

17 November 2011

Via e-mail

Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Re: Invitation to comment on measuring plurality across media

On 4 October 2011, prior to the publication of Ofcom's "invitation to comment", we published a Research Note titled *Measuring across media: Key issues in the United Kingdom*.

Since it covers a number of the issues listed in the "invitation to comment", we are pleased to submit that Research Note as part of your process.

We would also be pleased to respond to any questions you may have about the material contained in the Research Note.

Respectfully submitted,



Kenneth J. Goldstein
President

Attachment:

Research Note: *Measuring across media: Key issues in the United Kingdom*,
4 October 2011.

Measuring across media: Key issues in the United Kingdom

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Introduction

On 14 September 2011, Rt Hon Jeremy Hunt, UK Secretary of State for Culture, announced that he would forward to Ofcom the task of reviewing the question of media plurality in the United Kingdom. This follows a report by Ofcom on similar issues, published on 31 December 2010, in the context of the proposed purchase of majority control of BSkyB by News Corp., a proposal since abandoned by News Corp. The current review appears to be a response to the scandal and controversy over “phone-hacking”.

This brief note has been prepared to offer a general overview of some of the key issues that might be considered in any review of media plurality, particularly when that review moves into the area of attempting to measure cross-media “influence”.

This note has been divided into three main sections:

- I. General issues
- II. A review of the metrics used by Ofcom in its 2010 report
- III. Additional issues relating to the applicability of any rules that might be deemed necessary based on the statistical analysis

I. General issues

1. Ownership is an imperfect proxy for plurality:

In November 2006, Ofcom issued a report titled *Review of Media Ownership Rules*. In that report, Ofcom succinctly stated both a case for media ownership rules and, at the same time, the inherent public policy dilemma that underlies that case.

This is what Ofcom said:

There is currently no generally accepted way of measuring the degree of viewpoint plurality in the media. As a proxy for viewpoint plurality, the MO [media ownership] rules aim to ensure plurality of media ownership. This approach assumes a correlation between viewpoint and ownership plurality: different owners may be different sources of news and may also provide different perspectives on what is going on in the world.

Clearly this proxy is imperfect:

- Ownership plurality *does not ensure a plurality of news sources*. For example, two local radio stations might have different owners and yet obtain all their news from the same source;
- Ownership plurality *does not necessarily ensure editorial or viewpoint diversity*. Whilst diversity of ownership may have an effect on plurality, it may also be the case that different sources of news offer the same perspective. In addition, journalists, editors or producers, rather than owners, may have a more direct impact on the views expressed via a media outlet.

However, in the absence of a better means of assessment, ownership plurality remains the best proxy for viewpoint plurality.¹

Ofcom also noted that:

1. Competition law also protects ownership plurality; and
2. Consolidation can offer benefits, including economies of scale and scope.²

Essentially, an important area of media regulation is starting with an admittedly unproven assumption (that ownership somehow determines plurality) and then building legislative or regulatory tools based on that assumption.

Yet, as Ofcom acknowledged, there is very little evidence to suggest that ownership structure, per se, will or will not lead to plurality. “Good” or “bad” track records on a variety of issues cross all ownership lines – big, small, within a single medium, across media, etc.

So the lesson we should learn at the outset is this: If ownership is an imperfect proxy for plurality, then public policy should proceed with great caution in this area.

2. The media do not necessarily have a direct cause-and-effect “influence” on consumers:

The impetus to try to measure “influence” implicitly assumes that such “influence” exists. But does it, and if it does, how important is such “influence”? Or this is an elitist construct in which critics of the media say that the “mainstream media” don’t fully deliver some “truth” about a particular topic? Yet the critics appear to be immune from a problem that they assume is affecting everyone else.

In a Western democracy such as the United Kingdom, Canada or the U.S., it may be more useful to view media in an “environmental” context – that is, traditional media are an important ingredient in public opinion, but they share the public opinion space with many other influences, including a variety of new media, and also including home, work, school, community activities and places of worship.

3. Media markets cannot be considered in isolation:

Whether measuring within or across media, such measurements cannot be considered in isolation from broader trends. A good case in point is the newspaper industry. In the current controversy, we hear references to one owner’s share of newspaper circulation – but that has rarely been placed in the context of the fact that the share in question is a share of a declining market.

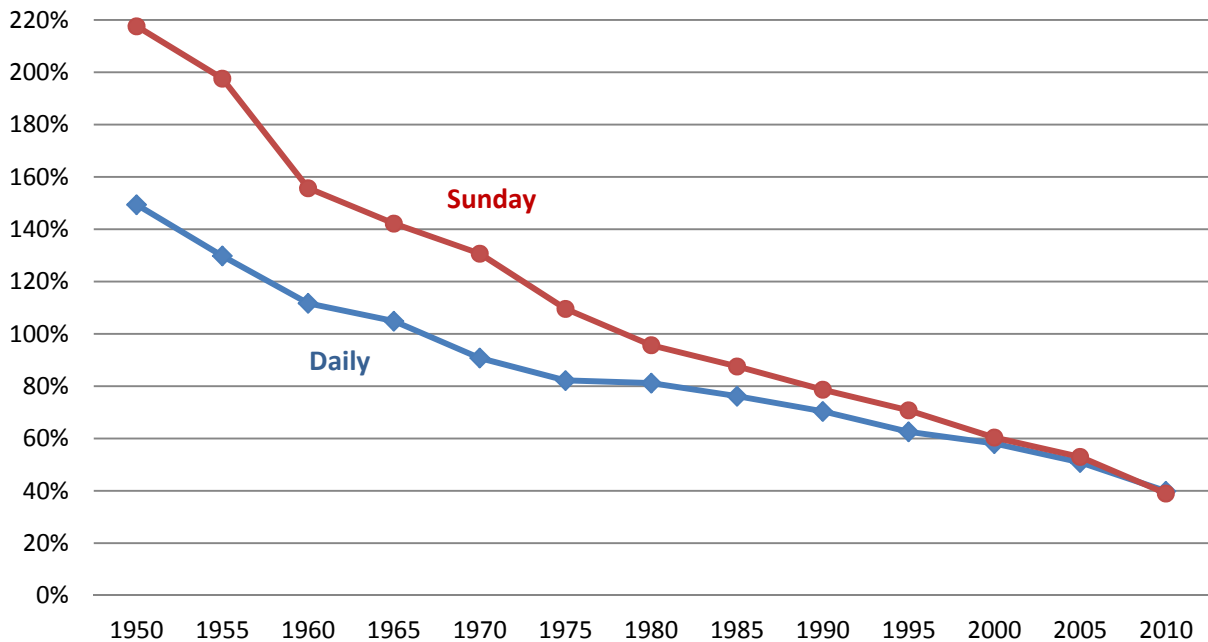
This is illustrated in Figure 1, which shows that circulations of U.K. national daily and Sunday newspapers now are the equivalent of less than 40 per cent of households.

¹ Ofcom, *Review of Media Ownership Rules*, 14 November 2006, p. 6.

² *Ibid.*, pp. 6-7.

Figure 1.

Total national daily / national Sunday newspaper paid circulation as % of households, Great Britain, 1950-2010:



SOURCE: Taken from *Sixty Years of Daily Newspaper Circulation Trends*, a discussion paper published by Communications Management Inc. on 6 May 2011.

In the United Kingdom, national newspaper circulation is specifically referred to in legislation dealing with ownership of television services, with restrictions on the amount of a specified television service that a newspaper proprietor can own, if that newspaper proprietor has more than a 20 per cent share of the national newspaper market. And the market share is measured on the basis of circulation.

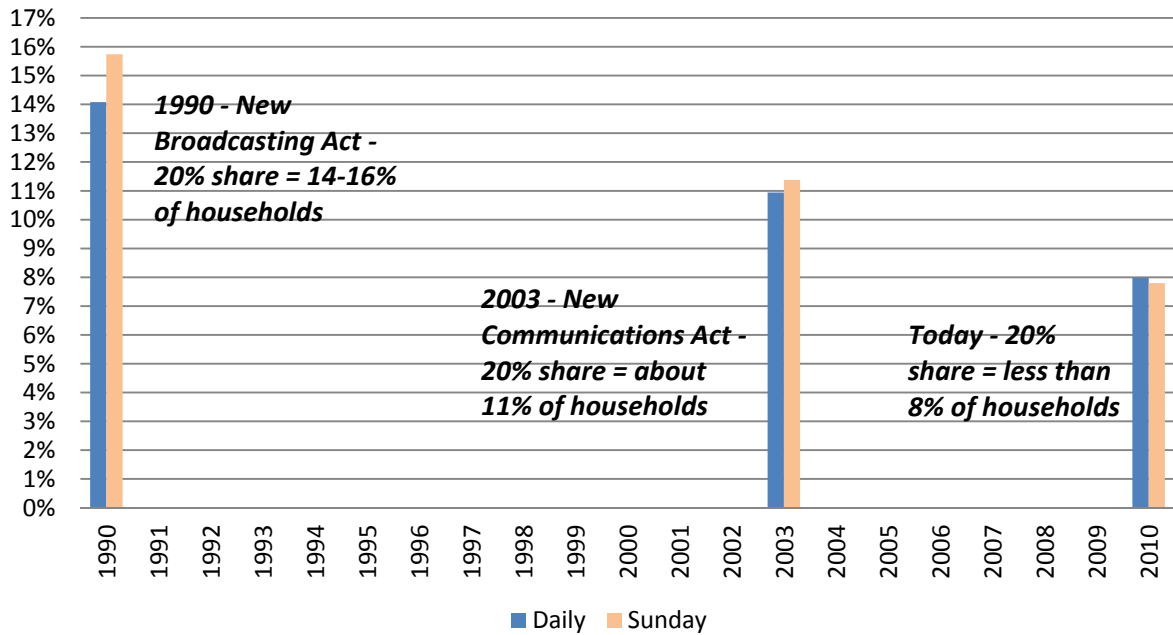
However, a measurement based on a fixed percentage of circulation will represent a declining share of households reached, at a time when circulation is declining and the number of households is growing.

As illustrated in Figure 2, when the U.K. *Broadcasting Act* was enacted in 1990, 20 per cent of national newspaper circulation was the equivalent of 14-16 per cent of households in Great Britain. Today, 20 per cent of national newspaper circulation is less than 8 per cent of households.

In the current controversy, there have also been calls to limit newspaper ownership, so that no single owner could control more than 20 per cent of total circulation. As indicated in Figure 2, by 2015, it is entirely possible that a 20-per-cent-of-circulation threshold will be the equivalent of five or six per cent of households – hardly an overwhelming “influence”.

Figure 2.

Percentages of households in Great Britain reached by a 20 per cent share of circulation in the national newspaper market, selected years, 1990-2010:



SOURCE: Taken from *Sixty Years of Daily Newspaper Circulation Trends*, a discussion paper published by Communications Management Inc. on 6 May 2011.

4. Regular competition laws – and other relevant laws – still apply:

As Ofcom noted in its 2006 report: “Competition law also protects ownership plurality.” So we should not forget that a wide range of laws already exists to deal with either competition questions or issues of unacceptable behavior. Indeed, actions stemming from the “phone-hacking” scandal now are underway in the context of existing legislation.

In that context, one might caution those who seek to add yet another level of oversight – it may appear to offer a “quick fix” in response to a scandal, but may, over time, simply add another level of regulation or complexity.

II. A review of the metrics used by Ofcom in its 2010 report

On 31 December 2010, Ofcom released its report on the proposed News Corp.-BSkyB transaction, and a substantial part of that report was devoted to a variety of analyses of media plurality. The report is titled *Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation*, 31 December 2010.

The report included a summary of the results of “cross media audience research” (CMAR) commissioned by Ofcom. Subsequently, on 14 July 2011, in response to a freedom of information request, Ofcom released the detailed findings of its CMAR survey.

The following overview is based on Ofcom’s report of 31 December 2010 and on the subsequently-released detailed tables.

In its report, Ofcom used four main analyses to help it determine the degree of media plurality before and after the proposed transaction:

1. Reach
2. Counting minutes
3. Share of references
4. Percentages of consumers naming specific media as their “main source” of news

Ofcom also broke the data into “retail” and “wholesale” components, in order to account for the fact that Sky News is a supplier to Channel 5 and to commercial radio stations.³

We believe that the Ofcom report made an effort to provide a wide array of possible ways of measuring media plurality with respect to the consumption of news. However, in so doing, we believe that Ofcom should have gone farther, and indicated which of the four metrics were more or less useful in this regard.

Our assessment of the four metrics is as follows:

1. Reach:

We believe that the use of reach in this context does not provide a useful tool for measuring media plurality, because the thresholds to be included in the reach data are simply too low to have any meaningful link to the potential for media “influence”. In some cases, Ofcom used reach data from single-media industry surveys – for example, to be included in the data for television reach, a respondent would have had to have watched as little as 3 consecutive minutes in an average week. In the case of radio, the threshold was 5 consecutive minutes once a week.

Ofcom also derived reach data from its CMAR survey, based on responses to a question on “regular” use of media as a source of news. However, here, too, the threshold for “regular” was very low, with someone who read a daily newspaper once a week or a weekly newspaper once a month being counted as a “regular” consumer. As a result, no distinction was made

³ It can be argued that the “wholesale” data overstate the potential degree of influence, since most of the retail customers for Sky’s wholesale news supply would still be exercising editorial control of what is broadcast.

in the reach data between that once-a-month weekly newspaper reader and a seven-day-a-week viewer of television news.

The figures of 81 per cent for the BBC and 51 per cent for News Corp.-BSkyB (post transaction) come from the reach analysis.

However, for the reasons noted above, we believe the reach data do not provide a reliable basis for assessing media plurality.

2. Counting minutes:

Another metric used by Ofcom was to count minutes devoted to four main media platforms (and specific titles/services within those media). However, this methodology is severely flawed, for two main reasons. First, it does not recognize that the time spent with newspapers is spent on much more than just news and commentary, since newspapers are bundled packages of news, comment, sports, financial information, cookery, cinema and theatre reviews, and diversions such as crossword puzzles and other games. Second, although Ofcom noted the lack of weighting in its “minute-counting” exercise, it did not weight the data to reflect the relative importance that consumers attached to each medium as a source of news, even though those weights had been evident in a number of Ofcom surveys.

The figures of 43.5 per cent for the BBC and 23.7 per cent for News Corp.-BSkyB (post transaction) come from the “counting-minutes” methodology.

However, because of the flaws noted above, we would also reject the “counting-minutes” methodology as a basis for assessing media plurality.

3. Share of references:

These data come from the Ofcom CMAR survey conducted in November 2010. The data are based on those who responded that they were “regular” users of particular media, but, as noted above, the definition of “regular” set a very low threshold – once a week for daily newspapers, radio, television and the Internet, and once a month for weekly newspapers. The totals for all of those “references” came to 387.2 per cent of the weighted number of respondents, and Ofcom then used that number as a new base and calculated percentages as a share of that 387.2 per cent.

The figures of 37 per cent for the BBC⁴ and 22 per cent for News Corp.-BSkyB (post-transaction) come from this methodology.

While interesting, we believe that the “share of references” approach suffers from the same flaw as the reach data – the threshold is too low, meaning that no distinction is made between regular-but-infrequent users and those who read or watch six or seven days a week.

However, we believe that some elements of the “share of references” approach might be useful, if the basic criteria could be modified in a future survey, and we will discuss that in more detail below.

⁴ The BBC’s actual percentage of the weighted total was 143.8 per cent; when that was divided by 387.2 per cent, it yielded 37.1 per cent.

4. “Main source” of news:

Of the four methodologies used by Ofcom, this is the most relevant and the most useful. It provides a straightforward answer to a straightforward question – what consumers consider to be their “main source” of news.

The full data in response to this question can be found in the detailed findings released by Ofcom on 14 July 2011. We have included in this note an Appendix that provides detailed data for responses to the “main source” question. We have also summarized the data in Figures 3 and 4.

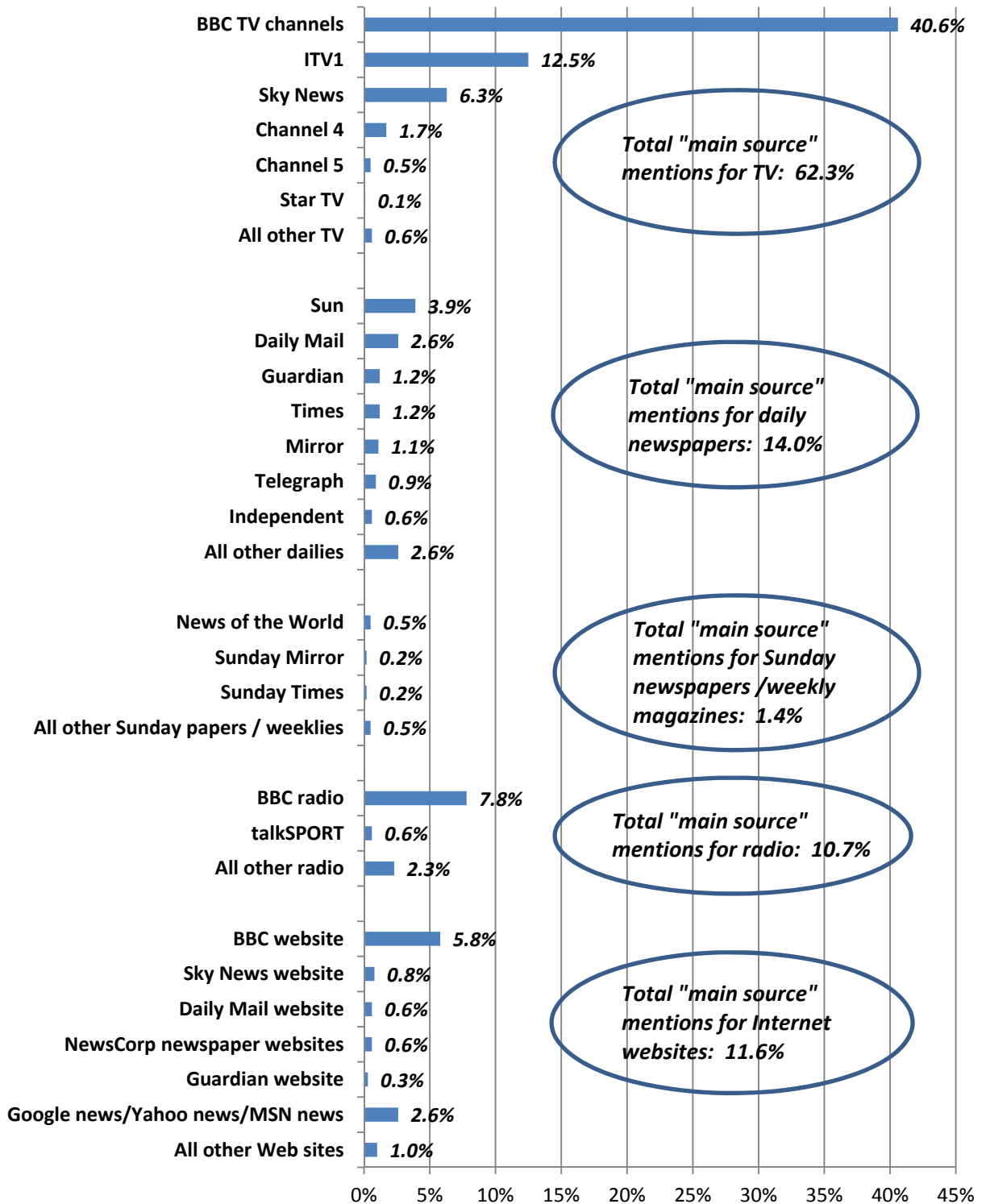
As can be seen in Figure 3, the “main source” data indicate the specific media outlets that consumers consider to be their “main source” for news, and also the overall weights that consumers attach to the different media platforms.

If we look at Figure 4, we can see that the BBC’s share of “main source” references was 54.2 per cent, compared to a share of 15.6 per cent for News Corp.-BSkyB (post transaction), and an ITN share of 14.2 per cent.

(Although *News of the World* ceased publication after the Ofcom CMAR survey was conducted, the “main source” data indicate that the removal of *News of the World* from the base would have a very small impact on the totals. As indicated in the Appendix, *News of the World* accounted for less than one half of one per cent of the “main source” references.)

Figure 3.

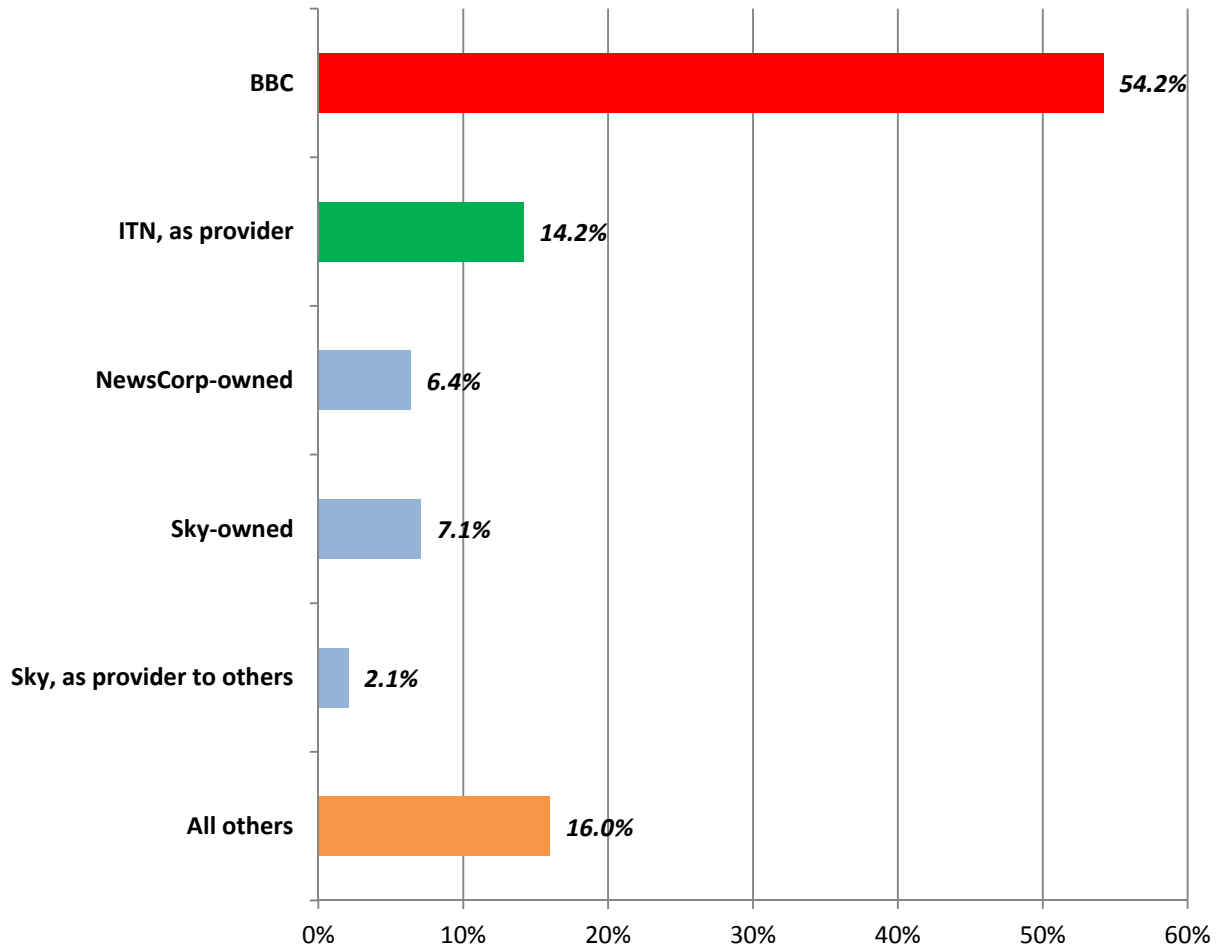
“Main source of news”, Ofcom Cross Media Audience Research (CMAR), November 2010:



SOURCE: Ofcom.

Figure 4.

“Main source of news”, by owner, Ofcom Cross Media Audience Research (CMAR), November 2010:



SOURCE: Ofcom.

Finally, in reviewing Ofcom’s report of 31 December 2010, we noted this reference (at paragraph 5.36):

Examining this analysis in more detail at the wholesale level, News Corp would be the equal second largest single main source of news with a share of 15% of respondents, marginally ahead of ITN (14%) and behind the BBC (54%).⁵

We think those words, and related references in other parts of the Ofcom report, indicate that, whatever modest changes to plurality might have resulted from the News Corp.-BSkyB transaction, the overwhelming market share of the BBC meant that any changes were most relevant to a competition for second place.

⁵ Ofcom, *Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation*, 31 December 2010, p. 60.

Suggestions for future research:

Based on the foregoing analysis, we offer the following suggestions for further research in this area:

- Ofcom should update its CMAR survey, with a larger sample (to enable possible additional cross-tabulations)
- The updated CMAR survey should continue to focus on “main source” for news
- In addition, if “regular” use questions are to be included, the definitions should be expanded to permit a more nuanced approach – for example, once a week, at least three times a week, six or more times a week, etc.
- Those more nuanced “share of references” data would allow Ofcom to construct an “arc of influence” for various platforms and specific media, which could describe more fully the way consumers use multiple media in varying combinations
- Ofcom might also consider a more nuanced approach to its dynamic analysis, in which models are developed for market shares that take into account the impacts of the continuing decline of newspaper circulation and the continuing growth of online services

III. Additional issues

A number of additional issues might usefully be discussed in this context:

1. How to treat the BBC in these analyses
2. Whether market share limits should be triggered only when acquisitions take place, or if such limits should also be applied to normal growth
3. Other issues

1. How should the BBC be treated in market share analyses?

We have seen how the Ofcom research to date has pointed to the overwhelming dominance of the BBC in the market for news in the United Kingdom. Yet some have argued that the BBC should be treated differently, because it is owned and governed in a different way than private media.

It is clear that the BBC must continue to be included in any market analyses, or those market analyses will be incomplete.

But should the BBC be subject to any resulting share limits that may flow from this exercise? That is a question beyond the scope of this note, and will have to be considered in the context of public policy at the appropriate time.

However, there is a key point that is related to that question – even if the BBC were to be excluded from any market limits, the quantum and application of those limits must take into account the presence of the BBC in the market. In other words, the market in which the private media companies operate will be a truncated market – truncated by the presence of the BBC – and that will mean that the economic realities within which they operate will also be constrained.

Thus, it would be inappropriate simply to apply conventional competition criteria to that truncated market; modifications would have to be developed that recognize the market's unique nature.

2. When should market share limits be triggered?

The Ofcom report from 2010 was part of a review process triggered by a potential acquisition, which has, historically, been the focal point for analyses of this type. However, it has also been suggested that market share limits should be set, and that remedies should be applied, if a media organization exceeds those limits through normal growth.

For example, in its report of 31 December 2010, Ofcom stated (at paragraph 1.64):

We therefore also recommend that the Government consider undertaking a wider review of the statutory framework to ensure sufficient plurality in the public interest. Specifically, we believe there may be value in providing for intervention where plurality concerns arise in the absence of any transaction involving media enterprises and which are not safeguarded by the current media ownership rules.⁶

This is a serious issue. First, it sends a signal to competitors near the limit to restrain their competitive instincts, which is surely the wrong signal to send in a competitive marketplace. Second, it raises the question of remedies.

In an acquisition scenario, regulators can reject the proposed acquisition, or they can mandate the divesting of selected assets (or other remedies) to bring the resulting entity within acceptable guidelines. But how would this be accomplished if a limit was exceeded through normal growth?

In the case of a newspaper, for example, what if the change in market share had been triggered not by a newspaper gaining circulation, but by a competitor losing circulation, thereby raising the unchanged circulation over some predetermined market share percentage? Would the newspaper with unchanged circulation be required to stop printing a number of copies, in order to bring its market share below the limit? And what about a television news service that exceeded the audience share limit – would it have to drop one newscast per week?

Those “remedies” may sound facetious, but they illustrate the difficulty of attempting to apply limits to normal growth in a competitive marketplace.

We would note that Canada's regulator, the CRTC, imposed certain market share limits on television in 2008, but the public policy specifically states:

It is important to note that the Commission will not be concerned about increases in viewing share that result from the normal competition for audiences or the introduction of new services. Concerns are only triggered

⁶ Ofcom, *Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation*, 31 December 2010, p. 15.

when a proposed acquisition may result in a person gaining a dominant position in the television sector.⁷

3. Other issues:

In the ongoing debate about media in the United Kingdom, a number of other issues have been raised, and we will briefly note two of them here.

Comparisons need to be consistent: A recent comparison was made between the revenues of the BBC and BSkyB. This is a classic mixing of “apples-and-oranges”, in which BSkyB’s revenues as a carrier and broadband provider are lumped together with its revenues as a provider of content on its own channels. If comparisons are to be made, they should be made among like services, unless, of course, one is attempting to make the argument that the total revenue is relevant to the ability to compete in a particular market segment. Of course, that would draw in the revenues of BT and Virgin (in whole or in part) in assessing where a company like BSkyB actually ranks in the marketplace.

Corporate structure and corporate culture are not always linked: As the “phone-hacking” scandal unfolded, it has also been suggested that, in addition to “influence”, the size of a media operation might be connected to “abuse”. In other words, there is a suggestion that “big” is more likely to be “bad”. On the other hand, one could also argue that unacceptable actions by some media outlets might be motivated not by their size, but by the pressures of a declining market; indeed, most of the attention has been focused on the media platform that is in decline – newspapers. We would caution against assuming some automatic link between size and behaviour, and we would also note that the alleged wrongdoings are being dealt with through existing laws and processes.

A final observation

It is clear that issues of media size and media behaviour have been driven near the top of the public policy agenda in the United Kingdom, fueled by scandal and allegations of wrongdoing. In that kind of an overheated environment, there is a temptation to create new rules so that one can pronounce the problem “solved”. But such quick fixes often lead to unintended consequences.

To the extent that statistical analyses become part of the input for major or minor revisions to the rules, then those analyses must adhere to strict standards, and must:

- Come as close as possible to measuring the actual relationships between media and consumers; and
- Take into account the rapidly changing media marketplace.

A set of rules developed mainly in response to scandal, with a focus on market shares instead of market dynamics, may actually lead away from the kind of media and regulatory environment that will be required in the future.

⁷ Canadian Radio-television and Telecommunications Commission, Broadcasting Public Notice CRTC 2008-4, “Regulatory Policy: Diversity of Voices”, 15 January 2008, at paragraph 84.

Appendix.

Detailed data for “main source of news”, Ofcom Cross Media Audience Research (CMAR),
November 2010:

	('000)	%
Weighted Base	45,075	100.00%
BBC One	15,799	35.05%
BBC Two	117	0.26%
ITV1	5,614	12.45%
Channel 4	782	1.73%
Five	243	0.54%
BBC News Channel	2,365	5.25%
Sky News Channel	2,843	6.31%
CNN	-	-
Star News	37	0.08%
Fox News	-	-
Euronews	-	-
Other channel	269	0.60%
Daily Mail	1,182	2.62%
Daily Star	120	0.27%
Daily Express	217	0.48%
The Sun	1,765	3.92%
The Mirror	475	1.05%
The Guardian	525	1.16%
The Independent	266	0.59%
The Times	520	1.15%
The Telegraph	405	0.90%
Financial Times	32	0.07%
Morning Star	-	-
Herald/Scotsman/Dly.Rec.	78	0.17%
Western Mail/Daily Post	-	-
Any reg./local newspaper	439	0.97%
Other newspaper	301	0.67%
The Observer	25	0.06%
The Sunday Telegraph	24	0.05%
The Sunday Times	107	0.24%
The Independent on Sun.	39	0.09%
Sunday Mirror	112	0.25%
News of the World	214	0.47%
The Sunday Herald	33	0.07%
Wales on Sunday	-	-
Weekly magazines	63	0.14%

	('000)	%
Weighted Base	45,075	100.0%
The Mail on Sunday	-	-
The Daily Star on Sunday	-	-
The Sunday Express	-	-
The People	-	-
Other weekend/weeklies	27	0.06%
Any BBC national radio	3,231	7.17%
Any BBC local/reg. radio	288	0.64%
Absolute Radio	86	0.19%
Classic FM	100	0.22%
talkSPORT	272	0.60%
Any other comm'l radio	506	1.12%
Other radio station	322	0.71%
BBC website	2,611	5.79%
ITV website	-	-
Channel 4 website	-	-
The Guardian website	146	0.32%
Telegraph/Sun. Tel. web.	58	0.13%
Times/Sun. Times website	39	0.09%
The Independent website	-	-
The Sun website	216	0.48%
The Daily Mail website	257	0.57%
The Star website	-	-
Daily Express website	-	-
Daily Mirror website	-	-
News of the World web.	-	-
Sky News website	363	0.81%
Financial Times website	32	0.07%
Google/Yahoo/MSN news	1,160	2.57%
Blogs	53	0.12%
Other website	295	0.65%
Total “main source” references	45,075	100.0%

NOTE: The "Weighted Base" of "45,075" refers to 45.075 million persons 16 years of age or older.

SOURCE: Ofcom.