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 <u>views</u> is the desired outcome in newspaper transactions, but a sufficient plurality of <u>owners</u> 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.

David Elstein November 18 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.

December 2010	%	March 2012 %
BBC	46.51	46.51
News Corporation	8.68	7.93
DGMT	6.72	6.72
Trinity Mirror	4.81	5.32
ITN	4.46	4.80
ITV	3.94	3.94
Commercial radio	3.84	3.84
Sky	2.81	2.47
Northern & Shell	2.38	2.62
Telegraph Group	2.37	2.37

Independent	1.67	1.67
Guardian Media	1.60	1.60
Channel 4	0.52	0.52
Pearson	0.15	0.15
Other regional	9.54	9.54
Total	100.00	100.00