

Ofcom submission outline material

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This report provides assessment of some of the issues that Ofcom might investigate in its report into the plurality implications of the proposed News Corporation acquisition of the BSkyB shares that it does not already own. The note was commissioned by a small group of Enders Analysis clients to provide them with clear and coherent arguments, and relevant supporting data and references, and in so doing support their submissions to Ofcom. The deadline for submissions to Ofcom is 19th November 2010.

The report's intention is to answer the question: **does the merger of BSkyB and News International's newspapers reduce 'plurality' to below a 'sufficient' level (as defined in the Communications Act 2003)?**

This report is structured as follows:

- 1) In section 1 we define 'plurality', showing that it means 'profusion' or 'numerousness'.
- 2) Using evidence from BSkyB's Annual Report 2010, we demonstrate the internal evidence in section 2 that News Corporation has 'material influence' over the company but not complete control. Therefore we believe the proposed transaction reduces plurality because it reduces the number of controllers of media enterprises.
- 3) In section 3 we lay out one method for showing how we can quantify the loss of plurality arising from the proposed transaction. We conclude that even if we were using standard competition tests, and not the wider plurality requirements, the transaction qualifies for the closest possible scrutiny. News Corporation's share of total UK news provision will increase from about 17% to about 21%. News International's newspapers are already the second largest source of news for the UK population, after the BBC. News Corporation's voice is louder in certain demographics, particularly the C2DE segment. A merger with BSkyB would mean that News Corporation's UK subsidiaries would become almost twice as important as the next largest news provider.
- 4) In section 4 we assess how News Corporation's share is likely to rise further over the period to 2015, showing that without further structural changes, but simply on the basis of organic growth, the company's share of news provision is likely to rise to over 25%. This will breach the limits in Germany and Italy for cross-media ownership discussed in section 3.
- 5) And we conclude in section 5 by showing how the merged firm may be positioned to further reduce plurality in the provision of news to UK-wide audiences further into the future. We argue that Ofcom has a strong basis for reporting that the transaction may reduce plurality or numerousness in the number of providers of national and international news to UK audiences to below an acceptable level.

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The 2007 investigations by regulatory authorities into the purchase of ITV shares by BSkyB focused on the provision of national and international news to UK citizens across all media ('cross-media'). The purpose of the Puttnam amendments to the 2003 Communications Act appears to have been to protect the range and diversity of news and comment addressed to UK residents. Speeches in the House of Lords during the passage of the legislation support this belief. The Enterprise Act 2002, as amended by the Communications Act 2003, requires that the plurality of providers of news and comment should be maintained above a sufficient level.

Since Ofcom's previous investigation into plurality in 2007, the following significant events have occurred.

- Sky News has become the only provider of news to the commercial radio sector. This leaves all radio stations in the UK either supplied by the BBC or BSkyB. The replacement of IRN as the provider of news reduced plurality below 2007 levels.
- Northern & Shell, the owner of the Express and Star newspapers, acquired Five, a public service broadcaster, in summer 2010, further reducing the number of 'controllers of media enterprises'. Five is obliged to provide a national news service until 2014. This has been provided by Sky News since 2003.
- BSkyB's revenues have continued to grow strongly, while the recent licence fee settlement has reduced the future funds available to the BBC.
- Although ITV revenues have recently been very healthy because of a recovery in the TV advertising market, the financial position of its news provider, ITN, has been called into question by its pension deficit and the qualifications placed on its accounts by its auditors. Moreover, ITV itself does not propound the view that future revenue growth will be robust. ITV's willingness and ability to sustain ITN must be open to doubt post 2014, even if ITV is to sustain a national news service.
- New media, such as online news websites and international TV news channels, have increased in importance but still provide a tiny fraction of total national news consumption by UK adults.

The position is therefore that, after the proposed merger, News Corporation's business would be the second largest overall provider of news in the UK, having by far the largest share of the newspaper market; a duopoly with the BBC in the provision of radio news; and being one of only three participants in TV news.

After the proposed merger is completed only News Corporation would provide news in four media: TV, newspaper, radio and online. The BBC engages in three of these markets. No other competitor participates in more than two.

The overall position suggests that the degree of plurality in the provision of news to UK citizens would fall to below a level that could be described as plentiful or numerous if the proposed transaction is completed.

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Section 1

The meaning of the word plurality.

What is plurality?

The Communications Act 2003 amended the Enterprise Act 2002 to allow public interest interventions in media mergers. The word 'plurality' occurs twice in the legislation, first in 58 (2B) and then in (2C)(a), both times in combination with the word 'sufficient'. The text of the relevant section is as follows.

1. *(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 is specified in this section.*

(2C) The following are specified in this section—

(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.

In the Court of Appeal judgment in the BSkyB/ITV case (2010), the Court made the following statement at paragraph 90:¹

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.

¹ <http://www.bailii.org/ew/cases/EWCA/Civ/2010/2.html>

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(In the report of Professor Charlotte Brewer below, she contends that the word 'plurality', when combined with the word 'sufficient', cannot in normal circumstances mean 'a number exceeding one' and must connote plentifulness or a multiplicity.)

The Competition Commission had also given its view at paragraph 5.7 of its final report on the transaction, submitted to the Secretary of State.²

Section 58A of the Act provides for construction of the media public interest considerations specified in section 58(2C). 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.

Neither of these two bodies provides a satisfactory definition of what 'plurality' means. Nor, therefore, do they indicate what a 'sufficient plurality' is.

We asked Charlotte Brewer, Professor of English Language and Literature at Oxford University and a world-renowned expert on dictionaries and their methodologies, to assess the meaning of the word 'plurality' in current UK usage.³ Without a definition of 'plurality', regulators cannot decide whether the proposed merger reduces the number and diversity of news providers to an insufficient level.

Her report is below, with the details of the dictionaries to which she refers contained in Appendix 1:

Report of Professor Charlotte Brewer

What does 'plurality' mean? To answer this question it is natural to turn to a dictionary, and in doing so it is important to be aware of how lexicographers (dictionary-makers) arrive at their definitions.

Reputable dictionaries of contemporary English published today, by companies such as Oxford University Press, Chambers, Collins and Longman, all derive their definitions from analysis of linguistic corpora. These corpora are electronically analysable databases of spoken and written English collected from a carefully determined range of sources—newspapers and periodicals, academic writings, fiction, legal prose, television and radio, and so on—with the aim producing a representative cross-section of standard English in its various genres and forms. Older editions of these dictionaries, published before the 1980s (i.e. before such corpora became available) also used the same type of evidence, but gathered by hand and comprising a smaller range and quantity of linguistic data. But all are based on wide and detailed analysis of the evidence of usage: they do not prescribe how we should use language in some ex cathedra manner, but instead set out to describe, as

² http://www.competition-commission.org.uk/rep_pub/reports/2007/fulltext/535.pdf

³ Full disclosure: Charlotte Brewer is married to Chris Goodall, a consultant to Enders Analysis.

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accurately and as fully as possible, how language is used in practice.

Such dictionaries provide varying types of information to help the reader understand and interpret the definitions they provide: a list of synonyms, for example, or grammatical information about how a word is used in the language, or sample phrases to illustrate how a word is used in context.

These dictionaries are arguably the best source of information on the prevailing meanings of words in contemporary English. Two other well-known dictionaries of English present such information from an historical perspective: the Oxford English Dictionary (OED), 20 volumes long, and generally used by academics seeking to understand the historical development of the language; and the Shorter Oxford English Dictionary, a shortened version of the OED.

Using a range of dictionaries of contemporary English (23 works altogether, detailed in the Appendix), we can see that there are four main meanings of the word plurality. Two of these can be discarded straightaway: the sense relating to the holding of more than one ecclesiastical office or living, and the sense relating to North American voting systems.

That leaves us with two main meanings for plurality as used in the document under question, namely 'more than one', and 'a large number'. Both these definitions are found in many of the dictionaries, and the analysis provided by the online resource 'Oxford Dictionaries' (Appendix no. 1) is particularly helpful in explaining their respective connotations and applicability since it furnishes us with illustrative examples of their respective use:

- *[mass noun] the fact or state of being plural: some languages add an extra syllable to mark plurality*
- *[in singular] a large number of people or things: a plurality of critical approaches*

Here the distinction between the senses is explained grammatically. A mass noun is a noun which cannot be counted, as compared with a noun that can be counted. Thus, in the sentences 'chocolate is my favourite food' and 'He finished all the chocolates', the first instance of 'chocolate' is classified as a mass noun (= 'a food in the form of a paste or solid block made from roasted and ground cacao seeds, typically sweetened and eaten as confectionery') and the second is a count noun ('a sweet made of or covered with chocolate').

*Thus, plurality in the sense 'more than one' is regarded as referring to a **state**, rather than to something which can be **counted**—as in a plurality of critical approaches. In the latter case, a plurality of critical approaches is to be defined as 'a large number of people or things'.*

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Applying this analysis to the phrase 'a sufficient plurality of persons' guides us firmly to interpret it as meaning 'a sufficient multiplicity of persons', 'a sufficiently large number of persons', or the like.

It is this grammatical distinction—between a mass and a count noun—which underlies the two definitions as dealt with in dictionaries 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 22, 23, all of which use very similar and sometimes identical language in defining these two senses of plurality.

No 13, the Oxford Dictionary and Thesaurus, gives additional help by supplying us with synonyms for plurality (whether mass or count noun) as follows:

(wide) variety [bold type in original], diversity, range, multitude, multiplicity, wealth, profusion, abundance, plethora, host. Informal: load, stack, heap, mass

No 17, Collins Cobuild, interestingly merges the two definitions together in its explanation of the term ('A plurality of things is the existence of more than one of them'), which it illustrates with phrases close in structure to the one we are trying to understand: 'E.g. It is necessary to acknowledge a plurality of aims... ...the plurality of belief systems in modern society'. At the same time it offers an additional interpretative tool: it supplies us with a synonym for plurality in such contexts: namely, **multiplicity**. This again guides us to interpret plurality, in the phrase under discussion, as meaning 'a large number' or the like—in other words, Collins Cobuild seems to equate the notion 'more than one' (as supplied in its definition) with the notion 'many more than one'.

Are there any circumstances where a plurality could be justifiably interpreted as simply 'more than one', rather than 'a large number'? The OED is helpful in exploring this specific question. As an historical dictionary, the OED prints quotations illustrating a word's use from the earliest sources in which it has been found up to the most recent. It is currently in the process of being revised for the first time since its first publication (1884-1928), which means that the original quotation evidence is being freshly analysed, and quotations from more recent usage (i.e. later 20th century and early 21st century) also taken into account.

In the first edition of the OED (no 26 in the Appendix), the relevant definitions for the entry plurality (published 1907 and reproduced without change in the 2nd edition of 1989) were very much the same as in the dictionaries already surveyed:

1. The state of being plural; the fact or condition of denoting, comprising, or consisting of more than one.

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1b. *The fact of there being many; numerousness; hence, a large number or quantity; a multitude.*

However, the quotations under sense 1 (as opposed to 1a) include examples of plurality used a count noun, e.g. 'The plurality of wives was by a special prerogative suffered to the fathers of the Old Testament' (1563); 'To shew how in one nature there may be a plurality of persons' (1624—the context is a discussion of the persons of God, i.e. the Trinity).

The other quotations in the entry—reproduced in the Appendix—show how difficult it is to be sure one way or another: were the lexicographers right to think that Gibbons's statement that 'Many of the Armenian nobles still refused to abandon the plurality of their gods and of their wives' referred to 'more than one wife or God' rather than, as in 1b, 'a large number'?

The entry has been recently revised in OED3 (i.e. the third edition of OED currently underway; the entry is dated June 2010 and its relevant sections reproduced at no 27 of the Appendix). The new version adds an extra phrase to its definition of the mass noun ('state of being plural' etc) to make explicit the possibility that that this sense could apply to usage of the count noun too: '(also) an instance of this'. At the same time, the revised OED entry merges the first OED's sense 1 with the plural connotations of its second identified sense (1a), in effect acknowledging that although there is a theoretical difference between 'more than one' and 'many', it is often difficult to tell them apart in context. So 'the state of being plural' and 'an instance of this' (both mass and count noun) are now recognized as being closely associated with 'the fact of there being many or much; numerousness, plentifulness', and the new sense 1a reads:

'The state of being plural; the fact or condition of denoting, comprising, or consisting of more than one; (also) an instance of this. Also: the fact of there being many or much; numerousness, plentifulness.'

The new sense 1b, applying only to the count noun, reads 'A large number or quantity of; a multitude, a profusion.'

Despite the implication OED3's revision (namely that plurality, even when used as a mass noun, has strong connotations of numerousness, plentifulness), it must still be recognized that the revision has newly identified the possibility that the count noun as well as the mass noun plurality may mean 'more than one' (or to be more precise, it has specifically articulated this possibility, which was only implicit in the first edition entry). Can we apply this specific definition to the instance of the count noun in the phrase under question, namely 'a sufficient plurality of persons'? Only with considerable difficulty.

The key here is the use of the adjective sufficient to modify the noun plurality ('a sufficient plurality of persons'). If we take a

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*plurality to mean 'more than one', i.e. 'not singular', we are simultaneously acknowledging what might be termed a binary opposition between singular and plural. Something is either singular or plural: there is no half-way house between the two states. Accordingly there is no logical way in which one can use the term 'sufficient' to describe 'a plurality' if at the same time the word is taken as meaning 'not singular'. The moment we acknowledge the possibility of degrees of plurality, we are dealing with the question of **number** not of **state**. The definition of plurality in reference to number is OED3's sense 1b: 'A large number or quantity of; a multitude, a profusion': consequently, this must be the appropriate definition to apply to the phrase 'a sufficient plurality of persons'.*

Of course the past use of language does not necessarily determine how language may be used in the future. But if the writers of this clause (Professor Brewer means the plurality clause in the Communications Act 2003 – Enders Analysis) intended to depart significantly from current usage, as overwhelmingly recorded in dictionaries of contemporary English, one would expect them to signal this explicitly to the reader and explain the precise significance of their use of this term. In the absence of such an explicit note, one must take the term as meaning what everybody else uses it to mean in current English.

What can we conclude from this survey of dictionary evidence? In my view, there is an overwhelmingly strong presumption that, in common usage (in which I include Standard English, as used by educated people), a sufficient plurality is to be interpreted as 'a sufficiently large number or quantity or profusion'. The only reason for thinking otherwise would be if those using the term gave explicit notice that they were attaching a specific technical sense to the term.

Charlotte Brewer, Professor of English Language and Literature, Hertford College, Oxford.

Section 2

Does News Corporation already control Sky?

In day-to-day English, the word 'control' also has a slightly ambiguous meaning. It can either imply total authority (as in 'was he in control of the car? Yes, Mr. Connolly was in control of the car at the time') or it may simply mean a degree of authority (as in 'She had little control over her subordinates'). This ambiguity is built into competition law: the word can either mean 100% control, as in total ownership, or the degree of influence coming from ownership of a fraction of the shares of a company.

This confusion has slipped into press commentary about the proposed merger with many journalists stating that News Corporation already has 'control' of BSkyB. The confusion appears to be related to the use of the word in Ofcom's 2007 report on the purchase of ITV shares by BSkyB.

1.14 For these purposes we have assumed that Sky is or may be controlled by News Corporation (39.1% shareholding held through a number of News Corporation subsidiaries). We have therefore considered newspapers in our report.⁴

We do not believe that News Corporation currently has total authority over BSkyB. We hold instead that News Corporation has 'material influence' over the company, as suggested by the Competition Commission in its later and final report.⁵

For the purposes of our analysis, we assumed that News Corporation had material influence over BSkyB.

In our view, the current proposed transaction would shift the degree of control over BSkyB from 'material influence' to complete authority, or 'control'. This movement creates a 'relevant merger situation' in UK law and therefore allowed the Secretary of State to issue his intervention notice. If News Corporation already had complete control then in law the notice could not have been issued because there would have been no relevant merger situation.

The rest of this section examines the ways in which BSkyB remains independent of News Corporation and its UK subsidiaries and associated companies. We use quotations from BSkyB's Annual Report 2010.⁶

The BSkyB audit committee

The audit committee checks on the transactions between BSkyB and News Corporation companies. It does this because BSkyB has other shareholders and their interests could be threatened by wrongly priced deals between two

⁴ Ofcom, Report for the Secretary of State pursuant to Section 44A of the Enterprise Act 2002 of British Sky Broadcasting plc's acquisition of 17.9% shareholding in ITV plc, 27th April 2007, available at <http://www.bis.gov.uk/files/file39607.pdf>

⁵ Competition Commission, Acquisition by British Sky Broadcasting Group PLC of 17.9% of the shares in ITV PLC, 14th December 2007, available at http://www.competition-commission.org.uk/rep_pub/reports/2007/fulltext/535.pdf

⁶ British Sky Broadcasting Group PLC, Annual Report 2010, available at <http://annualreview2010.sky.com/downloads/>

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companies. The audit committee is composed entirely of BSkyB's independent non-executive directors. The wording in the annual report of BSkyB is as follows:

- *News UK Nominees Limited, a subsidiary of News Corporation, is a major shareholder in the Group. The Audit Committee receives, on a quarterly basis, a schedule of all transactions between companies within the News Corporation Group and the Group, and any other related party transactions, showing all transactions which have been entered into during the year and which cumulatively exceed £100,000 in value;*
- *Committee approval is required for the entering into by the Group of a commitment or arrangement (or any series of related commitments or arrangements) with News Corporation or any of its subsidiaries, or any other related party which involves or could reasonably involve the payment or receipt by the Group of amounts equal to or in excess of £10 million, but not exceeding £25 million in aggregate value with News Corporation. Any transaction in excess of £25 million in aggregate value must be submitted to the Committee and, if approved by the Committee, must also be submitted to the full Board for approval.*

Related party transactions

BSkyB rules only allow it to make transactions on an arm's length basis.

The Group conducts all business transactions with companies which are part of the News Corporation group ("News Corporation"), a major shareholder, on an arm's length basis. During the current year, the Group made purchases of goods and services from News Corporation totalling £197 million (2009: £212 million) and supplied services to News Corporation totalling £32 million (2009£40 million)/

Role of independent non-executive directors

Eight out of fourteen directors of BSkyB are independent and non-executive.

The annual report comments:

The Independent Non-Executive Directors provide a strong independent element and a foundation for good corporate governance. Biographies of each of the Directors are set out on pages 34 to 35 and identify those Directors who are, in the view of the Board, independent within the meaning of the Combined Code. Prior to appointment, and on an annual basis, each board member receives and completes a questionnaire to determine factors that may affect independence according to the Combined Code. The responses to the questionnaire assist the Board in ascertaining whether a director is independent in character and judgment, and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the Director's judgment.

Corporate Governance and Nominations Committee

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Two out of the three members of this committee are independent non-executive directors.

The Committee also reviewed the independence of the Non-Executive Directors and recommended to the Board that there be no changes to the independent status of the current Non-Executive Directors. The Non-Executive Directors who are considered by the Board to be independent are clearly identified on pages 34 to 35. The Board's criteria for determining whether a Non-Executive Director is independent are set out in the Memorandum on Corporate Governance which can be found on the Company's corporate website. The Committee's review took into consideration the fact that Allan Leighton had served on the Board for nine years in October 2008 and David Evans will have served on the Board for nine years in September 2010. Provision A.3.1 of the Combined Code suggests that serving more than nine years could be relevant to the determination of a Non-Executive Director's independence. The Committee concluded that Mr. Leighton and Mr. Evans continued to demonstrate the essential characteristics of independence expected by the Board and that there are no relationships or circumstances that are likely to affect, or could appear to affect, their judgment.

Change of control provisions under the 2009 Revolving Credit Facility (RCF)

BSkyB borrows money under a revolving credit facility with banks. The Annual Report says that the money may have to be repaid if there is a change of control of the company. The exception to this is if News Corporation or any subsidiary or holding company acquires control. The inference is that News Corporation does not currently hold control.

The lenders can require any amounts outstanding under the revolving credit facility to be repaid in the event of a change of control of the Company (other than in the event that News Corporation or any subsidiary or holding company thereof acquires such control).

Control over editorial matters

The previous quotations in this section have all been from the 2010 Annual Report of BSKyB. The final text is from the Competition Commission's final report into the ITV share purchase.⁷

News International and its parent company, News Corporation (board members and senior executives), did not intervene or influence the presentation of news content, choice of stories or editorial stance taken by Sky News during the two time periods set out by the CC.

This provides evidence, we suggest, that current plurality of news sources is not reduced by News Corporation exerting influence over Sky News and that it is

⁷ Competition Commission, *Final report sent to the Secretary of State into the purchase of shares in ITV by BSKyB*, 14th December 2007, paragraph 35, Appendix 1.

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reasonable to assume that Sky News and the News International newspapers are under separate control.

Section 3

Measuring the quantum of the loss of plurality if the proposed transaction proceeds

Courts and regulators have struggled to measure the degree of plurality in the UK and elsewhere. Yet without a methodology for quantifying the amount of plurality before and after a transaction, there can be no intellectually robust assessment of the impact of a merger.

Media plurality is a political goal and there is a far-reaching consensus in democracies that it should be maintained so as to guarantee a free and diverse communications landscape. There is, however, neither a consensus on what constitutes plurality (e.g., is it a plurality of owners, a plurality of channels and titles and variations within them, or a diversity in content/ideas), nor on how this goal can adequately be achieved, let alone empirically measured.⁸

In this portion of our submission we look at:

- How other countries have begun to try to quantify the degree of plurality in media and, second, measure the impact of a loss of one or more participants.
- Set out one approach to measuring the loss of plurality in UK media from the proposed purchase by News Corporation of the shares in BSkyB it does not already own.

How other countries measure plurality

We look briefly at the attempts to introduce and use quantified measures of plurality, in particular as they apply to how regulators assess the impact of mergers on the degree of media diversity.

The US

In 2003, the Federal Communication Commission of the United States introduced a measure known as the Diversity Index (DI). This index sought to provide a measure of the degree of media concentration in a particular geographic area. It has been widely criticised for the failings of its methodology and apparent inconsistencies, but it does appear to be the first ever attempt to produce robust quantification of the degree of plurality.

The technique used to create the index mirrors the calculation of a Herfindahl Index (more commonly known as an HHI). In HHI measures, the shares of participants in a particular market are squared and then summed. An unconcentrated market generally has an HHI of less than 1,000 (which would, for example, arise if 10 competitors had 10% of the market each) while a highly concentrated market is often defined as one with an HHI of 1,800-2,000 or more. The HHI is widely used in competition analysis to determine whether or not a merger is likely to push a market into a degree of concentration that may result in anti-competitive outcomes. So the FCC was using a technique taken from

⁸ Natascha Just, *Measuring Media Concentration and Diversity: new approaches and instruments in Europe and the US*, Media, Culture and Society 2009, DOI: 10.1177/0163443708098248

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competition policy to measure plurality. Specifically, it also assessed plurality by looking across all forms of media, assuming, for example, that newspapers were in some senses substitutes for TV.

Later in this section, our assessment of the impact of the proposed News Corporation and BSkyB merger also uses the HHI measure. Second, we also assume that plurality can be assessed by looking at patterns of cross-media ownership, as well as by looking at diversity within specific media.

Italy

The 2004 Legge Gasparri (a law named after the Italian communications minister of the time) established what we think was the second systematic attempt to measure the concentration of ownership across different media and to introduce a cap on cross-media ownership.

The law said that no company should be able to hold more than 20% of the total media market. As in the US, this legislation has been widely criticised for its failure to take into account the impact of one company dominating one medium without breaching the 20% share of the value of all media markets. Nevertheless, the Legge Gasparri did set up a framework for assessing how a state might regulate cross-media ownership through the use of a quantified measure of market share.

Our proposal also shows how Ofcom and other authorities might wish to assess the degree of cross-media control established by News Corporation and BSkyB in the proposed merger.

Germany

A German transaction offers Ofcom the clearest equivalent deal in the European Union in recent years. We provide details of the transaction, and how it was assessed, in order that Ofcom may consider using a similar approach to the German regulator, KEK, in its plurality investigation. In a later portion of this section we carry out an analysis of the impact of the proposed News Corporation and BSkyB merger using a technique with some similarities to the KEK approach to the earlier deal.

In August 2005, the German publishing company Axel Springer made an offer to acquire 100% of the TV company ProSiebenSat1 (P7S1). It already had 12% of the shares. Springer owns the best-selling daily newspaper in Germany, the mass market tabloid Bild and other press interests including the upmarket Die Welt. Bild is broadly right-of-centre and is thought to exercise influence over public opinion. P7S1 is the second largest commercial TV broadcaster in Germany, with about 22% of the audience. State broadcasters control just under half of total viewing while RTL Group has slightly more than P7S1 at about 25%.

The German Cartel Office investigated the transaction under the standard laws on competition. A separate and parallel investigation was carried out by the German Commission on Concentration in the Media (Kommission zur Ermittlung der Konzentration im Medienbereich, or KEK). The KEK has power to stop the purchase of TV stations by obliging the media authorities of each individual German state to remove the broadcasting licence of the purchased station.

The KEK indicates that it works within the framework created by the case law of the German Federal Constitutional Court: 'The Court has emphasised that statutory regulations are necessary to ensure that the entire spectrum of opinions

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will be represented in broadcasting as fully as possible'.⁹ It also works under the Interstate Treaty on Broadcasting (Rundfunkstaatsvertrag of RStV), which introduced regulations 'designed in such a way as to effectively prevent the risk of creating predominant power over public opinion'.¹⁰

The RStV lays out quantitative criteria which KEK is expected to use to guide its decisions on dominance. In particular, any broadcaster with more than a 30% share of broadcast viewing will not be able to acquire new licences. This figure falls to 25% if the broadcaster has a dominant interest in another media. In addition, the KEK is entitled to block transactions if 'an overall assessment of its activities in television and in related media-relevant markets suggests that the influence of such activities *is equivalent to that of a company with a 30 percent audience share*'.¹¹ (Our italics)

KEK used such an assessment in its investigation of the Axel Springer/P7S1 deal. It looked at Springer's other media interests and estimated their share in the relevant market. It then weighted each medium in terms of its ability to influence media users. Television, for example, is given a higher weight than newspapers. 'The KEK estimated that after the merger, Axel Springer would have a market share equivalent to a broadcaster's 42 percent audience share (22% of which audience share by the ProSiebenSAT.1 group, 25% related media markets, less a bonus of 5% granted for securing diversity through regional and third-party programs'.¹²

The process of accumulating market share across different media produced an overall market share figure in excess of the legal maximum. KEK therefore blocked the deal. The methodology used by the regulator – and whether it was entitled under the RStV law to use the approach that it did – has also been attacked by academics, politicians and other German regulators. Nevertheless, KEK made what we think is the first systematic attempt in Europe to measure the influence of a cross-media merger in the process of assessing a particular transaction.

An approach to measuring plurality in the UK, and assessing how it is affected by the proposed merger

In summary, we assess the loss of plurality implied by the proposed merger by measuring the changes in the share of the viewing/reading/listening of news by adults held by the main news providers in the UK.

We made some important background assumptions:

- a) We choose in this part of the analysis to focus on the consumption of national and international news, as opposed to all media activities. We are therefore following the judgment made by regulatory agencies during the BSkyB/ITV inquiry in 2007. But, as a consequence, we diverge from the way that plurality is assessed in the three countries briefly examined in the previous pages. (If we had chosen to assess the market share of News Corporation business by any measure other than 'share of news

⁹ KEK, *Cross-Media Relations: A Challenge for Media Concentration Control*, 2007, available at www.kek-online.de/Inhalte/summary2007.pdf

¹⁰ KEK, *ibid*

¹¹ Natascha Just, *Measuring media concentration and diversity: new approaches and instruments in Europe and the US*, Media, Culture and Society 2009, DOI: 10.1177/0163443708098248

¹² Natascha Just, *ibid*.

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consumption' we would have arrived at a larger number for the share of News Corporation's prospective degree of control over the cross-media marketplace).

- b) Unlike the KEK assessment of the Springer transaction, we decided not to weight one medium as less or more important than another. One minute of news viewing on the TV is given the same importance as a minute spent reading a newspaper or viewing a web site.
- c) We chose to use standard audience measures. So, for example, our primary data is from BARB in television and NRS for newspapers. Other measures might produce somewhat different results but would almost certainly raise new methodological issues of equal or greater severity.

In 2006, the German regulator KEK assessed the Axel Springer/ProSeibenSat1 merger and concluded that the transaction created a dominant position for the combined firm (see above). It proceeded to effectively block the merger on the basis of this conclusion. We suggest that this is very broadly analogous to concluding that the merger reduced plurality to an insufficient level in the German cross-media market. KEK employed its own methodology for assessing the dominance of Springer and P7S1 combined and we have tried to do the same exercise in the pages that follow.

To be clear; we are not suggesting that German law is the same as UK law, or that the German and UK transactions are equivalent and certainly not that Ofcom should use the same methodology as KEK. What we are saying is that rigorous quantification of the impact on plurality of the UK transaction is a vital part of any plurality review. KEK's was the only attempt we have seen to assess the degree of dominance and UK analysis may choose to copy some aspects of the approach.

We have carried out our own work to provide a draft numerical estimate of the degree of concentration created by the proposed News Corporation transaction. In the time available we have focused entirely on the provision of news to adults in the UK (15+). The outline of our method is as follows:

- a) Estimate the total amount of news consumed by adults via five different media: TV, newspapers, radio, internet and magazines.
- b) Express this number in terms of minutes per day per person for each of the five media.
- c) Write down or calculate the market shares of each major provider within each media.
- d) Then use these numbers to calculate the number of minutes per adult per medium for each provider.
- e) Add the numbers of minutes per person together for all five news media for each provider.
- f) Calculate the market share for each provider.

A worked example. Data from the Audit Bureau of Circulation shows that the UK adult population buys X million national newspapers or regional newspapers with a heavy emphasis on national news (such as the Scottish papers). The National Readership Survey provides figures for the number of readers of each copy (Y people per copy), broken down by individual newspaper and quantifies the number of minutes ('Z') that the average reader spends with each issue of each newspaper (broken down by weekday, Saturday and Sunday editions, where relevant). This

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means adults spend X million times Y readers times Z minutes a day reading newspapers. We divide this by the number of adults in the UK to get an average figure for the number of minutes per person. This can then be divided into the number of minutes for each newspaper and each newspaper group. Similar analysis can be carried out across other media and the results aggregated to provide an estimate of the 'market share' of news provision attributable to each provider.

The key results

Table 1 gives the results of this work. Summary methodology is available in Appendix 2 to this section.

- a) The average person is exposed to news for about 60 minutes a day. Ofcom's Communications Market Report of August 2010 shows that about one third of this time is likely to have been spent while consuming some other form of media ('media multitasking'). We have not made adjustments to the data to reflect multitasking. About half the time spent is occupied by newspapers and slightly less than half is TV. Radio, internet news sites and news magazines are much less important.
- b) Of this total, the BBC provides about 34% of all news exposure. Today, before any transaction is consummated, News International has a 17% share, followed by Daily Mail and General Trust (12%) and then ITV (8%).
- c) Channel 4 and Five have their news services provided by third-party suppliers (ITN and Sky News respectively). Based on the legal language that plurality is assessed by the looking at the number of separate 'controllers' of media, we merge the audiences for these channels into the shares held respectively by ITV and BSkyB.
- d) After this adjustment, we can see that the top four suppliers of news have a share of about 71% of all news consumption (following Eli Noam, this is called the C₄ ratio) and the UK has 10 separate companies each providing more than 1% of all news seen or heard by its adult citizens.
- e) A calculation of the current HHI gives a figure of 1,793 suggesting a high level of existing concentration.
- f) The merger of BSkyB and News Corporation combines a high share in UK newspapers with Sky News on TV, Sky's provision of radio newsfeeds and Five's news programming. Assuming the transaction is completed, the share of total news consumption by the BBC remains the same (at about 34%) but News Corporation shares of 17% (newspapers) are combined with BSkyB's radio and Five audience (4.5%), taking the combination up to about 21.6% of UK news consumption. Other providers remain the same.

The transaction increase the C₄ ratio to 75%, the HHI to 1,948 and the number of providers with more than 1% share falls by 1 to 9.

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Table 1 – revised radio figures

News minutes per head per
day by news originator

	Papers	Radio	Online	TV	News mags	Total (mins.)	Total (per cent)
Sky	0.00	3.81	0.01	1.40	0.00	5.22	7.4%
News Intl	10.20	0.00	0.06	0.00	0.00	10.26	14.6%
Sky + News Intl	10.20	3.81	0.07	1.40	0.00	15.48	22.0%
Five	0.00	0.00	0.00	0.39	0.00	0.39	0.6%
Sky+News Intl+Five	10.20	3.81	0.07	1.79	0.00	15.87	22.6%
BBC	0.00	10.12	0.17	17.35	0.00	27.64	39.3%
ITV	0.00	0.00	0.00	4.68	0.00	4.68	6.7%
Channel 4	0.00	0.00	0.00	0.63	0.00	0.63	0.9%
ITV+Channel 4	0.00	0.00	0.00	5.31	0.00	5.31	7.6%
DGMT Trin. Mirror	7.28	0.00	0.13	0.00	0.00	7.41	10.5%
TMG	4.71	0.00	0.01	0.00	0.00	4.72	6.7%
Northern&Shell	2.77	0.00	0.03	0.00	0.00	2.80	4.0%
GMG Lebedev Found.	2.42	0.00	0.00	0.00	0.00	2.42	3.4%
Pearson	1.82	0.00	0.04	0.00	0.00	1.86	2.6%
Other	1.20	0.00	0.01	0.00	0.00	1.21	1.7%
Other	0.17	0.00	0.01	0.00	0.00	0.18	0.3%
Other	0.22	0.00	0.25	0.10	0.34	0.91	1.3%
Total (minutes)	30.79	13.93	0.72	24.55	0.34	70.33	100%

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Table 2 – original radio figures

News minutes per head per
day by news originator

	Papers	Radio	Online	TV	News mags	Total (mins.)	Total (per cent)
Sky	0.00	0.93	0.01	1.40	0.00	2.34	3.9%
News Intl	10.20	0.00	0.06	0.00	0.00	10.26	17.1%
Sky + News Intl	10.20	0.93	0.07	1.40	0.00	12.60	21.0%
Five	0.00	0.00	0.00	0.39	0.00	0.39	0.6%
Sky+News Intl+Five	10.20	0.93	0.07	1.79	0.00	12.99	21.6%
BBC	0.00	2.68	0.17	17.35	0.00	20.20	33.7%
ITV	0.00	0.00	0.00	4.68	0.00	4.68	7.8%
Channel 4	0.00	0.00	0.00	0.63	0.00	0.63	1.0%
ITV+Channel 4	0.00	0.00	0.00	5.31	0.00	5.31	8.8%
DGMT	7.28	0.00	0.13	0.00	0.00	7.41	12.3%
Trin.							
Mirror	4.71	0.00	0.01	0.00	0.00	4.72	7.9%
TMG	2.77	0.00	0.03	0.00	0.00	2.80	4.7%
Northern&Shell	2.42	0.00	0.00	0.00	0.00	2.42	4.0%
GMG	1.82	0.00	0.04	0.00	0.00	1.86	3.1%
Lebedev							
Found.	1.20	0.00	0.01	0.00	0.00	1.21	2.0%
Pearson	0.17	0.00	0.01	0.00	0.00	0.18	0.3%
Other	0.22	0.00	0.25	0.10	0.34	0.91	1.5%
Total (minutes)	30.79	3.61	0.72	24.55	0.34	60.01	100%

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The impact of the transaction can be seen in the following summary tables

Table 3

Concentration ratios		
(all news media)		
	Pre transaction	Post transaction
C1	33.7%	33.7%
C2	50.8%	55.3%
C3	63.1%	67.6%
C4	70.9%	75.4%

Table 4

HHI			
	Pre transaction	Post transaction	Increment
	1,793	1,948	156

Table 5

Number of providers with a share of 1%+		
	Pre transaction	Post transaction
	10	9

What do these numbers mean?

Our summary of the meaning of these numbers is as follows:

- a) The share of news consumption controlled by News Corporation rises to 21.6% in our analysis, behind the BBC but almost twice as much as the next most important news provider (DGMT). The 21.6% figure would breach the 20% threshold of the Legge Gasparri in Italy (**which refers to all media, not just news consumption. If we were measuring shares of revenue going into media, the breach would be very much clearer**). The proposed transaction would therefore, we believe, not be allowed under Italy's cross-media ownership rules.
- b) Under our analysis, if cross-media total news consumption the concentration ratios are high and rise by a significant amount as a result of the proposed merger.
- c) The number of players of greater than 1% significance falls to only 9.
- d) The HHI rises by 156 to almost 2,000, a measure of high concentration. In this note we are assessing plurality and not competition. Nevertheless it is notable that an increment of this size to an already high HHI would indicate severe competition issues in many markets. The point is this:

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'plurality' was introduced into the Communications Act because competition law was not thought to be strict enough to protect consumers and citizens but *even on a standard competition measure*, this transaction would create concern. (Please see Appendix 3 for analysis of the meaning of HHI numbers in the views of the UK and US competition authorities.)

Our figures are based on analysis of national audiences. If we examined the position in specific UK audiences, such as males aged 18-34, we would find increased or decreased levels of dominance. The previous Competition Commission and Ofcom investigations noted the increased penetration of News Corporation and BSkyB offerings among, for example, people in the C2DE demographic group. This will probably still be true today and we believe that Ofcom may appropriately conduct investigation of the level of plurality not just among the UK population but also in individual demographics.

Section 4

The current scale of News International's role in newspapers and likely future changes and similar figures for BSkyB's importance in TV

We forecast News Corporation's UK newspapers market share rising from about 37.3% of UK national press circulation in 2009 to about 41.1% in 2015. This alone would increase the merged company's share of all news consumption across media from about 22% to well over 23%.

Our projections suggest that BSkyB's customer base will continue to grow strongly. Furthermore, as the number of homes (and all television sets within those homes) continue to move to digital services, Sky News' share of news viewing is likely to increase.

Taken together, we believe that by 2015, News Corporation's share of total consumption of *news* across all media could be about 25% or more.

In the previous section, we established that the proposed transaction would be impossible under Italian law. In Germany, the KEK method of analysis is to take shares of *revenue* in the cross-media markets, with 30% being the crucial boundary. By 2015, if current trends continue, the BSkyB share of TV revenues would probably be 40% or more. News Corporation's share of UK newspaper revenues would also likely be over 40%. These segments of the cross-media market are by far the most financially important, meaning that News Corporation's overall share is likely to be well above the KEK 30% line in 2010 and certainly so by 2015. This would mean that, under German practice, the transaction would not be permitted.

Section 5

The prospects of further future loss of plurality and diversity in news provision

In this section we identify five ways in which the proposed merger may result in *future loss of plurality*. These issues are all separate and additional to the immediate loss created by the combination of the two companies.

- 1) The deep interconnectedness of UK media means that News Corporation can influence the future course of all other media companies.
- 2) News Corporation's relative financial strength.
- 3) No guarantee of the continued role of ITN.
- 4) BSkyB's growing share of the total media market could lead to the ability to request its TV advertising customers to direct a portion of their spending towards News International newspapers, at the expense of other media.
- 5) Similarly, BSkyB may be able to disadvantage non-News Corporation newspapers by bundling its associated papers, either in paper or electronic form, into an offer to TV customers.

The current rules on plurality were introduced as part of the 2003 Communications Act. Prior to this date, the competition regulators were allowed to make judgments on the extent to which a merger of newspapers might reduce plurality. The most recent of these cases was the 1999 investigation of transactions involving Trinity plc/Mirror Group and Regional Independent Media Holdings.¹³ In the assessment of the proposed merger, the Competition Commission looked at the longer run impact on plurality. In particular, it examined the effect of the merger on the prospects for news diversity in Northern Ireland, concluding inter alia that the merger would affect the long-run viability of a Unionist newspaper and would thus be against the public interest. (Paragraph 2.101)

The 2004 guidance from the DTI on the conduct of a plurality investigation under the Enterprise Act 2002 says that 'the Secretary of State expects there to be considerable continuity in the substantive assessment of public interest issues'. That is, consideration of potential losses in plurality carried out under the previous legislative regime can be used as a model for investigations under the 2002 Enterprise Act (Paragraph 2.5).¹⁴ We believe therefore that Ofcom could reasonably look beyond the immediate impact of the proposed takeover of BSkyB and consider the long-term effects of the transaction on plurality.

Deep interconnectedness of UK media

The British media landscape is dominated by a small number of firms. We concluded earlier that across TV, newspapers, radio, online and news magazines, only 9 companies would have a more than 1% share of news provision. Just the BBC and News Corporation entities combined would have 56% share, if the proposed merger were consummated.

¹³ Available from the Competition Commission at http://www.competition-commission.org.uk/rep_pub/reports/1999/431trinity.htm#full

¹⁴ Department of Trade and Industry, *Guidance on the operation of the public interest merger provisions relating to newspaper and other media mergers*, May 2004.

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Assessed in terms of an economic market, this position would be termed 'concentrated' or 'highly concentrated' in the technical language of the American and British competition authorities.¹⁵ If this merger were being studied by these authorities this would mean that it would be given close scrutiny. However, we also need to consider factors that may make the real position even less diverse than it might appear. In standard competition analysis, the factors listed below would make the industry more likely to suffer from what are called 'co-ordinated effects', the tendency for the participants in a market to work together rather than to compete actively. Competitors may know their interests are best served by not aggressively seeking to win business from other news providers.

- The industry shares some of its production facilities. For example, the Telegraph newspapers are printed on News International presses and The Independent operates from DGMT premises.
- BSkyB runs the satellite platform on which other companies provide free and pay television services. It controls the encryption system through which all subscription channels must go.
- According to Advertising Association data, BSkyB is the fourth largest advertiser in the UK, spending about £40m in 2008. BSkyB is thus a major advertiser in the newspapers of other groups. We are told, for example, that Sky is the single largest advertiser in the newspapers of the DGMT group.
- All national newspapers are distributed through the same oligopolistic physical distribution system.
- Entry into large-scale news provision is highly unlikely, particularly in radio and TV. This means that implicit collusion between providers is less susceptible to the discipline of the threat of entry into the market.

These characteristics of the news market make co-ordinated effects more likely. For any level of ostensible plurality, the degree of genuine diversity will be lower in a market like this with such strong links between the firms.

News Corporation has far greater financial strength than other companies in the news market.

In section 4 we showed that BSkyB has substantial greater turnover than other major companies in the TV market and that this disparity is tending to widen. BSkyB's turnover in 2009 was just under £6bn. By comparison, the next largest company in the provision of UK news (DMGT) had worldwide turnover of just over £2bn in the last financial year across all its worldwide businesses. The difference in turnover between these companies was thus even greater than the difference in their share of news provision.

We suggest that the influence of BSkyB over the media scene is thus even greater than its share of news provision. Its ability to influence the evolution of the wider media market affects the prospective degree of plurality in the offerings of news and comment.

No guarantee of the continued role of ITN

We believe that ITN has a contract to provide its news services to ITV until 2012 but has no guarantee of retaining the business after that date. In the past, BSkyB

¹⁵ The US competition authorities suggest an HHi of over 1,800 is 'highly concentrated'.

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has offered to become ITV's news provider and may decide to bid for the post-2012 business. If successful in replacing ITN, ITN will, we suggest, be likely to withdraw from the business of offering live TV news. Its other major customer, Channel 4, would not be able to provide sufficient business to warrant the continuation of the company and would also be forced to switch news supplier.

Should this sequence of events take place, the UK would be left with two large-scale providers of video news, the BBC and BSkyB. This would mirror the duopoly in radio news, meaning that all broadcast news provision would be in the hands of just two companies. If this happened News Corporation would control almost 40% of the newspaper market and be one of two participants in the other major news medium.

Conditional selling of TV advertising space dependent on also advertising in News Corporation's newspapers.

The increasing size and influence of BSkyB now means that the company may choose to sell advertising in ways that affect the viability of non-News Corporation newspapers. For example, premium sports brands, such as football boot manufacturers, may advertise on BSkyB's sports channels but be required to also take space in the Sun or the Times as a condition of obtaining the best placements during football matches. The effect of this may be to divert advertising away from other newspaper groups, threatening their long-run viability. At present, any conditional selling of advertising space would have to be in the interest of all BSkyB shareholders, not just News Corporation. This is unlikely to be the case, and BSkyB own internal rules, discussed in Section 2, would prevent this happening at present.

Bundling of newspapers with Sky subscriptions

BSkyB could launch a tablet computer device or bundle print or digital news provision from News International within its monthly subscription packages. By potentially locking out other newspapers, or by ensuring that the cost of their product is far higher to customers, BSkyB could adversely affect the finances of other newspapers.

In the future world of 'converged devices', companies with substantial presence in both video, radio and print news activities may be able to leverage their strength, affecting the survival chances of other media.

BSkyB's merger with News Corporation's newspapers would create an entity with a market share of over 30% in the commercial (non-BBC) market for news and comment. Many of the impacts of this may not be felt immediately. Ofcom may reasonably choose to look at the longer-run impact on plurality arising from the financial and operational power of the merged company. It might also take into account the limited powers available to regulators for controlling future losses of plurality as a consequence of this transaction.

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Appendix 1

List of dictionaries consulted and their definitions for *plurality*

(Provided with Professor Charlotte Brewer's report on the meaning of the work plurality)

Dictionaries in Part A were selected on grounds of wide current availability: they comprise the dictionaries of contemporary English immediately available to me, and all those I could find in Blackwells bookshop and the Oxford University Press bookshop in Oxford.

Relevant definition/explanatory material is in bold font. Comments by Charlotte Brewer are inserted within square brackets

Part A: Dictionaries of contemporary English published over the last few decades, aimed at general audience of native speakers.¹⁶

OXFORD UNIVERSITY PRESS DICTIONARIES

1. **Oxford Dictionaries (Online resource:**
http://oxforddictionaries.com/view/entry/m_en_gbo641560#m_en_gbo641560, accessed 12 November 2010):

plurality: noun (plural pluralities)

- 1 [mass noun] the fact or state of being plural: *some languages add an extra syllable to mark plurality*
 - [in singular] **a large number of people or things: a plurality of critical approaches**
 - 2 US the number of votes cast for a candidate who receives more than any other but does not receive an absolute majority
 - the number by which plurality exceeds the number of votes cast for the candidate placed second
 - 3 *chiefly historical* another term for *pluralism* sense 2 [i.e. holding of more than one ecclesiastical benefice]
2. **Concise Oxford Dictionary (COD) 4th edn** (1951, quoted from 1960 impression)
 - 'State of being plural; **large number, multitude**; holding of two or more benefices or offices; benefice, office, held with another; majority (*of* votes etc).'
 3. **COD 5th edition** (1964; quoted from 1975 impression): same as 4th edition
 4. **COD 6th edition** (1976, quoted from tenth impression 1980)
 - 'State of being plural; **large number, multitude**; holding of two or more benefices or offices; benefice or office held with another; majority (*of* votes etc.); *majority over each other candidate etc. but not over all together.'
 5. **COD 7th edition** (1982, quoted from the first impression): same as 7th edition
 6. **COD 8th edition** (1990, quoted from first impression)

¹⁶ Apart from no. 16, which appears to be aimed at advanced non-native as well as native speakers

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'1. the state of being plural. 2 = PLURALISM 1. ["holding more than one office, esp. an ecclesiastical office or benefice, at a time"] 3. **a large or the greater number**. 4. *US* a majority that is not absolute.'

7. *COD* 11th edition, revised. 2008 reprinted 2009
 1. the fact or state of being plural
 2. **a large number of people or things**
 3. [US voting sense]
 4. [ecclesiastical sense]
8. *New Oxford Dictionary of English*, 1st edition, 1998
 1. [mass noun] the fact or state of being plural: *some languages add an extra symbol to mark plurality*.
[in singular] **a large number of people or things**: *a plurality of critical approaches*.
 2. *US* the number of votes...
 3. *chiefly historical* [ecclesiastical benefice sense]
9. *Oxford Dictionary of English* 2nd edition (revised edition of *New Ox. Dict of E*, above), 2005: same as first edition
10. *Oxford Dictionary of English*, 3rd edition (revised edition of *Ox. Dict of E*, above), 2010: same as first edition
11. *Pocket Oxford Dictionary*, 10th edition 2005 (impression 8)
 - 1) the state of being plural or more than one
 - 2) **a large number of people or things**
12. *Compact Oxford English Dictionary for Students*, 2006; same as *Pocket Oxford Dictionary* 2005, above
13. *Oxford Dictionary and Thesaurus*, 2nd edition 2007
 - 1) the state of being plural or more than one
 - 2) **a large number of people or things**

[NB this dictionary gives synonyms for plurality as follows: '(wide) **variety** [bold type in original], diversity, range, multitude, multiplicity, wealth, profusion, abundance, plethora, host. *Informal*: load, stack, heap, mass'

LONGMAN DICTIONARIES

14. *Longman Dictionary of the English Language*, (1984, first edition)
 - 1a the state of being plural or numerous; **a large number of quantity; a multitude** 2 PLURALISM 2 ['holding of two or more offices...']; *also* a benefice held by pluralism 3 *chiefly N Am* 3a an excess of votes...
15. *Longman Dictionary of Contemporary English*, 1987 edition
 - '1 [Uncountable] *formal* (in grammar) the state of being plural 2 [Singular (of) *tech, esp. AmE* the largest number of votes in an election, esp. when less than a MAJORITY

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16. *Longman Dictionary of Contemporary English* for advanced learners (fifth edition 2009, quoted from 2nd impression 2009)
1 [countable usually singular] a large number of different things. ...2
 [Countable and uncountable] *especially AME technical* if one person or party receives a plurality in an election... **3 [uncountable] technical** when a noun is plural.

COLLINS DICTIONARIES

17. *Collins Cobuild* 1st edn 1987
1. A plurality of things is the existence of more than one of them. E.g. *It is necessary to acknowledge a plurality of aims... ...the plurality of belief systems in modern society*

[NB: RIGHT HAND COLUMN gives **multiplicity** as a synonym for this sense, marking it with an equal sign (see p. xi, 13.8: 'The symbol = indicates that the following word is a synonym, and so is very similar in meaning to the entry word or use and can often be used instead of it')]

2. If a person or party has a **plurality** in an elect, they have more votes than any other individual or party, but not more than the total votes received by all the other people or parties...

18. *Collins English Dictionary* (Fourth edition, quoted from reprint of 1998)
1. The state of being plural or numerous. 2. Maths. a number greater than one. **3.** The US and Canadian term for **relative majority**. **4.** a large number. **5.** the greater number, majority. **6.** another word for pluralism (sense 1 [i.e. ecclesiastical benefice sense].
19. *Collins English Dictionary* (9th edition, 2007)
 1) the state of being plural or numerous
 2) *maths* a number greater than one
 3) *US & Canadian* [voting sense]
4) a large number
 5) the greater number; majority
 6) [ecclesiastical sense]
20. *Collins Dictionary of the English Language* (1st edition, 2010)
 1) the state of being plural
 2) *maths* a number greater than one
3) a large number
 4) a majority

CHAMBERS DICTIONARIES

21. *Chamber 20th Century Dictionary*, New Edition 1983
 [treated under head word **plural**]:
 the state or fact of being plural: **numerousness**: a plural number: the greater number, more than half: [US and ecclesiastical senses]
22. *The Chambers Compact Dictionary*, 2005
 1) the state or condition of being plural

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- 2) [ecclesiastical sense]
- 3) **a large number or variety**

23. **The Chambers Dictionary**, 11th edition, 2008 (repr, 2009, 2010)
[treated under head word **pluralism**]:
the state or fact of being plural; **numerousness**; a plural number; the greater number, more than half: [US and ecclesiastical senses]

SECTION B: HISTORICAL DICTIONARIES OF ENGLISH

24. **Shorter Oxford English Dictionary Third Edition 1973; quoted from 1987 impression**

11. The state of being plural, or denoting, comprising, or consisting of more than one. **b**. The fact of there being many; numerousness; hence, a large number or quantity; a multitude. **2** [ecclesiastical sense].

II. Related in sense to L[atin] *plus* more. **2** = MAJORITY sense 3. **2**. [US politics].

25. **Shorter Oxford English Dictionary Sixth Edition 2007**

11 The state or fact of being plural. LME [= evidenced since Late Middle English] **b** The fact of there being many; numerousness; a large number or quantity; a multitude. LME

2. [ecclesiastical sense] LME

II3 The greater number or part...L16

4 A political majority which is not absolute. *US*. L18.

26. **Oxford English Dictionary** (entire dictionary originally published 1884-1928; this entry published 1907. Reprinted without change in 2nd edition 1989)

I. Related in sense to *pl*.

1. The state of being plural; the fact or condition of denoting, comprising, or consisting of more than one.

1398TREVISA Barth. *De P.R.* XVIII. xxxii. (MS. Bodl.), Pluralite of hornes folow
1563Homilies II. *Of Cert. Places of Script.* I. (1859) 374 The plurality of wives was by a special prerogative suffered to the fathers of the Old Testament. **1624**GATAKER *Transsubst.* 183 To shew how in one nature there may be a plurality of persons. **1727-41**CHAMBERS *Cycl.* s.v., A plurality of worlds is a thing which Mr. Huygens has endeavoured to prove in his *Cosmotheoros*. **1781**GIBBON *Decl. & F.* xviii. II. 103 Many of the Armenian nobles still refused to abandon the plurality of their gods and of their wives. **1869**H. F. TOZER *Highl. Turkey* I. 27 The..question of the unity or plurality of authorship of the poem. **1898**J. R. ILLINGWORTH *Divine Immanence* (1904) vii. 86/2 The fact that there is plurality, triune plurality in God.

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b. The fact of there being many; numerousness; hence, a large number or quantity; a multitude.

1432-50 tr. Higden (Rolls) l. 27, I have studiede that hit schal be called *Policronicon* of the pluralite of tymes whom it dothe conteyne.

1533 BELLENDEN *Livy* l. Prol. (S.T.S.) l. 7 In sic pluralite of writaris my fame is obscure and of litill estimatioun. **1535** STEWART *Cron. Scot.* ll. 445 Pluralitie of meit and drink siclike, Forbiddin wes bayth for puir and ryke. **1609** B.

JONSON *Sil. Wom.* IV. iii, Doe you count it lawfull to haue such pluralitie of seruants? **1664** POWER *Exp. Philos.* l. 37 Through a good Microscope, he may easily see..variety in the plurality, paucity, and anomalous Situation of eyes.

1859 MILL *Liberty* iii. (1865) 42/2 Europe is, in my judgment, wholly indebted to this plurality of paths for its progressive and many-sided development.

1866 ROGERS *Agric. & Prices* l. xx. 512 The money-chest was also secured by a plurality of locks.

[definitions relating to ecclesiastical benefices, majority, voting etc follow]

27. **Oxford English Dictionary Third Edition** 2000 onwards (available only to subscribers at www.oed.com). This entry dated June 2010.

1. a. The state of being plural; the fact or condition of denoting, comprising, or consisting of more than one; (also) an instance of this. Also: the fact of there being many or much; numerousness, plentifulness.

1398 J. TREVISA tr. Bartholomaeus Anglicus *De Proprietatibus Rerum* (BL Add.) f. 118v, Plyades ben seuene sterris, and hauen at name of..pluralite, for ey beo many. **1425** tr. Guy de Chauliac *Grande Chirurgie* (N.Y. Acad. Med.) f. 151, e byr is made hard for pluralite of birez [?**1425** *Paris* for many children]. **1475** (?**1425**) tr. R. Higden *Polychron.* (Harl.) (1865) l. 27, I have studiede that hit schal be called *Policronicon* of the pluralite of tymes whom it dothe conteyne. **1500** (1413) *Pilgrimage of Soul* (Egerton) V. ii. f. 90v, So wold he than, be distribucion of many hundred yeres suyng be succession..schewe the pluralite of worlde. **1533** J. BELLENDEN tr. Livy *Hist. Rome* (1901) l. l. Prol. 7 In sic pluralite of writaris my fame is obscure and of litill estimatioun. **1563** 2nd *Tome Homelyes* Cert. Places Holy Script. l, in J. Griffiths *Two Bks. Homilies* (1859) ll. 374 The plurality of wives was by a special prerogative suffered to the fathers of the Old Testament. **1616** B. JONSON *Epiocoene* IV. iii. 31 in *Wks.* l, Doe you count it lawfull to haue such pluralitie of seruants? **1624** T. GATAKER *Discuss. Transubstant.* 183 To shew how in one nature there may be a plurality of persons. **1659** J. PEARSON *Expos. Creed* ll. 271 The plurality of the verb, and the neutrality of the noun,..speak a perfect identity of their essence. **1728** E. CHAMBERS *Cycl.* (at cited word), A Plurality of Worlds is a thing which Mr. Huygens has endeavoured to prove in his *Cosmotheoros*. **1781** GIBBON *Decline & Fall* ll. xviii. 103 Many of the Armenian nobles still refused to abandon the plurality of their gods and of their wives. **1834** S. T. COLERIDGE *Specimens of Table Talk* (1835) ll. 61 It is very natural to have a dual, duality being a conception quite distinct from plurality. **1898** J. R. ILLINGWORTH *Divine Immanence* (1904) vii. 86/2 The fact that there is plurality, triune plurality in God. **1932** *Mod. Lang. Notes* 47 320 The first important association of the heliocentric hypothesis with the theory of a plurality of inhabited worlds seems to have been made by Giordano Bruno. **1991** S. WOOLF *Napoleon's Integration of Europe* ii. 48 The very plurality of sources of power under the Directory..sometimes offered the possibility to local patriots to transform

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provisional administrations into new republics.

b. A large number or quantity *of*; a multitude, a profusion.

1657 E. CALAMY *Evid. for Heaven* 160 The Position of the Apostle, is confirmed by a plurality of witnesses. **1701** T. D'URFEY *BathV.* i. 46 It may be so where she is singly imploy'd, and where there are a plurality of Lovers. **1784** E. ALLEN *Reason* viii. §1. 286 There will be an uncertain plurality 'of last days', which must be understood to be short of a month, or a year. **1839** DICKENS *Nicholas Nickleby* ix. 75 Mrs Squeers, when excited, was accustomed..to make use of a plurality of epithets. **1866** J. E. T. ROGERS *Hist. Agric. & Prices* l. xx. 512 The money-chest was also secured by a plurality of locks. **1931** *Official Gaz.* (U.S. Patent Office) 1 Dec. 270/2 Covering a plurality of laminations of the impregnated wood with a surface coating of powdered phenolic resin. **1994** *Lay Witness* Nov.-Dec. 3/2 Setting a table with a plurality of china, crystal, cutlery, and napery cannot be accomplished unless there is a table in the first place.

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Appendix 2: methodology and sources for share of news consumption

We calculated the number of minutes of news consumption per adult per day. Our overall aim was to estimate the total number of minutes spent consuming national news via five main news sources (TV, newspapers, radio, online, and news magazines) in the UK and then dividing it by the number of adults (about 51m) to get to a figure for news viewing per person. This could then be split into the minutes for each major provider group (such as the BBC or Daily Mail and General Trust).

Details of the sources for each estimate are as follows:

Newspapers

We acquired data from the NRS for time spent reading and ABC for newspaper circulation. We received data for the national dailies as well as those papers published outside London but whose content includes substantial national – as opposed to regional – news. The data supplied relates to the year July 2009 to June 2010. The base is all individuals aged 15 and over.

Radio

We started off with September 2010 listening data from RAJAR. We calculated the share of listening to BBC compared with commercial radio. We assume that news accounts for an average of 3 minutes an hour on commercial radio stations and on BBC Radios 1,2,3 and local radio while Radio 4 has 16 minutes an hour. BBC Local radio carries a large amount of regional news, which we have not included because our focus is national and international news. RAJAR defines adults as all aged 15 and over.

Online

We looked at data from Nielsen and ComScore. The ComScore data threw up some obvious problems – such as the BBC News website having the same audience as the Independent site – so we decided to use the Nielsen data. The numbers are for 15 year olds and over.

TV

To get the figures we conducted two runs on BARB. The first run looked at the dedicated news channels on the multichannel platforms, BBC News, Sky News, Euronews etc. The second run looked at programmes on the five main PSB channels that fell into the 'News' category, as defined by BARB. The data used is for September 2010 and includes all viewers 16 and over.

News magazines

For completeness, we included news magazines such as Private Eye, The Week and the Economist. The information was from NRS. We did not find an estimate of the time spent reading each magazine but assumed an average of 60 minutes per copy.

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Appendix 3: the views of competition authorities on HHI levels

In section 3 we state our view that the plurality clauses of the Enterprise Act 2002, as amended by the Communications Act 2003, were intended to create stronger protection against mergers than mainstream competition law. The 'Puttnam amendment' may thus have the consequence that transactions, which did not meet the threshold for blocking or amending on competition grounds, might nevertheless be caught by the plurality provisions in order to maintain the multiplicity or numerousness of providers of news and comment. We estimate in section 3 that the proposed transaction raises the HHI in the provision of news in terms of audience minutes by 156 to a level of almost 2,000. Below, we quote text from the merger guidelines of the US antitrust authorities (the Department of Justice and the Federal Trade Commission) and the recently amended guidelines on mergers prepared by the UK's Office of Fair Trading and Competition Commission.

Our view is that the proposed News Corporation and BSkyB transaction not only raises plurality concerns in the offering of news and comment to UK citizens but may also meet the tougher tests for detailed competition investigation, particularly under US practice but probably also under UK guidelines. Ofcom could very well choose to use HHI evidence to report to the Secretary of State that a second phase plurality investigation is warranted simply on this basis alone.

One response to our comments might be this: 'if the HHI for news does indicate a potential competition problem, then the issue is properly assessed by the competition authorities through the normal competition assessment process.' However, the competition assessment process deals with strictly *economic* markets. 'News' per se is not a conventional or simple economic market and there are thus reasons for it to be investigated under the plurality clause of the Enterprise Act, and not purely the competition route.

- a) US Department of Justice, Federal Trade Commission, Horizontal Merger Guidelines

http://www.justice.gov/atr/public/guidelines/horiz_book/hmg1.html

c) Post-Merger HHI Above 1800. The Agency regards markets in this region to be highly concentrated. Mergers producing an increase in the HHI of less than 50 points, even in highly concentrated markets post-merger, are unlikely to have adverse competitive consequences and ordinarily require no further analysis. Mergers producing an increase in the HHI of more than 50 points in highly concentrated markets post-merger potentially raise significant competitive concerns, depending on the factors set forth in Sections 2-5 of the Guidelines. Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise.

Merger Assessment Guidelines, a joint publication of the Competition Commission and the Office of Fair Trading. (Final revision of September 2010)

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http://www.competition-commission.org.uk/about_us/our_organisation/workstreams/analysis/pdf/100916_merger_assessment_guidelines.pdf

As regards the HHI, the OFT may have regard to the following thresholds any market with a post-merger HHI exceeding 1,000 may be regarded as concentrated and any market with a post-merger HHI exceeding 2,000 as highly concentrated. In a concentrated market, a horizontal merger generating a delta of less than 250 is not likely to give cause for concern. In a highly concentrated market, a horizontal merger generating a delta of less than 150 is not likely to give cause for concern. These thresholds may be most informative for mergers in a market where the product is undifferentiated and where competition between firms involves firms choosing what volume to supply to the market. In other cases the significance of these thresholds will be less.

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