



Response to Ofcom Invitation to Comment on Measuring Plurality Across Media

18 November 2011

1. INTRODUCTION TO NEWS CORPORATION RESPONSE

1.1 News Corporation (**News**) welcomes the opportunity to comment on Ofcom's consultation of 21 October 2011 on measuring plurality across media following the request for advice by the Secretary of State for Culture, Olympics, Media and Sport (**the Secretary of State**).

1.2 Section 3 of this response responds to the individual questions raised in Ofcom's consultation. However before dealing with the individual questions we think that it is important to take a step back and look at the issue raised by the Secretary of State in a wider context. These preliminary considerations are set out in Section 2.

1.3 In summary News' views are as follows:

(a) *Markets are working and the trend continues to be towards greater plurality rather than less plurality*

- (i) The clear trend since 2003 has been towards a greater plurality of voices available to UK audiences and a more plural consumption of news.
- (ii) In a cross-media environment, online – which is a growing medium – provides a greater range and variety of news choices and drives viewers towards a more diverse and therefore plural pattern of consumption.
- (iii) If there is a sufficient number and range of views available within each news medium (and News believes that there is) then there should be a high bar to establishing that there is not a sufficient number and range of views available on a cross-media basis.
- (iv) In short, markets are currently working to deliver plurality to UK consumers. Genuine concerns about exclusionary behaviour deriving from market power are adequately addressed by well established principles of competition law both at European and national level. The proper focus of any plurality test is the diversity of supply to consumers and not the market strategy of news providers or their revenues.
- (v) Reversing the trend of the past decade and adding to the regulatory burden carries a serious risk of deterring investment in news media in the UK and reducing innovation.

(b) *The existing regulatory regime provides adequate protection for plurality*

- (i) The current media plurality test was introduced in the Communications Act 2003 as a flexible standard of protection at a point where media markets were being liberalised in order to promote competition.
- (ii) In 2003, the protections put in place were considered by Parliament to be adequate to protect plurality and Ofcom reviewed the current provisions and recommended no change in both 2006 and 2009.
- (iii) Key aspects of the current regime have been tested by the courts and do not require changes.

(c) *Considerable care should be taken when attempting to use quantitative metrics to assess the sufficiency of plurality*

- (i) The practical experience of dealing with media plurality reviews in the current regime should not be abandoned moving forward. It is not especially helpful to reopen questions where a clear consensus has developed as to the basic scope of review – for example that media plurality should properly focus on news and current affairs rather than other types of content.
- (ii) A media plurality review properly involves consideration of the range and number of persons having control of media enterprises in the context of their ability to influence opinions taking into account both "external" and "internal" plurality and the pattern of news consumption by the relevant audience.
- (iii) News believes that a qualitative assessment of plurality, enabling regulators to take into account the relevant aspects of news provision and consumption, is preferable to any strict single test of sufficient plurality.

(d) *The role of the BBC and the availability of news on all platforms must be taken into account*

- (i) A plurality assessment must take into account all relevant circumstances. The role of the BBC should be taken fully into account alongside the role played by commercial news providers. Indeed, it would be impossible to make any realistic assessment of plurality in the UK without taking account of the BBC.
- (ii) Equally, online news provision, in all its forms, is a highly relevant factor in the overall assessment of media plurality.

2. PRELIMINARY CONSIDERATIONS

The notion of media plurality under the current regime

- 2.1 The current rules on media plurality in the Enterprise Act 2002 (as amended by the Communications Act 2003) and accompanying orders were introduced as a safeguard in the context of a move towards liberalisation of media markets. After reviewing the media ownership rules in 2003, the Government concluded that there remained a justification for certain rules but that they needed to be substantially relaxed. The view was taken that:

"Safeguards are needed against joint ownership of significant newspaper assets and mass audience universal access public service TV services;

No particular group should be disqualified from a broadcasting licence unless there is a compelling reason to expect adverse effects;

*Within individual media markets (TV, radio, newspapers), deregulation can promote healthy competition, as long as minimum guarantees of plurality remain."*¹ (paragraph 2.23)

2.2 Indeed, in its review of the media ownership rules in 2006, Ofcom recognised that even consolidation between media companies can be beneficial to the media landscape:

"It is also important to remember that consolidation can offer benefits. For example, it can produce:

- *Economies of scale and scope in news gathering and dissemination which can reduce news costs as well as improve access to international news;*
- *Access to better news management (e.g. from overseas and other media) and superior talent (e.g. journalists and presenters);*
- *Improved access to overseas capital for investing in the news function;*
- *Improved access to news gathering, editing and disseminating technology.*

*Consolidation can also enhance future investment in news gathering and programme production in general. As we explain below, this could be particularly important in the context of local commercial radio which is under increasing financial pressure as a result of competition from national BBC and commercial services and other media."*² (paragraphs 2.20 and 2.21)

2.3 The media plurality provisions of the Enterprise Act 2002 have been applied twice so far by the UK regulators – in the British Sky Broadcasting Group plc (**Sky**)/ITV case and in the News/Sky case – and, following on from the first case in particular, aspects of the statutory provisions have been tested by the courts including the Court of Appeal. The case law has clarified the meaning of "plurality" and of "media plurality". In summary:

2.4 In Sky/ITV, the Competition Commission (**CC**) said that:

*"We took the concept of plurality of persons with control of media enterprises to refer both to the range and number of persons with control of media enterprises. We concluded that a plurality of control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences. We thought it important to draw a distinction between the plurality of persons with control of media enterprises and the implications of that plurality for the range of information and views made available to audiences. We also thought that it was appropriate to distinguish between the range of information, and views that are provided across separate independent media groups (external plurality) and the range that are provided within individual media groups (internal plurality)."*³ (paragraph 30)

¹ Ofcom Review of Media Ownership Rules 2006: <http://stakeholders.ofcom.org.uk/binaries/research/media-ownership/rules.pdf>

² *Ibid.*

³ Competition Commission's Report *Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc*, sent to Secretary of State (BERR) 14 December 2007

2.5 Specifically considering the meaning of "plurality", the CC found that:

"There is no statutory definition of plurality in section 58A or elsewhere in the Act. We took the concept of plurality of persons with control of media enterprises to refer both to the range of and the number of persons with control of media enterprises." (paragraph 5.7)

2.6 This interpretation was supported by the Court of Appeal in the appeal of the Competition Appeal Tribunal's decision in the same case:

*"We agree with the Commission on this and would reject Mr Gordon's argument. The word plurality can connote more than just a number exceeding one. It may carry an implication of range and variety as well. Certainly it has that meaning in subsection (2B). We consider that it does so in subsection (2C)(a) as well."*⁴ (paragraph 90)

*"[...] it seems to us that the Commission was correct to hold that, whereas in reckoning the number of controllers of media enterprises for the purposes of section 58(2C)(a) only one controller is to be counted in respect of both or all of the relevant enterprises (here Sky and ITV), nevertheless, when it comes to assessing the plurality of the aggregate number of relevant controllers and to considering the sufficiency of that plurality, the Commission may, and should, take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another, whether it is a case of deemed control resulting from material influence under section 26 or rather one of actual common ownership or control."*⁵ (paragraph 121)

2.7 As further elaborated below, News submits therefore that it is now uncontroversial that the appropriate focus of a plurality analysis under the current legal framework involves the following:

- (a) on the supply side, consideration of all providers of news content within the relevant media environment (e.g. newspapers, television, radio or online);
- (b) on the demand side, consideration of the audience potentially impacted by any threat to plurality and, most importantly, that audience's patterns of consumption. In so far as sources of news are available to all consumers across the UK, an appropriate audience will usually be a UK-wide audience; and
- (c) a qualitative assessment of the range and variety of voices available to audiences, taking into account both "external" and "internal" plurality.

2.8 In the context of the current media plurality rules the Secretary of State must determine whether, following a merger, plurality would remain "sufficient". In considering whether the existing regulatory tools provide adequate safeguards to guarantee sufficient plurality it is important to keep in mind the overall market perspective and trends.

The market trend is towards a greater plurality of voices and more plural consumption of news

2.9 The dynamic media environment, in the UK and internationally, in particular the increasingly important role played by the internet, is leading to a much more plural media environment in which consumers can and do easily access a multitude of news sources. Consumers are also increasingly exposed to news content via social media sites such as Facebook and Twitter which also allow consumers to influence the wider news agenda. The increasing prevalence of smartphones and tablets means consumers have a myriad of options for accessing content.

⁴ Court of Appeal's judgement in *British Sky Broadcasting Group Plc v Competition Commission*, 21 January 2010 [2010] EWCA Civ 2
⁵ *Ibid.*

2.10 This dynamism has had positive effects on both the supply side and the demand side. Recent years have seen significant shifts both in the availability of multiple sources of news and current affairs content and in the tendency by consumers to multisource news. Both trends have led to an increase in the level of media plurality both within certain traditional media, over the internet and, most importantly, on a cross-media basis.

2.11 Ofcom identified the impact of new technologies in facilitating the availability of a range and variety of news sources in its first review of media ownership rules in 2006:

"Digital platforms are facilitating growth in the number of content services people can access:

- In television, a multichannel home has access to a broader range of television channels which has led to declining shares for the five main channels (BBC1, BBC2, ITV1, Channel 4 and Channel 5) in those homes. At the beginning of 2006, 354 satellite channels were accessible on Sky. Cable operators NTL and Telewest offered access to 165 and 141 channels respectively and 37 channels were available on Freeview. Moreover, broadcasters are increasingly making their programmes available live on the web and some are vodcasting (i.e. making video available for downloading to ipods and other mass storage devices) content.*
- In radio, a wide choice of services are available throughout the UK, with 422 local and national DAB services and 337 local and national analogue services broadcasting in Q1 2006. At present, a typical digital home has access to up to 60 radio services over DAB. Moreover, thousands of stations from around the world are available over the internet.*
- In addition, there is an expanding choice of new video and audio services, both from the UK and overseas, offered via broadband and 3G mobile networks." (paragraph 2.29)*

2.12 These new technologies have had an important impact on the ready availability of a wide range and variety of news content for many consumers. For example, there has been a marked increase in the range of choice of TV news channels, now accessible to the majority of households. Even excluding non-English language news channels, there is a wide choice of news provision:

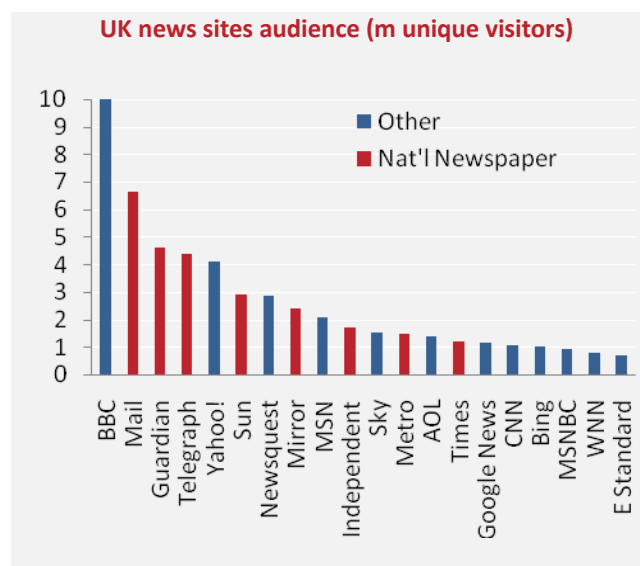


2.13 The internet has had a transformative effect and is a powerful propeller of the trend towards greater plurality. Comparing the position of internet news today with the position when the Communications Act entered into force in 2003, many more people are online, the news consumption of those online is up significantly, and online consumers are using a range of news sources dramatically greater than that used by a typical news consumer in 2003.

2.14 Consumers also access news content via an increasing diversity of platforms and devices. Social media sites such as Facebook, YouTube and Twitter are increasingly important as a source of news

and enable consumers to directly influence the news agenda. This contributes significantly to the plurality of sources available to and accessed by consumers. The parallel growth in smartphones and tablets provide consumers with an increasing choice and flexibility of how to access news content both via dedicated apps and via the internet.

- 2.15 Blogs, too, are an increasingly important, and plural, source of news. Since 2006 the number of blogs has trebled. Political bloggers and political websites have demonstrably been able to break stories that were subsequently picked up by traditional media outlets.
- 2.16 There has been an explosion in the number of online news sources accessible to most consumers. In the UK comScore tracks 675 news websites of which – as of September 2010 - more than 120 had over 100,000 UK visitors.⁶
- 2.17 The internet is a converging medium, with offline news sources also tending to be the most important online news sources. However the internet also increases plurality in news reporting by adding to conventional/offline news sources/providers.
- 2.18 Online news sites include not only traditional news organisation websites (broadcasters and newspaper publishers) but also websites of news agencies which are now able to reach consumers directly and news aggregator sites. News aggregators present a vast range of sources to their audience, including many they would otherwise likely never come across. In the year to October 2010, 1,738 different sources appeared on the Google News homepage.
- 2.19 News sites attract substantial online traffic. BBC News attracted ten million UK visitors in July of this year and the websites of national newspaper groups also generate substantial traffic. Among aggregators, each of Yahoo!, MSN, AOL, CNN and Google News now has over a million UK visitors per month according to the Press Gazette.⁷



- 2.20 The internet also enables consumers to access international news websites and sites such as the New York Times have a considerable readership.

⁶ Monthly total unduplicated unique visitors accessing news/information, comScore, as accessed on 11 November 2010.

⁷ Press Gazette, Top 40 UK news websites: BBC still leads Mail Online, 7 September 2011

- 2.21 In its consultation on media ownership rules in 2009, Ofcom recognised the important role of the internet:

"One of the significant impacts of the increase in broadband use is that consumers have a wider choice of news content providers online. Many traditional news providers from television, radio and press distribute content in this way, allowing them to provide almost instantaneous updates and offer interactive content. This content is often offered on a free to the user basis and supported by advertising.

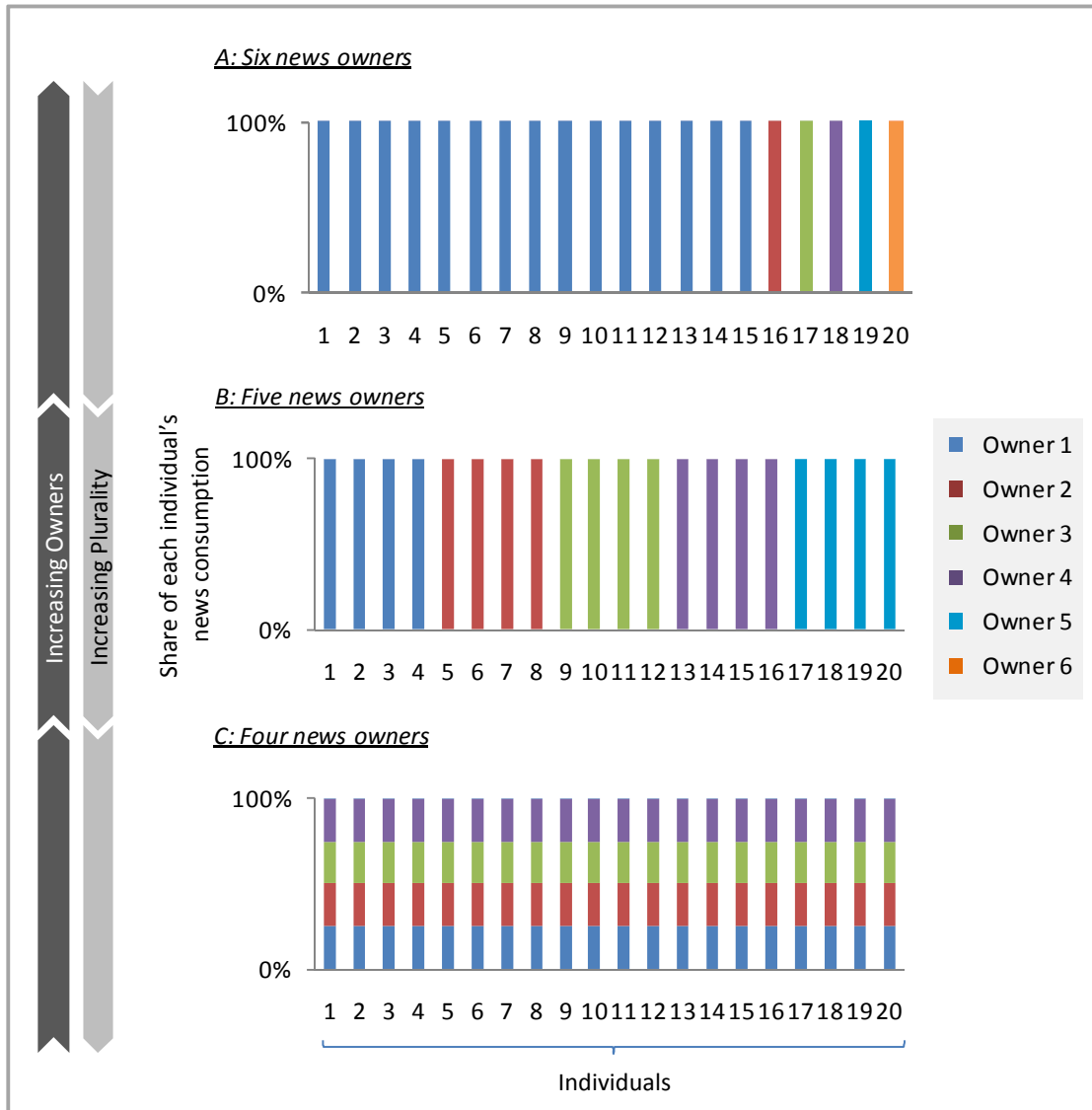
For example, all major newspapers, radio stations and television channels have online sites. In addition to building on their traditional products, these sites offer new and innovative ways of delivering content. Examples include catch-up television and radio services such as the BBC's iPlayer and ITV's itvplayer, and internet radio stations such as Sun Talk, launched by the Sun newspaper.

*Consumers can also access news content produced by non-traditional and online-only providers. This ranges from commercially-produced content to not-for-profit or amateur material. Blogs and the news distribution potential of social platforms such as Facebook and Twitter can also be important and influential sources of news."*⁸ (paragraphs 4.11 to 4.13)

- 2.22 These effects are magnified by trends in multi-sourcing. Assuming an equal number of news voices, it is indisputable that where the relevant audience engages in more multi-sourcing of news rather than less multi-sourcing of news, the environment would be more plural. This idea is illustrated in the following table (taken from Figure 1 of the Perspective Report submitted to Ofcom by News in the context of the News/Sky review).
- 2.23 Carrying out a qualitative analysis, a view might well be taken that scenario B was more plural than scenario A. However both scenarios assume that each individual consumer consumes only one source of news. News would take the view that scenario C, where each consumer consumes multiple sources of news, is a more plural news environment than A or B.

⁸ Ofcom Consultation on Media Ownership Rules 2009:
<http://stakeholders.ofcom.org.uk/binaries/consultations/morr/summary/morrcondoc.pdf>

Illustrative Scenarios Of News Consumption



- 2.24 Online news consumers have a tendency to be much more promiscuous in terms of content consumption than those who rely primarily on more traditional media. The average of distinct news sources used on the internet is about 3.5 individual sources, much higher than the variety of different sources which tend to be accessed by viewers of TV news and readers of newspapers. This is only to be expected as the internet makes it much easier to immediately access multiple views on a topic of interest, without having to wait for specific broadcast times, or purchase multiple copies of print newspapers (for example).
- 2.25 Already today most consumers use multiple sources of news on a regular basis. Ofcom's audience research in the News/Sky case – which arrived at more conservative estimates than third party sources – suggested that consumers regularly accessed, on average, 2.9 different sources of news and that these results were skewed by a large group of consumers who relied solely on the BBC for news. By contrast, FD's Media Monitor report for 2010 suggested that the average consumer used around 5 different sources of news. FD's findings in this respect had changed markedly since the

survey was launched in 2003 when more than half of the sample stated that they used two or fewer media. Mintel estimated that the average consumer accessed around 5 different sources of news.⁹

- 2.26 While TV remains the most important source of news for consumers, it is predicted that the internet will shortly overtake newspapers. According to Mintel,¹⁰ the internet is already the second most important source of news with around 46% of UK population using it regularly.
- 2.27 Therefore, as the internet becomes an increasingly important source of news, it is to be expected that an increasing proportion of the population to be regularly exposed to a wide variety of "voices".

The markets are working in delivering plurality – adding to the regulatory burden risks deterring investment and innovation

- 2.28 Plurality can be delivered through market forces and media markets are working to deliver a range and variety of news content to UK consumers. There are good reasons why cross-media issues are unlikely to arise in a plural environment
- 2.29 First, as noted above, News believes that the technological trends that are affecting the sector lead to a more plural environment not a less plural environment. Therefore these technological changes do not call for an increase in regulation.
- 2.30 Secondly, News believes that, as a matter of principle, where there is no lack of plurality within any one medium, there should indeed be a high threshold for identifying a problem cross-media. Assessing plurality involves a consideration of range of the number and range of views available. If there is a sufficient number and range of views available within each medium then there should be a high bar to establishing that there is **not** a sufficient number and range of views available on a cross-media basis. This is reinforced by the consideration that in a cross-media environment, online media – which is growing – drives viewers towards a more promiscuous and therefore plural pattern of consumption. When an assessment of cross-media plurality is carried out, the multi-sourcing of news by consumers must form a key part of the analysis, as must the provision of news content over the internet.
- 2.31 It is also clear that on a cross media basis there is a far greater range and variety of news providers than within any one individual medium who contribute to ensuring plurality. This should reduce rather than increase any residual need for regulatory oversight on a cross-media basis. Indeed the contribution of online news providers and of multiple media platforms to the overall availability of a wide range of news content in the UK is a relevant factor even when assessing the sufficiency of plurality within a particular news medium.
- 2.32 In this context, before potentially intrusive regulatory powers are extended or introduced, it is vital that a dispassionate analysis is carried out on whether such regulatory powers are truly desirable taking into account their impact on UK consumers in the longer term.
- 2.33 The Secretary of State acknowledged the fundamental conflict between a desire to tighten controls on plurality/increase the scope for regulatory intervention and the desire not to deter investment:

"we should also remember that if we put off outside investors from investing in the UK, we risk reducing and not increasing plurality."

⁹ Mintel report, Consumer Perceptions of News Media, September 2010. These sources were quoted in reports submitted to Ofcom by News in the context of the News/Sky review: FTI: *Measuring plurality in news, report prepared for News Corporation*, 23 November 2010 and Perspective: *Past and future trends in plurality and the setting of the news agenda*, 23 November 2010.

¹⁰ *Ibid.*

2.34 Ofcom made a similar observation in its Report to the Secretary of State on the proposed acquisition by News of the shares in Sky that it did not already own (**Ofcom News/Sky Report**) when it called for additional mechanisms for intervention to safeguard media plurality. Ofcom recognised that any such mechanism:

"must be transparent and proportionate, ensure freedom to innovate in response to market developments, to make risky investments and earn suitable rewards and must avoid creating negative or perverse incentives." (paragraph 1.63)

2.35 The need to strike an appropriate balance was also recognised in Ofcom's review of media ownership rules in 2006:

"The MO rules are designed to strike a balance between ensuring a degree of plurality on the one hand and providing freedom to companies to expand, innovate and invest on the other. The first is vital for democracy since plurality of ownership helps to ensure that citizens have access to a variety of sources of news, information and opinion. The second can also benefit citizens and consumers by providing a basis for delivering higher quality programmes, greater creativity and more risk-taking." (paragraph 1.2)

2.36 A liberal environment is key to ensuring that the UK remains an attractive market for inward investment from companies and individuals who are willing to invest in news provision.

2.37 In light of the above, News submits that the existing regulatory landscape is entirely adequate to ensure that plurality is protected.

Plurality is adequately protected under the current legal regime

2.38 It is important to recognise that media companies (in the same way as companies in other industries) are in any event subject to the application of ordinary competition rules and merger control rules which act to prevent them from restricting competition or exploiting market power.

2.39 Any media company in the UK which seeks to grow by acquisition must either (depending on the application of fixed revenue thresholds) seek prior clearance from the European Commission or be subject to the jurisdiction of the Office of Fair Trading. Any merger which substantially threatens competition can be blocked and/or unwound.

2.40 Similarly any company which has a position of market dominance is subject to special responsibilities and must take care as to its market conduct or risk being found in breach of UK and/or EU law. This point is explicit in Ofcom's 2006 and 2009 reports on media ownership rules. For example in paragraph 2.15 of its 2006 report, Ofcom recognises the protection afforded by competition rules:

"Even if MO rules did not exist, competition law can indirectly ensure some degree of plurality due to the need to ensure no substantial lessening of competition. For example:

- *Merger regulation prevents consolidation that would substantially lessen competition;*
- *Prohibitions on anti-competitive agreements (e.g. collusion) also prevent the coming together of actual or potential competitors that would undermine competition in a market."*

2.41 In the media sector, sector-specific obligations are layered on top of general competition law duties, some of which are aimed at limiting cross-ownership of certain media – for example the 20/20 rule

applying to Channel 3 licences and newspapers. The trend over time however has been for such ownership restrictions to be relaxed (for example Ofcom recommended the relaxation of local media cross-ownership rules to the Secretary of State in 2009 and this was put into effect by the Media Ownership (Radio and Cross Media) Order 2011 which came into effect on 15 June 2011).

- 2.42 At European level media plurality is also one of the few "legitimate interests" recognised by the European Commission to potentially justify national intervention in a merger situation where the competition issues have been dealt with by the European Commission (Article 20(4) EUMR) (along with national security and prudential rules). The corollary of this however is that a review of media plurality should not stray into the field of a competition analysis and should not go beyond what is strictly necessary to protect the relevant legitimate interest.
- 2.43 The same principle should apply in relation to purely national merger situations. Forward looking media plurality protection in the context of merger control is a special protection which is subsidiary to the protection afforded by competition law in the sense that it should only deal with issues that cannot be dealt with by general merger control or competition law in the ordinary course. Generally media plurality regulation should avoid duplicating the territory covered by a competition review based on a rigorous economic assessment. For instance the proper place for forward-looking analysis of market behaviour and of the potential for future market exclusion is as part of a rigorous competition law assessment.
- 2.44 Ofcom has reviewed cross-media ownership rules and media plurality rules twice since the coming into force of the rules contained in the Enterprise Act 2002 – in 2006 and 2009. On both occasions, Ofcom came to the same conclusion, recommending **no change** to national newspaper cross-media ownership rules and **no change** to the public interest intervention test. Indeed, it is notable that on neither occasion did Ofcom give consideration to an extension of the media plurality test. Evolution of media markets in the last several years can only bolster Ofcom's conclusions. Therefore, the merger intervention powers introduced by the Communications Act 2003 are more than adequate to safeguard plurality.
- 2.45 In relation to TV there is also an additional layer of sector specific regulation applying to broadcasters in the UK which impacts on the level of plurality within TV news (and by implication cross-media) by reducing the ability of a media organisation to influence editorial content in circumstances where television news broadcasts are required to be impartial. This is likely to increase plurality within a single media group which includes a broadcast news operation. This was acknowledged by the CC in its review of Sky/ITV:

*"In television news, existing regulatory mechanisms—including quality controls (eg in the Broadcasting Code), requirements for impartiality and quotas for television news and current affairs programming — reduce the scope for influence over editorial decisions by owners of television channels which broadcast news."*¹¹

3. RESPONSE TO OFCOM'S SPECIFIC QUESTIONS

QUESTION 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?

- 3.1 News does not believe that it is practical or desirable to set absolute limits on news market share.

¹¹ Paragraph 5.54 of the report referred to at footnote 3 above. That this is the case was at least partly acknowledged by Ofcom in its review of News/Sky: "We recognise that the impartiality rules may contribute as a safeguard against potential influence on the news agenda by media owners". (paragraph 1.41)

- 3.2 In practical terms, while the superficial attraction of a market-share test is the expectation that it might provide a "bright line" for intervention, the considerable difficulties involved in defining appropriate markets and in measuring market shares – particularly in a cross-media environment – make the application of such a test in any real-life scenario challenging. Indeed, the appropriate way to measure market share is likely to be almost as controversial as a qualitative assessment of plurality in terms of the range and variety of views available to consumers.
- 3.3 Furthermore, in the UK, the BBC is the largest provider, by any measure, of news on TV, over the radio and over the internet. It is therefore difficult to imagine that any cross-media market share test that would be adopted would not already be triggered by the BBC's news provision. It is equally difficult to conceive of any sensible regulatory regime which would ignore the role and position of the BBC. As News indicates, in paragraph 3.29 below, it is vital that the BBC is taken fully into account in any review of media plurality in the UK.
- 3.4 Should it prove possible to design a test in practice, it is in any event self-evident that a market share limit would be highly likely to deter investment and innovation by any company at risk of exceeding any set "threshold" of share of news. That cannot be a good result for UK consumers.
- 3.5 As described in paragraph 2.7 above, previous attempts to consider the best approach to measuring media plurality have arrived at a "qualitative" description of what a consideration of the sufficiency of plurality should entail - a consideration of the range and number of persons having control of media enterprises in the context of their ability to influence opinions and control the news agenda. News believes that such a qualitative analysis, enabling regulators to take into account various aspects of news provision, is preferable to a strict "market share" test.

- (i) **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).**

Presumption that no problem on a cross-media basis

- 3.6 By definition a cross-media audience potentially has access to a wide variety of sources of news within each medium: TV, newspapers, radio and the internet. For that reason, in circumstances where there is acknowledged to be sufficient plurality within each medium (which News believes is clearly the case in the UK today) a high bar should be set for any demonstration that there is, regardless, a lack of media plurality when considered cross-media. If there is a sufficient range and variety of views expressed in UK newspapers, in UK radio news, and in UK TV news, not to mention the internet which is the most plural of all of the sources, then by definition there should be a sufficient range and variety of voices taking a cross-media approach.

Considerable care should be taken when attempting to use quantitative metrics to assess the sufficiency of plurality

- 3.7 News is not aware of any reliable and robust metric for measuring plurality on which consensus has been reached either in the UK or elsewhere. A quantitative measurement carries the risk of missing the complexities of the media landscape through a mechanistic application of arbitrary devices. Measuring plurality is even more challenging on a cross-media basis taking into account divergent sources of news content. For example when the Federal Communications Commission attempted to base its cross media ownership rules on a quantitative assessment by way of a "diversity index", its approach was subject to extensive and detailed criticism on appeal and the attempt was ultimately abandoned.¹²

¹² See FCC Further Notice of Proposed Rulemaking, July 24, 2006.

- 3.8 In particular, the measures mentioned by Ofcom each have limitations and flaws. The considerable flaws in data available for carrying out any analysis should be taken fully into account when attempting to draw conclusions about the sufficiency of plurality.
- 3.9 As an example, News made several criticisms – which it believes to be valid – of the "share of minutes" calculations in Ofcom's Report to the Secretary of State in News/Sky. As well as attributing all of Sky's wholesale provision of news to commercial radio and to Channel Five to a merged entity, the approach taken significantly over-estimated the minutes of news sourced from Sky actually broadcast by commercial radio stations. There are also more fundamental concerns about measuring minutes of consumption. For example a reader who spends 20 minutes completing the Times cross-word is not during that time consuming news.
- 3.10 Further, any measure of reach of specific offerings/titles/media groups without also considering the multiplicity of news provision and consumption carries the risk of being misleading. The BBC has an extremely wide reach within the UK, reaching 81 per cent of UK adults on Ofcom's own analysis (see paragraph 1.30 of News/Sky). However, this is not generally cited to signal a lack of plurality precisely because it is acknowledged that there are many other sources of news available and that many individuals will consumer multiple sources of news. Similarly, if a second media organisation was to achieve a significant reach among UK consumers, there is no reason to believe that that would reduce plurality either in the provision or consumption of news.
- 3.11 As explained above, News believes that the multi-sourcing of news content by consumers should form an important part of any assessment of plurality and it should be recognised that more multi-sourcing leads to a more plural environment in that a greater number of consumers are, individually, exposed to a greater range and variety of views.
- 3.12 In previous cases where media plurality has been considered – for example Sky/ITV – the number of consumers who would potentially have suffered a reduction in the number of independent news sources they actually accessed was very small. According to TGI data only 4% of the UK population watched both ITV news and Sky news and only one per cent of this group did not actively use other sources of news.¹³
- (ii) Is there a way to assess the relative importance of different media in shaping public opinion?**
- 3.13 Any attempt to measure the relative importance of different media in shaping public opinion should form part of a qualitative and flexible test able to adapt to the changing role played by various media over time.
- (iii) 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?**
- 3.14 Media plurality rules are an exceptional additional layer of regulation justified by the public interest in assuring that consumers have access to a sufficient range and variety of views on important matters.
- 3.15 It is unclear why other types of media content should be subject to a similar exceptional jurisdiction.
- 3.16 The same conclusion has been reached in previous media plurality reviews in the UK. The CC decided in Sky/ ITV as follows:

¹³ Competition Commission report to the Secretary of State in Sky/ITV, Appendix 1.

"We concluded that a plurality of control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences." (paragraph 5.10)

"The parties overlap in a broad range of content, but news and current affairs are the genres most closely connected with the formation of public opinion about issues of national significance through the communication of a range of information and views. National news is an important genre of programming for both ITV and BSkyB. Considering all content genres, including current affairs, documentaries and satire, viewers rank news first in terms of 'societal importance', with a majority of the public saying that news helps them feel part of the democratic process. We also believe that news provision is a reasonable indicator of, and better defined than, a wider range of other content relevant to the formation of public opinion about issues of national significance. We therefore focused on national news and refer to the range of information and views communicated to audiences through the news as the 'plurality of news'." (paragraph 5.32)

(iv) How might the market evolve in future and how might this affect options for measuring media plurality across platforms?

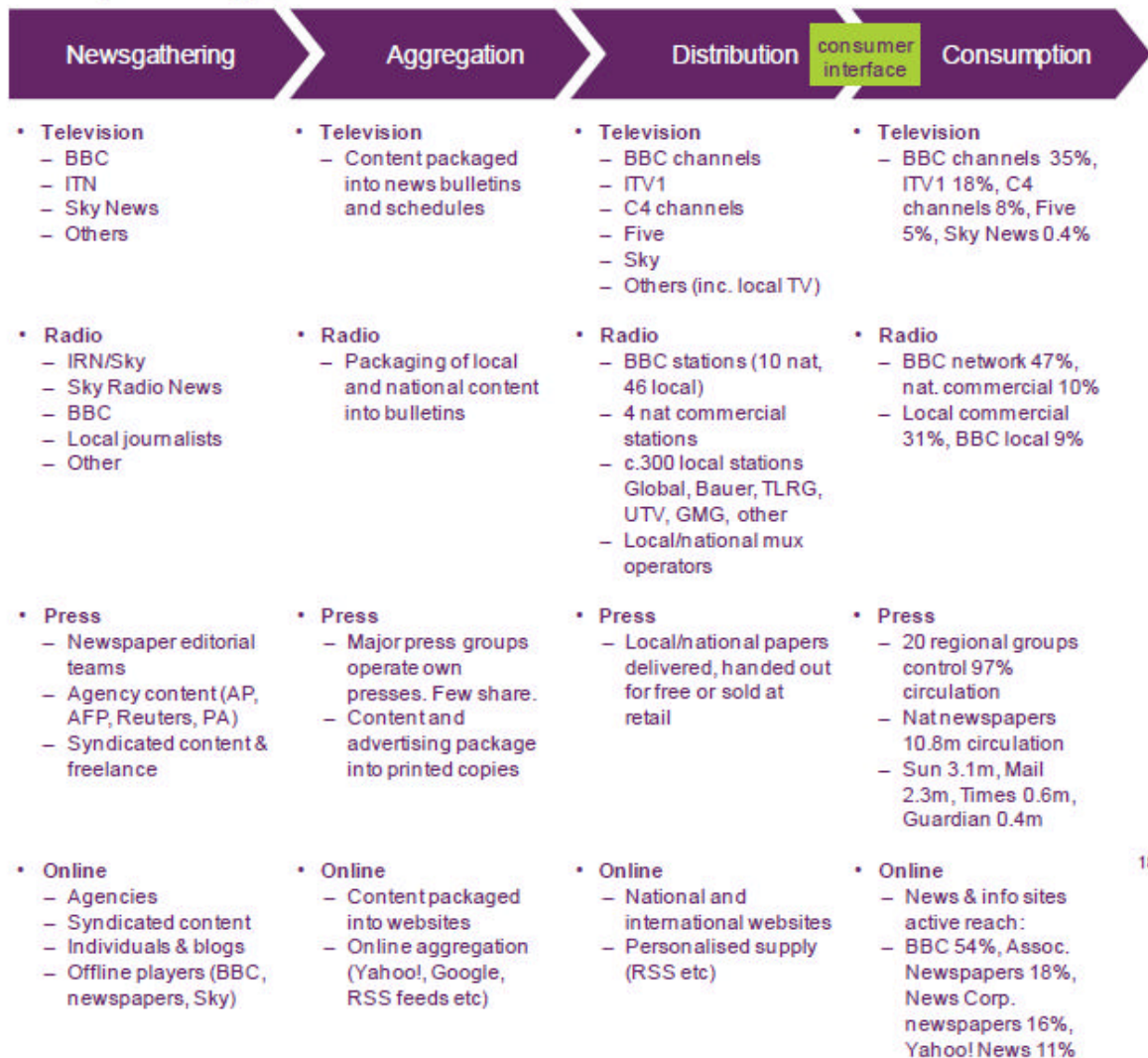
- 3.17 Media companies globally are facing increasing challenges in monetising their content in an environment where consumers are increasingly becoming accustomed to accessing content for free (via the internet) and where traditional media is facing increasing competition for advertising income. Traditional news providers face particular challenges in generating sufficient income/avoiding making substantial losses such that they can remain viable absent subsidy from the public purse. This makes it particularly difficult and, indeed, dangerous, at this point in time to come up with a specific rigid framework for measuring media plurality.
- 3.18 While there are a variety of possible scenarios for the development of the UK media market in the future, there is consensus amongst commentators on a number of points:
- (a) Convergence will continue, with what were once entirely distinct media sectors (TV, radio, newspapers and so on) increasingly being consumed via a single platform, the internet. As high speed broadband rolls out, the migration of TV online will accelerate. This will bring increased competitive intensity and plurality.
 - (b) Consumers will be ever more active both in customising their own personal agenda (via news search, alerts and so on) and in influencing the wider news agenda (via Twitter, YouTube, blogs and so on). This marks a shift from less plural media to more plural media (since most consumers only take one newspaper, if any), and a shift away from areas where News Corp and Sky are stronger to areas where they are relatively weak.
 - (c) We are at the beginning of a surge of consumption via mobile devices, which will bring the dynamics of plural, on-line consumption to areas (particularly out-of-home) that were previously the domain of paper based formats.

(v) At what point in the news value chain is there potential for the greatest level of editorial influence over content?

- 3.19 Previously, Ofcom has identified a value chain for news content moving from news gathering, to aggregation, to distribution, to consumption (see for example Ofcom's 2009 consultation on media ownership) and it has used the following diagram to illustrate the position.¹⁴

¹⁴ Ofcom's 2009 consultation (referred to at footnote 8 above), p. 35

Figure 14: Simplified supply chain for the delivery of news content



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3.20 It is clear that under the existing statutory regime it is the supply of news content to audiences – i.e. the consumer interface – which is the relevant aspect of the "news value chain" to assess sufficiency of plurality.

3.21 News considers that this is the appropriate focus for assessment.

(vi) Is it possible to define a set of characteristics of a market that could raise concerns about levels of plurality?

3.22 News does not consider that it is meaningful to define specific characteristics of a market which would raise concern. The essential question should be whether consumers have access to a sufficient range and variety of views.

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

3.23 See above at paragraphs 2.38 to 2.45.

3.24 In addition, the regulatory landscape makes a significant contribution to safeguarding a plural media environment. In relation to TV broadcasting, the Broadcasting Code requires that television news is presented impartially. This was recognised as an important factor by the CC:

"In television news, existing regulatory mechanisms—including quality controls (eg in the Broadcasting Code), requirements for impartiality and quotas for television news and current affairs programming — reduce the scope for influence over editorial decisions by owners of television channels which broadcast news." (paragraph 5.54)

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

3.25 All national media – television, newspaper, radio, the internet – can potentially be accessed by all (or at least the large majority of) consumers in the UK. A UK wide media audience should therefore be the starting point for consideration of media plurality.

3.26 Socio-economic groupings or regions or "nations" of the UK are not an "audience" in themselves, they are categorisations which may apply to some members of an audience (or members of a readership). There is therefore no reason why these categorisations should be given special consideration.

3.27 In any event, in both of the previous reviews of media plurality which have been carried out, it has been found that there were no fundamental differences in the potential impact of the merger on narrower groupings:

- Sky/ITV: *"Our view is that, whilst viewing shares and readership vary somewhat by socio-economic group, there are no fundamental differences in the significance of ITV, BSkyB and News International to particular sections of the UK population. Nor did we find any fundamental differences in the significance of ITV, BSkyB and News International between nations within the UK." (paragraph 5.50)*
- News/Sky: *"No sub-group audiences - there are some variations in news consumption among age and socio-economic groups, but we have no substantive evidence suggesting there are specific concerns for sub-group audiences. We do not believe that any particular sub-groups would be more significantly affected than the population as a whole as a result of this proposed acquisition." (paragraph 1.15)*

QUESTION 2: What could trigger a review of plurality in the absence of a merger, how might this be monitored and by whom? The Secretary of State identified concentration arising from organic growth and market exit in his recent speech. What other potential triggers might there be?

3.28 News does not believe that it is possible to design a system for reviewing media plurality in the absence of a merger which would not significantly increase regulatory uncertainty, deter investment into the media sector in the UK and, consequently, reduce innovation.

QUESTION 3: 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? How does the process of news gathering differ between: 1. organisations (e.g. between the BBC, compared to commercial organisations); 2. platforms (i.e. online, press ,TV or radio)? Do any of these differences warrant differential treatment by platforms or media organisation?

3.29 The BBC is by far the most important source of news content in the UK. To treat UK media markets as if the BBC did not exist would be to fundamentally underestimate the level of plurality which in

fact exists. It is therefore impossible to imagine a meaningful review of media plurality in the UK which did not include the BBC. Indeed, Ofcom itself recognises the role played by the BBC:

*"The BBC provides a further safeguard for plurality by acting as a source of news across all media except newspapers, alongside commercial news sources."*¹⁵ (paragraph 2.18)

- 3.30 In addition, as explained above, the internet has had a transformative effect on news provision and consumption and has contributed to an increasingly plural environment. It is not conceivable to have a review of media plurality that does not take into account news provided on the internet as well as patterns of consumption on the internet. The internet, after TV, is the medium which is increasingly likely to be a consumer's main source of UK news.
- 3.31 Finally, the process of news gathering is likely to differ in certain respects between media in general, and indeed, between media organisations. The analysis of any differences in the process of news gathering should be part of a qualitative review of the sufficiency of plurality to the extent relevant.

¹⁵ Ofcom Review of Media Ownership Rules 2006, referred to at footnote 1 above.