media *policy brief 7*

Regulating Media Plurality and Media Power in the 21st Century

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Key Messages

- The Leveson Inquiry should recommend use of a broad range of policy instruments to regulate media power and pluralism: not just press self-regulation but also those that deal with the root cause of media capture of politicians: media ownership and concentration

- There is no infallible policy prescription but the approach should be holistic; looking at both internal and external plurality of the media, and ensuring maximum transparency of ownership for citizens and consumers.

- To protect citizens and enhance certainty for industry, fixed ownership limits should be (re)-established for media mergers and a regular review of the market carried out by an independent media regulator to assess media plurality and concentration of media power and influence.

- Politicians should play no role in deciding individual cases involving media competition or plurality issues.

"I am concerned about the extent to which it is appropriate for me to start to opine about percentage market shares, because that involves all sorts of competition issues which would require themselves quite detailed analysis."

Lord Justice Leveson, June 13 2012

Introduction

In the UK, the framework for measuring 'media plurality' came under increasing scrutiny in 2011 and 2012. The weakness of the current regulatory framework was highlighted when Business Secretary Vince Cable had to resign from administering a media plurality test on the proposed News Corporation/BSKYB merger in December 2010 and, again, as his replacement, Culture Secretary Jeremy Hunt faced calls for his resignation over the same merger. In a recent report,[1] media regulator Ofcom has highlighted the inadequacy of the current legislative framework and suggested that new rules should deal with threats to media pluralism arising not only from proposed mergers but also from the 'organic' growth of specific media companies. Awareness of the difficulty of implementing a framework for media mergers has been heightened by the gradual realisation that regulators and politicians failed to deal with phone hacking and other illegal activities by journalists, because they felt unable or unwilling to challenge certain parts of the media.

> *"Because party leaders were so keen to win the support of newspapers, we turned a blind eye to the need to sort this issue, get on top of the bad practices, to change the way our newspapers are regulated".*
>
> *David Cameron, July 2011.*

In framing any new regime we thus need to address some fundamental questions. Who should decide when a merger between two media companies operates against the public interest, or when one has grown too big? How can decisions of this kind be made whilst avoiding the risk that politicians use merger review as a lever to curry favour with the very media owners they are supposed to constrain, or that the framework itself chills free speech? Such problems are exacerbated by the difficulty of defining 'media pluralism'. Numerous experts[2] have now commented on the complexities of reaching a judgement on what constitutes a 'sufficient plurality' of owners with control of media companies.

An analysis of the post-war media pluralism framework in the UK since the 1947 Royal Commission on the Press has identified four distinct objectives for media plurality regulation:[3]

- maintaining the integrity of the democratic process;
- preventing media misrepresentation and suppression of information;
- enhancing citizen's access to diverse information and opinions; and
- protecting freedom of expression.

But media pluralism is now not only a domestic imperative, recognised in the general duties of Ofcom (Communications Act 2003, section 3) and of the BBC (BBC Licence Agreement 2006, clauses 9 and 10); it is also considered an essential component of media systems in democratic societies by both the Council of Europe and European Union, notably in article 11 of the Charter of Fundamental Rights of the European Union.

During 2012 the Leveson Inquiry will make recommendations to Government on media pluralism. Ofcom, which has previously suggested[4] reforms are necessary, has just reported on the matter, and so will a select committee Inquiry. This brief outlines key elements of the current regulatory structure and sets out criteria for evaluating existing policies. It then reviews possible regulatory techniques and makes proposals for a revised framework for protecting media plurality. It argues that we need to establish clear limits on media ownership in order to protect the interests of citizens and create certainty for industry but that this can only be one part of a much broader 'holistic' approach – one that recognises the interconnectedness of media ownership controls with questions relating to competition in media markets, media transparency and accountability, press self-regulation, broadcasting impartiality, freedom and protection for journalists, and state support for public service media and investigative journalism.

1. Why Intervene to Protect Media Pluralism?

Witnessing the role of the mass media in both supporting and undermining democracy during the Second World War, European institutions, notably the Council of Europe, and European states have sought to put in place constitutional and legal frameworks that both protect the media from government manipulation and prevent an excessive concentration of media power in private hands. These frameworks characteristically include **content requirements**, for example, to cover a range of views and opinions or to act impartially; **disclosure and accountability requirements;** and **structural controls**.

This policy brief focuses on structural controls but recognises the importance of placing these controls within the broader framework of other relevant regulatory initiatives and standards. In the UK, ownership controls have been introduced primarily in order to:

- Enhance content diversity. In certain markets, enhanced competition encourages companies to diversify their product from that of their rivals.

- Prevent any one individual or company having excessive media power and influence. With more competitors there is less scope for a company to suppress information and dictate the news agenda. This also reduces the scope for the media to exercise an undue influence on government policy.

Structural controls can take a variety of forms. Most countries have introduced sector specific limits, which restrict the number of broadcast or press interests a given individual or company can accumulate at regional or national levels. An alternative approach is to rely simply on the operation of general competition rules, an approach often employed in relation to the printed press where there is no technical basis for licensing. The UK has increasingly employed a third, ‘hybrid’, form of intervention, which allows sectoral plurality considerations to be taken into account alongside general competition concerns when reviewing certain media mergers.

In addition, the UK prevents certain individuals or entities, notably advertising agencies, politicians, political bodies and religious institutions, from owning certain broadcasting licences because of the potential for conflicts of interest. In addition, under section 3(3) of the 1990 and 1996 Broadcasting Acts, Ofcom is required to ensure holders of broadcasting licences to be 'fit and proper' persons.

Within Europe it is widely recognised that the media not only need protection from government control and influence but that citizens and the government may need protection from powerful private media companies. General competition law, which does not directly address questions of media plurality, is unlikely on its own to be sufficient.

2. Are Controls Still Needed Given the Rise of New Media?

It has frequently been argued that technological changes – such as the decline of print, the lowering of barriers to entry in news provision, and the rise of an apparently infinite number of news and information websites on the internet – render twentieth century media pluralism controls redundant[5]. In the past decade, the UK, the US and other, governments have relaxed some of the controls on media ownership, in part on this basis. These moves appear premature since media power has proven more resilient than expected. Rather than simply come to an end, it has changed form:

- Internet delivery of news may have modified, but does not appear to have undermined, the influence that mainstream media have over opinion formation, rather mainstream media have actively and successfully colonised this new arena.[6]

- Interactive, social media generate new forms of power based on closer relationships between prosumers[7] and news providers, and a more tailored news experience. The ability to control and influence public opinion involves knowledge about what consumers expect, use, and demand. Companies such as Google, Facebook, and Twitter have an unprecedented ability to understand the diffusion of facts and opinions, and even link this information to individual subscribers.[8].

- The representation and formation of public opinion is no longer a simple process of production and dissemination of guiding texts, but a more complex interactive process. The representation of what is public opinion is itself a strong influence on what is public opinion. Development of semantic polling and other tools of monitoring public opinion are already deployed by media firms,[9] many of whom have privileged access to the data required to monitor traffic and flow of opinion.

New media technologies mean there are new dimensions of 'communication power' not captured by the traditional regulatory frameworks for media pluralism. Increasing reliance is placed on general competition law, which allows some scope to consider consumer but not citizens' interests.

2. Setting the Parameters: The Measurement of Media Plurality.

Unfortunately there are no simple policy prescriptions for enhancing media plurality and, in shrinking markets, policy options may be limited. In framing any future regulatory regime the following considerations do, however, need to be taken into account:

Ends and Means

In certain contexts policy trade-offs are required. In particular, our twin goals of content diversity and controlling media power may call for incompatible courses of action. Although a greater number of operators can enhance content diversity, there are situations, particularly where the market is limited, when a reduction in the number of operators is likely to result in more diverse, higher quality, content.[10] But concentration enhances media power and makes it easier for a media company to avoid or misrepresent certain issues for commercial or ideological reasons. A policy decision then needs to be taken as to whether to tailor structural rules to promote diversity or control media power. Depending on the choice taken, **alternative mechanisms, such as content controls or subsidies, may be needed to address the other concern.**

Relevant Content

A key decision has to be made whether to consider only *news and current affairs content* or *all media content* and, if news, whether only *national or* also *foreign* news services. Because of its democratic importance, Ofcom decided in the NewsCorp/BSkyB proposed merger to narrow its focus to news only, with specific reference to providers of domestic news. It has maintained this approach in its recent report to the Secretary of State on 'Measuring media plurality'[11] Regulation in other European countries has tended to focus on media content as a "whole".[12] In Germany, for example, the focus is on general audience share of television channels.

The counter argument is that other forms of content, entertainment, religious or cultural programmes, for example, can be equally important in conveying political and social information and that we require access to diversity across all programme genres. It has been suggested that consideration should thus be given to the impact of a transaction on 'cultural provision serving any group of users or viewers that might be significantly affected by it'.[13] There is also a practical problem in focusing solely on news and current affairs content in that this creates a disincentive for companies to offer news and companies wishing to expand may strategically spin-off their news services to avoid control, as was proposed by News Corporation in relation to SkyNews. To address these concerns, **as a minimum, separate consideration should be given to a firm's position in the market for news and current affairs as well as across all genres.**

Relevant firms

Given media convergence it no longer makes sense to focus solely on broadcast radio and television services and the printed press. Online providers of media content need to be included in any future regulatory scheme. Aggregators, search engines and other intermediaries that do not create specific content services of their own should not at present be covered by ownership restrictions but the position should be monitored to see whether they start to play a more central role in editorial decisions and opinion formation. Competition law does, however, need to be rigorously applied in this field and consideration should be given to whether there should be further scope to take media plurality concerns into account in this context. A high level of transparency for consumers and other communications operators as to the basis on which information is relayed should be guaranteed, and adequate returns ensured for the use of third party content. Some European countries, such as France and Spain, have imposed a tax on intermediaries and reinvested the funds in original content.

Wholesale or retail provision?

The decision regarding what level of a company should be considered is also relevant in relation to media markets. Ofcom has illustrated the importance of focusing on news providers at the "wholesale" level, meaning that the focus is not on the single "brand" accessed by the consumer (for example Sky News or Channel 5), but on the underlying news provider (Sky in both cases). This is because it would be misleading to conclude that there is a plural media market where multiple services all provide information obtained from a single source.

Considering the wholesale level provides a more comprehensive picture of a news provider's influence. In addition, this approach is more appropriate in a converged media market, where distinctions between single platforms become blurred.

Relevant indicators[14]

In evaluating the market for media diversity purposes, the relevant consideration, in structural terms, is the number of available outlets in a particular market. The position is, however, more complicated in relation to media influence because of the difficulty of establishing robust measures of influence. Subjective assessments are prone to error; behaviour modification difficult to evaluate because of causal complexity; while proxy measures, such as overall reach and the frequency and duration of exposure (taking into account reliance on alternative sources) raise specific questions regarding the comparability of data across media sectors and platforms.

The Ofcom report on the Public Interest Test[15] in the case of the 2010 NewsCorp/BSkyB merger is a case in point: Ofcom research combined more than a dozen separate dimensions of media plurality and a very wide range of separate empirical indicators, looking at news flow across platforms, relative influence of different platforms, in addition to a bespoke survey looking at 'share of references' (i.e. subjective reports of news sourcing). Despite the rigour of the research, it was criticised from numerous directions and had the merger proposal not been withdrawn, it is likely that any decision based on the research would have been subject to lengthy challenges and appeals.

Table 1 below illustrates the respective advantages and disadvantages of some of the various metrics of measurement that have been used, or proposed, in various European countries.

Table 1: Common Indicators for Media Plurality

Indicator/ adopted by	Pros	Cons
1. Revenue shares: indicates what proportion of revenues a media company holds within a specific media market Italy, Law n.122, 3 May 2004 (Legge Gasparri)	Revenue data easy to gather and compare Focuses on owners at the 'wholesale level'	Poor indicator of influence: media companies can have high revenues due to particular income sources (such as subscriptions) but reach only a small percentage of the audience
2. Standard industry indicators for "audience" shares in each media sector (i.e. shares of tv viewers/newspapers readers/radio listeners/internet users): indicate what proportion of the total of the users select a particular media item Germany, §26 of the German Broadcasting Treaty France, Law 86-1067 (Loi Léotard) revised on 10 July 2004 Belgium, Art. 7 Broadcasting Act French Community	Long-standing and increasingly reliable metrics for television, radio and newspapers Can be easily used for particular media content (e.g. for television news programmes only) Focuses on the consumer side	Poor indicators of influence: do not take into account the time spent accessing a particular media item, thus providing eventually misleading results Difficult to combine different indicators developed for each media sector in one cross-media indicator No standard industry measures for shares of internet users
3. Audience reach: indicates how wide-spread exposure to a particular source is across all users France, Law 86-1067 (Loi Léotard) revised on 10 July 2004	Shows how many consumers a media outlet is able to reach, thus providing the "penetration rate" of a media outlet within the entire audience Focuses on the consumers' side	Reaching many people means having potential influence, but not necessarily real influence (e.g. a tv programme can be watched by many people, but only for a short time) Must be combined with multi-sourcing: the more sources are used by a consumer, the less is the influence of a single source
4. Share of references: indicates how many times a news provider is cited by consumers as a regular source of news or current affairs. The share is obtained by calculating the proportion of references a news provider receives within the total number of references provided by consumers UK, Ofcom	Considers the loyalty factor, focussing on the regularity of exposure Overcomes all the methodological problems related to the different nature of each media platform Focuses on the consumers' side	No simple correlation between regular access and influence: a source accessed infrequently but for extended periods could be more influential than sources accessed regularly but for short durations Does not sufficiently take into account the relative importance attached to different media outlets Suitable for news content, but more difficult to apply to media content in general
5. Share of time exposure: indicates the proportion of time spent by consumers on each media content provider UK, Ofcom Netherlands, proposed and trialled by the Dutch Media Authority (Commissariaat voor de Media, see Mediamonitor 2010)	Best proxy for media influence, assuming that time spent on a media outlet correlates with influence New tech may offer more detailed time-based metrics Focuses on the consumer side	Relies on an equal impact assumption, implying that one-minute of news consumption has the same impact across all media Not easy to calculate the time spent reading newspapers or listening to radio

These indicators prove particularly useful in the case of cross-media mergers, thus potentially becoming even more relevant in a future, increasingly converged, media market. Apart from the share of revenues measure, they all focus on the **consumer side**, which represents the most effective policy approach to assess media influence over public opinion.[16] Although revenue proves useful to show the weight of a company in a given market, it provides poor evidence of a media outlet's real capacity to reach (thus influence) citizens.[17]

Share of time exposure is likely to be the best *single* measurement of potential influence, but these findings will be strengthened when other forms of assessment such as share of reference and audience reach are also taken into account.

None of the indicators listed above is able to directly assess the level of **multi-sourcing**, meaning the average number of sources used by an individual on a regular basis. This is data, which should also be taken into account, under the assumption that the influence of a single media outlet decreases when an individual accesses an increasing number of sources.

In addition to the indicators listed above, **concentration indices –** such as the *Herfindahl-Hirschman Index (*HHI) - have also been developed primarily in the United States, in order to allow competition authorities to assess the degree of concentration in specific markets. Normally, these markets are calculated in terms of share of revenues, but in the case of media companies, markets should be assessed in different terms, such as considering share of time exposure.

Applying concentration indices to a media market assessed in this way could provide a transparent mechanism to understand the degree of media power.[18]

These indices prove particularly useful in the case of mergers - because they allow one to easily evaluate whether a merger would breach a pre-defined concentration limit – and can be applied as part of a continuous review of the media market.[19] Still, concentration indices do not exempt policymakers from fixing specified limits, otherwise the values obtained by applying these indices are simply meaningless.

3. Regulatory Strategies in the UK and Abroad

Media ownership rules thus employ various systems of measurement. In particular, intervention can be more or less sophisticated and can afford more or less discretion to the designated decision maker. The greater the degree of sophistication and discretion involved, the greater the likelihood of uncertainty for industry and 'agency capture'. Some countries have sought to avoid these risks by establishing fixed ownership limits. Alternatively, thresholds or triggers can be specified that then lead to a more extensive examination of the impact of the proposed or actual concentration on specified plurality interests.[20] The UK currently incorporates elements of both these approaches, considered in turn below, but has shifted over time to rely much more heavily on a 'holistic' form of plurality review.

Fixed Limits

Fixed limits establish clear prohibitions on specific concentrations of ownership and may be calibrated by reference to the various measures discussed above, such as share of audience or revenue, number of operating licences etc. These rules are quite common in Europe. In Germany, the concept of Media Pluralism is not mentioned in the regulations that apply to the media. Instead, control over opinion-forming power is the crucial consideration to be taken into account ('*meinungsmacht')*. Companies that attract more than 30 per cent of the television audience are presumed to exert too great an influence on public opinion.[21] In Italy, owners are prohibited from obtaining more than 20 per cent of revenues derived from a broadly defined media sector, including audiovisual distribution services, book publishing and advertising agencies. Fixed limits have, until recently, been the preferred means of control also in the US, which has tended to favour 'bright line regulation' to limit agency capture.

In the UK most fixed limits have now been abolished. The sole remaining limit prohibits any combination between a company with significant interests in national newspapers and the holder of a Channel 3 television broadcasting licence. According to Schedule 14 of the 2003 Communications Act[22]:

"A person is not to hold a licence to provide a Channel 3 service if—(a) he runs a national newspaper which for the time being has a national market share of 20 per cent. or more; or (b) he runs national newspapers which for the time being together have a national market share of 20 per cent or more."

Thresholds and Undertakings

The alternative approach is to establish various thresholds or triggers that lead to a more in-depth analysis of the impact of a given concentration. The UK adopts a trigger, in the form of a proposed merger meeting certain threshold conditions, which can then lead to examination of specified media public interests. These media public interest (MPI) considerations are set out in section 58 of the Enterprise Act 2002[23]. The decision to review a relevant merger on the basis of these tests rests with the Secretary of State. The MPI considerations differ depending on the medium involved but broadly reflect the concerns to promote diversity and prevent undue media power identified above. For newspaper mergers the MPI's are:

> *58(2A) The need for:*
>
> *(a) accurate presentation of news; and*
>
> *(b) free expression of opinion;*

and

> *58(2B) The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom...*

For broadcasting and newspaper/broadcast mergers the considerations are:

> *58(2C)…*
>
> *(a) the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;*
>
> *(b) the need for the availability throughout the United Kingdom of a wide range of broadcasting which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and*
>
> *(c) the need for persons carrying on media enterprises, and for those with control of such enterprises, to have a genuine commitment to the attainment in relation to broadcasting of the standards objectives set out in section 319 of the Communications Act 2003.*

The UK statutory provisions do not themselves indicate how the MPI considerations should be assessed in practice and leave wide discretion to elected politicians in the final decision. Recent experience of applying this test in the media sector has led to intense debate (and costly market uncertainty) about what constitutes a 'sufficient plurality of persons' with control over media enterprises.[24] Where newspapers enjoy political influence this creates an endemic conflict of interest that undermines the legitimacy of the process.

The use of thresholds and undertakings affords media companies the possibility of convincing regulators that, whilst a change in media ownership appears *prima facie* a threat to media pluralism, it will not in fact operate against the public interest or that any negative consequences will be counterbalanced by other advantages. It may, for example, be possible to show that a company, if not taken over, will fail so that allowing a merger should at least maintain, rather than reduce, plurality. This was a consideration when News Corporation was given permission to buy the Sunday Times and Times.[25] Alternatively, media companies may be allowed to convince the relevant regulator that they can put in place reliable safeguards to protect media pluralism, such as independent directors or separate newsrooms, so that the merger should be permitted. They may also offer 'side-payments' in the form of additional investment in news gathering or the transmission of news or other forms of under-represented content. The factors that can be taken into consideration can be specified with more or less precision.

The [Co-ordinating Committee for Media Reform](#) (CCMR) has suggested the introduction of a 15% threshold and 30% limit in relation to share of news provision at national and regional levels.

Where a company exceeds the 15% limit, consideration would be given to the introduction by the company of various initiatives that could enhance media plurality.

There are problems with affording scope for safeguards or 'undertakings in lieu': firstly, the effectiveness of such safeguards – for example guarantees of editorial independence and non-executive directors - are often met with scepticism, and secondly, the negotiation of 'undertakings in lieu' can itself constitute a threat to media and political independence, as was witnessed dramatically in the case of the News International/ BSKYB merger decision in 2010-2011.

Our survey of systems employed for measuring media plurality shows that media plurality measurement faces a trade-off between *certainty* (justiciability/objectivity) and *responsiveness* (flexibility/sophistication). There is a clear interest in designing predictable, objective outcomes that are ‘above politics’ yet an opposite interest in flexibility and meaningful intervention. Despite the widespread policy experimentation, no country has managed to find a satisfactory measurement system. Media plurality measurement tends to be subject to appeal and long delays. The level of change in the media sector makes the quest for such a methodology less likely rather than more likely to succeed[26]. It is nonetheless possible to set out some proposals for reform that draw on experiences in the UK and other countries:

Conclusions: Elements of a New Policy

Front bench politicians of all parties have now acknowledged that the power of News International resulted in corruption and the cover-up of illegal practices by UK media in the past two decades. The Leveson Inquiry faces the additional challenge of deciding to what extent it should give detailed policy prescriptions given that it has also heard evidence that politicians may be tempted to compromise on policy in order to retain the support of private media. In this context, it is essential that Leveson sets out clear principles to govern policy as well as some potential options:

Leveson should recommend a new framework that is:

- *Protective: of citizens' interests, employing a precautionary principle*
- *Certain: to encourage investment in domestic journalism, combining streamlined merger control with periodic market review*
- *Independent: from politicians and industry*
- *Justiciable: to create trust*

The public policy implications of the corruption and cover-up exposed by the Leveson Inquiry could be approached in a variety of ways. Regulating the behaviour of politicians and the press, for example by making meetings between them more transparent, is part of the solution, as is reform of the self–regulatory regime for the press, possibly by extending its reach to online content more widely and by closely incorporating journalists as well as the public in the establishment and enforcement of ethical rules. But these are only partial solutions. It is necessary to deal with the root causes: concentration of media ownership and power. This policy brief has shown that there are two kinds of potential responses available: structural rules that govern the size of media companies and mergers between them (external pluralism) and behavioural rules that place limits on the use of opinion forming power (internal pluralism). Any new policy settlement will require a combination of these.

Principles for policy

Regulation should be:

- *Precautionary*. When regulation of media plurality fails, trust in democratic institutions is damaged. Therefore, prevention should be a priority. A precautionary principle, with readiness to intervene even where the scale of the risk is difficult to quantify should be adopted because of the potentially serious nature of any ensuing damage to society.

- *Certain*. A system that involves too much discretion and a lack of clear definitions and agreed measurements is a bad system. The time and cost of challenge and judicial review is simply too great, potentially leading to harmful disinvestment from the UK media. The new system should provide companies and investors with clarity to enable long term planning.

- *Independent*. Any future regulatory body dealing with media concentration should be independent from the government and from the media.

- *Justiciable*. To create trust in the system and ensure that the rules are applied correctly, without bias, there should be scope for judicial review.

External Pluralism: New Limits on Media Ownership

Mergers. The current media ownership controls are too complex, open to challenge and place too much discretion in the hands of the relevant minister. We suggest reconsideration of fixed limits, based on metrics suited to our converged media environment, leading to a simpler, more predictable, merger procedure:

New fixed limits should be established based on share of audience exposure to content, both in relation to news/current affairs and content in general.[27] Fixed limits can improve market certainty and avoid lengthy disputes, they are widely employed in other countries. Mergers would be prohibited when the time spent accessing content provided by relevant firms exceeds a specified percentage of the audience's total exposure time.

Limits should be set with a precautionary principle in mind. Further research and consultation is required before fixing these limits but a figure in the order of 15%-20% of total audience exposure to news and to content in general, at the national level, could be appropriate. The measurement we suggest relates to the multi-media market, including online services.

- Public service media such as the BBC and Channel 4 should be included in the assessment to ensure a proper evaluation of the market but should not be subject to control because of their extensive plurality obligations and degree of insulation from political and commercial pressures.

- Consideration should be given to applying a similar limit in the context of specific media sectors, for instance, radio, given that the style and nature of reporting differs across media. This is also important to prevent smaller media sectors being completed dominated by one or a few content providers. This limit is proposed for mergers involving firms operating at the national level but modified fixed limits could also be applied in the different regional markets.

- These limits are absolute, although consideration would need to be given to situations involving failing firms.

Organic growth. Here the situation is different in that there is a strong argument that firms should not be penalised for their commercial success. On the other hand, organic growth can be just as damaging to the public interest. We thus suggest a process of periodic (possibly bi-annual) market review to be carried out by Ofcom. Where a firm exceeds the specified audience exposure limits for news or content in general, it should be open to the firm to establish, using whatever information it considers most appropriate, either that media plurality is not at risk; that safeguards have been put in place to address potential concerns; or that countervailing action has, or will be taken, to compensate for any harmful consequences stemming from growth. In order to protect market certainty the measures likely to satisfy the regulator should be set out clearly in guidance. The Coordinating Committee for Media Reform has set out a potential list[28].

Ministers should be removed from decisions on mergers and undertakings. The final decision should be made by an independent media regulatory body such as Ofcom.

Internal Pluralism and other strategies for addressing media power

The revised proposal for mergers and new audience share limits are a necessary but not sufficient intervention to protect media pluralism. Without wider reforms even this reform is likely to fail. A range of other interventions will help to change the culture of media in the UK.

- New general measures to promote internal pluralism and content diversity should be encouraged for all media, using a range of incentives, such as subsidies, appropriate tax incentives, and clauses of conscience for journalists. In particular, there should be support for a variety of ownership, governance and accountability models, such as user ownership and trusts.

- Transparency of media ownership, control and regulation should be paramount. Citizens should be able to know who own the media they use and firms should be required to publish such data in a comprehensible and accessible form.

Making this Work: Audience Measures and New Sources of Data

The UK does not currently gather enough data to effectively measure the various aspect of media plurality. Ofcom could build on its own previous extensive research and work conducted by the EU[29] to develop convincing standards for measuring media plurality and to establish guidelines on good practice at the national and European levels.

- Ofcom should be asked to conduct a study on the data needed to provide evidence for audience share across media.

- Ofcom should be required to advise on the relative merits of various time-based measures, including both technical measurement and self-reporting, and develop a robust method for assessment (potentially combining the two).

- In an increasingly international media environment, ownership needs to be transparent not only at the national but also international levels. EU support in assisting further co-ordination between domestic regulators and providers of data relating to the media could here prove useful.

Reforming Regulation

Ofcom should also conduct regular and wide-ranging market reviews of media plurality. These could take place every four years and would cover ownership and opinion forming power.

- These should monitor the media market including online, not the legislation as is currently the case. These findings may, however, form the basis for regulatory or legislative initiatives.

- Government should order a separate policy review to support journalism at the Local level

In the longer term, because of the changing nature of the media market consideration should be given to the creation of a converged, media-specific, competition regulator. At present Ofcom has competition powers in relation to the services it licences but its powers are limited in relation to online providers. If such a body were to be created with power to review competition issues in the media field more generally and, in particular, to take into account plurality considerations, this could address some of the concerns relating to the growing power of intermediaries such as search engines and news aggregators.

Note

[1] Ofcom (2010). "Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation. http://stakeholders.ofcom.org.uk/binaries/consultations/public-interest-test-nov2010/statement/public-interest-test-report.pdf

[2] Ibid, p. 77. See also, Co-ordinating Committee for Media Reform (2011). "The Media and the Public Interest." Preliminary Briefing Paper. Retrieved on 29 June 2012, from http://www.mediareform.org.uk/policy-research/plurality/briefing-paper-on-plurality-and-the-public-interest

[3] Smith, R.C and Tambini, D (2012). "Measuring Media Plurality in the United Kingdom: Policy Choices and Regulatory Challenges." Forthcoming *Journal of Media Law.* A longer version of this paper will also appear in the Working Paper Series of the Robert Schuman Centre for Advanced Studies at the European University Institute, Florence.

[4] Ofcom noted that market developments have given rise to new plurality concerns that the current government approach fails to address, thus necessitating "a more fundamental review and possible reform of the current statutory framework." Ofcom (2010). "Report on public interest test on the proposed acquisition of British Sky Broadcasting Group plc by News Corporation.: pp. 90-92

[5] Elstein, D. (2001). "The market adds choice, and quality." openDemocracy. Retrieved on 28 June 2012 from http://www.opendemocracy.net/media-globalmediaownership/article_599.jsp

[6] Ofcom (2010), p. 34

[7] Prosumers is the terms used to refer to the consumers who also now participate in the production of content.

[8] " Our consumer research has found that Facebook and Google News are used by around one in five (19%) of people who use the internet as a source of news, making them the equal second most important sources of online news . However, the BBC website has a significant lead over all online sources, with 57% of online news users claiming to use it."
Ofcom (2012). "Measuring media plurality:Ofcom's advice to the Secretary of State for Culture, Olympics, Media and Sport." p.25 Retrieved on 29 June 2012 from http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf

[9] http://www2.lse.ac.uk/media@lse/documents/MPP/Policy-Brief-5-Semantic-Polling_The-Ethics-of-Online-Public-Opinion.pdf

[10] Smith, R.C and Tambini, D (2012)

[11] Ofcom (2012), p.9

[12] Commissariaat Voor De Media. "The concept of pluralism: media diversity." Retrieved on 29 June 2012 from http://www.cvdm.nl/content.jsp?objectid=11605

[13] (CCMR, 13) Co-Ordinating Committee for Media Reform." The Media and the Public Interest." Briefing Paper 4 November 2011, www.mediareform.org.uk/wordpress/wpcontent/uploads/2011/11/Plurality-briefing-paper.doc)

[14] Smith, R.C and Tambini, D (2012).

[15] Ofcom (2010).

[16] This is confirmed also by Ofcom, when they state that "Volume of consumption, and metrics based on claimed consumption, are likely to be the most effective means of measuring share, which in turn provides an indication of the level of influence associated with any one provider Ofcom (2012), p.20

[17] This is also confirmed by Ofcom: "[revenue] is likely to be a less effective common currency in the context of a plurality review, since the relationship between revenue and the ability to exert influence is less direct than the relationship between revenue and economic power." Ofcom (2012), p.19

[18] Smith, R.C and Tambini, D (2012).

[19] Ofcom also recognises that applying the HHI index can prove useful "where the market is more fragmented with a number of players". However, they also underline that indicators for market concentrations work best within well-defined single media markets (such as television or newspaper markets only), where there is a high level of substitutability between products. Ofcom (2012), p.20

[20] Smith, R.C and Tambini, D (2012).

[21] Ibid

[22] Communications Act 2003 http://www.legislation.gov.uk/ukpga/2003/21/contents

[23] http://www.legislation.gov.uk/ukpga/2002/40/section/58

[24] Smith, R.C and Tambini, D (2012).

[25] Ibid
[26] Ibid
[27] We have chosen time exposure as the principle measure because whilst no measure is perfect, time exposure offers the best proxy for influence. Technical problems related to measuring time spent reading newspapers or listening to the radio can be overcome by either developing more sophisticated metrics or relying on primary surveys on consumers.
[28] Co-ordinating Committee for Media Reform (2011). "The Media and the Public Interest. Preliminary Briefing Paper." Retrieved on 29 June 2012, from http://www.mediareform.org.uk/policy-research/plurality/briefing-paper-on-plurality-and-the-public-interest.
[29] Valcke, P. et al (2009). Independent Study on Indicators of Media Pluralism. http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf

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About The LSE Media Policy Project aims to establish a deliberative relationship between policy makers, civil society actors, media professionals and relevant media research. We want policy makers to have timely access to the best policy-relevant research and better access to the views of civil society. We also hope to engage the policy community with research on the policy making process itself.

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