mr Highfield: The last seven years has been extremely brutal for the regional press industry. I think the industry came late to understanding the full impact of the internet and was caught off guard by it. Now, the business that has gone to the likes of the American firms, the Auto Traders and eBays and so on of this world—classified advertising has gone. People consume local press, whether in print or online, because they are interested in local news and information.

While it has been tough, and this recession has been particularly hard, we are now at a level, provided that we can cut our cloth accordingly, that is sustainable for the long term as we move to the predominantly digital world. It means that it is a rather precarious recovery, but it is a recovery that I think the whole industry is seeing. We are in a position now where approaching 20% of our advertising revenue comes from digital. A year ago it was 10% and the year before that it was 5%. Across the industry we are probably only a year or two away from a tipping point where our digital growth will outweigh any further print decline. As I said, it is rather a precarious recovery and I am glad that we have this opportunity to say what the Government can do to help ensure that the recovery is sustained.

Q341 Lord Skelmersdale: Following on directly from that last comment, I was struck by the Newspaper Society’s written evidence where you say that print still—I emphasise the word “still”—accounts for around 90% and you say that it is slipping badly. What effect is all that going to have on print and how long do you expect print to last?

Mr Highfield: It is slipping but I do not think that is bad.

Lord Skelmersdale: Well, you talked about the tipping point.

Mr Highfield: The tipping point is where we make more from digital than we are losing from print, but that still means that our brands are relevant in the local communities they
serve. In fact, they are ever more relevant. In the last few months we have added 100,000 new net readers of our content every month, so digital growth is outweighing the print decline by some considerable margin already in audience terms.

To answer your question directly about print, I am of the view, and not necessarily everyone is, that we will carry on printing newspapers for many years, 20, 30, 40 years, because we run a portfolio of some 250 papers. I was at the Galloway Gazette and the Carrick Gazette the week before last. These papers have circulations of 2,000 or 3,000 but they are still profitable. One of the things that may be misunderstood is that all regional newspapers are profitable. The ones that have been shut are some of the free newspapers that were open during the boom times to complement a paid title, typically in the same market. They are about the only papers that have shut. All the regional press is profitable and down to very low volumes. It might not be huge amounts of profit, but I see no reason why you cannot make a reasonable return out of very low circulation papers.

Another reason why I would want to keep printing in print is because a lot of trust is given to you if you print because clearly an editing process has gone on. Therefore, people are more likely to trust your website as well and a trusted website is better for advertising. There is an incentive built in, even as we go into the digital future, to maintain a print part of our business.

Mr Jeakings: New print titles are still being launched—one was launched today—and not just by small companies. At Archant, we launched one a few months ago for a new town in Devon. As Ashley said, it is not making a lot of money but it is at least profitable. Print is far from dead. If the customers want a print product and are prepared to pay for it, that is what we need to do as long as we can make a reasonable return.

Ms Allinson: It is a good way of knowing whether the content is still relevant. If people go out and buy it, obviously your content is relevant and they want to have it, whereas online you can put things up and—

Baroness Bakewell: Do your audiences differ on your different platforms very much?

Ms Allinson: My editorial director believes that although our online audience is going up really fast at the moment, most people who go on our website already have a relationship with us, have bought our newspapers at some stage or listened to the radio station, but we do not measure that. It is a hugely expensive thing to try to measure how many people—

Baroness Bakewell: I was interested in the demographic. Do the old follow the newsprint and the young follow the digital? Does it break down like that?

Ms Allinson: With the print, for us it depends on the different parts of the paper. We have a section called “What’s on?”, and quite a few young people read that. It is difficult to generalise about it but, yes, I would agree that more older people buy the print products.

Baroness Bakewell: But it does not affect the market?

Mr Highfield: No, we are mostly in the market of weekly papers and weekly papers are broadly complementary. The web audience comes on a daily basis to see local football results, news, weather, traffic and travel. They have a different need online to the weekly papers that we have predominantly in the market.

The Chairman: We will have to go and vote, which is very discourteous but that is what we are here for. Will you forgive us while we retire and then we can pick it up where we left off? I hope it will not happen too frequently.
Sitting suspended for a Division in the House.

Q342 The Chairman: Shall we go on? Did we conclude the response to the last question? Is there anything else you want to add?

Mr Jeakings: I do have some data because we have done some research.

The Chairman: Right, then you can tell us, please. Thank you.

Mr Jeakings: Absolutely. This is just for our daily papers, of which we have four, actually our morning papers, which are the bigger ones: the Eastern Daily Press and the East Anglian Daily Times. We have found that the number of daily users on the websites is about 25% of the average issue readership for print. It is much harder to measure print readership, for obvious reasons, than it is digital, but if you look at the number of people who look at the website over a month, it is four times the print average issue readership. There is a difference in frequency of usership, we think. About 10% to 15% of people who read either read both the online and the print. In print, the average age group is 55-plus, demographic ABC1, although that does not mean much these days, and virtually equal male and female. Online, the largest single age grouping is 35 to 54, again ABC1, and 60% male, 40% female. There may be a slight bias in that because of football, but we do have separate football websites so it is not completely explainable by that.

The Chairman: Women like football too, you know.

Mr Jeakings: Yes, I do know that.

Q343 Bishop of Norwich: I think of our family as EDP readers, whereas my son goes online to read the EDP but does not bother with the newspaper, and I wonder how you are ever going to make money out of him. Is the theory that when he becomes mature he will graduate to taking the newspaper when his parents do not provide it? He is in a sort of EDP culture and wants to see how Norwich City are doing and looks at the news on the EDP website, but he does not give you much income.

Mr Jeakings: There are a variety of answers to that. How do you monetise that online and will the younger online users ever graduate to print? I think some of them will and the reason why I think some of them will is that the media are different. There are different characteristics in print in what you can do and the way you do it compared to online, and indeed compared to mobile. The one thing that slightly disturbs that very neat little equation for newspaper companies is the advent of tablet devices, which I think may accelerate the substitution of print because they can do some very similar things to print newspapers. That is part of the answer.

How do we make money out of him? First of all, I am delighted that he is a reader, I should say. There are all the conventional ways of making money from people who consume content online, such as display advertising, making things available for them to buy and then taking a share of the revenue. Then there are newer ways of monetising that content that people like the Times and the Financial Times have tried such as putting in place a pay wall, which is a dreadful term—imagine if you had a supermarket that said “pay wall” on the wall—but basically getting people to pay for that content. That is proving to be slightly easier with tablet device delivery than conventional fixed web.

Then there are indirect ways of monetising that relationship. We are working with Google and a local Norfolk company as well, using consumer surveys. If somebody wants to look at an article, they have to answer a question and people pay us to ask those questions of the users of our sites. Another variant of that is putting in place an option to watch a video,
which is effectively advertising material, and that has generated some money for us as well. I do not think there is a single solution to this. I think there are multiple solutions and we are still very much at the experimentation and trial stage, certainly at Archant.

Lord Clement-Jones: You talked about sites. Do you have apps as well?

Mr Jeakings: Yes, we do. The way we think about it is that you have print, which is self-evidently what it is. You then have fixed web: that is, websites accessed from usually a desktop, although clearly a tablet or any other mobile device can do it. You have mobile-optimised sites, which are sites that present the content in a way that is best for a smartphone, so small screen. You have tablet sites or apps—it does not make that much difference these days—that take advantage of the specific capabilities of the tablet. Then you also have what we call facsimile editions, which are really just an online version of the print product, identical in every way except that you are looking at it through a bit of glass or plastic rather than on print.

Ms Allinson: But they are a bit smarter, are they not? For example, if someone is advertising or you put a link at the bottom of a story, if someone wants to find out more they can on a tablet click on that link and that takes them through. It is a bit smarter than looking at the print.

Mr Jeakings: A little bit smarter than print, yes.

Q344 Lord Razzall: If we look at the national position, I suppose you can characterise us as living in a world where the broadcast media, who are quite heavily regulated, are trusted and certainly have a requirement to be fair in the provision of news and current affairs. Then we have the print media, who have no obligation to be fair, and I am not just talking about the Daily Mail. There is a clear distinction between the broadcast media and the print media. If you look at the local and regional newspapers in the context of our questions on plurality, do you see the same distinction between broadcasting and print or do you think that the similarity is not the same as with the national media?

Mr Jeakings: I think there is a fundamental characteristic of the local press or local news media that is different to national in that we describe ourselves as being community media. We work in the communities. We have to be trusted by the communities that we publish for. We go out of our way when we do it right, which is most of the time, to see both sides of the story, to be balanced. We are not regulated and I would not encourage any regulation, but because of that symbiotic relationship with the community, if we were to get it wrong we would not exist any more.

Mr Highfield: I think that is the point. We rely on the trust of our community for our very existence.

Lord Razzall: But all the national newspapers would say that. The Daily Mail would say that they rely on the trust of their readership.

Mr Highfield: No, I do not think they would. They rely on the patronage of their readers to buy the paper, but the person who buys the News of the World does not necessarily believe in what they are reading and nor do they feel that when they take apart somebody in the community that that is an outrage. We live and die by supporting the people in our community and being seen as a trusted source of information, holding local government, local councils, to account. From a purely commercial point of view, we get advertising revenue. In the future of this business, I have a quite strong view that I do not think we will ever create a paid-for world on the internet. It will be an advertising-funded future.
Advertisers want to advertise with us because we are a trusted medium. It works because if you advertise on our websites, the click-throughs are much higher than on the Mail on Sunday website, for example, because we are in a trusted environment. If we lose that trust then we lose the commercial revenue. I would say we are fundamentally different from the national press in that regard. We live and die by the trust our communities have in us.

**Lord Razzall:** What you are actually saying in answer to my question, looking at issues of plurality, which is what this Committee is looking at, is that you do not see a local distinction between the broadcast media and the print media in the way that obviously exists at the national level.

**Ms Allinson:** I think at the local level we are more highly trusted as brands in our local communities than other local media.

**Baroness Scotland of Asthal:** Is the point that the local community basically knows when you are telling them a lie? They know the schools and when you get it totally wrong they are able to say, “Well, actually, I know the headmaster. He is a decent person, contrary to what the newspaper says”.

**Mr Jeakings:** Yes, and that has happened. Yes, absolutely.

**Ms Allinson:** Yes, and they know when we have spelt someone’s name wrong and they know when we put the wrong name under a photograph. None of this is done intentionally, but we are all human and we always apologise.

**Q345 Baroness Deech:** I think much of the answer that I am expecting has come through already in what you said about the relationship between newsprint and internet. How would you describe the relationship between the papers and hyper-local websites, often run by a local authority or volunteers? Would you say that they complement each other, compete or are parasitic, feeding off each other? Personally, if I want to know what schools are closed—not now any more—whether it is snowing or whether the trains are running, I would tend to go to the local website.

**Mr Jeakings:** Yes, and that has happened. Yes, absolutely.

**Baroness Deech:** No, I would probably go to my Vale of the White Horse website.

**Mr Jeakings:** I think it depends on where you live. Often the difference between some of the hyper-local websites and some of the websites run by local newspaper companies is in the quality of the journalism, and I would not describe it as journalism. It is not professionally created content, which means that while getting the time of the trains and whether they are running or not is probably okay, anything much beyond that poses a bit of a problem. Archant’s view is that there is a place for hyper-local websites. We have some of our own. We work with other people who run both networks and individual hyper-local networks. For example, in Epping Forest there is a guy who has a local website. We do a print version for him and we share the revenue together. We have also invested in something called Streetlife, which is about hyper-local street level social media, so really, really local. I would say that there is a strong element of complementarity to them.

**Mr Highfield:** I think the important thing is to not see them as a replacement or ultimate substitute for local press, because there is fundamentally no business model. They do not scale, normally, the amount of revenue they can make if they are trying to run as a commercial entity: that is, to employ a journalist to work for them on a salary. You will end up with a lot of these people doing it for the love of doing it, but that is not necessarily a scaleable business.
The route that we are taking is to engage with a lot of these people and then get them to submit copy to us. That is not terribly radical. I have brought along one of our newspapers; it could have been any one. If you read a local paper, you have pages and pages of this. It is called “Down Your Way” in this paper, but it is hyper-local news, pages and pages of it, all contributed by people in the community who usually write it for free. They may occasionally get a stipend from us or some small amount. Moving that into the internet world, I see that as being a sustainable model where we aggregate and act as the curator for a lot of voices in the community. I do not really care whether you call them micro bloggers or whatever, but I think that our role going forward, therefore, is just as important as it has ever been in print.

Lord Clement-Jones: You are absorbing those hyper-local bloggers, in a sense, are you not? Is that not part of your strategy?

Mr Highfield: It is to give more voices an opportunity of getting a larger audience. If we have an audience already of a quarter of a million people reading our website in the Sunderland area, we can bring a large audience to content that we think passes a quality threshold. That is all we would do. The opinions of micro bloggers are their own, unless we bring them into print, in which case they then have to pass the tests of our editor. I think that that is a scaleable, sustainable model.

Increasingly in regional press you need hyper-local at one end but you also need to be able to scale businesses, particularly if the future is predominantly advertising-based. We would like to get a greater share of national advertising revenues, which means that we need to find ways of working together ever better, being represented by bodies like the Newspaper Society, but I believe the framework is going to be one of increased consolidation within this sector. It does not mean there will be a loss of plurality of voice, but it does mean that the commercial viability of papers will last for many years to come.

Lord Clement-Jones: Are you relying more and more on that kind of semi-volunteer addition to the material that you produce professionally?

Mr Highfield: I would definitely say so, yes.

Q346 Baroness Scotland of Asthal: This question is probably primarily for Geraldine Allinson. You have doubtless seen the recommendation that this Committee made in the Future of Investigative Journalism report, which came very much out of the experience that you have. There was a hope that that recommendation would be subsumed within the Communications Bill, which that has not come about yet. Do you agree with that recommendation about strengthening Ofcom’s role—I assume that you probably would—and do you think it would be possible for what happened with the KM Group in 2011 to happen again? What lessons do you think have been learnt, if any?

Ms Allinson: Ofcom did play a role, and I support the recommendation of this Committee wholeheartedly, but I do not think things have changed a great deal. To be fair, I do not talk regularly to the OFT, but there are a few other things that have been looked at by them and it appears to me that they still have a very narrow definition of local media. If it is a newspaper acquisition they are looking at—and they have published nothing to say that they have changed the way they look at this—they have not yet broadened the definition of the platform they are looking at. I truly believe that they do not believe that we compete with the internet still, and for us that is a hugely difficult thing.

Another example is in the radio sector. We are in the radio sector and obviously these things are of interest to us. Global have been told to disinvest themselves of some of the stations they bought from, I think, the Guardian Media Group. That definition is exactly the
same. It was because they were very local radio stations and they felt that Global would own too many of those in a narrow geographic area. I personally do not believe that they have broadened the way they look at local media and I think it is very restrictive, so whatever you can do to help in that regard would be great.

**Baroness Scotland of Asthal:** Is there any additional recommendation you think would assist to help them to better understand?

**Ms Allinson:** The problem for us is that we are such a small organisation and we do not have the people employed internally to be able to provide the sort of data they were requiring to get proof. I do not know whether the Local World deal has helped with that in any way, but we felt very much that they were expecting us to provide things that we absolutely did not have, could not have and would have cost us hundreds of thousands of pounds to get. We are just not in that remit. I would request that they look at our industry and see that over the last five, six years we have lost 50% of our revenues. I would question whether it was relevant for the OFT even to look at the belief now that it is dangerous to have a monopoly in a certain area within the very closely defined newspaper print sector.

**The Chairman:** Do either of you have anything you want to add to this?

**Mr Highfield:** Our competition is not my colleagues sitting here. It is just not. I am two years into this industry, having spent my career in the internet and broadcast industry, and I look at this industry as a bit like the cable industry was in the 1990s: a bunch of franchises that need to come together and of course have now come together. The ITV industry is a bunch of regional franchises that needed to come together and have now come together. I am not entirely sure why the press is quite so different. I see the move that Local World and Iliffe have done and the approval of that should be the benchmark for future transactions. It is true to say that the commercial viability will have such an obviously profound impact on media plurality, and therefore you have to have a commercially viable press industry if it is going to be any local voice. To have that, there needs to be allowed consolidation within the industry, whether it is on a big scale or a smaller scale of title swaps and so on.

**Mr Jeakings:** The only thing I would add is that my reading, which is admittedly a layman’s, of the OFT conclusions on Local World is that nothing has changed. We are in exactly the same place as we were in when we, Archant, had to fight them back in the early 2000s when we bought some newspapers in London and we were referred to the Competition Commission. We won that case in the end but only by taking out members of the panel and showing them on the streets the competition for our newspapers. The academic approach just does not work.

**Mr Highfield:** Who is our competition? Our biggest declining revenue lines in the last decade have been around property and motors, property through Rightmove and now Zoopla and motors because of Auto Trader. It is not each other. It is the internet.

**Mr Jeakings:** And Google coming up on the right flank.

**Mr Highfield:** Google and eBay and Gumtree and Monster—and, and, and. That is the world we live in, and to judge us by an analogue world when we are all working and living and suffering in a digital environment is just out of date.

**Q347 Bishop of Norwich:** If we can turn to Ofcom’s proposal for a new model for plurality policy based on periodic reviews, their supplementary advice was that, given the commercial pressures you have been describing, local and regional media should be exempt from this. Of course, I believe you think that is the right approach, but would it not be more
sensible to include, provided any review is sufficiently sensitive to commercial sustainability in reaching its conclusions, rather than to exclude the local and regional media entirely?

**Mr Jeakings:** A huge amount of time and effort is taken up with any such review by any government body and I think it would be a major distraction to be included in one. Since Ofcom itself feels that we should be excluded, we are very happy to go along with that.

**Bishop of Norwich:** Is that not a sort of relegation of social and political and economic significance? Is that a wise thing?

**Mr Highfield:** What, not to be regulated in the same way?

**Bishop of Norwich:** Yes. Well, it is not so much regulation, is it? It is to be excluded from a consideration of plurality, because it seems to me that the local and regional media add to the plurality of the media offer in the country as a whole. To exclude you narrows down in a rather unhealthy way, or could do, the very review that Ofcom is proposing should take place periodically. I can see why you do not like being reviewed—most schools do not like Ofsted coming in—but it does not help necessarily to be excluded.

**Ms Allinson:** I think this is a hugely difficult thing. At the moment, there are a lot of consultations going on and our businesses have been through such difficult times. We need to be free to get on and run our businesses and compete in the best way we possibly can with the new competitors that we have, which are online. To be involved in things like tests on plurality, I understand what you are saying completely, but if we are going to be fit to compete things like this will have a bearing on how we run our businesses in the future. This plurality test concerns me, because I am not sure if we are completely clear what the definition of plurality is exactly—

**The Chairman:** You will be after you have read our report.

**Ms Allinson:** Oh good, that will help greatly—and how exactly it is to be measured, because if we are to be included then all the ultra-local magazines that exist in the areas that we are in as well should be included and the BBC should be included. I would find it much easier knowing that we are excluded because, for example, we have to make a decision on local TV. A licence is being advertised in the Kent area at the moment. KM already exists in newspapers, radio and online. We have 90,000 Twitter followers. Are we adding another platform, TV? If we were to bid and be successful, would that be judged later on to have limited plurality in our area? I have to find a way with my team to have a good commercial business model to compete with these other people. To me, probably because I do not know enough about it and how it is going to be measured and so on, it just feels like another layer of bureaucracy that I will have to deal with that people like Google or Auto Trader or whoever will not.

**Mr Highfield:** I think I can square the circle. We do not have a problem with the idea that we would be included in the look at UK-wide media plurality, which was your point about us surely not wanting to get left out because we contribute, insofar as it would be looking at us with a view to the overall plurality of the UK or a devolved nation. What we do have an issue with is looking at local and the burden and the overhead on us for what benefit.

**The Chairman:** Can I just come in there? You own titles stretch from the *Scotsman* to the *Galloway Times*, I think.

**Mr Highfield:** Yes.

**The Chairman:** I do not think that the *Galloway Times* is going to have much bearing on national plurality. Would the *Scotsman*?
Mr Highfield: I think the Scotsman is possibly the most competitive landscape of any one of our titles.

The Chairman: But you see the point I am making?

Mr Highfield: Well, sort of, but the Scotsman does not speak for Scotland, it speaks for Edinburgh really, much as I would like it to speak for Scotland. The competitive landscape is, of course, the Scottish versions of all the English daily nationals. It is a highly competitive landscape because we are competing not only with the Glasgow Herald, and indeed other online websites, but against every single English national that sells newspapers in Edinburgh. As I say, we do not have an issue with looking at how we contribute to the overall plurality on a national basis, but to start to go down to a level of granularity would not be in anyone’s interest.

Q348 Lord Dubs: Are you saying that if it were done at a local level, the thing you are rejecting, that would impose too much of a burden in terms of dealing with it, or is it philosophically improper to do that? Which of the two is it?

Ms Allinson: I think we need to understand exactly what it is being done for. Why is it being done? Sitting here, I think my understanding is probably not as great as it should be. I do not understand why. What is the reason for doing it? I read a review that Ofcom had done a while ago, which said that people are using more and more sources to source their news. I think the average for most people now is three different providers of information. If that is going up, if that is on the increase, why is there a concern about measuring plurality? If Ofcom does that annual review and the areas or the different sources that people go to to get their news and information are increasing, why do we need to start measuring it? Does that make sense?

Lord Dubs: I am not sure I can answer your question either. Just suppose that somebody really dominated in a local area. Despite all the competition that you say exists, suppose somebody had a total dominance of the area. Would that not make you want it looked at?

Ms Allinson: I am not sure that ownership necessarily would dominate the plurality issue. We have different editors for each of our newspapers. We have different people producing the radio news. In a set area, for example to take one town in Ashford, we have a local paid-for newspaper, a local free newspaper, a local website and a local radio station. Different people choose the news to go on those things. It does not mean that the owners dominate the news agenda at all. I suppose I am struggling to understand why there is a necessity to measure it.

Q349 Baroness Bakewell: On a national scale that would be quite considerable. The ownership of major national newspapers could represent a very strong hold on the news agenda of the country.

Ms Allinson: It depends how an organisation is run.

Baroness Bakewell: But ownership can have a huge sway.

Ms Allinson: I would argue that in local media ownership does not dictate the news agenda at all, or views. I am chairman and a very small owner of our organisation, and I have no editorial control whatever. The company has been run in that way for many years.

Baroness Bakewell: Then you have a very good explanation to make, but the reason for the issue to be one that matters nationally is because if it were not so and you were not an
honourable person in the role that you have, you might be culpable of controlling the news outlets in your power.

Mr Highfield: The news outlets in the small towns are not political.

Baroness Bakewell: I was simply explaining why the whole business is—

Mr Highfield: I think this goes back to the earlier point that we are kept honest by the community in which we operate. Within that community, the people who buy the paper will come from all spectrums and political hues and therefore the papers, by their nature, cannot start to have strong opinions. That is not what local media is about. In many towns anyway there is only one local newspaper. Coming up with a conclusion that in an ideal world you would have two competing paid-for newspapers may be well and good but it is not going to happen.

Baroness Bakewell: No, I agree. I think you have a very strong case. It is just that plurality is an abstract issue in media terms and we are considering at which point it becomes absolutely relevant. In your case, it seems not to be relevant.

Mr Jeakings: I can see that it is important at national level, but if you just take our business, we have 80 newspaper titles, somewhat smaller than Ashley’s, somewhat bigger than the Kent Messenger. We have 80 magazines, over 200 websites. No shareholder owning more than 1% is employed by the business. It is totally inconceivable that the owners could interfere with the news agendas of any of those titles. I understand the national argument completely, but it is very different to our business.

The Chairman: Can I just intervene? We have run over time, thanks to the Division. I would like to continue this if you and our next witness are happy. We do not want to squeeze him out. Are you happy that things go on until towards 6.00 pm?

Professor Beveridge: Yes.

The Chairman: Yes, fine. Sorry.

Baroness Scotland of Asthal: One of the interesting things that Ashley raised is the difference between the national and the local position. It is very difficult to come to an informed decision about what you should do for UK wide without taking into consideration potentially how the decisions you may make nationally will impact either favourably or negatively on regional and local newspapers, if you come to the view that regional and local newspapers are a valid and important contribution to deliver plurality. That is my anxiety. If you say that Ofcom does not have to take into account local and regional and you put your area in a separate box, you may get a perverse imbalance because they then fail to take into account adequately, or at all, the decisions that they are making that may impact negatively as opposed to positively.

Mr Highfield: It is our view, and the view of the Newspaper Society, that at a national level, when they are reviewing the national landscape, it is okay then to take regional players into account, but it does not mean that you then look at plurality on a region-by-region basis.

Baroness Scotland of Asthal: No, but the current recommendation would appear to be—I am a horrible little lawyer—that if you exclude something you cannot take it into consideration. That is why there is a bit of anxiety about excluding it because it says then, “It does not matter whether it is negative or positive. We are not looking at it. It cannot impact on our consideration. We cannot exercise our discretion to take into account any positive or negative”.
Lord Clement-Jones: We have briefly discussed the point about the caveat that Ofcom makes so that it can take into consideration the contribution to plurality of local and regional newspapers when it looks at the level of the UK or the devolved nations, and we talked briefly about the Scotsman. What do you think it means by that? Do you think there is a potential impact on UK plurality? Is it not rather peculiar that it talks purely about the contribution, the positive aspect, when I suppose there could in theory be a detriment if all the regional newspapers, say, were in the hands of one company?

Mr Highfield: No, because not all the regional newspapers have a national agenda. That is the thing. All the regional newspapers have a hyper-local message, hyper-local journalists and a hyper-local editor. I cannot stress this strongly enough. It is the same message you are getting from all of us no matter what our size is. We have no control editorially over the message at a local level, so it does not really matter if you own one, 10 or 100 papers. You could not corral them all into a “vote Tory” agenda. It is not the way the local press works and it is not the purpose of local press, and I do not think there has ever been a headline that would look anything like that anyway. I do not think that at a national level you would need to look at ownership as being a detriment to plurality.

Baroness Deech: Is it not the case that local papers spend a lot of time on schooling, education, transport and planning, and all those things from time to time are very political at a national level?

Mr Highfield: But we always take a local view.

Lord Clement-Jones: Do you agree that therefore we must only talk about the positive? As Ofcom are really saying, if they do not have this review at local or regional level but they do take the regional media into account when it comes to looking at UK plurality, that is only taking the positive aspects into account?

Mr Highfield: I think the Scotsman adds to the plurality of media in Scotland. In the absence of the Scotsman, you might deem there to be enough other players there in the market, but I do not think an over-burdensome framework on the commercial side that caused us to stop publishing the Scotsman would be in anyone’s interest. We are on the edge of a very fragmented, fragile recovery here and I think we are all, to be honest, very frightened of anything, whether it is Leveson putting in place a regime that could cost us dearly in vexatious claims or a regulatory overhead or any burden.

Lord Clement-Jones: Or local television, indeed.

Mr Highfield: Indeed, any state intervention that has an inadvertent detrimental effect on a very fragile recovery in the regional media.

Baroness Fookes: Could we now look at plurality policy from a totally different angle? Let us assume you are standing outside of these requirements. Do you have any views, as regional and local media, as to how it should operate at the national level? Do you have any views as to how it might be reformed? We have had lord only knows how many suggestions.

Mr Highfield: I do not.

Mr Jeakings: I am afraid there is a very blunt answer to that, which is no, I do not.

Ms Allinson: I really do not think I know enough about it.

Mr Jeakings: It is way outside my area of expertise.

Ms Allinson: There were a list of options here, but I would not know enough to really comment, I am sorry.
Baroness Fookes: If you were not prepared to offer any suggestions as to how these reforms might be put through, do you have any ideas about who should be responsible for whatever regime is put in place, such as a Minister or a regulator?

Mr Highfield: Personally, again, I do not have a view on that.

Ms Allinson: The problem is that there are several different regulators, are there not, for different media? So I am not sure there would be any one regulator that could do it.

Baroness Fookes: No. There could be a new regulator altogether who does not fit any of the current arrangements, but I think I can see that you are not happy on this, so maybe we should move on.

Ms Allinson: I am sorry.

The Chairman: I sense there is some reluctance to commit a view on something you do not feel is directly relevant to your evidence, so shall we move on?

Q351 Baroness Healy of Primrose Hill: You have argued strongly that you believe that the local media plays an important role and will continue to exist, which is good. There are a number of evidence submissions, such as that from the Media Standards Trust, that argue that there is no evidence to suggest that the decline in local and regional media will be reversed, except in specific areas such as large cities, without some public, private or third sector intervention. How do you respond to the proposal that plurality policy should focus more on positive promotion of diversity and market entry than prevention of merger, and are there any good examples of this working? How do you guard against state influence? That is a rather long question.

Mr Highfield: I would definitely support the loosening of any burdens that stop us moving forward to commercial arrangements to consolidate the industry. I do not know whether I speak for my colleagues, but I am not sure that state intervention would work or is needed in the regional newspaper industry.

Mr Jeakings: I am quite clear that we do not want state intervention at Archant. We do not feel that would be helpful and we think it would be fraught with all sorts of dangers.

Mr Highfield: There are things you can do to help.

Mr Jeakings: There are. Relaxing the merger regime for local papers, for example, and getting the OFT to take a broader view of who competes with whom would be very helpful. Stopping some of the BBC’s more adventurous forays into local media would also be helpful.

Mr Highfield: And a clearer relationship—

Mr Jeakings: And a much clearer relationship, yes.

Mr Highfield: —where they would help by carrying content from us on their products, on their news sites, on their local radio, and where they would link to us, so a very symbiotic relationship. In fact, it was something that was recommended under the Philip Graf review and subsequently but has never really come to pass.

Mr Jeakings: It has proven to be very hard to make it happen.

Mr Highfield: It has, but that is an easy win, a very clear set of guidance on the BBC as to where they should not park their tanks but where they should collaborate. We can be the hyper-local engagement vehicle for debate, for plurality of voice, feeding that up into the BBC, and they can bring some national and larger regional attention to issues and then drive traffic down into us. There is the provision of local council newsletters.
Mr Jeakings: Exactly, and stopping local council newsletters competing unfairly with us, which Eric Pickles made a statement on yesterday, I think. We do not feel that we get our fair share, whatever that means, of government and public body advertising.

The Chairman: Can you say what that is?

Mr Jeakings: More than we get at the moment. As we have said already, we are a very trusted medium. There are surveys that indicate that we are the most trusted medium in the UK, and yet we get less than we would expect of government advertising. I do not have a precise number so I am going to stop waffling, but we feel it should be higher.

Mr Highfield: But since the COI was broken up, the government spend with regional press has fallen quite considerably.

Q352 Baroness Deech: I am a bit puzzled as to why you object to the BBC and other journals or websites. Are we not all in favour of plurality?

Mr Highfield: Why do I reject them?

Baroness Deech: Yes. You just said, “BBC, get your tanks off our territory”, and so on.

Mr Highfield: No. In their review they have been guided by the BBC Trust to up the quality of their local sites. Having been at the BBC on the board for eight years, I know that the BBC’s response to that quite often is to get in the tank and put your helmet on. What we would like them to do to improve the quality of their sites is to engage with regional media so we can provide more of the granular content that their sites could have with links to us. Then everyone wins: the quality of their sites goes up and we get traffic driven from the BBC. The alternative is that they think it is their role to get hyper-local and granular down from the 50-regional level that they operate at into the several hundred regions, but that is our territory. At that point, they could bring quite a damaging impact to our nascent websites, which we are pinning our future on. That is all.

The Chairman: Thank you. We have gone on much longer than we had originally planned, so thank you for being tolerant about that. We are coming to an end, but I would like to ask each of you whether there is anything you would like to say to us that you have not already said that you think is important from our point of view. I just wanted to give you a chance to say anything that we have not covered before that you would like us to hear.

Mr Jeakings: I think the key messages are that we have been through difficult times. We think there is a strong future. We employ more journalists across the country than any other medium and we have growing audiences, contrary to the propaganda that you read in the press.

The Chairman: Anything else?

Mr Highfield: Yes, reports of our death are much exaggerated. There is a role that we can play to help a number of government initiatives, whether it is Digital Britain or any other, but we do not need intervention help. We do not need state handouts, but there are certain things that could be done to help the regional press maintain that level of plurality and keep doing what we do so well, which is holding local elected officials to account and giving people a voice in their community.

Mr Jeakings: And certain things that could not be done that might be done.

The Chairman: Right. Geraldine, do you want to say anything?
Ms Allinson: No. I was just going to say thank you very much for listening to us and thank you for looking at this.

The Chairman: No, not at all. Thank you very much for coming and giving us the benefit of your considered and extensive experience.
Introduction

1.1 Ofcom welcomes the Lords Communications Committee's invitation to provide written evidence to its inquiry into media plurality.

1.2 As the United Kingdom’s independent regulator for the communications sector, Ofcom’s principal duties in carrying out our functions (set out in section 3(1) of the Communications Act 2003) are:

- to further the interests of citizens in relation to communications matters; and
- to further the interests of consumers in relevant markets, where appropriate by promoting competition.

1.3 Most recently, and of greatest relevance to this inquiry is the advice we provided to Jeremy Hunt, the then Secretary of State for Culture, Olympics, Media and Sport. This followed his request in October 2011 to Ofcom to advise on the feasibility of measuring media plurality across platforms. The Secretary of State 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?

1.4 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.

1.5 We submitted this advice in June 2012. He asked that we provide our advice to the Leveson Inquiry, and as an input into the Government’s Communications Review.

1.6 Following the submission of this report, the Secretary of State asked Ofcom for further advice, in the form of supplementary questions. The questions fell into three categories:

1. Questions relating to policy implementation
• What is the scope and timescale of a plurality review? Could the review be done in no longer than 12 months? What might be an appropriate timescale for the implementation of any remedies?

• Can a plurality review work effectively with existing provisions concerning mergers and avoid any risk of double jeopardy?

• Which body or bodies should have responsibility for making the final decision regarding the application of any remedies?

• What criteria should be used to define which online news providers should be included in a plurality review?

2. Questions relating to new policy areas

• What are the benefits, risks and other considerations associated with possible remedies?

3. Further thinking on questions answered in our June 2012 report

• What are the advantages and disadvantages of additional guidance on levels of sufficiency and how might these be made to work?

• What circumstances would provide sufficient certainty to merit the removal of the 20/20 rule?

• What are the circumstances under which a market exit might trigger a review?

1.7 Our answers to these questions were submitted to the Secretary of State, then Maria Miller, in September 2012.

1.8 We went as far as we felt was appropriate in answering the questions. There were some instances where we concluded that the issue was a matter for government and Parliament.

1.9 For this reason, the evidence in this submission draws largely verbatim on the advice given in the two reports we submitted to the Secretary of State (Measuring Media Plurality and Supplementary Advice on Plurality).

1.10 This evidence also draws on the contents of two Public Interest Tests reports that Ofcom has published:

• Report into the public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation (2010); and

• Report into the public interest test on the acquisition of Guardian Media Group’s radio stations (2012).

1.11 Other reports to which we refer are referenced in footnotes.
Section 1

Public policy objectives and defining media plurality

Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

In the absence of a definition of plurality in statute, Ofcom have provided [a] working formulation. Is this the best definition, or should it be improved?

1.12 This text is taken from paragraphs 3.1 – 3.5 of Ofcom’s Measuring Media Plurality report.

Objective for plurality

1.13 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".\(^{269}\)

- 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”.\(^{270}\)

- 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”.\(^{271}\)

1.14 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”.\(^{272}\)


\(^{271}\) Lord Mcintosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard.

Ofcom – written evidence

• 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”.273

1.15 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.

Ofcom’s formulation

1.16 Ofcom has concluded that plurality contributes to a well-functioning democratic society - through the means of:

• Informed citizens - able to access and consume a wide range of viewpoints across a variety of platforms and media owners.

• Preventing too much influence over the political process – exercised by any one media owner.

What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?

1.17 This text is taken from paragraphs 3.11 – 3.15 of Ofcom’s Measuring Media Plurality report.

1.18 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.274

1.19 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”.

1.20 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

273 Westminster Hall debate on regulation of media ownership, 14 September 2011.
274 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).
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.

1.21 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.footnote{275}

- 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.

1.22 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.

---

275 See Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation, Figure 4.
Section 3
Triggers for a review of media plurality

What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic?

Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

1.23 This text is taken from paragraphs 5.56 to 5.79, 5.4 to 5.33 and 5.80 to 5.87 of Ofcom’s Measuring Media Plurality report.

Triggers

1.24 As part of our advice to the Secretary of State contained within the report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation, 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.

1.25 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.

1.26 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

1.27 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.

1.28 Both of these approaches are objective, and would form an apolitical and independent basis on which to trigger a plurality review.

1.29 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.

1.30 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.

1.31 Metric-based triggers also suffer from two important practical limitations:

a) Agreeing a simple set of metrics. Starting from the principles (see paragraph 2.11 of Measuring Media Plurality), 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 paragraph 4.6 of Measuring Media Plurality), so a metrics trigger could limit itself to a threshold for each.

b) 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.

1.32 We therefore favour a time-based trigger. This provides a high degree of certainty, simplicity and transparency to the market.

1.33 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**
1.34 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.

1.35 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.

1.36 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.

1.37 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.

1.38 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.

1.39 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.
1.40 Therefore, there are trade-offs between exit and time-based triggers. Without an exit trigger there is a risk 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.

1.41 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

1.42 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.

1.43 To trigger a review of plurality, a transaction must involve two enterprises\(^{276}\) “ceasing to be distinct”\(^{277}\); and meet a jurisdictional threshold — either turnover based (£70 million) or based on share of supply/demand (25%).

1.44 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 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.

1.45 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.

1.46 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 in *Measuring Media Plurality*), 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

\(^{276}\) An “enterprise” is the activities, or part of the activities, of a business.

\(^{277}\) 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).
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 of *Measuring Media Plurality*, 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.

1.47 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.

### Measuring news media plurality

1.48 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.

1.49 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**

1.50 This category of metric captures the number of providers available at the point of consumption.

1.51 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. We think it right for this broader idea of “plurality” to be retained in any future framework.

1.52 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.

1.53 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 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.

1.54 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.

1.55 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

1.56 Consumption measures capture the number of people using news media, and the frequency or the time they spend consuming it.

1.57 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.

- 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.

1.58 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).

1.59 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.

1.60 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.
1.61 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. 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.

1.62 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 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.

1.63 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.

1.64 While not perfect, these consumption measures provide a reasonable proxy for the different elements of plurality, and are practical to measure.

1.65 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.

279 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.
1.66 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**

1.67 Impact metrics need to capture the influence of news content consumption on how people's opinions are formed.

1.68 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.

1.69 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.

1.70 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.

1.71 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*
1.72 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.

1.73 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.

1.74 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.

1.75 From a regulatory perspective, broadcasters are subject to impartiality requirements while newspapers and websites are not. As we set out in paragraph 4.17 of *Measuring Media Plurality*, 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**

1.76 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 1.

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

- at a retail or wholesale level\(^{280}\); and

---

\(^{280}\) 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
• by demographic or location (e.g. by age, by nation).

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.
**Figure 1: Recommended measurement framework**

<table>
<thead>
<tr>
<th>Category</th>
<th>Metrics</th>
<th>Description</th>
<th>What it indicates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Availability</td>
<td>Number of providers</td>
<td></td>
<td>An indication of the potential for diversity of viewpoints.</td>
</tr>
<tr>
<td>Consumption</td>
<td>Reach</td>
<td>By platform – TV, Radio, Newspapers, Internet</td>
<td>An indication of the diversity of viewpoints disseminated.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By provider within platform</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cross platform</td>
<td></td>
<td>As above. Potentially useful in assessing a cross media merger. It establishes the capability for each provider to reach the population regardless of platform.</td>
</tr>
<tr>
<td>Share of consumption</td>
<td>Within platform – TV, Radio, Newspapers, Internet</td>
<td></td>
<td>An indication of the potential concentration in patterns of consumption.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>By provider within platform</td>
<td></td>
</tr>
<tr>
<td></td>
<td>HHI within platform</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Cross platform – TV, Radio, Newspapers, Internet</td>
<td></td>
<td>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.</td>
</tr>
<tr>
<td></td>
<td>Cross platform by provider</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>HHI cross platform</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multi-sourcing</td>
<td>By platform and cross platform</td>
<td></td>
<td>An indication of the extent to which consumers are sourcing their news from one or a range of sources.</td>
</tr>
<tr>
<td>Impact</td>
<td>Personal importance</td>
<td>By platform</td>
<td>Provides one proxy for measuring the potential to influence opinion.</td>
</tr>
<tr>
<td>Contextual factors</td>
<td>A range to be considered dependent on the situation</td>
<td>Examples include Internal plurality, Internal governance processes, Editorial policy, Impartiality requirements, Market trends and future market developments</td>
<td></td>
</tr>
</tbody>
</table>

1.78 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.

**The role of discretion**

1.79 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.

1.80 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
Ofcom – written evidence

politicisation of the process, while regulatory discretion can risk confirmation bias.

1.81 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.

1.82 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.

1.83 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.

1.84 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.

1.85 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.

1.86 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.

Section 3

Sufficiency and gateways

For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications Act 2003?

How should the growing role played by digital intermediaries acting as gateways to content be taken into account?

1.87 This text is taken from paragraphs 5.113 to 5.123 of Ofcom’s Measuring Media Plurality report.

1.88 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”.

1.89 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\(^\text{281}\). 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\(^\text{282}\).

1.90 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, having regard to any change in plurality that arises as a result of the acquisition.”\(^\text{283}\)

\(^{281}\) British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform [2010] EWCA Civ 2, at paragraph 87http://www.bailii.org/ew/cases/EWCA/Civ/2010/2.html

\(^{282}\) Ibid at paragraph 104.

\(^{283}\) 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.
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\textsuperscript{284}) gave evidence at the Leveson Inquiry, he said:

\textit{“the first part of protecting plurality or supporting plurality is being crisp around what plurality might be sufficient”}\textsuperscript{285}.

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\textsuperscript{286}), 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.

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\textsuperscript{287}.

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 of \textit{Measuring Media Plurality}:

- 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.

\textsuperscript{284} Former executive chairman of News International and chairman of BSkyB.
\textsuperscript{286} A SSNIP test refers to a “small, but significant, non-transitory increase in price” used in some competition investigations.
\textsuperscript{287} See Figure 3.5.5 on page 39 of Kantar Media’s quantitative research, “\textit{Measuring News Consumption and Attitudes}”. This study was commissioned by Ofcom during the formulation of the advice we gave in \textit{Measuring Media Plurality}. 
- 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.

1.95 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.

1.96 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.

1.97 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.

1.98 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.

1.99 Additional advice on guidance on sufficiency is found in paragraphs 7.1 to 7.28 of our Supplementary Advice on Plurality.

Digital intermediaries

1.100 We did not consider the role of digital intermediaries acting as gateways in our advice to Secretary of State. We were, however, asked to consider whether online providers should be included in any assessment of plurality in Ofcom’s Measuring Media Plurality report, and that advice is set out below.

1.101 This text is taken from paragraphs 5.34 to 5.55 of Ofcom’s Measuring Media Plurality report.

Definition of online news providers

1.102 We have been asked whether a framework for measuring plurality should include websites.
1.103 We have interpreted this question broadly to include internet usage regardless of device (PC, tablet, mobile), incorporating both websites and applications.

1.104 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.

1.105 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**

1.106 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.

1.107 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.

1.108 Ofcom’s report on measuring media plurality

- 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.

1.109 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.

1.110 However, online news use is steadily growing. In 2002, only 15% of the population had ever used online news, growing to 27% in 2007. The current figure of 41% represents a significant further increase.

1.111 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. However, the BBC website has a significant lead over all online sources, with 57% of online news users claiming to use it.

1.112 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.

1.113 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.

---

289 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.

1.114 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.

1.115 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.

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

1.117 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.

1.118 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.

1.119 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

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

---

290 This may be achieved either by primary legislation or by order under s.58(3) Enterprise Act 2002.
291 See Report into the public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation, Figure 11: Share of page views and minutes for top 50 news sites by wholesale news provider in October 2011.
292 UK Online Measurement (UKOM) is the UK’s industry-recognised online media measurement for advertisers.
1.121 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 currently the appropriate measure, and UKOM should be the source in the immediate future to measure online consumption293.

1.122 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.

1.123 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.

1.124 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.

**How should ‘sufficient plurality’ be measured?**

1.125 The advice we provided to Secretary of State on sufficiency is contained in our answer to the question starting at 1.87.

1.126 We note that Lord Justice Leveson, in his report published in November 2012, recommended that:

   “...the levels of influence that would give rise to concerns in relation to plurality must be lower, and probably considerably lower, than the levels of concentration that would give rise to competition concerns.”294.

**Should the BBC’s output be included in a review of it?**

1.127 This text is taken from paragraphs 5.135 to 5.155 of Ofcom’s *Measuring Media Plurality* report.

**The BBC’s role and regulatory context**
1.128 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.

1.129 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.

1.130 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\(^\text{295}\).

1.131 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.

1.132 The BBC is estimated to have spent c£430m\(^\text{296}\) 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.

The BBC’s position in the market today

1.133 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.

1.134 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.

1.135 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),

\(^{295}\) [http://www.bbc.co.uk/aboutthebbc/insidethebbc/whoweare/publicpurposes/citizenship.html](http://www.bbc.co.uk/aboutthebbc/insidethebbc/whoweare/publicpurposes/citizenship.html)

\(^{296}\) Source: Mediatique report for Ofcom 2012.
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.

1.136 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?**

1.137 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).

1.138 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.

1.139 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.

1.140 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**

1.141 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.

1.142 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.

1.143 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.

1.144 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.
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.

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.

The public policy goals set out above and in paragraph 3.5 of *Measuring Media Plurality* – 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.

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.

**How can internal plurality be sensibly measured against external plurality?**

In our advice to Government on internal plurality, Ofcom considered both the question of internal plurality at the BBC (see paragraph 1.141 of *Measuring Media Plurality*), and in relation to the objectives of relevant remedies (see paragraphs 2.6 to 2.9 of *Measuring Media Plurality*).

We have defined external plurality as the range and number of persons having control of media enterprises in the context of their ability to influence opinions and control the agenda. We have defined internal plurality as 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.

In our advice to the Secretary of State on measuring media plurality, we said that plurality needs to be considered both within media enterprises (i.e. internal plurality) and between media enterprises (i.e. external plurality). We noted that 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. We identified internal plurality as an area where non-quantitative factors will play an important role.

While the nature of internal plurality is a matter which is not easily quantified, it is possible to consider the degree of ownership control and draw evidenced conclusions about the degree to which internal plurality may be relied upon. The
Court of Appeal’s judgment in British Sky Broadcasting plc v The Competition Commission[301] makes clear:

“when it comes to assessing the plurality of the aggregate number of relevant controllers and to considering the sufficiency of that plurality, the [authorities] may, and should, take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another, whether it is a case of deemed control resulting from material influence ... or rather one of actual common ownership or control.”

[301] British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform [2010] EWCA Civ 2
http://www.bailii.org/ew/cases/EWCA/Civ/2010/2.html
Section 5

Remedies

What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

2.1 This text is taken from paragraphs 6.3 to 6.11 of Ofcom’s Supplementary Advice on Plurality.

2.2 In summary, a range of remedies might be relevant to address plurality concerns identified as part of a review process. They can be grouped into five broad categories:

- structural remedies that raise levels of external plurality;
- behavioural rules that may help to increase levels of internal plurality;
- behavioural rules that impose standards on providers of news;
- behavioural remedies that improve access by citizens to providers of news; and
- positive interventions to encourage more news provision.

2.3 There is unlikely to be a ‘one size fits all’ approach. It is firstly for Parliament to consider the set of remedies which should be available in principle within a new framework, and it is then for the decision-maker tasked with selecting and implementing remedies to determine which of these is best suited to a specific set of circumstances.

Considerations for Government/Parliament

1. Categories of remedy and their suitability to address plurality concerns

2.4 We defined a plural market in our June report as one with the following outcomes:

- ensuring there is a diversity of viewpoints available and consumed across and within media enterprises; and

- preventing any one media owner or voice having too much influence over public opinion and the political agenda.

2.5 A plurality review might conclude that there are sufficient plurality concerns to justify imposing remedies on a whole industry, or on one or more specific entities. A range of remedies might be relevant.

2.6 The possible remedies have been grouped below into five broad categories. However, we note that these categories are not mutually exclusive, and that the distinctions between their boundaries are blurred.
Structural remedies that raise levels of external plurality: These remedies require the divestment of all or part of an enterprise, typically in order to mitigate plurality concerns from one media owner having too much influence. In some cases, they aim to deliver long-term change by altering the underlying incentives within an organisation. They are best suited to situations where there are substantial plurality concerns stemming from too much influence by one organisation.

Behavioural rules that may help to increase levels of internal plurality: Such remedies leave the organisational structure in place and aim to create rules that create conditions for internal plurality, typically by ensuring that individual titles or programmes have editorial independence, despite being under common ownership. Their effectiveness depends on there being incentives for the regulated entity to comply, as well as robust and effective monitoring and enforcement. They are best suited to circumstances where there is too much influence by one organisation, but where it is disproportionate or otherwise inappropriate to impose structural remedies.

Behavioural rules that improve standards: Such remedies aim to improve standards of practice within news providers. They might mitigate potential concerns around too much influence being exerted by any one media organisation, typically by securing fairness (in terms of how news providers report issues) and accuracy (in terms of the completeness of what is reported). They may be suited to market-wide issues, to improve levels of trust in news provision and help secure a diversity of viewpoints that meet minimum safeguards and standards – although their introduction would need to balance the risk that they bring uniformity to news provision. Alternatively, they could be targeted to particular providers to address specific plurality concerns.

Behavioural rules to improve access. Must-carry obligations could require a distribution platform to distribute the content of news providers meeting specific criteria. Must-offer obligations could be used to ensure that news providers distribute their content via any platform meeting specified criteria. The general aim of such obligations is to ensure that news content is widely distributed. They can be effective in reducing the influence of a particular distribution network if it is using its position as a gatekeeper to discriminate against particular content providers.

Positive interventions to encourage more news provision: These aim to help fill the gaps left by the market, typically in circumstances where the desired level of plurality is not commercially sustainable. They can take two primary forms: direct funding (e.g. grants, journalist funds) for news provision; and news and current affairs obligations (either required outright, or in return for implicit subsidies - ranging from gifted/reserved multiplex capacity to prominence for news content on electronic programme guides (EPGs) . Such interventions are best suited to situations where there are substantial plurality concerns due to commercial provision of multiple sources of news content being unsustainable.

The suitability of different types of remedy will depend on the nature and significance of the concerns, and whether they are caused by a single organisation or a more
general feature of the market (see Figure 2 below). In addition, for some of these remedies it may be hard to ensure effective implementation and compliance. These factors need to be taken into account on a case-by-case basis in deciding which remedies might be appropriate.

**Figure 2: Suitability of remedies, by nature and significance of plurality concerns**

<table>
<thead>
<tr>
<th>Nature of plurality concerns</th>
<th>Organisational E.g. Too much influence</th>
<th>Market wide E.g. Lack of diversity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structural remedies that raise levels of external plurality</td>
<td>• Clean and relatively simple • Significant intervention - requires strong evidence</td>
<td>Positive interventions to encourage news provision • Promotes bottom up plurality • Need strong case for use of public funds/subsidies • Risk of perverse incentives/crowding out</td>
</tr>
<tr>
<td>Behavioural rules to increase levels of internal plurality</td>
<td>• Less onerous - leaves organisation structure in tact • Require ongoing monitoring</td>
<td>Behavioural rules that improve standards • Can be applied market wide or to individual organisations • Low cost initially but creates additional regulation requiring ongoing compliance</td>
</tr>
<tr>
<td>Behavioural rules to improve access</td>
<td>• Self-monitoring, as those seeking access complain when obligation not met • Can become outdated rapidly in light of market developments</td>
<td></td>
</tr>
</tbody>
</table>

2. **Examples of past remedies to address plurality concerns**

2.8 We set out a number of past or proposed remedies in the UK, which might be relevant in addressing plurality issues, in Annex 2. These include:

- NewsCorp/BSkyB (2011 – proposed but not implemented).
- Supply of national newspapers (1993).
- Public service broadcasting obligations on Channel 3 and 5 licensees (ongoing).
- S4C (ongoing).
3. **Assessment of remedies**

2.9 All remedies have their advantages and disadvantages, and trade-offs are inherent in any decision process. As illustration, we set out pros and cons of the different types of remedy below.

**Figure 3: Pros and cons of remedies and interventions**

<table>
<thead>
<tr>
<th>Remedy category</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Structural remedies that raise levels of external plurality</strong></td>
<td>• Offer clarity and certainty. • Simple and clean solutions. • Can deliver long-run benefits. • Do not require ongoing monitoring.</td>
<td>• May be ineffective if divested interests are commercially unsustainable. • The risk that a structural remedy may be imposed can act as a disincentive to investment and innovation, and can create perverse incentives (e.g. collusive behaviour on the part of a stronger provider to avoid threatening the existence of a weaker one). • Represent significant regulatory intervention. They are usually irreversible and can involve significant transition and transaction costs.</td>
</tr>
<tr>
<td><strong>2. Behavioural rules that may help to increase levels of internal plurality</strong></td>
<td>• May be less intrusive. • More proportionate.</td>
<td>• Require potentially complex and costly ongoing monitoring/enforcement. • Experience suggests that they are often perceived to be lacking in credibility.</td>
</tr>
<tr>
<td><strong>3. Behavioural rules that enforce standards</strong></td>
<td>• Clear set of rules. • Objective. • Gives market certainty of standards expected.</td>
<td>• Require ongoing monitoring/enforcement. • Risk that rigid enforcement of some standards could reduce diversity.</td>
</tr>
<tr>
<td><strong>4. Behavioural remedies to secure access</strong></td>
<td>• Targeted remedy to address concerns re discrimination by gatekeepers. • Self-monitoring, as those seeking access complain when obligation not met.</td>
<td>• Susceptible to gaming. • Can become outdated in light of market developments.</td>
</tr>
<tr>
<td><strong>5. Positive interventions to encourage more news provision</strong></td>
<td>• Can target specific concern. • Positive incentives can be used to promote plurality across the market.</td>
<td>• Require public funds/subsidies. • Careful design required to minimise effect of subsidies on market-based provision.</td>
</tr>
</tbody>
</table>
• Do not penalise success in the way that rules and structural remedies might.

2.10 There is unlikely to be a ‘one size fits all’ approach, as the nature of the remedies necessary will differ depending on a range of factors, including the specific plurality issues identified, and the structure of the market sector in question, noting in particular issues of commercial sustainability.

2.11 It will be for the decision-maker tasked with selecting (and implementing) remedies to address the specific plurality concerns identified, on a case-by-case basis.

How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?

2.12 This text is taken from paragraphs 5.124 to 5.131 of Ofcom’s Measuring Media Plurality report.

2.13 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.

2.14 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.

2.15 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.

2.16 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.

2.17 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.
2.18 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.

2.19 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.

2.20 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.

With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

2.21 This text is taken from paragraphs 4.3 to 4.15 of Ofcom’s Supplementary Advice on Plurality.

2.22 We believe it is properly for Parliament and the Government to determine the most appropriate decision-maker(s) for reviews of plurality, and to describe the role of politicians versus regulatory bodies.

2.23 However, to illustrate the trade-offs inherent in the choice of decision maker we set out below some matters Parliament and the Government might wish to consider.

Considerations for Government/Parliament

1. Decision-making in the existing merger review process

2.24 Our starting point is the existing merger process. We provide further details in our answer to question a) and in Annex 1 as to the operation of the existing merger review process.

2.25 This process involves a number of decision points for the Secretary of State:

- Trigger: The Secretary of State decides whether to intervene in a merger and, if so, which public interest consideration(s) to ask Ofcom to explore.

- Reference: The Secretary of State, having received advice from Ofcom as to whether the threshold for a reference is met (i.e. whether or not the merger might be expected to, or does, operate against the public interest), decides whether or not to refer the merger to the Competition Commission for a second-stage review.
Ofcom – written evidence

- Finding: The Secretary of State, having received advice from the Competition Commission, decides whether or not to make a finding that the merger operates, or may be expected to operate, against the public interest.

- Remedies: The Secretary of State, having received advice from the Competition Commission, decides whether or not to impose remedies, and what those remedies should be.

2.26 Overall, this process has well-versed pros and cons. In summary:

- Pros: Discretion not to carry out a review of mergers which are unlikely to have a material impact on the public interest. Checks and balances provided by two review stages and the involvement of two different and independent regulators.

- Cons: In practice, because of the low thresholds for both trigger and referral, discretion is limited, and the first stage does not act as much of a filter. Therefore, the involvement of multiple regulatory bodies risks elongating the process and creating some duplication of effort. For small mergers, this regulatory burden can act as a deterrent to mergers which might otherwise be beneficial.

2.27 As noted in our June report, we believe that it is important to maintain a discretionary trigger for public interest merger reviews, in order to minimise the burden on industry.

2.28 Thus far, intervention notices have been issued only in relation to three media mergers. Where the Secretary of State has considered intervening, she has received or invited representations from interested parties – in other words, there has been some evidence gathering. However, she is not required to publish reasons for deciding not to intervene, or to explain why the particular public interest consideration specified has been chosen. The reasons given for deciding to intervene have been limited to stating that the test for intervention has been met.

2.29 In only one case (Sky/ITV) has a decision to refer a media merger to the Competition Commission on public interest grounds led to a completed review. Ofcom undertook the first-stage review in 40 days. As per our recommendation, the Secretary of State referred the case to the Competition Commission. Following this two-stage review (completed in approximately 10 months), the subsequent judicial review process relating to the divestment remedy for competition issues took 2 years to complete.

2. Decision-making in the new periodic review process

2.30 The proposed periodic review is rather different in character from the existing merger process.

- The initiation of the periodic review would be automatic. There would therefore be no need for discretion at this point of the process.

[302] In News Corporation/Sky, a reference was made to the Competition Commission but the parties dropped their plans to merge shortly after.
• There would also be no need for a stage 1 review to act as a filter before a full stage 2 review.

• The proposed periodic review of plurality is therefore broadly equivalent to a stage 2 merger review.

• The only point at which political discretion might be exercised in this process is in relation to the final decision.

3. Decision-making and the exercise of discretion

2.31 As summarised above, there will continue to be a requirement for a degree of discretion in considering which mergers are subject to a plurality review. Furthermore, the final decisions, in both merger reviews and periodic reviews, will require a significant degree of judgement, due to the subjective nature of any assessment of plurality. This amounts to a further exercise of discretion.

2.32 We noted in our June report that discretion comes in two forms: from politicians or from the reviewing (or another regulatory) body. We acknowledged that both forms of discretion have advantages and disadvantages; political discretion can bring perceived politicisation of the process, while regulatory discretion can risk confirmation bias.

2.33 The supplementary question we have been asked focuses specifically on the risk of politicisation. It acknowledges the recent debate about the role of the Secretary of State in decisions on plurality, and expresses an interest in exploring alternative options.

2.34 Our view is that the arguments remain finely balanced. One the one hand, we recognise the risks associated with politicisation. On the other hand, where a decision requires a high degree of judgement, it may still be more appropriate for a democratically-elected decision-maker to exercise the resulting discretion, rather than an independent regulatory body. We remain of the view that this choice is for Parliament to make.

Section 6

International considerations

To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

3.1 Debate outside of the UK on media pluralism can provide useful context. During the formulation of our advice to Secretary of State, Ofcom remained abreast of developments in a number of countries such as Germany, Norway and Australia.

3.2 However, the factors relevant to a plurality assessment may be particular to the country under consideration, and may well vary between jurisdictions. These
variations might include (for example) the relevance of online news media content, given different levels of internet-enabled device penetration.

3.3 In our Measuring Media Plurality report, we considered plurality primarily in the context of a UK-wide news media market. We acknowledged that the conclusions may vary at the level of the devolved nations, and in relation to local media.

3.4 In our report on public interest test on the acquisition of Guardian Media Group’s radio stations, we noted that as a contextual factor in our setting out of data relevant to the assessment of news media plurality in Wales and in Scotland (where the merger had an impact):

Wales is a distinct democratic unit. Decisions taken by the Welsh Assembly have a significant bearing on a wide range of public policy issues. In assessing the plurality of persons with control over media enterprises, we have given weight to the need for Welsh audiences to have access to a wide range of sources of nations news and current affairs, from a plurality of media owners.

and that:

Scotland is a distinct democratic unit. Decisions taken by the Scottish Parliament have a significant bearing on a wide range of public policy issues (covering for example, health, education and transport). In assessing the plurality of persons with control over media enterprises, we have given weight to the need for Scottish audiences to have access to a wide range of sources of nations news and current affairs, from a plurality of media owners.

What should the UK learn from international approaches to media plurality?

3.5 Ofcom keeps under review developments in other countries.

3.6 Ofcom’s advice to Government examined briefly the questions of plurality review scope, and the plurality-related precedents set by international cases:

- 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 (see paragraph 3.13 of Measuring Media Plurality).

- 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 (see paragraph 5.117 of Measuring Media Plurality).

1 May 2013
Mr Steve Unger, Director of Strategy, International, Technologists and Economists, Ofcom, and Mr Steve Gettings, Director of Strategy, Ofcom

Q394 The Chairman: We are a minute or two late starting, so I apologise to you both, Steve Unger and Steve Gettings, for that delay. Thank you very much for coming and answering our questions. Before we start, I will see whether you want to make any introductory statement. If you could tell us just who you are for the purposes of the record and everything, that makes it easier. Is there anything you would like to start off with?

Mr Unger: Shall I start by introducing ourselves?

The Chairman: Yes.

Mr Unger: I am Steve Unger. I am the Group Director, Ofcom, responsible for the group which deals with Ofcom’s strategic approach to regulation and, in particular, the work we have done on media plurality.

Mr Gettings: I am Steve Gettings. I work in Steve’s group and I am a Strategy Development Director.

Mr Unger: I may just make a very brief introduction?

The Chairman: Of course, yes.

Mr Unger: It is worth very briefly recapping our involvement in this debate. That goes back to particularly the News Corp/Sky merger, where in the reports that we produced in the phase 1 assessment of that merger we made two recommendations. The first was that we suggested that there may be a concern raised by that merger in relation to plurality. We therefore recommended that the merger be referred to the Competition Commission. That
is now history because, of course, as a result of subsequent events that merger did not proceed.

Separately, though, we also noted that there appeared to be a gap in the statutory framework for assessing plurality, in that it was possible for plurality concerns to arise by organic growth and not be assessed unless there was a merger. We felt that that was a potential concern. I am sure you are aware that that issue then got picked up. We were asked a series of questions in two rounds around the detail of how one might address those concerns. I will not elaborate on that.

I just want to make two remarks in relation to that, though. The first remark I would like to make is that in relation to many of the questions that were raised, there were always two sides to the argument. We recognised on some of the most difficult questions—for example, the scope of a plurality assessment, for example the question of triggers versus periodic reviews—that you could make arguments on both sides. In the end, we applied some judgment and we made a set of recommendations as to what we thought the right answer was. I would refer you back to the original report where we did emphasise that you could make arguments on both sides.

I would also emphasise that there were some areas where ultimately we felt that it was not right for us to make those judgments. We felt that there were some areas of judgments which really were for Parliament and for Government to make rather than for us, and that remains the case. If you will forgive me, there may be some questions where I will still be unable to provide any further help on because we feel that this is for Parliament, but I will try and give the assistance that we can.

The Chairman: I can accept that there are some things that become so much a matter of policy that they cease to be matters of regulation, and obviously it is for DCMS and the Government to work out what that policy is.

Mr Unger: That is right.

The Chairman: Perhaps if I might just recap, to go back, you said in your advice to the Secretary of State that you felt that periodic plurality reviews were the right starting point for looking at this in the future. For our benefit, could you recap the main reason or two why you thought that other options did not really meet the case?

Mr Unger: The main choice was in how you would trigger a review. We recognised that one could trigger a review either through the lapse of time or through some form of metric. We recognised that both were objective means of triggering a review, so had some merit. There were some merits to a review triggered by a metric because that review might be targeted in time to the point where the concern arose, but we were concerned about the idea that the market might be under perpetual review, if you like. We felt that a periodic review gave more certainty to industry players as the point in time when there would be a review, as opposed to the alternative where the action of one company, for example, exiting the market or growing share might subject the whole market to review. We felt that sense of perpetual review was just not a good thing for the market. It was particularly that issue of certainty, that once in a while there would be a review but meanwhile people could get on with their business.

The Chairman: Yes. You do not want permanent revolution.

Mr Unger: That is right.
Q395  **Lord Clement-Jones:** You have given the top reason, which is the certainty point. Are there other reasons why periodic review is the one that you favour?

**Mr Unger:** There is another subsidiary reason, which is really to do with measurement. When one carries out a review, where we go to in terms of measurements is that there is no single metric that captures everything. An assessment would have to take account of a range of different metrics and also qualitative factors. You could do that if you looked at the market every few years, but you could not design a single trigger that would capture all of that.

The final point I would make is about the issue of discretion. One of the debates is around the exercise of discretion in making decisions. There is ultimately going to be some discretion when you come to decide remedies, but one of the benefits of a periodic review is, again, that there is no discretion. There is no decision-making process as to whether you should do a review. Every once in a while one just happens.

**Lord Clement-Jones:** On the other hand, the outcome of the review is quite discretionary at the same time if you are using a range of metrics.

**Mr Unger:** Absolutely. There were always two quite separate issues for us. One is the process for triggering a periodic review itself and then there is the question as to whether remedies should be triggered automatically as a result of the review. At one extreme you have this idea that there might be some sort of bright line cap on ownership, which has the merit of, I suppose, simplicity: everyone understands exactly what the rule is; there is no discretion. We felt that there were two concerns particularly around that approach. One, again, goes back to the measurement point: an assessment of plurality is far more complex than can be captured in a single metric, for the reasons I have just described. Secondly, we felt it was important that there was some flexibility to consider how one would act in particular circumstances. So to take a practical example, if one newspaper group was to exit the market in a way that put the market share of another news group above some cap, does that automatically trigger a divestment requirement of that other newspaper group, or should there be some opportunity to consider whether there are other alternative remedies which could address the concern?

**Lord Clement-Jones:** Understood, and I very much take the clarity of your approach or your answer, but there are those who feel that these kinds of reviews and monitoring exercises are not a very satisfying response to what is a major question of influence on UK democracy. It is quite a technical approach that you have taken, and yet this has real substance to it.

**Mr Unger:** We certainly feel the importance of this subject very strongly, and I would say that is precisely why it requires a proper examination. The subject is both too important but also somewhat complex for there to be, I suppose, a simplistic approach to it. I recognise that there is a slight risk that as a result we introduce too much complexity in the regulatory process and there is a balance to be struck there, but I do think we need a process which is somewhat more sophisticated than a binary cap.

Q396  **The Chairman:** Do you think there is a real risk that you cannot have a satisfactory metric that is generally comprehensible to the wider world?

**Mr Unger:** Yes, I think that is right. There are a number of measures, though, which can usefully be used, but they need to be assessed in the round. Steve, do you want to say something about that?
Mr Gettings: The way we set out a measurement framework is to think about the measures in terms of availability, consumption and impact on opinion forming. Across those categories, there are standard industry metrics which you are probably familiar with in television and radio, press and online. On top of that, in our public interest test for Sky/News Corp and for Global/GMG Radio and in the advice that we have already published, we also developed a cross-media metric that tried to get to a story around the degree to which consumers rely on news sources across platforms: in other words, the extent to which television plays a role in where consumers draw their news from versus online versus radio versus print media. There are newer metrics that we have helped to develop through the course of those projects I have described alongside very well-established metrics that are principally used to trade advertising inventory. The view that we took is in the round that all those metrics should play a role in the assessment across those three categories of availability, consumption and impact.

Lord Clement-Jones: It is quite ironic, though, because you are getting rid of the public service broadcast periodic reviews, are you not, and yet you want to introduce a periodic review in a totally different field?

The Chairman: I think that was the Secretary of State, to be fair, was it not?

Lord Clement-Jones: I am being slightly unfair.

Lord Razzall: If we are going to have a periodic plurality review approach, what are your views of the arguments for or against the so-called 20/20 rule?

Mr Unger: On the 20/20 rule I think it is worth separating two different issues. First, does the underlying concern that the rule was designed to address continue? What we said, particularly in the first round of advice, was that we think that it does, at least for now, in the sense that TV and newspapers remain probably the most important media to influence opinion, and therefore cross-ownership between those two media is an important issue. So the underlying issue seems to remain.

We recognise that that might change, particularly with the increased importance of online. So we were open to the idea that on a forward-looking basis there might be a different means of addressing the same set of issues. We were pushed on that in the second round of advice. In the first round we said that was really a matter for Parliament. In the end there was a trade-off where between certainty and flexibility it is really a matter for Parliament. In the second round we were pushed on that and asked under what circumstances might there be more certainty. We said that at the point of the first periodic review if one was to do the first periodic review and as a result of that a more holistic framework was put in place for considering media plurality, that might allow one to remove the 20/20 rule, but really you had to judge that at that point.

Q397 Baroness Deech: You told us something about your views on metrics and you have developed what you think would be good metrics. How much discretion do you think legislation should leave in your hands in determining which metrics are to be used?

Mr Gettings: We have set out a framework: availability, consumption, impact. Within that framework, it seems to us that a degree of discretion is desirable, not least because the fastest growing news media around, online, is still a relatively immature medium and so are the measures that underpin that. Over time, a reviewing body has to be in a position to take on board new measures as and when they arise, and that in turn demands a degree of discretion in the way that a review is undertaken.
Baroness Deech: What criteria would you use in choosing the metrics in a particular review, or should there be some guidance in legislation as well as your discretion?

Mr Gettings: Ideally, what we are looking for are measures that proxy as closely as possible to the three categories that I have described. So starting with availability, that is probably a comparatively easy set of metrics to define because you are counting the sources available, the supply of content or of titles.

When it comes to consumption, I think there is a judgment to be made, first and foremost, about what is available. First and foremost, we have to work with what we have and we have those measures available. Potentially, one of the criteria might be the degree to which there are measures already available in the market that get us to some understanding of patterns of consumption.

When it comes to impact, the criteria that you might use to assess measures are far harder to define, not least because one of the only ways you will get to a view on that is by asking consumers, “To what extent does the news that you consume help shape your opinions?”. It is very hard for a consumer to unpack that answer, and we find that in our research.

So I think, as far as availability is concerned, guidance is relatively straightforward to offer. As far as consumption is concerned, it has to include those metrics that are reasonably well established, that provide a reasonable proxy for consumption. As far as impact is concerned, I think it is harder to offer guidance in that area.

If I could just add a couple of points, I think we felt that it was important to have discretion but that we would need to provide some degree of certainty to industry players as to what we were going to look at. Issuing guidance, updating that guidance in each review and so on is quite important.

The area where we felt clear guidance from the statutory framework was perhaps most important was sufficiency, which is quite closely related to that question of measurement. It is one thing for us to take a technical judgment as to how one would measure availability, consumption and impact. The policy judgment as to at what point that becomes too concentrated and therefore there is a problem for plurality is the area on which it is particularly important that Parliament provide guidance. That is particularly valuable.

Baroness Deech: Yes, and difficult. Thank you.

The Chairman: The European Commission did some work on this and concluded that you needed somewhere over 100 metrics.

Mr Unger: Yes, that is correct.

The Chairman: That is not really realistic. Do you think it is possible, based on your experience and your feel for it, that you can find, shall we say, half a dozen metrics that might basically do the job?

Mr Unger: There is always a challenge in regulation. It is possible in any problem, and I have seen this when we looked at quality of service indicators for telecoms operators, it is possible to come up with frameworks that have thousands of metrics and no one can understand them, but there is always a trade-off between the number of metrics that you would ideally need to do the analysis and something that can be communicated and actually understood by stakeholders. It is a really important point. In the end, we did not use hundreds in our assessment.
Mr Gettings: No. I think we felt in the course of the public interest test that we have executed that we were able to draw on both established metrics and in the time available commission new metrics that taken as a whole in however many—10 or 15—measures.

Mr Unger: Ten or 15, yes.

Mr Gettings: It was possible to paint a picture.

The Chairman: You would say 10 or 15, just as a figure in the wind, and I am not holding you to it.

Mr Unger: Exactly. When you get to 100 you are doomed because you can no longer explain what you have done. I think one or two is too few to capture the complexity, so yes.

Mr Gettings: The point you make about ensuring that it is understood by others is very important, and that mitigates against a large number of measures.

Q398 Earl of Selborne: I want to ask about the geographical scope of a periodic review on plurality. In your supplementary advice to the Secretary of State, you suggested that you would not recommend that a periodic review of plurality be considered local or regional media except insofar as they contribute to plurality at the level either of the United Kingdom or one or more of the devolved nations. How are you going to know whether local or regional media contribute to plurality, either at UK level or devolved nation level, without including them in the review in the first place?

Mr Gettings: Prior to that paragraph in our report, we did actually focus on the needs of the devolved nations and the importance of holding democratic institutions in the devolved nations to account. That is the approach that we took in the public interest test that we executed for Global Radio and GMG Radio. We looked at measures relating to the Scottish news media market, because the radio merger affected radio stations in Scotland and the same for Wales as well. So to the extent that we think that regional and local media have a bearing on that accountability process that I have just described, they are important and should form part of the periodic review.

What we went on to say is that as you drill down below the level of the nation down to English regions, the question might become less about plurality and more about the economic sustainability of the news media titles that are available at a regional level. So it is not so much about how much plurality as about any plurality at all. That then plays into the question of whether regional media, and regional print media in particular, are commercially viable in the context of these new advertising opportunities that are emerging that you have already heard about.

Earl of Selborne: So drilling down below the level of the devolved nation, you are saying that the issue might be economics.

Mr Gettings: That is correct.

Earl of Selborne: Why not include them in the review but take into account the economics?

Mr Unger: In relation to a review of plurality at the nations level, they would be included. So the contribution that local and regional news make to the democratic debate around the nations, they would be included. All we were saying was that when you get to the question of how you call local government to account, we did not think that trying to promote plurality at the level of local news was the priority. The challenge there was the sustainability of local news. We were concerned in particular—and we flagged this in the second set of
questions—we are aware that there are some concerns about the way in which the competition framework is perceived to be somewhat onerous for local media, in the sense that it can make quite difficult some of the consolidation that some perceive to be necessary. What we did not want was for the plurality process to add an extra layer of process to something that is already seen as quite difficult.

Q399 The Chairman: Would it be fair to say that when you get down to local level—I am chairman of a local newspaper group so I have a slight conflict there—there is the old hypothesis that probably at local level, possibly even at English regional level, competition policy is probably the most important thing, inasmuch as if competition policy is working properly you will not lose anything?

Mr Unger: It is slightly different to that, and slightly more fundamental. At a local level the sustainability issue means that whatever we want, either from a competition or a plurality perspective, may simply be difficult to achieve. We might, in an idealised world, want multiple local newspapers, multiple radio stations and so on, but the evidence at the moment is that that simply may not be commercially sustainable and trying to maintain high levels of plurality in the face of the economics of local media is not going to happen. There is a risk that if we intervene too strongly to try and do so, the actual effects will be market exit. You might be aware of the issue with the Kent Messenger case, where the process costs associated with demonstrating the benefits of a merger were too high for the consolidation to be properly considered.

Earl of Selborne: Just going on with the theme of the geographical scope, would you include news and current affairs media consumed by United Kingdom citizens but coming from outside UK jurisdiction?

Mr Gettings: The answer to that is, yes, when we can identify that there is a source of supply from outside of the UK that is consumed at all, but widely consumed, in our analysis.

Earl of Selborne: There are plenty of sources, so you would include them all?

Mr Gettings: Yes.

Mr Unger: Then come the consumption impacts. They clearly have to be counted, but then how you weigh them depends on how relevant and on the impact that that provides.

Q400 Baroness Fookes: May we now look at wholesale and retail news providers and where control is exercised in the editing? You suggested in your advice document that there needed to be some flexibility here, which suggests some difficulty in deciding where it lies. How in practice would you set about dealing with this situation?

Mr Gettings: Looking at the retail level alone risks overstating the diversity of news media. Equally, focusing on wholesale on its own risks ignoring the value added that comes in the editorialisation at the retail level. In terms of how you go about identifying control really boils down to legwork, investigation and questioning the relevant parties to understand how news is gathered and packaged at that wholesale level, and then following through the copy or the content as it then manifests itself in a retail product. It is a relatively straightforward answer.

I suppose what I might go on to say is that does potentially require information-gathering powers, which is something that might need to be considered in the future.

Baroness Fookes: That you do not have.
Mr Unger: One of the things we commented on, in relation to this plurality review, is that when there is a merger there is an incentive on the parties to co-operate because they want to get the merger through. In the context of the plurality review it will be really important to us to understand what goes on inside the companies where editorial control is exercised. We did identify that the ability to gather information on those questions will be important.

Baroness Fookes: You would have those powers, I presume?

Mr Unger: We have powers to gather information in other areas. I think all we are saying is that if there was a plurality review it would be important to be able to use those types of powers for that purpose as well.

Baroness Fookes: All right, but apart from that it is fairly straightforward?

Mr Unger: I am not saying it is straightforward.

Baroness Fookes: It is a question of gathering the information, which suggests a lot of work for someone within your organisation.

Mr Unger: Yes. You have to look at the evidence. Listening slightly to the discussion session before us, you cannot make a general statement about where this sort of control is exercised. You have to ask yourself where it is actually exercised on the evidence.

The Chairman: Do you think you can get to the bottom of that in a comprehensive way in a general plurality review, in a manner that is going to add something to the work you are doing? You have to get it right across the waterfront, do you not?

Mr Unger: I would never pretend that you can ever get to a perfect understanding.

The Chairman: No, I appreciate that.

Mr Unger: But yes, I think it is really important that one tries to understand that. What we did in the last round was we presented evidence on the wholesale and the retail, and we made an assessment in the round. It is worth emphasising that that was really in the first stage of the process. If that had gone to the second stage I would have expected the Competition Commission to have had to ask itself in more detail whether control was exercised at the wholesale and retail level, and I do not see how you can do that without actually looking at the evidence.

Baroness Fookes: Does that mean you would have to take a particular instance, look at a major story, a major item of news, and trace it back?

Mr Unger: That is the sort of thing I imagine doing, trying to trace, as Steve described, where the information originated, how it was handled subsequently and who influenced the final outcome.

Baroness Fookes: You could extrapolate from that a wider principle, or perhaps you would need several examples?

Mr Gettings: I think you need to take a portfolio approach, so it would definitely be a question of using case studies and following the journey of the content. In-depth interviews would also play quite an important role, with editorial figures within all the relevant news media organisations as well, I think.

Mr Unger: Submissions were made to us during one of the first rounds of questions trying to identify what the underlying sources were and what their passage had been through, because actually you can even go upstream of the wholesale provider to organisations such
as PA and Reuters, which gather the information. You can go downstream when you talk about news aggregators, such as Google and Facebook, so the value chain is quite complex.

**Baroness Fookes:** Would you expect co-operation, or could there be some stalling or failure to be as transparent as one would like?

**Mr Unger:** There will always be a degree of co-operation and a degree of lobbying. It is always the case in these reviews that the companies will put their best foot forward and present the evidence in the best way they can for the interest that comes. That is exactly as you would expect and there is nothing wrong with that, and it is why one has to be quite precise about digging below that to try and understand the actual facts.

**The Chairman:** Is there not a kind of conceptual problem behind a bit of this: that news is based on fact? For example, if you have a football match it has a particular outcome and you may get the result transmitted to you by the Press Association or equivalent, or by a man in the crowd, or whatever. So it is not quite as clear cut as it might sound on paper, is it?

**Mr Unger:** I doubt that it is ever clear cut, so I imagine you will always be back in the position where you have assembled a set of evidence and you are still assessing that evidence overall rather than drawing absolute conclusions about each specific instance.

**The Chairman:** Presumably, too, the kind of contractual relationship between people who supply news in package form for other people, such as things that are done for Channel 4 news and Channel 5 and so on, has a bearing on exactly where the control is. It is a bit of each in a way.

**Mr Unger:** That is right.

**Q401 The Chairman:** Thank you. Thinking about telecommunications, I think you heard the questioning to the previous witnesses that access is the big issue. When it comes to digital intermediaries it has been put to us by Robin Foster that most of the potential concern, if you look at it in the context of media plurality, relates to access rather than editorial issues. Do you think that is a fair comment?

**Mr Unger:** It was interesting listening to the session before us. At present the debate around the over the top players is probably mainly about access. I think that is because on the evidence at the moment they do not exercise editorial control. I think it is more to separate the two out, though. We noted in our advice that it is possible to imagine circumstances where a powerful digital intermediary was able to exercise editorial control. Again, you would have to look at that on the facts, but if that was the case, then that could become a concern here. But, at the moment I think we are conscious that the question is mainly around access. There I would say that there is an emerging debate in the context of the European telecommunications framework about the way that framework treats the traditional players on the one hand and the over the top providers on the other hand.

I think the point there is that the economics is different for the over the top players. I think it was said earlier that it is not that there is a scarcity of the resource needed, for example, to develop a social network but that there are also economic reasons why something like a social network might become a gatekeeper. If we look at the issue there of network effects, it is possible to imagine a circumstance where, because everybody wants to be on the same social network, that social network becomes a particularly powerful gatekeeper.

At the moment we do not worry too much about that, because at the moment the evidence is that although there is that effect, it is also the case that precisely because of these network effects that if Facebook gets it wrong it is entirely possible for another social network to
emerge, and for the market very rapidly to tip to that other provider, so that disciplines the way in which those companies behave. At the moment we are not too concerned about it, but we do think there is a potential issue going forward around the role of the over the top players. It is not an issue that we think is a problem at the moment, but I suspect that the next time there is a major review of the telecommunications framework, the subject that will probably be utmost in most people’s minds will be the respective treatment of the over the top players and the traditional network operators.

**The Chairman:** Given these concerns, which are not necessarily developed but are in the back of people’s minds, if you were advising somebody of the approach that they might take to address some of these concerns, what would you say?

**Mr Unger:** I think what we would say, in relation to plurality in particular, is that that is why the internet-based players need to be in the scope and it is why one of the remedies that we addressed as potentially needing to be available was a set of access remedies. I think we listed five remedies that might be appropriate, depending on the nature of the concern, and one of those five was that there might be a need for an access remedy if there was a powerful gatekeeper exercising his sole control. We are not saying that is the case at the moment. I think we observe at the moment—and I emphasise “at the moment”—that the internet-based ecology is characterised by high levels of innovation. Even though they are quite powerful players they are disciplined by the market, but you cannot rule out the possibility that they might be a concern in the future.

**The Chairman:** You would say that it is something one should bear in mind even if it is not an immediate problem as of today?

**Mr Unger:** If you are trying to design a framework that is going to be enduring and that allows one to address plurality issues that might emerge over the next decade or more, then I think one needs to think about those possibilities, but at the same time that is not to suggest that we currently have a concern.

**The Chairman:** That seems to be a very clear way of putting it. Thank you.

**Q402 Baroness Scotland of Asthal:** I think I am not the next question, or perhaps I am. I want to ask a question arising out of what we have just been discussing, because I listened with care to what was said by the last two witnesses, and they said that they made no editorial decision, no input. Can I ask you to comment on the fact that we appear to know that in looking, for instance, at the Google search you can weigh the item so that it comes to the top, the middle, and the end. How do we deal with that manipulation?

**Mr Unger:** I think this is an issue which the European Commission has been looking at recently. It was recently reported as suggesting that Google does not have dominance. I think there have been a number of allegations around that sort of manipulation. It certainly seems to be the case that people are able to promote their particular content by the way they present it, so they get it higher to the top of the search results. I do not think that necessarily means there is evidence of harmful intent by Google. That is the thing that is being investigated, both in the US and in Europe by the European Commission.

**Baroness Scotland of Asthal:** Although we look at outcomes, and the empirical data tend to indicate that whether someone’s intention is there is another matter, what we are really concerned about when we are talking about plurality is what impact, whether intentional or unintentional, it has.
**Mr Unger**: That is right, but I think that is why it is important from a competition perspective. I think at the moment the competition authorities are looking at this closely but at the moment have not identified a concern. From a plurality perspective I would also say that the existence of search engines, such as Google, feels broadly to be something that promotes plurality because it makes available a much wider range of content than people traditionally found. But I think we have to be vigilant against this concern.

**Baroness Deech**: In Google’s defence, is it not possible for someone to get themselves up the list by constantly searching for themselves? If I search, “Baroness Deech wonderful”, or something, and kept doing it, it would rise to the top.

**Mr Unger**: It is one of the things that we flagged in one of our reports.

**The Chairman**: It would rise to the top.

**Baroness Deech**: Yes, exactly, and it would be correct.

**The Chairman**: Have you tried that, Ruth?

**Baroness Deech**: No, I just thought of it.

**The Chairman**: It might come up on your search, but it will not come up on anybody else’s, will it?

**Baroness Deech**: If I kept blocking that one.

**Mr Unger**: People who are developing web pages think very carefully about how to design a web page so that the search engines will give prominence to those web pages. That is a large industry, I would say, and that is inevitable, I think.

**Baroness Deech**: Newspapers have a front page.

**Mr Unger**: That is right, yes.

**Baroness Deech**: I do not know what else you can do, really.

**Mr Unger**: As in any medium, there will be people who advise on how you can use that medium most effectively to promote your own interests. Google’s business is based on delivering value to the people who use the search results, so I think that Google has a very strong interest in maintaining trust and in maintaining the value they deliver to people who are using those search engines. There is a bit of an arms race, I suspect, between Google and the people trying to manipulate the results.

**Mr Gettings**: It is widely reported that Google is vigilant about attempts to manipulate their algorithm too.

**Baroness Healy of Primrose Hill**: Beware, Deech.

**Q403 Baroness Scotland of Asthal**: We were looking at the periodic review and what the conclusions are going to be when they are completed. Have you thought about the nature of those conclusions? I do not mean what they are going to be, but how are you going to frame them? Are they going to be described in terms of landscape, or is recommended action going to be the basis? I am going to ask you a few more questions to tease that out, but how do you see it at the moment?

**Mr Unger**: I think it has to be both. One would have to set out a general picture of the market, both now and how it is expected to evolve. I also think that unless there is some recommendation comes out of that, there is a limited purpose. The point is that something also has to happen as a result. There has to be some form of recommendation. That might
be recommendation that says everything is fine. It might say that there is now a problem, or it might be a recommendation that says “Here is something that needs to be watched”.

**Baroness Scotland of Asthal:** Are you attracted by the green light, amber light, red light type of indicator: the traffic lights?

**Mr Unger:** I am not sure of the precise metaphor, but in substance at the end you have to say: is there a problem now? Is there not a problem now but could there be a problem that needs watching? I am just repeating myself, so I think we are saying the same sort of thing. Something has to come out at the end that leads to something tangible, to some form of action if there is a concern or some form of monitoring if there is an emerging concern, rather than just saying, “Here is an interesting study”.

**Baroness Scotland of Asthal:** Particularly in reaching the conclusions about remedies, how would you take into account the potential for market change based on market exit and organic growth?

**Mr Unger:** Looking forward in particular?

**Baroness Scotland of Asthal:** Yes, divestment or other interventions - can it be possible to impose a sort of red card. How would you do that?

**Mr Unger:** I think it depends on whether you are close to the line. I think you have to be careful on the one hand about speculating too much, and there is a question there as to what’s the periodicity of the review. The periodicity of the review has to be such that you are not projecting forward too far and speculating too much. If you can see a growth trend that is heading to a problem point, I think you could flag that. I think you can also imagine tipping points. A tipping point as referred to in the report is, I imagine, a situation where quite quickly news content might tip from the written media to tablet-based media, for example. If as a result of that, it is possible to imagine a relatively rapid shift in consumption patterns, I think you could flag that. The same is true of market exit. If you could see that there was a potential issue about a particular important provider that there was a concern about, again I think that could be flagged. I think you have to be careful not to become too speculative. You have to be careful not to pretend that we can predict the future.

**Baroness Scotland of Asthal:** Marking the direction of travel?

**Mr Unger:** Yes, I think it has to be somewhat forward-looking. There is an analogy here with the work that we do in the competition framework. In the competition framework we review the telecommunications markets every three years, and the intention, unlike an ex post competition analysis, that intended to be a forward-looking analysis of likely developments over the next three years. It is the same point here: you want to understand the position now but you also want, to the extent you can, to take some forward-looking view.

**The Chairman:** A periodic review by definition takes place from time to time. How long should the gap be, roughly? How far can you sensibly start looking forward?

**Mr Unger:** We ended up somewhere between four and five years.

**The Chairman:** About five years?

**Mr Unger:** About five years. Again, this is one of these classic trade-offs where we are conscious, particularly given the likelihood that the review would take a certain amount of time, that if it is every two or three years you are back to basically a perpetual review.
Q404  Earl of Selborne: Once you have completed this review and determined the conclusions and identified what needs attention, how are you going to determine the appropriate remedies and interventions?

Mr Unger: We have identified five different categories of remedies that we thought might be appropriate. I imagine that we would make a set of recommendations as to which of those remedies seem most appropriate. The recommendation would have to take into account both the nature of the problem—if the issue is access, the remedy is very different than the issues around concentration—and this question of sustainability. You would not want to put in place a remedy that was perverse in the sense that it reduced the provision. I would imagine that there would be a recommendation taking into account the specifics of the problem.

Then you get a quite difficult question as to who makes the decision around that recommendation, and we said that that was really not for us. We felt comfortable saying that it would be right for us to make a series of recommendations, but then you get to the question of whether the final decision should be taken by a regulator or by the political process, and we felt that was really a question for Parliament.

Earl of Selborne: Do you see yourselves making a recommendation or making a decision?

Mr Unger: We felt that either model was possible. We thought it was possible to have a model where the regulator took a decision, subject to the right statutory framework being in place to provide guidance on questions such as sufficiency, and subject to the right checks and balances being in place on that decision. We also registered that there were good arguments for the final decision here being taken by the Secretary of State, given the nature of the judgments that were made. That was not something that we felt was right. We could see the arguments for either side and we did not think we should make that call.

Earl of Selborne: Do you think there would be a case for a consultation period where you put the options and you are prepared to put it out there?

Mr Unger: We anticipated that one of the reasons why the review would take some time was because there would have to be a consultation process, both in relation to the nature of the issue, the one identified, and the nature of any remedies.

Q405  Lord Clement-Jones: Could we explore that decision versus recommendation a little further? As you rightly said, there are competing suggestions, and you have deliberately not taken a view, but perhaps I could tempt you a bit further. Lord Leveson’s recommendation was that the Secretary of State should be obliged to accept the conclusions of a plurality review or else reject them but publish the reasons for doing so.

Assuming that Lord Leveson’s approach was adopted, what do you believe should happen if the Secretary of State rejects the review’s recommendations? Do you like the idea of written reasons and so on? Can you see a situation where even if the Secretary of State published his or her reasons and you saw that they were sensible, you might come back for another bite of the cherry in an amended set of recommendations, so that this was a kind of iterative process, or do you think that would be ministerial discretion by the back door?

Mr Unger: I am afraid I am going to have to resist the temptation to go too far down this particular route. What I would say is that the recommendation from Lord Leveson is an interesting attempt to try to find compromise solutions between the role of the regulator and the role of government. In that sense I think it is a useful contribution to the range of options on the table. It is not for us to say which is the one.
Lord Clement-Jones: It is a third way, basically?

Mr Unger: Exactly. It is about trying to find a way of balancing these two different possibilities. In that sense it is certainly an interesting proposition, but I will resist the temptation.

Lord Clement-Jones: Nowadays you are resisting the temptation to make policy in Ofcom, are you?

Mr Unger: I think we are comfortable. I should emphasise that we are perfectly comfortable making policy judgments in some areas. That is why my opening remarks I hope were carefully chosen. It is not that we are averse to making policy judgments. One has sector regulators because they are supposed to be equipped to make policy judgments, but part of that judgment is understanding how far one can go before it really becomes a matter for—

Lord Clement-Jones: Where the lines in the sand are.

Mr Unger: Exactly.

The Chairman: Is it sound regulatory principle that when you have important decisions to be taken like this, you can end up in a kind of bidding war in negotiations between all the parties? Or is it better to have a kind of clear-cut decision and that is it? Or do you feel that there are arguments on both sides?

Mr Unger: There are arguments on both sides. With News Corp Sky, the fact that there was the ability to have a further negotiation around a settlement, that can be beneficial. There are risks, though. That can become very protracted and it cannot go on for ever. There are times when finally there is a need for a decision. I think it depends on specific circumstances, I am afraid.

The Chairman: That is an entirely fair response.

Baroness Fookes: We live in an imperfect world.

Mr Unger: That is exactly right.

Baroness Scotland of Asthal: I want to ask you not specifically about News Corp but about that sort of situation. You were talking about the plurality issue. What role, if any, would a fit and proper person test play during that part of the process? At the moment we have this separation between the two, which is not necessarily helpful.

Mr Unger: Of course, we looked separately at the fit and proper question with a great deal of care. I think they are different questions, but I would say that one needs to make sure, in process terms, that they are dealt with in a joined up way. They are quite different questions. Certainly we dealt with them separately in terms of the analysis.

Baroness Scotland of Asthal: But they were interconnected

Mr Unger: Just in the timing, I suppose. You cannot not be aware of the two processes, but I think it is very important that each of those decisions is made separately on its own merits and in the particular statutory framework that applies to that test.

Q406 Baroness Healy of Primrose Hill: What should the relationship be between the conclusions of Ofcom’s periodic plurality reviews and subsequent transactional reviews by the competition authorities? For example, what should happen if a periodic plurality review reports concerns itself with the commercial sustainability of news provision in a particular local area and recognises that further concentration of media ownership may be the only way to sustain any provision of news in that area, as you have said before, and then at a later
point a merger is proposed between two providers of news content in that area, which the competition authorities decide to block on the grounds that the merger would distort the local advertising market?

**Mr Unger:** This is a familiar subject, and we touched on it earlier. I have made the general point that in our advice on plurality we have noted the importance of joining up the public interest merger framework and the periodic review. There is a different question here, though, which is around the relationship between a plurality and competition assessment. This was looked at in some detail at the time of the Digital Economy Act, where again the concern particularly centred on the sustainability of local media. The position that we have got to is that at the moment, where there is a local merger as a result of discussions during the Digital Economy Act, there is a process whereby Ofcom provides advice to the OFT in the first stage of the competition assessment. This is called a local media assessment. The intention of that process is to help the OFT take account of any countervailing benefit. So in this type of consolidation there will simply be a competition concern on the advertising side of the market, and there may be a benefit from consolidation in the enhanced quality of journalism for readers. In principle, it is possible to take account of those in the competition framework, but the problem that arises is that if you end up going all the way to the Competition Commission to do so, that process is simply too costly, hence the *Kent Messenger* issue.

The idea of this LMA was that we might provide input to stage 1 of the competition assessment, which would enable the OFT to consider these issues at that stage 1. In practice it remains difficult, because you are doing quite a difficult balancing act between a quite tangible impact on advertising on the one hand and the effect on quality on the other hand, which is difficult to quantify and even more difficult to guarantee and lock in. It is genuinely difficult to address that at stage 1 of the merger assessment.

As I say, the LMA was an attempt to provide an answer to that. I think we are still feeling our way to the best answer. I think it is worth flagging the other suggestion that emerged at that time: that there might be what was described then as a positive public interest test. So the idea here is that in addition to the existing public interest considerations, it might be possible to specify a positive public interest reason for the merger proceeding, and the analogy here is the sort of Lloyds HBOS public interest consideration. That is difficult, because on the one hand that provides a mechanism for taking account of these positive benefits from consolidation. On the other hand, I think there is a concern around the proliferation of public interest considerations and what that does to the competition framework more generally. Those were the considerations that were discussed in some detail during the discussion around the Digital Economy Act and, frankly, I do not think we have a definitive answer yet to your question. I am sorry.

**The Chairman:** What you are saying is that you cannot really make a rule about if there is a state of impasse, one trumps the other.

**Mr Unger:** We have a bit of a problem in that in principle the competition framework can take account of the benefits of consolidation, but in practice the process for doing so is just quite onerous, and when the merging parties are small local newspapers—

**The Chairman:** And by definition running out of money.

**Mr Unger:** And running out of money. The evidence today—this is the *Kent Messenger* point that I have mentioned several times—is that running through a full competition merger assessment all the way through to the Competition Commission is the answer in an ideal world, but we do not live in an ideal world.
The Chairman: Without wishing to prejudge anything, would you then suggest that it would be sensible for us, in the context of the work that we are doing, to suggest that there ought to be some kind of fast, one-stop shop process for dealing with this sort of issue?

Mr Unger: That was really what we were trying to explore with this local media assessment: whether there was a way, in a fast track manner, of carrying out this analysis during that first stage of a merger assessment using our expertise as well as the OFT's. I think the problem we have is the merger framework more generally. The case law is such that on the decision at stage 1 there is quite a low threshold under merge law for making a reference to the Competition Commission. Trying to change that to address this specific issue has much wider ramifications for the competition framework. You can end up fixing a problem here in relation to local media—

The Chairman: But creating another one somewhere else.

Mr Unger: But creating a problem elsewhere in the operation of the competition framework. That I think is the tension.

The Chairman: Yes, I can see that.

Mr Unger: It is one that we have struggled with in the past and we still do not—

The Chairman: You still do not have a sort of killer app here?

Mr Unger: I think there is no simple answer to it. That is right. If there was, I think we would have come up with it before now. We remain very conscious of the issue, though.

Q407 Baroness Scotland of Asthal: You talked a lot about the line, almost the red line, that you cannot cross. I know that in the advice you gave to the Secretary of State you called on Parliament to clarify the whole notion of sufficiency of plurality, and whether there should be a presumption of sufficiency now. Would you be willing not to express a definitive view but to indicate the sort of things that you would hope might be taken into account to make that decision? That is number 1. The second thing I would like you to both think about if you would, while you are holding that in your mind, is what guidance should or possibly could helpfully be set out in legislation, if any, for Ofcom to take into account when embarking upon its periodic plurality review? What would you say to this when it comes to a narrative description, which you talked about earlier, of plural media markets or a description of sufficiency or principles for how to determine appropriate metrics or principles for how to determine appropriate interventions?

Mr Unger: The question of what constitutes sufficiency was probably the most difficult question for us. We had a go at a narrative description of the factors that were important. We did also suggest that it might be possible to provide guidance on the sort of range of indicators. There is another important point for me, though. Plurality is just very different from economic regulation. In economic regulation there is an economic framework which is about does one firm constrain the prices of another and from that everything else follows, at least in theory, so you can start from an economic framework and work through a series of tests. Our concern in relation to sufficiency is that really there is ultimately a degree of judgment. We can find a qualitative narrative and, absent any other guidance, we would have a go at guidance on ranges. But it is an area where it just feels really important to us that the more guidance that Parliament can provide in this area the better, given that ultimately it is a slightly arbitrary judgment as to what sufficiency is.

Baroness Scotland of Asthal: That is why, if I may, I want to explore with you what that framework guidance is likely to be, otherwise we are going to be circular. Parliament says,
“We would like Ofcom to do it”, and Ofcom says, “We would like to know what to say”, and back we go. So if we can in this Select Committee come to an informed view of the essence of the questions that have to be asked and answered, in order to get the sufficiency, that seems to be the consummation devoutly to be wished.

Mr Gettings: I think the narrative description of what I call a well-functioning plural market—we call it the ideal plural outcome, in fact—is quite a good starting point. Once again, sorry to keep harking back to our framework, but it does focus on the availability, the use and then the impact of various news media sources. Those characteristics focus on there being a diverse range of independent providers of content, that reaching consumption of those different sources is high among all sections of society and different demographic groups, and that there is good evidence of multi-sourcing, which we have not spoken about very much, Steve. For us that was quite an important metric that we drew out of both our public interest test analysis and the advice we gave to the Secretary of State: that there is evidence for low barriers of entry and competition in the provision of this content, and equally that there are investment opportunities and viable commercial returns to support that entry; and that no organisation, no provider of this content, has what policymakers might regard as an unreasonably high level of consumption, in other words dominates the news media market. That is a good starting point. At the very least I think the narrative description is something that any reviewing body would need.

Mr Unger: We went slightly beyond that in the second round of advice where we were pushed on whether there could be guidance on metrics. I suppose I could imagine going back to the discussion we had earlier about there being 10 or 15 metrics and so there might not be a single bright line test. Is there a small set of metrics where some sense of at least the range might cause a concern? That feels in the realm of the possible. Again, we were keener on ranges than absolute values. The risk of a single value there is that even if it is meant as guidance, it rapidly becomes perceived as an absolute, so we are keen on ranges as a result.

The Chairman: What you have kindly said to us is obviously going into the transcript. Would it be helpful for us and for you if you went home and drafted what you have said in exactly the words that you considered, rather than doing it in response to a question orally, and then sent it in to us? It may be very important. Would that be helpful or not?

Mr Unger: It may well be, so let us take that away, yes.

The Chairman: It just occurred to me, as you were saying it, that the nuance and the odd place of a word in a sentence might be very important.

Mr Unger: Exactly. I do not think we have said anything that we have not said in the written report, but you are right: the nuance is important. So being able to take that away and think carefully about that nuance is helpful.

The Chairman: How long do you think it would take to carry out one of those periodical reviews? That is obviously rather important, bearing in mind you have a cycle rolling.

Mr Unger: I know. We were pushed as to whether, if it was us, we could do one in less than 12 months. We said that we probably could not the first time. I think it depends on how much certainty the statutory framework provides, but particularly the assumption is that the first time around you would have to do quite a lot of work to develop guidance as to what we measured, how and so on. You might even have to consult on that before you did the review in earnest, so I think the first one might take slightly longer.
The Chairman: Would that include working out what metrics you were going to use? The metrics you might use this year could be very different from the metrics you would use five years hence.

Mr Unger: I think the expectation is that if it were us, and I am not presuming it would be, we would not start from scratch at the beginning of each review point, so you would be gathering evidence on an ongoing basis. I think we would have a reasonably good understanding of what metrics to use at the start of the review, but I think you would still need to ask yourself whether they were fit for purpose for that particular review.

Q408 Baroness Fookes: In my youth the demand for a judicial review was a very rare and very solemn event. Now it seems to be the first resort for anyone dissatisfied with a decision properly arrived at. Is there a strong likelihood that when you came to a decision at the end of all this it might well be challenged? Is there any way of reverting it? It is hypothetical.

Mr Unger: The answer is extremely simple. Yes, the likelihood is very high. Our experience is that not only is everything we do subject to judicial review but in many cases it is subject to merits appeals, and our observation is that in many ways we would be grateful if all we had to deal with was a perpetual judicial review. Particularly on the question of judicial review I think it is inevitable in the context of the plurality process. That is why one has to get the analysis right. There is no magic to that.

Baroness Fookes: Careful preparation.

Mr Unger: Careful preparation. But, yes, it is inevitable that any conclusion which upset anybody is likely to be appealed.

Baroness Scotland of Asthal: And the right and correct process.

Mr Unger: Yes, that is absolutely right.

The Chairman: I am sure there are some people in this room who may have made the odd penny over the years doing judicial reviews, are there not?

Mr Unger: By the way, I would emphasise that it is also right that our decisions should be subject to appeal, but the question is the amount. The concern that we have at the moment is the extent to which that is used in circumstances where frankly people are just using it to promote their commercial interests, rather than address a real failure of process.

The Chairman: You have been very helpful and wide-ranging in your remarks to us, and for that we are grateful. Is there anything else that you would like to say to us that we have not touched on and you think is relevant to what we are doing?

Mr Unger: I do not think so. We have already provided fairly extensive advice on these questions. All I would say is if there are any further questions you would like to put to us, we are happy to help, but I do not think there is anything else we want to say at the conclusion of today’s session.

Q409 The Chairman: It has just been put to me that in talking about judicial review it has very strictly circumscribed rules about when a review is possible. Do you think that it is appropriate in this sort of matter that you should have the possibility of appeals on the merits of decisions, or do you think you want to keep it reasonably tightly drawn?

Mr Unger: We are keen to try to keep things tightly drawn. It goes back to this concern: our experience has been that the framework that we deal with, where there is the possibility
of a merits appeal, has become almost unmanageable in terms of the scale of stakeholders simply using that process to slow it down.

**The Chairman:** Spin it out for commercial reasons.

**Mr Unger:** Absolutely. We are deeply sympathetic to the idea that people should be able to appeal bad decisions, and by “bad decisions” I do not just mean bad process. I think where a decision is clearly wrong then it is right that that should be appealed, but there needs to be a threshold, which is not where we are at the moment.

**The Chairman:** Do you have anything else you would like to say to us?

**Mr Unger:** I do not think so.

**The Chairman:** Thank you both very much for coming along. We are most grateful.
Thank you for the opportunity to submit evidence with relevance to the deliberations of the Select Committee on Communications on the role of news agencies and producers in UK media plurality. As I indicated to the Committee in response to the announcement of this set of deliberations, the impact of the limited number of wholesale news sources - the news agencies - on public discourse has been the focus of my published research for many years.

I note that one of the Committee’s witnesses on 8 October, 2013, does “not recognise” the concept of wholesale news provision. This submission argues that it exists, is well documented and recognised in scholarship, and that it needs to be recognised as central to discussion of media plurality, because its established structures present a barrier to UK and international news audiences benefiting from a plurality of public affairs information.

A variety of research projects and research collections in which I have participated in the past decade lead consistently to the conclusion that the broader trends in journalism of seeking efficiency and profit at the expense of public affairs reporting have resulted in the few speaking to the many, as the massive output of news agencies comprises, directly or indirectly, the bulk of what audiences receive as “news” across all media.

Boyd-Barrett (1980) developed the distinction between the “retail”—packaged, glossy, localised—news the public consumes every day and the “wholesale”, intra-industry flow of news most of us are substantially unaware of, unless we work for a news organization. Today, two commercial companies, one US owned (Associated Press), the other Canadian owned (Thomson-Reuters), provide most non-locally originated (that is, “wholesale”) television news images (and accompanying story information) to most broadcasters around the world; the smaller the broadcaster, the more they depend on these services (Paterson, 2011).

Those two commercial companies also provide international news to all the UK television broadcasters. Their dependence on these sources is illustrated by the fact that when, in 2004 the BBC required journalists to go for a week without Reuters Television and a week without APTN, to see if they could manage without either, it was concluded that “for the scale of the operation that we run, we require two agencies—we couldn’t be everywhere doing everything,” according to the BBC executive who devised the scheme, speaking to me in 2008 (and requesting anonymity) (Paterson, 2011). Similarly, a senior APTN executive estimated that, after CNN terminated a longstanding subscription to Reuters, 70% or more of CNN’s international video content came from the London based APTN.

The same two news agencies, with the addition of the Agence France-Presse (AFP) provide, often verbatim, most international news for the most highly used news websites (Paterson, 2007). And they remain, as they always have been, the major sources of international news for those newspapers which do not have their own journalists at the scene of developing international stories. It is on that basis that my writing over twenty years has argued that what these few agencies select as “news”, and how it is to be understood, matters deeply and needs to be analysed, debated, and to be as much a subject of public policy as the news provision of domestic organisations. An analogy could be made to assessing the quality of a restaurant while entirely ignoring the ingredients which go into the food.
My research has confirmed the ongoing problem, cited by the Online Journalism Review in 2002 that: “as two or three wire services emerge as dominant content providers to news organizations that don’t want to spend money on bureaus and travel, Internet readers are cheated out of different, more lively versions of events” (Welch, 2002). Convergence has meant for most newsrooms “fewer reporters, less real news gathering,” as one journalist told Friend and Singer (2007), and various newsroom research projects have found an almost complete absence of original journalism taking place amongst online journalists.

Online newsroom research by scholars in the UK and around the world tells us that internet journalists are staggeringly dependent on news generated by news agencies (Paterson & Domingo, 2008; Domingo and Paterson, 2011). Content analysis research which I developed at Leicester University in 1999, tracking the original sources of words in published news stories, has demonstrated that the international news which internet audiences consume tends to originate with the three global news agencies: Associated Press (USA), Thompson Reuters (Canada, with a London news base) and Agence France Presse (France) (Paterson, 2007).

Research in the UK for the Joseph Rowntree Charitable Trust and Media Wise Trust (Lewis et al, 2008) revealed a surprisingly large, and probably increasing, dependence on the Press Association amongst the mainstream UK press, demonstrating that “60 per cent of press articles and 34 per cent of broadcast stories [in UK media] come wholly or mainly from ‘pre-packaged’ sources, such as public relations copy, or news wire services”. This author similarly found that international news on the internet consisted of about 85% verbatim use of news agency text (mostly from the Associated Press and Reuters) (Paterson, 2007). This concentration of source dependence has come amid numerous reports of the Press Association itself reducing its traditional local newsgathering role (well documented, especially, in the extensive critique of UK journalism by Guardian reporter Nick Davies, 2008).

Currently, the international television news agencies are Associated Press Television News (APTN) and Reuters Television; these are part of global information conglomerates and are also the leading “wire services” and providers of international news online. Sociologist Jeremy Tunstall, who provided an early influential analysis of global communications flow in The Media Are American (1977), speculated in 1992 that “most TV foreign news professionals would probably agree that Visnews (taken over by Reuters in 1993) has some claim to being the most widely consumed, if least recognized, world brand.” (1992, 89) That claim now rightfully belongs to the television news agency duopoly of Reuters and APTN. APTN claims that “video captured by AP Television News can be seen by over half of the world’s population on any given day” (APTN, 2010), and the claim is credible, as detailed in my 2011 book. Reuters and APTN, like their predecessors, market their output to broadcasters, but almost never to the public at large, making their editorial choices both omnipresent and substantially invisible.

Since the beginnings of television news (save a few years in the 1950s, mid-1990s, and again in 2000), broadcasters around the world have had just two of these television news agencies to choose from for their images of foreign news. While consistently professional and well-meaning in their intent, news agency journalists admit, and a small body of content research demonstrates, that the “wholesale” news they distribute to the media of the world is far from diverse and pluralistic. It has been found to consistently focus on a very limited range
of countries, topics, and ideological perspectives; and there is a generally a commercial logic for it doing so, although it would potentially be in the public interest for its focus to be wider. Research into news agency content is described in more detail in chapter two of my 2011 book. The focus of that book is the claim that globally relaying a limited selection of information in a limited set of ways is likely to limit public understanding, especially when so many people all over the world consume that same collection of audiovisual information every day.

The growth, both in volume and importance, of wholesale international television news is both a product of, and a contributor to, larger trends in global television:

1. The deregulation and privatization of television, which was, in turn, a by-product of the 1980s neoliberal policy agenda. This process had two important effects with regard to international television news: (a) it reversed a long trend of expansion and investment in international newsgathering by US television networks and most large commercial and public broadcasters worldwide, and (b) it led to the creation of new commercial channels requiring, at minimal cost, large amounts of content for their news programs.

2. The growth of 24-hour news channels or, more precisely, what Cushion (2010) terms the “third phase” of that growth: its rapid expansion at a mostly regional level during the past decade.

Potential competitors exist for the wholesale delivery of international television news images, albeit on a smaller scale. Their very existence suggests the possibility of a more fragmented market emerging, with expansion of the French agency AFP and US based news agency Bloomberg. The Press Association, has built a video newsgathering apparatus to supply video for the websites of British newspapers, but with the potential to expand internationally. The well-funded, commercial Ihlas News Agency from Turkey competes with the global television news agencies in the provision of news stories and in “broadcast service” support to broadcasters on Middle Eastern stories, and has grown substantially over the past decade. The wealthy and widespread Chinese state news agency, Xinuan, is another potential player in international television news distribution. But there is little indication that any of these would produce a substantially different kind of wholesale television news product than the existing industry leaders. The international success of the rolling news channels Al Jazeera, Telesur and Al Jazeera English, which profess a desire to challenge traditional story frames, does imply that there is a market demand for a broader range of news at the wholesale level.

While I have not conducted original research on the UK Press Association, I wrote a literature review-based chapter about the Press Association in 2010, and found at that time that there was almost no recent independent academic research to facilitate public understanding of the PA. My review of published information about the Press Association noted the emergence of crossovers between the core news business and the public relations divisions and commercial media monitoring companies within the PA corporation. This crossover would traditionally concern news agency journalists, due to the potential conflicts of interest it creates; this has not been subject to any significant published independent research. Based on analysis of a shareholder list provided by the PA (correspondence, 22 September 2009) and published company information, it appears that today only 7 of 25 current shareholders are active local or regional British newspaper companies. The rest are
investment companies or billionaire investors (in the case of the Barclay brothers, owners of the Telegraph group), a PR company (United Business Media), Irish media, and national or international media conglomerates. Several companies which hold shares in the PA may exist for that purpose only; their newspapers were sold long ago to larger companies like Johnson Press or Trinity Mirror. The chapter argues, therefore, that the PA has moved far from its roots as a newsgathering service for the British press and that this has not necessarily been beneficial for the health of UK media or its plurality.

This process of so much news being provided to so many people, but being processed and selected by so few, is at odds with widespread predictions since the 1990s of increased and more equitable news flow caused by new news providers and the application of new newsgathering and distribution technologies. Indeed, the central rationale for so much deregulation of broadcasting and the journalism it entails over the past three decades has been that these processes facilitate a diverse and vibrant journalism. This author (2011) argues this prediction was wrong to a substantial degree, since deregulation only spread further the words and images originating with two companies. Only well informed regulation at the domestic and international levels can ensure plurality and diversity in the international wholesale news sector, just as it is necessary in the domestic retail news sector. My 2011 book concludes with the recommendation that national and transnational authorities (like the European Union) should recognize the threat to democracy posed by source concentration in mainstream journalism and take action to promote diversity, just as national governments—especially France—are seeing the need to subsidize national journalism. European policy during the 1990s did a great deal to bring about the current situation of almost completely commercial control over international news flow. It devastated European public broadcasters, which were the remaining counter to a commercially determined international television news agenda, and it spurred the growth of national and regional commercial broadcasters, without placing journalistic criteria on them, so they chose the cheapest and easiest means to provide news coverage: dependence on the agencies. Creating a larger, global role for the Eurovision news exchange would put leading public broadcasters (and this could be extended to include publicly controlled media everywhere) back at the forefront of shaping the news agenda, thus promoting a more democratic global and domestic public sphere.

I encourage the Select Committee on Communications to engage with the limited, though substantive, body of independent scientific research concerning news agencies and their social role and to take account of the highly concentrated, highly commercial and very homogenous nature of wholesale news provision - domestically and internationally – in the course of any deliberations on media plurality. I would be pleased to assist further in this endeavour and thank you for your consideration of this submission.

4 October 2013
Press Association and ITN – oral evidence (QQ 276-285)

Transcript to be found under ITN
1. I am Director of Research at the Reuters Institute for the Study of Journalism, University of Oxford, a research fellow at Green Templeton College, Oxford, and a fellow of the Royal Society of Arts. I am making this submission as an individual and the opinions and recommendations made herein do not necessarily represent the views of those institutions. I am a specialist on media economics and policy, have spent three decades wrestling with issues related to media pluralism, and have worked with governments in Europe and North America, the European Commission, civil society organisations, and companies on those issues.

2. Media pluralism is crucial to society because it is a necessary condition for healthy participatory societies. Media represent who we are as a people and our individual and collective hopes, aspirations, and concerns. They mirror and develop our social norms and culture, provide forums for debates of social and political issues and options, and pursue social accountability of public and private institutions.

3. Reconsideration of the concept of media pluralism by the House of Lords is not only appropriate, but necessary, because of the contemporary transformation of media and communications. Media markets were historically based on supplier control of content, distribution, and access to audiences. Digital media systems have reduced that power by creating opportunities for many more providers of content and generating multiple communication pathways to individuals at home and away from home. These changes are moving media markets from supply-driven to consumer-driven markets. Overall media time use is growing and people are using more devices to access media content. To facilitate this, however, powerful digital intermediaries through which content passes have developed and they are influencing the communication processes and content. These contemporary conditions require a new conceptualisation of media pluralism and new measures to protect and promote it.

4. For more than a century the primary policy concern regarding pluralism has been ensuring that proprietors of media properties do not exercise undue political influence. To date no effective measures of that influence have been established, so proxy indicators have been used. The tradition has been to use ‘share of voice’ measures focused on how many newspapers, magazines, or broadcasting stations were owned or controlled by an individual or firm. In the digital age, however, the growth of alternative media distribution systems, Internet, social media, and other means of communication have led to a proliferation of choices for the public and provided opportunities for them to add to the content. Some observers have erroneously assumed this dissipates the

---

303 Ofcom noted the difficulty of measuring influence and the lack of a simple indicator of plurality in its report *Measuring media plurality, Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport, 19 June 2012.*
influence of media proprietors.\textsuperscript{304} Despite the emergence of new digital media players, a few media content providers continue to dominate overall use and these have greater influence than other providers. However, in the converged environment of media, the more effective proxy indicator of influence is not ‘share of voice’, but ‘share of ear’. These developments and considerations are crucial in answering the questions the Select Committee on Communications has posed about how plurality should be measured and what should be deemed ‘sufficient plurality’.

5. Media pluralism was originally conceptualised as multiple providers of newspaper content in order to ensure a variety of perspectives on public issues. The primary focus was ensuring a range of papers and proprietors existed to reflect the breadth of opinions in society so democratic political processes could work effectively and no proprietor could unduly influence what was discussed, how it was discussed, or what options were presented. Because democratic states do not regulate political and opinion content in individual papers, policies to promote pluralism in liberal democracies have been concerned with the overall mix of ideas and opinion available.\textsuperscript{305} They have tended to be based in competition policy and newspaper-specific support mechanisms such as indirect or direct state intervention to support pluralism. Concern about newspapers and pluralism has been raised in the UK in a number of official inquiries in the UK since 1945, but little policy action other than reviews of mergers have taken place.

6. The BBC has and continues to play a significant role in ensuring media pluralism in the UK and it is appropriately included in any consideration or measurement of overall pluralism. From its inception, it has specifically served the function of conveying the broader perspectives available in society and providing pluralistic content that counters any narrowness of views and opinions in the private press. Although the BBC is an important tool for achieving pluralism, far too much reliance has traditionally been placed upon it. Its very existence as a centrepiece in pluralism discussion has permitted the government to avoid other policies and mechanisms to promote pluralism—actions that are crucial as the media landscape continues to transforms and the impact of individual media operators diminishes.

7. The fundamental conceptualisation of media pluralism began changing with the emergence of private broadcasting. Most countries created limits on the number of channels a broadcaster could operate (a structural approach), but specific content policies to support pluralism goals were added. Most countries enacted behavioural regulatory policies for the content of news and current affairs programming and created quotas of specified types of programming that broadcasters were required to provide to further pluralism goals relative to diverse groups and children. Most democratic nations required private broadcasters to impartially convey or balance the range of ideas and opinions in news and current affairs and not to display favouritism toward any political

\textsuperscript{304} This occurs because the argument focuses only on the number of market participants rather than their market influence.

\textsuperscript{305} This is referred to as external pluralism, i.e. the amount existing in society, not in the content of an individual firm.
viewpoint. In recent years, some countries—notably the United States of America—have relaxed this policy as the number of channels has risen.

8. The growth of media firms operating in multiple media sectors—especially newspapers and broadcasting—induced a number of countries to place limits on cross-ownership of broadcast operations in order to preserve pluralistic operation (a structural approach). In recent years a number of countries have implemented plurality measurement systems that combine the number of media units controlled by leading firms with audience use measures for use in making determinations regarding the influence of cross-sector operations.

9. Digital intermediaries are now influencing content choices by directing users toward specific content providers through the use of search, aggregation, app stores, and social media technologies. Their decisions to do so are based on their economic self-interests and their perceptions of what is of greater interest. Such underlying factors, built intransparently into algorithms and display commands, can narrow plurality and thus have significant policy implications.

10. When ownership is addressed as a pluralism concern it is not because proprietors have influence, but from the belief that some may have too much influence. From the regulatory perspective, this is problematic because determinations of what constitutes too much influence are by nature qualitative and subjective. The traditional means of avoiding such determinations has been apply a structural, competition policy approach to pluralism, but this has proved only marginally effective in dealing with influence. Compared to most other industries, media industries remain highly concentrated both because of industry economics and that impediment to effective policy.

11. Ownership-based aspects of media remain a concern of most states and the European Commission. In recent decades, however, a wider conceptualization of media pluralism has been established in some countries, the Council of Europe, and the European Parliament that relates pluralism to factors beyond ownership and political influence to include social and cultural influences on media content. These incorporates diversity aspects such as geographical media pluralism within nations (i.e. that media should be spread throughout a country to represents varying provincial interests) and cultural pluralism (i.e. the presence of media or content serving and representing subgroups in society is necessary so their views can be heard and they can integrate with society as a whole. Cultural pluralism is typically seen as involving various minorities, gender, age, and

---

306 This is conceived as internal pluralism.
307 This has been accomplished through the removal of equal time requirements and other policies permitting partisan broadcasting, exemplified by Fox News/Fox News Channel.
308 The UK and Germany has been notable in this regard.
309 The policy implications of this issue have been raised in Robin Foster in News Plurality in a Digital World, RISJ Report, July 2012. Reuters Institute for the Study of Journalism, University of Oxford.
income groups).\textsuperscript{311} It is often argued that limited representations and employment of minorities and women in news organisations, and lack of adequate news providers in local communities, create significant constraints on pluralism.

12. This broader, more holistic perspective on media pluralism embraces the ideas that healthy societies involve more than overt political debates and that the lives, concerns, and cultural contributions of all members of society need to be seen and reflected in news, public affairs, and other media content if they are to be full participants in society and if society as a whole is to benefit through this inclusion. Determining the extent to which the variety of voices are heard is difficult, but a study for the European Commission has suggested a method for determining the risks that some will not be heard. Such a study is well within the capabilities of regulatory bodies such as Ofcom.\textsuperscript{312}

13. The official conceptualization of media pluralism in the UK has not moved much in this regard and is thus more narrowly constructed than in the maturing approaches in European and other countries.\textsuperscript{313} UK policy still tends to emphasize aspects of political pluralism in news and current affairs media\textsuperscript{314} and plays only limited attention to other content. Considering the wider views of pluralism will be important in answering the questions the Select Committee on Communications has posed about the appropriate scope of media plurality policy and what can be learned from international approaches.

14. The authority to address issues of pluralism in the UK and elsewhere has traditionally been diffused through multiple ministries and departments. This has tended to produce ministerial conflicts due to differing interests, authority, and divergent policy approaches—often resulting in inability to formulate coherent and effective pluralism policies. Addressing this diffusion of competency is crucial if the Select Committee on Communications is to fulfil its stated objectives of answering the questions about where, when, and with what approaches reviews of media plurality should take place.

15. Although efforts to ensure media pluralism have historically focused on ownership and industry structural concerns, regulating ownership alone is not an effective method for dealing with the wider concerns of media pluralism. It has proved wholly inadequate in the UK, Europe, and other Western nations.

16. In order to produce effective policy, a comprehensive inquiry into media pluralism in the UK will need to consider several fundamental questions:

\begin{itemize}
\item \textsuperscript{311} Council of Europe, Recommendation (2007) 2 on Media Pluralism and Diversity of Media Content, 31 January 2007.
\item \textsuperscript{312} The indicators and process for undertaking such a study are reported in the Independent Study on Indicators for Media Pluralism in the Member States—Towards a Risk-Based Approach, Prepared for the European Commission Directorate-General Information Society and Media, 2009, http://ec.europa.eu/digital-agenda/en/independent-study-indicators-media-pluralism
\item \textsuperscript{313} This narrowness is reflected in the Ofcom definition of plurality, which focuses on viewpoints available and consumed and the influence of media owners (Ofcom, Measuring media plurality, Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport, 19 June 2012).
\item \textsuperscript{314} This focus on the role of news and commentary was reflected in the House of Lords Select Committee on Communications report The Ownership of News (2008).
\end{itemize}
a. Will it address pluralism in a sectorial approach (concerned with pluralism within some or all individual media industry sectors) or as a holistic approach addressing pluralism across media as a whole?

b. Will the inquiry focus primarily on political pluralism as represented in news and current affairs media or broaden it to include other genres of content (such as radio talk shows and dramatic/fiction television, motion picture, and literature where social and political issues of society are often explored).

c. Will the focus on pluralism be only on the spectrum of political views represented by national media owners/operations or be broadened to include their impediments to views representing geographic and cultural political pluralism concerns?

d. Will the focus primarily be on protecting existing media pluralism or finding ways to expand the pluralism available in the UK?

e. What kinds of criteria should be involved in determining the minimally acceptable level of media pluralism, i.e. the level at which public intervention may be appropriate?

f. Is the end result foreseen as a discourse on the challenges of media pluralism, improvement of regulatory structures and processes when pluralism issues arise, or to create policy that will alter the current conditions to improve the conditions of media pluralism?

17. If policies to control or improve media pluralism are the objective, the policies will need to be unambiguous for effective implementation. They should not be designed merely to regulate behaviour or to respond to actions by media firms, but should make clear to media firms what is expected so they do not encounter surprises that create undue harm to their strategic or investment choices. The requirements and boundaries of policy should be readily apparent ahead of time, so they know what behaviours or decisions are likely to raise oversight.

18. If policies are to be effective in the digital age, they cannot focus merely on traditional media, but need to address the effects of digital intermediaries—particularly about their potential to limit access to content and the need for transparency about the ways they skew content choices.

19. Achieving policy objectives will be complicated because media pluralism is not a strategic priority of the Department for Culture, Media and Sport and none of the media-related regulatory authorities, broadcasting authorities and corporations, independent public bodies, or advisory bodies are responsible for assessing and improving the overall state

315 Doing so might be a rationale choice, but creates issues of categorization and measurement that have not yet been generally agreed so guidance will be necessary from the Parliament.
of media pluralism in the UK. Far more attention is provided—and much better approaches taken—to ensuring pluralistic aspects in the arts and sport than for media.

20. The existing UK mechanisms for addressing media pluralism are insufficient for more than monitoring limited aspects of pluralism and ensuring that existing levels of pluralism do not worsen. Ofcom, the Office of Fair Trading, and the Competition Commission have the ability and skills to undertake appropriate inquiries in areas involving ownership and mergers/acquisitions, but their remits do not include continuous monitoring of broader pluralism issues and the authority and tools to work to proactively improve media pluralism. They also lack the organisational ethos and capabilities for positively promoting media pluralism.

21. To overcome the diffused authority and varying interests in aspects of media pluralism within government, a special joint commission or council should be constructed (drawing upon existing resources and approaches in ministries and departments concerned with media, competition, culture, and consumer welfare and incorporating Parliamentary and civil society representatives), which has the authority to promulgate regulation within a scope delegated by the Parliament, to act on issues of media pluralism in its broader conceptualization, and to make recommendations of actions requiring further Parliamentary consideration.

22. Because the protecting and promoting of pluralism require some flexibility in action, the entity should conduct periodic reviews of the state of pluralism and be empowered to initiate special inquiries in the case of mergers/acquisitions in and across media sectors, in cases of major new investments in sectors by the largest media firms, or in other circumstances likely to affect availability, distribution, or access to media content that have significant pluralism implications.316

23. Structural and behavioural regulation should not be the only measures used to address issues of media pluralism. Consideration should be given to requirements and incentives for media behaviours that promote pluralism objectives and creating new mechanisms through which broader objectives for geographic and cultural pluralism might be positively promoted.

13 May 2013

316 Initiating such a review should not be seen as prejudicing the outcome. A variety of public interest factors, as well as needs of companies to maintain viability and reduce risks, should be considered in the course inquiries resulting from the actions of companies.
Professor Robert Picard and Mr Robin Foster – oral evidence (QQ 15-28)

Transcript to be found under Mr Robin Foster
Lord Puttnam – written evidence

Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

1. Yes. Since the original Public Interest Test was designed in the context of the 2003 Communications Act, there has been enormous upheaval in the media and communications industries, principally as a consequence of the way in which digital technologies have transformed these sectors. The way in which news organisations operate, for example, has fundamentally changed because of the development of online services – including, for example, social media which barely existed in 2003.

2. For example, via online services, a number of large corporations are collecting very large amounts of data (so-called “big data”) about the lives of individuals across the UK. This presents obvious dangers not only in relation to privacy, but more specifically in relation to plurality – clearly, it would not be in the interests of any participatory democracy for the vast majority of this data to be concentrated in the hands of any one, or even a few, corporations.

3. There is thus a pressing need for a root and branch review of both the objectives of plurality policy and the means by which we measure it. This review needs to start with an examination of whether the objectives of any plurality policy need to change in a digital age.

In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition, or should it be improved?

• “ensuring there is a diversity of viewpoints available and consumed across and within media enterprises and;

• preventing any one media owner or voice having too much influence over public opinion and the political process/agenda.”

4. This is a good definition. However, given the fundamental importance of plurality to the health of an informed democracy, the definition should be embedded in statute.

What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?

5. News and current affairs are critically important to the maintenance of plurality. This principle has been consistently recognised by Ofcom and is also embedded in the Leveson report. Without access to a broad range of trustworthy and informed opinion about news and current events, the ability of citizens to make judgements which have a fundamental impact on society and on individual lives is seriously impaired.

What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic?
6. I support the principle that reviews of plurality should be triggered both as a consequence of merger and acquisition activity (via the Public Interest Test) but also that there should be periodic reviews every four or five years – as was proposed by Ofcom in its report on media plurality in June 2012. The latter proposal would enable media plurality to be measured in the context of the organic growth or other changes in the media sector, not simply in the context of specific activity in the marketplace.

7. For example, most of the large corporations which dominate online activity have acquired market share organically rather than by acquisition or merger.

- Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

8. Please see the answer to previous question.

- For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?

9. I believe that “sufficient plurality” as defined by Ofcom above is a an appropriate point of departure.

10. The growing role played by digital companies which serve as gateways to content must be taken into account. The most logical way to assess their role would be to examine the share of advertising revenues that companies hold across all forms of media in the UK. A cap should then be placed on the share which any one company could hold; Claire Enders suggests 15% which seems to me an effective starting point.

- How should ‘sufficient plurality’ be measured?

11. Plurality should be measured on an evidence-based manner by Ofcom using the wide range of analytical tools at its disposal including, but not limited to, economic tools.

- Should the BBC’s output be included in a review of it?

12. Probably, but not on a 'like for like basis' as the BBC's Licence Fee and Charter obligations place it in a different 'competitive sphere' and although its share of voice is significant it is prevented by statute from being a full commercial player. It's vital that this 'difference' be acknowledged in any final report from the Committee.

- How can internal plurality be sensibly measured against external plurality?

13. Internal plurality within large public organisations – such as the BBC – is important. However it is not a question of measuring it directly against external plurality but of ensuring that, through instruments such as the BBC Charter and Agreement, there is a legal underpinning for such internal plurality.
• What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

14. The standard instruments of competition policy can be deployed as remedies if insufficient plurality is identified – for example, measures ranging from blocking a merger or acquisition to ordering divestments – as when the Competition Commission ordered the British Airports Authority (owned by the Spanish group Ferrovial) to divest itself of Gatwick Airport and Stansted in 2009. Although there are salutary lessons no doubt in the fact that Stansted was not sold until January 2013 due to a series of legal challenges by BAA (by then known as Heathrow Airport Holdings).

15. The difference from classic competition policy in the case of media plurality should be that these instruments are deployed in the service of the broad citizen (or public) interest – and not only to prevent consumer detriment.

16. It would also be well worth considering whether a “fit and proper persons” assessment should be embedded within the Public Interest Test.

• How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?

17. The over-riding consideration has to be the broad public interest rather than the more narrow interests of private shareholders. However, the question also underlines why public interventions which help ensure a plurality of impartial and balanced news provision – such as those of the BBC and the commercial public service broadcasters – retain their over-riding importance in a digital age.

18. It is these interventions, whether funded by the licence fee or by discounted spectrum pricing which seek to ensure a plurality of high quality and trusted news – not least on a local and regional level.

• With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

19. The discretionary power to implement these remedies should ultimately rest with the Secretary of State principally responsible for media policy. But Ofcom has a critical role to play in supplying the rigorous evidence base which will inform those decisions.

20. It is also the case that the outcome of Jeremy Hunt’s decision to take a ‘quasi-judicial’ role in the News Corp./BSkyB case suggests that the power to implement remedies in this area should strictly lie with the competition authorities such as Ofcom or, where necessary, with the new Competition and Markets Authority.

21. We should recognise that the temptations and pressures that come with these decisions should be removed as far as possible from government - for its own sake!
• To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

22. I believe there is now an overwhelming case for a Europe-wide 'public interest test', one that could offer additional protection for plurality of voice, and serve as a barrier to market abuse and political interference.

• What should the UK learn from international approaches to media plurality?

23. I refer the Committee to an excellent report by Enders Analysis published in July 2011 entitled Lessons On Media Mergers From Other Countries.

3 May 2013
Lord Puttnam and Lord Fowler – oral evidence (QQ 140-159)

Transcript to be found under Lord Fowler
RadioCentre – written evidence

Introduction

1. Founded in 2006 after the merger of the Radio Advertising Bureau (RAB) and the Commercial Radio Companies Association (CRCA), RadioCentre represents radio groups and stations from rural, small scale ventures, to household names serving major metropolitan areas. Its member shareholders together represent over 98% of commercial radio listening.

Executive Summary

2. RadioCentre welcomes the opportunity to submit to the call for evidence on behalf of commercial radio. We recognise the importance of sufficient plurality in the media, and ensuring that ownership of national news media is not unduly concentrated in a manner that would be against the public interest.

3. The need for a review of plurality is timely. The media landscape is not what it once was. News is produced and consumed across a variety of media platforms at national and international levels. This trend is only likely to increase, and it is therefore appropriate to consider whether existing plurality measures remain appropriate.

4. When considering how to measure and define plurality we agree with Ofcom that the scope should be limited entirely to the provision of news and current affairs information across platforms, and should not extend to entertainment output or cultural diversity in content provision. We also support the view that there should be no pre-determined limits in market share.

5. We would also ask the committee to take into account the unique nature and impact of news on commercial radio. These relate to its editorial independence and impartiality, as well as the supply, distribution and delivery of news. Moreover the scale of public intervention in radio news (through the BBC) is a significant factor that ensures plurality both locally and nationally.

6. Finally, we question the wisdom of introducing ‘periodic reviews’ of plurality, which could result in market interventions, even in the absence of a specific corporate transaction. Such a process could act as a significant disincentive for media organisations to innovate or invest in content and technology. Moreover, we would ask the committee to endorse Ofcom’s recommendation to exclude local media entirely from any proposed periodic reviews.

Background

7. As the committee will appreciate, the fragmentation of media, proliferation of platforms and changes in consumption provide important context for current considerations of plurality. Consumers now access content from an average of 2.9 different news
providers in a typical week\textsuperscript{317}, with some estimates suggesting regular use of around 4 different sources. These sources have increased significantly since the current legislation designed at safeguarding plurality, such as the Enterprise Act 2002 and Communications Act 2003, were debated and approved by parliament.

8. Research commissioned for Ofcom highlights that while traditional media are still very important in accessing news, there has been a rapid growth in the use of online. Therefore while TV remains the most popular platform for news in the UK (85\%) and other traditional platforms such as radio (53\%) and newspapers (53\%) are very important, the fact that 41\% of the population also go online to access news is a significant shift\textsuperscript{318}. These dramatic changes that have occurred in multi-sourcing of media, particularly multiple news sources, are undoubtedly factors that should be attributed greater significance when measuring media plurality in future.

9. Ofcom has taken the position previously that the dramatic changes in multi-sourcing of media are important but has said 'we do not believe we can rely on it to ensure sufficient plurality'\textsuperscript{319}. However, we believe that this must be a factor that is monitored closely and attributed greater significance when measuring media plurality, particularly as the consumption of multiple and interchangeable online news sources continues to grow.

10. It is also the case that competition for content has also brought competition for advertising. Over the last decade, radio's share of total UK advertising has fallen from 4.1\% to 2.7\%, while internet ad revenues have grown to 35\%\textsuperscript{320}. As part of this shift the traditional local media sector has faced the biggest challenge, with a number of local newspapers closing and local radio stations under severe pressure.

11. Weakening local media not only depletes uniquely local content, but also lessens the training of the media talent of tomorrow that often start at their local newspapers and radio stations. We therefore agree with Ofcom that sustainability is the principle concern in local markets, as opposed to plurality\textsuperscript{321}.

Defining and measuring plurality

12. The definition Ofcom uses for media plurality of 'ensuring there is a diversity of viewpoints available...preventing any one media owner or voice having too much influence over public opinion and the political agenda'\textsuperscript{322} is an appropriate and workable one.

13. Ofcom has previously considered a number of measures when advising on the ability of media businesses to influence opinions and set the political agenda. Understandably this starts with a number of conventional measures of media impact, including reach; share of minutes/ hours; share of references; and whether the medium constitutes a 'main source' of news.

\textsuperscript{318} http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr12/CMR_UK_2012.pdf
\textsuperscript{320} RadioCentre/ Communications Chambers analysis, 2012
\textsuperscript{322} http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf
14. Measuring plurality of news in this way must remain the key function of the framework. Therefore we welcome Ofcom’s clear view that news and current affairs should remain the focus of considerations about plurality in the media in future. It would be ill-advised and unnecessary to extend to these considerations to broader issues of cultural diversity or non-news content. This would risk significant distraction and potentially undermine the primary purpose of the existing system.

15. Moreover, there are already a number of regulatory checks and mechanisms in place to ensure that no single person controls too much of the media, and therefore does not have excessive power or influence. These include the public interest test for media mergers, the remaining cross-media ownership rules, the accuracy and impartiality requirements in the broadcasting code, the “fit and proper” test for holders of broadcast licences and the public service broadcasting framework in which the BBC and other public service broadcasters operate.

16. Given the sensible focus of plurality definitions being put forward by Ofcom, and the range of existing measures in place, we do not believe fundamental underlying principles of the current framework should be discarded, in favour of overly simplistic thresholds or limits on market share that could be seen as binding. To do so might limit the flexibility available to the Secretary of State and his ability to examine each merger case on its merits, which is an important aspect of the current system. Therefore we welcome Ofcom’s rejection of a pre-determined limit or prohibition of market share in news.

Nature and impact of radio news

17. RadioCentre would also like to take the opportunity to outline some of the defining characteristics of radio news, which are not always appreciated fully when considering issues of plurality. First and foremost there are significant safeguards in place that ensure the editorial independence and impartiality of news and current affairs coverage. Broadcast regulation provides protection for news plurality, due to requirements in the Communications Act 2003 that are incorporated in Ofcom’s Broadcasting Code section 319, which states that ‘news in whatever form, must be reported with due accuracy and presented with due impartiality’. This is a significant safeguard against potential influence on the news agenda by media owners.

18. In addition, while Sky News (through its contract with IRN) supplies news content to commercial radio stations, this is a news supply agreement and it is the stations themselves that retain editorial control and produce the vast majority of bulletins, particularly in peak time.

19. Commercial radio bulletins consist mainly of short informative news headlines, providing listeners with the news they need to know rather than comment, analysis or opinion pieces. The average commercial station broadcasts 45 minutes of news across 19 bulletins each day, whereas the BBC’s radio portfolio includes a national station that is obliged to broadcast 75% news (5 Live); a national station that broadcasts the country’s

---


most influential radio news programmes at peak times (Radio 4); and a local radio network that is predominantly speech and news based.

20. Therefore, because of the method news is provided it would be misleading to equate the reach of commercial stations that carry this news (over 33m listeners) with the reach of news on BBC radio stations (over 34m listeners). This does not take into account the extent of radio news listening on these networks, or the distinct nature of much commercial radio and BBC output.

21. The different focus of these services is one of the reasons that media (and media businesses) have a differing ability to influence opinions. This is something that can be measured and assessed by the extent to which a medium is a main (or only) source of news and its relative importance to other sources, but also by considering the proportion of output that could be considered as news.

22. Ofcom indicated that it understands and appreciates this distinction when it considered the acquisition of Sky by News Corp in 2010. Specifically it stated that 'it is likely that estimating reach on the basis of all radio listening overstates the level of reach achieved in respect of national news listening', but that 'no industry data is available to estimate the share or reach of radio news'\textsuperscript{325}.

**BBC impact**

23. Plurality and mergers in the radio sector should also be considered to be different to other media due to the uniquely large public intervention in the sector in the form of BBC. The BBC’s current share of radio listening sits at 55.3%. This is significantly higher than its share of any other media, including television where its overall share is around 30% (and declining).

24. As well as its dominance in radio, the BBC also has a significant advantage due to its unique ability to cross-promote its content nationally and locally across television, radio and online, irrespective of its public value. BBC News is the most popular news site among UK internet users and BBC News stories are shared most often on the leading social networks.

25. This promotion (across a network of services that are rightly prevented from carrying advertising) provides a reach and impact for promotional activity which is far in excess of what any commercial broadcaster could realistically achieve.

26. Although recently the BBC has had to make reductions in expenditure, in line with the freezing of the licence-fee until 2016, its position will remain relatively strong and stable when compared to many of the more fragile commercial operators. Indeed it is still possible that the BBC could grow organically in influence and share in some sectors, whether due to its own actions or market evolution.

27. The BBC should therefore be included within the scope of any plurality review. Given the BBC’s significant presence in news, and the pressures it faces to consolidate its

\textsuperscript{325} Ofcom ‘Report on public interest test on the proposed acquisition of British Sky Broadcasting by News Corporation’, Dec 2010, p.37
newsgathering operations in order to deliver savings, we further recommended that the BBC Trust assesses the BBC’s contribution to plurality as one of the actions of this review.

Reviewing plurality

28. As the committee notes in its call to evidence, one of the most significant changes proposed to the current framework for assessing media plurality, is the concept of a regular review every 4 or 5 years. This approach emerged following Ofcom’s work during 2012 and associated questions from the then Secretary of State for Culture, Media and Sport.

29. It seems to RadioCentre that there are inherent structural challenges in establishing such a regime and committing to ‘periodic reviews’ of this nature. In particular we note that the statutory framework is only designed to deal with a reduction in plurality arising from a specific corporate transaction, as opposed to market exit or organic growth.

30. If a future review process was to lead to market interventions, whether or not there was a corporate transaction, then this could introduce significant uncertainty and costs that would act as a major disincentive for media organisations to innovate or invest in content and technology. Moreover, it is not clear how appropriate remedies would be devised or enforced in circumstances where no corporate transaction, takeover or merger has taken place. We would therefore be very concerned about any change to the regulatory regime that could result in interventions which did not result from a specific corporate transaction.

31. If regular reviews are to take place to inform policy-making it will be crucial to ensure that their scope and focus are appropriate and take into account all of the relevant factors. For radio that means understanding and acknowledging a number of the issues we have raised in this response, including its place within a fast changing market for news; acknowledging the nature and impact of its news output; and the role of the BBC.

32. We would also ask the committee to consider Ofcom’s clear advice on this matter in relation to local media, which emphasised the fact that challenges at a local level ‘are more about sustainability than plurality’. As such Ofcom was very clear that it ‘would not recommend that a periodic review of plurality considered local media’326, which is a position that we would ask the committee to endorse strongly.

Conclusion

33. RadioCentre welcomes this call for evidence and the helpful scrutiny that the committee will be able to bring to the matter of media plurality. We share Government and Parliament’s view that plurality of news provision is essential for our democracy, and we believe that this can only be achieved by ensuring we retain a vibrant and diverse media sector.

34. In order to support this objective we understand the desire to examine the measurement of plurality across media, specifically in regards to the provision of news

326 http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/letters/advice.pdf p.8
and current affairs. This approach is eminently sensible and has the potential to provide greater clarity and certainty for all concerned.

35. However, any changes should not be to the extent that they increase red-tape, specifically when considering local media companies that are already under considerable financial strain to survive. This local resource should be valued above plurality concerns, which are most relevant to national and international media organisations.

36. We also note that the fundamental changes in the way news is produced and consumed across platforms in recent years, with the rapid growth of online news sources. As this process continues to accelerate we believe that it is legitimate to question whether tests for plurality within traditional media will appropriate or should more take into account these changes more explicitly in future.

4 May 2013
Dear Sirs

We welcome the Select Committee’s inquiry into media plurality.

We provide our comments in the capacity of two experienced practitioners in the field. Dr Alison Sprague is a consultant economist specialising in the media sector and Suzanne Rab is a competition lawyer. Individually and collectively we have advised businesses and regulators on the interaction between media plurality and competition law in the UK and overseas. Alison Sprague has recently joined Competition Economists LLP but we provide these comments in our personal capacity. As such, these comments do not necessarily express the views of Competition Economists LLP or other organisations we represent or are affiliated to. To assist your consideration of these comments, we provide summary bios in Appendix A.

In view of the speed of consideration required in the initial call for evidence, we provide our headline observations on the key issues below. To support this response, we provide in Appendix B selected recent submissions that we have made on this issue by way of public commentary and as part of consultations on this issue in Europe and overseas (including in relation to the recent review of media plurality regulation India and Australia).

So important are the issues under inquiry that we believe now is a critical time for the UK to reflect on and reassess the experience it has had in this area and to fundamentally shape the future regulatory landscape. The implications of ‘getting it right’ for the UK and other jurisdictions which look to the UK for inspiration of design of their own regimes are significant. In short, we have a lot to learn from the experience to date, with a corresponding huge scope for error and unintended consequences.

Accordingly, the following are some of the main issues highlighted by the call for evidence:

- **Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?**

We believe that policy objectives should be clearly defined. Given the (positive) effect the internet is having on plurality, together with the fact that the last major legislative measure was made in 2003, plurality policy could be revisited and objectives reconsidered. Any incorporation into statute needs to balance certainty for stakeholders against the need for some flexibility in interpretation. By this we mean that anything in statute should not invoke automatic triggers but that the basis for intervention should be transparent, predictable and proportionate. Above all it should be based on sound evidence that has been tested before diverse stakeholders.

- **In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition, or should it be improved?**

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 process/agenda.”

Ofcom devoted considerable attention and effort to developing its working ‘definition’ of media plurality. Its consultation was some seven months long and involved inputs from a wide range of stakeholders. Reviews of academic literature, research and academic seminars were held, amongst others. We thus believe that Ofcom’s working definition is an excellent first position and believe that while there may possibly be some minor enhancements/refinements, a wholesale revision is not advisable unless new robust evidence has come to light since the consultation.

- What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?

The scope of media plurality should encompass news and current affairs only; media plurality is concerned with the plurality of viewpoints. Other genres are not directly relevant although we acknowledge that some genres (e.g. soaps) may influence people’s viewpoints. On the supply side, news provision is better defined and a reasonable indicator of relevant content than other genres. We direct the HoL to Ofcom’s conclusions in respect of relevant genres. Wider cultural diversity in content provision may be met by the market and is additionally met via content obligations in licences/agreements for PSBs. Indeed, plurality objectives and wider cultural diversity objectives should not be confused. Regional news is of course a special case (see FTI Whitepaper, ‘Rags in Tatters’, available on FTI’s website, link in Appendix B).

- What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic?

The appropriate trigger is a relevant media merger. Ofcom reviews the status of media ownership rules on a periodic basis, and thus media plurality is implicitly assessed on a regular basis. Regulatory certainty should be paramount for all stakeholders.

Flexibility could be based on periodic reviews provided that the basis for the review has a rational basis (e.g. time since prior review or compelling empirical data supporting a re-evaluation).

- Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

There should not be a back stop power to review that can be called upon at ministerial discretion. This would effectively leave a ‘sword of Damocles’ hanging over the industry and disincentivise organic growth. We welcome that Ofcom has rejected the concept of an ‘exit trigger’ whereby there would be intervention in the event that a media player left the market. Such a situation could be neutral as regards sufficient plurality.

- For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications
**Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?**

Sufficient plurality is a qualitative concept (exercising judgement based on a range of quantitative and qualitative evidence) and it must be assumed that there was sufficient plurality at the time the Communications 2003 Act was enacted. Essentially, there needs to be a sufficient range of viewpoints available to audiences in the UK across all media. Online news provision (and BBC services) should be included in the assessment and both the demand side (consumption, including multi-sourcing within and across media) and the supply side (news) provision should be taken into account. Companies that are successful in a plural environment should not be penalised for their success.

It is not clear what ‘digital intermediaries’ encompasses. But news aggregators, online news websites provided by traditional media companies, online news sites (e.g. the Huffington Post) and social media, primarily Twitter but also Facebook et al. should all be included in any assessment of sufficient plurality. *(We refer the HoL to the report written by Alison Sprague on behalf of News International and submitted to the Leveson Inquiry. This is available on the Inquiry’s website and the link is provided in Appendix B.)*

Ofcom in its plurality review has indicated that there are a basket of measures that may be taken together ‘in the round’ to characterise a plural environment. The key issue is ‘sufficiency’. There should be no absolute threshold which defines sufficiency. The starting point has to be that when enacting the Communications Act 2003 which represents a reeling back of regulatory intervention and ownership restrictions, Parliament must have deemed there to be sufficient plurality. Any deterioration relative to that situation would of course raise issues for plurality. In today’s more diverse media environment it is hard to conclude that society is less plural. Whether it is sufficiently plural is to be determined by reference to a variety of metrics which Ofcom has recognised and a sensitivity testing of the various metrics. No one indicator should be decisive. All the evidence reviewed (the effect of the internet, access to the internet, trends in social media, consumer behavior, traditional media responses etc.) indicates that the news media environment is significantly more plural since 2003 *(see FTI reports to DCMS and Leveson, links in Appendix B).*

- **Should the BBC’s output be included in a review of it?**

The BBC cannot be excluded from the plurality landscape. If it is accepted that a commitment to impartiality, of its own, is not enough to guarantee plurality - though it contributes to it - BBC’s governance structure should not prevent it being considered. It still has scope to influence the news agenda.

BBC’s position in news provision means that it would be incongruous not to consider it in any measure of viewpoint diversity.

This does not mean that BBC’s current position is problematic for plurality. It merely means that there is no compelling justification to consider it as a special case because of the way it is governed and regulated. It is not possible to argue at the same time that the BBC is committed to impartiality and at the same time to say that a provider that is responsible for over 80 per cent of news consumption (depending on the measure) does not contribute to plurality.
It is encouraging that Ofcom has moved to a more sensible approach of jettisoning some artificial approaches while embracing an approach that would take account of a number of different indicators of plurality. Now that all needs to be brought together in a consistent, rational and specific way. This is not to argue for a remedy but rather to provide a framework for diagnosis.

- **How can internal plurality be sensibly measured against external plurality?**

Both these mechanisms for contributing to plurality are valid. The distinction between external plurality (achieving plurality through a number of media outlets) and internal plurality (ensuring content diversity through a single supplier) has been accepted in the UK. In the context of BSkyB’s proposed acquisition of a 17.9 per cent interest in ITV, the UK CC thought “that it was appropriate to distinguish between the range of information and views that are provided across separate independent media groups (external plurality) and the range that are provided within individual media groups (internal plurality)”.

Among the mechanisms for ensuring content diversity are: licence conditions, and commitments to accuracy and impartiality. Competition law, by preventing substantial concentration in the hands of one controller, indirectly fosters external plurality.

- **What structural and/or behavioural remedies are appropriate if insufficient plurality is found?**

The choice between structural or behavioural remedies is not a binary one, i.e. a choice between one or the other remedy. The focus of competition authorities on structural remedies in cases raising concerns of market concentration has given way to a more sophisticated approach which selects the appropriate remedy on a case by case basis. In some instances a behavioural solution may be more effective than a divestment remedy such as where access to content or prohibition from discrimination is key to ensuring the viability of independent offerings.

Clearly pluralism and competition are different concepts but there is cross-fertilisation between the two areas. Thus the increasing sophistication of the competition authorities in devising flexible remedies has lessons for plurality interventions. Editorial independence is a key safeguard of pluralism and formed the majority of commitments in UK mergers raising concerns for plurality under the Fair Trading Act 1973. If there are questions that such commitments may not be effective in particular fact scenarios, this should not lead to rejection of the remedy but may point to the need for additional safeguards and monitoring.

- **How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?**

Remedies should be consistent with sound regulatory principles particularly proportionality. It is a truism that regulators face challenges when deploying remedies in fast moving markets. This is particularly the case in the media sector where the rise of the internet, new technologies and distribution methods presents, on the one hand the prospect of increased plurality but also uncertainty about how the market may develop. Accordingly, remedies should be supported by an impact assessment given the recognised ambiguous impact of technological and economic development in the media sector.
Another relevant factor is the financial situation generally and in the provision of news specifically. It will be recalled that acquisitions may be prompted by situations which although not amounting to ‘failing firm’ defences under competition law, nevertheless take place against a counterfactual where the target would otherwise have a slow lingering death and potentially leave the market, but for the acquisition. In these circumstances, the deployment of remedies should take place against a robust view of the relevant counterfactual. This may not necessarily be the continued independent existence of the target or its takeover by an acquirer who presents fewer issues from the perspective of pluralism. The proposed acquisition by BSkyB of a 17.9 per cent interest in ITV was effectively prohibited by the UK competition authorities on competition grounds alone. However, the acquisition took place against the background of ITV’s deteriorating financial position. It may be conjectured whether the transaction would have been allowed had competition issues not been in issue? It is a reminder of the complex trade-off that regulators should undertake when faced with the prospective financial weakening of the target. A prospective inquiry is required. There should be no presumption that the relevant counterfactual is the preservation of an independent target contributing to plurality in the same way as previously.

(We refer the HoL to the ‘Rags in Tatters’ paper – see link at Appendix B – which examines some relevant issues facing the regional press.)

- With whom should power to deploy these remedies ultimately reside?

What process for their deployment should be observed?

Historically, intervention on media public interest grounds has been the preserve of Government rather than an independent regulator. Even with the removal of political influence from most spheres of economic regulation, pluralism remains one of the ‘holy grail’ areas where the Minister has the final word on whether there is an adverse public interest effect and, if so, what remedies if any are suitable. The rationale for the State being decisive on this question is rooted in the public interest, namely that pluralism is a fundamental goal of democracy and policy.

However, as with any review of the substantive rules, there should also be a review of traditional orthodoxy which entails that the State should be decisive on this question. The conclusion may be the same but the inquiry should focus on what safeguards can be deployed to ensure that such important decisions are in the public interest. The role of the courts to review such decisions cannot be under-stated. Even before judicial challenge is considered, checks and balances in the decision-making process can be strengthened to ensure that decisions and procedures have a sound legal and empirical basis.

On the issue of implementation of remedies, it may seem that the sector regulator with relevant expertise and experience has an obvious role in monitoring enforcement. However, this is not an axiom and may not be desirable in all cases. The involvement of independent monitoring trustees or adjudicators who are independent of the Government, the sector regulator and the parties is well established in competition cases. There is no reason why it cannot have a counterpart in the case of plurality remedies, particularly where behavioural solutions are in issue.
Suzanne Rab and Dr Alison Sprague – written evidence

• To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

The Commission's proposal for an EU wide measure on media plurality emphasises that this issue is to be seen in a wider international context even though the terms of reference for the inquiry are domestic.

There are numerous challenges to instituting EU wide regulation including different cultural, regulatory and normative contexts in the various member states. The legal basis for a pan-EU measure is far from settled. The difficulties of adopting relevant regulation against fast technological developments are multiplied when these need to take into account developments in different markets at different stages of development.

We believe that each member state’s approach to media plurality should be treated similarly to public service broadcasting: i.e. each member state determines its own policy subject to competition rules.

• What should the UK learn from international approaches to media plurality?

International experience contains the following lessons for design of policy. There is no one size fits all across jurisdictions and polar extremes in terms of the content and intrusiveness of regulation. These range from no rules to address media plurality beyond competition law to elaborate schemes to capture the nuances of content and viewpoint diversity.

Many emerging economies are seeking to adopt their own regulation in this area taking their lead from the UK (India, Somalia). Yet these jurisdictions may not have the institutional infrastructure to address the issues even where there is an empirical basis for intervention.

Established regimes have revisited their lighter touch regulation in this area, sometimes in response to popular pressure. The experience in Australia where reforms were tabled - and withdrawn - in a matter of one month highlights the political fallout that can ensure when reforms are rushed through without proper consultation.

The overriding message is that there are huge challenges in transposing what has been done elsewhere into a domestic context. Conversely, where the UK is held up as a beacon of best practices, it has a responsibility on the international stage to ensure that what it adopts is not only robust for the domestic market but is seen in its proper context and frame of reference. The dangers for UK companies overseas who encounter additional lawyers of regulation in new markets, themselves inspired by the UK example, cannot be overestimated.

We note that the Committee is open to receiving more lengthy submissions extending to over 6 pages. We believe that this area may require a more comprehensive submission than reflected in this overview. It is our intention to reflect on our comments above and if we consider it appropriate, we may make a further submission to the inquiry next week to supplement this response.
We provide these comments in a spirit of constructive engagement. We would be glad to provide further assistance to the inquiry including providing oral evidence in public at Westminster.

1 May 2013
Appendix A

Bios

**Alison Sprague D.Phil**
Economist: media & entertainment

Alison specialises in the entertainment, media and telecoms sectors. Her sector experience includes television, radio, film, internet, sport, music, publishing and fixed/mobile telecoms. She has led numerous strategy and economics projects, providing commercial, competition, policy and regulatory advice, including advising companies, regulators and governments on deregulation of media/telecoms markets and digital broadcasting. She jointly led the study, ‘The public policy issues arising from telecoms and audiovisual convergence’ for the European Commission which formed the basis of the Green Paper on convergence. She has advised on film policy, radio ownership rules, broadcast licence applications and renewals, TV advertising minutage, media plurality and conducted several economic impact studies for the TV and film sectors. Additionally she has advised on consumer interest matters in the formation of regulatory policy and written thought leadership papers on various media matters including local newspapers, sound recordings copyright duration, media policy, the Hargreaves review of IP and gambling.

**Suzanne Rab**
Competition Lawyer

Suzanne is a competition lawyer. Suzanne has over fifteen years of experience advising clients across all areas of European and UK competition law in leading competition practices. She has also occupied the role as director at PricewaterhouseCoopers working with its economics and forensics practices. She has particular experience advising on transactions and behavioural matters, including in proceedings before the UK competition and regulatory authorities and the European Commission. She has worked on some of the most high profile merger, market and cartel investigations in Europe and the UK. Suzanne has advised on a range of competition law issues in the media sector including in matters relating to newspapers, online distribution, pay TV, sports rights and licensing of copyright. Suzanne regularly speaks at conferences, presenting on a variety of competition-related topics including merger control, sector regulation, and the role of economics in competition cases. Suzanne maintains a focus on international comparative competition law and regulation, particularly in the regulated sectors and in emerging markets. She is author of “Indian competition law, an international perspective” (published by CCH India, a division of Wolters Kluwer in May 2012).
Appendix B

Submissions on Media Plurality

Attachments

Ofcom: Measuring Media Plurality (‘Take Two’), FTI White Paper - September 2012
http://www.fticonsulting.co.uk/global2/media/collateral/united-kingdom/measuring-media-plurality.pdf

Issues relating to media ownership: TRAI’s consultation paper, A Report for Casbaa - March 2013

The March of Media Reform: A UK Perspective on Australia, FTI White Paper - April 2013

Media Freedom and Pluralism: A Threat from the European Commission, FTI Briefing – April 2013

Further references


‘The importance of the internet in how news is delivered today’, report prepared for NI Group Limited.

‘Rags in Tatters’, an FTI whitepaper on the prospects for the regional press

327 As advisers to News Corporation in relation to the proposed acquisition by News Corporation of BSkyB
We refer to our Initial Submission of 1 May 2013 (“Initial Submission”) in relation to the above Call for Evidence. Such is the importance of the issues under consideration that we indicated that we would reflect on and, if appropriate, make supporting submissions to develop our initial comments.

The purpose of this submission is to provide, by way of synthesis and aide memoir, further contextual examples in relation to the first and final questions.

**Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?**

Media plurality has been a cornerstone of UK policy for almost seventy years, although the search for a definition which is both practical to apply and supported by theory and empirical research has so far proved elusive. In order to analyse the ‘fitness for purpose’ of the current statutory plurality test it is necessary to consider the main potential policy rationales that have been put forward for plurality regulation. We then examine how the UK’s enforcement experience measures up against those rationales and draw some tentative conclusions for the design of future policy and legal instruments.

**Objectives for plurality policy**

For convenience only, pluralism may be described as a situation where no single voice/viewpoint can control the news agenda, restrict ideas or debate or allow government, or indeed other parties, to escape scrutiny or criticism.

Another relevant distinction is between external plurality (achieving plurality through a number of media outlets) and internal plurality (ensuring content diversity through a single supplier). Both these mechanisms for contributing to plurality are accepted in the UK. In the context of BSkyB’s proposed acquisition of a 17.9 per cent interest in ITV, the UK Competition Commission thought that “it was appropriate to distinguish between the range of information and views that are provided across separate independent media groups (external plurality) and the range that are provided within individual media groups (internal plurality)”. In this respect, the distinctions between external and internal plurality may loosely correspond to a distinction between the goals of source plurality (external plurality) and content or viewpoint plurality (internal plurality).

When the UK sought to develop its latest regulation of media plurality contained in the Enterprise Act 2002 the relevant minister said at the time 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” (emphasis added).328

---

328 Lord McIntosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard.
This statement encapsulates three closely linked objectives that are put forward for plurality interventions: (1) promoting the democratic process; (2) avoiding media oppression through the distortion or suppression of information; and (3) facilitating access to a range of diverse opinions and viewpoints.

The current UK media plurality statutory test

The current UK media public interest criteria that trigger an intervention by the Secretary of State are set out in section 58 of the Enterprise Act 2002. The relevant “considerations” differ depending on whether the transaction concerns only newspapers or broadcasting/cross-media mergers.

In relation to newspaper mergers the relevant considerations are:

“58(2A) The need for— .

(a) accurate presentation of news; and

(b) free expression of opinion

[…]

(2B) The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom […]”

In relation to broadcasting and cross-media mergers, the relevant considerations are set out in section 58(2C) and are:

“(2C) […]

(a) 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;

(b) the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and

(c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.”

The relevant considerations generally reflect the three objectives discussed above. However, the language for similar concepts differs within section 58 and objectives are not accorded the same treatment or prominence across newspaper and broadcasting/cross-media mergers.
Objective (3) (facilitating access to a range of diverse opinions and viewpoints) is reflected in the tests for both newspapers (section 58(2B)) and broadcasting/ cross-media mergers (section 58(2C)(b)).

Objective (2) (avoiding media oppression through the distortion or suppression of information) informs the tests for both newspapers and broadcasting/ cross-media mergers (sections 58(2B)(a) and 58(2C)(c)). However, in relation to the broadcasting sector, the consideration is based on existing regulation in this area rather than a general commitment to accuracy and freedom of expression. This is logical in view of the existing regulatory framework where newspapers are not subject to the same standards objectives as broadcasters.

Each of the above considerations may indirectly promote the democratic process (objective (1)).

The need to maintain diversity of media outlets (broadly corresponding to source or external plurality) applies only to broadcasting/ cross-media mergers. The Explanatory Notes state in relation to section 58(2C)(a) that “[t]he first limb of this subsection is concerned primarily with ensuring that ownership of media enterprises is not overly concentrated in the hands of a limited number of persons.” 329 This consideration does not have a direct counterpart in relation to newspapers.

UK experience of the media plurality test

In the decade since the current regime was put into operation, only two cases have raised plurality “issues” such as to warrant a intervention. Critically, there has been no final determination in a case involving only plurality issues. However, it is useful to consider the basis for intervention in these cases to explore the relevance of the statutory objectives.

In BSkyB/ ITV, BSkyB had acquired material influence over ITV. The intervention notice was based on section 58(2C)(a), namely “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”. The Competition Commission concluded that sufficient plurality remained for each major audience in the UK, both for a TV audience and a cross-media audience (taking into account the readership of News International’s newspapers). Ultimately and inconclusively for present purposes, BSkyB was required to divest its shareholding in ITV to below 7.5 per cent, for reasons connected with competition and not media plurality.

The second case involved News Corporation’s proposed acquisition of the shares in BSkyB that it did not already own. The case did not reach a final decision by the Secretary of State so provides no definitive support for the efficacy or otherwise of the existing statutory controls. Again, the intervention notice was based on section 58(2C)(a).

Implications for design of policy and regulation

329 Explanatory Note 802
In terms of theoretical and constitutional legitimacy, this brief examination of the rationales in protecting plurality has shown that the existing statutory provisions do broadly capture the goals that were put forward as intrinsic to plurality at the time of their adoption.

The experience in practice suggests that there is room for a clearer statement of the objectives since the current formulation carries some risk of haphazard application. It also confuses or conflates concepts which are borrowed from other areas of regulation (i.e. Ofcom’s broadcasting standards). This potential overlap carries the risk of over-zealous and potentially unpredictable intervention.

We recommend that the existing statutory objectives, while not fundamentally ill-conceived, could benefit from the following clarifications:

First, the definition should include for each of newspapers, broadcasting and cross-media mergers “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”. The question of what amounts to “sufficient” plurality is the key element where Ofcom’s latest thinking represents an important development in this area (namely the need to take account of a variety of measures with no one metric being decisive).

Second, the definition should include for each of newspapers, broadcasting and cross-media mergers “the need for the availability throughout the United Kingdom of a sufficient plurality of views and content which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests”.

Third, for each of newspapers, broadcasting and cross-media mergers there should be a commitment to the accurate presentation of news and free expression of opinion. In our view, issues relating to market power or concentration are better addressed by competition authorities. Concerns raised by the conduct of media owners are matters which more properly fall within the remit of press regulation, journalistic standards and Ofcom’s fit and proper person regulation. Finally, the broadcasting objectives set out in section 319 of the Communications Act fall properly within Ofcom’s review.

It will be clear from the above analysis and the increasing diversity and complexity of media markets that not all the above issues will be relevant in a single media merger. It will be rare for any one combination to raise concerns in relation to all three objectives.

It follows that there is unlikely to be watertight definition of the objectives to be pursued that will satisfy all stakeholders. The need for a robust judge-proof definition carries the risk of over-reliance on quantitative metrics that Ofcom has rightly eschewed. The need to incorporate flexibility and discretion will encounter resistance from those seeking predictability and legal certainty.

In suggesting a tightening up of the current provisions we recognise an element of ‘if it ain’t broke don’t’ fix it’. This is not a recommendation for a deregulatory approach, but a statement of caution. This seeks to build on objectives that have acquired some popular and political consensus, while linking this to the wider regulatory framework that can indirectly support plurality as well as media independence.
What should the UK learn from international approaches to media plurality?

We believe that this issue merits particular focus given the heightened interest in this issue by policy-makers, regulators and organisations at the national, regional and international level.


There is no one size fits all across jurisdictions and polar extremes in terms of the content and intrusiveness of regulation

While a broad international consensus exists for the support pluralism, there is no internationally recognised regulatory model as to how this goal is best served.

Our review of international regulatory regimes from a media plurality perspective identified three models in terms of the paradigms of regulation.

<table>
<thead>
<tr>
<th>Model A</th>
<th>No media ownership rules and sole application of competition rules in merger control</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model B</td>
<td>Media ownership rules and sole application of competition rules in merger control</td>
</tr>
<tr>
<td>Model C</td>
<td>Media ownership rules and modified application of competition rules in merger control</td>
</tr>
</tbody>
</table>

Sweden is an example of Model A. Sweden’s media industry is the largest in Scandinavia. The Swedish and other Scandinavian governments have cooperated to seek to ensure competition and address fears that more financially powerful Swedish companies will be able to gain market power across the Scandinavian media sector. This has contributed to an environment where there are few restrictions on media ownership.

France is an example of Model B and has stringent and complex media ownership rules. Although France may regarded as a text book example of the application of rigid media ownership, the regime has to be understood in its political and cultural context. That said, this has stopped short of any special media rules in the merger control context where a pure competition analysis is deemed sufficient. Thus, even a country that may be considered to be more an outlier in terms of media ownership regulation has elements of moderation in its pure competition-based approach to merger control in the media sector.

Germany is an example of Model C. In Germany, mergers in the TV and broadcasting market are reviewed by the Federal Cartel Office (“FCO”) and the German media regulator (“KEK”). The FCO applies mainstream competition law, whereas the KEK applies the Interstate Treaty on Broadcasting. This system of double scrutiny led to a first prohibition – the proposed merger between Axel Springer AG and ProSiebenSat.1 Media AG in 2006. The parties appealed both the FCO and KEK decisions. In the competition case, the Federal Supreme Court confirmed the FCO’s view in June 2010. On 15 February 2011, the Bavarian Higher Administrative Court overruled the 2006 decision by the KEK finding that the KEK
exceeded its powers. It should not have considered Axel Springer's activities in other media markets but should only have focused on ProSiebenSat.1's television audience share which was below the statutory threshold. Although the case revolves around the technical interpretation of the specific statutory provisions, it illustrates some of the complexities in devising rules to capture pluralism in the absence of competition concerns.

The technical descriptions of these regimes and their market, political and cultural context emphasise that they cannot be separated from that context. They should not be taken as a blueprint for export into a wholly different market environment where the local context is very different. Even within those jurisdictions like the UK that have more complex regimes, these have developed over a number of years and are not without costs.

Trends towards liberalisation can also be detected. The Netherlands was comparatively late in liberalising its media and terrestrial broadcasting sector with the first commercial and private broadcasting licences first issued in 1990. Since then it has made significant advances and has now removed restrictions on companies merging or acquiring assets in individual media segments and across the media beyond mainstream competition law.

This is not to argue for a wholesale reeling back of existing rules. Given the state of experience and knowledge as to the effectiveness of the various rules, it is clear that devising rules to safeguard plurality is not an exact science. It involves a complex interplay of measures to enhance the diversity, quality and range of media on offer. The assessment does not take place in a vacuum but is deeply intertwined with the broader regulatory framework and democratic process prevailing in a particular market and legal system.

(See further 'Issues relating to media ownership: TRAI’s consultation paper, A Report for Casbaa’ - March 2013 at Annex B to the Initial Submission).

Many emerging economies are seeking to adopt their own regulation in this area taking their lead from the UK

The UK has had a long history of regulation of media plurality. The Leveson Inquiry and the current Inquiry have once again highlighted the ongoing debate about the ‘right’ approach to regulation in this area.

Our review of similar regulatory consultations in other jurisdictions indicates that the UK often provides support for intrusive and rigid controls elsewhere. The recent consultation by the Telecoms Regulatory Authority of India (‘TRAI’) is a case in point. On 15 February 2013 TRAI issued a consultation on proposed reforms to regulation of the media sector. Amongst the more controversial consultation issues were: (a) whether it would be appropriate to have a “1 out of 3 rule” to restrict any entity having ownership/ control of an outlet in a media segment; (b) whether it would be appropriate to restrict any entity having ownership/ control in a media segment of more than a threshold level (say 20 per cent); and (c) whether any entity should be allowed to have an interest in both broadcasting and distribution (i.e. a de facto ban on vertical integration).

In the course of this consultation, the UK is referred to almost as a ‘poster child’ for the type of regulation that the TRAI is debating. In some instances, measures that the UK has now rejected in favour of a more liberal approach (e.g. limits on local media ownership) are cited in support for replicating such a regime.
The upshot is that now is a critical time for the UK in taking a long hard look at its own regulation not only for setting the domestic regulation but also in the context of the UK’s position internationally. Our experience has been that the UK can provide stimuli for policies and procedures elsewhere but there is a real danger that ‘tried and failed’ (or now outdated) approaches are taken out of context. Worse still, such exports can be damaging to the competitiveness of businesses seeking to expand in newer economies which face regulatory barriers to growth purportedly modeled on the UK.

The implication is that the UK has an opportunity to reflect on the experience domestically and abroad. This has implications for media plurality in the UK but also for the competitiveness of UK businesses overseas.


**Established regimes have revisited their lighter touch regulation in this area, sometimes in response to popular pressure**

We welcome that the Inquiry has instituted this Call for Evidence and has invited wide public commentary.

Recent attempts to incorporate plurality tests without a Regulatory Impact Assessment and proper consultation with industry have floundered. The month of March 2013 saw the release – and 11th hour withdrawal – of hotly contested reforms to Australian media regulation. The proposed reforms comprised four bills affecting media ownership and regulation of media professionals and incorporated a controversial plurality test. They attracted vociferous condemnation from the media industry’s most prominent leaders including public statements from News Limited and Ten Networks. Serious reservations were expressed about the content of the bills, and that they were presented without proper consultation with industry and the Opposition. The political repercussions of the aborted proposals are only just being felt.

This recent experience, at the very least should urge caution when seeking to implement radical reforms without an assessment of underlying regulatory failure. The mere fact that a regime has plurality laws but has not used them – which has been a criticism of the UK - should not of itself be a justification for a re-write of existing laws, in whole or in part, where there is no evidence that those laws are not suitable.


**The on-going debate on media plurality**

The debate among regulators and policy makers in this area is on-going and remains polemic. A few examples will serve to illustrate the issues that have been faced even by countries which have had experience applying controls on plurality. In short, there is no ‘one size fits all’ and while pockets of consensus emerge, this is not universal.
Clearly media plurality is important; a crucial feature of a democratic society and a valid policy objective. But it is difficult to define (more so in practice than in theory) and challenging to measure. In particular, identifying a definitive way to measure cross-media plurality remains tricky; there is no acceptable cross-media exchange rate. This boils down to the fact that ‘impact’ or ‘influence’ is almost impossible to assess. Thus trying to add up the consumption of TV, radio, newspaper and online news is fraught with difficulties.

**Academic perspectives**

The European Commission engaged a consortium of consultants and academics to conduct a major study on media plurality across EU Member States. Its objectives were to consider appropriate metrics to measure media plurality and to monitor and indicate risks to media plurality. It developed a diagnostic tool, the ‘Media Pluralism Monitor’ which comprises more than 160 indicators. While a report was published in 2009, there appears to be no subsequent developments. This is not surprising – it seems unlikely that 27 Member States would compile and monitor 166 metrics.

Another study critically reviews how a number of plurality regimes have worked in practice, covering the Diversity Index in the US (2003), the public interest or plurality test in the UK (2003), the integrated communications system (“SIC”) in Italy (2004), and the German regulator’s approach to weighting the influence of various media in the context of its merger decision on ProSiebenSAT.1 Media AG and Axel Springer Media AG (2006).

The observations made in the paper are worth reproducing:

"Measuring media concentration has always been a difficult task and results were never satisfactory. The convergence of media, telecommunications and information technologies adds a new dimension to this problem as it results in changing market structures, exacerbating among other things the handling of cross-ownership and market definitions, and in claims for a greater emphasis on empirical evidence."

"The instruments are novel but imperfect responses to the issues surrounding today’s communications policy making. They have been appraised cautiously due to their methodological shortcomings and have been criticized outright: the [UK] plurality test applies only to mergers that would have been covered by the rules prior to their removal by the 2003 Communications Act, the [US] DI neglects variations in size of media companies, the KEK’s weighting approach arbitrarily assigns the equivalence of audience share in television to other media, and the SIC’s market definition is too broad, thus rendering it unlikely that a company will have a dominant position under it."

The study is highly critical of the various plurality regimes assessed, stating that none of the approaches are reliable or objective, and, importantly that there is a:

"lack of sound empirical proof of whether they achieve what they are supposed to."

---

331 Ibid.
332 Ibid.
Moreover, the author relays how the FCC moved away from its diversity index following a review in 2006:

[it] “is an inaccurate tool for measuring diversity” (FCC, 2008: 12). [In the future it will] “not employ any single metric, such as the Diversity Index, because … there are too many qualitative and quantitative variables in evaluating different markets and combinations to reduce the task at hand to a precise mathematical formula.” (FCC, 2008: 43).

Regulatory policy perspectives

We also detect on the part of regulators themselves a trend of questioning of once ‘tried and tested’ mechanisms to see whether they are effective or need to be changed.

In the UK the Leveson Report and on-going review of media ownership regulation has again revisited the role that tighter or more sophisticated rules could play in promoting plurality. Ofcom has made some sensible recommendations in identifying the market characteristics that when present are indicative of sufficient plurality. Its suggestion that it is appropriate to examine a range of metrics ‘in the round’ and make a subjective judgment is sensible and echoes the approach adopted by the Competition Commission in BSkyB/ITV. However, this conclusion comes after many years of soul searching by an experienced regulator and many distractions along the way. The inherent subjectivity of such a benchmark remains a concern; hence the need to take account of a variety of measures for sensitivity testing.

In the US there is still vigorous debate on the scope and content of media ownership rules. On 22 December 2011 the FCC proposed changes to its media ownership rules. The FCC is required by statute to review its media ownership rules every four years to determine whether they are “necessary in the public interest as the result of competition”.

In proposing changes to the existing regime, the FCC stated:

“Our challenge in this proceeding is to take account of new technologies and changing marketplace conditions while ensuring that our media ownership rules continue to serve our public interest goals of competition, localism, and diversity.”

The existing rules prohibit inter alia ownership of both a major newspaper and a major television station in the same media market. The proposed rules would relax the restriction on owning both types of outlets in the top twenty media markets. In the top twenty media markets, a daily newspaper could seek to merge with a television station, provided that (a) the television station is not ranked among the top four television stations in the market, and (b) at least eight independently owned major media outlets would remain in the market after the combination. In such circumstances, the FCC would presume that a waiver of the prohibition would be consistent with the public interest. If the conditions are not met, then a waiver would be presumed to be against the public interest.

It is of note that there are no formal guidelines governing how the FCC exercises its discretion to grant waivers from the restriction on cross-media ownership.

---

The final vote on the new rules was expected to take place in early 2013. However, on 26 February 2013 the FCC announced a delay while the FCC conducts an impact study on how cross-ownership affects minority ownership.

FCC chairman Julius Genachowski when announcing the delay confirmed that the Minority Media and Telecommunications Council in a filing with the agency offered to conduct and pay for the independent study; his statement recognised that this is a:

“heavily-litigated area where a strong record is particularly important”. 334

In the UK concerns have arisen that the plurality test is subjective and vague and could be subject to political interference. In the US concerns have arisen that hard limits on media ownership should themselves be subject to discretionary application but with as yet no clear consensus on how that should be applied. The protracted and, at the time of writing ultimately inconclusive positions in both countries has led observers to question whether these tests provide a benchmark to be emulated overseas.

Conclusion

Recognising that the Inquiry has already received voluminous submissions it is not our intention to over-burden the Inquiry with further detail at this stage. If there are particular issues where our input would be useful, whether in writing or in oral evidence we would be happy to contribute further.

8 May 2013

---

334 “Yesterday, the Minority Media and Telecommunications Council informed the Commission that it will conduct a focused, independent study on the effects of cross-ownership rules on minority ownership and newsgathering, in order to enhance the record in the Commission’s proceeding. The study is expected to take several weeks and will be filed with the Commission, after which MMTC suggests that the agency solicit public input, to be followed by a Commission vote. In this heavily-litigated area where a strong record is particularly important, I believe this is a sensible approach to moving forward and resolving the issues raised in this proceeding” (Statement from FCC chairman Julius Genachowski on the status of media ownership proceeding, 26 February 2013).
Dr Alison Sprague and Suzanne Rab – written evidence

See Suzanne Rab and Dr Alison Sprague
Dr Alison Sprague and Suzanne Rab – supplementary written evidence

See Suzanne Rab and Dr Alison Sprague
Dr Damian Tambini – written evidence

Dr Damian Tambini – written evidence

Dear Lord Inglewood, Dear Committee,

I welcome the opportunity to respond to your call for evidence. The main evidence I would like to submit consists in two recent publications on the topic of media plurality, both authored with colleagues:

1. A paper I authored with Rachael Craufurd-Smith on the topic of measuring media plurality. This was published in Working Paper form by the Centre for the Study of Media Freedom and Media Pluralism in Florence and by the Journal of Media Law. http://cadmus.eui.eu/handle/1814/23314


These were written in the context of the debate on media plurality triggered by the Leveson Inquiry. The rules have not been changed since then, so the papers remain relevant.

In this short note, I will draw out some key points relevant to the questions you highlight in your call for evidence. Some of the answers to the questions depend on whether you recommend a far reaching review of the whole framework, or a bit of tinkering with the definitions. I recommend the former, so have not opted to answer the questions that are really dealing with tinkering, but am happy to answer those later if you take that direction

Yours sincerely,
Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?

It is essential that the objectives of media plurality policies are more clearly set out and defined in statute. A lack of clear definition of objectives has led to crippling legal uncertainty. As both the attached publications note; the framework in the UK since the 1947 Royal Commission on the Press has centred on four distinct objectives for media plurality regulation:

• maintaining the integrity of the democratic process;
• preventing media misrepresentation and suppression of information;
• enhancing citizen’s access to diverse information and opinions; and
• protecting freedom of expression.

However the objectives are not clearly set out in legislation or guidance which has resulted in disputes and uncertainty. In addition, there are no hard and fast rules, or ‘apolitical formulae’ that can be applied in order to ascertain how much market concentration can be tolerated according to the various methodologies examined in the attached papers if those four separate objectives are to be protected. It would provide regulators with more guidance and certainty if the aims, objectives and also the detailed limits in ownership shares were set out in legislation with parliamentary scrutiny. Such rules should be set by parliament after a full public debate.

In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition or should it be improved?

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 process/agenda.”

This ‘definition’ is really a restatement of the policy objective rather than a clear indication to industry and society of what should and will be tolerated. It does not provide the necessary regulatory certainty and should be revised. It may be better to avoid the vague notion of ‘media plurality’ altogether. In the attached papers we discuss alternatives: “In Germany, the concept of Media Pluralism is not mentioned in the regulations that apply to the media. Instead, control over opinion-forming power is the crucial consideration to be taken into account (‘meinungsmacht’). Companies that attract more than 30 per cent of the television audience are presumed to exert too great an influence on public opinion. In Italy, owners are prohibited from obtaining more than 20 per-cent of revenues derived from a broadly defined media sector, including audiovisual distribution services, book publishing and advertising agencies. Fixed limits have, until recently, been the preferred means of control also in the US, which has tended to favour “bright-line regulation” to limit agency capture”. (2)
What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?

From the point of view of the public policy objectives that have been gathered under the rubric of media plurality (and are discussed in paper 1) both are relevant. A controller of a distribution platform for films for example could exert unacceptably high levels of control over opinion formation ‘zeitgeist’ and also the general public awareness of issues (such as climate change or terrorism for example). Eli Noam () presented a compelling argument why new technologies that involve high spectrum/bandwidth demands or are based on social distribution with network effects for example are more, not less prone to economies of scale and concentration. However a pragmatic approach could be devised that address both issues without unacceptable bureaucracy. For example similar audience based methodologies for measuring media plurality should be applied, but with different thresholds for news (lower) compared to more general cultural content.

What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?

It is of paramount importance that individual decisions be removed from political control. This is the only way of avoiding the fundamental conflicts of interest that arise when politicians are involved in decisions of this nature. When clear rules and criteria have been set out, it is entirely possible for an expert commission to apply the necessary discretion as is the case in Germany. Paper 1 examines various systems of regulation and paper 2 proposes a framework for triggering reviews. Because the outcomes that media plurality regulation aims to achieve can be compromised both by endogenous growth of media companies and by mergers/changes in control, both these should be able in principle to trigger a review. However in addition to the thresholds based reviews of transactions and periodic reviews, there should be some fixed outer limits of audience based concentration shares. Further policy consultation will be necessary to examine methodologies and to set appropriate thresholds and limits (papers 1 and 2).

For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?

I wholeheartedly endorse the call made by Robin Foster in his recent report335 for a ‘plurality dialogue’ involving a range of media intermediaries about the rapidly changing role of digital intermediaries in relation to news plurality in relation to the editorial and gatekeeper roles they play. In addition it is essential that new ways that media and communications companies are involved in the wider process of opinion formation in society are taken into account, particularly as regards the intersection of privacy, freedom of expression and media plurality issues.

335 REUTERS INSTITUTE for the STUDY of JOURNALISM REPORT News Plurality in a Digital World Robin Foster July 2012
How should ‘sufficient plurality’ be measured?

Should the BBC’s output be included in a review of it? The BBC is regulated for internal pluralism and subject to a variety of accountability mechanisms that do not apply to other market players. As such it should not be subject to the same rules. But it should be relevant to some calculations as their presence in the market does contribute to plurality.

How can internal plurality be sensibly measured against external plurality?
See papers 1 and 2.

What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

Clear rules clearly understood by sector participants should be easy.

How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?

Carefully, independently and transparently.

With whom should power to deploy these remedies ultimately reside?

An independent regulatory agency with expertise in the media sector.

What process for their deployment should be observed?

See paper 1.

To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?

There is a strong argument that the EC has competence to review media plurality and that this would be a useful way to deal with threats to the democratic life of states in the EU. The EU has developed a research tool for monitoring media plurality and there is a strong argument that such a tool, or a scaled down version of it should be deployed as a way of monitoring the situation. General policy objectives can be agreed at the Council of Europe level though detail of thresholds would need to be set at the level of the national market.

What should the UK learn from international approaches to media plurality?

See paper 1.
Dr Damian Tambini and Dr Rachael Craufurd Smith – oral evidence (QQ 1-14)

Transcript to be found under Dr Rachael Craufurd Smith
Telegraph Media Group – written evidence

1. Telegraph Media Group (TMG) is the publisher of The Daily Telegraph, The Sunday Telegraph, The Weekly Telegraph, The Telegraph website, and many other media and digital products. TMG hopes that our submission proves useful to the Committee.

2. TMG operates in the best - in terms of quality, competitiveness and diversity - media market in the world. This has developed because of both Britain's historic commitment to free speech and by significant commercial investment.

3. We have previously argued that because public policy debate has lacked any definition of plurality we have seen 'muddied waters'. Whilst we largely accept Ofcom’s working formulation ‘diversity of viewpoints and level of influence’ which has been highlighted by the Committee, we recommend that such a definition should not be based in statute.

4. The creation of a statutory definition of plurality is both unnecessary and, at worst, could conceivably be surpassed by future developments and therefore prove detrimental to assessing it.

BBC: market intervention

5. British media companies operate in a peculiar environment with enormous state intervention. The BBC, with an annual budget of £3.662 billion, represents a massive market distortion and impacts across all media forms and affects every commercial media organisation in the United Kingdom.

6. Various assessments of the media sector have shown the huge level of penetration – TV, radio and online – of the BBC and its services. We therefore welcomed Ofcom’s conclusions that any assessment of plurality within the UK should include the BBC.

7. Indeed, given its unique source of funding and market share, it would be inconceivable to have reached any other conclusion. We hope, therefore, that the Committee also supports Ofcom’s position.

8. TMG welcomed the Committee’s conclusion from its recent inquiry into media convergence that:

“In the run up to the next BBC Charter Review, we recommend that the Government invite the BBC Trust to consider how best to make progress on two fronts: enhancing the BBC's overall economic impact, and reassuring the

market that there are effective safeguards in place, possibly through the use of periodic and independent market impact reviews.”

We suggest that reassurance would be significantly enhanced by changing the current arrangements for implementing the BBC Trust’s Public Value Test (PVT) which is sometimes triggered when the BBC seeks to launch a new service. At present it is within the BBC Trust’s gift to trigger this process, or not.339

9. The BBC Trust should be absolved of the responsibility for triggering the PVT process – this responsibility should be passed to another organisation perhaps, for simplicity, Ofcom who already conduct the Market Impact Assessment element of it. The other element, the Public Value Assessment (PVA) – which considers appropriate use of Licence Fee payers’ money – could still be conducted by the Trust.

High Level Group on Media Freedom and Pluralism

10. TMG remains ever vigilant of EU intervention in the operation of our business and the media sector in general. TMG, along with many other media organisations340, have serious concerns about the recent High Level Group Report cited by the Committee in the call for evidence. Recommendations, for example, effectively to license journalists by granting and removing “journalistic status”, and seeking to “promote European values” are chilling and should be of concern to the Committee.

11. Nevertheless, recommendations made within it in the area of media pluralism such as:

“The EU should be considered competent to act to protect media freedom and pluralism at State level in order to guarantee the substance of the rights granted by the Treaties to EU citizens, in particular the rights of free movement and to representative democracy. The link between media freedom and pluralism and EU democracy, in particular, justifies a more extensive competence of the EU with respect to these fundamental rights than to others enshrined in the Charter of Fundamental Rights.”

Are arguably beyond the competences of the EU, and we suggest are the beginnings of the EU trying to justify a greater role in the area of media plurality and content.

Merger Regime

12. We would draw the Committee’s attention to the recent proposed acquisition by Kent Messenger Group of seven newspaper titles from Northcliffe Media. The prospect of a full Competition Commission inquiry following a referral from the Office of Fair Trading341 following a Local Media Assessment by Ofcom342 saw the deal collapse.

13. As a result seven local newspapers subsequently closed, and communities were left without a significant and vital local service. We would urge the committee to investigate and recommend ways to ensure that the merger regime does not discourage growth in the local media sector.

May 2013
This is Global – written evidence

This is Global is a media and entertainment company comprising Global Radio, Global TV, Global Publishing (music publishing) and Global Talent (recording and artist related rights and artist management). We employ more than 1,100 people across the UK in 22 broadcast centres. Our brands include Heart, Capital, Classic FM, LBC, Gold, XFM and Choice FM and together reach over 19m listeners on air every week.

We pride ourselves on being a pioneering company investing in the best talent and technology so we can keep innovating, growing our business and serving our listeners. We are committed to giving our listeners up to date news bulletins across our stations. We have 70 journalists across the UK producing 3,600 news bulletins each week. Our 18 newsrooms are able to react 24 hours a day, seven days a week.

We are grateful for the opportunity to respond to the Lords Communications Committee inquiry into ‘Media Plurality’. We share Government and Parliament’s view that plurality of news provision is essential for our democracy, and we believe that this can only be achieved through ensuring we retain a vibrant and diverse media sector.

We address the specific questions posed by the Committee below.

1. **Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?**

Section 3 of the Communications Act 2003 sets out Ofcom’s statutory duty to ensure “the maintenance of a sufficient plurality of providers of different television and radio services”, while Section 365 of the Act sets out the powers of the Secretary of State to intervene in media mergers on (inter alia) plurality grounds.

There are therefore a number of regulatory checks and mechanisms in place which, taken together, set a clear framework for plurality policy and provide considerable safeguards. As Ofcom noted in its report in 2012, these include the public interest test for media mergers, the remaining cross-media ownership rules, the accuracy and impartiality requirements in the broadcasting code, the “fit and proper” test for holders of broadcast licenses and the public service broadcasting framework in which the BBC and other public service broadcasters operate. In any future reviews of media regulation, we would urge Parliament and Government to build on these established mechanisms rather than seek to create an entirely new regulatory regime.

2. **In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition, or should it be improved?**

   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 process/agenda.”
We judge this formulation to be broadly workable providing that the definition of ‘media enterprises’ is sufficiently wide so as to include all online and digital services (including social networks that act as news aggregators and curators for many of their users).

This formulation also needs to include community media as well as independent online content providers, such as bloggers, who individually may make a small contribution to plurality but in aggregate are an increasingly important source of news and opinion. In many cases these sources of news and opinion are not ‘enterprises’ in the traditional sense of the word.

3. **What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?**

We broadly agree with the approach Ofcom has taken in the past to measuring plurality by looking at the reach of all news media and time spent watching, reading or listening to news output, and seeking to weight news consumption according to the extent to which citizens rely on different media as their primary or secondary source of news.

We do not believe that genres other than news and current affairs should be considered for plurality purposes. Rather, we believe the authorities should focus on the key sub-genres within news and current affairs, which are the most important in influencing opinion.

Specifically, we do not think that a direct comparison can be made between music based commercial radio stations, that provide news bulletins as a small part of their programming on the one hand, and newspapers or peak time TV news programmes which remain most people’s primary source of news, on the other.

Rather than include genres of content other than news and current affairs into an assessment of plurality, we believe that analysis of media plurality should distinguish between the various types or sub-genres of news content consumed. One categorisation would be between:

- Headline news provision with a summary of the day’s main stories, e.g. as provided on the vast majority of commercial radio stations or in a “news in brief” section of a website,
- In-depth news and analysis, including comment, where editorial decisions on story selection and “news angles” can vary substantially between providers e.g. a half hour TV news bulletin, and
- Investigative journalism, campaigns, exclusives and “front page splashes” involving a high degree of editorial judgement and potential influence.

We believe that plurality is more of a concern in some of these sub-genres than others and that any regulatory regime must be capable of making a distinction between media, such as the majority of music-based commercial radio stations, which seek to keep listeners “up to date” and other media content in which opinion or comment play a much larger role either explicitly through adopting a particular editorial line, or implicitly through the selection of topics and material.
4. **What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?**

The UK has a vibrant and innovative media sector. Any triggers for review of media plurality should not threaten to stifle growth and innovation by creating uncertainty. The current statutory framework only addresses a reduction in plurality that arises from a specific corporate transaction, as opposed to market exit or organic growth.

We recognise that there may be calls for Ofcom or another body to undertake regular reviews of plurality to inform policy-making, but if such a review could lead to market interventions then this would impose significant costs on the industry and would act as a major disincentive for media organisations to innovate or invest in content and technology. We would therefore be very concerned about any change to the regulatory regime that could result in interventions which did not result from a specific corporate transaction.

5. **For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications Act 2003?**

In measuring plurality, we do not think it is either practical or advisable to set absolute limits on news market share. We believe that the analysis of news market share is a complex undertaking but is ultimately only an indirect means of measuring influence and therefore it would be inappropriate for rigid limits to be set. In our view, the interpretation of what is meant by ‘sufficient’ plurality must therefore remain a matter of judgement, rather than a rigid measure.

6. **How should the growing role played by digital intermediaries acting as gateways to content be taken into account?**

We believe that digital intermediaries must be included when considering plurality. Technology means that digital intermediaries such as Twitter and Facebook are increasingly being used as news aggregators and curators therefore the way such services choose to cater to their customers could impact on the news consumption of those users.

Young audiences increasingly consume news content online, often via social networks. In the case of Capital FM, our target audience of 15-24 year olds do not search out news from traditional sources like newspapers and news bulletins. They get their news online and on social media. We therefore believe our role in delivering media plurality must be evaluated alongside those we compete with for our audiences.

7. **How should ‘sufficient plurality’ be measured?**

We broadly agree with the approach Ofcom has taken in the past to measuring plurality by looking at the reach of all news media and time spent watching, reading or listening to news output, and seeking to weight news consumption according to the extent to which citizens rely on different media as their primary or secondary source of news. We also agree that,
while impartiality is not the same as plurality, the fact that broadcast media operate under a specific code guaranteeing impartiality must be borne in mind.

We believe that any analysis of news provision or media plurality must include online news sources, including not just websites but also mobile applications and news alerts, social media and digital services that aggregate and curate news.

8. Should the BBC’s output be included in a review of it?

The BBC must be included. We cannot see how a robust or credible analysis could be undertaken if the largest single news organisation in the UK were excluded.

Clearly, the BBC operates under a different framework to commercial operators and this would need to be taken into account, just as the differences between the regulation of different media, for example press and broadcasting, would also need to be taken into account.

9. How can internal plurality be sensibly measured against external plurality?

Media plurality should be measured by how it impacts on citizens. Citizens are increasingly sophisticated consumers of media and are able to understand that one media organisation can be capable of providing more than one perspective on an issue.

We therefore believe that internal plurality should be taken into account in any assessment of media plurality, though we recognise that it may be seen as ‘second best’ in comparison to external plurality. Nevertheless, in the face of increasing financial and commercial pressure on traditional providers of news and current affairs it is important for policy makers to recognise and nurture all forms of plurality.

10. What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

For the reasons given above, we consider that direct interventions should only result from specific corporate transactions and not as a result of organic growth or market exit by another party. Powers already exist in this regard under the merger control regime as is set out in the Enterprise Act as amended by Section 375 of the Communications Act.

11. How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?

It is absolutely critical that any direct interventions take full account of wider considerations such as financial viability.

Competition for audiences and advertising revenue is increasing across all media, most notably due to the expansion of digital services. Any reviews of media plurality should therefore include an appraisal of recent and likely future market trends. It is also essential that the potential impact of any proposed intervention on the sustainability of news providers be fully taken into account to ensure that such intervention does not threaten to
undermine financial viability. In the midst of a rapidly changing media market, there is a significant risk that intervention could be counter-productive.

12. **With whom should power to deploy these remedies ultimately reside?**  
**What process for their deployment should be observed?**

Under the current regime, if the Secretary of State intervenes in a media merger on plurality grounds, the ultimate decision on clearance of the merger and/or the deployment of remedies rests with the Secretary of State.

We believe that, on balance, this is correct and it is preferable for elected representatives to make the final decision in plurality cases rather than attempt to pre-define a set of rigid rules, or leave the decision to an independent regulator such as the Competition Commission, OFT or even Ofcom. Competition cases are all about economic efficiency and protecting the consumer; intervention to maintain media plurality is about protecting democracy.

We do, however, believe that an suitable process should be available to those subject to a decision by a sitting Secretary of State and that such an appeal should be permitted on matters of substance as well as substance as process.

13. **To what extent should plurality be seen in a wider EU context,**  
**particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?**

We believe that since plurality considerations relate to the effective operation of the democratic process they should continue to be dealt with at a national rather than EU level.

14. **What should the UK learn from international approaches to media plurality?**

The vast majority of our activities are in the UK and we have therefore not undertaken a detailed review of approaches to media plurality in other countries.

May 2013
Voice of the Listener and Viewer – written evidence

EXECUTIVE SUMMARY

The Voice of the Listener and Viewer (VLV) welcomes the opportunity to respond to the request for evidence from the House of Lords Select Committee on Communications as part of the Committee’s inquiry into Media Plurality.

1. We believe that:

- the objective for media plurality policy should include ensuring a range and diversity of content as well as a plurality of supply
- it should recognise the civic role, described by Lord Patten in relation to the BBC, that the media plays
- public service media such as the BBC and Channel 4 should be included in the assessment of media plurality
- its scope should encompass not only news and current affairs but a wide range of genres
- media plurality should be reviewed periodically, at intervals of four or five years
- any measurement of ‘sufficient plurality’ should include wholesalers of news content
- the final decision on such issues should be made by an independent media regulatory body and by appropriate competition authorities.

EVIDENCE

Does a clearer objective for plurality policy need to be thought out?

2. We note that Ofcom has highlighted the inadequacy of the current legislative framework and suggested that new rules should be introduced to deal with threats to media plurality arising not only from proposed mergers but also from the ‘organic’ growth of specific media companies.

3. VLV defines the issue of media plurality not simply in terms of the numbers of providers or channels available in the market place but rather in terms of the range, diversity and quality of accessible content.

4. VLV agrees with Ofcom that plurality is not a goal in itself but a means to an end. A range of objectives has been suggested. Quoting the Ofcom Measuring Media Plurality Report (June 2012):
"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'.

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'.

Lord Maclintosh of Haringey, the then 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'.

5. Prior to the passing of the 2003 Communications Act the Department of Culture, Media and Sport, in its consultation on ownership rules, also made a useful contribution to the debate about plurality and we endorse these views:

"A plurality of ownership should secure a plurality of sources of news and editorial opinion …A healthy democracy depends on a culture of dissent and argument, which would inevitably be diminished if there were only a limited number of providers of news."

6. VLV understands from these comments that the accepted objectives for plurality policy are to ensure a range of voices, to avoid concentrated media ownership and to encourage vibrancy of democratic debate.

7. The current legislative framework, to a certain degree, delivers these outcomes, but it has been shown to have weaknesses. One weakness is that plurality of supply does not guarantee a range or diversity of content. Again, quoting Ofcom:

"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."

8. We would endorse the arguments made by Dr Des Freedman (Goldsmiths, University of London) in his A Note On Plurality submitted to Ofcom in relation to the public interest test and in the context of the proposed acquisition of BSkyB by News International. Dr Freedman distinguishes what he terms competing definitions of plurality:

"The first...is a very narrow understanding of plurality that is largely related to a quantitative measure of media sources and outlets; the second is a more expansive definition that relates to the existence of a sufficient number of distinctive..."
9. VLV strongly believes in the importance of the media for us all as citizens and not simply in terms of the amount of media available in the market place. As Dr Freedman argues of the ‘narrow’ definition:

"...pluralism is here understood as referring to the simple availability of consumer choice rather than the actual contribution such outlets and services make to the diversity of the media landscape."

10. VLV was heartened by Lord Patten’s view of broadcasting and the BBC, as set out in his RTS Fleming Memorial Lecture (6 July 2011):

"I think the BBC is a core part of our civic humanism in this country. What do I mean by civic humanism? I mean our sense of shared citizenship, regardless of our different backgrounds. I mean the understanding that citizenship is underpinned by a common set of values, a common conversation and an acceptance of mutual responsibility for our individual and collective welfare."

"How does the BBC fit into that? By providing a public space for argument and creativity. By being a party to the public’s engagement with democracy. By allowing citizens to test the trustworthiness of the information they get from those in authority. And beyond politics, by connecting different people and different communities to one another in all sorts of other ways. From EastEnders to the Proms. From Glastonbury to the new initiative that has put 200,000 of the nation’s oil paintings online."

11. VLV believes that this concept of a civic role is important across media outlets and not relevant only in the case of the BBC. We therefore see a crucial role for Ofcom in ensuring a plurality of media sources of information and cultural experience. Lord Patten went on to comment on the need to ensure a range of provision:

“We should also listen hard to those who accuse us of drowning our viewers and listeners in a small metropolitan pond of stereotypes and prejudices, what Flaubert called “received ideas”. The customarily ‘unreceived’ deserve to be considered and reflected too. And audiences in every part of the UK should feel the BBC is relevant to their everyday lives."

12. It is VLV’s view that having a number of distinct voices under separate control does not guarantee variety and range. We note the comments made by Patricia Hodgson in 2008 when she pointed out the paradoxical narrowing of choice despite a proliferation of media sources:

"... so much choice and nothing to watch...We seem to be losing genuine intellectual diversity and a shared cultural experience of which we can all feel proud."
13. VLV urges the Committee to consider how to ensure that there is plurality, range and diversity of content provided by broadcasters, rather than focus primarily on plurality of supply.

14. During the debate about supporting public service content many incentives and regulatory levers have been discussed, such as positioning on the Electronic Programme Guide, tax-breaks and levies. We believe these should be employed as widely as possible to encourage all PSBs to deliver a wide range of public service content which will ensure plurality and diversity for the future.

**Should the BBC’s output be included in a review?**

15. Public service media such as the BBC and Channel 4 should be included in the assessment of media plurality to ensure a proper evaluation of the market, but they should not be subject to control because of their extensive plurality obligations and degree of insulation from political and commercial pressures.

**What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?**

16. While VLV agrees that a plurality of supply in news and current affairs is essential for a well-functioning democratic society, we do not believe that it should be limited to these two genres. The availability of a range of genres, including drama, comedy and even, in some instances, light entertainment, especially where these involve content produced within the national culture, is important; these can be a powerful force in influencing the agenda or debate. They can also engage a different audience from that for news and current affairs programmes and should be included in the scope of media plurality policy.

17. We have two particular concerns:

- an apparent decline in the number of documentaries and current affairs programmes broadcast on television in recent years, especially on the commercial PSB stations; and
- the declining level of UK-produced content in many areas of programming, including children’s television. Such content can contribute to the connection and fostering of civic culture.

18. We wish to emphasise the importance of qualitative as well as quantitative analysis in establishing whether there is a plurality of content. We believe it is vital that public policy makers analyse the detail of content delivered in order to assess the actual diversity (or stereotypical sameness) of specific examples. It is not sufficient in our view to restrict analysis to counting the number of owners, important though this is. There is a real danger that if plurality is conceived primarily in terms of the number of channels or outlets, then many of these may have a very similar range of content, often syndicated or repeated, and will not have the budgets or the interest in producing material that is challenging and thought-provoking about contemporary issues.

**What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the**
possibility that a review can be triggered under certain circumstances? What should those circumstances be?

19. We agree with Ofcom that there should be a periodic review of media plurality every four or five years:

"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."

20. In addition, we agree there could be merit in a review 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.

How should 'sufficient plurality' be measured?

21. We agree with Ofcom that any review of plurality needs to consider what level of plurality is sufficient, but that this is challenging because the judgment is subjective:

"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."

22. One aspect of plurality which VLV believes needs to be addressed in this inquiry is the wholesale provision of news content, an issue that has been raised by a number of commentators. In our view it is misleading to conclude that there is a plural media supply if multiple services provide information from a single source such as a news agency. As the costs of international news become prohibitive with restricted news budgets, there is an increasing tendency to use agency content or user-generated content. This could lead to a homogenisation of news with one crew supplying all the footage on an international story. This would represent a significant lack of plurality in news.

23. We agree with Ofcom’s recommendation:

"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."

With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

346 ibid
347 ibid
348 ibid
24. It is VLV’s view that politicians should play no role in deciding individual cases involving media competition or plurality issues. The final decision on such issues should be made by an independent media regulatory body such as Ofcom and by the appropriate competition authorities.

**What should the UK learn from international approaches to media plurality?**

25. We note that regulation in other European countries, such as Germany, France and Norway tends to focus on media content as a whole rather than just on news and suggest that this practice should be adopted in the UK.

1 May 2013
The Welsh Language Commissioner – written evidence

1. The Welsh Language Commissioner welcomes the opportunity to submit evidence concerning media plurality. This evidence is provided in order to assist the Select Committee to inform policy making relating to media plurality, specifically in relation to cultural and linguistic diversity within media content provision in Wales.

2. The principal aim of the Commissioner is to promote and facilitate the use of Welsh. This is achieved by highlighting the fact that the Welsh language has official status in Wales and by imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

3. Two principles underpin the Commissioner's work:
   - In Wales, the Welsh language should not be treated less favourably than the English language;
   - Persons in Wales should be able to live their lives through the medium of Welsh if they wish to do so.

4. In due course, secondary legislation will introduce new powers allowing the setting and imposing of standards on organizations. Until that takes place, the Commissioner will continue to inspect statutory Welsh language schemes through the powers inherited under the Welsh Language Act 1993.

5. The office of Commissioner was created by the Welsh Language (Wales) Measure 2011. The Welsh Language Commissioner may investigate failure to implement a language scheme, interference with the freedom to use Welsh in Wales and, in future, complaints regarding the failure of organizations to comply with standards.

6. One of the Commissioner's priorities is to scrutinise policy developments with regard to the Welsh language. Therefore, the Commissioner is providing evidence in accordance with these terms of reference, acting as an independent advocate on behalf of Welsh speakers in Wales who may be affected by any changes introduced by the Government relating to communications. This factual evidence is provided without recommendations or advice in order to avoid any potential compromise of the Commissioner's regulatory functions in relation to any decisions made subsequently by the Government.

The importance of broadcasting in promoting and facilitating use of the Welsh language

7. Broadcasting plays a significant role in the promotion of regional and minority languages throughout the world. In the European context, the importance of broadcasting in maintaining and promoting use of minority languages is recognised within Article 11 of the European Charter for Regional or Minority Languages. This article has been ratified in part by the UK Government and compliance with this part of the Charter is regularly monitored by the Council of Europe’s Council of Experts.

8. In 1996, the High Commissioner on National Minorities appointed by the Organization for Security and Cooperation in Europe ('OSCE') requested the Foundation on Inter-Ethnic Relations to consult a small group of internationally recognised experts, with a view to receiving their recommendations on an appropriate and coherent application of the linguistic rights of persons belonging to national minorities in the OSCE region. This led to publishing the 'Oslo recommendations regarding the linguistic rights of national minorities'. 4 recommendations were made specifically relating to the media and minority language broadcasting, highlighting the importance of enabling speakers of minority languages to access broadcasting services which meet their respective language needs.

"Persons belonging to national minorities should have access to broadcast time in their own language on publicly funded media. At national, regional and local levels the amount and quality of time allocated to broadcasting in the language of a given minority should be commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs." 351.

9. Specifically relating to the Welsh language, the significant role of the media and broadcasting has long been established within language planning in Wales. In 1993, the Welsh Assembly Government published its National Action Plan for a Bilingual Wales, ‘Iaith Pawb’ (‘Everyone’s Language’). The plan stated.

"Broadcasting plays an important role in reinforcing many aspects of the Government’s wider language policy and underlines the status of the language. The television service provided by S4C together with BBC Radio Cymru make it possible for the language to be part of everyday life. Television in particular can be an important source of support for those learning the language." 352.

10. The essential role of Welsh language broadcasting in maintaining and promoting the use of Welsh is further reinforced within the Welsh Government’s Welsh Language Strategy for 2012-17, ‘A living language: a language for living’.

"Public service broadcasters in Wales, including BBC Cymru Wales, S4C and ITV Wales, latterly as a programme producer, have played an important role in ensuring that the Welsh language continues to thrive. Although broadcasting is not a devolved matter, the Welsh Government is committed to doing all it can to ensure that Welsh-language broadcasting continues to develop and improve, especially in the light of recent discussions about the future and editorial independence of S4C......However, online service provision through the medium of Welsh has not been given the same priority as it has through the medium of English. We hope that the new arrangements announced for the relationship between S4C and the BBC will lead to a strengthening of online provision through the medium of Welsh, to the same level as that provided through the medium of English. We will also seek to ensure that Welsh-language service provision is effectively safeguarded and developed by regulatory bodies such as Ofcom." 353.

---

350 http://www.unesco.org/most/ln2pol7.htm
351 http://www.unesco.org/most/ln2pol7.htm - recommendation 9
The statutory context of Welsh language broadcasting

11. The Welsh Language Act 1993 allows for the imposition of duties on public bodies in relation to the conduct of public business and the administration of justice in Wales. Public bodies have been required to prepare and implement Welsh language schemes which give effect to the principle of the Act that the Welsh and English languages should be treated on the basis of equality. Only one Welsh language scheme makes any provision for broadcasting in the Welsh language. In 2012, using powers assumed under Section 14(5) of Act, the Welsh Government Minister for Education and Skills determined the terms of Ofcom’s Welsh Language Scheme which makes the following provision

“We [Ofcom] will give appropriate consideration to the use of the Welsh language in carrying out our functions involving services to the public. Those services include:

a. the drawing up and issuing of our Localness Guidelines, and

b. the carrying out of our licensing functions in a way which seeks to ensure inclusion in licensed broadcasting of local material, including material of particular linguistic content and or presentation, where necessary by the imposition of licence conditions”.

12. The Government of Wales Act 1998 devolved responsibility for the Welsh language to the Welsh Government. In 2011 the Welsh Government introduced the ‘Welsh Language Measure (Wales) 2011’ which provides the Welsh language official status in Wales and makes provision for promoting and facilitating use of the Welsh language and to ensure the Welsh language is treated no less favourably than the English language. In accordance with the provisions of the Government of Wales Act 1998, the Legislative Competence Order which allowed for the introduction of this Measure did not allow for imposing duties on relevant bodies relating to their broadcasting services.

13. Consequently, despite international recognition of the importance of broadcasting in the maintenance and promotion of regional and minority languages, the provisions of current Welsh language legislation have a very limited application in relation to broadcasting.

14. It is also true that UK legislation relating to broadcasting makes no explicit, specific provision for the Welsh language. For example the Broadcasting Act 1990 and Communications Acts of 2003 and 2010 make no direct provisions for Welsh language broadcasting, despite the Oslo Recommendations and the Government’s commitment to the European Charter for Regional or Minority Languages. When imposing a Welsh Language Scheme on Ofcom the Welsh Government Minister for Education and Skills explained how the indirect provisions of UK broadcasting legislation may be applied to Welsh language content, in the context of Ofcom’s regulatory duties in Wales.

15. In a letter of response to the Minister Ofcom has questioned the legality of the imposition of the duty referred to in Section 11 above. In light of that, and taking into consideration the recognised, essential role of broadcasting to the safeguarding and promotion of the Welsh language, it would seem appropriate and desirable that the

354 http://www.comisiynyddypymraeg.org/english/Pages/searchresults.aspx?k=ofcom&s=Search%20the%20entire%20site – section 3.5

The Welsh Language Commissioner – written evidence

Government makes explicit, specific provision for the language within its policy and regulatory framework relating to broadcasting.

The future of Welsh language broadcasting

16. In reference to the question of whether or not plurality of the media should encompass diversity of content, Welsh speakers currently have access to one national television Welsh language broadcasting service, S4C, and one national radio Welsh language broadcasting service, BBC Cymru. In a letter to S4C in 2010 the DCMS announced a funding cut of 24.4% over 4 years\(^{356}\) and then a further cut in 2012\(^{357}\). These funding cuts were in line with other funding cuts made by the UK Government as part of its spending review. Welsh language interest groups have questioned whether funding cuts at the same level as those made to other public broadcasting services were commensurate and appropriate for the only publically funded national television broadcast service available in Welsh. In 2011 the BBC announced funding cuts to the only national Welsh language radio service, BBC Cymru, at a level similar to those made to its various English language services in Wales.

It is unclear to what extent these funding cuts will affect the diversity and quality of content provided in Welsh over time.

17. On a more local level, providers of Welsh language community radio services in Wales seek to compete against commercial, non-Welsh language radio service providers for licenses awarded by Ofcom. As explained above Ofcom has opposed the imposition upon it of a duty to ensure, through the undertaking of its regulatory duties, that licensed radio service providers in Wales are able to meet the language needs of their audiences.

18. As a result, without some form of intervention, it is unclear how Welsh language television and radio broadcast services, both national and local, will ‘develop and improve’ in future, in accordance with the aims of the Welsh Government’s Welsh Language Strategy for 2012-17. The UK Government’s ‘Communications Review’ offers an appropriate opportunity to consider possible interventions to develop and improve the diversity of content and quality of Welsh language broadcasting.

Conclusion

19. The Committee wishes to receive evidence relating to the questions ‘What should media plurality be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?’ I trust the evidence provided above will assist the committee to reach a conclusion on these questions, especially in relation to cultural diversity in content provision, and help to inform future decisions on the Government’s policy and regulatory framework for media and broadcasting in Wales.

20. Thank you for the opportunity to submit evidence to the committee. Please do not hesitate to let me know should you wish to receive further information regarding the


matters discussed above, in the context of this inquiry or the committee’s work more generally.

16 May 2013