

## Call for evidence and Consultation response form

### Your response

#### Call for evidence

Question
We are seeking views and information on the role and impact of online intermediaries on the news consumption journey of UK consumers and the UK news media landscape.
We are seeking views and information on whether the role and impact of online intermediaries gives rise to new media plurality concerns; and, if so, how the regulatory framework might be updated to mitigate such concerns.
We are seeking views and information on how the algorithms used to recommend news content to UK consumers work in determining the prominence given to different news providers.
We are seeking views and information on whether the role and impact of algorithms on the news consumption journey of UK consumers and the UK news media landscape.
We are seeking views and information on whether the role and impact of algorithms gives rise to new media plurality concerns and if so, how the regulatory framework might be updated to mitigate such concerns.
We are seeking views and information on the role and impact of market change, outside the context of a merger, on the news consumption journey of UK consumers and the UK news media landscape.
We are seeking views and information on whether the role and impact of market change, outside the context of a merger, gives rise to new media plurality concerns, and if so, how the regulatory framework might be updated to mitigate such concerns.

#### Introduction

The Media Reform Coalition welcomes the invitation to respond to the important questions raised in this consultation. Since 2011, we have been at the forefront of debates around plurality regulation in the digital environment. In 2014, our evidence to the Lords Select Committee Inquiry into media plurality was cited in the Committee's [final report](#) immediately prior to a key recommendation: that any monitoring and assessment of media plurality should factor in the influence of digital intermediaries. The government subsequently endorsed this recommendation [in response](#) to the report. In 2018, we pressed this point to Dame Cairncross ahead of her review into the [sustainability of journalism](#) which recommended a news quality obligation be imposed on online platforms. This was followed by the Government's 2019 [white paper](#) on online harms which imposed a Statutory Duty of Care on online intermediaries, including the requirement to promote diverse news content. This consultation therefore comes at a pivotal moment given the clear need and broad support for factoring intermediaries into the plurality framework.

However, we have also been a leading voice in arguing that the current framework is insufficient to meet the challenges of an ever more concentrated news market, especially in local print news, online news, and more generally at the level of wholesale newsgathering across platforms. In 2017, we provided extensive evidence during the Fox/Sky merger review which was heavily cited in both Ofcom's public interest test report, as well as the final report by the Competition and Markets Authority (CMA). That report affirmed that 'traditional news providers continue to produce the bulk of the news content that is consumed online, either directly or via intermediaries.'

In summary, we welcome Ofcom's proposal to extend the scope of the public interest test framework and to retain the remaining rules regarding cross-media ownership and restrictions on media ownership in respect of political bodies and local authorities. However, we believe that there are two further and urgent changes that need to be made to the existing plurality framework.

First, **it is essential that Ofcom is empowered to carry out regular plurality reviews.** We suggest these should take place every four years to account for organic and dynamic market changes that can impact on the extent of plurality, and to address significant concentrations over recent years that have been well documented.

Second, these reviews should include **the monitoring and assessment of major news algorithms** in respect of plurality goals. The current draft Online Safety Bill presents a timely opportunity to do so given that Ofcom is already tasked with proposing a code of practice in respect of the bill's broad stipulations. We believe that this is the most practical, proportionate, and logical approach to factoring online intermediaries into plurality regulation.

## The need for regular plurality reviews

Although the Fox/Sky merger review set important precedents for plurality assessment in today's media environment, it also exposed a key limitation of the public interest test framework for regulating plurality. In particular, it exposed the reality that any merger review on plurality grounds necessarily relies on the present or pre-transactional picture as a benchmark of plurality 'sufficiency'. Yet there is now compelling evidence to suggest that the existing news media landscape falls significantly short of Ofcom's plurality objectives.

In particular, the public interest test framework fails to capture concentrations of power that can and have developed 'organically' rather than as a result of merger activity, e.g. as a result of dynamic changes in markets and technology. For instance, since abandoning its paywall in 2015, the online edition of *The Sun* newspaper saw its reach grow at an unparalleled and unprecedented rate, attracting the largest number of monthly unique visitors in the UK within three years.<sup>1</sup> This reflected a significant consolidation both within the online news market and across platforms which has not triggered a regulatory review due to falling outside of the current framework.

This problem was first raised by Ofcom in 2010 in its report to the Secretary of State on the proposed merger between News Corporation and BskyB. Ofcom's acknowledgement that the framework then was not sufficient to confront potential concentration in a volatile media market was echoed and reinforced by the subsequent Leveson Report into Culture, Practices and Ethics of the Press, as well as the House of Lords report on Media Plurality in 2014. The government's response to that report promised the 'first-ever baseline assessment of media plurality in the UK' to be conducted by Ofcom, following the development of a plurality measurement framework.

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<sup>1</sup> Tobitt, C. (2018), 'The Sun overtakes Mail Online to become UK's biggest online news brand, latest Comscore data shows', *Press Gazette*, May, <https://www.pressgazette.co.uk/the-sun-overtakes-mail-online-to-become-uks-biggest-online-newspaper-brand-latest-comscore-data-shows/>.

However, to date no such 'baseline assessment' has been undertaken in spite of Ofcom publishing its measurement framework in 2015. In its supplementary guidance to the Secretary of State, Ofcom asked in 2012 for 'some form of guidance' from Parliament on the question of sufficiency, specifically: 'indicative ranges, with additional qualitative guidance as to how those ranges should be interpreted.' There remains a compelling need for Parliament to produce such guidance, not least the concentrations that have developed in UK news media markets over the last five years.

The Media Reform Coalition has regularly published reports on media ownership in the UK that provide empirical evidence to support these concerns, most recently in 2015, 2019 and 2021.<sup>2</sup> In 2015 three companies controlled 71% of national newspaper readership. By the end of 2018, the same three companies – Rupert Murdoch's News UK, DMG Media (publisher of the *Mail* titles) and Reach (publisher of the *Mirror* titles) accounted for 83%. By the end of 2020 this dominance had increased to 90% of the national newspaper readership with two companies, News UK and DMG controlling over 70% of the market share of national newspapers. If we consider overall audience reach, the drops in circulation of these company's print titles has been offset by a growth in their online presence. In 2021, *The Sun* and *Daily Mail* together accounted for nearly 38% of total daily UK newsbrand reach. As with print circulation, just three publishing companies account for four-fifths of total brand reach amongst the major print titles: DMG Media, including the Evening Standard (34%), News UK (26%), and Reach (21%).

It is equally clear from the available evidence that the reach and dominance of print newspapers online has not been eclipsed by new entrants. So, while *The Canary*, for example, attracted 645,260 UK visits in January 2021, this was less than 0.5% of the traffic to the *Guardian* online with 146.5 million visits. During the 2017 General Election campaign period, *The Canary* outperformed the *Daily Mail* online when it came to Facebook shares of articles on the two main party leaders. Yet its actual reach was, over the same period, a tiny fraction of the *Mail's* (1% versus 36%). And in the month the general election was called, page views of the *Daily Mail* website outnumbered those of *The Canary* by a factor of more than 700. Similarly, in January 2021 the right-wing outlet *Guido Fawkes* saw 2,255,198 visits to its site, approximately 1.5% of that of the *Daily Mail* with 149 million visits.

We are seeing similar patterns of concentration in the local newspaper market where just six conglomerates now account for 84% of all titles while 50 smaller publishers have just 16% of what is left. Back in 2015, six companies dominated the market, but with the purchase of Local World by Trinity Mirror (now Reach), the market is even more compressed.

Radio audiences remain healthy, but this is far from a diversified sector. The BBC has a 49.7% audience share while commercial stations have 47.8 per cent, leaving a very small slice of 2.5% for community radio. Once again, the commercial sector is highly concentrated with just two large companies, Global and Bauer, accounting for almost 70% of the entire local commercial analogue market and 60.5% of national commercial digital radio. Following the launch of Times Radio in June

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<sup>2</sup> Media Reform Coalition (2015), *Who Owns the UK Media?*, London: Media Reform Coalition, [https://www.mediareform.org.uk/wp-content/uploads/2015/10/Who\\_owns\\_the\\_UK\\_media-report\\_plus\\_appendix1.pdf](https://www.mediareform.org.uk/wp-content/uploads/2015/10/Who_owns_the_UK_media-report_plus_appendix1.pdf).

Media Reform Coalition (2019), *Who Owns the UK Media?*, London: Media Reform Coalition. Available at <https://www.mediareform.org.uk/wp-content/uploads/2019/03/FINALonline2.pdf>

Media Reform Coalition (2021) *Who Owns the UK Media?*, London, Media Reform Coalition. Available at [https://www.mediareform.org.uk/wp-content/uploads/2021/03/Who-Owns-the-UK-Media\\_final2.pdf](https://www.mediareform.org.uk/wp-content/uploads/2021/03/Who-Owns-the-UK-Media_final2.pdf)

These reports draw on the most widely used industry sources, including BARB, ABC, PAMCo, RAJAR and company accounts, to measure ownership trends across national and local news, platforms and intermediaries, as well as radio and television.

2020, Wireless Group (a subsidiary of News UK) now operate four UK-wide talk radio and news stations – more than any other radio broadcaster, including the BBC. New DAB licences have not facilitated greater diversity and local accountability. Rather we are seeing the consequences of mounting concentration: in February 2019, Global took a decision to scrap around 40 local breakfast shows and to replace them with just three nationwide programmes, resulting in significant numbers of redundancies.

As for television, which remains the most used and trusted platform for news in the UK, this continues to be dominated by just three providers at the wholesale level: the BBC, ITN and Sky. In 2020, these three providers accounted for 99% of national/international news (of which the BBC accounted for 65%).<sup>3</sup>

These data underscore the need for plurality reviews outside of merger activity to not only protect against further reductions in plurality, but importantly to address *existing* deficits as outlined above. It is difficult to imagine that these levels of market concentration are consistent with Ofcom's plurality objectives, or indeed the statutory framework. As the CMA's 2018 report on the Fox/Sky merger makes clear, these objectives go well beyond competition concerns.<sup>4</sup>

## The need for algorithm governance

Much of the scholarly literature has rightly rejected claims by intermediaries to be entirely neutral conduits through which users find, select and consume news and information. However, this has led in some cases to a presumption that they play an editorial role equivalent to, and directly comparable with, that of conventional news sources. Since intermediaries by definition do not produce original news content, nor carry the news produced by an exclusive wholesale provider, the key questions from a plurality perspective is *which* wholesale or retail news sources achieve more or less salience on these platforms, and *how* this is shaped by their algorithms.

Ofcom's present approach to assessing plurality on the one hand acknowledges the distinct impact on plurality that intermediaries may have in this sense by classifying them as news 'gateways', as apart from wholesale or retail news sources. But when it comes to the analysis of news consumption, intermediaries still tend to be treated as sources *alongside* wholesale/retail providers. This risks skewing the data in either of two directions. If, for instance, a user gets their online news predominantly via the BBC website and the BBC News Facebook page, and cites the BBC and Facebook as sources in a survey response, this will be reflected in Ofcom's data as two separate news sources, effectively double counting the BBC. On the other hand, if they get their news from the BBC website plus various Facebook pages belonging to Sky News, *Daily Mail*, *Guardian*, etc then they might still cite the BBC and Facebook as their two main sources for news, with the effect that Ofcom's data would significantly understate their actual news diet.

This issue became a critical point of contention during the Fox/Sky merger review. The merging parties sought to argue that intermediaries were inherently pluralising forces (as suggested in the preceding example), widening the range of online news sources to which users are exposed. On this basis, they argued that Ofcom's cross-platform analysis overstated the shares attributable to the merging parties by not taking due account of the actual consumption of news sources via intermediaries.

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<sup>3</sup> Source: BARB, Network. Network programming based on 4+ area filter. Genre = national/international news (as quoted in Ofcom's 2021 News Consumption Report).

<sup>4</sup> CMA (Competition and Markets Authority) (2018a), *A report on the anticipated acquisition by 21<sup>st</sup> Century Fox, Inc, of Sky Plc*, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/713920/CMAFoxSky\\_report\\_nonconfidential.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/713920/CMAFoxSky_report_nonconfidential.pdf)

But the CMA's own analysis appeared to support the inverse of Fox's argument. For instance, data collected on news consumption via Twitter showed that sources with the highest reach (based on impressions) were overwhelmingly large-scale conventional news organisations, especially newspapers and broadcasters.<sup>5</sup> Data from the Reuters Institute for the Study of Journalism reinforces this point. Its Digital News Report 2021 notes that 35% of the UK population use BBC news online at least three times a week, compared to 1% who use BuzzFeed News.<sup>6</sup>

This continued dominance of established news organisations is consistent with evidence suggesting that digital intermediaries are increasingly prioritising such sources in their algorithms and in their interventions into the flow of news across their networks. In 2013, Google's patent application for its updated news algorithm made explicit reference to the perceived quality and importance of large scale, mainstream news sources.<sup>7</sup> In 2016, it was revealed that Facebook had hired a team of journalists with instructions to ensure that headline stories on mainstream news media were given a 'boost' if they weren't trending on Facebook 'organically'.<sup>8</sup> A 2018 study of sources recommended by Apple News editors found that these were dominated by 'a few major newsrooms'.<sup>9</sup> With Facebook having introduced its news service in the UK in January, which involves substantial payments to leading publishers, the prioritising of their content is likely to increase yet further.

All this suggests that the most appropriate way to factor intermediaries into both the assessment and regulation of plurality is to focus on the degree to which their algorithms promote a plurality of news sources at both the wholesale and retail level. There are now a number of ways in which it is possible for Ofcom to collect meaningful data on this, including but not limited to:

- Soliciting relevant data from the intermediaries themselves
- Commissioning bespoke data from commercial media measurement and analytics services
- Carrying out 'reverse engineering' and other experimental research designs aimed at determining the range of news sources promoted by major algorithms for various user profiles and/or search queries
- Adding detailed sub-questionnaires to news consumption surveys

Importantly, this research should be aimed at assessing plurality both at the aggregate level (i.e. the range of news sources promoted overall) and at the exposure level (the range of news sources to which users are, on average, exposed).

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<sup>5</sup> CMA (Competition and Markets Authority) (2018a), *A report on the anticipated acquisition by 21<sup>st</sup> Century Fox, Inc, of Sky Plc*, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/713920/CMAFoxSky\\_report\\_nonconfidential.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/713920/CMAFoxSky_report_nonconfidential.pdf)

<sup>6</sup> 2021 Digital News Report, Reuters Institute: Oxford. Available at <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2021>

<sup>7</sup> See United States Patent Application Publication No. US 2014/0188859 A1. 3 July, 2014. Available at <https://docs.google.com/viewer?url=patentimages.storage.googleapis.com/pdfs/US20140188859.pdf>

<sup>8</sup> Nunez, M. (2016), 'Want to Know What Facebook Really Thinks of Journalists? Here's What Happened When It Hired Some', *Gizmodo.com*, May, <http://gizmodo.com/want-to-know-what-facebook-really-thinks-of-journalists-1773916117>.

<sup>9</sup> Brown, P. (2018), 'Study: Apple News's human editors prefer a few major newsrooms', *Tow Center*, June, [https://www.cjr.org/tow\\_center/study-apple-newss-human-editors-prefer-a-few-major-newsrooms.php](https://www.cjr.org/tow_center/study-apple-newss-human-editors-prefer-a-few-major-newsrooms.php)

## Conclusion

Based on the evidence presented here, we believe that regular plurality reviews are a vital addition to the current public interest test framework for regulating plurality. Though further guidance from Parliament on plurality sufficiency may be useful, we believe that Ofcom's measurement framework and the precedents set by the Fox/Sky merger review provide a basis on which to carry out such reviews outside of merger activity. We recommend that reviews be conducted every four years, and that they should broadly follow the existing framework for reviews triggered by proposed mergers. In particular, Ofcom should be empowered to carry out an initial, baseline review and make recommendations to the Secretary of State accordingly, including for a more in depth and wide ranging 'stage 2' review by the Competition and Markets Authority if appropriate.

Where concerns in respect of the public interest are raised, Ofcom and/or the CMA should be empowered to make recommendations to the Secretary of State to intervene in media markets as they would in the context of a merger review, including behavioural or structural remedies as may be appropriate to the particular plurality deficiencies identified. Added to these should be the power to issue digital intermediaries with specific orders in respect of their algorithm metrics, should their performance fall short of standards as elaborated in the relevant code of practice. Ofcom should also be granted enforcement powers in respect of such orders, allowing the imposition of substantial fines in the event of non-compliance.

Together, these proposed changes will address existing concentrations in wholesale and retail news markets, protect against further reductions in plurality resulting from organic market or technological changes, and, above all, bring online intermediaries into the framework in a way that reflects their particular role and potential impact on news plurality. Since Ofcom first recommended regular plurality reviews to the government in 2010, the idea has attracted consensus support among policymakers. As the gaps in the existing framework become ever more apparent, we believe it is imperative that Ofcom revives the proposal whilst factoring in the ever more important contribution of digital intermediaries.