

Measuring media plurality

Summary of second AHRC/University of Westminster seminar Held at Ofcom on 15 March 2012, 2-5.30 p.m.

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*This memorandum records ideas, arguments and issues discussed by participants.
The seminar was held under Chatham House rules: comments are not attributed to
specific individuals or organisations.*

Seminar two, session one

Moving towards a new policy framework, in particular examining issues around consumption, measurement and share. Is it plausible to think in terms of converged news consumption? Is there a case for maintaining sectoral share limits, and if so what should they be? If not, how do we measure "converged" consumption, what measurement proxies might be workable and what should be dismissed? Might revenues be a better approach than share for assessing plurality and concentration?

1. Short introduction and welcome. Explanation of AHRC and its role. Short review of previous session on 1 March. Minutes (as published) had been distributed in advance.

2. General discussion

UK political geography

We need to take account of changing political geography in the UK, particularly in Scotland where there are two serious propositions: "Devo Max"¹ which would push devolution much further; and Scottish independence which could mean the break up of the UK or another negotiated arrangement.

Scotland has a distinct media market, and Scots consume a mixture of UK and Scottish media. There is a distinctive Scottish press which is in decline, as elsewhere in UK, and a debate about the future of broadcasting in Scotland. SNP proposals for a Scottish broadcasting corporation would have implications for the BBC and its future². The idea of a Scottish digital network³ potentially competing with BBC would change the landscape. Contrary to Jeremy Hunt's ideas about local TV, the SNP notion is that local TV could be a national broadcasting network for Scotland.

There has also been some SNP talk about an 'Ofcom for Scotland' and its leader Alex Salmond has held discussions with Rupert Murdoch⁴. There have been recent Parliamentary inquiries into broadcasting, and the issue of renewal of Channel Three licenses is explosive (ITV wants to keep Border licence which incorporates part of Scotland; STV wants whole of Scotland as a licence area). These political issues have a direct bearing on plurality.

A few of the problems associated with this situation: how to define what is a Scottish publication? Some UK newspapers have a Scottish edition, others do not. Ireland example: there are British newspapers in Ireland – how to include them

¹ See: BBC News (2012): <http://www.bbc.co.uk/news/uk-scotland-scotland-politics-17094333>

² See: Broadcast (2012): <http://www.broadcastnow.co.uk/news/broadcasters/snp-scottish-bbc-is-entirely-feasible/5039204.article>

³ See: <http://www.scotland.gov.uk/News/Releases/2011/03/09112154>

⁴ See: Guardian (2012), <http://www.guardian.co.uk/politics/2012/feb/29/ruPERT-murdoch-alex-salmond-meeting>

in the assessment of ownership at a national level? Cross-border media is a problem in external markets.

Follow-up from previous meeting

Transparency is key: need to establish ground rules to ensure greater scrutiny of accounts. Ofcom can ask for as much information as it wants but it does not have the right to publish on the non PSBs, on grounds of commercial confidentiality. For example, Sky's expenditure on news is never explicitly set out. This theme emerged in last session: transparency and accountability can/ought to be part of the plurality issue, but regulators have to be given the tools by Parliament.

PSB: It is important to make the distinction that there are two kinds of public service broadcasting:

- 1) publicly owned corporations – BBC, S4C, Channel 4 – which have to perform public service broadcasting
- 2) commercial public service broadcasters - it's a voluntary activity

Once digital switchover completes, any broadcaster can reach 90% of the British population, via Freeview, cable and satellite. If they want to reach 98% of the population and use the privileged spectrum they have to sign up to public broadcasting requirements. They have to decide if the incentive of the extra 8% reach makes it worth signing up to certain quotas. In the last session we discussed quotas and requirements, but what about incentives?

In the past, commercial PSBs had to abide by public service obligations in return for a dominant position in the TV advertising market. Now, they could walk away in two years time, if they don't get a commercially attractive deal. Should there be more emphasis on incentives and less on obligations? Is the balance right? The Media Reform Campaign has been looking at what sort of obligations might form part of the Public Interest test.

Historically, PSBs had privileged access to limited spectrum, but now there is 90% distribution for a multiplicity of digital channels. Much of the debate over the last ten years was around what can be demanded in exchange for guaranteed universal distribution.

Pollution taxes: obligations are fine but they also impose costs. Are the benefits worth the costs? If you're running a marginal broadcasting business and there are costly obligations placed on you, you may decide to reduce your spend in other areas, or not operate. We have to be aware of implications and unintended consequences.

How would these obligations apply to global players? MTV is owned by Viacom, which might fit into that scheme. This could be a marginal decision for a global company, but raises a crucial question: whether market power brings with it greater obligations.

BSkyB/News Corp is frequently cited as a generic example of large media corporations, but there are plenty of global players bringing investment to UK whose market power is less threatening (and is not abused).

Market power measures – what is included?

How do you measure market power? What is dominant and what is acceptable? Brings us back to measures such as HHI indices⁵. Is it just news or can/should measurements be broadened?

We can define media plurality very narrowly, in terms of a set of outcomes and the Ofcom approach in the public interest test. On the other hand, the study by Peggy Valke for the European Commission included almost everything⁶ - regional and cultural diversity as well as political pluralism objectives. Need to understand the ultimate objective.

A more practical question: what should the new post-Leveson compact involve? What is the scope for reform, in terms of competition framework, mergers and market reviews? Is it broader than news/political pluralism?

The danger of starting with a broad cultural perspective is that you have to include the whole cultural market, not just media organisations. We are not short of cultural content and activity in the UK. Perhaps the best focus for Ofcom's activity should be the area currently most under pressure: provision of and access to news and opinion.

Does this include new providers and aggregators, social media, new distribution systems? Apple, Amazon, Google, Facebook. Difficult to exclude Google from any discussion on market power. Then there is the issue of cultural power, two very different things.

New models: if we are looking how much advertising revenue is lost to Google, maybe there should be restraints on Google, especially in regards to sale of third party data (which contravenes UK data protection law). We should have ISP providers offering customers opt-ins rather than opt-outs for double-click software (see first session notes).

Google is acquiring advertising that is hurting old media and presenting market entry barriers to new media. Maybe there should be a commensurate obligation to contribute to some media diversity fund (cf. the reciprocal obligations of the old commercial PSBs in return for their advertising monopoly). New digital gateways and distribution systems are a huge issue which the government/Ofcom need to consider, but we should focus on news for this session. But we do

⁵ Herfindahl-Hirschman Index, available at:
<http://www.justice.gov/atr/public/testimony/hhi.htm>

⁶ (2009) Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach. Prepared for the European Commission Directorate-General Information Society and Media SMART 007A 2007-0002

need to be wary of fighting yesterday's battle, as well as the realities of trying to impose obligations or regulations on internet-based media.

On the other hand, the plurality issue is about size rather than platforms. New platforms – perhaps even platforms that have not yet been envisaged – should be part of the discussion and then we can think about the rules of the game. The Communications Act 2003 was not future proofed, nor can the next Comms Act be. But a central issue around plurality is whether new distribution networks are causing concern (part of the problem) or alleviating concern (part of the solution).

Culture or news?

We can distinguish between news/current affairs and drama/comedy etc. But news is also bound up with entertainment values, and newspapers contain a lot of material that is not news. There is “common culture” associated with news, which we could embrace while putting drama, or high-medium culture to one side.

Films/museums etc. are too big to include, but areas such as drama and comedy involve significant investment and offer real opportunities to influence ideas. Conversely, distribution platforms (e.g. ISPs) are not currently involved in the production of cultural/editorial content, but perhaps we should be thinking about who controls information flows. It is a complex area, but will have a bearing on measurement indicators.

There is a good case for thinking about new distribution systems and their impact on political discourse, but including drama/comedy etc. would provoke resistance and raises the question of an arbitrary line between mediated forms of drama, as opposed to theatrical drama.

Conversely, there is good reason for not drawing boundaries narrowly: Berlusconi's influence in Italy was exerted through game shows on his TV programmes as well as through his news output and ensuring that his channels did not provide any unfavourable or unflattering coverage.

This comes down to a conceptual point about a definition of plurality. If we treat news and drama as separate genres, can we treat them as separate markets for analysing plurality? How would that work? Is there a set of common principles that might apply to different genres? These are issues of market definition; we need common principles or indicators that could apply to different markets.

Content and size

We need to think about regulation in a tech-neutral way: it should be based on platforms rather than size. Thus, if BSkyB were split into a channel business and a satellite platform business which simply made its money from renting out space (i.e. involved only in distribution, like BT), would that be included for the purposes of “measuring” plurality (given its lack of influence over content)?

Probably not, as long as power is not being leveraged over the selection of media content. The platform is not relevant. Digitalisation enables power and influence to move upstream: the content collectors and providers are key. We need to find a way of capturing control of information flowing to the platform, which is difficult because it moves us into the territory of programme supply and news supply.

At some point there had been blue sky thinking about an enforced separation between platform and channels, aimed particularly at the burgeoning power of BSkyB. Might this be one approach to plurality: that if you have material power over a major distribution platform, you should forego the right to have equivalent power over content? Would also embrace BSkyB's role as significant player in ISP market.

Market power and diversity

In relation to news, how do we weigh up the differences between approaches based on, say, market power or diversity or democratic significance? We may want to examine why Italy, Germany, Britain and the US have different answers on how to measure plurality.

There is no single definitive measure. Valcke's European study has 166 indicators, but we should probably be looking for a handful of meaningful indicators. Given the rate of change and the shift in news flows across platforms, it will be increasingly difficult to find a definitive answer. Ideally, one wants to find a framework which offers some sort of certainty: perhaps a relatively simple measure that would trigger a review rather than provide an instant answer, which takes us back to audience or revenue share (and the need for regular market reviews).

Should be sceptical about Ofcom's share of reference measure. Self-reporting of news consumption is notoriously subject to error (people say they listen to more news more than they do). It could be possible to improve the objectivity of the trigger measure. Different questions arise in terms of consumption and what the audience/ consumer does with their media.

Internet and plurality

In a more digital world, most news is available in different forms on the internet. (some behind paywalls). Does a plethora of online sources vitiate arguments about plurality? No, because if most consumers are concentrated on the same news sources as offline (as studies have shown), there remains the problem of dominant influence.

Markets can be competitive but sub-plural. It is easy to argue for plurality in large markets, but harder in small markets: there will be trade-offs between sustainable levels of journalistic supply and plurality. In addition to thinking

about measures, one has to engage with hard cases where you make a trade-off between a multiplicity of suppliers versus any supply at all.

BBC's position

Market share can only be the starting point, and the BBC raises different issues and different questions. To what extent is it right, in plurality terms, to include the BBC in these calculations? On the one hand, that is how people experience the world: the BBC competes with other news providers, and it is irrational to think about news consumption and not include the BBC.

On the other hand, the BBC promotes internal pluralism, making it different from smaller and privately owned news providers. Moreover, it is publicly owned with a specific governance policy and constitution in place, with careful checks on impartiality. Audience surveys consistently suggest that most people (70/75 %) trust the BBC to provide independent and impartial news.

However, it is important to distinguish between “news agenda” and partiality of news. Choice of certain stories over others involves a kind of partiality: does the BBC’s internal plurality cover news agendas as well as reporting?

Public service obligations

Rather than contemplate closing down newspapers or limiting news operations to penalise unhealthy market share, perhaps we should contemplate public obligations once companies move beyond a given share, e.g. 15%. In return for extending reach, there would be certain obligations to society.

This might be an interpretation of the Sky takeover issue: News Corp’s Undertakings In Lieu included the offer to float off Sky News as its “public service” contribution in return for additional market power.

It is very difficult to impose a market share cap without undesirable unintended consequences, but doing nothing is equally not an option. There needs to be an intermediate position. An analogy might be that public service broadcasters have to deliver something in the public interest in return for a privileged position in the market.

There might be a difference between organic growth and growth by merger or acquisition. If a newspaper breaches a threshold through organic growth, any imposed changes will risk creating a disbenefit to its readership. That would be an unimaginative approach, there should be other ways of imposing serious obligations or supporting other ventures which need support.

One suggestion, from a group of academics (CCMR) is a 15% market share trigger⁷. How to measure market share is problematic, as is how to deal with

⁷ <http://www.mediareform.org.uk/policy-research/plurality/briefing-paper-on-plurality-and-the-public-interest>

local media. There have been very few regulatory interventions over the last 15 years in this area, and the Leveson Inquiry and phone hacking tells us this is a problem. Any measurement system will be attacked (cf. the FCC) but this proposal offers flexibility in terms of commercial incentives and changing the balance.

Measuring market share

In a digital world, how does one measure market share of a free-to-air digital offering? Number of users per day? But would that penalise a good website for attracting more visitors? Both the European Commission and the FCC have been grappling with the question of measuring market share in a digital environment.

There are two broad approaches to the issue of market dominance: either define it by market demand and consumer satisfaction; or place consumer demand within the context of the media's role in a democratic society and the need to fulfil other requirements. Historical precedents for anti-monopoly legislation or decisions are not encouraging: the last Royal Commission on the Press reported that 49/50 referrals had been passed. Refusing mergers is seen as the nuclear option because governments/regulators dare not risk a decision that might lead to closure. What might an effective alternative be?

Perhaps more imaginative approaches might be available for dealing with the contrasting narratives of penalising success or enterprise on the one hand (and by extension investment in journalism), and wanting to protect a truly democratic media on the other. Policy transfer options from the French and Canadian models: taxing/levying successful business operations to pay into a content diversity or a subsidy fund for other media.

Measuring consumption

Research by Ofcom around the proposed takeover of BSkyB by NewsCorp tried to measure news consumption across media, but do the methods and the underlying principle (concentrating on news) reflect the true realities/problems of plurality?

The problem is as much about size/power of media organisations as about news. In their approach Enders Analysis has looked at the size of total media market (excluding "carriage" charges such as the BSkyB platform for non-Sky channels or BT for broadband programming). The principle is that the route to ensuring a diversity and multiplicity of providers in a market which ranges from newspapers to computer games, social media and TV sports channels, is to put a cap on total share of revenue held by one company.

This proposal also deals with concerns about one major commercial player dominating the UK's media ecology and using its profits to squash other forms of cultural diversity. If consumption is used in calculations of plurality instead of size, it will change the point at which any trigger kicks in.

Trigger point

How trigger points are calculated will be crucial, as will issues of profitability. ITN probably breaches the 15% threshold because it operates the news on ITV, Channel 4 and 5. Alexander Lebedev's newspaper operation, although it currently doesn't command much market share, is unlikely to be profitable even if it expanded. The notion that a certain market share might automatically entail profits which could flow back into the media ecology to assist plurality may not work that way. However, although an investigation might be triggered, that does not mean a uniform solution (or imposition of obligations). Flexibility is key.

There is a tension between total market approaches and news specific approaches. The point about Berlusconi's control is right, in that ideas or worldviews can emerge through entertainment. To exclude entertainment from any kind of monopoly rules is nonsensical. At the same time, however, there are different degrees of democratic significance: watching the *News at 10* is not the same as a video game.

Let's say ITV is bought by Disney, which owns ABC in the US, and decides to run its own news service. That would be the end of ITN's contract to supply ITV; it would lose 60% of its revenue and could not survive. Channel 4 would then have to make other arrangements. At that point, we will have lost a major provider of television news and will be relying on an American company providing news according to Ofcom standards of quality, investment, impartiality etc. Where does that leave us in terms of plurality?

Perhaps this is not a problem given news content requirements, but how would Ofcom assess quality of output? While Ofcom could theoretically step in, its powers in news have never been tested. Would they be enforceable?

This raises the issue of news "quality" more generally. Channel 5 News costs 10% of ITV's. If ITV wanted to move to a similar model, could and would Ofcom step in? Does the regulator have enough power to intervene? Power may not be the issue as much as definitions of quality. Perhaps Ofcom could specify that a certain percentage of revenue is spent on news?

This assumes that audiences would accept dilution of content. Audience dynamics are also important: certain types of news have survived partly because of the importance of branding, positioning, identity, within the context of an increasingly diversifying market. University of Westminster's recent longitudinal study of terrestrial television news showed a dramatic increase in Channel 5's tabloid content, from 12% to over 50 % between 2004 and 2009.⁸ Arguably, that is part of the Channel 5 brand.

⁸ 'From Callaghan to Credit Crunch: Changing Trends in British Television News 1975-2009', Steven Barnett and Gordon Neil Ramsay, University of Westminster, and Ivor Gaber, University of Bedfordshire, January 2012.

http://www.westminster.ac.uk/_data/assets/pdf_file/0009/124785/From-Callaghan-To-Credit-Crunch-Final-Report.pdf