



Ofcom: Invitation to comment on measuring media plurality

Consultation response from the ESRC Centre for Competition Policy

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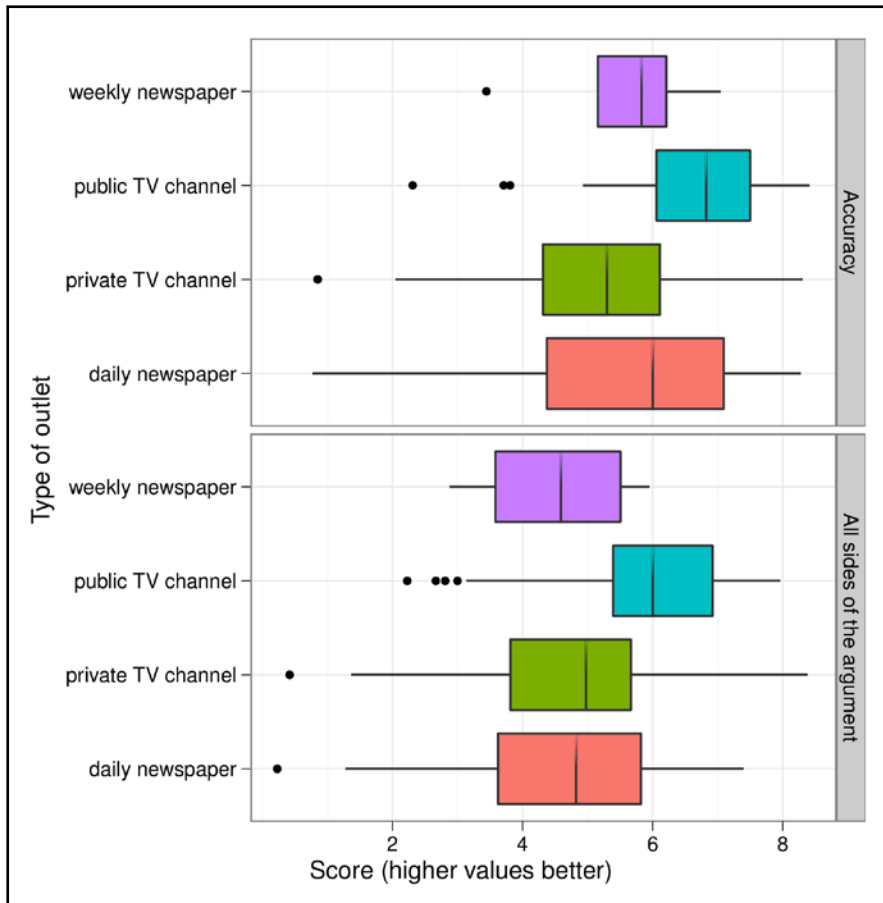
Questions responded to (our numbering)

**1. What are the options for measuring media plurality across platforms?
What do you recommend is the best approach? Is it practical or
advisable to set absolute limits on news market share?**

1.1 Pluralism can be generated in two distinct ways. *External pluralism* is a property of a market (or segment thereof) and arises from a range of distinct offerings within that market/segment). *Internal pluralism* is a property of the outputs of a single media provider within a market/segment. For the UK, the distinction is important in practice because broadcasting outlets have to satisfy more or less stringent public broadcasting requirements that contribute to *internal pluralism*, whereas newsprint and the internet operators do not and as a result are most usually judged by their *external pluralism*. Hence, any assessment of pluralism across platforms requires combining two kinds of pluralism. The question naturally arises as to how *internal* and *external* pluralism should be measured for the purpose of making any such combination of the measures meaningful.

1.2 The answer to this question depends on why pluralism is valued. This is in part because there are many indices of variety and which is the most suitable depends on why pluralism is valued. In addition, there are reasons for treating variety that is generated by *internal pluralism* differently to variety that comes through *external pluralism*. For example, people seem to trust broadcasters more and rely more on them for their news than other media. Figure 1 captures specific perceived differences among experts on accuracy and balance across the EU. Whether such differences matter or how they should matter must depend on why pluralism is valued in the first place.

Figure 1: Expert judgements of media outlets' accuracy and balance across 27 countries



Source: Hanretty (forthcoming)

1.3 Two common reasons for valuing pluralism are:

- a) exposure to a variety of points of view leads people to be better informed when making both collective and individual decisions;
- b) existence of a variety of views gives recognition to different identities and visions of the good life.

1.4 We recommend that OFCOM should be guided by these and other possible reasons for valuing diversity in developing measures of plurality across platforms.

2. What are the potential metrics that could be useful to assess plurality (for example, in the past we have used reach, minutes, share of references, ‘main source’ of news

2.1 External pluralism.

There are several possible metrics like reach, minutes, share of references, main sources and a number of indices that can be used to capture the extent of *external pluralism* (e.g. the Herfindahl-Hirschman, the entropy measure of dispersion, etc). Depending on why pluralism matters, there can be theoretical reasons for preferring one index to another, but it seems likely that the choice of metric (reach, minutes, etc) is an empirical question. That is, it is an empirical question what metric and what index using this metric captures how newsprint and the internet contribute to whatever it is that is valued about pluralism. Thus, for example, suppose pluralism is valued because it contributes to decisions that are better informed. The metric and the index should be determined by the attributes of the newsprint and internet markets/segments that, in practice, contribute most to explaining how well informed the public are. Whatever attributes these prove to be, they provide the guide for when policy interventions should be triggered and what form they should take. This type of empirical investigation is currently the object of a project being undertaken at the CCP.

2.2 Internal pluralism

Measuring internal pluralism is comparatively difficult. There are metrics based on the amount of screen time given to politicians, political parties and representatives of important social and political groups, as is done by the Conseil Supérieure de l'Audiovisuel, or by the Agenzia per le Garanti nelle comunicazioni. Alternatively it could involve counting the authorities cited by news items. The difficulty with such an approach or one that relies on surveys of public opinion (e.g. on trust) is again that what is measured should be guided by what is important. In short, the measure must depend on why pluralism is valued in the first place and it is a matter of empirical determination what actual attributes of broadcasting contribute to these sources of value.

2.3 We recommend that OFCOM develop an empirical assessment of what aspects of the various media markets/segments contribute most to generating the perceived desirable consequences of plurality.

3. Is there a way to assess the relative importance of different media in shaping public opinion?

3.1 There are two possible approaches. The first effectively asks consumers/citizens where they get their news from and what media they trust (e.g. surveys of the kind conducted by OFCOM in its review of the proposed acquisition of BSkyB and the regular Eurobarometer surveys of how well different media are trusted). The second examines how attributes of the media system affect public opinion.

3.2 The German Commission on Concentration in the Media (KEK) offers one example of the latter. They employ three different criteria in order to develop a weighting of television, the press, and the internet: (1) the suggestive powers of the media in question (Suggestivkraft); (2) the broad effect (Breitenwirkung) and (3) the topicality of news (Aktualität). These are plausible, in principle, as are the elaborations. The suggestive powers of media are, for example, the result of a combination of various communications forms such as text, images (moving/still), and sound. Television combines text, moving images and sound, and thus exhibits greater suggestive powers than newspapers or radio, for instance. The broad effect refers to the range of national coverage and the spatial and temporal availability. Here again, broadcasting has a wider coverage than the internet, magazines or newspapers, however its spatial and temporal availability is limited. As regards the coverage, the internet, newspapers and magazines are weighted to a lesser degree, while they have some advantages over television with regard to their spatial and temporal availability. Finally, the topicality of news refers to daily relevance (Tagesaktualität). According to the KEK's analysis, only television satisfies all three criteria, while the other media lag behind (Just (2009)).

3.3 The specifics are, however, more problematic. It is possible for instance that precisely because broadcasters are required to be duly impartial, they influence public opinion less than the partisan coverage of newspapers. Indeed, newspaper choice in some studies appears to be a better predictor of voting behaviour than is television choice (Van Kempen (2007)).

3.4 For this and related reasons, we recommend that OFCOM engage in empirical work that examines the aspects of media markets that influence public opinion. Particular attention in this needs to be given to how to measure public opinion and

those aspects of markets which have relevance for policy. For example, it appears that trust in television depends on some simple attributes of the governance structure of broadcasting (see Connolly and Hargreaves Heap (2007)).

4. News and current affairs have been established as key genres particularly critical for informing democracy. Should any other genres be considered, and what evidence is there of their capacity to influence public opinion?

4.1 There is a danger in focusing on only one form of pluralism: that captured in the range of political views expressed in news and current affairs in and across different media platforms, given that democratic citizenship is not simply a matter of processing information.

4.2 The danger lies, first, in overlooking other types of pluralism that may be of equivalent political significance. The most obvious example of this is cultural pluralism: the representation of different ethnic, gender etc identities. This is part a matter of personnel (who presents news and current affairs) and of perspective (how news is experienced and understood).

4.3 The second danger lies in overlooking the pluralism within culture (i.e. non-news/current affairs content). There are two key literatures here: first, that documenting the range of (or lack thereof) views expressed within forms of entertainment culture; and second, that analysing the impact of market concentration on the diversity (or lack thereof) within entertainment culture. Diversity here is not just a measure of consumer choice, but of forms of life. There is a third literature, at this stage less developed, on the impact of cultural consumption on citizenship. And finally, the suggestion that online cultural consumption is, in itself, providing diversity (the so-called 'long tail') is challenged by evidence of consumer behaviour and the practice of online companies.

4.4 Other genres of programming should be considered. Drama, broadly understood to include soaps as well as single episode dramas, is a candidate. The second

approach in 3.1 above to assessing the importance of different aspects of the media in shaping public opinion can, in principle, be elaborated to allow for the influence of quality measures of other genres on consumer/citizen knowledge. Comedy programming, in particular topical panel- or chat-shows, should be included. There is some evidence of the capacity of such programmes in the US to influence public opinion. Those who were randomly selected to watch the Daily Show with Jon Stewart are more cynical about politics, but at the same time are more confident in their own ability to understand politics and the political process (Baumgartner and Morris (2006)). These experimental findings come from the US, where there is no requirement that programmes be fair and balanced, or duly impartial, or endeavour to present politics in a multifaceted fashion. They may therefore represent an upper bound on the capacity of such programmes to influence viewers' opinions regarding politics.

5. How might the market evolve in future and how might this affect options for measuring media plurality across platforms?

5.1 A wide definition of media should be adopted and updated on a regular basis. This can be something that is encouraging from the point of view of plurality (i.e. there are a wide range of views presented) but also of concern (that a voice is dominant across media but not necessarily on a given platform). But there is a need to take quite a granular approach. There is no point in pointing to the range of views available online when there are still significant disparities in (a) media consumption where access is available and (b) access to sufficiently high-speed Internet access in the UK; this is demonstrated in the Communications Market Report 2011, in terms of measures like age (p.74), class (p.209) and geography (in the case of mobile Internet across rural UK, p.84, and broadband in Scotland both urban and rural, p.89)). There may also be other gatekeepers active online that can exercise influence - thus providing a link to Ofcom's work on net neutrality as well as wider issues around search engines, aggregators and social networking platforms.

6. Is it possible to define a set of characteristics of a market that could raise concerns about levels of plurality?

6.1 For the reasons given in the answer to question 1, we believe that it is not possible to define a set of characteristics of the market for news and current affairs, considered as a whole, that could raise concerns about levels of plurality.

6.2 Nevertheless, **for the contribution from *internal pluralism***, in principle, the efficacy of PSB governance is likely to be crucial. In practice, the aspects of governance that matter for each possible value associated with plurality is an open empirical question.

6.3 **For the contribution from *external pluralism***, in principle, the degree of concentration of outlets (or ownership interests) in terms of citizens citing these outlets (or outlets controlled by these ownership interests) as their main or frequent source of news. This may need to be sensitive to the details of ownership structures but again what exactly matters for each particular value associated with pluralism is an empirical question that needs to be determined.

7. To what extent do other laws (for example the competition law) or sectoral characteristics (such as multisourcing by consumers) act as safeguards for plurality?

7.1 Competition law may be used to secure plurality. For example, by requiring platform operators to grant access to their platforms to broadcasters, especially where that platform holds a dominant position.

7.2 Over the past decade, there have been a number of cases involving premium content (i.e. live top flight sporting events, first-run Hollywood movies etc). The contracts between broadcasters and content rights holders tend to be exclusive supply agreements, covering all potential platforms (including the internet and mobile), and for long periods of time. Several interventions by the European Commission have sought to shorten the length of these contracts, disaggregate platforms and, in the FAPL joint selling case, require that the rights are not sold exclusively to one broadcaster. All of these cases have sought to minimise the foreclosure of the downstream pay-TV market to competition from existing rivals and

potential new entrants. The intervention by Ofcom in the pay-TV market was similarly motivated.¹

7.3 These interventions seek to ensure that there is a choice of platforms downstream, and thus contribute to plurality. Where competition in the pay-TV market is strong, all firms have an incentive to maximise their wholesale revenues by selling their premium content to one another. It is only where, as in the case of BSkyB, a platform has a dominant position that it will forego wholesale revenues in order to ensure that its subscriber base is not cannibalised and its position to outbid its rivals in the upstream markets for content rights is not undermined. Without intervention, pay-TV markets may not attract new entry because without premium content new entrants will not be in a position to attract sufficient subscribers. Not only will this result in higher prices, it will also reduce the choice of providers and, in turn, media plurality.

7.4 There is also sector specific legislation in place, deriving from EU law, which ensures that PSBs have access to digital TV platforms (the so-called “must carry” obligations under the Universal Services Directive). The UK currently uses these provisions with respect to BBC channels. The Audio Visual Media Services Directive contains provisions which require broadcasters to meet specified quotas for European content and European independent work, the latter target especially contributing to media plurality. It should also be noted that the BBC has long been under an obligation to commission 25 per cent of its content from independent production companies, and competes with them for a further 25 per cent (the “window of creative opportunity”).

7.5 Finally, the commitment at EU level to ‘preserving the open and neutral character of the Internet’ [2009] OJ C 308/2 should be seen as a further means by which plurality could be safeguarded. The instances of blocking reported by BEREC and others (reviewed in the European Commission’s most recent report on net neutrality, COM(2011) 222 at [4.1]) demonstrate how moves towards blocking (particularly

¹ While strictly speaking this was done using sectoral powers under the Communications Act, the remedies were imposed using a competition based test; see similarly the recent provisional findings of the Competition Commission in pay-TV movies.

where this is not a violation of article 102 TFEU) would affect the ability of end users to access lawfully available content. In conjunction with this Internet-focused point, the 'bundling' of Internet and non-Internet services (e.g. telephone, cable and broadband) may require the assessment of plurality to consider the actions of parties beyond publishers and broadcasters. For so long as competition between providers regarding the provision of a connection to the Internet is based on price, speed, customer service etc, the dangers are minimal, but where that connection allows the prioritisation of one content provider over another or restrictions on certain media formats, the supposed safety valve of Internet media (low entry costs, greater user participation, a wider range of views) will be very different.

8. Are there any regions, areas or audiences (such as the devolved nations) which may require separate consideration, and why?

8.1 This can be an important consideration. For example, where devolved legislative and executive bodies exist, the question of ensuring plurality in news provision may be different to that at a UK-wide level, as not all providers within a given nation would report on these institutions. This could mean that an undifferentiated analysis would show a range of providers, even though there may be a problem with plurality on nation-specific matters.

8.2 Furthermore given the degree to which there are parallels between particular communities and news sources (take for example the religious affiliation of newspaper readers in Northern Ireland, or the growth in the number of television licensable content services licensed by Ofcom which are directed at a particular social, religious or ethnic group), it is not just a question of overall plurality but also a need to guard against allowing one voice to be dominant within a community. Some of the data necessary for this type of analysis should already be available but steps may need to be taken (whether through licensing or monitoring) to improve it.

8.3 The recent cuts in funding by the BBC of local radio provision, and the pressures facing regional news on Channel 3, are likely to make plurality in local / regional news provision all the more important.

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

9.1 In its report on the acquisition of BSkyB, Ofcom alluded to the decoupling of the media plurality rules from the merger regime. There is no reason why media plurality could not be incorporated into the existing market investigation regime, given that the Competition Commission (and presumably its successor) has the role of assessing media plurality in the media merger context.

9.2 The issue of how a plurality inquiry could be triggered is perhaps more problematic. It should be noted, however, that Ofcom has the responsibility to conduct periodic reviews of various aspects of the media industry (e.g. PSB provision). A similar duty could be imposed for media plurality, with the power to make a reference to the CC (or its successor) if there is a serious reduction in media plurality, for whatever reason. One such trigger could be a reduction in the efficacy of PSB regulation for impartiality and accuracy as captured, for instance, in falling levels of trust or reliance for the news. Others might be the exit of a major outlet, or the emerging dominance of one firm in a particular market segment or across segments.

9.3 The operation of a media plurality test in a merger context – where the focus is on a change in media plurality – would be quite different here. There would be the need to devise some benchmark to measure whether there exists a sufficient media plurality, a more complex and value laden question. Our recommendations in answer to questions 1-3 would become all the more important.

10. The Secretary of State identified concentration arising from organic growth and market exit in his recent speech. What other potential triggers might there be?

See answer to 9.

11. Could or should a framework for measuring levels of plurality include websites and if so which ones? Whether or how it should include the BBC?

See answers to 1. and 5 above.

12. How does the process of news gathering differ between: organisations (e.g. between the BBC, compared to commercial organisations); platforms (ie online, press ,TV or radio)?

12.1 There are obvious differences between broadcasting and, say, news aggregation sites on the internet in terms of investing in new news (as compared with re-cycling somebody else's news).

12.2 Regulatory requirements (outside of plurality) have an impact on news gathering. The Communications Act requirements for due impartiality, for fairness and privacy etc are good examples here - it affects the conditions for plurality in that a bare analysis of the number of outlets could be misleading. This itself is an issue that may shift over time - any future changes to press regulation (whether in terms of added regulation or liberalisation) would also be relevant. The link between a platform (or a service within a platform - 'online' is a wide category) and the credibility attached to it should also continue to be explored.

13. Do any of these differences warrant differential treatment by platforms or media organisation?

13.1 As has previously been stated, it is necessary to make a distinction between broadcast outlets subject to the requirements of fairness and impartiality and newspapers and the internet. With respect to the latter, it is logical to treat simple

news aggregation sites differently from those internet sites which do actually produce content in a meaningful way.

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