THE FUTURE OF MEDIA PLURALITY IN THE UK / MEDIA OWNERSHIP RULES REVIEW
RESPONSE OF ITV PLC

INTRODUCTION

ITV welcomes Ofcom's review of the media ownership rules and media plurality and in particular for recognizing the changing nature of the news landscape and expanding its review to address these issues.

As the rise of disinformation during the Covid-19 pandemic has highlighted, it has never been more important that UK consumers and citizens can access high quality trustworthy news from a variety of voices. This is valued by audiences. As Ofcom recently noted in its statement "Public Services Broadcasting in the Digital Age", which followed its extensive 'Small Screen, Big Debate' review:

> "*A large majority of audiences continue to believe that PSB news is trustworthy … This feels particularly important at a time when there is a proliferation of online news of varying degrees of accuracy, including outright 'fake news'*"[1]

But the news landscape is changing. We refer Ofcom to the report prepared by Robert Kenny of Communication Chambers as part of ITV's submission to Ofcom's 'Small Screen, Big Debate'.[2] This sets out clearly the challenge facing the UK news sector today:

> "*The challenge in this will be to find ways to enable commercial PSB providers such as ITV to continue to fund high quality, trusted, mass reach news programmes as part of broader broadcast and online offerings that achieve mass reach in the UK. This problem is particularly acute given the increasing reliance that national providers such as ITV will have on global online distribution platforms to reach increasing parts of the audience at scale.*
>
> *There are important lessons to learn from the experience of the newspapers, particularly in terms of the visibility and prominence of their content and, above all, the revenue loss that they have experienced due to online distribution.*
>
> *A revised policy approach is needed to safeguard the public value contribution of the PSBs, particularly in news, if as a society we believe that there is no obvious substitute for the public value they deliver.*"

In the first part of this submission, we set out the market backdrop to the current review, including ITV's role in providing high quality trustworthy news and how we are actively adapting this for a digital future, the challenges facing the business model for funding news and how intervention is necessary to ensure the future sustainability of media plurality in the UK.

In the second part of the submission we set out a response to the key specific questions asked by Ofcom in relation to the Review of the Media Ownership Rules.

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[1] Public service broadcasting in the digital age, Ofcom, para 2.7
[2] Sustaining the public value of ITV News in a changing world, Robert Kenny, Communication Chambers, October 2020

PART 1: MARKET BACKDROP AND THE SUSTAINABILITY OF NEWS PLURALITY IN THE UK

ITV's key role in the provision of high-quality trusted news in the UK

As explained by Rob Kenny in his report, "*ITV is one of the most important providers of national, nations and regional news in the UK. It has a long and distinguished history and a strong culture underpinning its commitments to impartiality and accuracy*".[3]

Each year ITV spends £120m on its news provision, employing over 500 journalists. ITV's regional news bulletins are generally in the top most-watched programmes each weekday and our news services are relied on by 19m people each week (compared to 4.5m by Sky News) with much higher weekly reach during many months of the Covid pandemic.

Core to ITV's offer is its ability to reach all audiences. Other than the BBC, ITV is the only universally-available, free, high-reach news service in the UK; rated as the second "*most-used*" news source in Ofcom's recent News Consumption Survey, after the BBC and ahead of Facebook and Sky News.[4]

This means ITV News is able to reach all demographics particularly including those that are potentially excluded from digital services. ITV national news is particularly valued and viewed by people in the north and in the UK nations, as well as amongst older viewers and those in social classes C2DE, complementing the core audience of BBC news services. Other news providers, notably BBC Channel4, Sky, the *Guardian* and even the *Daily Mail*, skew significantly ABC1.[5]

We are also reaching substantial youth audiences with our linear news offer: an average of 2.9m 16-34s watched ITV's news and current affairs output on our main channel each week. Or to put it another way, 34% of 16-34s use ITV for news, higher than Channel 4, Channel 5 and Sky. 1m 16-34s (25% of its overall adult audience) watched the two-part series *Welcome to HMP Belmarsh*, and 1m 16-34s that watched live as Boris Johnson debated Jeremy Corbyn live on ITV before the 2019 General Election.

ITV News is valued not only for its reach but also for the quality of its output: [6]

- When rated by their users on measures such as importance, trustworthiness, range of opinions and impartiality, year-on-year TV news (and magazine) outperforms all other media sources;
- Users rate ITV the highest of all TV news sources for impartiality and second to Channel 4 news on trustworthiness;
- ITV rates higher than all other TV news providers on the quality of its regional/local news; and
- The ITV News website is rated in the top-5 most trusted websites, ahead of Google, the *Daily Mail* and the *Telegraph*.

ITV's role is also crucial as an alternative and complementary voice to that of the BBC. Having an alternative free, mass reach news service brings several benefits: it provides choice for citizens,

[3] Ibid.
[4] Ofcom News Consumption Survey 2021
[5] Ofcom News Consumption Survey 2021
[6] Ofcom News Consumption Survey 2021

addresses the needs of different demographics, and pushes the BBC to provide the best possible output.

ITV News embraces a digital future

Like all other areas of the media, audiences for news are increasingly moving online. Recent Ofcom research shows that in 2020, while TV remains the most used platform for news, internet is growing in importance: 73% of UK adults say they use the internet for news (compared to 79% which identify TV; 50% use social media and 19% use news aggregation services.[7] These trends are even more pronounced in younger audiences: 85% of audiences 16-24 say the internet is their most-used platform for news (up from 78% in 2020).[8]

This is a very different picture compared to 2013 when 32% said they use the internet for news, with 'the internet' comprising websites, apps, social media and news aggregation services.[9]

The digitisation of media consumption presents an opportunity which ITV has embraced. We have changed our management structure to reflect a digital-led strategy and developed products and services that facilitate digital consumption. News is no exception:

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Our strategic vision is to be a digitally led media and entertainment company that creates and brings our brilliant content to audiences wherever, whenever and however they choose.

The commercial sustainability of high quality news faces real challenges

As a PSB ITV receives certain benefits – primarily a prominent linear EPG position and DTT spectrum – which have helped us deliver an effective cross subsidy model in which commercially successful and attractive content has generated sufficient revenue to offset the cost of news. However, this traditional PSB funding model is under more pressure as the linear EPG is less important as a mechanism for directing audiences to content and as more content is consumed online rather than via traditional broadcast platforms. The implicit subsidy to help fund PSB news is therefore in decline and it's critical that there is a new and more viable long term settlement for commercial PSB in future in the upcoming Media Bill. That is the single most important initiative that could be taken to sustain plurality in accurate and trusted high quality video news on TV and online.

The rapid increase in the distribution of content online brings real potential challenges to models for funding PSB TV news at scale. So, for instance, ITV is increasingly reliant on global platforms to mediate relationships with online audiences and which control access through their own proprietary browsers and app stores. ITV estimates that [CONFIDENTIAL]% of desktop browsing and [CONFIDENTIAL]% of mobile browsing of the itv.com/news website is done through the two main ecosystem operators: Google (via its Chrome browser) and Apple (via Safari).

Perhaps even more significantly, TV viewing is increasingly mediated by the global platforms as they seek to apply their approach to connected TV screens via their operating systems and, in some cases, through commercial agreements that will be incorporated into the development of hardware (and software) of new TVs. It is estimated that by 2023 60-80% of all new TVs purchased in the UK could

[7] Ofcom News Consumption Survey 2021
[8] Ofcom News Consumption Survey 2020 and 2021
[9] Ofcom News Consumption Survey 2013

have an operating system from one of the big global platforms. In the not-to-distant future, most TV viewing will take place on connected devices, whether IP or hybrid IP/broadcast and much of it is likely to be controlled by a handful of global gatekeepers: Amazon, Google, Apple, Samsung, Comcast-Sky who will decide what content is discoverable.

This new reality is having a profound impact on the sustainability of models that support TV news investment at scale:

(a) *Prominence, visibility and inclusion of high-quality news content*

Global platforms are increasingly guiding and curating the choices of audiences. These platforms are rewarded through views and clicks and are therefore incentivised to show content that is the most 'engaging'. This often means that high quality trustworthy news is demoted in favour of the salacious and sensational. There is plenty of evidence that high quality news suffers in this context. The final report of the Cairncross Review observed:

> *"this propensity for "clickbait" or sensationalist journalism, which is in turn encouraged by the digital advertising market, is having a negative impact on the provision of local public-interest news".*[10]

Because of their global reach, online platforms also make commercial deals that tend to give prominence to global content providers. This is generally at the expense of national and regional operators who lack sufficient scale and resources to conclude such deals for single territories. This is most obvious in entertainment where Netflix, Amazon and YouTube are ever-present and in the most visible positions on home screens and even TV remote controls. The global online platforms have also illustrated in recent years their preparedness to confront attempts to rebalance the relationship with content providers and news operators. This was made very clear when Facebook decided to 'unfriend' the Australian public removing news content from feeds following moves to regulate the supply of news in that country. Julian Knight, chair of the DCMS Select Committee commented at the time:

> *"This is not just about Australia. This is Facebook putting a marker down, saying to the world that 'if you do wish to limit our powers… we can remove what is for many people a utility"*[11]

(b) *Fair value for PSM content in future*

To put it starkly, the risk in future is that the money that commercial PSBs like ITV generate which helps to cross subsidise news is simply extracted by online TV platform operators as a condition of inclusion on the platform in the first place. So, for instance, the standard terms on which Amazon offers content providers access to its Amazon Fire TV platform states:

> *"Fire TV Ad-Enabled Apps must provide 30% of total advertising impressions in the app to Amazon, which 30% will be representative of all of the app's advertising impressions and not exclude or limit Amazon's access to times, programs or categories. Apps will not receive payment for the 30% of impressions provided to Amazon."*[12]

[10] The Cairncross Review: a sustainable future for journalism, 12 February 2019, p.43
[11] BBC News, 18 February 2021
[12] Amazon Inventory Optimisation Policy

The situation with other content aggregators is arguably even worse. YouTube takes a cut of 45% of the revenue from advertising served around ITV content. [CONFIDENTIAL]

ITV has few other options open to it in terms of funding news on a sustainable basis. A limited number of news providers have successfully adopted a subscription model. Realistically, this option is only available to providers that command a 'premium' audience (e.g. *FT*, *New York Times*) and therefore not compatible with ITV's commitment to universal access and to younger and more economically diverse audiences.

Faced with concerns around the widespread proliferation of fake news, aggregators are beginning to see the benefit of hosting content from reputable and trustworthy news providers online at least. But ITV's ability to secure favourable terms – i.e. ones that ensure the continued sustainability of online news and do not undermine the integrity of our brand and news offer – has been limited.

In 2020, ITV managed to secure a deal with Facebook for inclusion of ITV News content in its Facebook News service. [CONFIDENTIAL]. Crucially, we have no way to monitor the effectiveness of this channel despite giving Facebook access to significant volumes of data about our users and their behaviour on our website. Negotiations with Google have been less successful to date.

However, it is striking that in the case of both of these major online platforms any financial benefit to ITV is very limited – a fraction of what comparable TV news operators in Australia have managed to achieve under the new Bargaining Code regime that has rolled out there recently and which we discuss specifically below.

The scale of the issue of value extraction by the platforms is underlined by the very high rates of return being made by the global online platforms. As the government noted in its response to the CMA's report on the digital advertising market:

> "[the CMA's analysis] *shows that in the UK both Google and Facebook are consistently earning profits well above what is required to reward investors with a fair return. Google earned £1.7bn more profit in 2018 in the UK than the benchmark level of profits. For Facebook, the comparable figure for 2018 was £650million.*[13]"

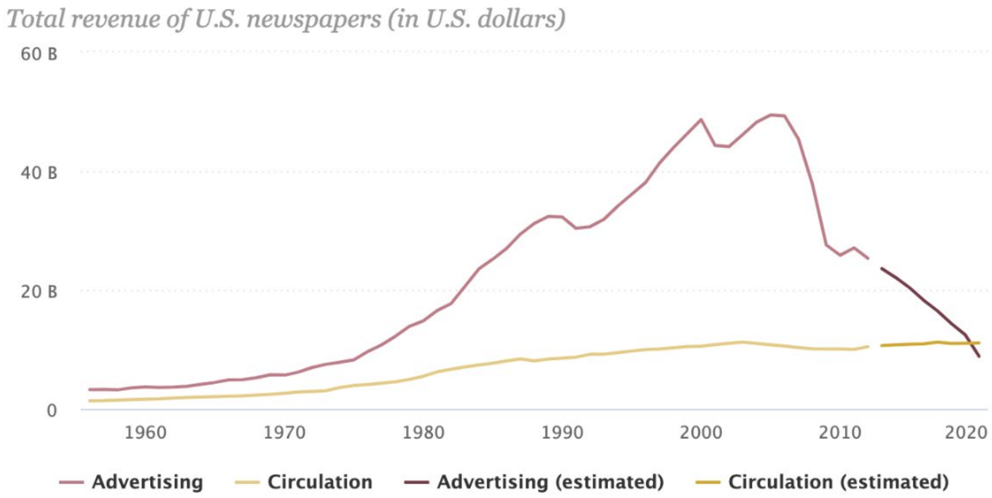
The challenge to news providers is real and acute and one that newspapers have already experienced: since 2005, at least 265 local newspaper titles have closed;[14] even some online operators (such as Buzz Feed and Huff Post's UK operations) once thought well-placed to take advantage of the digital revolution, have ceased operating. Crucially this is hitting journalism - since 2007, publishers have reduced the number of journalists by 35% with a greater loss of experienced journalists.[15] The following chart (although US focussed) is particularly illustrative:[16]

[13] https://www.gov.uk/government/publications/government-response-to-the-cma-digital-advertising-market-study

[14] Press Gazette, 20 August 2020

[15] The Cairncross Review: a sustainable future for journalism, 12 February 2019, p.77

[16] Source: News Media Alliance, Journalism.org, 29 June 2021



In this context, comments made by made by News Corp's COO David Dinsmore before the House of Lords' Select Committee hearing on the future of journalism are particularly resonant:

> "*Commercial TV broadcasters* [will] *probably find themselves in the position we were in 10 years ago... if you are ad-funded, in the new world with all the money going to Google and Facebook it becomes increasingly challenging*".[17]

How do we address the challenges of sustainability news?

It's an obvious truth that without viable economic models for news investment and provision, there will be no plurality – only the publicly funded BBC would be left. If, as we suggest, unfair value extraction by powerful platforms and aggregators poses a significant threat to all models that directly or indirectly support investment in news then that value extraction will need to be confronted.

Accordingly, if as a country we want high quality, trustworthy, news universally available for free, we need to face up to the reality that that will not happen without regulatory intervention to control the behaviour of global online platforms. There really is little doubt now that relying on the goodwill or charity of platforms or aggregators to fund news is unlikely to yield sufficient value and is a fundamentally unstable basis on which to base a media plurality regime. Rather, there will need to be a set of reforms to ensure fair terms of access to audiences and revenue which facilitate broader investment in high quality local, regional and national journalism.

There is no single solution to this issue. However, a core part of the answer to sustaining high quality video and TV news will be in the implementation of Ofcom's recommendations for new legislation to deliver a modernised public service media (PSM) settlement:

> "*Platforms would have to make the PSM content available in line with a new set of statutory requirements. These should include a requirement to give appropriate prominence to PSM content and for terms to be consistent with the sustainable delivery of PSM*"[18]

[17] https://committees.parliament.uk/oralevidence/580/pdf/
[18] Ofcom SSBD Statement, para 6.18

The recognition by Ofcom of the importance of the sustainable delivery of PSM is crucial since if global platforms are able to use their financial muscle to squeeze the value out of PSM content then there will be no commercial PSB news in future. Regulation must guarantee PSBs the opportunity and ability to negotiate deals that fairly reflect the value of risky investments in UK content for UK audiences to enable us to sustain our investment in news. In its recommendations to government following the *Small Screen: Big Debate* review, Ofcom recommended a role for itself to develop guidance that incentivised parties (i.e. platforms and PSM providers) to reach timely agreements in the interests of audiences and investment in PSM content.[19] Of course, this proposed PSM intervention goes much broader than simply news but is about ensuring that the variety of life in the UK – culturally, socially, artistically is represented on TV in future and is easy to access.

However, as more and more video news content is delivered (and consumed) online and via online aggregators (as well as via TV and video services on entertainment services on living room TVs) there is a need to look at the terms of access and provision of that news content via those sites too. Ofcom has made it clear that those sites would not be covered by its recommendations around PSM prominence and availability. In this context, there is increasing evidence that interventions by governments and regulators can make a difference to help to sustain a broad spectrum of news provision from a wide variety of providers, including the press. We set out below a couple of case studies of that intervention.

[19] Small Screen: Big Debate, recommendations to government on the future of public service media, para 6.26

Case Study: Australian News Media Law

In July 2020, Australia proposed a new law – the News Media and Digital Platforms Mandatory Bargaining Code (the News Media Law)[20] which encourages digital platforms (Google and Facebook specifically) to negotiate payment deals with news organisation. If negotiations fail, the law obliges the parties to subject themselves to arbitration by a panel appointed by the Australian Media regulator which has the power to determine the price the platforms pay for use of content, based on choosing the price proposed by the platform or the price proposed by the media organisation.

The News Media Law was developed by the Australian Competition and Consumer Commission (ACCC), in recognition that:

> "*the production and dissemination of news provides broad benefits to society*" and the need to "*address bargaining power imbalances between Australian news media businesses and digital platforms in order to ensure that commercial arrangements between these parties do not undermine the ability and incentives for news media businesses to produce news for Australians*".[21]

The new law came into force in February 2021 by which point Google had reached agreement with a number of the big Australian news providers. By comparison, Facebook responded by preventing Australians from sharing news content on its platform. The difference of approach was initially explained by Facebook as resulting from a difference in each platform's relationship with news content – the information that people see on Facebook is placed there by news providers.[22] However, in the aftermath, Facebook appeared to row back from that position after the Australian government agreed not to designate Facebook under the regime if the company demonstrated it has signed enough deals with media companies to pay them for content.[23]

Fundamentally, the Australian law is an important step in addressing structural imbalances that impact the sustainability of news and our understanding is that substantial payments have been made by the platforms to a number of news providers (including TV news providers).

[20] Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021
[21] Mandatory news media bargaining code: Concepts Paper, ACCC, 19 May 2020
[22] Facebook, 24 February 2021
[23] Guardian, 23 February 2021

Case Study: French Neighbouring Rights Act

In 2019, France was the first EU Member State to implement new provisions of the European Copyright Directive that created a 'neighbouring right' for press publishers. Google had been one of the most vocal opponents of what it dubbed the 'link tax'. Soon after France adopted its Neighbouring Rights Act Google announced that it would not publish press publishers' content in its search results or its Showcase news aggregations service unless publishers agreed to grant it a blanket, royalty free licence free-of-charge. This left press publishers with a Hobson's choice between giving away their rights or not appearing on the worlds' most popular news aggregation service. In response to Google's action, two unions representing French press publishers complained to the French competition authority that Google was abusing its dominant market position by imposing unfair trading conditions which had caused "*serious and immediate harm to the press sector*".

In 2020, the French Competition Authority (FCA) found that Google had abused its dominant market position by imposing unfair trading conditions on press publishers in breach of French and European copyright law. The FCA imposed interim conditions that required Google to negotiate "in good faith" with press publishers on (i) the terms and conditions of use; and (ii) remuneration due to news agencies and publishers, for use of their content. In July 2021, Google was fined €500m for failing to comply with these conditions.

In a scathing decision, the FCA made clear how serious they considered Google's violations to be. In a statement, the FCA said:[24]

> *Google's behaviour is the result of a deliberate, elaborate and systematic strategy of non-compliance with Injunction No. 1 and appears as the continuation of the opposition strategy of Google, put in place for several years, to oppose the very principle of related rights during the discussion of the directive on related rights, then to minimise its concrete scope as much as possible.*
>
> *It thus appears that the negotiation strategy implemented by Google with regard to the negotiations conducted within the framework of the Decision was part of a more global strategy, implemented at a more global level, and aimed at avoiding or limiting as much as possible payment of remuneration to publishers, to use the Showcase service in order to resolve the basic debate on the allocation of specific rights to publishers and agencies for the reproduction of press content, and, finally, to use negotiations on related rights to obtain the production of new content by press publishers, via Showcase, and subscription by the latter to the SwG service, which allows Google to collect additional income from subscriptions to press titles.*

[24] Authorité de la Concurrences, 13 July 2021

These are standout examples of governments and regulators seeking more equitable arrangements between global platforms and news providers.[25] Both the UK CMA and the European Commission[26] are looking with interest at Australia's action as they develop proposals for platform regulation and representatives of the UK government have, in the light of Australia's action, expressed "*great admiration*" for countries that have proposed laws compelling tech giants to pay for journalism.[27] But support is not enough; concrete action is needed.

What does this mean for media plurality?

In its consultation, Ofcom observes that the developments taking place in the news landscape provide it with a key opportunity to "*identify* [regulatory]*approaches that will work to the benefit of plurality and democracy within the UK*". Ofcom is seeking views on three key areas: (i) online intermediaries; (ii) algorithms; and (iii) market changes. In very simple terms the risk of developments in these three areas is that individually and in combination they threaten the economics of commercial organisations providing high quality news services whose services will not otherwise be replaced. This is a profound threat to the plurality of voices in the news arena. Without commercially sustainable news providers there will be no plurality in future.

This is a big shift since, historically, the plurality rules have assumed a stable market and, hence, financial viability for a number of providers. Accordingly, the rules have focused for many years on preventing over-concentration of ownership by preventing consolidation. Concern over there being a sufficient plurality of voices available to consumers and citizens gave rise to media ownership rules which prevented the concentration of power in too few hands. Such an approach posed no threat to plurality historically because economic viability was assured.

Developments in recent years suggest that this approach is obsolete: there is no lack of diverse voices online but no rules around how platforms choose to promote or demote different voices or how much value they extract from such content. **Perhaps even more significantly, excessive concern about preventing concentration may well now result in *less* plurality - news providers, prevented from achieving efficiencies through consolidation and building scale may instead be forced to exit the market. This is a profound shift.**

The *Kent Messenger* merger case was a very graphic early example of this problem. In 2011, Ofcom conducted a Local Media Assessment of the proposed acquisition by the Kent Messenger Group of seven local newspaper titles in Kent from the Northcliffe Group. Ofcom's assessment recognised the major structural changes occurring in the local news sector as a result of classified advertising moving online. Ofcom concluded that the target businesses would struggle to achieve profitability given prevailing market forces and could be forced to close. In light of this, Ofcom recommended that the merger would provide the opportunity for the combined group to make cost savings, thereby providing a sounder commercial base from which to address long-term challenges.[28] The OFT took the view that the parties had not provided sufficient evidence to support a 'failing firm' defence. As a result, they took a 'conservative' approach and concluded that the appropriate counterfactual was the competition conditions prevailing prior to the merger and, as a result, concluded that there was sufficient risk to competition to warrant referral to the Competition Commission. Soon after the

[25] Telegraph, 24 February 2021
[26] FT, 8 February 2021
[27] Standard, 22 February 2021
[28] Ofcom Local Media Assessment

referral decision was announced, the merger was abandoned. Absent the merger, Northcliffe closed two of its Kent titles, just as Ofcom had predicted.[29]

The Kent Messenger case represented a serious failure of merger control and illustrates the obsolescence of historic market definitions and previous approaches to safeguarding media plurality.

More recently, News Corp applied to the Secretary of State to be released from undertakings set in 1981 following its acquisition of the Times and Sunday Times. The conditions required News Corp to continue operating the titles as two separate newspapers, with editorial independence from one another. The conditions were varied in 2019 to allow some sharing of resources including journalists. News Corp has now submitted a formal request to be released from the undertakings in their entirely. News Corp's argument is that the market conditions have changed so materially as to make the undertakings unnecessary and places News Corp at a competitive disadvantage.[30] This is another example of where consolidation may be the best way of maintaining plurality in the longer term in a world of significant commercial pressure on news organisations.

PART 2: SPECIFIC PROPOSALS ON MEDIA OWNERSHIP RULES

ITV broadly supports Ofcom's proposals for reform of its media ownership rules and makes the following limited comments

- ITV supports retention of the **Channel 3 news provider** rule as this ensures the presence of a strong and sustainable competitive and alternative voice to the BBC.

- ITV has no fundamental objection to Ofcom's proposal to broaden the scope of the **Media Public Interest Test** to include "news creators". We can appreciate the recognition that the market for news is wider than newspapers/broadcasting and that the rationale for Secretary of State intervention into media mergers might sensibly apply to other operators too. However, we appreciate that a lot turns on the definition of "news creator" and how markets would be defined in this context. We would appreciate more information from Ofcom explaining how it has approached these issues.

- ITV also strongly supports Ofcom's proposal to remove the prohibition on **advertising agencies** holding broadcasting licences. This rule (contained in section 202(7) of the Broadcasting Act 1990) was initially conceived at a time when there were limited routes to market for brands seeking to advertise their goods and services. The fear was that advertising agency control over television advertising could give rise to undue influence and risk unfair commercial advantage in the advertising market.[31]

  Much has changed over the last 30 years, most notably the rise of online advertising as a competitive alternative to traditional forms of advertising. Today, it is estimated that 70% of all advertising spend in the UK is online, with spend on digital growing 5% in the past year (outpacing overall ad spend which fell by 7%).[32] Moreover, as noted above, the Covid-19

[29] Journalism.co.uk, 25 November 2011
[30] DCMS Invitation to Comment, 24 June 2021
[31] Ofcom 2009 Media Ownership Rules Review, para 7.18
[32] iab.com, 18 May 2021

pandemic has speeded the trend of audiences from all demographics moving online which means that TV's unique selling point of providing mass mainstream reach is being eroded.

In this context, rules that seek to exert control over UK broadcasters' ability to innovate in the advertising market seem outdated. Indeed, no such rules exist online meaning that Google which controls 90% of UK search advertising,[33] and 20% of digital video digital video advertising, can operate a highly successful digital video service (YouTube) and can progress strategies of mediating (e.g. through Android TV) UK audiences' access to linear and on demand TV services on connected TVs, unimpeded by concerns over its control over advertising. Note that Facebook also controls 60% of digital video advertising in the UK and itself has aspirations to mediate TV viewing through its Portal TV product.

Furthermore, given developments in the online space, it is increasingly difficult to define 'advertising agency' in the context of media ownership rules, meaning that application of the rules can be cumbersome and arbitrary. In 2018, ITV sought to acquire Amobee, an 'adtech' company active in the development of technology to support the management of advertising supply (i.e. managing advertising inventory) and advertising demand (i.e. managing campaign placement). [CONFIDENTIAL]

Given the sheer scale and fast-moving nature of online advertising, it is unfortunate that UK broadcasters are forced to jump through these additional hoops and potentially may find their initiatives restricted in future. It places UK broadcasters at greater legal risk – and significant competitive disadvantage – compared to their online, global competitors.

The fact is that existing competition/merger review rules give regulators the ability to review the competitive impact of transactions that risk resulting in a substantial lessening of competition in advertising, or indeed any relevant market.

In this context, the current prohibition looks increasingly disproportionate, potentially highly distortive and unnecessary. For these reasons, ITV welcomes Ofcom's proposal to recommend that the current rule is retired.

[33] Online platforms and digital advertising, market study final report, CMA, July 2020