



Report on public  
interest test on the proposed  
acquisition of British Sky  
Broadcasting Group plc by  
News  
Corporation

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31 December 2010

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## Section 1

# Summary

## Introduction

- 1.1 On 3 November 2010 News Corporation (“News Corp”) notified the European Commission of its intention to acquire the shares in British Sky Broadcasting Group plc (“Sky”) it does not already own (throughout the report we refer to this as the “proposed acquisition” or “the transaction”). This would increase its holding from approximately 39.1% to 100%.
- 1.2 On 4 November the Secretary of State for Business, Innovation and Skills issued a European intervention notice in relation to the proposed acquisition. The notice specified the public interest consideration in section 58 of the Enterprise Act 2002 (‘the Act’) concerned with the sufficiency of plurality of persons with control of media enterprises. This is:
- “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”.<sup>1</sup>*
- 1.3 He asked Ofcom to investigate and to report to him by 31 December 2010 providing advice and recommendations on the specified public interest consideration, which may be relevant to the Secretary of State’s decision on whether to refer the case to the Competition Commission.
- 1.4 It is not Ofcom’s role to advise on whether concerns are conclusively established but rather to advise on whether there may be concerns such that a fuller second stage investigation is warranted. In our advisory role undertaking a first stage assessment within 40 working days, the threshold to be reached for Ofcom to advise the Secretary of State that the proposed acquisition may warrant fuller consideration by the Competition Commission is fairly low. *Ofcom needs to hold a reasonable belief, on the basis of the evidence available, that the proposed acquisition may operate or be expected to operate against the public interest<sup>2</sup>.*
- 1.5 In fulfilling this role, we have had particular regard to the significance attached by Parliament to media plurality to the functioning of a healthy and informed democracy. The relevant Government minister said in 2003 that *“[media] plurality is important for a healthy and informed democratic society. The underlying principle is that it would be dangerous for any person to control too much of the media because of his or her ability to influence opinions and set the political agenda”.<sup>3</sup>*
- 1.6 We have undertaken our own analysis and new primary research and taken into account submissions received from a range of stakeholders including:
- 20 commercial and professional organisations (including News Corp and Sky);
  - 8 academics and industry observers;

<sup>1</sup> There has only been one previous instance of an intervention notice being issued in relation to this public interest consideration involving Sky’s proposed acquisition of 17.5% of ITV (“Sky/ITV”)

<sup>2</sup> Office of Fair Trading & Ors v IBA Health Ltd [2004] EWCA Civ 142 (19 February 2004)

<sup>3</sup> Lord McIntosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard

- 96 direct submissions from individuals; and
  - 58,600 individuals via two online campaign groups.
- 1.7 We have taken account of the relevant DTI Guidance<sup>4</sup>, the Competition Commission's report on the Sky/ITV case<sup>5</sup>, and the Court of Appeal's judgment in the Sky/ITV case<sup>6</sup>. We have also considered other relevant regulatory provisions, in particular, the impartiality requirements under Ofcom's Broadcasting Code.
- 1.8 It is important to note that whilst a number of parties have suggested to us that the proposed transaction may also raise competition concerns, we are concerned only with the specific public interest consideration referred to us by the Secretary of State in his intervention notice. The effect of the transaction on competition was the subject of a separate investigation by the European Commission that resulted in the proposed acquisition being approved under the EU Merger Regulation<sup>7</sup>.
- 1.9 In light of the potential issues raised by representations made to us, we have looked at the public interest consideration in two ways:
- the 'static' effects of the proposed acquisition – on plurality immediately after the transaction in terms of range and number of persons controlling media enterprises including their ability to influence opinions; and
  - the 'dynamic' effects of the proposed acquisition – issues that may arise over time, within a forward view of how plurality may develop.
- 1.10 In considering plurality and the need for there to be sufficient plurality, we have considered the range and number of persons having control of media enterprises in the context of their ability to influence opinions and control the agenda<sup>8</sup>,
- 1.11 In doing so we have had regard to the Government statement during the debate of the plurality provisions (see paragraph 1.5 above) and the Secretary of State's guidance on the media public interest merger provisions, which states that the public interest consideration *'is concerned primarily with ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons. It would be a concern for any one person to control too much of the media because of their ability to influence opinions and control the agenda. This broadcasting and cross-media public interest consideration, therefore, is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality'*<sup>9</sup>.
- 1.12 Ofcom has a wide discretion in relation to the assessment of sufficient plurality. Following the Court of Appeal decision in Sky/ITV, what is required is "a qualitative assessment of the position resulting, or likely to result", from the proposed

<sup>4</sup> DTI Guidance: the Enterprise Act 2002: Public Interest Intervention in Media Relevant merger situations, May 2004

<sup>5</sup> Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007, ("Competition Commission")

<sup>6</sup> British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform [2010] EWCA Civ 2 ("Court of Appeal")

<sup>7</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1767&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>8</sup> Competition Commission report, paragraph 5.7 and Court of Appeal paragraph 90 on range and number.

<sup>9</sup> DTI Guidance, paragraph 7.7

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acquisition<sup>10</sup>. This is inevitably a matter of judgment, which we have exercised with regard to the considerable importance Parliament has attached to media plurality for the functioning of a healthy and informed democracy.

1.13 News Corp argued to us that plurality has increased since Parliament last legislated in relation to it, the inference being that it must now be more than sufficient such that the proposed transaction (even if it reduces plurality) cannot be said to operate against the public interest. On the other hand, many other respondents have argued that plurality is already insufficient and that the proposed transaction would exacerbate the problem<sup>11</sup>.

1.14 When examining the effects of the proposed transaction on the sufficiency of plurality of persons in control of the media, we adopt the same approach taken by the Competition<sup>X</sup> Commission in the Sky/ITV case:

*“Whilst recognising that it would not be sufficient for plurality purposes to rely on a single provider (for example, the BBC), we do not consider it necessary to take a view on precisely how many owners would constitute a ‘sufficient’ level of plurality of persons. Rather, we have looked qualitatively at sufficiency. We have considered sufficiency by reference to the current levels of plurality, having regard to any change in plurality that arises as a result of the acquisition.”<sup>12</sup>*

## Relevant audiences

1.15 We have defined the relevant audiences as United Kingdom audiences for cross-media news and current affairs including TV, radio, newspapers and the internet. This is because:

- *News and current affairs* – news was the main focus of the majority of representations. In addition, consumers rank news highest in terms of both personal and social importance<sup>13</sup>. Current affairs also plays an important role in providing consumers with information and analysis and therefore in the development of public opinion. The various media platforms like newspapers are not solely devoted to news and include comment on current affairs.
- *Cross-media* - prior to the transaction News Corp provides news and current affairs in newspapers and online, whilst Sky provides news and current affairs directly on TV and online, and indirectly over radio as a result of wholesale news provision to commercial radio through a contract with IRN. Therefore, other than online, the proposed transaction would not change the number and range or ability to influence *within* each individual platform. The main effect of the transaction is in relation to cross-media audiences.
- *UK-wide audiences* - the two parties mainly provide news and current affairs to a UK-wide audience, with limited provision of news to specific regions or localities.

<sup>10</sup> Court of Appeal, paragraph 87

<sup>11</sup> See for example responses from 38 Degrees, Campaign for Press & Broadcasting Freedom paragraphs 4.1 to 4.3 and 5.1, NUJ pages 3 and 4, Robert Beveridge page 2 and Prof Steven Barnett page 6.

<sup>X</sup> A typographical error contained in the version of this report sent to the Secretary of State on 31 December 2010 has been subsequently corrected here. The original text was: “When examining the effects of the proposed transaction on the sufficiency of plurality of persons in control of the media, we adopt the same approach taken by the Competition and Commission in the Sky/ITV case”

<sup>12</sup> Competition Commission, 2007, paragraph 5.15.

<sup>13</sup> See Figure 4

- *No sub-group audiences* - there are some variations in news consumption among age and socio-economic groups, but we have no substantive evidence suggesting there are specific concerns for sub-group audiences. We do not believe that any particular sub-groups would be more significantly affected than the population as a whole as a result of this proposed acquisition.

### Plurality of persons with control of media enterprises

- 1.16 Ofcom's consideration of plurality takes into account the fact that News Corp already owns approximately 39.1% of Sky. However, the proposed acquisition would give it a 100% ownership of shares in Sky so that Sky would become a wholly owned subsidiary of News Corp. Currently, News Corp's stake in Sky, while representing material influence over Sky, does not enable News Corp to pass general and special resolutions alone given the presence of other shareholders and independent directors.<sup>14</sup>
- 1.17 Full control would allow News Corp to take decisions involving Sky which are in the exclusive commercial interests of News Corp. In light of the fact that the proposed transaction would give News Corp total control of Sky, we consider it would result in a reduction in the number of persons with control of media enterprises and that Sky would cease to be a distinct media enterprise.
- 1.18 In addition, we also consider the number and range of views across different media enterprises in the context of their ability to influence, and the range of views *within* media enterprises.
- 1.19 This is the approach adopted by the Competition Commission in Sky/ITV where it termed the former external plurality and the latter internal plurality, although in that case the Competition Commission was considering a situation involving Sky's acquisition of 17.9% shareholding in ITV as compared to 100% in this case.<sup>15</sup>

### External plurality

- 1.20 Representations have been made to us that after the proposed transaction there would be sufficient plurality by reference to the total number and range of media enterprises available. However, as set out in paragraphs 1.10 and 1.11, we consider that in assessing sufficient plurality we should look not simply at the number and range of media enterprises, but also at their relative ability to influence and inform public opinion.
- 1.21 We have looked at ability to influence and inform opinion by reference to a number of factors since there is no single standard industry measure which can be used consistently across-media platforms. These are:
- *Audience share and reach within individual platforms*<sup>16</sup>. Where possible, we have used recognised industry measures for each media platform to assess the current situation and the potential effect of the proposed transaction.

<sup>14</sup> In Sky/ITV, we assumed that News Corp's 39% shareholding gave it a level of control over Sky for the purposes of including newspapers in our assessment, but we did not have to consider in that context the question of News Corp having full control of Sky.

<sup>15</sup> Competition Commission report, paragraph 5.11

<sup>16</sup> Audience share is the percentage of total consumption accounted for by a specific news provider. Audience reach is the percentage of the total audience which is exposed to a specific news provider

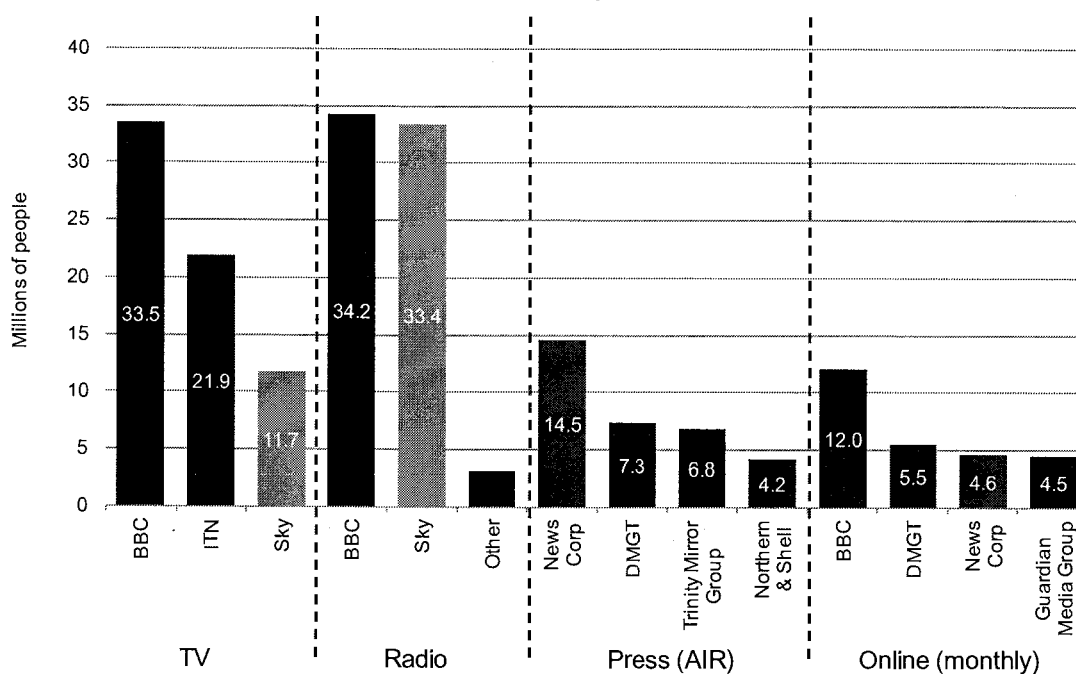
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- *Analysis of consumers' consumption of news* - based on minutes of use by a typical consumer in a day.
- *Primary research on consumers' claimed use of different media*. This new market research provides us with the only available measure to compare the use and reach of different news sources across different media, something which is of particular importance in light of our identification of relevant audiences as cross-media audiences<sup>17</sup>.

1.22 In considering the effect of the proposed acquisition on the relative positions of News Corp and Sky within individual platforms, we have looked both at their audience share and reach.

1.23 Comparison of either audience share or reach across platforms is not simple given the different ways this information is collected. However, a comparison of reach is helpful in understanding how many consumers may obtain news from News Corp or Sky news content today. We have looked at this measure both on a wholesale and retail basis<sup>18</sup>. The reach of News Corp and Sky cannot be added together following the proposed transaction as there will be an overlap among consumers who already use both News Corp and Sky content<sup>19</sup>.

**Figure 1: Reach across platform (millions of people) at wholesale level**



Source: TV: October 2010, BARB, All Adults (16+), Radio: Q3 2010, RAJAR, All Adults (16+), Press: Kantar Media/NRS, all adults (16+), Online: October 2010, Nielsen / UKOM, all 2+. See footnote 84 for source details. Methodologies for data collection differ by industry. Note, radio reach is for all radio listening, not radio news listening as RAJAR does not provide genre breakdowns.

<sup>17</sup> This cross-platform metric is a 'share of references', derived by determining which media outlets, titles or channels consumers refer to when asked about their news and current affairs providers across media platforms. See footnotes 54 and 55 and Annex 1 for more details

<sup>18</sup> For retail, see Figure 16

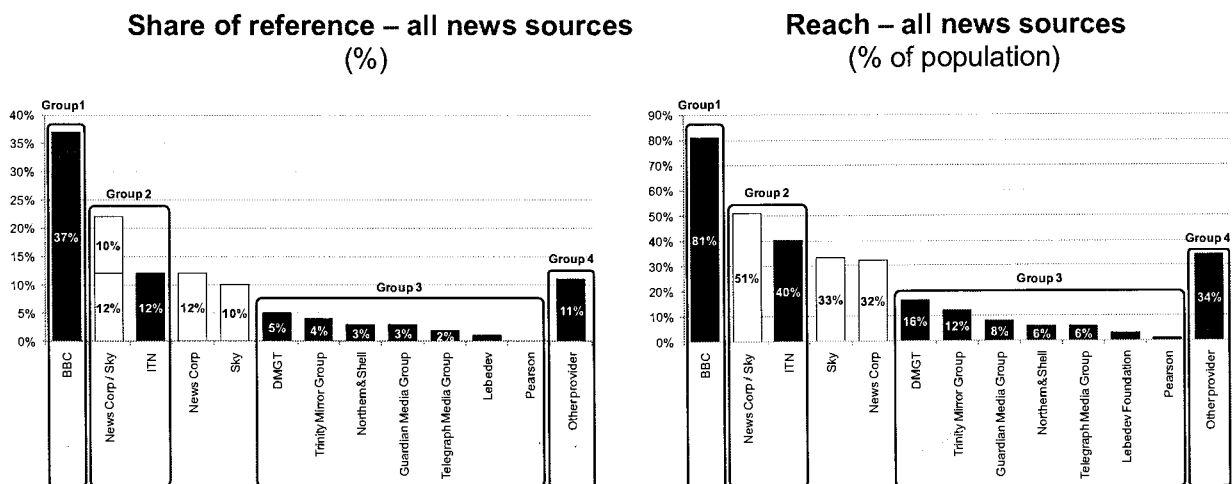
<sup>19</sup> For more details, see paragraphs 4.11 to 4.38



- 1.24 Following representations made to us, we have also reviewed the effect of the proposed acquisition in terms of minutes of use of news media across platforms.
- 1.25 This suggests that the proposed acquisition would see News Corp consolidate its second place in terms of news consumption (rising from 14% to 24% including wholesale news provision). This compares to the BBC, which has news consumption of 44% of minutes and DMGT which is third with 9%. This approach provides a useful overview of cross-media news usage from a consumers' perspective. Whilst this assessment is an improvement on a straightforward analysis of availability, it is still limited; it does not take into account the varying ability of different media to influence opinion. This is set out in 5.24 to 5.32.
- 1.26 The results of Ofcom's new market research are summarised below. This research is based on a measure which takes into account the differential ability of alternative media and media organisations to influence opinion as it shows consumers' views of their main sources and all regular sources of news on a cross-media basis.
- 1.27 The data reproduced at Figure 2 relates to the wholesale provision of news, so it takes account for example of the provision of TV news by ITN to C4 and by Sky to Five.

**Figure 2 - Effect of the proposed acquisition on news provision to audiences and ability to influence based on wholesale news provision**

Percentage of regular news and current affairs consumers - 96% of GB population



Source: Ofcom, cross-media audience research, 2010<sup>20</sup>. Represents 96% of the GB (excludes Northern Ireland) adult population aged 16+. See Annex 1 for details

- 1.28 This data suggests that providers of news and current affairs across-media platforms can be divided into four broad groups based on their relative share of references by consumers<sup>21</sup>:

- The BBC has the largest share, representing 37% of the total references.

<sup>20</sup> Share of all sources of news and current affairs used regularly (i.e. at least once a week) by adults in GB, by wholesale news provider.

<sup>21</sup> See paragraph 4.43 onwards for full details

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- ITN (providing news via ITV and Channel 4), News Corp and Sky news currently constitute a second group of providers. Prior to the transaction each of these has a share of references of around 10%. It is noteworthy that, since its launch, Sky has built its presence in retail and wholesale news provision.
  - A third group, made up mainly of the other physical and online newspaper providers have shares ranging from 5% to 1% of references. These include DMGT, Trinity Mirror Group and the Guardian Media Group.
  - Finally, a large number and range of other providers represent a further 11% share in total, but individually, they have a small share of references
- 1.29 A similar story is apparent for the *reach* of different news providers – the number of individuals who use each news provider at least once a week.
- 1.30 In terms of reach, the BBC (in the form of TV, online or radio) is used by 81% of UK adults at least once a week. This compares to 40% for ITN, 33% for Sky News and 32% for News Corp. The next largest provider in terms of reach is DMGT with 16% of adults using it as a news provider at least once per week<sup>22</sup>.
- 1.31 The reason why the BBC, ITN and Sky feature so prominently in this data is because of the continuing importance of TV news as a means of influencing opinion. This also accounts for the relatively high share of reference attributed to Sky News despite its relatively small share of the total television news audience. The reason for the prominence of News Corp is its strong position in newspapers, which makes it the only non-TV media enterprise with a similar level of influence to the major providers of TV news.
- 1.32 The effect of the proposed acquisition is to bring together one of the three main providers of TV news with the largest provider of newspapers. The effect on the relevant share of references and reach is indicated by our market research. In relation to the provision of wholesale news:
- The proposed transaction would result in Sky ceasing to be a distinct media enterprise, reducing the number of Group 2 providers from three to two in both share and reach terms. This is particularly marked in wholesale news provision.
  - The proposed transaction would be a combination of the second and fourth largest providers based on our research into share of all references for news providers. For example, News Corp's potential ability to influence would increase with the addition of Sky News, increasing its share of references from 12% to 22%. News Corp's reach as a percentage of regular news consumers would increase from 32% to 51%.
  - This does not suggest News Corp moves from Group 2 to Group 1<sup>x</sup> in our charts: it would not be of the same scale as the BBC in share or reach terms after the proposed transaction. However, it would be larger in relative ability to influence opinion than both ITN and the Group 3 providers at the wholesale level.

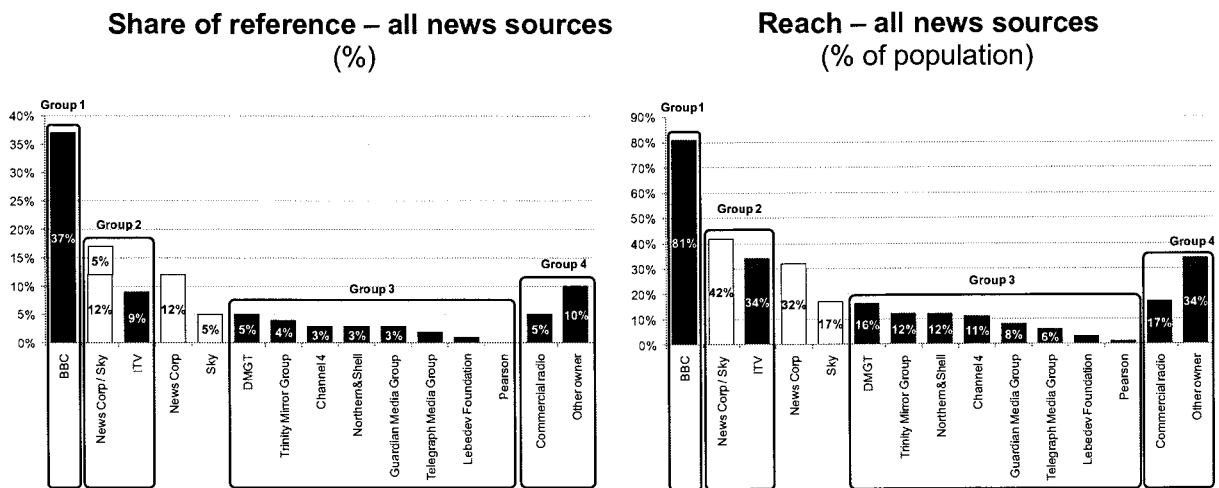
<sup>22</sup> See Figure 22 and Figure 23 in section 4

<sup>x</sup> A typographical error contained in the version of this report sent to the Secretary of State on 31 December 2010 has been subsequently corrected here. The original text was: "This does not suggest News Corp moves from Group 1 to Group 2 in our charts".

- 1.33 This analysis is based on all news sources measured in the survey (across TV, newspapers, online and radio) and is based on wholesale news provision not retail.
- 1.34 However, a similar picture is displayed when considering all sources of retail news provision, outlined below, and when considering the main source<sup>23</sup> of news at the retail level (see Figure 28 and Figure 30 in Section 4). In both cases, the BBC continues to be the largest provider, while the transaction increases News Corp's potential ability to influence.

**Figure 3 - effect of the proposed acquisition on news provision to audiences and ability to influence based on retail news provision**

Percentage of regular news and current affairs consumers - 96% of GB population



Source: Ofcom, cross-media audience research, 2010<sup>24</sup>.

- 1.35 The BBC is the only Group 1 provider in our analysis, a consequence of its scale in television, radio and online news. As with all media enterprises, the BBC may have an institutional view which can shape its editorial decisions. However, the governance of the BBC is different from other broadcasters in that it has a Royal Charter that requires it to be “independent in all matters concerning the content of its output... and in the management of its affairs.” Its strategic direction is set by the BBC Trust, which is held publicly accountable for the performance of its role in meeting the “public interest, particularly the interest of licence fee payers”. The Trust must also maintain the independence of the executive, which oversees output. This is fundamentally different from other media enterprises, including News Corp, which typically have a controlling proprietor.

Internal plurality

- 1.36 For the reasons set out above, we consider that the proposed acquisition by News Corp, giving it 100% ownership of Sky's shareholding, would reduce the number of persons with control of media enterprises with Sky ceasing to be a distinct media enterprise. Although News Corp would have full control of Sky we have nonetheless

<sup>24</sup> Share of all sources of news and current affairs used regularly (i.e. at least once a week for all sources, except for weekly newspapers/magazines which are defined as at least once a month) by adults in GB, by retail news provider.

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considered the actual extent of control that would be exercised and exercisable by News Corp. This is in line with the approach taken by the Court of Appeal<sup>25</sup>.

- 1.37 We have received a number of submissions on how far internal plurality within the merged group would help in ensuring a range of opinion, and in particular whether Sky News could be seen to remain an independent voice to News Corp's other news outlets.
- 1.38 A number of the submissions received argue that there is a history of intervention in relation to the News Corp owned newspapers, and that there is no reason why this should not also occur in other media. News Corp submit that TV broadcasting has a different culture from newspapers, and that for a combination of a number of reasons such as editorial policy not being a matter for the board, audience expectations and the nature of TV news (see further Section 5), the transaction would not jeopardise the editorial independence of Sky News.
- 1.39 In light of the conflicting views that have been put to us on this issue and taking account of the fact that in this case News Corp would acquire full control of Sky, we do not consider that we can reach the view that internal plurality will ensure sufficient plurality in the provision of news and current affairs as part of a first stage review.
- 1.40 News Corp's submissions on internal plurality are made in the context of a regulatory framework which it argues will safeguard against the over-representation of one point of view. In particular News Corp have submitted that, in practice, the impartiality rules help to ensure that the owner of a television station could not intervene to require news items on their own television news service to receive lesser or greater prominence for political reasons.
- 1.41 Ofcom's Broadcasting Code requires that "news in whatever form, must be reported with due accuracy and presented with due impartiality". The requirement for "due impartiality" is not absolute and broadcasters' have a degree of editorial discretion in the selection of the news agenda. We recognise that the impartiality rules may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot themselves necessarily ensure against it.
- 1.42 In any event, there is a difference between the Broadcasting Code which provides the regulator with the ability to intervene on a case by case basis to ensure impartiality in terms of news presentation and the statutory need for there to be a sufficient plurality of persons with control of media enterprises. The regulatory framework, while relevant to the plurality of news and, hence, the statutory public interest assessment, does not on its own ensure a sufficiency of plurality of news. This was the position adopted by the Competition Commission in Sky/ITV.

Multi-sourcing and online news provision

- 1.43 In arguing that there would be sufficient plurality following the proposed transaction, News Corp and Sky have made representations and provided evidence that multi-sourcing (or the use by consumers of multiple sources of news) and the use of online sources of news have both increased since the Communications Act was introduced in 2003, which they consider to be significant.
- 1.44 Although a minority of consumers (18%<sup>26</sup>) rely on a single media owner, the majority of consumers draw on a range of sources for news and current affairs. Our research

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<sup>25</sup> Court of Appeal, paragraph 121

estimates that the average news consumer uses 2.9 news providers in a typical week. Data from submissions from News Corp puts this higher at 4 sources per week, but includes local and regional sources as well. The loss of Sky as a distinct media enterprise would not materially change this average number of news providers used by individual consumers.

- 1.45 However, although we believe multi-sourcing to be important, we do not believe we can rely on it to ensure sufficient plurality. This is because the process of forming public opinion does not just depend on individuals consuming news, and then each forming their own opinion without reference to other consumers. Rather, individuals consume news, debate and discuss it with others, and it is this process of both news consumption and debate which helps form public opinion. In our view, what matters more therefore are the number and range of news providers used by *all* consumers and their relative significance, rather than the number and range used by each individual.
- 1.46 We also recognise the increasing importance of online news provision today. Wider availability and use of the internet, and the extension of media enterprises' news offerings online, allow consumers to access news more easily from a range of different providers. Our audience research indicates that online usage appears to be complementing the use of traditional media for consumers. This can increase the availability of news sources, and result in consumers using a greater range of sources than may have historically been the case.
- 1.47 However, traditional media providers account for 10 of the top 15 online providers of news (eight newspaper groups plus the BBC and Sky), with the remainder predominantly being news aggregators rather than alternative sources of news. This suggests that today online news tends to extend the reach of established news providers as opposed to favouring the use of new outlets that are not present on traditional media. We recognise that this could change in the future, but the nature of any such change is uncertain.
- 1.48 We have considered plurality and the need for there to be sufficient plurality by looking at the number and range of persons with control of media enterprises in light of their ability to influence opinion. We have done so in accordance with the purpose of the public interest consideration. We have considered carefully all the representations made and evidence available to us, including submissions made in relation to the increase in multi-sourcing and online news provision. However, for the reasons summarised above and set out in full in Section 5, our view within this first stage review, is that we consider it reasonable to believe that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences.

### Forward looking dynamic assessment

- 1.49 The longer term effects of the proposed transaction are inherently uncertain. Many of them will depend on how the wider media market develops, which is inherently difficult to predict given the extent of dynamic change within the sector. As a result, the longer-term implications of the transaction are harder to quantify in comparison to the static effects, and therefore more difficult to take into account.

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<sup>26</sup> Ofcom cross media audience research, 2010

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- 1.50 These generally relate to the economic position of the merged entity by comparison to the majority of other news providers in the market (outside of the BBC). Specific concerns included:
- Development and launch of integrated news products for convergent devices and media
  - Cross promotion between News Corp news titles and channels.
  - Bundling of news products with other media services.
  - Winning new wholesale news contracts.
- 1.51 Few of these potential developments can be linked exclusively to the proposed transaction. In considering the counter-factual, many of these developments may come to pass regardless of the common ownership of News Corp and Sky. How far such forward looking developments would affect plurality would depend on a range of factors including the competitive responses of other players, how far new products are replicable, or the adoption of new services by consumers.
- 1.52 Potential consumer benefits could arise as a result of the proposed transaction. For example, News Corp and Sky have a track record of investing in news. News Corp is an innovative, well resourced company that can and does explore risky business models which may benefit both consumers and the wider industry if proven to work. We believe this is of particular significance in the context of current uncertainties as content providers seek to identify profitable business models online. However, it is unclear whether these consumer benefits may or may not result in positive effects for plurality.
- 1.53 We have received representations that suggest there could be public interest concerns in a forward view. We also note that media markets and news provision is changing dramatically, with the continued development, launch and adoption of new products and services. The proposed acquisition may affect these market developments given the strategic and financial assets of the combined entity. Representations made to us suggest such effects may be either positive for consumers or negative for plurality over time. If it was the case that, over time, plurality suffered as result of this proposed acquisition, this would reinforce our conclusions on the static analysis.
- 1.54 However, there is a high degree of uncertainty about these developments. We do not rely upon this forward looking analysis for our advice to the Secretary of State, but note that there are possible situations where both positive and negative effects from the proposed acquisition could emerge.
- 1.55 In this context, it is important to note there is no mechanism to address potential plurality concerns arising in the future on an ex post basis.

**Our advice and recommendations**

- 1.56 This report provides advice and recommendations to the Secretary of State on the specified public interest consideration in section 58 of the Enterprise Act 2002 concerned with the sufficiency of plurality of persons with control of media enterprises.

- 1.57 Ofcom's advice, based on the evidence and reasons set out in this report, is that it reasonably believes that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences. In reaching this view we do not rely on the dynamic effects discussed in full in Section 6.
- 1.58 We believe there is, therefore, a need for a fuller second stage review of these issues by the Competition Commission to assess the extent to which the concentration in media ownership may act against the public interest, and we advise the Secretary of State accordingly.

### Concerns about wider market developments and sufficient plurality

- 1.59 The future market developments explored in this report suggest that the current statutory framework may no longer be equipped to achieve Parliament's policy objective of ensuring sufficient plurality of media ownership. These market developments include the risk of market exit by current news providers, or a steady, organic growth in audience shares and increase in the ability to influence by any one provider.
- 1.60 These changes are, by their nature, evolutionary. However, a public interest consideration can only be triggered by a specific corporate transaction. The current statutory framework may therefore fail to deliver its public interest objectives if plurality in the UK is significantly reduced by developments that do not arise from a specific corporate transaction involving media enterprises.
- 1.61 While there is a clear statutory framework for remedying competition concerns which may develop following a merger or from general market developments,<sup>27</sup> the same is not true of concerns related to plurality. This means that if a transaction is found not to operate against the public interest in relation to plurality, there is no subsequent opportunity or mechanism to address or consider any plurality concerns that may emerge in the future.
- 1.62 This suggests that a more fundamental review and possible reform of the current statutory framework may be required. Any such review would be a matter for Parliament.
- 1.63 Any new mechanism would need to provide a means for intervention if market developments resulted in significant concerns about the sufficiency of plurality over time. At the same time, it must be transparent and proportionate, ensure freedom to innovate in response to market developments, to make risky investments and earn suitable rewards and must avoid creating negative or perverse incentives.
- 1.64 We therefore also recommend that the Government consider undertaking a wider review of the statutory framework to ensure sufficient plurality in the public interest. Specifically, we believe there may be value in providing for intervention where plurality concerns arise in the absence of any transaction involving media enterprises and which are not safeguarded by the current media ownership rules.

<sup>27</sup> These include the use of ex post powers under the Competition Act, as well as the possibility of a market investigation reference under the Enterprise Act.

## Section 2

# Introduction

## The proposed acquisition and Ofcom's role

- 2.1 On 3 November 2010 News Corporation notified the European Commission of its intention to acquire the shares in British Sky Broadcasting Group plc it does not already own (throughout the report we refer to this as the "proposed acquisition" or "the transaction"). This would increase its holding from approximately 39.1% to 100%.
- 2.2 On 4 November the Secretary of State issued a European intervention notice in relation to the proposed acquisition. The notice specified the public interest consideration in section 58 of the Enterprise Act 2002 ('the Act') concerned with the sufficiency of plurality of persons with control of media enterprises. This is:
- "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".*
- 2.3 Consequently, Ofcom must report to the Secretary of State by 31 December 2010 on this public interest consideration. Our report must provide advice and recommendations on the specified public interest consideration, which may be relevant to the Secretary of State's decision on whether to refer the case to the Competition Commission.
- 2.4 It is not Ofcom's role to advise on whether concerns are conclusively established but rather to advise on whether they may be concerns such that a fuller second stage investigation is warranted. In our advisory role undertaking a first stage assessment within 40 working days, the threshold to be reached for Ofcom to advise the Secretary of State that the proposed acquisition may warrant fuller consideration by the Competition Commission is fairly low. Ofcom needs to hold a reasonable belief, on the basis of the evidence available, that it may be the case that the proposed acquisition may operate or be expected to operate against the public interest<sup>28</sup>.

## Our approach

- 2.5 After receiving the European Intervention notice, we published a guidance note on our approach to the public interest test<sup>29</sup> and invited the parties and other stakeholders to comment on the proposed acquisition in a number of areas, including: content types; audiences; media platforms; control of media enterprises; and future developments in the media landscape<sup>30</sup>. We received submissions from a range of stakeholders, and have taken these into account in our advice. Representations were received from :
- 20 commercial and professional organisations (including News Corp and Sky);
  - 8 academics and noted industry observers;

<sup>28</sup> Office of Fair Trading & Ors v IBA Health Ltd [2004] EWCA Civ 142 (19 February 2004)

<sup>29</sup> <http://media.ofcom.org.uk/2010/11/04/guidance-note-for-public-interest-test/>

<sup>30</sup> <http://media.ofcom.org.uk/2010/11/05/invitation-to-comment-public-interest-test-proposed-acquisition-of-bskyb-by-news-corporation/>



- 96 direct submissions from individuals; and
  - 58,600 individuals via two online campaign groups.
- 2.6 In order to assess the public interest consideration defined by the Secretary of State, we have adopted a similar approach to that of the Competition Commission in the Sky/ITV case. We have therefore considered:
- The nature of the public interest test, including sufficient plurality, described below
  - the relevant audience(s), defined in Section 3;
  - the current market situation, including News Corp and Sky's contribution to news and current affairs and consumers' behaviours, outlined in Section 4
  - the static effects of the proposed transaction, considered in Section 5;
  - a forward view (dynamic) of the effect of the proposed transaction, in Section 6; and
- 2.7 We provide conclusions and recommendations in Section 7.

### Sufficient plurality of persons with control of media enterprises

- 2.8 As explained in the Secretary of State's guidance on the media public interest merger provisions, the public interest consideration outlined in 2.2 above *'is concerned primarily with ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons. It would be a concern for any one person to control too much of the media because of their ability to influence opinions and control the agenda. This broadcasting and cross-media public interest consideration, therefore, is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality'*<sup>31</sup>.
- 2.9 Ofcom has a wide discretion in relation to our assessment of sufficient plurality. What is required is "a qualitative assessment of the position resulting, or likely to result", from the proposed acquisition<sup>32</sup>. This is inevitably a matter of judgment, which we exercise with regard to the considerable importance Parliament has attached to the preservation of plurality of controllers of media enterprises<sup>33</sup>. The relevant Government minister said in 2003 *"[media] plurality is important for a healthy and informed democratic society. The underlying principle is that it would be dangerous for any person to control too much of the media because of his or her ability to influence opinions and set the political agenda"*<sup>34</sup>.
- 2.10 News Corp argued that plurality has increased since Parliament last legislated in relation to it, the inference being that it must now be more than sufficient such that the proposed transaction (even if it reduces plurality) cannot be said to operate

<sup>31</sup> DTI Guidance: the Enterprise Act 2002: Public Interest Intervention in Media Relevant merger situations, May 2004, paragraph 7.7

<sup>32</sup> Court of Appeal *British Sky Broadcasting Group plc v The Competition Commission and The Secretary of State for Business Enterprise and Regulatory Reform* [2010] EWCA Civ 2 ("Court of Appeal"), at paragraph 87.

<sup>33</sup> Ibid at paragraph 104.

<sup>34</sup> Lord McIntosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard

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against the public interest. On the other hand, many respondents argued that plurality is already insufficient and that the proposed transaction would exacerbate the problem<sup>35</sup>.

2.11 When examining the effects of the proposed acquisition on the sufficiency of plurality of persons in control of the media, we adopt the same approach taken by the CC in the Sky/ITV case:

*“Whilst recognising that it would not be sufficient for plurality purposes to rely on a single provider (for example, the BBC), we do not consider it necessary to take a view on precisely how many owners would constitute a ‘sufficient’ level of plurality of persons. Rather, we have looked qualitatively at sufficiency. We have considered sufficiency by reference to the current levels of plurality, having regard to any change in plurality that arises as a result of the acquisition.”<sup>36</sup>*

2.12 We therefore commence our analysis by reference to the current levels of plurality. We consider how the proposed transaction may affect the level of plurality in the market today, and whether this may raise risks for the public interest in terms of a potential reduction in media plurality such that a fuller second stage investigation is warranted.

2.13 In undertaking our assessment, we consider a number of broad points that underpin our advice and recommendations. These include:

- defining the relevant audiences for the proposed acquisition;
- media enterprises;
- control of media enterprises and assessing the effects of any change on plurality;
- assessing external and internal plurality;
- the timeframe for forward-looking analysis; and
- plurality and other regulatory measures.

Defining the relevant audiences for the proposed acquisition

2.14 In relation to the audiences served by the merging parties, (which includes readers<sup>37</sup>), the Act gives us a wide discretion to consider them all together, separately, parts of them or in groups, as we consider appropriate<sup>38</sup>.

2.15 In this case we consider that relevant audiences should be defined according to:

- Content types: Parliament did not define specific content genres as being important to plurality. We need to consider which content types are most relevant to the proposed acquisition and plurality.

<sup>35</sup> See e.g. responses from 38 Degrees, Campaign for Press & Broadcasting Freedom paragraphs 4.1 to 4.3 and 5.1, NUJ pages 3 and 4, Robert Beveridge page 2 and Prof Steven Barnett page 6.

<sup>36</sup> Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007, (“Competition Commission”), paragraph 5.15.

<sup>37</sup> Section 58A(8) of the Act.

<sup>38</sup> Section 58A(6) and (7) of the Act

- Geographical location: the audience affected by the proposed acquisition may be UK-wide or confined to particular geographical areas. This depends primarily on the geographical scope of the activities of the media enterprises involved in the transaction.
- Media platforms: audiences should also be defined according to the media used to access relevant content types provided by the merging parties.
- Sub-groups: in defining audiences we have also had regard as to whether particular sub-groups (for example according to age, socio-economic groups, ethnicity or other criteria) may be more affected than others by the proposed transaction.

2.16 Section 3 of this report discusses our audience definition.

### Media enterprises

- 2.17 For the purposes of this assessment a “media enterprise” consists in or involves broadcasting or the supply of newspapers<sup>39</sup>. Broadcasting means, very broadly, the provision of radio and television services<sup>40</sup>. A “newspaper” is a daily, Sunday or local newspaper circulating wholly or mainly in the UK or part of the UK<sup>41</sup>. However, media enterprises typically publish content online, reflecting the public’s growing access to and popularity of the internet. When we are considering the “sufficiency” of plurality of media enterprises, we have had regard to the content they, and others, publish online.
- 2.18 In many of the representations we received, stakeholders have commented on the role of the internet, including online news providers who are not also UK TV news broadcasters or newspaper groups. In terms of the Enterprise Act, these are not defined as media enterprises. However, we consider the internet and wider online news provision to be relevant in any consideration of the sufficiency of plurality in the provision of news and current affairs and we have taken it into account.
- 2.19 Some representations submitted that wholesale news provision also falls outside the scope of the public interest consideration. As noted by the Competition Commission, in providing wholesale news to channels and publishers, both wholesaler and channel operator share some degree of editorial influence.
- “Within the strategic framework provided by the channel operator, the news provider (e.g. ITN, Sky News) is responsible for day-to-day editorial control, such as selecting the stories to be presented on a given bulletin and the way in which they are to be presented..the channel operator remains ultimately accountable (including to the regulator) for the news that is presented on its channels”.*<sup>42</sup>
- 2.20 Sky’s provision of news (‘Sky News’) to other media enterprises may not, of itself, bring Sky within the definition of “media enterprise” for the purpose of the statutory test. However, it is relevant to the question of the contribution made by those other media enterprises to plurality and therefore to the degree of any concerns arising from the proposed transaction. In any event, Sky is a “media enterprise” and it

<sup>39</sup> Sections 58A(1) and 58A(2) of the Act.

<sup>40</sup> Services for which a Broadcasting Act licence is required, see section 44(9) of the Act.

<sup>41</sup> Section 44(10) of the Act.

<sup>42</sup> Competition Commission, 2007, par 5.55 (c) and (d).

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indirectly serves a variety of audiences besides its retail audiences, through wholesale news provision.

- 2.21 Typically, while national news outlets may source news from upstream providers like news wires, the national news outlet generally retains editorial control and plays a significant role in shaping the position and tone of their output. This is qualitatively different from wholesale news provision by ITN and Sky News to TV and radio retailers, the scope of the latter to make day-to-day editorial decisions on the content is far smaller.
- 2.22 In the analysis which follows, we present data on the proposed transaction both with wholesale content provision included, and with it excluded. In considering wholesale content provision, we have only included those wholesalers who typically provide a refined product in relation to which there is little scope for editorial adjustment by the retailer. This means we have included ITN and Sky News, but excluded, for example, the news wires.

#### Control of media enterprises and assessing the effects of any change on plurality

- 2.23 Ofcom's consideration of plurality takes into account the fact that News Corp already holds approximately 39.1% of Sky, noting the proposed acquisition would move it to having full control. In Sky/ITV, the Court of Appeal determined how we should approach a situation like this within the framework of the Enterprise Act 2002 (the "Act").
- 2.24 Our starting point is that the proposed acquisition reduces the number of persons having control of media enterprises<sup>43</sup>. Full control will allow News Corp to do a number of things it cannot do at present, for example, to take decisions which are in the exclusive commercial interests of News Corp.
- 2.25 However, the Court of Appeal has made it clear that in order to assess plurality and sufficiency of plurality, it is right to look not just at the number of persons having control, but also at the range<sup>44</sup> of persons having control, before and after the transaction. We must also "*take into account the actual level of control exercised and exercisable over a relevant enterprise by another*" and make an assessment which is qualitative not quantitative<sup>45</sup>.
- 2.26 In this report we have categorised these considerations under number and range, and included an assessment of the sources of news and current affairs available to consumers.
- 2.27 In addition, we believe a consideration of the relative 'ability to influence' of media enterprises, particularly evidenced by audience share, reach and trust, is important to any assessment of the effect of the proposed acquisition on plurality. This is because, as the DTI guidance outlines, what constitutes a sufficient number of owners controlling media enterprises in a given case may be affected by the relative audience shares that these enterprises hold<sup>46</sup>. Should a transaction increase significantly the ability of one media enterprise to influence relative to others, this would suggest a greater concentration affecting sufficiency of plurality.

<sup>43</sup> Section 58A(4) of the Act, see also Court of Appeal at paragraph 121.

<sup>44</sup> In our report, we use range to cover the concepts of 'range and variety' – see Court of Appeal paragraph 90

<sup>45</sup> Sky/ITV, at paragraph 121.

<sup>46</sup> DTI Guidance: the Enterprise Act 2002: Public Interest Intervention in Media Relevant merger situations, May 2004, paragraph 7.10

### Assessing external and internal plurality

- 2.28 In carrying out this assessment, we adopt the same approach as the Competition Commission did in Sky/ITV. We look at the range of opinions and views across the various groups of media enterprises (*external plurality*), and at the range of opinions and views within a group of media enterprises (*internal plurality*).

### The timeframe for forward-looking analysis

- 2.29 We noted that representations made by interested parties were concerned with both effects arising directly by virtue of the transaction taking place, but also with effects of the acquisition considered in a wider context of market evolution. In our analysis we have sought to make a distinction between these.
- 2.30 Section 4 of this report discusses what we refer to as a *static analysis* of the effects of the proposed acquisition. This focuses on short-term effects on plurality that would arise directly from the transaction.
- 2.31 Section 5 illustrates our *dynamic analysis*. This considers the possible effects on plurality in a forward-look view of the market, considering possible changes to plurality affected by the transaction over a period of time.

### Plurality and other regulatory measures

- 2.32 The public interest consideration is one of a number of regulatory mechanisms which can have a bearing on plurality.
- 2.33 Parliament has previously put in place media ownership rules for television, radio and newspapers. Ofcom has a statutory duty<sup>47</sup> to undertake a review of these rules every three years. Although the purposes of the media ownership rules are similar to those of the public interest consideration, the scope of the media ownership rules is narrower, focusing in particular on ownership of Channel 3 licences alongside other media outlets.
- 2.34 Ofcom's Broadcasting Code contains impartiality provisions, requiring that news is reported with due accuracy and presented with due impartiality<sup>48</sup>. For example, views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes. We consider linkages between these regulations and the effect of the proposed acquisition on plurality in Section 5 of this report.
- 2.35 Plurality is distinct from competition considerations and therefore competition policy. Parliament has acknowledged the role that competition law plays in protecting consumer interests where concentrations of market power are concerned but such a framework alone would not guarantee plurality<sup>49</sup>.
- 2.36 A parallel but distinct review of any competition issues resulting from the proposed acquisition is being conducted by the European Commission<sup>50</sup>.

<sup>47</sup> The Public Bodies Bill proposes to amend the Communications Act 2003 to remove this duty.

<sup>48</sup> Section 5 of Ofcom's Broadcasting Code, which broadcasters are required to comply with under the terms of their licences (<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/>)

<sup>49</sup> See for instance Hansard HL Debate, 2 July 2003, c 913, and Hansard HL Debate, 5 June 2003, c 1435

<sup>50</sup> <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1767&type=HTML>

### Section 3

## Audience definition

3.1 In considering what audiences are relevant for this test we have focused on UK-wide audiences for cross-media news and current affairs including TV, radio, newspapers and the internet. The paragraphs below set out our thinking in relation to the constituent elements of this audience definition, as set out in section 2:

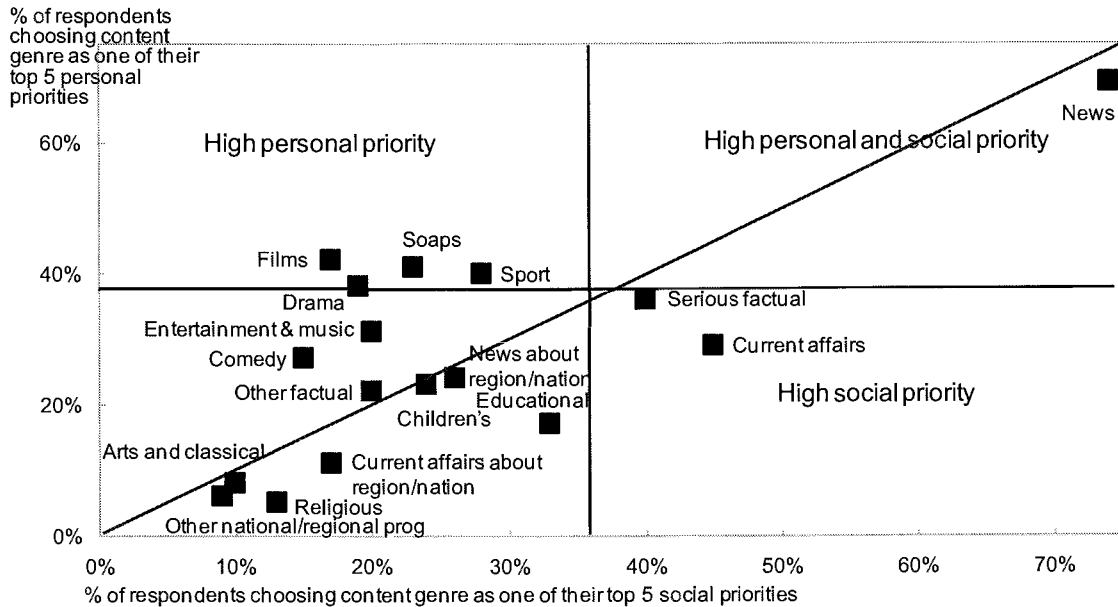
- Content types
- Geographical location
- Media platforms
- Subgroups

### **Content types: news and current affairs**

3.2 Representations from merging parties and third parties focused on the provision of news content. This is consistent with the approach we took in the Sky/ITV case in 2007, where we concluded that Parliament's focus on how media enterprises influence opinion and set the political agenda suggested that news was the most important content type. Within news we include international, national and regional news stories.

3.3 Other categories of content can also be relevant to the public interest consideration. In broadcasting, the term 'current affairs' relates to programmes providing in-depth discussions of current events of particular political, economic or social importance. These programmes play an important role in providing consumers with information and analysis about society, and therefore in the formation of public opinion. Previous Ofcom research highlights that 45% of consumers chose current affairs as one of their top 5 priorities for the main 5 TV channels in terms of social importance. This placed it in second place behind news (74% of respondents chose news as one of their top 5 social priorities).

**Figure 4 - Mapping social and personal importance for content genres on main TV channels**



Source: PSB Review survey Q29 and Q30 2,260 interviews with UK adults aged 16+, October - December 2007

- 3.4 In the Sky / ITV case, the Competition Commission focused its analysis on national news, but it also acknowledged that genres such as current affairs were connected with the formation of public opinion.
- 3.5 Newspapers are not solely devoted to the reporting of news, but also provide content based on in-depth discussions and opinionated commentary. Representations made to us have highlighted the importance of these features in informing and influencing opinions and therefore contributing to democracy<sup>51</sup>.
- 3.6 In TV and radio broadcasting current affairs programming provides content that is to some extent comparable to the features of newspapers discussed above. In the context of our cross-media analysis for this case, we believe that current affairs broadcasts are relevant to our assessment.
- 3.7 Our content type definition therefore uses the terms 'news and current affairs' to refer to programmes and articles provided across all the relevant media platforms that inform the public and contribute to democracy through the reporting, discussion and commentary of current events. As a result, we have only considered the Sky News channel in this analysis, as opposed to other factual channels carried on the Sky platform that could have some current affairs related content (for example National Geographic or the History channel). We have also excluded sports news programming.

**Geography: UK wide audiences**

- 3.8 The two parties' main focus for news and current affairs within the UK is the provision of news and current affairs to a UK wide audience, with little provision of news at the

<sup>51</sup> Sky submission, Slaughter & May, NUJ, Enders

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regional or local level. We therefore believe that the relevant geographic audience for the public interest consideration is UK-wide.

- 3.9 On TV, we have considered all national TV news and current affairs providers. On radio, we have considered station groups that have national or near-national coverage. This includes all national analogue licensees, but also groups like Bauer Media that, through a network of local stations, achieve near-national coverage and a substantial audience share. In addition, we note that many of the local stations provide news at a local level that is sourced from a single, UK-wide provider (IRN).
- 3.10 We note that, within newspaper and online platforms, there is a mix of UK-wide and regional titles and news provision. Amongst online services, international titles also feature as a prominent source of news for consumers. Both regional and international titles and channels can make a contribution to public opinion and therefore the democratic process. However, UK-wide news and current affairs providers can be expected to have a wider reach and greater relevance to UK democracy given a UK specific agenda.
- 3.11 We have excluded from our analysis regional newspaper groups because they do not provide news to a UK-wide audience, and will have lower circulations and readerships for individual titles compared to national newspaper groups. Some regional titles, notably within newspapers, may have a reach large enough to influence nation-wide opinion. These include publications like the Evening Standard in London and regional variations of Metro. Both are free papers, and one an evening paper. Our investigation has not afforded us the time to examine in detail how far such publications may contribute to plurality nation-wide. We have therefore excluded them from our audience definition. If there is a subsequent reference to the Competition Commission, this may be an area for further analysis.<sup>52</sup>
- 3.12 We also note that press titles that are only available in the devolved nations (Scotland, Wales and Northern Ireland) will influence public opinion in those nations, and hence contribute to the democratic process. However, we have received no submissions and found no evidence that suggests audiences in the nations would be more significantly affected by the proposed acquisition than the UK-wide audience.
- 3.13 These factors combined suggest that there is no need to define a sub-national audience for the purposes of our assessment of the public interest consideration.

**Media platforms: cross-media**

- 3.14 Prior to the transaction News Corp provides news and current affairs in newspapers and online, whilst Sky provides news and current affairs directly on TV and online, and indirectly over radio as a result of wholesale news provision to commercial radio through a contract with IRN. The only areas of overlap are therefore in relation to online audiences.
- 3.15 Post-acquisition, the two parties combined would provide news and current affairs directly on TV, in newspapers and online; and indirectly over radio. With the exception of online, neither News Corp nor Sky is both present on a single platform.

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<sup>52</sup> Our market research included regional and local news providers within the questions asked as it was scoped before a final decision was taken on the audience definition. Local and regional providers referred to by consumers are therefore included in results under 'other'. This has the effect of diluting the share of references for the nation-wide news providers. For the reach of news providers, it has no effect.



- 3.16 We have not considered the effect of the transaction on the plurality available to audiences for online news only as these are not defined as media enterprises in the Enterprise Act. We have included online within cross-media audiences for the reasons outlined in paragraph 2.18.
- 3.17 We therefore consider that relevant audiences should be considered cross-media, including TV, newspapers, radio and online.

**No audience subgroups**

- 3.18 We have analysed consumer markets at the UK-wide level by age, socio-economic group and by the news title that consumers claim to be their 'main' source of news. As we illustrate below in 4.56 to 4.58, we note that there are some variations in news consumption among age and socio-economic groups, especially in relation to the use of news sources on the internet, but we do not think these variances suggest a need to define sub-group audiences.
- 3.19 No representations suggested there were specific concerns for ethnically defined sub-groups. Some concerns were raised about consumers who solely source news and current affairs from a combination of News Corp and Sky, but we note that this group is likely to be very small (see paragraph 5.109 and 5.112).
- 3.20 Our view is therefore that no particular sub-groups would be more significantly affected than the population as a whole as a result of this proposed acquisition. We do not consider there is a need to define separate audiences on the basis of geography, age, socio-economic group or ethnicity.

## Section 4

# The current situation

- 4.1 In this section we examine how audiences access and consume relevant content types within and across platforms as context for our advice and recommendations.
- 4.2 In considering the situation pre-transaction, we have had regard to the following issues:
- how news is gathered;
  - the importance that consumers attach to different media platforms when sourcing news;
  - how consumers access and consume news and current affairs within media;
  - how consumers access and consume news and current affairs across TV, newspapers, radio and online;
  - how consumers rely on different and multiple sources, within and across-media; and
  - consumers' trust and critical evaluation of the news they consume.
- 4.3 Annex 1 discusses the data sources used in this report

## How news is gathered

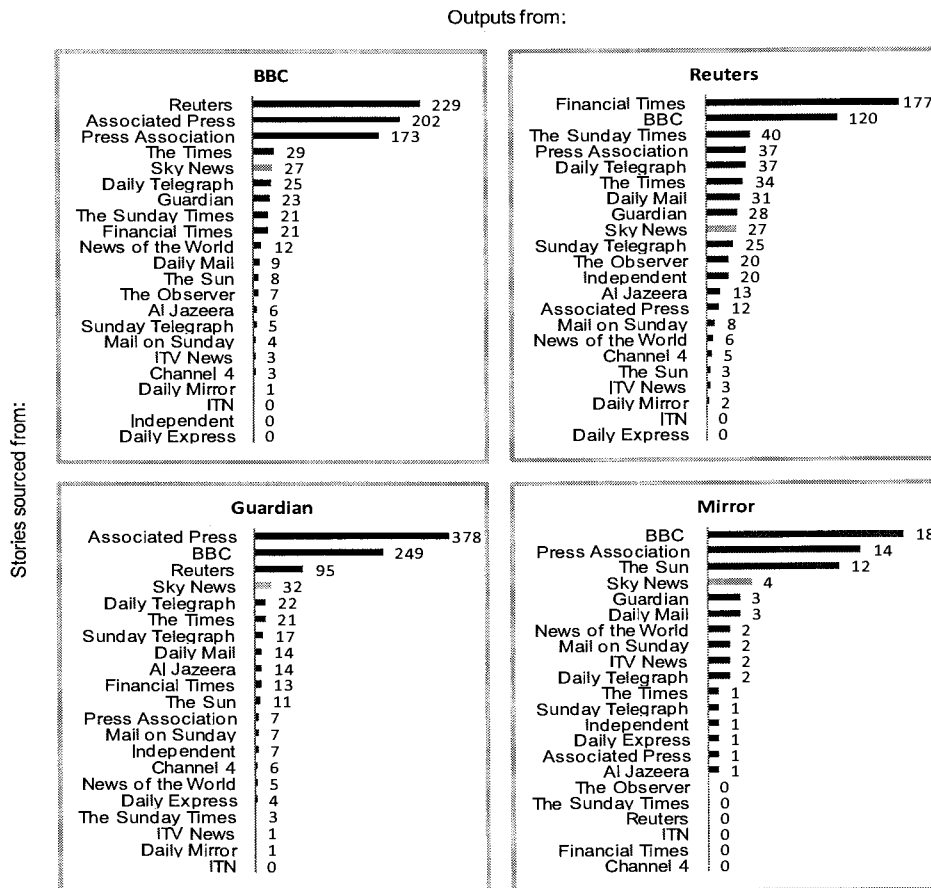
- 4.4 Today, consumers are provided news content by channels and publishers from two sources: content produced in-house (retail content); and content sourced from third parties (wholesale content). For example, ITV and Channel 4 source news content and programming from ITN and Five from Sky. ITN and Sky are acting as 'wholesale' news providers, while ITV, Channel 4 and Five can be considered as the 'retailer'. The BBC and national newspaper groups on the other hand produce a significant amount of news content in-house, fulfilling both wholesale and retail roles.
- 4.5 However, this is a simplification of the actual process for news gathering and aggregation. In practice, news providers source stories and content from a range of areas, including for example news wires. For example, News Corp's submission set out the range of sources for news stories used by different media providers, as illustrated in Figure 5 below<sup>53</sup>.

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<sup>53</sup> The citations analysis was submitted to Ofcom by News Corp and undertaken by Perspective. It is based on stories tracked by Google News for 6 month period 1 June 2010 to 30 November 2010 that were available at 8-17 December 2010. The following stories / cross references were excluded:

- those about a media outlet rather than citing it (eg coverage of the BBC Licence Fee settlement was not counted as a citation of the BBC);
- historically referenced stories (e.g. quotes in a biography); and
- stories from newspaper reviews / gossip columns.

**Figure 5 - Original sources of news stories appearing in outputs of a selection of media enterprises (BBC, Reuters, Guardian, Mirror), June to November 2010**



Source: News Corp submission - Perspective report, Setting the news agenda, 15 December 2010

4.6 [X]. We consider that news agencies play an important role in news gathering, but that whilst this gives them some ability to influence the news agenda, there are a number of other sources of influence.

4.7 A source may be influential in that it “breaks” stories, for example, by carrying out its own investigation. Alternatively, a source may be important because it is capable of bringing a story wide publicity. A story broken by a regional news outlet may be picked up by a national one. A story given enough coverage by an outlet with enough influence may become so important that all news outlets must cover it or lose credibility. All these roles matter in any consideration of plurality.

4.8 In the time available to us we have not been able to assess the relative importance of these different roles. Overall, our view is that the ability to influence opinion is held mainly by those media enterprises that can exert meaningful editorial control over the news and current affairs output of media enterprises. Therefore, and as noted above, we have included wholesale news providers in our analysis, but not the content provided by upstream suppliers of individual stories.

**Main sources of news and current affairs by medium**

4.9 When asked to identify their main source of UK news, consumers do not appear to attach equal weight to all platforms. Ofcom’s media tracking study has consistently

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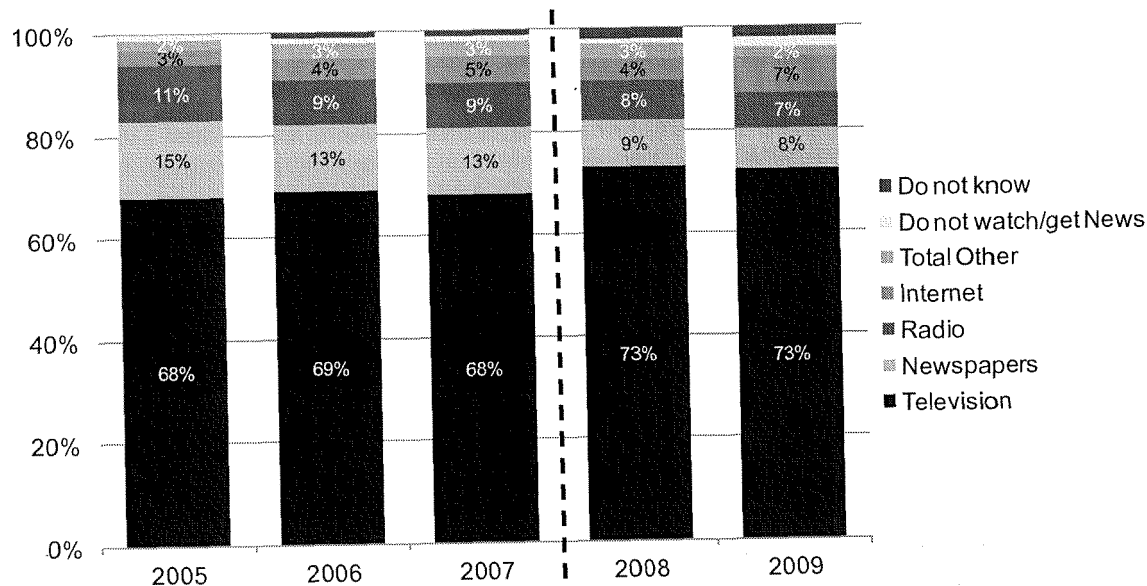
identified the television as the most popular 'main' source of UK news for a large proportion of the UK adult population aged 15+ (73% of all respondents, according to our media tracking study, 2009). Older people are more likely to cite the television as their main news source, as are people in the C2DE socio-economic group. Newspapers are cited by a further 8% of the UK adult population as their main source, with radio at 7% and online 7%<sup>54</sup>.

- 4.10 Our media tracker research suggests that the proportion of the population nominating online as their main UK news source looks to have risen over time (up by four percentage points from 3% in 2005), probably reflecting the growing take-up and access to broadband services across the UK. The results suggest that during that same period TV has maintained or even enhanced its importance and that the growth in online to date appears to be mainly at the cost of newspapers, and radio.

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<sup>54</sup> Our recent cross media audience research (CMAR) showed a similar pattern in the proportion of people naming each media platform as their main source of news, although actual figures differ. The results were 63% for television, 14% for newspapers, 10% for radio and 10% for total internet. Differences in results between the two surveys are likely to be due to a range of methodological differences including: (1) Question asked: main source of UK and international news and current affairs (CMAR), main source of UK news (media tracker). CMAR splits out internet on computer and internet on mobile phone whereas Media tracker did not. (2) Time period: November 2010 (CMAR) April and October 2009 rolled data (media tracker). (3) Sampling: CMAR quotas for age ranges including 65+, and starts at age 16, and covers Great Britain, media tracker quotas for age ranges including 55+, and starts at age 15, and covers UK. (4) Question order: CMAR questions focused solely on UK and international news and current affairs and were the first questions asked of respondents, the media tracker question is asked towards the end of a 40 minute survey on a range of media related subjects, including questions on main source of local news.

**Figure 6 - Main source of news by platform - 2005-2009**



Source: Ofcom Media Tracker. Base: All UK Adults aged 15+. 'Total Other' = Teletext, Magazines, Talking to other people, Other. Note: data is not fully comparable over time except for 2009 vs 2008 due to method changes

## News and current affairs consumption on individual media

### Television

- 4.11 Our recent cross-media audience research (2010) found that 79% of adults stated that they regularly use TV as a source of news<sup>55</sup>, with 29% of regular news consumers saying that they source their news only from TV on a weekly basis. TV therefore represents a particularly important source of news to a large proportion of the population.
- 4.12 TV viewing of national news, as classified on BARB, has remained fairly constant at around 20 minutes per day per UK adult aged 16+ over the last few years. There has been a slight decline since 2002, when the average daily viewing was 20.9 minutes per day, compared to 20.0 minutes per day in 2009.<sup>56</sup>
- 4.13 The vast majority of news in the UK (at the retail level) is provided by five media owners, BBC, ITV, Channel 4, Five and Sky. In addition, there are a number of specialist news channels such as France 24, Euro News and Al Jazeera, Fox News and CNN. However, these specialist news channels do not have a UK news agenda and are only watched by a small minority of audiences<sup>57</sup>

<sup>55</sup> Respondents were provided a list of different media types and then asked the question "From the list below, please tell me which of these you use regularly for UK/International news and current affairs, by regularly I mean at least once a week."

<sup>56</sup> Source: BARB, Network plus.

<sup>57</sup> With the exception of Euro News and Fox News, the remaining specialist news channels are not measured or reported by BARB. We estimate these non-BARB reported channels represent a very small proportion of total national/international news viewing. BARB Network plus figures for 2009 show that Euro News achieved a total share among all UK adults 16+ of 0.01% and Fox News

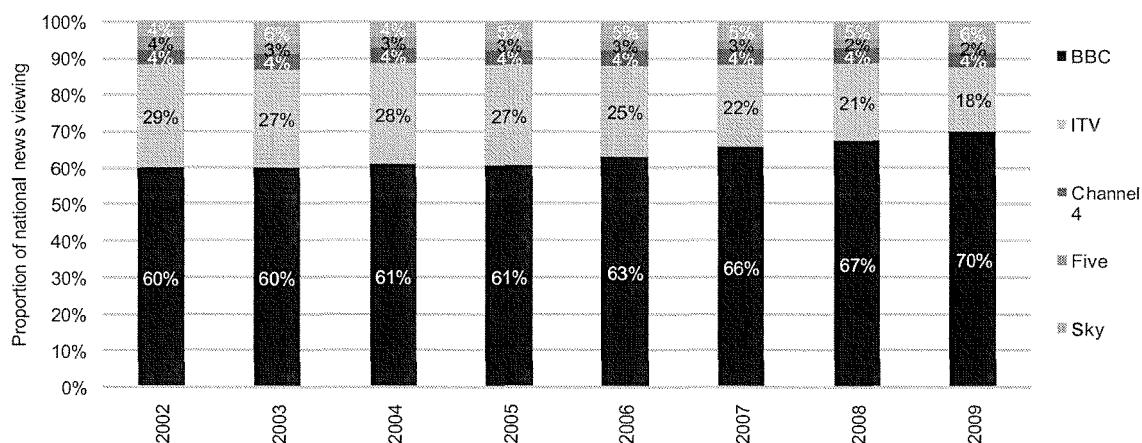
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4.14 At the wholesale level, both Sky and ITN have contracts to supply news content to Five and ITV / Channel 4 respectively. As discussed above, we have therefore considered the impact of the transaction at both the wholesale (news content provider)<sup>58</sup> and retail (news broadcaster)<sup>59</sup> level.

4.15 Figure 7 below provides a breakdown of the audience share for national TV news viewing (based on the BARB subgenre of national and international news) for each of the five main providers, according to BARB<sup>60</sup>. At the retail level, there are five providers: the BBC is the most watched provider (70%), ITV second (18%), followed by Sky with 6% share (based on Sky news channel), Channel 4 at 4% and Five at 2%.

4.16 This analysis also shows that, over time, the BBC share of news viewing has increased, while ITV's share has declined and Sky's share of news viewing has remained relatively stable. At the wholesale level, there are only three principal providers of TV news content. The BBC is the leading provider of TV news, accounting for a 70% share of national news viewing, ITN is second with 22% and Sky is third with 8% (Sky news channel and Five combined) in 2009.

**Figure 7 - Share of viewing to 'national and international news' on TV by media retailer, 2002 - 2009**



Source: BARB, All adults (16+), Network Plus, 2002-2009. National News genre. BBC = BBC One, BBC Two, BBC News; ITV; C4; Five; Sky = Sky News channel.

4.17 According to BARB, on a weekly basis, 38.6 million adults (79.4% of the adult population, 16+) watched at least 3 consecutive minutes of television news in October 2010.

achieved a total share of 0.02%. Total minutes viewed per day for Euro News channel overall averaged at 0.02 per adult and 0.04 for Fox News.

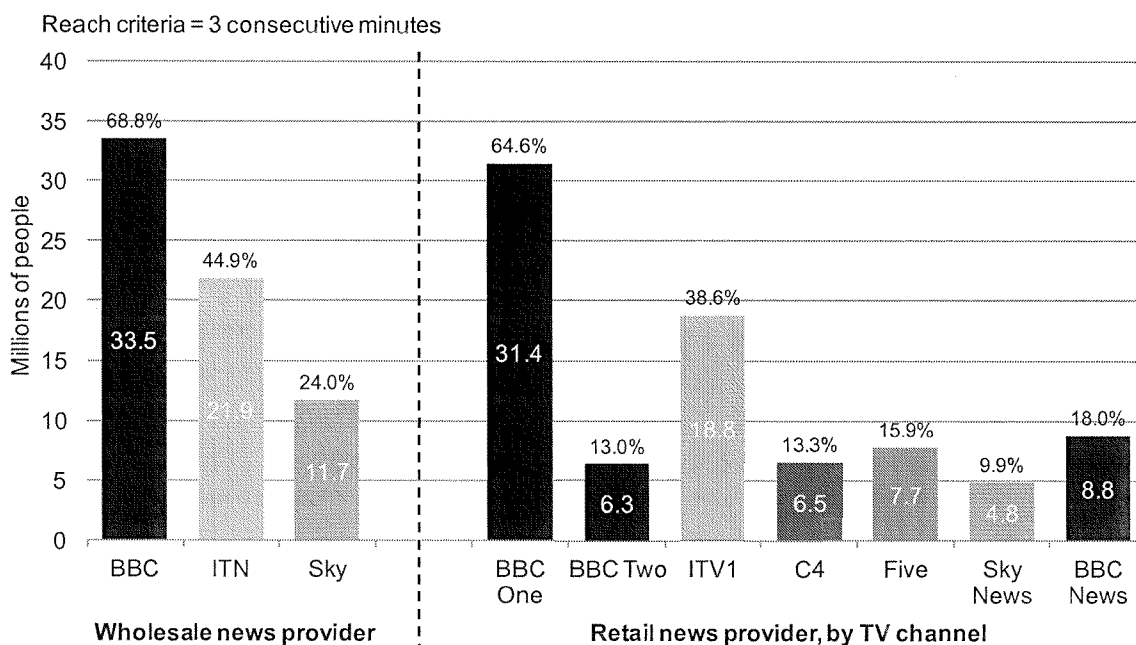
<sup>58</sup> That is, Five's audiences will be attributed to Sky, and Channel 4/ITV audiences to ITN.

<sup>59</sup> That is, audiences will be attributed to Five, Channel 4 and ITV as separate media enterprises.

<sup>60</sup> This analysis excludes 'other' viewing to the national and international BARB subgenre, which represents less than 1% of the total genre from 2002 to 2009. In 2009 'other' news viewing represented 0.3% share of the total category. Fox News does not appear in this figure, as its schedule is not classified as news in BARB. Programme genre classification is optional.

4.18 In terms of audience reach<sup>61</sup>, the BBC continues to maintain a significant presence with 33.5 million adults (or 69% of the adult population) watching at least 3 consecutive minutes of news on a weekly basis in October 2010. At the wholesale level, ITN reached 21.9 million UK adults (45%) in a typical week in October 2010. At the wholesale level, Sky's news content reached 11.7 million (24%) adults (i.e. Sky news channel and Five news combined). Sky's reach was 4.8 million (10%) adults when considered at the retail level (excluding wholesale provision through Five).

**Figure 8 - Average weekly reach for TV 'National News' (October 2010)**



Source BARB, All adults (16+), All homes, October 2010. National News genre. Reach criteria = 3 consecutive minutes at least once in the week. Full weeks used. BBC = BBC One, BBC Two, BBC News; ITN = ITV1, C4; Sky = Sky News, Five.

**Newspapers**

4.19 Our cross-media audience research (2010) found that 44% of adults say that they regularly use newspapers as a source of news, with 6% of regular news consumers only sourcing their news from newspapers on a weekly basis.

4.20 Newspaper providers have, over the last decade, experienced a decline in circulation for both daily and Sunday newspapers, with total national newspaper circulation falling from around 13 million for daily newspapers and 14 million for Sunday newspapers in 2000 to 10 million copies in 2009 for both daily and Sunday newspapers<sup>62</sup>. Newspaper readership is also in decline, with the number of people reading a Sunday title falling by almost 5% per annum over the nine years to 2009, while daily readership has fallen at an average annualised rate of almost 3% over the same period<sup>63</sup>.

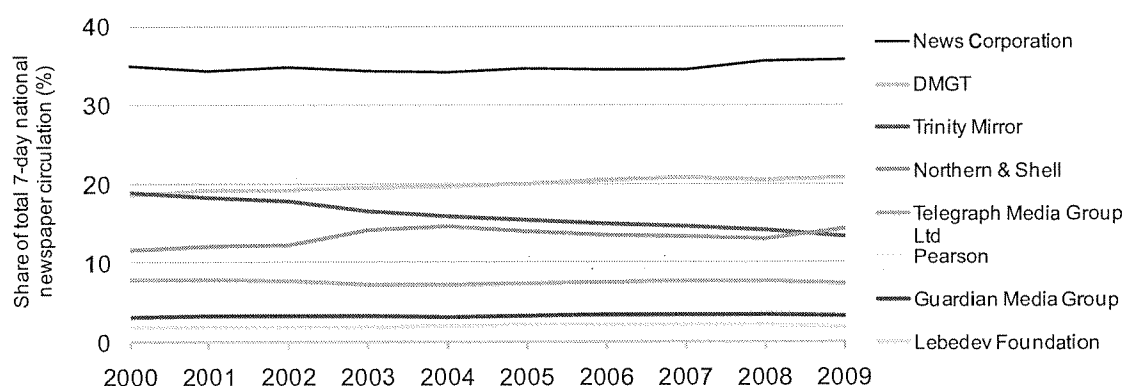
<sup>61</sup> Reach is defined as any viewing to the national news genre for 3+ consecutive minutes, in this case on a weekly basis in the month of October 2010.

<sup>62</sup> Source: Audit Bureau of Circulations / MediaTel / Ofcom calculations

<sup>63</sup> Source: National Readership Survey / MediaTel / Ofcom calculations.

4.21 There are eight main providers of national newspapers, publishing 20 national daily and Sunday titles between them, accounting for 100% of total paid-for circulation<sup>64</sup>. As Figure 9 below demonstrates, News Corp has the largest national newspaper group; its titles, which include the Sun, The Times, The Sunday Times and the News of the World, account for over a third (35.7%<sup>65</sup>) of combined daily and Sunday national newspaper circulation. DMGT (Daily Mail) has the next largest share of the market by circulation (20.8%<sup>66</sup>), followed by Northern & Shell (Daily Express, Daily Star), with 14.2%<sup>67</sup>.

**Figure 9 - National newspaper market share by publisher, 2000-2009**



Source: Audit Bureau of Circulations / MediaTel / Ofcom calculations

Note: Publisher data is based on current ownership and is not retrospective. Excludes regional newspapers

4.22 The National Readership survey provides industry data on the readership of newspaper titles, in terms of Average Issue Readership (AIR). This is defined as anyone who has read or looked at a newspaper title for two minutes or more within the issue period of the newspaper. For example, for daily newspapers the respondent is asked if they have read a title yesterday. These results provide an equivalent metric to the television reach figures provided above in estimating the number of people who have read a particular title.

4.23 Figure 10 below shows that News Corp has the highest readership of all newspaper groups, with 14.5 million adults aged 16+ (or 29% of the adult population) reading at least one of their titles. News Corp's readership is approximately double that of DMGT (7.3 million, 14.8%) and Trinity Mirror Group (6.8 million, 13.9%), the second and third largest newspaper providers<sup>68</sup>.

<sup>64</sup> There are a number of other newspaper titles in the UK, however, these have been excluded from our analysis as they have a regional or non-UK wide (e.g. Scottish) news focus. Four remaining national newspapers have also been excluded – Daily Sport, Saturday Sport, Sunday Sport and Racing Post – as they do not carry a material amount of national news.

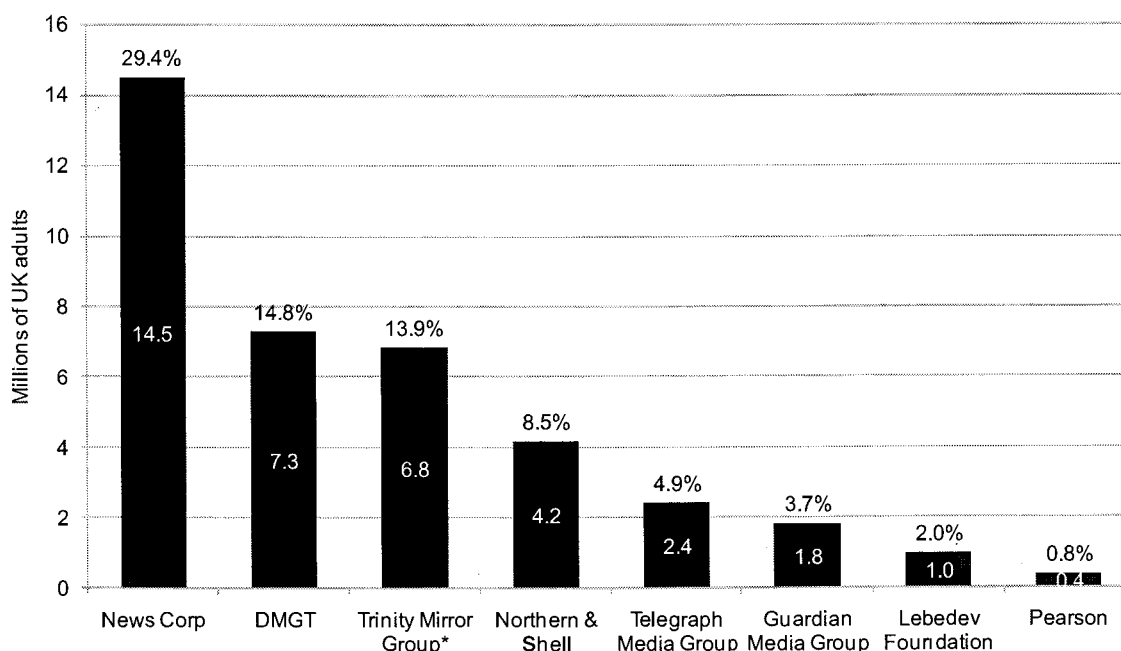
<sup>65</sup> News International accounts for 34.8% of circulation for daily newspapers, and 41.3% of circulation for Sunday newspapers.

<sup>66</sup> DMGT account for 20.9% of circulation for daily newspapers, and 20.1% of circulation for Sunday newspapers. ABC/MediaTel/Ofcom calculations

<sup>67</sup> Northern & Shell account for 15% of circulation for daily newspapers, and 17.5% of circulation for Sunday newspapers. ABC/MediaTel/Ofcom calculations

<sup>68</sup> National Readership Survey 2010 - (October 2009 - September 2010). Based on net average issue readership, 6 day period for daily titles.



**Figure 10 - Readership for national newspaper groups**

Source: Ofcom / Kantar Media analysis based on NRS data 2010 (October 2009 - September 2010). All adults 16+.

Note: Daily and Sunday national newspapers only, excluding regional newspapers. Net reach is based on average issue readership (AIR). For daily papers this is 6-day AIR. Trinity Mirror includes Daily Record in Scotland.

### Online services

- 4.24 Our cross-media audience research (2010) found that 26% of adults regularly use the internet as a source of news<sup>69</sup>. Internet take-up, currently at 76% of UK homes, continues to grow<sup>70</sup>, with an increasing number of people using the internet as a source of news (as displayed in Figure 6 above).
- 4.25 The internet is the only platform on which both Sky and News Corp directly overlap. As Figure 11<sup>71</sup> below shows, News Corp is currently the fourth largest online news

<sup>69</sup> This is comprised of 24% for internet on computer and also 5% for internet on mobile phone, which when combined and de-duplicated is 26%.

<sup>70</sup> Ofcom Consumer Experience Report 2010, p. 23-24.

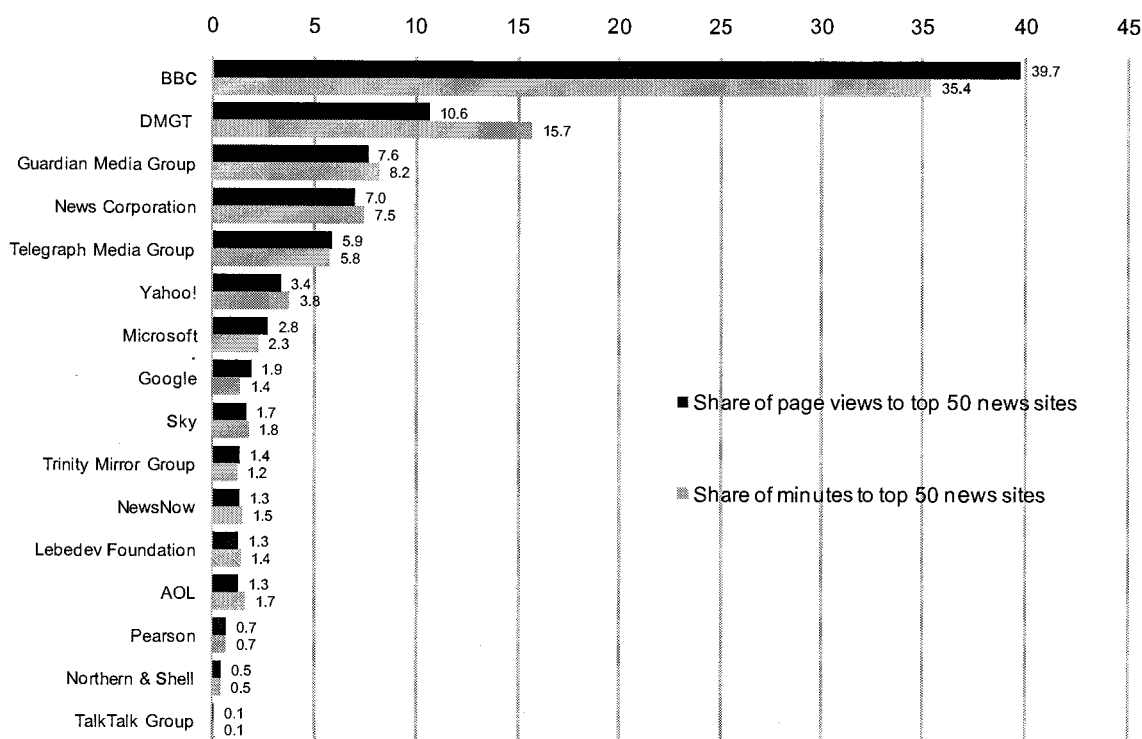
<sup>71</sup> Our figures for the share and reach of each owner exclude regional and international titles for each owner. However such titles are included in the total number of page views and minutes from which the percentages are calculated (i.e. the denominator includes page views and minutes to regional/international sites). This has the effect of understating the share and reach figures for media owners who have regional and international titles. Including international and regional titles in our reach and share figures would have the following effects:

- DMGT's share of minutes increases from 15.7% to 18.7%, and its reach from 9.1% to 11.8%.
- GMG's share of minutes increases from 8.2% to 8.5% while its reach increases from 7.4% to 7.8%.
- News Corp's, share of minutes increases from 7.5% to 7.8% when international titles and the Scottish Sun are included, while its reach increases from 7.7% to 8.2%.
- Other media providers including Trinity Mirror and The Lebedev Foundation also show slight increases in population share and reach when regional/international titles are included.

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provider in terms of both page views (7.0%) and minutes (7.5%), while Sky currently is tenth (with 1.7% and 1.8% for page views and minutes respectively). The BBC leads the usage of online news sites with a 39.7% share of page views and 35.4% share of minutes of use.

**Figure 11 - Share of Page Views and Minutes for Top 50 News Sites by wholesale news provider (%)**



Source: Nielsen, home and work panel, applications included, all people aged 2+, October 2010.<sup>72</sup>

4.26 Nielsen provides a standard metric of population reach, which is defined as the proportion of the total UK population aged 2+ who have visited a site. In terms of population reach, News Corp was the third largest internet news provider, reaching 4.6 million individuals (or 7.7% of the UK population, aged 2+<sup>73</sup>) with its online news content in October 2010, while Sky reached 1.6 million individuals (2.6% of the population). The largest provider was the BBC, reaching 12 million individuals (19.8%), followed by DMGT reaching 5.5 million individuals (9.1%). This data shows

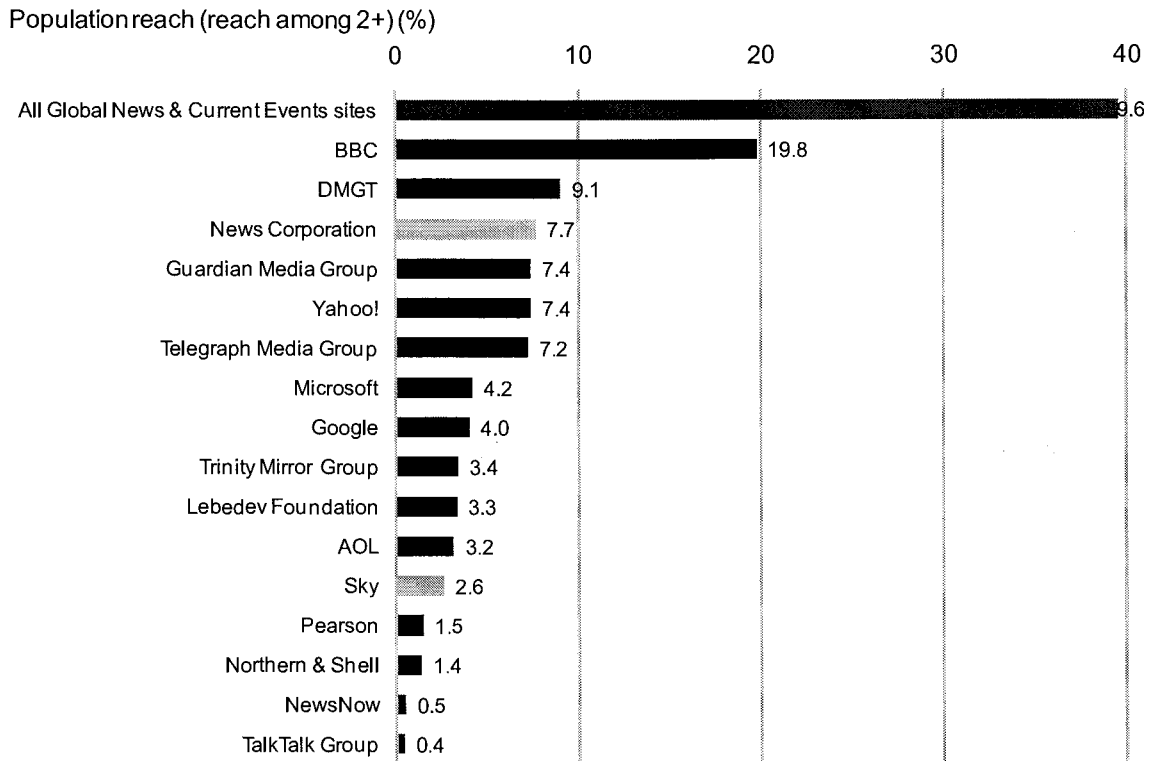
- The chart would also include some standalone regional or international providers such as the New York Times and Gannett.

<sup>72</sup> Market share calculated as a percentage of the top 44 sites in Nielsen's 'Current Events & Global News' subcategory combined with six other relevant sites (FT.com, Wall Street Journal, Reuters, Metro.co.uk, Northcliffe Newspaper Group, Archant Regional Network). Nielsen is investigating a decline in its internet use data around duration metrics and the potential impact of this on unique audience metrics. Consequently, until these investigations are concluded, Nielsen internet data for 2010 is likely to represent a lower bound and should be treated as indicative only.

<sup>73</sup> Data collected by UKOM/Nielsen is based on a total UK population aged 2+. This differs from the data used to assess other platforms in this report which are based on the adult population 16+. As a result, the percentage of population figures quoted for online reach will be proportionally lower than those quoted as percentage of the adult population for other platforms.

a greater balance in the relative reach of the nation-wide newspaper providers compared to print news.

**Figure 12 - Online Population Reach for Top 50 sites by Owner (%)**



Source: Nielsen, home and work panel, applications included, all people aged 2+, October 2010.<sup>74 75</sup>

4.27 In its submission, News Corp argued that the high degree of fragmentation in the online news sector ensures plurality in online news provision. The FTI Report, attached to the News Corp submission, states that “Online has hundreds (and potentially millions) of news voices (and media, formats, and services). Moreover, there are several other players in this space, primarily the BBC, that enjoy a much stronger market position than Sky and News Corporation”.

4.28 We have found that there is a multitude of internet sites providing users with access to news content online. However, the extent to which these internet news providers add to plurality over and above the plurality which is delivered via other platforms is less clear. For the most part, internet news providers tend either to have a presence on another platform already (e.g. TV, newspapers); are news aggregators (e.g. Google News, Yahoo); or do not have a UK focussed news agenda (e.g. New York Times).

<sup>74</sup> Nielsen is investigating a decline in its internet use data around duration metrics and the potential impact of this on Unique Audience metrics. Consequently, until these investigations are concluded, Nielsen internet data for 2010 is likely to represent a lower bound and should be treated as indicative only.

<sup>75</sup> This information is after The Times introduced a paywall. However, the way the information is collected, measurement is taken on access to the home page of news providers’ sites, which does not sit behind a paywall for The Times. Since introduction of the paywall on The Times site, News Corp has reported numbers of consumers using its services.

## Report on public interest test

- 4.29 There is anecdotal evidence that the level of syndication of news on the internet is high<sup>76</sup>, suggesting that the majority of news stories reported by each individual site are essentially replicated from a small number of original news stories. Despite this, news aggregators may, to some extent, add to plurality by exerting a degree of editorial influence in deciding which stories are given prominence, and, in the case of aggregators, may increase users' exposure to multiple sources of news. This is explored in more detail in Section 5.
- 4.30 There is also evidence that multi-sourcing (where consumers source news from a range of providers within or across platforms) may be higher among consumers of online news than other platforms. The Perspective report submitted by News Corp included an analysis of Comscore data which found that the average online multi-sourcing among online news consumers was 3.46 sources within the platform<sup>77</sup>. The issue of multi-sourcing and its effect on the consumption of news is explored in more detail in paragraphs 4.59 to 4.80.
- 4.31 We note that higher levels of multi-sourcing online may be focused on specific demographics and socio-economic groups given the variations in online take-up and usage. Just under a quarter (24%) of UK households do not have access to the internet<sup>78</sup>. As noted earlier, 26% of adults say that they regularly consume news online<sup>79</sup>. However, only 6% of those aged 65 and over said that they consumed news online on a regular basis<sup>80</sup>. Within socio-economic groups, online news consumption is higher for those in ABC1 socio economic group (34%) than those in C2DE group (15%).

## Radio

- 4.32 Our cross-media audience research (2010) found that 32% of adults say that they regularly use radio as a source of news. Among regular news consumers only 3% say that they source their news only from radio. This compares to 29% who only source news from TV, 6% for newspapers and 5% for online. Furthermore, Ofcom's Media Tracker (2009) found that 7% of UK adults consider radio to be their main source of UK news. As a main source of news, radio appears to be relatively less important than some of the other media.
- 4.33 Sky does not have a retail presence in the radio sector; rather, it wholesales its news content to commercial radio providers. Following the awarding of the IRN contract to Sky in March 2009 (previously held by ITN), it now supplies news content to virtually all commercial radio stations in the UK.
- 4.34 According to RAJAR, nearly 46.8 million adults (aged 16+) listened to the radio on a weekly basis (5 minutes consecutive listening) in the third quarter of 2010. This

<sup>76</sup> Desk research from the Nieman Foundation at Harvard University found that of the 121 unique articles listed on Google News for one news item on February 20<sup>th</sup> 2010, only 13 (11%) had some amount of original reporting and only 7 (6%) consisted primarily of original reporting. (<http://www.niemanlab.org/2010/02/the-googlechina-hacking-case-how-many-news-outlets-do-the-original-reporting-on-a-big-story/> )

<sup>77</sup> National Readership Survey, BARB, Comscore, Perspective Analysis, in Perspective Report p33

<sup>78</sup> UK Internet Take-up is 76% of households, as published in our Consumer Experience Report (December 2010)

<sup>79</sup> Ofcom Cross-media audience research. Note: Regular defined as at least once a week. 24% for internet on computer, but also 5% for internet on mobile phone, which when combined and de-duplicated comes out as 26%.

<sup>80</sup> In addition, this figure was 36% among 16-24, 39% among 25-34, 32% among those aged 35-44, 29% among those aged 45-54, and 17% in the 55-64 age group.

equates to 90% of the UK adult population. RAJAR does not provide a breakdown of listening by programme type. However, we estimate that a large proportion of this listening is not to news content because news content is scheduled only periodically on radio networks.

- 4.35 As outlined above, the radio listening figures from RAJAR are based on listening to all radio, and are not specific to listening to news content. At the wholesale level, Sky is one of only two main providers of news content to radio listeners. The radio stations that it provides news to account for 43.6% of all radio listening<sup>81</sup>, with the BBC accounting for 54.2%, according to RAJAR. At the retail level, the BBC share of listening remains the same (54.2%) and is then followed by a range of smaller radio providers, most notably Global (16.6%) and Bauer (11.1%).

**Figure 13: Radio listening shares and wholesale provision**

<b>Group</b>	<b>Share of radio listening</b>	<b>News supplier</b>
BBC Network Stations	45.2%	BBC
BBC Local/Regional	9.0%	BBC
<b>Total BBC</b>	<b>54.2%</b>	
Global Radio (UK)	16.6%	Sky
Bauer Radio	11.1%	Sky
GMG Radio	4.1%	Sky
UTV Radio (inc. TalkSPORT)	3.3%	Sky
Absolute Radio Network	1.7%	Sky
Other commercial	6.8%	Sky
<b>Total Commercial</b>	<b>43.6%</b>	
Other listening	2.2%	
<b>Total other listening</b>	<b>2.2%</b>	

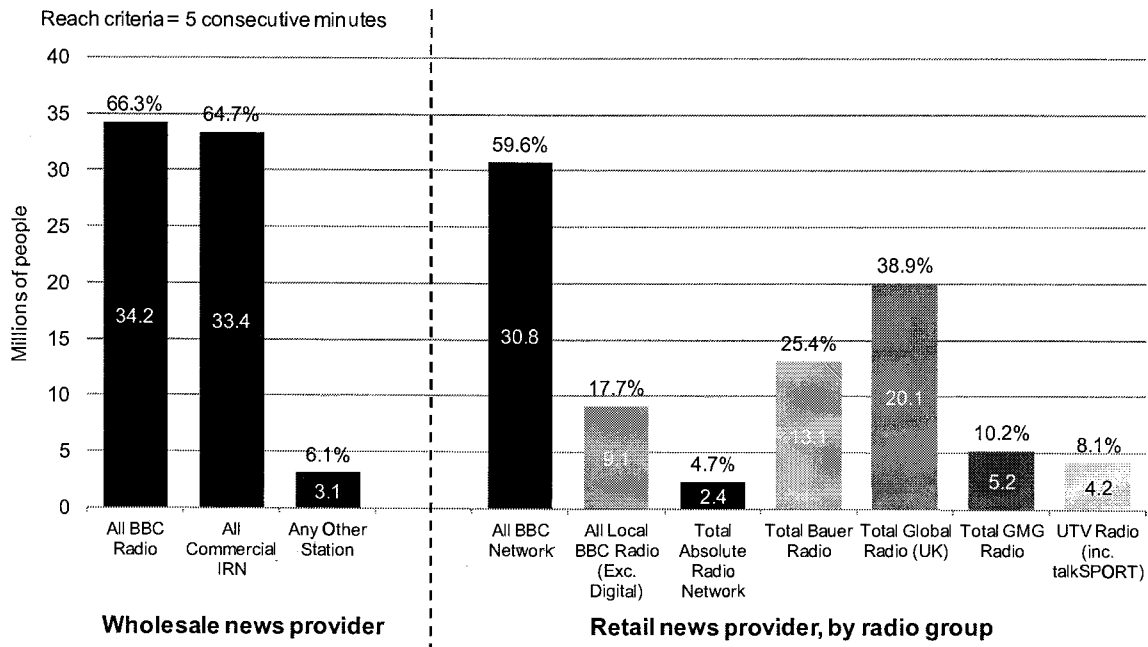
Source: Ofcom, RAJAR Q3 2010, all adults 16+

Note: Figures are for total listening, not radio news listening, as RAJAR does not provide genre breakdowns.

- 4.36 Figure 14 below sets out the proportion of adults aged 16+ who listened to at least 5 consecutive minutes of radio (audience reach) for each provider of radio news at both the wholesale and retail level. This demonstrates that, through its supply of news content at the wholesale level Sky has the potential to reach 33.4 million adults or 64.7% of the adult population. This compares to the BBC's reach of 34.2 million (66.3%) adults. It has not been possible to calculate reach on the basis of radio news listening alone, and the amount of national news broadcast will vary by outlet, it is likely that estimating reach on the basis of all radio listening overstates the level of reach achieved in respect of national news listening. No industry data is available to estimate the share or reach of radio news.

<sup>81</sup> As noted earlier, in the absence of data on radio news listening (as RAJAR does not provide genre breakdowns) we have used total radio listening when considering the relative positions of each media provider on the radio platform.

**Figure 14 - Radio Average Weekly Reach – Q3 2010**



Source: RAJAR, All Adults (16+), Q3 2010<sup>82</sup>. Note, this is not radio news listening, but all radio listening as RAJAR does not provide genre breakdowns.

**Summary of platform by platform analysis**

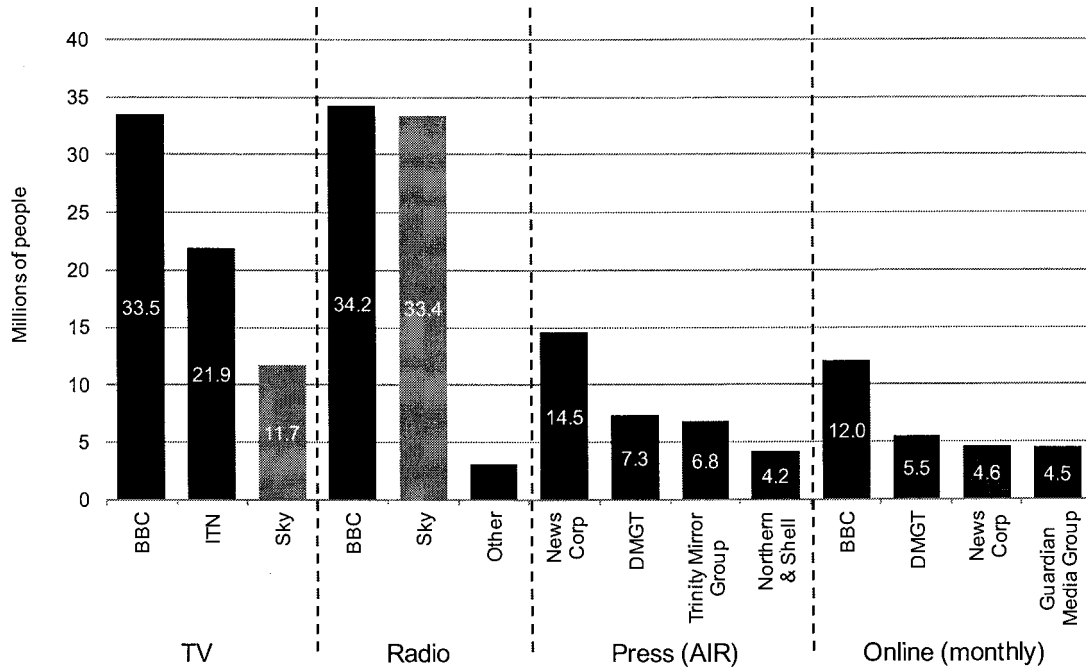
4.37 With a strong presence on three of the four media platforms (TV, Radio and online), the BBC is the largest and most far reaching provider of news and current affairs to consumers in the UK. While ITN and ITV are only present on two platforms (TV, online), they currently hold a strong overall position given their presence on TV (as the second largest provider) which is the most commonly used platform for news and current affairs consumption. Sky is present on three platforms at the wholesale level (two at the retail level) which includes the TV platform. As a result it achieves a relatively high reach in terms of proportion of the adult population. At the wholesale level, Sky also has a strong presence in the provision of news content to radio broadcasters. News Corp is currently present on two platforms (newspapers, online), and holds a strong position in respect of newspapers, achieving a reach double that of its nearest rival, DMGT. A number of other media providers are also present on one or two platforms.<sup>83</sup>

4.38 Figure 15 and Figure 16 provide a graphical comparison of the parties' reach within each platform. While the standard industry measure of reach is different for each platform and cannot be combined, viewing each measure as a proportion of the adult population does provide a picture of the main news media providers' relative importance (in terms of reach) across all four media platforms.

<sup>82</sup> 'Any other station' will include listening to (but not limited to) stations not measured by RAJAR (e.g. small community radio stations), hospital radio stations, army base radio stations.

<sup>83</sup> In most cases, the second platform is online as a result of the creation of a news website to complement their offering on another platform.

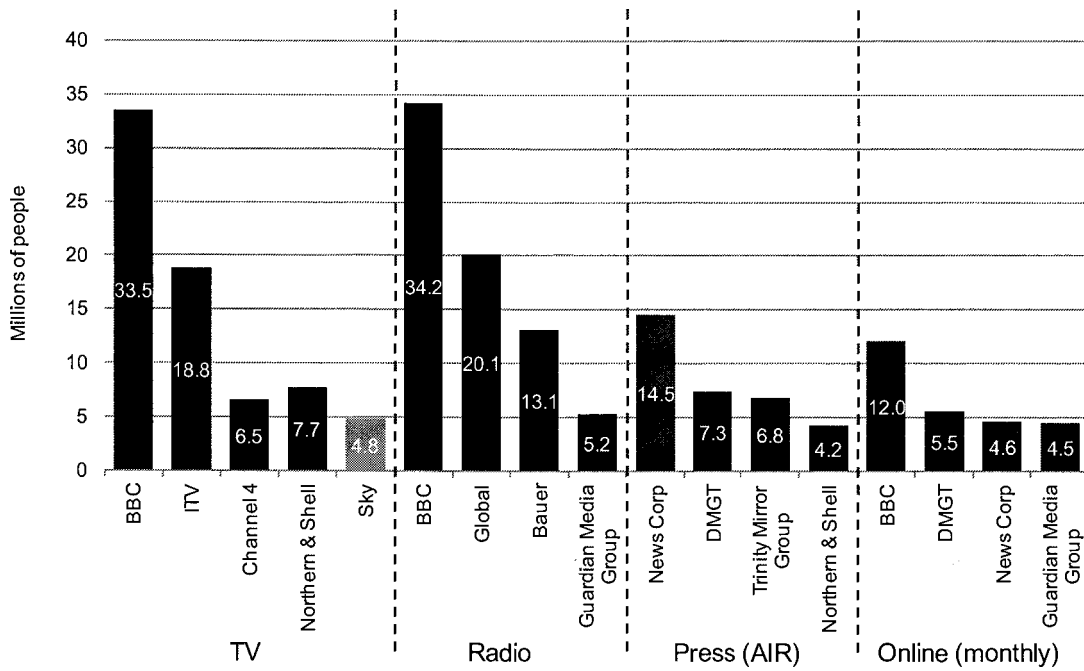
Figure 15 - Reach across platform (millions of people) at wholesale level



Source: TV: October 2010, BARB, All Adults (16+), Radio: Q3 2010, RAJAR, All Adults (16+), Press: Kantar Media/NRS, all adults (16+), Online: October 2010, Nielsen / UKOM<sup>84</sup>, all 2+. Methodologies for data collection differ by industry.

<sup>84</sup> **TV:** National and international news subgenre only. BBC = BBC One, BBC Two, BBC News. ITN = ITV1, C4. Sky = Sky News, Five. Reach criteria = 3 consecutive minutes of viewing in an average week, October 2010. **Radio:** Listening to all radio – as RAJAR does not provide programme genre analysis. ‘Any other’ includes listening to stations not individually measured by RAJAR and non BBC or Commercial stations. Reach criteria = 5 consecutive minutes of listening once in the week. **Press:** 6 day average issue readership (AIR) for dailies, Oct 2009 – Sept 2010, excludes regional titles. Reach criteria = read or looked into a publication within its publication period for at least 2 minutes. News Corp = The Sun, News of the World, Times, Sunday Times; DMGT = Daily Mail, Mail on Sunday; Trinity Mirror = Daily Mirror, Sunday Mirror, The People, Daily Record (in Scotland); Northern & Shell = Daily Star, Daily Express, Daily Star Sunday, Sunday Express. **Online:** Home and work panel, applications included, all aged 2+. Analysis based on top 50 news sites only. Figures are monthly unduplicated audiences. Unduplicated audience figures exclude regional and international titles, and sites outside the top 50. BBC = BBC News + BBC Homepage, DMGT = MailOnline, News Corp = The Sun + News of the World + The Times/Sunday Times, Guardian Media Group = Guardian.co.uk.

**Figure 16 - Reach across platform (millions of people) at retail level**



Source: TV: BARB, All Adults (16+), Oct 2010, Radio: RAJAR, All Adults (16+), Q3 2010, Press: Kantar Media/NRS, all adults (15+), Online: Nielsen / UKOM, Oct 2010, all 2+.<sup>85</sup>

**News and current affairs consumption cross-media**

4.39 In the absence of a single metric to measure the consumption of news consistently across platforms, Ofcom commissioned audience research into the claimed consumption patterns of user across TV, radio, press and online. Details of this research can be found in Annex 1. The research asked respondents to name their sources of UK and international news and current affairs from a prompted list that included regional and local sources, such as regional newspapers or regional radio stations (see footnote 52). From this data we were able to establish a common metric (share of references<sup>86</sup>) to measure cross-media news and current affairs consumption in terms of:

- ‘main source of news’ – respondents were also asked to name their single main source of news that they used regularly (e.g. a specific TV channel, website,

<sup>85</sup>TV ‘National News’ genre only. Reach criteria = 3 consecutive minutes of viewing once in the week  
 Radio: Top 4 groups charted. Reach criteria = 5 consecutive minutes of listening once in the week  
 Press: Press: 12 month average issue readership (AIR) Oct 2009 – Sept 2010, excludes regional titles. Reach criteria = read a publication within its publication period for at least 2 minutes. Online: Home and work panel, applications included, all aged 2+. Analysis based on top 50 news sites only. Figures are monthly unduplicated audiences. Unduplicated audience figures exclude regional and international titles, and sites outside the top 50.

<sup>86</sup> In Ofcom’s cross-media audience research (2010) a ‘reference’ is a news brand/title that is cited by a consumer as a source of regular (i.e. at least once a week for all sources, except for weekly newspapers and magazines where it is defined as at least once a month) UK or international news or current affairs for them. A media provider’s total references are calculated as responses for each individual news source across the platforms of TV, radio, newspapers and internet. These are for example, BBC One, Sky News, The Daily Mail, etc. If a respondent uses more than one source from a particular media provider it counts each time. The share of each media provider is then calculated as the aggregated number of references for that media provider, expressed as a proportion of all references.



newspaper or radio station). This enabled us to aggregate this data by media owner (retailer) and media provider (wholesaler) to establish the share by media owner or provider based on consumers' single main source of news<sup>87</sup>; and

- 'all regular sources of news' – by provider (retailer e.g. title, channel) and wholesaler (media provider). This includes all sources of news and current affairs named by consumers that they used regularly. It therefore includes both the main source of news named and 'secondary' sources named, thereby including the effects of multi-sourcing on the share of media providers.

4.40 Respondents were able to name any source of news, including both nation-wide and local or regional news providers as part of this research. In the results, local or regional providers have been aggregated into 'other' but individually accounted for a small share of responses.

4.41 Furthermore we were able to calculate the proportion of people who said that they had used at least one media source by media owner (retailer) and by media provider (wholesaler), in order to produce a cross-media reach metric based on regular news consumers. For example, if a respondent said they had used both a BBC website and BBC One, they counted once in the cross-media reach for the BBC. See Annex 1 for more details.

4.42 This research has enabled us to examine the relative shares and reach of different news and current affairs providers, in respect of their importance to consumers both as a main source of news, and as a regular source of news more generally.

**Share of references**

4.43 The analysis provides us with four different measures of audience share for each provider: the "main source of news", and "all regular sources of news", at both the retail and wholesale level. The results of our research are summarised in Figure 17 and displayed in Figure 18 to Figure 21 below for regular use (at least once a week).

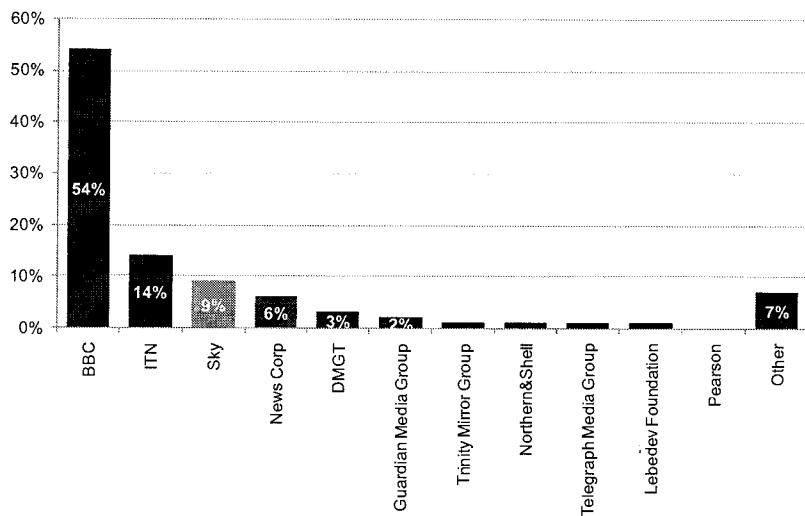
**Figure 17: Summary results from market research on share of references**

	'Share of references'			
	'Main source of news'		'All regular sources of news'	
	Wholesale	Retail	Wholesale	Retail
BBC	54%	54%	37%	37%
ITN / ITV	14%	12%	12%	9%
News Corp	6%	6%	12%	12%
Sky	9%	7%	10%	5%
Others	See Figure 18	See Figure 19	See Figure 20	See Figure 21

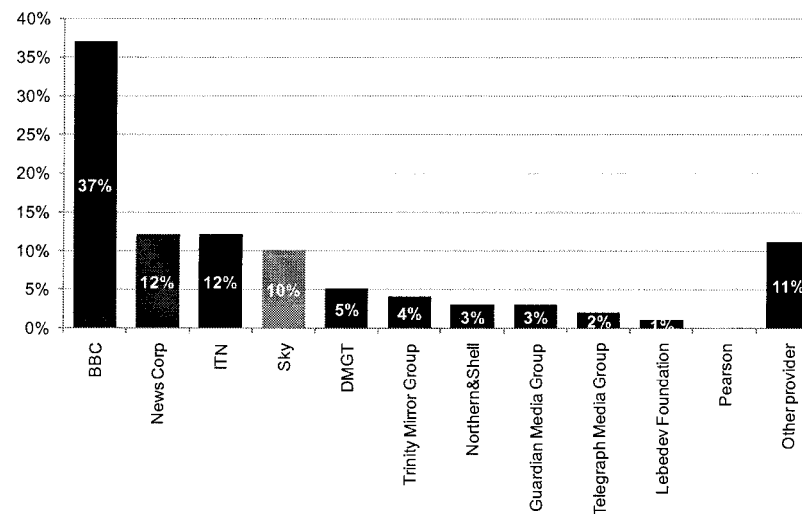
<sup>87</sup> For the purposes of assessing share of references at the wholesale level, where news is provided through a wholesale contract, the reference is attributed to the wholesale provider of news content. At the retail level, the reference is attributed to the owner of the news source named.

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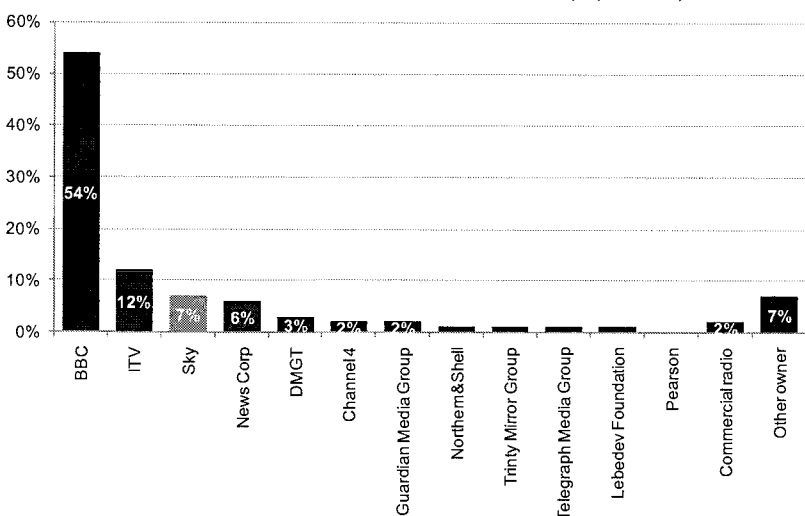
**Figure 18 - Share of references for single main source of news, at wholesale level** (Base: regular users of news, 96% of GB population)



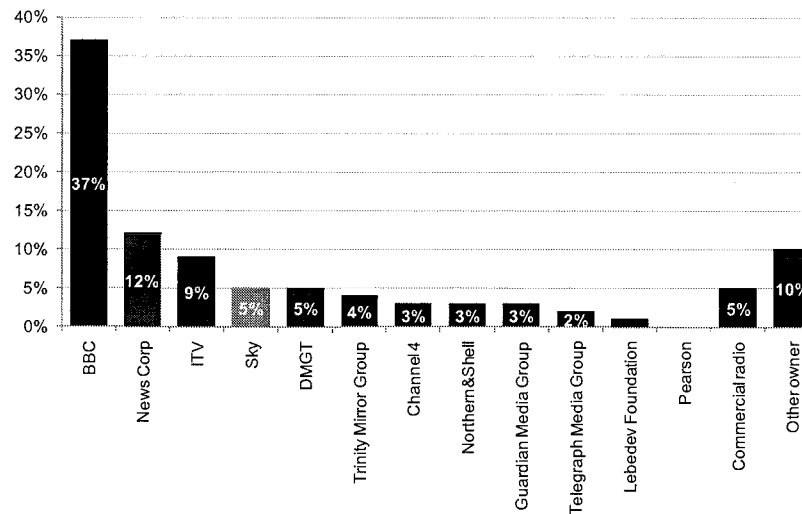
**Figure 20 - Share of references for all sources of news, at wholesale level** (Base: regular users of news, 96% of GB population)



**Figure 19 - Share of references for single main source of news, at retail level** (Base: regular users of news, 96% of GB population)



**Figure 21 - Share of references for all sources of news, at retail level** (Base: regular users of news, 96% of GB population)



- 4.44 Our analysis indicates that the BBC is the single most named source of news and current affairs for respondents, both in terms of share of references for main source of news (54%) and share of references for all sources of news (37%). While the BBC is not present on all four platforms, it continues to account for a large proportion of cross-media consumption, primarily due to its position in TV news viewing, the platform most cited by consumers as being their main source of news. As noted earlier, the BBC's position in the provision of TV news has increased over the last eight years. It also possesses a strong online news service and is the leading source of radio news for listeners.
- 4.45 Together ITN and ITV hold a relatively strong position in the provision of news to cross-media audiences at the wholesale and retail levels respectively. In respect of the wholesale provision of news, ITN is the second largest wholesale provider in terms of main source of news with 14% of respondents naming ITV or Channel 4 as their main source of news. ITN is second (joint with News Corp) most cited of all sources of news with 12%. Similarly, ITV is a strong provider of news at the retail (media owner) level as the third largest provider, with 12% of respondents indicating it was their main source of news and 9% of responses indicating it was a regular source of news. The prominence of ITV and ITN is primarily due to their presence on the TV platform, particularly given they are currently only present on one other platform (online). As noted earlier, ITV's share of TV news viewing has been falling over the last eight years.
- 4.46 While only present on two of four platforms today (newspapers, online) News Corp has a strong position relative to other remaining media providers, with 6% of respondents naming it as a main source of news (fourth overall) and 12% of responses citing it as a regular source of news (second overall)<sup>88</sup>. News Corp's position in respect of cross-media consumption is primarily due to its leading presence in the newspaper platform.
- 4.47 Due to its presence on the TV platform, Sky also has a relatively strong position relative to other providers. Sky's position is enhanced at the wholesale level, due to its wholesale contracts to supply TV and radio news content, where it is the third largest provider of news in cross-media terms. In this respect, 9% of respondents cited Sky as a main source of news, whereas it had a 10% share of references as a regular source of news. If considered at the retail level, Sky's is third with a 7% share of references for main source of news, and is equal fourth in share of references for all regular sources of news with 5%.
- 4.48 As would be expected, a number of other media providers also contribute to cross-media consumption, although for the most part they account for substantially smaller shares of references for main source of news and for all regular sources of news. The one exception to this is DMGT<sup>89</sup> which had the same share of all sources of

<sup>88</sup> There is no difference between wholesale and retail for News Corp as it self-provides news for its newspaper and online.

<sup>89</sup> The questions on news sources in the quantitative research were based on asking respondents to select from a list which news sources they used on a regular basis. Respondents were also asked if there were any other titles they used that were not on the list and these were also recorded. For the weekly newspapers, the list read: The Observer, The Sunday Telegraph, The Sunday Times, The Independent on Sunday, Sunday Mirror, News of the World, The Sunday Herald (shown in Scotland only), Wales on Sunday (shown in Wales only), Weekly magazines (e.g. The Economist, The Spectator, New Statesman, etc), Other weekend/weekly newspaper or weekly magazine (write in). Due to an error, the list omitted the following weekly newspapers: Mail on Sunday, Daily Star on Sunday, Sunday Express, The People. Data for these titles are therefore based on spontaneous responses from participants. In order to investigate the potential impact of this research effect, we

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news (5%) as Sky at the retail level. However, only 3% of respondents named it as a main source of news (compared to 7% for Sky).

## Reach

- 4.49 Our cross-media audience research also provided us with the data to calculate an estimate of the proportion of regular news consumers who say that they use at least one source of news on a regular basis for each media provider and owner across all platforms (offering a cross-media audience reach metric). For example, if a respondent said they had used both the BBC website and BBC One as regular sources of news, they were counted once in the cross-media reach for the BBC.
- 4.50 Submissions made to Ofcom offered alternative measures for audience reach. A number of submissions used reach figures sourced from Touchpoints, which provides a database for multimedia channel planning which gathers together figures from the industry standard measures for each of BARB for TV, RAJAR for radio, UKOM for online and NRS for print to generate a single source through data fusion. This suggested the combined reach of News Corp / Sky would be 52% of the UK population<sup>90</sup>.
- 4.51 We have not had sufficient time to fully validate the Touchpoints findings in addition to our own research and use of individual industry data. This is within the context of there being no one industry recognised single source of media measurement across platform. In addition, each of the individual industry measures for TV, radio, newspapers and online have differing definitions for the genre of news, as well as different methods for measuring consumption, as well as variation in age ranges, and definitions of consumers.
- 4.52 The quantitative research we commissioned offers instead a consistent definition of news and current affairs, and of consumption for each platform. Although it has from limitations (for example, our market research is based on a weighted sample of respondents that is smaller than those generally used to compile standard industry metrics) we believe that it provides useful data in analysing reach on a cross-media

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undertook a modelling exercise for all the weekly newspapers and normalised estimates based on the national readership distribution from the national readership survey. The results showed a minimal effect on total share of references:

- Retail level results: BBC 36%, ITV1 9%, News Corp 13%, Sky 5%, Channel 4 3%, Northern Shell, 4%, Associated Newspapers 6%, Trinity Mirror Group 5%, Telegraph Media Group 2%, Guardian Media Group 3%, Independent Print 1%, Pearson (less than 1%), Commercial radio 5%, other owner 9%.
- Wholesale level results: BBC 36%, ITN 12%, News Corp 13%, Sky 10%, Northern Shell 3%, Associated Newspapers 6%, Trinity Mirror Group 5%, Telegraph Media Group 2%, Guardian Media Group 3%, Independent Print 1%, Pearson less than 1%, Other owner 10%

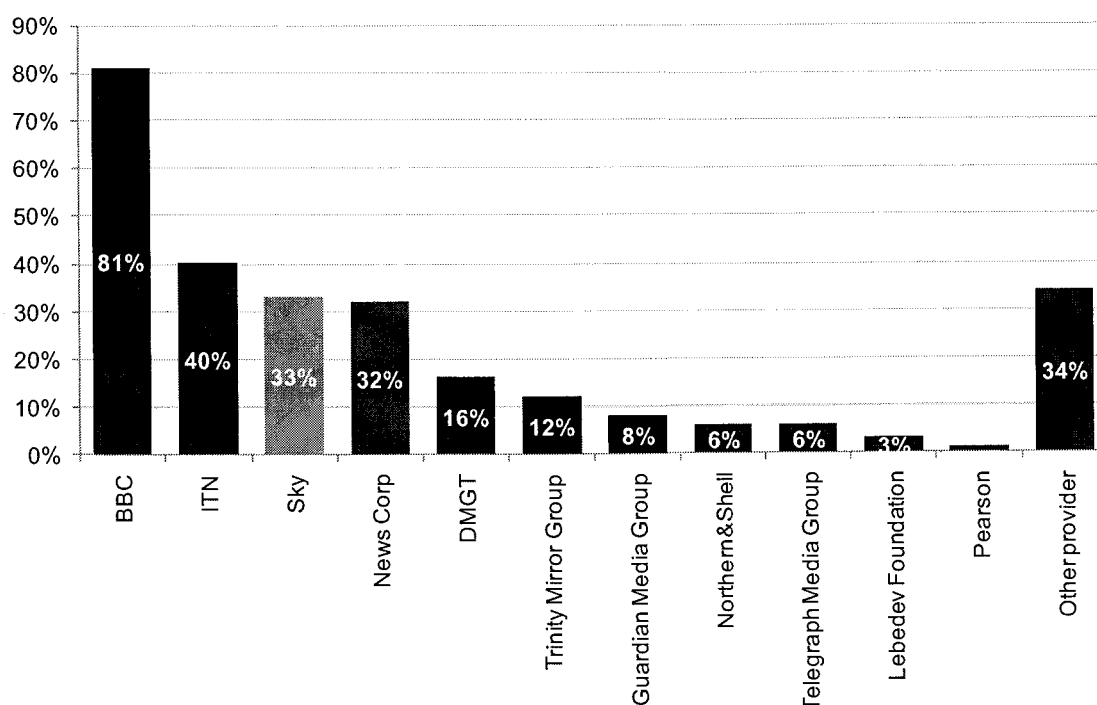
<sup>90</sup> Source: Slaughter and May submission, based on Arena BLM Touchpoints Analysis. Covering News Corporation newspapers, BSkyB TV news channels, Five News, News Corporation and BSkyB websites and TalkSport (one of the main radio stations supplied by Sky News). It does not include reach BSkyB achieves through the supply of news to all commercial radio. Touchpoints provide a database for multimedia channel planning which gathers together figures from the industry standard measures for each of BARB for TV, RAJAR for radio, UKOM for online and NRS for print to generate a single source through data fusion. Due to the time constraints on the test, we did not have sufficient time to fully validate the Touchpoints findings, this also applies to other third party research quoted in this document. This is within the context of there being no one industry recognised single source of media measurement across platform. In addition, each of the individual industry measures for TV, Radio, Newspapers and online have differing definitions for the genre of news, as well as different methods for measuring consumption, as well as variation in age ranges, and definitions of consumers.

basis. Our platform-by-platform analysis outlined between paragraphs 4.11 and 4.38 considers the standard industry reach metrics specific to each platform.

- 4.53 The results of our cross-media audience research are given in Figure 22 and Figure 23 below. This shows that 81% of consumers who use news regularly use the BBC as a news source at least once a week. This position does not vary between wholesale and retail as the BBC self-provides news.
- 4.54 At the wholesale level, ITN is second in cross-media audience reach, with 40% of consumers who use news regularly saying they use it as a regular source of news. Sky is third achieving a cross-media audience reach of 33%, followed by News Corp in fourth with 32%. There is then a longer tail of smaller providers comprising the other newspaper groups. 'Other providers' is a fragmented group of smaller providers named by respondents to the research.
- 4.55 At the retail level ITV is the second placed news provider with a reach of 34%. News Corp is third with 32% and Sky fourth with 17%. However, although the identity of the top four news providers remains the same, the gap between them and the other providers is much reduced, with DMGT and Trinity Mirror at fifth and sixth place with 16% and 12% respectively. In this chart, Channel Five is included within Northern and Shell. The retail assessment also includes commercial radio (covering the reach of all commercial radio stations) and other providers. The difference between the wholesale and retail data on reach is mainly due to the significant reach of TV news on Channel 4 and Channel Five.

**Figure 22 - Cross-media audience reach of consumers who use news regularly, wholesale level**

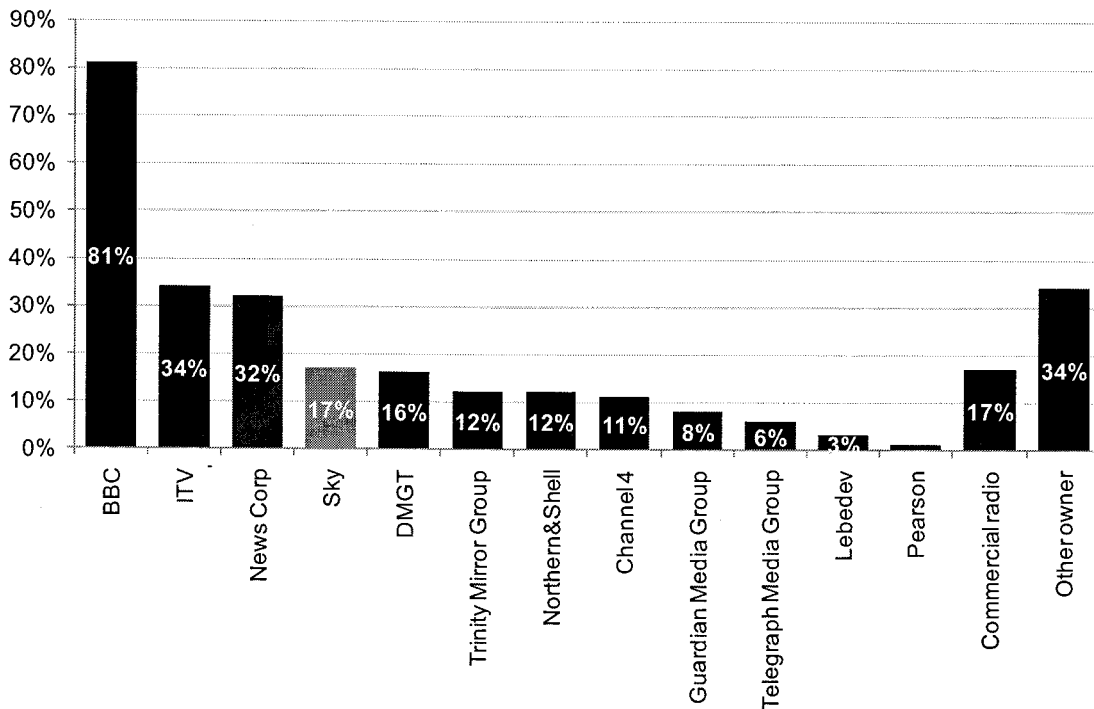
Percentage of consumers using news regularly



Source: Ofcom cross-media audience research, 2010

**Figure 23 - Cross-media audience reach of consumers who use news regularly, retail level**

Percentage of consumers using news regularly



Source: Ofcom cross-media audience research, 2010

**Demographic and socio-economic variations in cross-media use of news and current affairs**

4.56 Our cross-media audience research highlighted some variation in the news and current affairs sources that people from different age or socio-economic groups use to access news and current affairs.

4.57 The most notable variations are as follows:

- Older consumers are less likely to use the internet as a source of news. While on average across the population 26% of people said that they regularly used the internet to access news, for the 65+ age group this was 6%<sup>91</sup>. Regular use of the internet as a source of news and current affairs also varies according to socio-economic group, with 34% of those in the ABC1 group comparing to 15% of those in the C2DE group<sup>92</sup>. Both of these are consistent with general internet take-up and usage trends within these groups.
- Younger consumers are less likely to say that they use radio as a source of news and current affairs. While the proportion of the population as a whole who used the radio to access news on a regular basis was 32% on average, for 16-24 year olds, this was 21%. Younger consumers were also less likely to cite television

<sup>91</sup> Cross media audience research 2010, Base: All adults in GB (2018), Q1A: platforms used regularly (at least once a week) for news. Note: Regular defined as at least once a week.

<sup>92</sup> Ibid.

(66%) versus 79% for all adults, and more likely to cite the internet (36%) versus 26% for all adults.

- Older consumers aged 55+ are more likely to cite newspapers as a source of news (50% of those aged 55-64 and 54% of those aged 65+) versus 44% for all adults.
- Platform-level multi-sourcing also varies to some extent. According to our cross-media audience research, people aged 55-64 were less likely to use just one platform for news (36% compared to 42% for all adults) whereas those aged 16-24 were more likely (46%), as were those in the C2DE socio-economic group (50%). Research cited by the merging parties showed broadly consistent socio-economic variations regarding multi-sourcing.

4.58 In the time available, we did not consider these variations to be significant enough to warrant the definition of separate audiences according to age or socio-economic groupings.

## Consumers' use of multiple sources of news and current affairs

4.59 Of relevance to plurality for news and current affairs is an understanding of how consumers may draw on multiple sources for news and current affairs. We refer to this by using the term 'multi-sourcing'.

4.60 It is important to note that the audience shares which we present above for the 'main source of news' are unlikely to capture the effects of multi-sourcing. However, the analysis which we present of audience shares for 'all sources of news' does capture the effects of multi-sourcing, albeit implicitly.

4.61 We have received detailed representations on how many sources consumer use for news and current affairs<sup>93</sup>. Consumers may use multiple sources of news in three ways:

- sourcing news from one provider on more than one platform;
- sourcing news from more than one provider on the same platform;
- sourcing news from more than one provider on more than one platform.

4.62 We look here at multi-sourcing across all providers and platforms. We have also looked in particular at consumers who source news today from both News Corp and Sky.

4.63 The possible implications of consumers using multiple sources for news and current affairs in the context of the proposed transaction are explored in section 5.

### Use of multiple media platforms

4.64 We estimate that a large proportion of the UK adult population uses more than one media platform to access news and current affairs.

4.65 Our cross-media audience research showed that 42% of regular news consumers rely on a single media platform for news and current affairs while 58% use two or

<sup>93</sup> See for example News Corp's response to the Invitation to Comment paragraphs 6.7-6.8 and [3<].

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more platforms on a weekly basis (32% use two platforms, 19% three platforms and 7% four platforms). This suggests that the average number of platforms used to access news in a typical week is 1.9.

- 4.66 Evidence submitted by News Corp suggests instead that the average number of 'types of media' used 'regularly' is closer to 4<sup>94</sup>. We note that FTI / Mintel consider local/regional newspapers as a type of media distinct from national newspapers, and similarly local/regional radio as a distinct type of media from national radio. This means that the total number of different types of media in the FTI / Mintel analysis is six: TV, internet, national newspapers, local/regional newspapers, national radio, and local/regional radio. Our analysis, instead, focuses on four media platforms: TV, radio, newspapers and internet. In addition, the definition of news for the multi-sourcing data may be broader than our definition for the public interest consideration, including: national and international news; sports; entertainment news; current affairs; and politics.
- 4.67 We are not persuaded in any event that these different approaches and the inclusion of different media are likely to make a significant difference to the overall understanding of consumers' use of multiple sources of news.
- 4.68 Among the alternative platform combinations available, our research found that 29% of regular news consumers claimed to rely on television alone for news content. Television coupled with newspapers was the next most popular combination (16% of respondents). Television, radio and newspapers came third (12%), followed by TV/radio together (7%) and TV/radio/newspapers/internet combined (7%). These five consumption modes accounted for over 70% of regular news consumers as measured in our quantitative research.

### Multi-sourcing within each platform

- 4.69 News Corp submitted evidence on how consumers use a range of different sources within and across platforms:
- FTI's report provides information on the proportion of consumers who use a mix of different platforms for news, drawing from TV, radio, newspapers, online and magazines. This suggests that around 8% of consumers use no sources of news, with around 17% using one source, 24% two sources, just under 25% using three sources, around 18% using four sources and around 8% using 5 sources. FTI noted more than 50% of consumers use 3 or more media platforms.
  - Within platforms FTI provided data suggesting that on average each week consumers use 1.1 channels for TV news, 2.2 channels for radio, 1.4 titles for newspapers and 3.5 websites for online<sup>95</sup>.
  - Perspective also provided data on multi-sourcing for news within platforms, slightly differing from FTI's, stating that consumers use 1.26 newspaper titles, 2.2 TV channels and 3.5 websites<sup>96</sup>.

<sup>94</sup> This estimate is based upon an analysis by FTI for News Corp of data published by Mintel in *Consumer Perception of News Media*, Sept 2010. In the time available, we have not been able to validate this evidence. Differences between our and FTI's estimate may be due to numerous methodological factors.

<sup>95</sup> News Corp submission, Annex 1 by FTI (Table 5.1)

<sup>96</sup> News Corp submission, Annex 1 by FTI (Table 5.1), Annex 2 by Perspective (Figure 23)



- 4.70 Our cross-media audience research<sup>97</sup> also provides evidence on the level of multi-sourcing within each platform. Its estimates are broadly similar to News Corp's for multi-sourcing within TV and newspapers. It indicates that for UK news and current affairs consumption: regular<sup>98</sup> TV news viewers use on average 1.7 channels per week; regular daily newspaper readers use on average 1.3 titles per week; and regular weekly newspaper readers use on average 1.1 titles per month.
- 4.71 However, our research suggests lower levels of multi-sourcing within the radio and internet platforms compared with the News Corp submission. We recognise that the difference in results may be due in part to limitations of our survey methodology causing an underestimate on our part of the level of multi-sourcing on the radio and internet<sup>99</sup>. On the other hand, we have not been able to validate the evidence submitted by News Corp in the time available.
- 4.72 If a reference to the Competition Commission were made, we would recommend further investigation of the level of media-brand multi-sourcing within the radio and internet platforms as a relevant factor in understanding how consumers use of news and current affairs media and how this affects plurality.

### Multi-sourcing across platforms

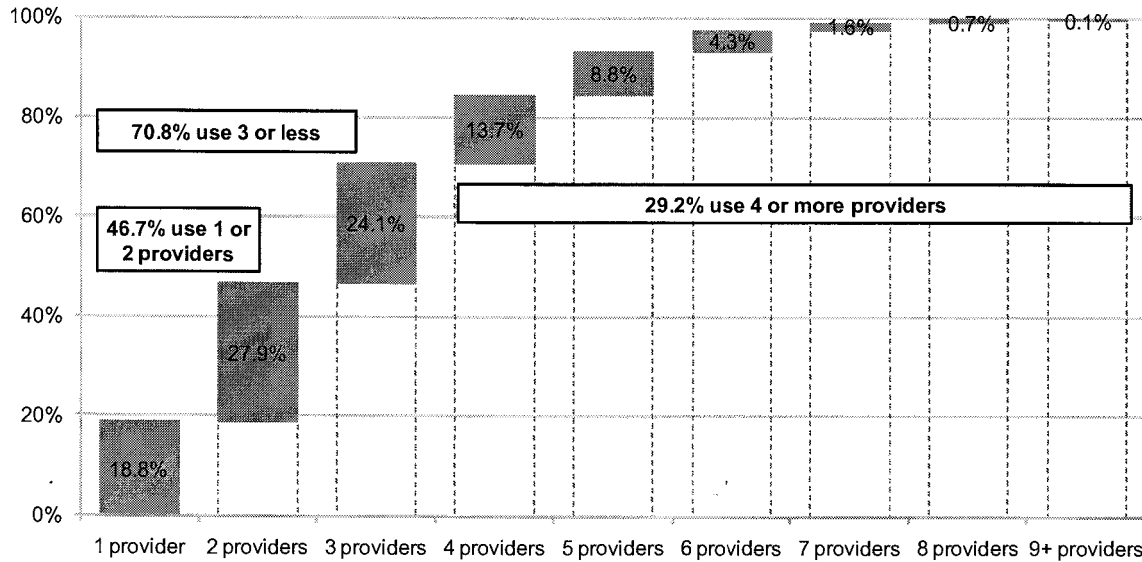
- 4.73 Our cross-media audience research provides evidence on the number of providers from which consumers source their news across all platforms. Figure 24 suggests that many regular news and current affairs consumers tend to source their news and current affairs from a relatively limited number of providers. Looking at wholesale provision, 71% of regular news and current affairs consumers use three or fewer providers in a typical week, and 47% only use one or two. However, a significant proportion (29%) uses four or more providers at least weekly. On average, consumers who use news and current affairs regularly use 2.9 providers in a typical week.

<sup>97</sup> Source: Ofcom cross-media audience research (2010). Base : regular users of news platforms (TV=1784, Newspapers=1281, Radio=942 , Internet=705) Q3a/b, Q4a/b, Q5a/b, Q6a/b, Q7a/b

<sup>98</sup> We use 'regular' to refer to consumption of UK news and current affairs on a weekly basis on a specific platform.

<sup>99</sup> The questionnaire we used in our research lists groupings of some radio stations as a single brand. For example, all BBC national radio stations are grouped as one brand. And while we list a number of different news websites, we grouped 'other' websites together in our questionnaire. This means, for example, we classify all the different blogs as one source and all other websites not listed in our questionnaire as one source.

**Figure 24 - Distribution of multi-sourcing by wholesale provider among all regular news consumers**



Source: Ofcom cross-media audience research (2010)

Note: Figures refer to at least weekly use for TV channels, radio stations, websites and daily newspapers, and at least monthly for weekly/Sunday newspapers of wholesale providers of news and current affairs across all platforms. Figures count News Corp and Sky as separate providers. Figures may underestimate the amount of multi-sourcing because “other” sources are grouped as one.

- 4.74 By considering retail provision, multi-sourcing levels do not appear materially different. According to our research results, consumers who use news and current affairs regularly access on average 2.8<sup>100</sup> retail news providers, with 19.2% consumers relying on one source, 48.9% on two or less, 72.9% on three or less, and 27.1% on four or more.
- 4.75 The high levels of single-sourcing are partly driven by a large proportion (11%) of regular news consumers solely relying on the BBC to access news and current affairs.

**Multi-sourcing by Sky and News Corp consumers**

- 4.76 Our cross-media audience research also indicates that regular users of Sky and News Corp sources are more likely to use multiple sources than the average regular news consumer. We found that both Sky and News Corp users access on average content from 4 different wholesale news providers in a typical week. This compares to an average of 2.9 for the general regular news consumer.
- 4.77 When looking at the distribution of multi-sourcing by wholesale news, we found that 62% of regular Sky news consumers use four or more providers on at least a weekly basis. Around 38% use three or fewer, 17% use one or two, and only 7% of Sky consumers solely rely on Sky.

<sup>100</sup> Results from our market research show only a very small different in multi-sourcing between the wholesale and retail levels – 2.89 and 2.81 respectively

- 4.78 News Corp consumers have a similar distribution when it comes to multi-sourcing, with 54% accessing news and current affairs from 4 or more providers. We also found that only 2% of News Corp consumers rely solely on News Corp sources.
- 4.79 Across the population as a whole, we found that few regular news consumers rely solely on Sky titles or solely on News Corp titles: at the retail level, 2% rely solely on news from Sky; and 1% rely solely on news from News Corp<sup>101</sup>; these shares do not change materially if considering wholesale news provision.
- 4.80 Our market research data is broadly consistent with the available industry data for television. On television, BARB data highlights that out of all the viewers of national news provided by Sky in October 2010, 4% only watched Sky's news services whereas 76% watched news from two other providers in that month. A further 20% watched news from one other provider<sup>102</sup>.

### Critical evaluation and trust of the media

- 4.81 How consumers engage with the media may affect the ability of a media owner to influence public opinion. In particular, some consumers may critically assess the quality of the news that they consume and try to understand the agenda and key issues behind it.
- 4.82 For example, research from Mintel indicates that around a third of internet users aged 16+ tend not to trust the news that they see, hear or read in the media<sup>103</sup>, and that just over half<sup>104</sup> of consumers say that they often check more than one source to confirm news stories that they have read.
- 4.83 Where consumers do seek to question the news they may themselves limit the ability of a media owner to influence public opinion. How far this can successfully guard against the risk that one controller of media enterprises may have too much influence remains unclear. Consumers may find it difficult to stay abreast of all the key events and underlying key issues in the news; this could take a significant amount of time and effort to research.
- 4.84 In any case, Ofcom research indicates that a large proportion of consumers do place a significant trust in TV news. Both news programmes on BBC One and Sky News demonstrate high levels of trust. Around 84% of regular Sky News viewers rate Sky News highly on the provision of trustworthy news. Similarly, 80% of regular BBC One viewers rate BBC One highly on the provision of trustworthy news<sup>105</sup>. On the same trust metric, TV news from other public service broadcasters had lower rates among their regular viewers, ITV and Channel 4 at 70%, and 61% respectively.
- 4.85 Many consumers do however understand that newspapers are more prone to expressing a particular position than TV news. Ofcom research indicates that 36% of consumers believe newspapers are either impartial or neutral<sup>106</sup>. This compares with 56% of consumers who believe newspapers are biased. By comparison, 72% of consumers believe TV is either impartial or neutral and 22% believe it is biased.

<sup>101</sup> Source: Ofcom cross-media audience research (2010). Base: All regular news consumers (1923), All GB adults (2018) Q3a/4a/5a/6a/7a combined.

<sup>102</sup> Source: BARB, Network, based on 3 consecutive minutes, October 2010

<sup>103</sup> Consumer Perceptions of News Media - UK - September 2010, Mintel, Figure 55 (internet survey)

<sup>104</sup> Consumer Perceptions of News Media - UK - September 2010, Mintel, Figure 55 (internet survey)

<sup>105</sup> Source: Ofcom PSB Tracker, 2009. Consumers provided ratings of 7, 8, 9 or 10 out of a score of 1 to 10 where 1 is not at all trustworthy and 10 is completely trustworthy.

<sup>106</sup> Ofcom Media Tracker, 2009 [Q105. All adults 15+]

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- 4.86 Consumers may also consider some platforms and specific media brands more influential than others. For example, the News Corp submission<sup>107</sup> reported that in the press, *The Times* has the most positive perceptions among consumers; it is seen as authoritative, traditional, reliable, and responsible. In comparison, it reported that the Sun is viewed as sensationalist, biased and lightweight.
- 4.87 More generally, consumers may seek out different types of content depending on the media they use. For example, the Mintel research indicates that 58% of popular tabloid readers are interested in politics/current affairs compared to 81% of broadsheet readers<sup>108</sup>. These different perceptions and interests could suggest different degrees of influence of different media brands. While quantitative metrics on media usage provides some indication of relative influence between different media players, they are not perfect measures. Some media players may be more influential than these metrics would suggest, whereas the opposite may hold true for others.

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<sup>107</sup> News Corp submission, Annex 1 by FTI (p62) using Consumer Perceptions of News Media - UK - September 2010, Mintel (internet survey)

<sup>108</sup> Consumer Perceptions of News Media - UK - September 2010, Mintel, Figure 62 (internet survey)

## Section 5

## Effects of the proposed acquisition - static analysis

- 5.1 In this section we have looked at the effects of the proposed acquisition on plurality immediately after the transaction in terms of range and number of persons controlling media enterprises including their ability to influence opinions. We refer to these as “static” effects.
- 5.2 In performing our static analysis we have had regard to:
- whether the proposed transaction constitutes a change of control;
  - external plurality: we have considered the range and number of persons having control of media enterprises in the context of their ability to influence opinions and control the agenda.<sup>109</sup>
  - internal plurality: we examined how far the range of views expressed within media enterprises may ensure sufficient plurality following the proposed transaction, including the effects of the impartiality rules for broadcast news, the culture of newsrooms and audience expectations; and
  - multi-sourcing and online news provision: we considered the effect of consumers’ use of multiple media and the increase in online news provision.

### Change of control

- 5.3 The proposed transaction involves News Corp, which currently holds 39.14% of Sky, acquiring the remaining shares it does not own, to give it 100% control of Sky. This would represent a move from part ownership to full ownership. Currently, News Corp’s stake in Sky, while representing material influence over Sky, does not enable News Corp to pass general and special resolutions alone given the presence of other shareholders and independent directors.<sup>110</sup>
- 5.4 The degree to which News Corp can influence the corporate policy and strategic direction of Sky, given its current shareholding, will depend on a number of factors:
- Voter turnout and share of votes cast – at present News Corp’s voting rights are limited to [X]%<sup>111</sup> which, based on past voter turnout over the last five years, equates to between [X]%-[X]% of votes cast. On this basis News Corp is currently not able, on its own, to achieve a simple majority of votes cast which, for example, would be necessary to appoint or remove the Board. News Corp’s voting rights would, however, allow it to block special resolutions which, amongst other things, would be required to alter Sky’s Articles of Association, reduce Sky’s share capital, and decide on the voluntary winding up of Sky.

<sup>109</sup> Competition Commission report, paragraph 5.7, Court of Appeal paragraph 90 on range and number and DTI Guidance paragraph 7.7 on ability to influence.

<sup>110</sup> In Sky/ITV, we assumed that News Corp’s 39% shareholding gave it a level of control over Sky for the purposes of including newspapers in our assessment, but we did not have to consider in that context the question of News Corp having full control of Sky.

<sup>111</sup> [X]

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- Board representation – the Sky board currently includes a majority of independent directors (8 of 14). Four of the six non-independent directors, are affiliated with, but not appointed by, News Corp. The remaining two directors are executive directors and are therefore classed as non-independent directors.<sup>112</sup>
  - UKLA listing rules and corporate governance arrangements – a number of rules govern and safeguard transactions between Sky and News Corp. . In particular, Board approval is required for Sky to enter into certain arrangements with News Corp or any of its affiliates.
  - Special rights – News Corp does not currently enjoy any special voting rights in respect of its shareholding in Sky, nor does it have the right to appoint a director to the Sky board.<sup>113</sup>
- 5.5 Taking these factors together the presence of the remaining shareholders and independent directors is such that News Corp does not have full control over Sky.
- 5.6 Following the proposed acquisition, News Corp would have 100% ownership giving it full control of Sky, which would enable News Corp to take decisions that are in the exclusive commercial interests of News Corp.
- 5.7 News Corp may also gain a greater ability to exert influence over editorial decisions, for example through the appointment or dismissal of the editor of Sky News ( see later paragraphs 5.54 to 5.103 on our assessment of internal plurality).

## Plurality of persons with control of media enterprises

- 5.8 In considering plurality and sufficiency of plurality, we consider the number and range of views *across* different media enterprises in the context of their ability to influence, and the range of views *within* media enterprises. This is the approach adopted by the Competition Commission in Sky/ITV where it termed the former external plurality, and the latter internal plurality, although in that case the Competition Commission was considering a situation involving Sky's acquisition of 17.9% shareholding in ITV as compared to 100% in this case.<sup>114</sup>
- 5.9 In looking at the number and range, we did not look simply at the number and range of media enterprises, but also at their relative ability to influence and inform public opinion. In doing so we have had regard to the purpose of plurality provisions<sup>115</sup> and as explained in the Secretary of State's guidance on the media public interest merger provisions, which states that the public interest consideration *'is concerned primarily with ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons. It would be a concern for any one person to control too much of the media because of their ability to influence opinions and control the agenda. This broadcasting and cross media public interest consideration,*

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<sup>112</sup> For the purposes of Sky's Corporate Governance Code, all executive directors are treated as not being independent of the company.

<sup>113</sup> The presence of directors on the Sky Board who are affiliated with News Corp would indicate that News Corp does have some influence over the appointment of directors; however, this influence arises from their position as a major shareholder in Sky and not through any special rights.

<sup>114</sup> Competition Commission report, paragraph 5.11

<sup>115</sup> Lord McIntosh of Haringey (Parliamentary Under Secretary, DCMS) 2 July 2003, Hansard

*therefore, is intended to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality<sup>116</sup>.*

### External plurality

- 5.10 Representations have been made to us that after the proposed transaction there would be sufficient plurality by reference to the total number and range of media enterprises available.
- 5.11 An analysis of this type would not take account of the ability to influence opinion. It would simply indicate the number and range of persons with control of media enterprises providing news and current affairs without considering use by consumers.
- 5.12 [X]
- 5.13 [X]<sup>117</sup>
- 5.14 At the most extreme, adopting a count of the number and range of owners of media enterprises without taking account of their ability to influence opinion would mean that all news and current affairs providers would be included as contributing to plurality simply by being available regardless of whether they were used by several million or zero consumers.
- 5.15 We do not consider these submissions or this approach to be credible. Assuming a reasonable minimum scale, the number and range of persons controlling media enterprises at the retail level with a minimum scale falls from 16 to 15. At the wholesale level, the number and range of persons controlling media enterprises would decrease from 11 to 10<sup>118</sup>.
- 5.16 In any event, as explained above, we consider that in assessing plurality and sufficient plurality we should look not simply at the number and range of media enterprises, but also at their relative ability to influence and inform public opinion.

<sup>116</sup> DTI Guidance, paragraph 7.7

<sup>117</sup> [X]

<sup>118</sup> For wholesale, this figure has been calculated under the following assumptions:

- Specialist TV news broadcasters (e.g. France 24, Al Jazeera, CNN, Euronews, Fox News, RT, CNBC, Bloomberg, CCTV, Star News, Press TV and NDTV) are excluded as they do not have a UK news agenda, are targeted at a small minority of the UK news audience. We estimate that they account for less than 1% of total national news viewing. This would limit their ability to influence
- The TV and Radio news content provided by Sky at a wholesale level to third party broadcasters is treated as 'controlled' by Sky for the purposes of the 'count'; and
- Online only news providers are excluded, as these are not defined as media enterprises under the Enterprise Act 2002. It should be noted that in almost all cases online news providers either (i) already have a presence on another platform (e.g. newspapers, TV) and are therefore included in the 'count' of media enterprises, or (ii) are online news aggregators or (iii) do not have a UK news agenda.

At the retail level, The figure has been calculated using the same assumptions as those at the wholesale level, with the following exception - the TV and Radio news content provided by Sky at a wholesale level to third party broadcasters is instead treated as 'controlled' by the third party broadcaster. Furthermore, we have exclude radio providers that account for less than 1% of total radio listening given their limited ability to influence opinion

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- 5.17 We have looked at ability to influence and inform opinion by reference to a number of factors since there is no single standard industry measure which can be used consistently across media platforms. These are:
- *Audience share and reach within individual platforms*<sup>119</sup>. Where possible, we have used recognised industry measures for each media platform to assess the current situation and the potential effect of the proposed transaction.
  - *Analysis of consumers' consumption of news* - based on minutes of use by a typical consumer in a day.
  - *Primary research on consumers' claimed use of different media*. This new market research provides us with the only available measure to compare the use and reach of different news sources across different media, something which is of particular importance in light of our identification of relevant audiences as cross-media audiences<sup>120</sup>
- 5.18 While each of these measures may not individually capture all the different features of cross media consumption and the effects of the proposed transaction, they provide useful insight.

In combination the parties would have a significant presence across platforms

- 5.19 This transaction does not result in a change in the number, range or relative ability to influence within three of the individual platforms - TV, radio and newspapers. There would be a change within online news provision, with a reduction in the number of voices and a concentration in audiences as both News Corp and Sky provide news on this platform.
- 5.20 However, the relevant audience for this public interest test is cross media. Taking into consideration the parties' positions across all media platforms, the transaction may be expected to have an impact on the number and range of persons owning media enterprises across media platforms.
- 5.21 As discussed in Section 4, News Corp is currently present on two media platforms (newspapers and online), while Sky is present on three platforms at the wholesale level (TV, radio and online) and two platforms at the retail level (TV and online).
- 5.22 Following the transaction, News Corp would be the only news and media provider present on all four media platforms at the wholesale level (TV, newspapers, online and radio). At the retail level, it would be one of three providers of UK-wide news and current affairs on three of four platforms (alongside the BBC on TV, radio and online and Northern & Shell on TV, newspapers and online). Considering the respective positions of the parties in terms of reach on each platform (see Figure 22 and Figure 23), post-transaction, News Corp would have a significant presence<sup>121</sup> across all media platforms.

<sup>119</sup> Audience share is the percentage of total consumption accounted for by a specific news provider. Audience reach is the percentage of the total audience which is exposed to a specific news provider

<sup>120</sup> This cross-platform metric is a 'share of references', derived by determining which media outlets, titles or channels consumers mention when asked about their news and current affairs providers across media platforms. See Annex 1 for more details

<sup>121</sup> Post-transaction, at the wholesale level, News Corp would be the largest (of eight) newspaper provider, the third largest (of three) TV news provider, the second (of two) largest provider of radio news content, and one of the top five online news providers.



- 5.23 Most importantly, the transaction will provide News Corp with full control of a presence on the TV platform. Access to TV for news delivery is of particular importance – this is the platform to which consumers rely on most, with 73% stating it is their main source of UK news compared to 8% for radio, 7% for newspapers and 7% for online news<sup>122</sup>.

#### Share of cross media news consumption – shares of minutes of news consumed

- 5.24 In order to understand the potential ability to influence public opinion, we have considered the parties position in respect of their share of ‘news minutes’ consumed. Ofcom estimates that the average person spends approximately one hour per person per day consuming news content across media platforms. Using data from industry standard data sources (BARB / RAJAR / NRS / Nielsen) we can display the distribution of this time by platform and media owner<sup>123</sup>.
- 5.25 This provides a common measure upon which to compare consumption by media provider across all platforms. Such analysis does have some drawbacks. In particular, it assumes that one minute of news consumption is equal in terms of ability to influence across all media<sup>124</sup>, and that the underlying standard industry measures being converted into minutes are directly comparable<sup>125</sup>. Both of these assumptions are likely to be flawed to some degree.
- 5.26 Nonetheless, we considered that this measure provides a useful overview of the parties’ relative positions and ability to influence public opinion through cross-media news and current affairs consumption, particularly when viewed in conjunction with other cross media data.
- 5.27 The results of our analysis of cross media share of consumption based on share of minutes consumed per head, per day by news provider are set out in Figure 25 and Figure 26.
- 5.28 Following the transaction, at the wholesale level, our analysis suggests News Corp will account for 23.7% of all minutes of news consumption – a 9.8 percentage point increment. At the retail level, News Corp’s share of minutes would be 16.3% (a 2.4 percentage point increment) given the exclusion of Sky News’s current wholesale provision of news to Five and commercial radio. By comparison, the BBC continues to account for the largest proportion of news minutes consumed (43.5%). The third placed provider would be DMGT at 9.4% of minutes, with others substantially lower.

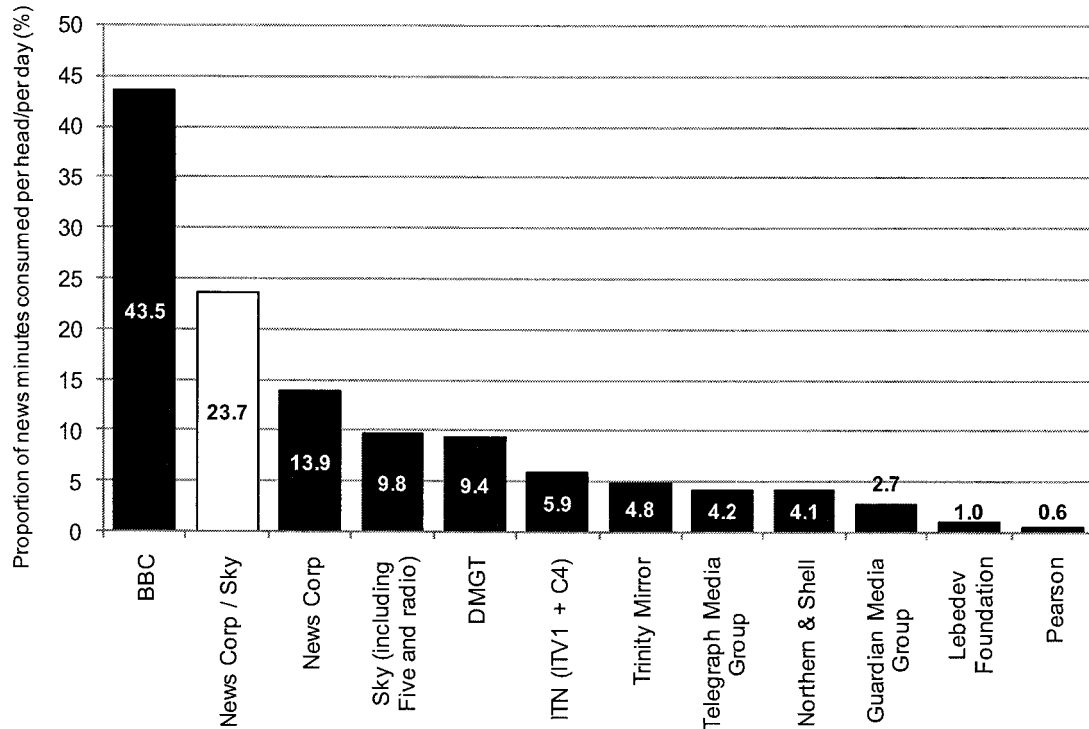
<sup>122</sup> Respondents were provided a list of different media types and then asked the question “From the list below, please tell me which of these you use regularly for UK/International news and current affairs, by regularly I mean at least once a week.”

<sup>123</sup> For this analysis we have estimated radio news listening based on RAJAR figures and Ofcom assumptions. This differs to the treatment of reach earlier that displayed all radio listening, unadjusted.

<sup>124</sup> For example, one minute of TV national news consumption in this analysis is equivalent to one minute of reading a newspaper.

<sup>125</sup> It is important to bear in mind that each industry measure has its own methodology for measuring consumption. For example, television and online measurement are both based on a continuous panel of people and a metered form of measurement. Radio and print, on the other hand, are based on respondents’ claimed consumption reported in a diary or survey. Furthermore, there is no consistent measure of news consumption across platforms.

**Figure 25: Share of news consumption by media enterprise at the wholesale level**



Source: see footnote 126

- 5.29 It should be noted that the share of minutes attributed to Sky could, to some degree, understate its impact on consumers as a TV viewing minute is attributed the same value as a minute spent on other media platforms. However, the same will be true of the relative importance of ITV and Channel 4 in this analysis.
- 5.30 In practice, we would expect that a TV news minute would hold greater weight in terms of ability to influence than other media given television’s impact as a medium. Specifically, TV news broadcasts are designed to deliver information and messages effectively in a relatively short time period compared to that available to newspapers. This suggests TV news broadcasts may be somewhat underweighted in this analysis. At the same time, newspapers may be overweighted given the time spent on reading. The analysis also highlights how a relatively limited amount of time may be spent by consumers using online news media.

5.31 [X].

**Figure 26 - Proportion (%) of news minutes consumed per head/per day by platform and provider<sup>126</sup>**

	Papers <sup>1</sup>	TV <sup>2</sup>	Radio <sup>3</sup>	Online <sup>4</sup>	Total
Sky (including radio)	0.0	2.4	6.7	0.0	9.1
Five	0.0	0.7	0.0	0.0	0.7
News Corp	13.8	0.0	0.0	0.1	13.9
<b>News Corp / Sky</b>	<b>13.8</b>	<b>3.1</b>	<b>6.7</b>	<b>0.1</b>	<b>23.7</b>
<b>BBC</b>	<b>0.0</b>	<b>24.9</b>	<b>18.3</b>	<b>0.3</b>	<b>43.5</b>
ITV 1	0.0	4.8	0.0	0.0	4.8
Channel 4	0.0	1.1	0.0	0.0	1.1
<b>ITN (ITV1 + C4)</b>	<b>0.0</b>	<b>5.9</b>	<b>0.0</b>	<b>0.0</b>	<b>5.9</b>
DMGT	9.2	0.0	0.0	0.2	9.4
Trinity Mirror	4.8	0.0	0.0	0.0	4.8
Telegraph Media Group	4.2	0.0	0.0	0.1	4.2
Northern & Shell	4.1	0.0	0.0	0.0	4.1
Guardian Media Group	2.6	0.0	0.0	0.1	2.7
Lebedev Foundation	1.0	0.0	0.0	0.0	1.0
Pearson	0.6	0.0	0.0	0.0	0.6
<b>Total</b>	<b>40.3</b>	<b>33.9</b>	<b>25.1</b>	<b>0.7</b>	<b>100.0</b>

Source: see footnote 126

5.32 Overall, we consider that this measure provides a useful insight into the level of news consumed from each media provider. The analysis indicates that News Corp currently holds a strong position with respect to the consumption of news content across all media. This will be further strengthened by their acquisition of Sky, creating a significant gap between the top two providers (the other being the BBC) and the remaining news providers. On this measure, the effect of the proposed transaction varies when the impact on wholesale or retail news provision is considered.

<sup>126</sup> Note of data sources:

- Papers: Ofcom analysis based on NRS data supplied by Kantar Media. Audience base is 16+, and the data covers the period October 2009 – September 2010.
- TV: Ofcom analysis. Total minutes of television viewing sourced from BARB, all Adults (16+), all homes. National and international news subgenre category only in BARB. The base for minutes/head is the adult UK population. Note that news output on Sky represents Sky News channel's output that is categorised as national/international news in BARB. For the BBC, it includes news on BBC One, BBC Two and BBC News. October 2010.
- Radio: Ofcom analysis. Total minutes of radio listening sourced from RAJAR, based on all adults (16+), Q3 2010. Minutes spread across the total adult population 16+. As RAJAR does not provide programme genres, we have had to estimate the amount of listening to the news genre on radio. We have weighted minutes of listening to commercial radio and BBC radio services according to an assessment of the proportion of the schedule dedicated to news output. The weighting is 5% for all stations except BBC Radio 4, which has been weighted at 27% and BBC Radio Five Live (19%). Note that this doesn't include minutes of unallocated radio listening which, by its nature, cannot be apportioned to news and non-news content.
- Online: Ofcom analysis. Sourced from Nielsen, all internet users aged 2+ in October 2010. The base for minutes/head is Ofcom's estimate of the population aged 2+.

Relative share and reach of the combined entity across media

- 5.33 Our market research has enabled us to examine the parties' position, relative to other nation-wide news providers, in respect of their importance to consumers both as a main source of news, and as a regular source of news more generally. This measure provides the most direct comparison across media for sources of news, with consumers identifying both their main and regular sources of news.
- 5.34 Figure 27 to Figure 30 show News Corp's position relative to other providers following the transaction in relation to both wholesale and retail provision of news.
- 5.35 Most notably, post transaction News Corp would be of roughly equal size to ITN and ITV as the second largest main source of news at both the wholesale and retail level. Similarly, News Corp's position as the second largest provider in respect of all sources of news is also further strengthened, increasing the gap between it and ITV/ITN.
- 5.36 Examining this analysis in more detail at the wholesale level, News Corp would be the equal second largest single main source of news with a share of 15% of respondents, marginally ahead of ITN (14%) and behind the BBC (54%). Sky News, which was the third player pre-acquisition, would no longer exist as a distinct media enterprise from an external plurality perspective. There would then be a notable drop in share to the next largest providers.
- 5.37 All of these other players have a substantially smaller share given their focus on one or two of the four platforms and most notably their lack of presence on the TV platform. In addition, the proposed transaction would result in News Corp achieving a share of references for all regular sources of news of 22%, second to the BBC (37%), and ahead of ITN (12%), DMGT (5%)<sup>127</sup>, and the Trinity Mirror Group (4%).

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<sup>127</sup> See footnote 85 for a discussion of the possible effects of the omission of the following titles from the prompted list of newspaper titles in our questionnaire: Mail on Sunday, Daily Star on Sunday, Sunday Express, The People.

Figure 27 - Share of references for single main source of news, at wholesale level (post –transaction) (Base – all regular news users)

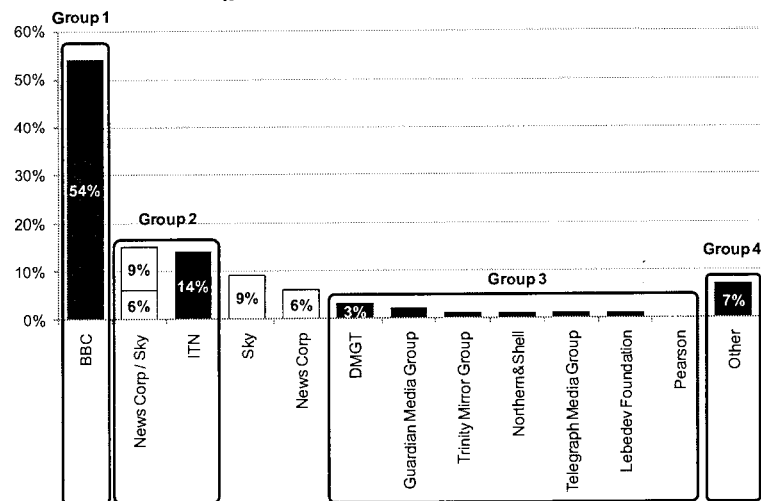


Figure 29 - Share of references for all news sources, at wholesale level (post –transaction) (Base – all regular news users)

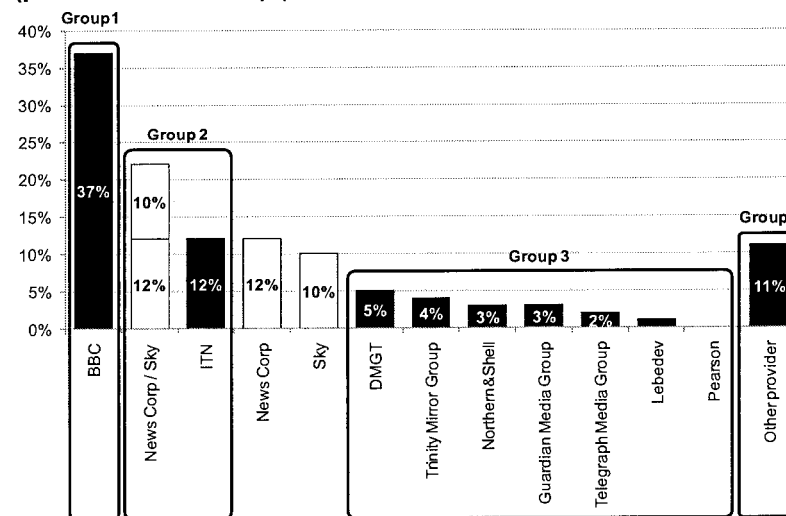


Figure 28 - Share of references for single main source of news, at retail level (post –transaction) (Base – all regular news users)

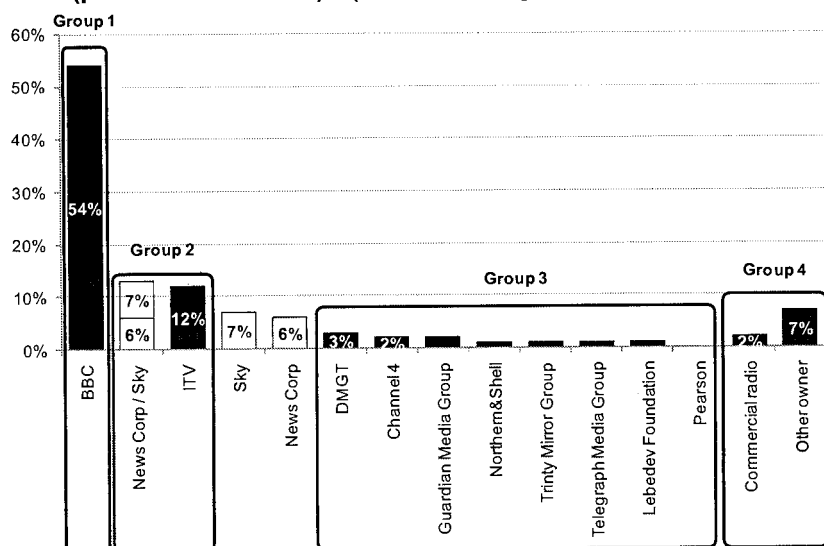
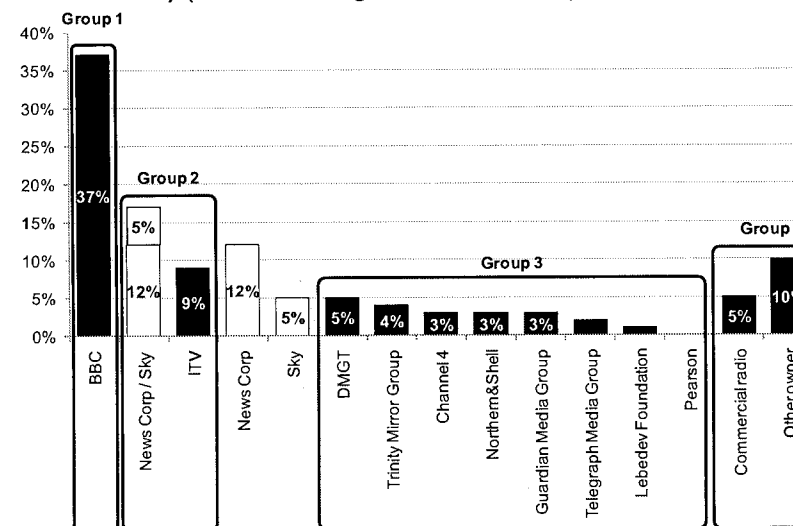


Figure 30 - Share of references for all news sources, at retail level (post –transaction) (Base – all regular news users)



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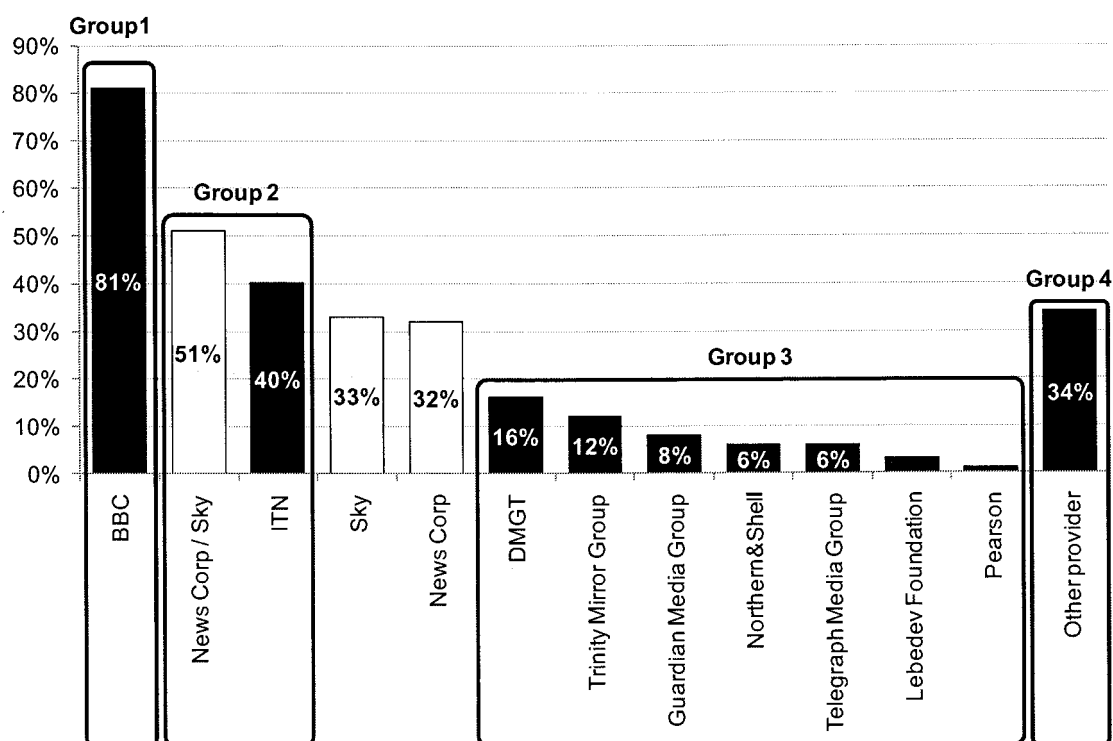
- 5.38 At the retail level, a combined News Corp/Sky would become the equal second largest single main source of news with a share of 13% of respondents, behind the BBC (54%) and marginally ahead of ITV (12%), DMGT (3%), and Channel 4 (2%) and the Guardian Media Group (2%). News Corp would also strengthen its position as the second largest provider by share of reference for all regular use of news sources (17%).
- 5.39 This compares to the BBC (first with 37%) and ITV (third with 9%), DMGT (fourth with 5%) and a range of other smaller providers. In both cases, Sky News which was third and fourth in terms of main source and all sources would cease to exist as a distinct media enterprise provider of news in terms of external plurality.
- 5.40 Overall, the proposed transaction would result in the loss of the fourth largest provider of news content and would serve to strengthen News Corp's position as the second largest provider of news content, second to the BBC. Furthermore, it would further widen the gap between News Corp and ITV / ITN and the remaining news providers across all media platforms. Such a change to the relative ability to influence public opinion may suggest public interest concerns.
- 5.41 As noted earlier, our cross media audience research also provided us with the means to estimate cross media audience reach for each media provider. The results of this analysis are given in Figure 31 and Figure 32. The BBC continues to lead with a cross media audience reach of 81% of regular news consumers. However, after the transaction, News Corp will overtake ITV/ITN as the second largest provider in terms of cross media audience reach with 51% at the wholesale level and 42% at the retail level.
- 5.42 Both News Corp and ITV/ITN achieve substantially higher levels of cross media audience reach (more than double) relative to the remaining media providers. At the wholesale level, the transaction also results in the loss of one of four media providers today who achieve a cross media audience reach of greater than 30%<sup>128</sup>.
- 5.43 By looking at these measures, we consider that post-transaction, providers of news and current affairs can be divided into four groups based on their relative share and reach, indicating relative ability to influence.
- In the first group, the BBC has the largest share both in terms of share of main source of news (54%) and share of references to all sources of news by regular news users (37%), as well as the largest reach of all news providers (81%).
  - News Corp/ Sky and ITN (at wholesale level) or ITV (at retail level) tend to constitute a second group of providers with a share of main source of above 10%, and share of references to all sources of news above 9%. Post-transaction, these players have a reach in excess of 30%.
  - A third group, made up mainly of the other physical and online newspaper providers who have shares of 5% or less in terms of share of references to all sources of news used regularly and share of main source of news and a reach of

<sup>128</sup> At the retail level, the number of providers with a cross media audience reach of greater than 20% remains the same.

16% or less. These include DMGT<sup>129</sup>, Trinity Mirror and the Guardian Media Group.

5.44 Finally, there are a large number of other providers who were referenced by respondents but which, individually, have small share of references.

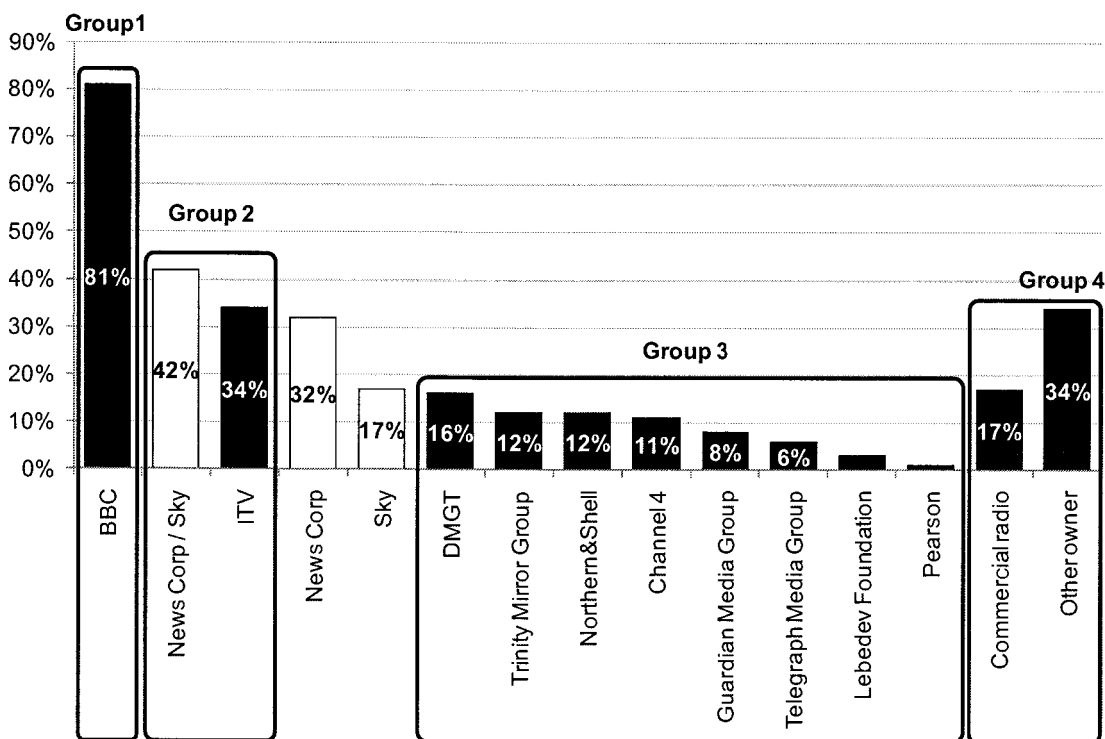
Figure 31 - Cross-media audience reach for news, wholesale level (post-transaction)



Source: Ofcom cross-media audience research, 2010. Base – all regular news users, 96% of GB population

<sup>129</sup> Associated Newspapers does achieve a share of 5% on the basis of all sources of news at the retail level.

Figure 32 - Cross-media audience reach for news, retail level (post-transaction)



Source: Ofcom cross-media audience research, 2010. Base – all regular news users, 96% of GB population

**Summary of analysis of external plurality**

- 5.45 We have looked at the number and range of persons with control of media enterprises taking account of their ability to influence and inform opinion by reference to a number of different measures in order to assess the impact of the transaction on the parties' position with respect to cross media consumption.
- 5.46 While Sky News' audience share as highlighted by TV industry data is relatively low, it has a significant ability to influence public opinion and the news agenda in audience terms given its presence and reach on TV and having built a strong presence in retail and wholesale news provision. As a result, today it makes a strong and positive contribution to plurality. Similarly, News Corp contributes to plurality as a result of its presence in newspapers and online. The proposed transaction would result in Sky ceasing to be a distinct media enterprise from News Corp.
- 5.47 Share of minutes is a less directly comparable measure. However, it provides a useful complementary measure. Our view based on our new market research and set out above is supported by the analysis of share of minutes, which demonstrates that, following the transaction, News Corp would consolidate its position as the second largest provider of news and current affairs behind the BBC, creating a significant gap between these top two providers and the remaining news providers. This analysis also shows that online may account for a relatively limited amount of time for news consumption, especially in relation to newspapers which are seen to represent a significant share of total news minutes.



- 5.48 Based on our market research, the effect of the proposed acquisition is to bring together one of the three main providers of TV news with the largest provider of newspapers. The effect on the relevant share of references and reach is indicated by our market research. In relation to the provision of wholesale news:
- The proposed transaction would result in Sky ceasing to be a distinct media enterprise, reducing the number of Group 2 providers from three to two in both share and reach terms. This is particularly marked in wholesale news provision.
  - The proposed transaction would be a combination of the second and fourth largest providers based on our research into share of all references for news providers. For example, News Corp's potential ability to influence would increase with the addition of Sky News, increasing its share of references from 12% to 22%. News Corp's reach as a percentage of regular news consumers would increase from 32% to 51%.
  - This does not suggest News Corp moves from Group 2 to Group 1<sup>x</sup> in our charts: it would not be of the same scale as the BBC in share or reach terms after the proposed transaction. However, it would be larger in relative ability to influence opinion than both ITN and the Group 3 providers at the wholesale level.
- 5.49 This analysis is based on all news sources measured in the survey (across TV, newspapers, online and radio) and is based on wholesale news provision not retail.
- 5.50 However, a similar picture is displayed when considering all sources of retail news provision, outlined below, and when considering the main source<sup>130</sup> of news at the retail level (see Figure 28 and Figure 30). In both cases, the BBC continues to be the largest provider, while the transaction increases News Corp's potential ability to influence.
- 5.51 We note that the acquisition would not affect the BBC's status as the strongest provider of news and current affairs in the UK. As with all media enterprises, the BBC may have an institutional view which can shape its editorial decisions. However, the governance of the BBC is different from other broadcasters in that it has a Royal Charter that requires it to be "independent in all matters concerning the content of its output...and in the management of its affairs." Its strategic direction is set by the BBC Trust, which is held publicly accountable for the performance of its role in meeting the "public interest, particularly the interest of licence fee payers". The Trust must also maintain the independence of the executive, which oversees output. This is fundamentally different from other media enterprises, including News Corp, which typically have a controlling proprietor.
- 5.52 We therefore consider that the proposed transaction will result in an increase in News Corp's ability to influence public opinion, as measured by share of news and current affairs consumption in the context of a cross media market. Taken in combination, this indicates a change in the concentration of media ownership which is likely to affect sufficient plurality.

<sup>x</sup> A typographical error contained in the version of this report sent to the Secretary of State on 31 December 2010 has been subsequently corrected here. The original text was: "This does not suggest News Corp moves from Group 1 to Group 2 in our charts".

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### Internal plurality

- 5.53 For the reasons set out above, we consider that the proposed acquisition by News Corp giving it 100% ownership of Sky's shareholding would reduce the number of persons with control of media enterprises, with Sky ceasing to be a distinct media enterprise. Although News Corp would have full control of Sky we have nonetheless considered the actual extent of control that would be exercised and exercisable by News Corp.
- 5.54 We have received a number of submissions on how far internal plurality within the merged group would help in ensuring a range of opinions; in particular whether Sky News could be seen to remain an independent voice to News Corp's other news outlets. Some respondents to our invitation to comment submitted that it was inappropriate to consider internal plurality at all in circumstances where the proposed acquisition led to 100% control. However, the Court of Appeal has stated that the right approach is to *"take into account the actual extent of the control exercised and exercisable over a relevant enterprise by another, whether it is a case of deemed control resulting from material influence...or rather one of actual common ownership or control"*<sup>131</sup>.
- 5.55 The Competition Commission noted in Sky/ITV that *"[BSkyB's board] had no role in the day-to-day editorial control of Sky News content on television or online. We received no evidence from third parties to suggest that senior executives at BSkyB or its parent companies exerted influence on the Sky News agenda"*.<sup>132</sup>
- 5.56 We note comments made by Rupert Murdoch to the Ownership of the News report by the House of Lords Select Committee on Communications where he noted: *'the only reason that Sky News was not more like Fox News was because 'nobody at Sky listens to me'*<sup>133</sup>). We also note News Corps' submission that despite the degree of control it currently has over Sky, it does not currently exert such control to influence editorial decisions of Sky News.
- 5.57 Therefore, in terms of editorial decisions, in looking at the position today, we have considered Sky News as a media enterprise which is distinct from News Corp regardless of the 39.14% ownership.
- 5.58 We received a mixed set of responses on how far internal plurality may remain once News Corp owns 100% of Sky. This section considers:
- Concerns that internal plurality for Sky News will not be maintained.
  - Arguments that a range of existing mechanisms will ensure internal plurality will be maintained

### Concerns in relation to internal plurality

- 5.59 The main concern raised has been that, given the proposed acquisition will result in full ownership of Sky by News Corp, internal plurality for Sky News cannot be

<sup>131</sup> British Sky Broadcasting Group PLC, Virgin Media Inc v The Competition Commission and Secretary of State for BERR and others, [2010] EWCA Civ 2, at paragraph 121.

<sup>132</sup> Paragraph 5.57, Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007

<sup>133</sup> House of Lords Select Committee on Communications, Ownership of the News, 2008, Appendix 4, paragraph 47

guaranteed. Representations argue that this is because the proposed acquisition will result in the loss of independent shareholders and the removal of the existing independent directors who currently help protect the independence and diversity of Sky News. Following the proposed transaction, News Corp would have greater direct control and influence over the editorial staff of Sky News.

- 5.60 One important issue here is the fact that, post transaction, News Corp would be able to appoint and dismiss the editor of Sky News. It has also been argued that:
- the economics of news provision means some level of operational integration is likely, providing new coordination mechanisms for Sky and News Corp; and
  - media proprietors have a tendency to intervene in editorial decisions, most notably in the newspaper industry.

### Operational integration

- 5.61 The economics of news provision is dominated by the substantial fixed costs of newsgathering and distribution. We received representations arguing that the acquisition would provide News Corp with the opportunity to reduce some of these fixed costs by integrating aspects of the news operations of Sky News and News Corp's news titles, including News International's UK newspapers<sup>134</sup>. Integration could range from consolidation of certain back-office functions, e.g. HR or IT support, to full newsroom integration with shared journalists, foreign bureaux and/or editorial control.
- 5.62 We recognise that some synergies can be realised without any need for a merger. There are examples today of commercial deals between rival titles designed to deliver such synergies. For example, The Daily Telegraph currently uses News International's printing press facilities. We also note that David Elstein submitted that Sky and News Corp could integrate their newsrooms regardless of the proposed acquisition, if they were so inclined.
- 5.63 We also recognise that operational integration of editorial functions associated with different titles could be counter-productive, in circumstances where those different titles have different target audiences, and where it is therefore commercially advantageous for the different titles to maintain distinct voices. We note in this context that News Corp has not integrated news functions of its existing titles and channels either in the UK or internationally. We note News Corp's submission [X] noted the views from Perspective's report on the difficulties posed from different cultures of TV and press newsroom. We also note that David Elstein submitted that Sky and News Corp could integrate their newsrooms regardless of any proposed acquisition, if they were so inclined.
- 5.64 Nevertheless, we believe that the transaction would make it possible to exploit a range of operational synergies between News Corp and Sky. [X].
- 5.65 Overall, we consider that some level of operational integration is likely to follow as a result of the transaction. Even if this does not result in newsroom integration, it may still result in an enhanced ability to co-ordinate the news gathering and distribution activities of different distribution channels, and therefore an enhanced ability for the News Corp to exercise influence.

<sup>134</sup> See e.g. responses from BT (page 5); Campaign for Press & Broadcasting Freedom (page 5); Northern & Shell Network Limited (throughout).

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Media proprietors' influence

- 5.66 Numerous submissions to Ofcom alleged that Rupert Murdoch has a history of intervening in the editorial decisions and political slant of the News Corps newspapers, and that after the proposed acquisition this editorial influence would be extended to Sky News thus reducing the level of plurality within the media enterprise<sup>135</sup>.
- 5.67 A range of anecdotal evidence was provided to this point in relation to News Corp, however, it should be noted that claims of such influence are not limited to News Corp – it is a common theme for many media enterprises, most notably in the press.
- 5.68 As set out in the Competition Commissions report<sup>136</sup> there are fewer regulatory restrictions on newspapers than on television news and, in particular, newspapers are able and expected to take an explicit editorial position in relation to topical issues. The risk is that a ‘traditional newspaper proprietor’ may seek to adopt a similar approach to TV news.
- 5.69 Among News Corporation titles, it has been argued that Rupert Murdoch adopts different roles and exerts different levels of influence. This issue was considered by the Competition Commission in Sky/ITV where it noted that:
- News International also told us that Mr Rupert Murdoch and the News International Executive Chairman had regular discussions with the Editor of The Sun on a range of editorial matters, from page design to editorial policy, whereas, in relation to The Times and The Sunday Times, the position on news coverage, editorial stance and appointment of editors is governed by the terms of the DTI consent of 27 January 1981 relating to the transfer of these titles to their current ownership<sup>137</sup>.*
- 5.70 The Competition Commission in Sky/ITV concluded that there was a considerably greater degree of involvement by Mr Rupert Murdoch in relation to *The Sun* than some other News International newspapers, such as *The Times*.
- 5.71 This was further supported by evidence submitted by Rupert Murdoch to the House of Lords Select Committee on Communications report on The Ownership of the News<sup>138</sup> In this evidence Rupert Murdoch described himself as a ‘*traditional proprietor*’ for *The Sun* and *News of the World* exercising editorial control on major issues, like which political party to back in a general election or which policy to support on Europe. However he argued that ‘the law’ prevents him from instructing the editors of *The Times* and *The Sunday Times* and that the independent board is there to ensure he cannot interfere.
- 5.72 However we also received submissions which argued, for example, that during Andrew Neil’s tenure as editor of *The Sunday Times* Rupert Murdoch sought to intervene in the editorial content of the paper in areas that related to Rupert Murdoch’s business interests.

<sup>135</sup> See e.g. responses from Slaughter and May paragraphs 7.11-7.18; Campaign for Press and Broadcasting Freedom note 7; International Consumer Policy Bureau, entire document; Professor Steven Barnett, sections 2(i)-(ii).

<sup>136</sup> Paragraph 5.58 Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007

<sup>137</sup> Paragraph 5.6 Competition Commission Report on the Acquisition by BSkyB plc of 17.9% of the shares in ITV Plc sent to Secretary of State (BERR) 14 December 2007

<sup>138</sup> House of Lords Select Committee on Communications report on The Ownership of the News paragraph 128

- 5.73 This influence does not always have to be overt. The House of Lords report "The Ownership of the News" quotes Andrew Neil:

*"There are many ways in which you can influence a newspaper without giving a downright instruction. Throughout the 11 years that I was Editor of The Sunday Times, I never got an instruction to take a particular line, I never got an instruction to put something on the front page and I do not think I even got an instruction not to do something, but I was never left in any doubt what he wanted"*

- 5.74 Some of the submissions we received noted that intervention also took place when the news agenda coincided with News Corps wider business interests. A submission referred to Andrew Neil, who said that the division between *The Sun* and the *Times*' editorial independence as declared by Rupert Murdoch was blurred over issues which specifically related to the business interests of News Corporation, rather than day-to-day coverage or major political issues.<sup>139</sup>
- 5.75 Andrew Neil also reports that while editor he was subject to interference on news items which affected Rupert Murdoch's business.<sup>140</sup>
- 5.76 We also note submissions from Sky and the conclusions of the Competition Commission, that there is no evidence of editorial influence being exerted on Sky News by the Sky Board or by shareholders. David Elstein noted in his submission that in his own experience there was never any pressure applied to Sky News. However, we also note that the evidence of past behaviour may not necessarily be a reliable indicator of future behaviour.

### **Submissions that there are a number of existing mechanisms that would ensure internal plurality**

- 5.77 We received submissions making four main arguments suggesting internal plurality would remain following the proposed acquisition:
- Increasing the level of control to full control will not translate in to the loss of Sky News's editorial independence as Sky News' editorial policy is not a matter for the Board.
  - Existing regulatory safeguards, notably impartiality requirements on TV broadcast news would protect internal plurality and ensure no undue influence on the news agenda and public opinion from media owners.
  - The existing impartiality requirements and history of TV news has resulted in audience expectations of impartial TV news broadcasts, a high level of trust in TV news and a distinct culture among TV news journalists and newsrooms. Combined, these all help protect plurality.
  - The nature of TV news, especially rolling news services like Sky's, is such that the news agenda is defined by breaking news, not by what stories a broadcaster chooses or chooses not to cover. This is different from the role played by newspapers, which adopt a more investigative approach to finding and exploring stories, as well as containing opinion and comment.

<sup>139</sup> Slaughter and May submission 7.12, p16-17

<sup>140</sup> House of Lords Select Committee on Communications, Ownership of the News 2008, paragraph 188

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Sky's editorial policy is not a matter for the Board

- 5.78 News Corp submitted that Sky's editorial policy was not a matter for Board determination. Editorial policy has not been debated at Board level and News Corp has not sought to influence the editorial policy of Sky News. Further they argued that there is no evidence that the independent directors have had to "defend" the editorial policy of Sky News against influence by News Corp executives. News Corp stated that the regulatory requirements of impartiality in Ofcom's Broadcasting Code and the strong culture of independence in TV newsrooms (see below) are significant safeguards.
- 5.79 However, notwithstanding the regulatory framework and culture, we note that the current behaviour of News Corp as a minority shareholder in Sky is not necessarily a clear indicator of its future behaviour should it have full control of Sky. The degree of control exercisable by News Corp as a full owner is clearly potentially different from its current minority shareholding, for example, News Corp would be able to appoint or dismiss the senior editorial team, including editor, at Sky News.

Impartiality requirements

- 5.80 Section 5 of the Broadcasting Code is intended *'to ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality'* and *'to ensure that the special impartiality requirements of the [Communications] Act are complied with'*<sup>141</sup>.
- 5.81 We received submissions that argued that the impartiality rules in Ofcom's Broadcasting Code:
- reduce the scope for influence by owners of television channels over editorial decisions concerning broadcast news; and
  - are not limited to preventing the biased presentation of news stories, but also prevent partiality for political reasons in editorial decisions on the selection of and prominence given to stories which are broadcast.
- 5.82 We have considered whether existing provisions on impartiality and due prominence would allay any internal plurality concerns arising from this transaction.
- 5.83 The requirement for broadcasters to present the news with "due impartiality" is of course not absolute and broadcasters have a degree of editorial discretion in the selection of the news agenda. These rules would not necessarily prevent an individual with control of a media organisation from influencing the news agenda through the selection or omission of stories. There could be cases where the deliberate exclusion of stories could potentially be a breach of the Broadcasting Code. However, in practice, the effect of partial selection or omission of news stories would be a subtle one which it could be difficult, through regulation, to identify and/or prove.
- 5.84 The potential limitations of impartiality regulation and the role that selection of stories can have in setting the agenda have been highlighted to us by a number of submissions and were indeed noted within the Sky Chairman's own MacTaggart lecture in 2009:

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<sup>141</sup> Ofcom, Broadcasting Code Section 5 <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/impartiality/>

*'the system is concerned with imposing what it calls impartiality in broadcast news. It should hardly be necessary to point out that mere selection of stories and their place in the running order is itself a process full of unacknowledged partiality'.<sup>142</sup>*

5.85 This is consistent with the position of the Competition Commission in Sky ITV:

*Impartiality relates to the fair and balanced treatment of differing viewpoints in relation to particular news stories. However, it does not address the relative prominence given to each story. In our view, it is a matter of public interest that decisions about the relative importance of different news stories should be made by a range of independent people and reflect diverse perspectives'<sup>143</sup>*

*We found that the regulatory framework, while relevant to the plurality of news and, hence the statutory public interest assessment, does not on its own ensure a sufficiency of plurality of news " <sup>144</sup>*

5.86 We agree with the Competition Commission's conclusion and in particular with its view that "*decisions about the relative importance of different news stories should be made by a range of independent people and reflect diverse perspectives'<sup>145</sup>.*

5.87 We recognise that the impartiality rules are relevant and may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot by themselves necessarily ensure against it. Our view is that these provisions do not by themselves adequately address all potential concerns.

5.88 In any event, there is a difference between the Broadcasting Code which provides the regulator with the ability to intervene on a case by case basis to ensure impartiality in terms of news presentation and the statutory need for there to be a sufficient plurality of persons with control of media enterprises. The regulatory framework, while relevant to the plurality of news and hence the public interest assessment, does not on its own ensure a sufficiency of plurality of news.

### Audience expectations

5.89 We received submissions that argued audiences have particular expectations for television news to be impartial and balanced, citing Ofcom research which found that 87% of audiences thought impartiality was important in television news<sup>146</sup>. These submissions also suggested that the relatively low audience share of Fox News in the UK was evidence of a lack of demand for partial journalism in TV news in the UK.

5.90 While audience expectations may deter a media owner from attempting to influence editorial decisions, it is our view that the audience desire and expectation for impartial TV news would not be sufficient to ensure the continued delivery of impartial news and a plurality of views. They may act as a constraint – to an extent – on stories that are broadcast. However, these expectations are less likely to be relevant when considering which items are included in– or excluded from – the news agenda.

<sup>142</sup> James Murdoch, MacTaggart Lecture, 2009

<sup>143</sup> Competition Commission, Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc, 14 Dec 2007, paragraph 5.12

<sup>144</sup> Competition Commission, Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc, 14 Dec 2007, paragraph 5.38

<sup>145</sup> Competition Commission, Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc, 14 Dec 2007, paragraph 31

<sup>146</sup> Ofcom, New News Future News, Figure 5.4 p65

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We believe that, while there could be commercial incentive to cater to audience demand for impartial news, the extent to which this would prevent any potential desire to interfere with the editorial independence of Sky News is unclear and hard to quantify.

- 5.91 In addition, while in some cases audiences (and the regulator) would be able to identify more obvious partial news as a result of story selection (for example on very high profile political issues), other cases would be harder to identify (for example, non-selection of stories detrimental to the commercial or personal interests of a media owner).
- 5.92 Therefore, we do not consider that audience expectations of TV news could be relied on to protect plurality.

Culture of TV newsrooms

5.93 We have received submissions that safeguards already exist within the internal culture of all TV newsrooms, including Sky News. At the core of these is the argument that TV news has a different culture from newspapers, and that this culture would be resistant to editorial interference. Evidence submitted included:

- Comments on the nature of TV news compared to newspapers for example television news, with its different technical and logistical skills, tends to recruit from within itself rather than from newspaper journalists which suggests that this cements the separate culture.
- There is already a strong culture of independence among TV news editors, in part due to the expectation of impartiality and also as a result of the approach of the BBC in this area. The culture of independence was noted by the Competition Commission in Sky/ITV: *“the evidence that we received suggested to us that there was a strong commitment to editorial independence across television news broadcasting which would lead to editors resisting any direct board intervention or intervention from shareholders to set the news agenda”*<sup>147</sup>

5.94 Alternatively, other representations questioned how far such cultural differences and safeguards could be depended on in a situation of full ownership. Specifically, concerns were raised that editors may ‘self-censor’ as editors cannot be expected to act with complete disregard to the views of a full owner<sup>148</sup>. This links to points made by the Competition Commission which noted: *“boards usually play some role in the appointment of editors”*.

5.95 In addition, in future there may be potential journalistic and operational benefits arising from combining print and TV journalists when creating news for converged platforms. The increasing use of video content on text based news websites, or development of news for convergent devices, may result in a change in the distinction between print and video journalism and hence a change in the role and culture of newsrooms.

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<sup>147</sup> Competition Commission, Acquisition by British Sky Broadcasting Group plc of 17.9 per cent of the shares in ITV plc, 14 Dec 2007, Paragraph 5.68

<sup>148</sup> See e.g. responses from Slaughter and May, paragraph 7.13; Professor Steven Barnett, section 2(ii)



- 5.96 It is our view that cultural safeguards may be expected to go some way to maintaining the editorial impartiality of Sky News but we do not consider that they can be relied upon to secure plurality.

### Summary of analysis of internal plurality

- 5.97 We recognise that audience expectations, the culture of TV journalism and the nature of rolling news may together contribute towards the independence of editorial voices against proprietary influence on the Sky News agenda. However, for the reasons set out above we do not consider that these factors will ensure plurality.
- 5.98 We recognise that the impartiality rules are relevant and may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot by themselves necessarily ensure against it. Our view is that these provisions do not adequately address all potential concerns.
- 5.99 In any event, there is a difference between the Broadcasting Code which provides the regulator with the ability to intervene on a case by case basis to ensure impartiality in terms of news presentation and the statutory need for there to be a sufficient plurality of persons with control of media enterprises. The broadcasting regulatory framework, while relevant to the plurality of news and hence the public interest assessment, does not on its own ensure a sufficiency of plurality of news.
- 5.100 We recognise that it is possible that Sky News may remain a strong independent voice from an internal plurality perspective even while no longer part of a distinct media enterprise.
- 5.101 However, in a situation where Sky is wholly owned by News Corp and where we have received a significant number of representations that a proprietor may want to interfere with editorial decisions, we need to understand what would in practice prevent such intervention. From the evidence submitted to us, while there are factors that are likely to contribute to internal plurality, we consider that these are not such that they would preclude such interference in circumstances of full control.
- 5.102 In light of the importance attached by Parliament to media plurality in informing opinion and setting the agenda, we do not consider that in this case we can rely on internal plurality to ensure sufficient plurality in the provision of news and current affairs.
- 5.103 This is consistent with views expressed by the House of Lords Select Committee on Communications in 2008:

*We do not believe that an internal company structure can be an adequate substitute for competition law and statutory regulation in ensuring that no single voice becomes too powerful.*<sup>149</sup>

### Multi-sourcing and online news provision

- 5.104 As explained in section 4, consumers tend to use more than one source of news and current affairs and this is a relevant consideration in any plurality assessment. This is because the extent to which consumers access and use news and current affairs

<sup>149</sup>House of Lords Select Committee on Communications, *The Ownership of the News*, 2008, paragraph 220

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from different providers may limit the ability of any single provider to influence audiences.

- 5.105 The use of multiple sources of news is considered in most of the measures we have used to assess changes in external plurality. The effects of multi-sourcing are particularly evident when comparing the share of references of different providers for all news sources (which takes account of consumers' use of multiple sources) with the shares related to single main sources (which instead considers only the sources to which each consumer attaches the most importance).
- 5.106 The BBC accounts for 37% of references when considering all sources of news by wholesale provider, but its share rises to 54% when looking at single main sources. ITN's share of references remains similar (12% and 14%) when moving from all sources to single main source, and Sky also broadly maintains its share (10% for all sources, 9% for single main source). News Corp has a materially lower share of single main source share of references (6%) relative to its all-sources share (12%). A similar trend is visible for other newspaper providers. This suggests that consumers, when prompted to choose a single source of news, attach more weight to the news and current affairs content they access on television as opposed to newspapers.
- 5.107 News Corp's ability to influence is strengthened by the proposed acquisition (both in terms of share and of reach) even when taking into consideration all the sources that consumers access regularly. It is important to note that, regardless of the level of multi-sourcing, acquisition of one player by another will always result in an increase in the relative share of the acquiring enterprises. Similarly, a merger will always increase the reach of the acquirer unless the two entities merging have a perfectly overlapping audience.
- 5.108 In addition to considering multi-sourcing in our analysis of static effects to external plurality, we have also looked specifically at whether the proposed acquisition would change overall levels of multi-sourcing by consumers through the loss of one distinct news and current affairs provider (Sky News).
- 5.109 In its submission, News Corp estimated that 6% of all UK consumers relied on both News Corp and Sky for news. Of these, approximately 96% also sourced news from other sources as well. News Corp therefore estimated that the proportion of consumers who would, post transaction, rely on only News Corp and Sky News and no other news provider would be 0.3% of the population<sup>150</sup>.
- 5.110 As described in section 4, our research found that in a typical week consumers used on average 2.9 wholesale news providers, with 46.8% of respondents claiming they use 1 or 2 providers and 29.2% 4 or more. We have also highlighted that levels of multi-sourcing for consumers that access Sky News regularly are higher than for the general population – with 4 news providers used in a typical week.
- 5.111 When considering News Corp and Sky as a single provider post-transaction, the level of multi-sourcing for the population as a whole decreases only slightly. The average number of wholesale news providers accessed by all consumers who regularly access news would fall to 2.8<sup>151</sup>. For the sole consumer base of Sky and News Corp combined, the average number of sources used following the proposed acquisition

<sup>150</sup> Source: News Corp submission (FTI report), paragraph 6.37

<sup>151</sup> Source: Ofcom cross-media audience research 2010. This analysis assumes no other change to cross-media consumption of news and current affairs, other than the loss of Sky as an independent provider.

would instead fall to 3.5. Although the relative change is higher, we note that the average number of sources would still remain considerably above the average for the population as a whole.

- 5.112 In section 4 we also noted that the size of the audience that relies solely on Sky or News Corp for accessing news and current affairs is very small (respectively 1% and 2% according to our market research) and this remains the case post-transaction, with only 6% of the combined consumer base (or 3% of the total population) relying solely on news and current affairs from News Corp or Sky.
- 5.113 This data suggests that although Sky would cease to be a distinct media enterprise, many individual consumers would continue to access a number of different sources following the proposed transaction. This would therefore provide some constraint on the extent to which News Corp, post transaction, would be able to take advantage of an increase in its audience share and reach to influence public opinion and the news agenda.
- 5.114 However, the implications of multi-sourcing in relation to this proposed transaction are complex and as a first stage authority we do not have sufficient time to consider it fully.
- 5.115 In any case, although we believe the level of multi-sourcing by individual consumers to be important, we do not believe that we can rely on it to ensure sufficient plurality.
- 5.116 This is because the process of forming public opinion does not just depend on individuals consuming news, and then each forming their own opinion without reference to other consumers. Rather, individuals consume news, debate and discuss it with others, and it is this process of both news consumption and discussion which contributes to public opinion. What matters more therefore is the number and range of news providers used by *all* consumers and their relative significance, rather than the number of news providers used by each individual consumer.
- 5.117 We also recognise the increasing importance of online news provision today. Wider availability and use of the internet, and the extension of media enterprises' news offerings online, allow consumers to access news more easily from a range of different providers. Our audience research indicates that online usage appears to be complementing the use of traditional media for consumers. This can increase the availability of news sources, and result in consumers using a greater range and variety of sources than may have historically been the case.
- 5.118 However, traditional media providers account for 10 of the top 15 online providers of news (eight newspaper groups plus the BBC and Sky), with the remainder predominantly being news aggregators rather than alternative sources of news. This suggests that today online news tends to extend the reach of established news providers as opposed to favouring the use of new outlets that are not present on traditional media. We recognise that this could change in the future, but the nature of any such change is uncertain.

### **Influence on other media and the agenda**

- 5.119 We have received some representations that the merged entity, given its presence across all platforms and in particular in TV rolling news (through Sky News), could

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exert a greater influence over the news agenda of third parties, therefore diminishing overall plurality<sup>152</sup>.

- 5.120 One submission illustrated this by referring to the risk that Sky News could choose to give disproportionate coverage to stories featured in News Corp titles, at the expense of stories featured by other news providers. We received representations that a story picked up by Sky News is more likely to become so important that all news outlets have to cover it<sup>153</sup>. Conversely, the perceived importance of Sky's rolling TV news in agenda-setting<sup>154</sup> would mean that stories excluded by Sky News would be less likely to be covered by other outlets.
- 5.121 The merging parties have instead argued that it is very unlikely for any single media enterprise (and for Sky News in particular) to be able to influence the wider news agenda because of a variety of factors, including:
- Sky News's relatively small viewing share in TV;
  - the prominence of the BBC in news provision and the fact it is unlikely to follow any agenda set by other players;
  - the growing importance of online outlets in both news distribution and news gathering; and
  - trends towards greater use by consumers of international and specialist outlets, which are unlikely to be influenced by mainstream UK news sources.
- 5.122 We note that a variety of factors affect the way in which media enterprises source the stories they cover, and their editorial policy. For example, a title or programme focused on investigative reporting will (by definition) tend to source its stories directly. Other outlets may instead rely more on news stories supplied by news agencies<sup>155</sup>.
- 5.123 As displayed in Figure 5 in Section 4, the news providers contained in the Perspective analysis drew on a range of cited sources for news stories in the period June to November 2010. In this analysis, neither News Corp nor Sky were the main source of news stories for these news providers. For the outlets Perspective examined, of stories that cited a source, Sky News was referenced 3.7% of the time. Sky in combination with all the News International papers was referenced 12.1% of the time. By comparison, the BBC was cited as a source for 24.6% of stories. The three news agencies were also cited as key sources for the titles contained in the Perspective analysis: Associated Press 25%, Reuters 13%; and the Press Association 10%. However relevant, rolling TV news is just one of many possible sources of news for media enterprises. Overall, the available evidence does not point to a conclusion that News Corp's ability to influence through other media would be materially enhanced by the acquisition.

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<sup>152</sup> Slaughter & May, BT, Dr Des Freedman

<sup>153</sup> See file note of telephone conference with [X] [a national newspaper editor].

<sup>154</sup> Slaughter & May

<sup>155</sup> We received a representation that, for example, the BBC's rolling news coverage largely reflects the Press Association's newlists. See file note of telephone conference with [X] [a national newspaper editor].

## Conclusions on static analysis

- 5.124 We have considered plurality and the need for there to be sufficient plurality by looking at the number and range of persons with control of media enterprises in light of their ability to influence opinion. We have done so in accordance with the purpose of the public interest consideration. We have considered carefully all the representations made and evidence available to us. We believe that there is a public interest concern in relation to external plurality as the effect of the proposed transaction would bring together one of the three main providers of TV news and the largest provider of newspapers significantly increasing News Corp's ability to influence opinion and control the agenda.
- 5.125 Further in circumstances of 100% ownership and control, we do not believe that cultural safeguards and internal plurality can be relied upon to ensure plurality.
- 5.126 We recognise that the impartiality requirements of the Broadcasting Code may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot themselves necessarily ensure against it. In any event, there is a difference between the Broadcasting Code which provides the regulator with the ability to intervene on a case by case basis to ensure impartiality in terms of news presentation and the statutory need for there to be a sufficient plurality of persons with control of media enterprises.
- 5.127 We have carefully considered the submissions made in relation to the multi-sourcing and the increase in online news provision. Whilst we believe the level of multi-sourcing by individual consumers to be important, we do not believe that we can rely on it to ensure sufficient plurality. We also recognise the increasing importance of online news provision today. However, we believe that online news tends to extend the reach of established news providers as opposed to favouring the use of new outlets that are not already present on traditional media.
- 5.128 For the reasons summarised above and considering all the relevant factors together, our view within this first stage review, is that we consider it reasonable to believe that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross media audiences.

## Section 6

# Effects of the proposed acquisition - dynamic analysis

- 6.1 In addition to the static analysis, the proposed transaction could result in changes to the level of media plurality over a longer period of time. We received a number of submissions raising concerns about possible longer term effects from the proposed acquisition. We have therefore considered a forward view of the possible effects on plurality.
- 6.2 In order to do this, we have divided this section into two:
- An overview of key media market trends to provide a relevant context for plurality.
  - In this context, we have provided a summary of the potential longer term effects on plurality arising from the proposed transaction that were raised with us through submissions.

## Market trends and future market developments

### UK consumers and content producers have adopted a wide range of new digital media technologies, platforms and services over the last ten years.

- 6.3 Ofcom's research has highlighted the growth in availability, take-up and usage of different media services over recent years. This has been supported by the development of a number of new technologies; convergence between different media services; and the growing availability of access to digital services via fixed and mobile broadband networks.
- 6.4 Ofcom's 2010 Communications Market Report presented research demonstrating that, on average, nearly half of UK adults' waking hours are spent using media content and communications services. Use of different services at the same time is also increasingly common, with people squeezing 8 hours and 48 minutes of media consumption into an average of 7 hours and 5 minutes of time each day. Of all services, television remains the most heavily used<sup>156</sup>.
- 6.5 Many of the new technologies being adopted provide consumers with greater choice, convenience and control over how they consume content. These developments have also reduced the traditional distinctions between different services for consumers. The recent development and take-up of smart phones and tablet devices now enable consumers to access a range of content from broadcast, audio, print and other media on one device wherever they are. These devices have the potential to increase the levels of interactivity, participation and personalisation of media. Consumers are also increasingly choosing to take a bundle of different services from a single provider.
- 6.6 Such new services are usually adopted initially by younger and more affluent audience demographics. Daily use of a range of digital technologies is consistently higher among adults aged 16-24. By way of example, this audience spends a larger

<sup>156</sup> Ofcom Communications Market Report 2010, Figures 1.16 and 1.17

proportion of its media consumption time using mobile devices than any other age demographic<sup>157</sup>.

- 6.7 These trends are making more information available to consumers and giving them more ways to access it. At the same time, the traditional media platforms continue to play a significant role for many consumers, including older consumers. Today, Ofcom research estimates that 38% of all media and communications usage for those aged 16 and over is watching scheduled television on a TV set – the most popular media activity among consumers. This rises to 51% for those who are aged 55 plus<sup>158</sup>.
- 6.8 The development of new digital media technologies, platforms and services has consequences for the economics of the sector, above and beyond the impact of the recent economic downturn. These can include both opportunities to open up new revenues streams through selling new content and services to customers and challenges to existing business models when new technologies reduce the barriers to new entrants able to offer competitive services to consumers.
- 6.9 In the last five years there has been substantial growth in the revenue generated through subscription television and online advertising, whereas advertising from traditional print, television and radio has seen much more limited growth, and in some cases substantial declines. These trends are partially a consequence of the close link between GDP and advertising expenditure, but there is evidence of structural change occurring to the business models across the sector.
- 6.10 For content producers, these developments offer the prospect of new revenue models through the possibility of consumers paying for added choice or convenience, or access to a wider choice of content. They can open up new revenue streams such as online display advertising to media owners who extend their presence online. In addition, advertisers may be willing to pay a premium for targeting a particular audience target or demographic.

Despite widening access and use of new media technologies, the audience for television has remained relatively stable.

- 6.11 Television remains the most heavily used of all media services, and despite the growth in other media platforms such as broadband and mobile, overall levels of viewing have increased slightly over the last five years<sup>159</sup>.
- 6.12 It is possible that this resilience of television viewing is a consequence of a number of technological enhancements to the platform, which have included the growth of digital television, the launch of high-definition television and time-shifted viewing through PVRs. Digital television is now available in 93% of homes; digital video recorders are installed in 37% households and 5.1m households take HD (as of Q2 2010)<sup>160</sup>.
- 6.13 Over the last five years, television advertising revenue has declined by 1.8% p.a., whereas licence fee income allocated to television has grown by 1.7% p.a. and subscription revenue to television services has grown by 6.2% p.a.<sup>161</sup> This has led to

<sup>157</sup> Ofcom Communications Market Report 2010, Figure 1.19

<sup>158</sup> Ofcom Communications Market Report 2010, Figure 1.24

<sup>159</sup> Ofcom Communications Market Report 2010, Figure 2.67

<sup>160</sup> Ofcom Communications Market Report 2010, , Figure 1.2, Figure 2.15

<sup>161</sup> Ofcom Communications Market Report CMR 2010, Figure 2.28

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a reduction in the overall levels of investment in programming by the main public service broadcasters over the period, with a 4.6% p.a. decline in investment in original programming over the last five years among public service broadcasters<sup>162</sup>.

- 6.14 The availability and take-up of services that enable time-shifted and VOD television programming has grown significantly. All of the major broadcasters have launched video-on-demand services (or 'players') which they make available to a wide variety of platforms including the PC, games consoles, mobile devices and hybrid IPTV platforms. Of adults with the internet, 31% have watched catch-up TV<sup>163</sup>, while time-shifted viewing through a DVR still only represents 5.9% of all television viewing<sup>164</sup>.
- 6.15 Broadcast news has been affected less than other content genres by the emergence of new technologies that can draw audiences away from the live TV platform. Ofcom's consumer research shows that viewers prefer to watch news content live rather than on-demand or timeshifted<sup>165</sup>. However, broadcasters do appear to have pulled back on their news commissioning funding. Total spending on news-based content fell from £363m in 2005 to £293m in 2009<sup>166</sup>.

#### Radio also remains a significant service for a large proportion of the UK audience

- 6.16 Like broadcast television, radio remains a very highly used medium by audiences despite growing use of other services. Overall weekly reach of radio has stayed consistent at 90% over the last five years. However, average weekly hours of listening has declined over the same period (by 5.3% p.a. to 19.8 hours per head per week)<sup>167</sup>.
- 6.17 Digital Audio Broadcasting (DAB) has grown in usage with almost 16%<sup>168</sup> of homes owning a DAB set as of Q2 2010 and DAB listening representing almost a quarter of all radio listening.
- 6.18 The BBC remains the most significant player in the sector and its expenditure on radio has grown over the last five years, whereas both listening and revenues to commercial radio have declined over the same period<sup>169</sup>. This is primarily a consequence of a decline in advertising revenue in radio, which like television appears to be a consequence of both cyclical changes and the growing competition from other media for advertising expenditure.
- 6.19 The growth in the number of devices (both in the home and mobile) that can connect to the internet has led to the availability of non-broadcast audio services (e.g. audio streaming or downloading to a PC or mobile phone). Take-up and use of such services is most significant amongst the 16-24 age group.

#### Print media is facing declines in circulation as online use grows

- 6.20 The newspaper industry is in a transitional phase as new, disruptive means of distribution emerge and traditional revenue sources decline.

<sup>162</sup> Ofcom Communications Market Report, Figure 2.36

<sup>163</sup> Ofcom Communications Market Report Figure 2.8

<sup>164</sup> Ofcom Communications Market Report Figure 2.4

<sup>165</sup> Communications Market Report 2009, Figure 1.41

<sup>166</sup> PSB annual report 2010

<sup>167</sup> Ofcom Communications Market Report 2010, Figure 3.1

<sup>168</sup> Ofcom Communications Market Report 2010, Figure 3.2

<sup>169</sup> Ofcom Communications Market Report 2010, Figure 3.6



- 6.21 Print media has experienced progressive decline over the past ten years. There have been substantial declines in circulation and readership of national newspapers. For example, readership has fallen substantially among both daily and Sunday newspapers – by 3% p.a. among the Sundays and by nearly 2% p.a. for daily newspapers<sup>170</sup>.
- 6.22 Newspaper providers have been especially affected by a drop in classified advertising revenues, matched to a steady decline in circulation, which threaten the future profitability of many titles<sup>171</sup>.

### Consumption of online services continues to grow in popularity

- 6.23 The growth in the availability and take-up of the internet has provided a platform over which a variety of content types can be delivered to consumers, both traditional (existing television, radio and newspaper content) and new (such as social networking sites and other sources of user generated content).
- 6.24 Access to the internet by consumers is now at 76% of UK households, the vast majority of whom use a broadband connection (up from 31% in 2005)<sup>172</sup>. As home internet take-up has risen, so has the average minutes spent per person surfing the web – at 27 minutes per person per day (up by an average of 17% p.a. since 2004)<sup>173</sup>.
- 6.25 The growth in the availability and take-up of the internet has provided a platform over which a variety of content types can be delivered to consumers, both traditional (existing television, radio and newspaper content) and new (such as social networking sites and other sources of user generated content).
- 6.26 As a consequence of this rapid growth in broadband access to the internet, the total level of revenues generated by online services has grown substantially in the UK. The online advertising market alone was worth £3.54bn in 2009, 27% growth per annum over the last four years<sup>174</sup>.
- 6.27 The majority of online advertising (£6 in every £10 generated) is made up of paid for search services such as Google. The remainder of the market is split evenly between classified and display advertising. It is particularly the growth in these two categories that has structural implications for the television, radio and press sectors, given each currently relies significantly on classified and display advertising currently. Each of these sectors is seeking to tap into the growth of online advertising as a consequence of declines in advertising in their own markets.
- 6.28 One of the most significant trends in the last few years has been the growth in mobile access to the internet, which is now at 16% of consumers and growing rapidly<sup>175</sup>. This has the potential to enable a range of new services to consumers above and beyond those already available to them at home or work, particularly linked to the take-up of smart-phones and tablets.
- 6.29 The breadth of functionality that mobile and fixed broadband access to the internet offers is reflected in the range of services consumers use. Social networking

<sup>170</sup> Source: NRS / MediaTel / Ofcom calculations

<sup>171</sup> Enders Analysis submission

<sup>172</sup> See Ofcom technology tracking study, Q3 2010, question QE6, Table 44

<sup>173</sup> Ofcom Communications Market Report 2010, Figure 1.4

<sup>174</sup> Ofcom Communications Market Report 2010, Figure 4.7

<sup>175</sup> See Ofcom technology tracking study, Q3 2010, question QE6, Table 44

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accounts for a quarter of the time consumers spend online, by far the largest share of any online service (including email, search, news, games and other service). Online news is attracting a growing unique monthly audience, although it still accounts for a very small proportion of overall time spent online (less than 3%<sup>176</sup>). Most providers of news on television or radio have launched offerings on the internet accessible via a range of devices including PCs, smartphones and tablets. Each is seeking to extend the reach and use of their output while also accessing the growth in online revenue.

- 6.30 A range of different online content and business models are emerging which may provide new revenue opportunities for the newspaper publishers. News aggregators such as Google News and Yahoo! News bring together news stories from a wide range of providers and outlets. Many newspapers online are making increasing use of video and audio to enhance the richness of their content propositions. Some, such as FT.com and Times.co.uk, have opted for 'freemium' or subscription-based revenue models, whereas other players have pursued a free model reliant on advertising. So far newspapers' online revenues have failed to match those of their print counterparts. DMGT, for example, recently announced that the ad-supported Mail Online website, currently the second-most popular newspaper website in the world according to ComScore<sup>177</sup>, generated approximately £12m in the financial year 2009/10<sup>178</sup>. GMG website The Guardian Online reportedly generated around £40m last year<sup>179</sup>.

### **These trends suggest that convergent cross-media services will become increasingly important**

- 6.31 Taken together, these trends suggest that there may be a continuous shift in the relative mix and balance of different media platforms and services for consumers, with an increasing push into convergent cross-media services.
- 6.32 Of the traditional media platforms, television appears to have an enduring strength as a key platform for the delivery of content to consumers – its reach, impact and significance to consumers is likely to continue in the future. However, all platforms including online today will need to respond to the development and adoption of increasingly convergent media.
- 6.33 Online services, and the convergence of the internet with traditional media platforms are therefore one of the key areas for future development. This will continue to result in the development of new, cross-media products and services for consumers. This is one of the areas of focus for many players in media, including news and current affairs: the development of convergent, integrated media products that draw on the strengths of video, print, and audio to deliver content to consumers across a range of platforms and devices.
- 6.34 It is unclear at present to what extent these cross-media services will be complementary to existing services, in which case we might expect bundling of such services to increase in importance, or substitutional to existing services, in which case they might be expected to displace them. [X]<sup>180</sup> <sup>181</sup> [The redacted text refers to

<sup>176</sup> Ofcom Communications Market Report 2010, Figure 4.4

<sup>177</sup> As reported by Paid Content. See <http://paidcontent.org/article/419-mail-online-vs-nytimes.com-running-the-numbers/>

<sup>178</sup> <http://www.dmgt.co.uk/uploads/files/DMGT-Preliminary-Results-2010.pdf>

<sup>179</sup> <http://www.abc.net.au/pm/content/2010/s3058684.htm>

<sup>180</sup> [X]

<sup>181</sup> [X]

paragraphs 210 and 213 of the European Commission's decision, in relation to which Ofcom is not in a position to identify what may be disclosed].

- 6.35 However this develops from a commercial perspective, for those consumers adopting new products and services that exploit the potential of convergence between online and traditional media, this undoubtedly increases their ability to consume content from a wider variety of sources, with greater flexibility and sophistication than ever before.

### **Potential longer term effects on plurality arising from the proposed transaction**

- 6.36 We received many submissions that raised concerns about the potential for the proposed acquisition to affect plurality in the future. Much of this concern was around the potential effect of the economic power of the combined entity in the context of future media market developments. The concerns raised were that, following the acquisition, News Corp would be better placed than its competitors to respond to market developments and develop its service and presence across-media.
- 6.37 The economic power of the combined group covers a number of possible factors. The merged entity would be financially bigger than any of the other voices in the market (for example in terms of group revenues and cash flows). Representations argued that thanks to its financial security and size News Corp would be able to make commercial decisions that its rivals would be unable to make, and thus would be better placed to respond to market developments and challenges. This would allow News Corp to increase its market presence and share compared to other news providers, while not behaving anti-competitively.
- 6.38 [REDACTED]. Our view is that future concerns in relation to plurality are not necessarily captured by any competition assessment of the proposed transaction. As outlined in paragraph 2.35, media public interest considerations invoked by the Secretary of State are distinct from the competition-based test applied by the competition authorities. The aim of any competition analysis is to prevent a level of concentration of ownership which could give rise to a substantial lessening of competition, to the detriment of consumers. The public interest considerations defined by Parliament have a different goal: to ensure sufficient plurality of media enterprises to support effective debate and the democratic process. While it is possible that there may be overlap between issues and / or facts relevant to a competition consideration and a need for sufficient plurality under the public interest consideration, the two statutory regimes are distinct with different purposes.
- 6.39 As noted in paragraph 2.36 of this report, on 21 December 2010 The European Commission ("the EC") concluded its Phase One investigation into the competition effects of the proposed acquisition. The EC decided not to oppose the notified acquisition and declared it compatible with the internal market and with the EEA Agreement. Its decision was based solely on competition-related grounds, pursuant to Article 4 of European Council Regulation No 139/2004. [REDACTED]<sup>182</sup> [The redacted text refers to paragraphs 1, 307, 309 and 310 of the European Commission's decision, in relation to which Ofcom is not in a position to identify what may be disclosed. The EC's press release of its decision is available at <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/1767>].

<sup>182</sup> [REDACTED]

### Concerns were raised in representations that the proposed transaction could influence future levels of plurality

- 6.40 In representations, we received two main groups of possible concerns for plurality as a result of the proposed transaction:
- The economic power of the combined entity and its ability to react to future market developments like convergence
  - A range of specific concerns relating to potential activities by the merged entity

#### Economic power and convergence

- 6.41 There are historic examples of how 'economic power' can be employed to engage in long term strategies that could affect plurality if other players in the market are not able to respond. For example, News Corp has in the past supported Fox News through a period of substantial loss until it became established<sup>183</sup>. Such activities are not unique to News Corp though – there are numerous examples of media enterprises making significant investments in new titles and routes to market, notably online, before they make an economic return.
- 6.42 Economic power can allow a company to take strategic decisions that might ultimately have an impact on plurality. Economic power may allow a media enterprise to invest in new ventures, business developments or adopt pricing strategies that others do not have the resources to compete with. There may be a consequential reduction in other players' share of voice and hence plurality.
- 6.43 As noted above, one of the key expected developments for the future is developing the presence of news content across convergent media. For all media players, a future presence online and development of new applications, taking advantage of the functionality of new devices and the ways that consumers access content is likely to be key.
- 6.44 Representations to us suggested that the combination of News Corp's print news content and Sky's audio-visual content makes it best-placed to take advantage of the move to convergent news media. If for example it was able to develop a compelling content proposition for e-readers or tablet devices, which could not be replicated by other providers, this might over a period of time enable it to extend its share of voice beyond that which it achieves as an immediate consequence of the proposed transaction.
- 6.45 We acknowledge that the ability of News Corp to develop and distribute convergent media products does not depend on the proposed transaction. For example, The Times newspaper's website and the Times iPad edition already feature some Sky News content. The transaction is however likely to strengthen the ability of News Corp to produce such products, given the complementary capabilities of News Corp and of Sky in the production of textual and audiovisual content respectively.
- 6.46 We note that it is a difficult and uncertain process for other news providers (e.g. newspapers) to build up the capability to produce their own AV and multimedia content, although there are some emerging examples of newspapers doing so<sup>184</sup>. It is

<sup>183</sup> House of Lords Select Committee, Ownership of the News 2008, Appendix 4, paragraph 29

<sup>184</sup> E.g. Telegraph Media Group's Telegraph TV <http://www.telegraph.co.uk/telegraphtv/>

potentially costly, and would require them to diversify into a very different skill-set in order to produce high-quality AV journalism.

- 6.47 However, we note also that investment in new, innovative convergent media products is not limited to a combined News Corp or Sky, and other news suppliers do offer similar multimedia content<sup>185</sup>. Other news providers and platform operators may develop and distribute converged services through commercial deals<sup>186</sup>. No other single company has the same combination of a portfolio of content assets (including news) and scale of distribution across TV, newspapers and broadband. However, the evidence which has been presented to us in the time available does not support a conclusion that such strategies could not be replicated by rival news providers, entering where necessary into commercial agreements with appropriate partners.
- 6.48 We acknowledge that the effects on plurality of new convergent products are uncertain. They may fail, in which case they will have no impact on plurality. If they succeed, this could have a negative impact on plurality if other providers are not able to provide similar products, but could also have a positive impact if they help pioneer the development of new online business models which are then replicable by a wider range of alternative providers.
- 6.49 There is a high degree of uncertainty surrounding future convergent products, and the potential for a range of players across the communications value chain including news providers and platform operators to invest in such products. As a result, we do not consider that there is sufficient evidence for the view that it may be the case that these issues may be expected to result in additional plurality concerns to those identified in our static analysis.
- 6.50 However, that is not to say that these concerns can be dismissed either. This is particularly true given the fact that under the current statutory framework it is only possible to examine these concerns at the time of a particular transaction. So whilst we do not rely on these issues as the basis for our recommendation that a reference be made to the Competition Commission, in event of a reference then this is an area that may warrant further consideration

#### Specific concerns relating to potential activities by the merged entity

- 6.51 In addition to the development and launch of convergent news media products, a number of other possible future issues were raised by respondents as potentially having an effect on the level of plurality. Specifically, representations raised concerns about:
- a greater ability to cross-subsidise news operations;
  - more cross-promotion between News Corp outlets including Sky;
  - 'bundling' together of goods and services; and
  - a greater ability to bid for and win wholesale news deals.
- 6.52 **Better ability to cross-subsidise news operations.** Concerns were raised with us that the combined entity would have significant funds for cross subsidy between its different media operations. However, cross subsidies are a common feature of the

<sup>185</sup> E.g. BBC News has made certain AV content available to all newspaper websites [http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/07\\_july/28/content.shtml](http://www.bbc.co.uk/pressoffice/pressreleases/stories/2009/07_july/28/content.shtml)

<sup>186</sup> It is common for newspaper websites to use a mix of their own and third party content, e.g. The Financial Times using CBS AV news content <http://www.pressgazette.co.uk/story.asp?storycode=46046>

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market today for a range of media providers, and News Corp in particular already has a strong enough financial position to enable it to fund any cross-subsidies which it might wish to provide. Therefore, although the proposed transaction would increase the strength of News Corp's finances in terms of cash flow, we do not believe that the proposed acquisition would create a situation which is not possible already given News Corp's existing ability to cross subsidise its different media operations.

- 6.53 [X]<sup>187</sup> [The redacted text refers to paragraph 223 and 213 of the European Commission's decision, in relation to which Ofcom is not in a position to identify what may be disclosed].
- 6.54 **Cross-promotion between News Corp outlets.** Concerns were raised that News Corp's influence on consumers could be increased through greater use of cross promotion. This could include direct cross-promotion, such as more references to Sky in News Corp's newspaper titles, or indirect cross-promotion, such as sister titles sharing correspondents or columnists. Incentives already exist for cross-promotion between News International's print titles and Sky, but these would be increased by the transaction.
- 6.55 There are limitations to how far Sky could directly promote News Corp titles on its television channels, as set out in Ofcom's Broadcasting Code<sup>188</sup> ("the Code"). However, the Code does not necessarily restrict some forms of indirect promotion<sup>189</sup> such as leading the news agenda with a sister outlet's news scoop or inviting a sister outlet's star columnist to comment on news stories.
- 6.56 We note that the European Commission considered the risk of input foreclosure of BSkyB's competitors as a result of a refusal to advertise in News Corp titles. The Commission concluded that this was not a concern, largely on the basis that there are alternative means of advertising to these titles.<sup>190</sup> This conclusion is relevant to our consideration of cross-promotion, since it suggests that News Corp titles are not uniquely well placed to engage in cross-promotion. However, we believe it may still be possible for cross-promotion to provide increased influence in circumstances which fall short of input foreclosure.
- 6.57 Overall we believe that the transaction may increase the effectiveness of cross-promotion between Sky and News Corp titles, and therefore the influence of these titles, but have not in the time available been able to quantify this effect. We acknowledge that there is already an incentive to engage in some cross-promotion, and note the conclusion of the European Commission on input foreclosure
- 6.58 **"Bundling" together of goods and content.** Bundles can come in several forms:
- a) physical bundles of products (e.g. giving subscribers to Sky TV a "free" subscription to The Times newspaper);
  - b) content aggregation services (e.g. a News Corp service in which News Corp collects content from a variety of third party sources (e.g. The Daily Mail, The Independent newspapers) and brings it together at a single point of use for consumers. It would act as gatekeeper to this service.); and

<sup>187</sup> [X]

<sup>188</sup> See Section 10, 'Commercial References and Other Matters'

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/commercial-references/>

<sup>189</sup> Subject to the limits implied by rules on preventing undue prominence of a product or service

<sup>190</sup> [X]

- c) more complex bundling and integration (e.g. placing and using news content on the Sky broadband internet home page; giving priority to News Corp's own news content via broadband traffic management).
- 6.59 We note that some of the potential concerns which have been put to us under the banner of 'bundling' relate to the creation of new integrated products, typically in the context of convergent media. We have already discussed these above. In what follows we focus on the somewhat narrower question of the retail bundling of existing products, [X] [The redacted text in this and the five following paragraphs refers to paragraphs 224-257 of the European Commission's decision, in relation to which Ofcom is not in a position to identify what may be disclosed].
- 6.60 [X]<sup>191</sup>
- 6.61 [X]<sup>192</sup>
- 6.62 [X]<sup>193</sup>
- 6.63 [X]<sup>194</sup>
- 6.64 Our view, [X] is that bundling of existing TV and newspaper subscription services is unlikely to be a significant concern. However, as discussed above, [X] there is a great deal of uncertainty as to the types of integrated tablet or e-reader type products that might be developed as a result of convergence through new devices and the manner in which these might be retailed. However, this may create concerns in the future, and we note the absence of a statutory framework for addressing such potential issues on an ex post basis.
- 6.65 **Bidding for wholesale TV news deals** - Today TV news provision is already highly concentrated, with only three providers of news at the wholesale level: the BBC, ITN and Sky News. We received representations arguing that, in the longer term, the proposed acquisition might have an impact on the level of plurality in the wholesale provision of television news<sup>195</sup>. Specifically, post transaction, Sky might be in a stronger position when bidding for broadcast news contracts. Concern was expressed that, in the long term, this might lead to ITN exiting the wholesale broadcast news market<sup>196</sup>, which could ultimately result in a duopoly of wholesale news provision in broadcast news<sup>197</sup>.
- 6.66 We note that Sky News already bids competitively for wholesale tenders, both successfully and unsuccessfully, and that there is already the possibility of current wholesale providers of TV news being displaced by Sky News. Sky News is already part of a large and well resourced media enterprise, capable of bidding effectively for wholesale tenders regardless of this transaction. We have not seen any evidence that suggests changes in wholesale provision would flow specifically as a result of the transaction.

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<sup>191</sup> [X]

<sup>192</sup> [X]

<sup>193</sup> [X]

<sup>194</sup> [X]

<sup>195</sup> For example, see BBC, Goldsmiths Leverhulme, Media Research Centre, Slaughter & May

<sup>196</sup> For example, see BBC, Enders, Slaughter & May, Professor Barnett

<sup>197</sup> It is important to note that Sky News would only be able to provide news to ITV as part of a consortium where it held less than 20% due to the designated provider rules for Channel 3 news

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- 6.67 While it is possible that there will be changes which affect plurality in the future in relation to wholesale news provision, these are uncertain and could work to reduce plurality or to increase it. In this context we note once again the absence of a statutory framework for addressing potential issues on an ex post basis.

### **The proposed acquisition may result in potentially positive outcomes for consumers**

- 6.68 We note that there are several potentially positive outcomes from this transaction.
- 6.69 The merged entity could be able to afford to take more risks and to innovate, with possible positive spill-over benefits for the wider industry. We note that News Corp and Sky each have strong records of innovation. News Corp led the way in revitalising the newspaper industry in the late 1980's, by driving the adoption of new printing technologies despite union opposition, and is currently trialling the use of paywalls for online news content. Sky has consistently pioneered new means of producing and distributing TV content including, *inter alia*, its launch in 1989 of Sky News, and its subsequent development as one of the UK's main sources of rolling TV news.
- 6.70 The increased scale and economic power of a merged News Corp / Sky may help it to establish or support new business models. The wider news industry could then benefit from these, as long as they are replicable. For example, News Corp has opted for a subscription-based (pay-wall) revenue model for some of its UK newspaper website titles. Subscription revenues per user are typically higher than advertising-based revenues, so it is plausible that if the transaction were to help establish a subscription model, allowing it time to mature and increase take-up, that it would improve the ability of a range of organisations to develop sustainable business models for news content online. This in turn, could help initiate a virtuous cycle, leading to a resurgence of the wider news industry.

### **Conclusions on dynamic analysis**

- 6.71 A number of forward-looking concerns have been put to us. The most credible are those that relate to the ability of the merged party to use its economic power and its complementary strengths in text and audiovisual news content to produce new integrated products within the context of an increasingly converged market. Examples might include new types of news applications for e-readers and tablets. If these could not be replicated by other providers, this might over a period of time enable the merged party to extend its share of voice beyond that which it achieves as a direct consequence of the proposed acquisition.
- 6.72 As a result of the degree of uncertainty affecting any view on possible future developments, the limited evidence available on the effect of the proposed transaction, and uncertainty on how far these developments could occur absent the transaction, we do not consider that there is sufficient evidence for the view that these issues may be expected to result in additional plurality concerns to those identified by our static analysis.
- 6.73 However, that is not to say they can be dismissed either. So whilst we do not rely on these issues as the basis for our recommendation that a reference be made to the Competition Commission, if a reference is made then these issues merit further evaluation. We are particularly conscious that whilst some of the longer-term effects



of the transaction are inevitably somewhat speculative, there is no ex post mechanism to address potential plurality concerns arising in the future.

- 6.74 Our analysis and consideration of a forward view of the market in terms of plurality does suggest that, regardless of the transaction, plurality may face challenges in the future. Market developments such as those identified in paragraphs 6.3 to 6.35 above may be expected to have an effect on the relative influence of different voices over time. In this context, a relatively more influential voice for a combined News Corp/Sky may be more of a concern than relatively stronger voices for each of the two separate companies as distinct media enterprises.

**Section 7****Recommendations****Advice and recommendations**

- 7.1 Ofcom's advice, based on the evidence and reasons set out in this report and summarised in the executive summary, is that it may be the case that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences. In reaching this view we do not rely on the dynamic effects discussed in full in Section 6.
- 7.2 Therefore we believe there is a need for a fuller second stage review of these issues by the Competition Commission to assess the extent to which the concentration in media ownership may act against the public interest, and we advise the Secretary of State accordingly.

**Stakeholder views on possible remedies**

- 7.3 We received various submissions in response to our invitation to comment on possible remedies to ensure sufficient plurality. Overall, three broad categories of potential remedy were identified:
- Requiring undertakings (behavioural remedies) from the parties to secure editorial independence for Sky News
  - Requiring divestment of some news media assets
  - Blocking the proposed acquisition on public interest grounds
- 7.4 We received few representations on remedies [X]. One common theme within the comments we received was significant scepticism as to the effectiveness of behavioural remedies as a means of guaranteeing the editorial independence of Sky News from News Corp.
- 7.5 This scepticism was based partially on general concerns about the effectiveness of behavioural remedies, but also on the perceived outcome of specific commitments given during previous transactions, in particular following the acquisition by News Corp of the Times and Sunday Times. We note however that the evidence provided on this point was largely anecdotal.
- 7.6 While divestment remedies might potentially address public interest concerns, they would require a credible purchaser. Otherwise such a remedy risks a potentially perverse outcome for plurality, given the contribution currently made by Sky News, News International newspapers and their respective online services.

**Recommendation on review of statutory framework for plurality**

- 7.7 We received many submissions that raised concerns about the potential for the proposed acquisition to affect plurality in the future. We consider these in Section 6.

- 7.8 Furthermore, many of the submissions we received raised additional concerns which are relevant to plurality, but which are not specific to this transaction. These concerns arise from the rapid and far reaching changes that are taking place within the media as a result of technological advances and new business models. They include:
- **Adoption and use of new media technologies** combined with a contraction in some of the more traditional media forms. For example, according to Ofcom research online news was the main source of news for 7% of consumers in 2009, up from 3% in 2005<sup>198</sup>. The majority of online news is accounted for by online versions of current newspapers, but also includes aggregators such as Google and Yahoo. At the same time, newspaper circulation has been falling, down from 25 million for daily newspapers and 27 million for weeklies in 2000, to 22 million for each in 2009<sup>199</sup>.
  - **Organic change in market shares** of key players – since 2003, we have seen material changes in the relative standings and importance of different players. For example, ITN (which provides news for ITV and Channel 4) has seen its share of all national news viewing fall from 34% in 2003 to 22% in 2009<sup>200</sup> as a result of ITV's falling share and the loss of the Five news contract to Sky.
  - **Changes to wholesale news provision** – wholesale news provision can change fairly quickly through changing contractual relationships. As a result, the structure and ownership of news provision on platforms like TV or radio can alter with the change of a significant contract.
  - **Evolution in upstream content provision** – we may witness the emergence of a few stronger players in the upstream gathering and provision of news as a result of the economics of news provision. This possible development was discussed in more detail in our review of the Media Ownership Rules in 2009.
- 7.9 Under the current statutory framework, a media public interest consideration of plurality can only be triggered when there is a proposed merger involving media enterprises. The future market developments considered in this report suggest that the current statutory framework may no longer be fully equipped to achieve Parliament's objective of ensuring sufficient plurality of media ownership.
- 7.10 The market developments identified include the risk of market exit by current news providers, or a steady organic growth in audience shares and increase in ability to influence by any one provider. For example, in a situation where a company grows organically through entirely legitimate business strategy which does not involve any anti-competitive behaviour but finds itself in the relevant media market with 90% share of audiences. While this may not have raised competition concerns, it very clearly may raise plurality concerns.
- 7.11 While there is a clear statutory framework for remedying competition concerns which may arise in the context of a merger<sup>201</sup>, the same is not true of concerns related to plurality more generally. This means that if a transaction is found not to operate against the public interest in relation to plurality at the time, there is no subsequent

<sup>198</sup> Ofcom Media Tracker, 2009, all adults 15+.

<sup>199</sup> NRS / MediaTel / Ofcom calculations

<sup>200</sup> Barb, Network Plus, Ofcom

<sup>201</sup> These include the use of ex post powers under the Competition Act, as well as the possibility of a market investigation reference under the Enterprise Act.

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opportunity or mechanism to address or even to consider any plurality concerns which develop over time.

- 7.12 This suggests that a more fundamental review and possible reform of the current statutory framework may be required. Any such review would be a matter for Parliament.
- 7.13 Any new legislative and regulatory framework for plurality would need to provide a mechanism for intervention if market developments resulted in changes which raised serious doubts in relation to the sufficiency of plurality.
- 7.14 However, any intervention would need to be transparent, proportionate and balance the need for a plural media environment with possible risks from intervention. Any modified policy would need to ensure there remained a freedom to innovate in response to market developments, to make risky investments and earn suitable rewards and must avoid creating negative or perverse incentives.
- 7.15 This is properly a debate for Parliament. In undertaking any such review, we think it would be useful to consider a number of questions, including:
- What could trigger any safeguard – for example certain thresholds for cross-media audience shares or reach; regular situation reporting similar to the infrastructure report from Ofcom to Government?
  - Who would be responsible for conducting any review following the trigger and to whom would it report?
  - What sort of outcomes or solutions to public interest concerns might be required – which would be useful in defining the powers necessary to safeguard plurality effectively in the future
  - What sort of legal instrument and mechanisms could be used to deliver a safeguard for plurality? How could it be ensured that any intervention was proportionate?
- 7.16 We therefore also recommend that the Government consider undertaking a wider review of the statutory framework to ensure plurality in the public interest. Specifically, we believe there may be value in providing for intervention where plurality concerns arise in the absence of a corporate transaction involving media enterprises and which are not safeguarded by the current media ownership rules.

**Linkages to the current public interest consideration**

- 7.17 Our thinking on potential new safeguards for plurality does not change our advice and recommendations on the proposed transaction. The time required to conduct a review of the legislative framework to secure sufficient plurality may be substantial and we see this as a separate consideration

## Annex 1

## Data sources used

- A1.1 There is no existing system that measures cross-platform news consumption on a consistent basis. Instead, there are a series of separate industry standard metrics available on a platform-by-platform basis. It is important to note that each uses a different research methodology (as outlined below) and that the ability to analyse news-specific consumption also varies substantially across the methodologies; reach is also defined differently by each system. To supplement the analysis that these industry metrics support, Ofcom commissioned primary quantitative research to understand consumers' use of news across-media platforms.
- A1.2 This section sets out the main features both of the standard industry measurement systems and of the quantitative research that Ofcom commissioned.

Currency	Methodology	Time period	Age range and sample size	News definition	Reach definition
Television - BARB	Continuous panel. Uses a meter attached to the television, measuring viewing on a second by second basis	October 2010, trend data 2002-2010 year to date	Age range: UK adults aged 16+, Sample size: 5,100 UK households on a continuous basis	News: national and international sub-genre provided by BARB	3+ consecutive minutes of viewing
Radio - RAJAR	One week self-completion diary – self reported measure	Quarter 3 2010	110,000 UK adults aged 15+	Radio listening overall, with exception of average minutes analysis where we have estimated the amount of news listening.	5+ minutes of consecutive listening
Print - NRS	Face to face quantitative survey – self reported measure	October 2009-September 2010	36,000 UK respondents annually Aged 16+	Self reported measure – read the newspaper	Average issue readership – using NRS 6-day estimate for dailies
Online - UKOM/Nielsen	Continuous panel of participants	October 2010	43,330 people aged 2+; data reported monthly	UKOM current events & global news sub category and selected other news sites.	The percentage of a country's 2+ population that visited the Web site or used the application.

## Television news viewing - BARB

- A1.3 For television viewing, we have used the BARB industry currency (Broadcaster Audience Research Board). BARB uses a continuous panel of 5,100 UK homes and tracks television viewing among all people aged 4+ in these homes on a second by second basis using a metering system.
- A1.4 BARB viewing data can be analysed by programme genre. Programmes are categorised by the broadcasters and can be a useful way of analysing viewing. However, the genre classifications are provided on a voluntary basis by broadcasters, and there is no independent verification of them.
- A1.5 The 'News and weather' genre contains four subgenres – 'national/international news', 'weather', 'regional news' and 'miscellaneous'. Analysis in this report is based on viewing to the subgenre of 'national/international news'. The other subgenres were excluded as we deemed them less relevant to an understanding of

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consumption of TV national and international news. We also excluded the BARB genre of Current Affairs, as it contains a wide range of programme titles, including ones we thought were not relevant to an understanding of the consumption of news and current affairs (such as The One Show, or Helicopter Heroes). This was also the case even when we looked at the 'political/economic and social' sub-genre of Current Affairs.

- A1.6 In this report, analysis has been conducted on viewers aged 16+. Reach (that is the proportion of the population who have consumed a defined number of minutes of national/international news in a given period) is based on anyone who has watched at least 3 consecutive minutes of the sub-genre in an average week; industry practice is generally 3+ or 5+ minutes. Ofcom decided to run the TV news analysis on 3+ minutes due to the varying duration of news programmes (e.g. short news bulletins, hour long programmes or 24 hour channels).
- A1.7 Share of news viewing is based on the following three providers - BBC (BBC One, BBC Two, BBC News); ITN (ITV1, C4), Sky (Sky News, Five), and relates to October 2010; in 2009, these providers accounted for 99.69% of all television news viewing (rising from 99.05% in 2001). Other channels measured by BARB that provide short news bulletins and/or generate a small proportion of total viewing of news are not included in this analysis. These include Euronews, Fox News, BBC Parliament, ITV2, ITV3, BBC Three, BBC Four; they accounted for the remaining 0.31% of television news viewing in 2009.
- A1.8 There are other dedicated news channels that broadcast in the UK. However, as these are not individually measured nor reported by BARB (which is indicative of their relatively small channel shares) the viewing minutes they attract cannot be allocated to the 'news' category. These channels include CNN, Al Jazeera English, Russia Today and France 24. We estimate these non-BARB reported channels represent a very small proportion of total national/international news viewing.

**Radio news listening – RAJAR**

- A1.9 For radio listening we have used the RAJAR industry currency (Radio Joint Industry Research). RAJAR interviews approximately 110,000 adults aged 16+ over 50 weeks per year. The survey operates as a sweep, not a panel, which means that respondents only participate for one week. Respondents are asked to complete a one week diary showing all the stations they listened to, for at least 5 minutes, recorded in quarter hour time blocks. Data is compiled and released on a quarterly basis.
- A1.10 RAJAR does not provide programme level detail or programme genres. Therefore we have been unable to measure listening to news or current affairs programmes on radio. Instead, we have used listening to radio *overall* and analysed radio consumption by commercial stations versus BBC services. Where it has become necessary to conduct more detailed analysis, we have used a range of weights on station minutage to reflect the differing presence of news content on different categories of radio network; in so doing we have been able to provide an estimate of the amount of time spent listening to news on the radio (based on a review of the schedules of different radio networks, we consider it reasonable to apply weights of 27% to Radio 4; 19% to Radio 5 Live and 5% for all other radio networks). All reach and radio share figures are based on total radio listening and are not specific to news.

- A1.11 In this statement, reach is based on those listeners who say that they listen to 5 or more consecutive minutes of radio in the average week.

### **Newspaper readership - National readership survey (NRS)**

- A1.12 Newspaper-specific analysis uses the industry currency – the National Readership Survey (NRS). This is a rolling face-to-face quantitative survey, drawing on a monthly sample of 3,000 respondents, interviewing 36,000 respondents each year.
- A1.13 A respondent is deemed to have read a paper if they spent more than two minutes reading or looking at it. Average issue readership (AIR) is based on whether respondents say if they have read each title within the issue period of the title. For example, for daily newspapers respondents are asked whether they have read each daily paper in the last day.
- A1.14 The titles analysed are the twenty newspapers that are available on a national basis: The Sun, The Mirror, The Daily Star, The Express, The Daily Mail, The Times, The Daily Telegraph, The Guardian, The Independent, The FT, The News of the World, The Daily Star Sunday, The Sunday Express, The Sunday Mirror, The People, The Mail on Sunday, The Sunday Times, The Sunday Telegraph, The Observer, The Independent on Sunday.

### **Online – UKOM / Nielsen**

- A1.15 Online-specific consumption is measured using data supplied by UKOM (UK Online Measurement) / Nielsen, which monitors consumers' active use of online sites on PCs and laptops at home and at work. The UKOM / Nielsen panel consists of 43,330 individuals aged 2+. Standard survey metrics provided by this panel include monthly active and population reach of different online sites/groups of sites; page views and time spent on a site per session.
- A1.16 Nielsen is currently investigating a decline in its Internet use data around duration metrics and the potential impact of this on Unique Audience metrics. Until these investigations are concluded, Nielsen Internet data for October 2010 is likely to represent a lower bound and should be treated as indicative only.
- A1.17 Nielsen groups websites into categories and sub-categories. In this statement we have performed our online analysis on its 'Current Events and Global News' subcategory. This includes the overwhelming majority, although not all, of the sites pertinent to this statement. To correct for this, we have combined this sub-category with a small number of sites found elsewhere – FT.com, Reuters, Wall Street Journal Digital, Metro.co.uk, Archant Regional Network and Northcliffe Newspapers. Our share of page views and time spent analysis is based on the top 50 sites by unique audience from this combined list of sites.

### **Cross-media research**

- A1.18 Ofcom commissioned eight questions on Kantar Media's omnibus survey between 19<sup>th</sup> and 23<sup>rd</sup> November 2010. This was a face-to-face survey among a representative sample of 2,018 adults in Great Britain, excluding Northern Ireland as this was not covered by the omnibus survey. The data is weighted to the National readership survey (by region, gender, age and socio economic group). Respondents were asked which platforms they used regularly/occasionally for UK/international news and current affairs. For those platforms cited, they were asked to select from a list which news sources they used. Regularly was defined as

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'at least once a week', and occasionally was defined as 'at least once a month', with the exception of weekly newspapers and magazines, whereby regularly was defined as 'at least once a month', and occasionally was defined as 'less than once a month'. We also asked consumers which platform (i.e. television, newspapers, radio or internet) and which title they regarded as their main source of news.

- A1.19 The analysis in this report groups responses by wholesale news provider (Sky, ITN, BBC etc) and retail news providers (BBC, ITV1, Sky News etc). The quantitative consumer research includes analysis of the share of each news provider cross-platform, based on the number of times each individual news source is cited by respondents. An individual news source is, for example, a specific television station, radio station, newspaper title or website.
- A1.20 Each provider's share is based on the total number of responses for each individual source across television, radio, daily and weekly newspapers and the internet. If a respondent uses more than one source from a particular provider, it is counted each time. The share of each provider is then calculated as the aggregated number of responses in thousands for that provider, expressed as a proportion of all responses for all news sources measured in the survey. Note that a reference of a daily newspaper carries the same weight as a reference of a Sunday newspaper.
- A1.21 Reach describes the proportion of respondents who say that they use each news source, platform, or provider on a regular basis. The reach figures for media providers are calculated based on the proportion of respondents who say they use at least one news source regularly provided by each media group. For example, if a respondent says that they use both the BBC One and BBC website for their news on a regular basis, they will be represented once in the reach figure for the BBC. The reach figures for media owners are calculated in a similar way.
- A1.22 The statement uses analysis by both wholesale news providers and retail providers. Please see the tables below for full details on how each source is grouped.

Retail news provider	Makeup
BBC	BBC channels (Q3), BBC national radio, BBC local radio (Q6), BBC website (Q7)
ITV	ITV (Q3), ITV website (Q7)
News Corp	Fox News, Star News (Q3), Sun, Times (Q4), News of the World, Sunday Times (Q5), Times\Sunday Times website, Sun website, News of the World website (Q7)
Sky	Sky news (Q3), Sky news website (Q7)
Channel 4	Channel 4 (Q3), Channel 4 website (Q7)
Northern Shell	Five (Q3), Daily Star, Daily Express (Q4), Sunday Star, Sunday Express (Q5), Star website, Daily Express website (Q7)
Associated Newspapers	Daily Mail (Q4), Mail on Sunday (Q5), Daily Mail website (Q7)
Trinity Mirror	Daily Mirror (Q4), Daily Mirror website (Q5), Sunday Mirror, People (Q5), Daily Post (Q4), Western Mail (Q4), Wales on Sunday (Q5)
Telegraph Media Group	Telegraph (Q4), Sunday Telegraph (Q5), Telegraph\Sunday Telegraph website (Q7)
Guardian Media Group	Guardian (Q4), Observer (Q5), Guardian website (Q7)
Independent Print Ltd	Independent (Q4), Sunday Independent (Q5), Independent website (Q7)
Pearson	Financial Times (Q4), Financial Times website (Q7)
Commercial radio	Classic FM, Absolute Radio, TalkSport, Any other commercial radio station (Q6)
Other	CNN; Euro News, Other TV Channel (Q3), Morning Star, Herald/Scotsman/Daily Record, Any regional local paper (Q4), Sunday Herald, Weekly Magazines, Other weekend/weekly newspaper Magazine (Q5), Other radio station (Q6), Google News/Yahoo news /MSN news, blogs, other websites (Q7)



Wholesale news provider	Makeup
BBC	BBC channels (Q3), BBC national radio, BBC local radio (Q6), BBC website (Q7)
ITN	ITV, Channel 4 (Q3), ITV website, Channel 4 website (Q7)
News Corp	Fox News, Star News (Q3), Sun, Times (Q4), News of the World, Sunday Times (Q5), Times\Sunday Times website, Sun website, News of the World website (Q7)
Sky	Sky news, Five (Q3), Sky news website (Q7), Classic FM, Absolute Radio, Any other commercial radio station (note: exc. TalkSport) (Q6)
Northern Shell	Daily Star, Daily Express (Q4), Sunday Star, Sunday Express (Q5), Star website, Daily Express website (Q7)
Associated Newspapers	Daily Mail (Q4), Mail on Sunday (Q5), Daily Mail website (Q7)
Trinity Mirror	Daily Mirror (Q4), Daily Mirror website (Q5), Sunday Mirror, People (Q5), Daily Post (Q4), Western Mail (Q4), Wales on Sunday (Q5)
Telegraph Media Group	Telegraph (Q4), Sunday Telegraph (Q5), Telegraph\Sunday Telegraph website (Q7)
Guardian Media Group	Guardian (Q4), Observer (Q5), Guardian website (Q7)
Independent Print Ltd	Independent (Q4), Sunday Independent (Q5), Independent website (Q7)
Pearson	Financial Times (Q4), Financial Times website (Q7)
Other	CNN, Euro News, Other TV Channel (Q3) Moming Star, Herald/Scotsman/Daily Record, Any regional local paper (Q4), the Sunday Herald, Weekly Magazines, Other weekend/weekly newspaper Magazine (Q5), TalkSport, Other radio station (Q6), Google News/Yahoo news/MSN news, blogs, other websites (Q7)

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## Annex 2

# Summary of representations

- A2.1 In total, we received 126 responses to our invitation to comment, comprised of 22<sup>x</sup> from organisations and 104 from members of the public. Two submissions from organisations consisted of collations of messages from individuals (around 58,500 in total).
- A2.2 We summarise below the representations we have received. Some of these responses were in part or entirely confidential.

## Organisations

### Sky

- A2.3 Sky provided a submission to Ofcom's Invitation to Comment, along with an appendix containing a copy of Sky's statement of 15 June 2010 regarding News Corp's proposal. [X]
- A2.4 Sky stated that, because an offer from News Corp could be in the interests of Sky shareholders in the future and that obtaining any necessary merger clearances would facilitate such an offer, it had agreed to co-operate with News Corp in seeking those clearances.
- A2.5 Sky stated that:
- it considered that an offer from News Corp could be in the interests of Sky shareholders in the future, noting that the prevention of such an acceptable offer would be adverse to those interests.
  - it wished to ensure that no precedent was set which would unduly restrict any merger or acquisition opportunities which may be available to Sky.
- A2.6 Sky stressed that the investigation should be properly focused on the question before Ofcom (with submissions from commercial competitors being treated with 'due scepticism') and conducted in a manner which was mindful of the need for transparency and predictability in merger control, so as not unduly to undermine the ability or incentive for companies to expand, invest and innovate.

### The scope of Ofcom's investigation

- A2.7 Sky noted two boundaries to the scope of Ofcom's investigation, namely:
- that Ofcom is required to investigate the impact of the proposed acquisition on media plurality rather than competition (which is a matter which falls to the European Commission).
  - that the investigation is limited to the impact of the proposed acquisition on existing levels of plurality

<sup>x</sup> In the version of this annex provided to the Secretary of State on 31 December 2010, we indicated erroneously here that we received a total of 127 responses and that 23 organisations had submitted representations on this case. This version gives the correct information, already provided in paragraphs 1.6 and 2.5 of the main report.

Without these boundaries, Sky believed that there was a risk of the media plurality provisions operating without clear and objective criteria, and undermining the incentives of operators to expand, invest and innovate.

- A2.8 In relation to the first of these boundaries, Sky stated that ‘any intervention by the UK authorities in the present case on grounds of media plurality must be justified by reference to the need to protect the sufficiency of media plurality, must be reasoned, transparent and proportionate and must be consistent with the competition assessment of the transaction to be undertaken by the European Commission’.
- A2.9 Any submissions alleging that the proposed acquisition may adversely impact competition in the provision of news or other content would concern “extraneous factors” which, in Sky’s view, should not properly fall within the scope of Ofcom’s investigation.
- A2.10 Sky stated that the second boundary reflected the framework of analysis adopted by the Competition Commission in 2007, which considered whether the proposed acquisition could have an adverse effect on the plurality of news relative to the position absent the acquisition. The proper scope of Ofcom’s investigation was therefore to investigate the extent of any impact on current levels of plurality that results from News Corp moving from owning a 39.1% shareholding in Sky to owning a 100% shareholding in Sky.
- A2.11 Sky also urged Ofcom to take due account of the DTI Guidance, which suggested that the media plurality public interest provisions are intended to operate only “in exceptional circumstances” where such mergers give rise to “serious public interest concerns”.

### **The scope of Ofcom’s invitation to comment**

#### *Content types*

- A2.12 Sky submitted that no content types other than news were relevant for the public interest consideration, given the statutory framework and Parliament’s intentions. The submission highlighted that in the Sky/ITV case, neither the Competition Commission nor Ofcom investigated the impact that transaction might have had on any content type other than national news.

#### *Control of media enterprises*

- A2.13 Sky noted that it was appropriate for Ofcom to consider the potential impact on the proposed acquisition by reference to ‘internal plurality’. The Competition Commission adopted this approach in 2007 and did not consider that the degree of “internal plurality” at ITV would be adversely affected by Sky’s acquisition - therefore concluding that the sufficiency of plurality of persons with control of media enterprises servicing audiences for news would not be materially affected.
- A2.14 In light of the Competition Commission’s reasoning, Sky stated that if no material change to the degree of “internal plurality” at Sky would be expected as a result of the proposed acquisition, then there could be no expected reduction in the overall current level of plurality. Ofcom would therefore need to determine whether the degree of “internal plurality” at Sky would be adversely affected by the proposed transaction and, in particular, whether Sky News would cease to be an independent

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“voice” from News Corp in circumstances in which it operates within a strong culture of editorial independence across television news broadcasting.

- A2.15 Sky drew attention to findings by the Competition Commission in the Sky/ITV case which indicated that Sky News (and television news broadcasting as a whole) retained a strong commitment to editorial independence. The submission further highlighted that the setting of Sky News’ news agenda was carried out by the Head of Sky News and his editorial team, and that impartiality requirements would continue to apply (which the Competition Commission considered relevant in 2007).
- A2.16 Sky also stated that it had invested in the operation of Sky News despite the unattractive returns available from such investments. This enhanced the overall attractiveness of the services Sky offers, meaning that the availability of Sky News to audiences was the result of a strong commercial incentive. This incentive would remain irrespective of a change in ownership of Sky, but it had the potential to be undermined if the operation of Sky News inappropriately or unduly restricted any merger or acquisition opportunities which may be available to Sky. Thus, a conclusion that the transaction would result in a loss in plurality could, in Sky’s view, increase the risk of that very situation.

*Audiences and media platforms*

- A2.17 If Ofcom determined that internal plurality could be adversely affected, then the investigation would then need to consider whether the proposed acquisition would adversely affect the sufficiency of plurality of persons with control of media enterprises to a degree which would result in “serious public interest consequences”, “unacceptable levels of dominance” and a “significant reduction in plurality”.
- A2.18 Sky highlighted several findings made by the Competition Commission in 2007 in relation to this issue, including:
- that Sky News had a comparatively low share of national television news viewing;
  - that whilst viewing shares and readership varied somewhat by socio-economic group, there were no fundamental differences in the significance of ITV, Sky and News Corp to particular sections of the UK population; and,
  - that no more than 1% of the population (and quite possibly less than this) took news from ITV and Sky and/or News Corp, but from no other source.
- A2.19 In light of these findings, Sky noted that Sky News’ audience share remained small, and that alternative sources of news had risen considerably in prominence since the Sky/ITV case (particularly via the internet). Additionally, Sky argued that the percentage of the UK population who could be said to rely upon Sky News as such an independent “voice” (and who therefore would in practice suffer from a loss of plurality) would be extremely low.
- A2.20 Sky also noted that the Competition Commission did not seek to aggregate either Five News or radio services receiving news content from Sky into Sky News’ audience share in the Sky/ITV case, and argued that Sky’s wholesale news arrangements did not afford Sky control of the setting of the news agenda of the end providers.

*Future developments*

A2.21 Sky agreed that a consideration of future developments would be relevant to considering the potential impact of the proposed acquisition on existing levels of plurality. However, Sky argued that it would not be appropriate for such an analysis to set a new benchmark for “sufficient” plurality based on Ofcom’s views of how news provision might develop following, or in the absence of, any transaction. The correct counterfactual for Ofcom’s analysis was said to be the existing level of plurality.

**[X] [A submission]**

A2.22 [X]

A2.23 [X]

A2.24 [X]

A2.25 [X]

A2.26 [X]

A2.27 [X]

A2.28 [X]

A2.29 [X]

A2.30 [X]

A2.31 [X]

A2.32 [X]

A2.33 [X]

A2.34 [X]

A2.35 [X]

A2.36 [X]

A2.37 [X]

A2.38 [X]

A2.39 [X]

A2.40 [X]

A2.41 [X]

A2.42 [X]

A2.43 [X]

A2.44 [X]

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A2.45 [X]

A2.46 [X]

A2.47 [X]

## News Corp

A2.48 News Corp provided a submission to Ofcom's Invitation to Comment, along with two annexes containing reports from FTI Consulting and Perspective Consulting on media public interest considerations. [X] All of these documents are summarised below.

### Background to the parties and the transaction

A2.49 The submission outlined the operations (such as assets, revenues and organisational structure) of both News Corp and Sky. It noted that News Corp owned 39.14% of the shares in Sky, and was entitled to exercise 37.19% of the voting rights in Sky.

A2.50 The proposed transaction contemplated the acquisition by News Corp of Sky's shares it does not already own. After the implementation of the Transaction, News Corp would exercise sole control over Sky. The transaction would be implemented by way of a public offer or court approved scheme of arrangement.

A2.51 News Corp outlined the rationale for the transaction, noting that it would present an opportunity for News Corp to achieve financial consolidation for a company with which it has been closely associated for a long time, and which is mainly active in a sector that constitutes a core business for News Corp.

A2.52 News Corp highlighted that the proposed acquisition would (amongst other things):

- allow News Corp to diversify the geographic scope of its activities by acquiring a significant presence in two territories (UK and Ireland) where News Corp's activities in the TV sector were rather limited; and,
- allow News Corp to diversify its sources of earnings by consolidating a business whose earnings were less dependent on advertising than other News Corp activities (more linked to subscription fees paid by TV viewers)

### Legal framework: relevant public interest consideration and sufficiency of plurality

A2.53 News Corp stated that the scope of Ofcom's report was limited to plurality concerns. This did not include third party submissions which suggested that the transaction would have detrimental effects on competition, as such theories were 'unsubstantiated and are based on hypothetical assertions of what "may" or "might" occur'. These submissions would, in News Corp's view, fall under the exclusive competence of the Commission.

A2.54 The submission noted the Competition Commission's approach to the Sky/ITV case, and suggested an analysis of plurality that included:

- a qualitative assessment of the range and variety of voices available to audiences, taking into account both "external" and "internal" plurality;

- a focus on the provision of news – although any wholesale activities which did not confer control over the editorial policy of a third party were deemed not to be relevant to the public interest consideration; and
- in terms of audiences, the proposed transaction could only conceivably affect a cross-media audience, if at all; socio-economic groupings were suggested not to be relevant audiences for statutory purposes.

A2.55 Therefore, after establishing what would qualitatively change post-transaction, compared with pre-Transaction in respect of the provision of news to a cross-media audience, it would then be necessary to assess whether or not that change would result in insufficient plurality in the UK.

#### The relevant public interest consideration

A2.56 News Corp noted that the Competition Commission's approach to conducting an assessment of the sufficiency of media plurality in 2007 was accepted and followed by the Secretary of State.

A2.57 The submission highlighted one particular aspect of the Competition Commission's approach which was ultimately endorsed by the Court of Appeal – namely that when assessing the plurality of the aggregate number of relevant controllers of media enterprises and considering the sufficiency of that plurality, the actual extent of the control exercised and exercisable over a relevant enterprise by another can and should be taken into account.

A2.58 News Corp stated that it should not be necessary for Ofcom to re-open the debate in areas where the Competition Commission has already made clear findings.

#### Plurality requires an assessment of the range and number of voices

A2.59 News Corp noted the approach of the Competition Commission and findings of the Court of Appeal, which confirmed that an analysis of plurality involved more than an assessment of the number of controllers, and instead encompassed an assessment of the range and variety of voices available to audiences, taking into account both "external" and "internal" plurality.

A2.60 The submission stated that the provisions of section 58A(4) and (5) of the Enterprise Act meant enterprises may be treated as ceasing to be distinct if there is a change in the quality of control, but did not preclude additional qualitative analysis. It was therefore necessary for the Secretary of State to consider to what extent the transaction would change the status quo ante (whereby News Corp had a degree of control of Sky), so as to create a situation of insufficient plurality.

#### Focus of analysis should be news

A2.61 News Corp said that the Competition Commission had decided in Sky/ITV that the best metric to assess the range of information and views presented to the public (and to assess plurality) was the provision of news.

A2.62 News Corp argued that consideration of other types of content provision would not assist in assessing plurality and other content types should be regarded as irrelevant to a plurality analysis.

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Wholesale supply of news content is not within the scope of the legal consideration of sufficiency of plurality

- A2.63 The submission stated that the Secretary of State would be required to consider only the plurality of persons with control of media enterprises, and noted that (as per the Enterprise Act) an enterprise is a media enterprise if it "consists in or involves broadcasting". A "media enterprise" would therefore not be one which consisted in or involves the provision of news content or services to broadcasters.
- A2.64 This approach was said by News Corp to be logical and consistent with the overall regulatory framework, where the focus is not on the provider of content but on the owner of channels and programming and editorial control.
- A2.65 News Corp therefore believed that activities of Sky or News Corp in relation to the supply of raw news content to third parties which did not confer control over editorial policy were not within the scope of the public interest consideration. This encompassed the supply of news services to both Channel Five and those commercial radio stations who were customers of IRN.

Relevant audiences

- A2.66 News Corp stated that the concept of an "audience" for a particular media outlet should be based on those people who are exposed to the views and opinions of that media outlet and could therefore be impacted by any alteration in its presentation of the news. For a merger between a newspaper enterprise and a TV broadcaster the relevant audience was said to be necessarily a cross-media one.
- A2.67 The submission said that for statutory purposes, socio-economic groupings or regions or "nations" of the UK were not themselves audiences, citing the Competition Commission's conclusion that that there were no fundamental differences between these groupings in the Sky/ITV case. The FTI report demonstrated that the same conclusion could be drawn in regard to the proposed transaction.
- A2.68 News Corp stated that the only audience for whom plurality could conceivably be reduced as a result of the transaction was a cross-media audience. The number of controllers of television news broadcasters would not be reduced. Neither would the number of controllers of newspapers.
- A2.69 Thus the only context in which the number of controllers of news sources for any audience would conceivably have reduced would be examining an audience's consumption of news across multiple media, taking into account exposure to both television news and newspapers.

"Sufficiency" of plurality for relevant audience pre and post-Transaction

- A2.70 News Corp said that there was no indication that Parliament considered plurality to be insufficient at the time of the Communications Act. Therefore it would be legitimate to assume that intervention on plurality grounds would only be appropriate where a transaction reduced plurality to a level materially below that when the legislation was introduced (i.e. 2002).
- A2.71 The submission stated that today's 'rich and diverse media environment' meant it could not be established that the transaction would give rise to serious public interest concerns.



- A2.72 News Corp noted that the Competition Commission had treated Sky and News Corp as a single enterprise in the case of Sky /ITV. It found that Sky had acquired material influence over ITV, yet still concluded that sufficient plurality remained for both for a TV audience and a cross-media audience. News Corp said that a cross-media audience would have access to a wide range of sources (including TV, radio, newspapers, magazines and online).
- A2.73 News Corp concluded that it was extremely difficult to see how a transaction which did not involve ITV and only involved a change in the quality of control between two enterprises which were previously deemed to form a single enterprise could have any adverse impact on the sufficiency of plurality for any audience within the UK.

### **Editorial influence over Sky News**

- A2.74 News Corp drew a distinction between the degree of News Corp's control over Sky's commercial policy and whether such control would result in influence over the editorial policy of Sky News. The two concepts were said not to be aligned, a conclusion which the Competition Commission and Court of Appeal had reached in Sky/ITV.

#### News Corp's existing control over Sky

- A2.75 News Corp said that it already had a degree of commercial influence over Sky which resulted in "control" for Enterprise Act purposes. This had been recognised by a number of UK authorities during the Sky/ITV case (the OFT, Competition Commission, Ofcom and the CAT).
- A2.76 The submission stated that a number of factors highlighted the relationship between News Corp and Sky, namely:
- Shareholding - News Corp was a founding shareholder of Sky, had remained its major shareholder since it was listed, and currently was the largest shareholder by far (with the next major shareholder holding only 5.02%).
  - News Corp's position on the Sky Board – there had always been (since the public listing) between four and five directors on the Board of Sky affiliated with News Corp. The position of Chairman has been occupied by Mr. Rupert Murdoch and Mr. James Murdoch.
  - [REDACTED]

#### Commercial influence and editorial influence

- A2.77 News Corp stated that, despite its degree of control over Sky, it did not exert editorial influence over Sky News.
- A2.78 The submission argued that the Court of Appeal judgement meant that one could not assume that commercial influence necessarily translated into editorial influence. Therefore, increasing News Corp's level of control to full legal control would not translate into the loss of Sky News' editorial independence.
- A2.79 News Corp said that the Competition Commission had recognised the independence of Sky News in the Sky/ITV case.
- A2.80 Editorial decisions were not subject to alteration as a result of the change of a shareholders' level of commercial influence in News Corp's view. The submission

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noted that the Competition Commission report in the Sky/ ITV case had confirmed that editorial decisions in TV news broadcasting were not taken at board level.

- A2.81 News Corp stated that the proposed acquisition would not jeopardise the editorial independence of Sky News because:
- Sky's editorial policy was not a matter for Board determination (to date, editorial policy had not been a debated issue at Board level);
  - despite its commercial influence over Sky, News Corp had not sought to influence the editorial policy of Sky News;
  - the Sky News editorial directors were experienced individuals with expertise to manage and direct the editorial policy of Sky News;
  - there was no evidence that independent directors had had to "defend" the editorial policy of Sky News against influence by News Corp executives; and
  - News Corp had no special arrangements with Sky News which would confer on it control over editorial policy.
- A2.82 News Corp also highlighted the importance of broadcasting impartiality requirements, which the Competition Commission had noted reduced the scope for influence over editorial decisions on TV news by owners. Sky News could not, for example, favour one particular party line, or it would risk losing its licence. This was contrasted with the position regarding newspapers.
- A2.83 News Corp concluded that its ability and incentive to influence the Sky News editorial agenda would not be affected by the proposed transaction and that the current situation was likely to continue. The editorial independence of Sky News would not be jeopardised following the transaction, and there was no evidence to support the assertion that it would be.

### Impact on setting of the news agenda

- A2.84 News Corp highlighted the DTI's Guidance, which stated that the plurality analysis involved the assessment of the ability to "influence opinions and control the agenda". In relation to the latter point, the submission stated that two conditions would have to hold for the transaction to influence or control the wider news agenda, namely:
- News Corp would need to be able (and have an incentive) to exert control over the Sky News agenda; and,
  - this would need to lead to significant changes in the wider news agenda.

News Corp did not consider either condition likely. The analysis in this section was explained in further detail in the Perspective report (detailed below).

### Sufficient plurality post-transaction

- A2.85 News Corp stated that even if Ofcom assumed that there would be a "head count" reduction in the number of voices for a cross-media audience, it must go on to consider whether that reduction will result in insufficient plurality for any relevant audience. To do this, Ofcom must consider:
- i. how to measure the variety of voices available to each audience; and
  - ii. what the transaction changed (if anything)

- A2.86 News Corp noted that Competition Commission analysed the sufficiency of plurality for television audiences and cross-media audiences in 2007 and had no concerns. Plurality had increased since that time, meaning that the 'only reasonable conclusion' was that the proposed acquisition would not lead to insufficient plurality for any audience in the UK.
- A2.87 The grouping of particular individuals within the UK population who relied only on news content from Sky News and News Corp was said to be minimal (0.3%).
- A2.88 The FTI report indicated that the level of plurality in the provision of news to UK audiences across different media platforms was increasing, in terms of both the number of voices and the range of voices. Penetration of digital TV and broadband was high, as was the number of TV channels available.

#### News provision

- A2.89 News Corp stated that these changes had increased the availability of a wide number of voices. There were far more TV news options to the UK audience over and above the traditional PSBs. The number of voices in newspapers and magazines had not materially increased but nor had it materially decreased (although it was noted that this medium was becoming less important as a source of news).
- A2.90 The submission argued that the internet had had a transformative effect on news plurality as a means of accessing multiple news sources:
- there had been an 'explosion' in the number of online news sources (675 UK news websites)
  - the internet increased plurality in news reporting adding to conventional/offline news sources/providers (for example, news aggregators presented a vast range of sources to their audience, including many they would otherwise likely never come across).

#### News consumption

- A2.91 Developments in news provision were said to be accentuated when considered alongside trends in news consumption:
- News Corp stated that it was easier for consumers to access multiple sources of news (most consumers used 4-5 sources daily across 3-4 different platforms).
  - Although TV was the most popular medium for accessing news, News Corp noted that Sky News accounted for just 6% of TV news consumption.
  - Circulation of print media was noted as being in long term decline.
  - Proportion of people listening to radio was up, while total time listening was down.
  - The internet was, according a recent Mintel report, the second most important source of news with around 46% of UK population using it regularly.
  - Time spent watching TV news and consuming news on the internet were about equal
- A2.92 News Corp highlighted that online news consumers tended to use a high number of news sources. Therefore as the internet became an increasingly important source of news, News Corp expected that an increasing proportion of the population would be regularly exposed to a wide variety of "voices".

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### Sufficient plurality post-transaction

- A2.93 The transaction would not, in News Corp's view, detract from the high degree of variety and range of voices available to a cross-media audience which 'comfortably meets the criteria of sufficiency of plurality'. In particular:
- The importance of online as a source of news would continue to grow and so would the plurality of voices inherent in this medium, with News Corp / Sky having a 'diminutive share of voice';
  - The number of TV voices would remain unaltered, and still be lead by the BBC and ITV;
  - The number of radio news voices would be entirely unaffected; and,
  - The number of newspaper voices would be unaffected (and in any event, the relative importance of print newspapers as was in long term decline).
- A2.94 News Corp highlighted the FTI finding that only 0.3% of the population receive news only from Sky and News Corp. FTI also found that no socio-economic grouping or nation in the UK was disproportionately affected.
- A2.95 News Corp argued that regardless of this finding, consumers could switch to different providers or expand their choice of sources. The potential availability of sources of news for this audience would be 'no different from the wide range and number of different voices available to the UK population as a whole'.

### **Conclusion**

- A2.96 News Corp concluded that there was no basis to conclude that the transaction 'would operate, or be expected to operate, against the public interest by way of any reduction in the plurality of enterprises serving any relevant audience in the UK'.

### **News Corp Annex I – FTI Consulting**

- A2.97 FTI researched the following areas:
- trends in news provision by provider by medium/platform;
  - trends in news consumption by audiences by medium/platform; and
  - differences pre- and post-transaction.
- A2.98 The study covered the provision and consumption of news in the UK. FTI stated that in respect of consumption such consumers are defined as an "audience served by an enterprise". Socio-economic groupings or regions or nations of the UK are members of an audience. While such groupings are therefore not an audience per se, FTI also examined whether there are any key differences between the nations and demographic groupings.
- A2.99 In respect of news provision, FTI examined news provision on TV, radio, the internet and the press. The study did not examine news provision in magazines in detail as these represented a minor source of news consumption and were not deemed of sufficient importance to be subject to sector-specific regulations in respect of ownership or content.

## Key conclusions

- A2.100 FTI stated that it was clear that the number of platforms and sources from which people take their news had increased during the past 3-5 years. Digital TV penetration stood at more than 92% and would reach 98.5% by the end of 2012 once digital switchover was complete.
- A2.101 Around 75% of the population used the internet – this was expected to increase as the government (and private sector) addressed broadband “notspots”. Radio listening (until recently when there was a rebound) and newspaper circulation had been on a consistently downwards trend.
- A2.102 The internet was stated to be ‘a cross-media environment [where] distinctions between traditional media blur’. FTI noted the vast range of services available, and suggested that this typified plurality in media.

### *Sufficiency of plurality*

- A2.103 FTI stated that the study demonstrated that there had been a significant increase in plurality of sources in news provision. Access to platforms had increased and FTI therefore concluded that the availability of this increased provision had also increased. It was noted that access could be expected to continue to increase.
- A2.104 There had been no major changes in the provision of news on radio or in the press, and there was a sufficient number of voices in both sectors.
- A2.105 Given the benchmark of the 2003 media landscape, and on the basis that since then there had been significant increase in the number and range of voices in news provision since then, FTI stated that it was ‘axiomatic’ to conclude that there was sufficiency in plurality in news provision on a cross-media basis.
- A2.106 Overall, cross-media consumption had increased both in terms of number of providers accessed and number of sources used. FTI found:
- The plurality of cross-media consumption of news had increased in line with its increased provision;
  - Press and radio were reducing in importance in the cross-media share of voice as both usage and user perceptions of their importance as news media had fallen;
  - The internet was expected to continue to grow in importance in terms of time spent and usage;
  - There was a shift in cross-media news consumption patterns towards the more plural environment of online;
  - These trends were expected to continue as internet penetration increased; and
  - In the media in which it has a presence, the BBC remained the leading player by a significant margin.
- A2.107 FTI highlighted that the balance of usage (reach, number of outlets and time spent) and ascribed importance by consumers amongst the various media had been changing – a trend of reducing radio and press consumption, with TV remaining steady and online increasing.
- A2.108 The study found the share of voice of each medium within the cross-media consumption mix to be changing. The weight remained towards the TV voice, with online voices increasing and radio and press voices in decline.

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A2.109 FTI identified no fundamental differences between the significance of Sky and News Corp to nations and socio-economic groups.

*Comparison of pre- and post-transaction*

A2.110 FTI assumed a reduction of one voice at the cross-media level. The study argued that the loss of one voice could not be considered to be substantial given the range and number of such enterprises, and particularly given that the number and range of voices had increased since 2003. FTI said there was no change within each of TV, radio and press.

A2.111 In the off-line cross-media environment, FTI stated that a reduction in the number of players by one could not be regarded as material, particularly as these sectors had many players and no concerns regarding the sufficiency of the number of voices.

A2.112 Sky had a relatively weak position in TV broadcast news, so the study did not consider that this reduction in headcount could have a material impact.

A2.113 FTI noted that online there were hundreds of news voices, along with several other players (primarily the BBC) that enjoyed a much stronger market position than Sky and News Corp.

A2.114 Sky was said to have a weak position in the cross-media environment, with a negligible share online and a low share in TV news (which was not expected to increase in the future, a digital penetration was already at a high level).

A2.115 News Corp was also said to have a weak position in the online environment. It held a strong position in press, but FTI stated that this medium was in decline in importance and had a decreasing share of the cross-media voices from a consumption perspective.

A2.116 FTI stated that the combined entity would not enjoy a strong position in TV, the most important news media from the consumer perspective. Its position would be strong in press, although the medium is in long term decline. In online its share would be around 6% and subject to competition from strong players and little expectation of increasing this share significantly.

A2.117 Based on this assessment, FTI concluded that the transaction would not materially reduce the range and number of voices in the cross-media environment and therefore that it would not have a material impact on the sufficiency of plurality.

A2.118 FTI also identified whether there were particular individuals within the UK who took news from Sky and News Corp and no other source. The study found that the proportion of the population that took news from Sky and News Corp was 4% excluding online and 6% including online. FTI found that the proportion of these groups that took news from no other source was negligible - 0.3% - (and lower than the proportion affected in the Sky/ITV case).

## **News Corp Annex II – Perspective Consulting**

A2.119 Perspective were asked to consider:

- How the news agenda is in practice set in the UK market
- Trends in UK media plurality, and in particular news plurality, since the Communications Act of 2003

- How the UK market is likely to develop in the coming years.

### Setting of the news agenda

A2.120 Perspective noted that TV news operates under a requirement of impartiality, but that this might leave a concern that a broadcaster might seek to influence opinion via choice of stories covered. The ability of a broadcaster to pursue an independent news agenda and to influence the agenda of other outlets was therefore a key consideration.

A2.121 Perspective focused on Sky News, as this outlet was subject to 'speculation that it might see a change in its output'.

A2.122 The report found that TV news operated under a range of practical constraints that would make it very difficult to alter the news agenda of a given outlet in such a way as to have material impact on plurality. In particular:

- Audiences have very particular expectations of TV news, encouraging similarity between outlets.
- Much of the TV news agenda is driven by events of the day and access to shared news gathering resources.
- Impartiality requirements act as constraints by influencing story choice as well as how stories are treated.
- For areas where plurality is most important (for instance, election coverage), it was 'inconceivable' that a broadcaster would choose not to provide coverage of a key story of the day, and impartiality rules apply once covering a story.
- TV news rooms have their own particular ethos, and imposing a newspaper approach would be difficult.

A2.123 Perspective stated that even if there were to be a change in Sky News' agenda following the transaction and that Sky News' output was altered, the combination of Sky and News Corp would still be most unlikely to materially alter the wider news agenda, for a number of reasons:

- There were numerous competitors of News Corp and Sky which were unlikely to become 'followers' of a news agenda. The BBC acted as a powerful independent voice; with secure funding, a substantial audience lead in each of TV, radio and online news; and a very high reputation with consumers.
- Sky News had only a 6.3% share of TV news consumption, suggesting a limited ability to influence third parties
- News Corp/ Sky News outlets did not represent a particularly important source of stories for other outlets. The Perspective Report demonstrated that newspapers were not the sole source of the stories they represent. An analysis of sources cited by Reuters indicated that Al Jazeera was as important as Sky News for that purpose.
- Consumers were increasingly consuming news from specialist and international outlets that are all the less likely to be influenced by a change in news agenda at one generalist, UK outlet.

### Trends in plurality since 2003

A2.124 Perspective stated that there had been an increase in plurality since the enactment of the Communications Act, noting the effects of increased TV news provision

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through uptake of digital TV, the increase in online consumers and the rising importance of online news.

A2.125 As of 2009 TV remained the most important source of news for consumers, with the internet predicted to overtake newspapers. Perspective argued that this marked a shift from a media with less plurality of individual consumption to a media with more (since most consumers only take one newspaper, if any), and shift away from areas where News Corp and Sky were relatively strong to areas where they were relatively weak.

A2.126 Thus Perspective believed that plurality had risen appreciably since 2003, and News Corp and Sky's 'share of news voice' had fallen. This made it much less likely that the transaction in question would reduce plurality to the level of the market in 2003, and Perspective stated that it would 'seem unreasonable to reject a transaction that left plurality at a level higher than that that existed at the time the requirement was created'.

### **Future developments in the UK market**

A2.127 Certain future developments in the UK media market were highlighted. Convergence was expected to continue with a focus on online platforms, leading to increased competitive intensity and plurality. Consumers were expected to be more active in searching for their own stories, as well as generating content themselves (e.g. through social networks), which would lead to greater plurality. Similarly, consumption via mobile devices was likely to increase, meaning more plural consumption would be more widely available.

A2.128 Perspective noted that this would result in a range of evolving approaches to capturing news. The different editorial demands of broadcast news and regulatory requirements meant TV and print newsrooms were likely to remain separate for the foreseeable future. Broadcasters operating in new media markets would place a central focus on audio and video news, with text and graphics in a support role, and so the 'culture' of the TV newsroom would be likely to remain central.

A2.129 The report stated that these trends pointed to a continuation of the increase in plurality and of declining 'share of voice' for News Corp and Sky. In Perspective's view, this made it hard to make the case for intervening in the market now to pre-empt a hypothetical future threat to plurality, given that the wider context is of generally increasing plurality and a weakening of the influence of News Corp and Sky.

### **Conclusion**

A2.130 Perspective concluded that for each of the individual issues examined, the evidence suggested that there would not be a material impact on plurality, and that in aggregate across these issues the case was even stronger.

### **[X] [A submission]**

A2.131 [X]

A2.132 [X]

A2.133 [X]



A2.134 [X]

A2.135 [X]

A2.136 [X]

A2.137 [X]

A2.138 [X]

A2.139 [X]

A2.140 [X]

A2.141 [X]

A2.142 [X]

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A2.145 [X]

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A2.158 [X]

A2.159 [X]

A2.160 [X]

A2.161 [X]

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A2.162 [X]

A2.163 [X]

A2.164 [X]

A2.165 [X]

A2.166 [X]

A2.167 [X]

A2.168 [X]

A2.169 [X]

## **BBC**

A2.170 The BBC stated that it made an important contribution to news provision in the UK, but that it was imperative that a variety of other viable news providers also continue to exist to ensure plurality.

A2.171 The submission noted that the proposed acquisition would have the effect of combining two of the largest voices in the UK media. It highlighted that News Corp was the largest supplier of national newspapers in the UK, while Sky was the leading supplier of pay-TV wholesale and retail services in the UK.

A2.172 The BBC suggested that Ofcom should explore a number of issues when preparing its report, namely:

- A reduction in the number of entities setting the news agenda for the UK cross-media news audience (and, possibly, for particular socio-economic groups)
- The incentive and ability for News Corp to exert editorial influence over Sky's TV and radio news operations (both current and future), and align them with its national newspapers
- The potential impact of increased financial and other leverage (e.g. cross-promotion) between Sky channels and News Corp publications
- Future possible adverse developments in the UK newspaper sector as a result of the acquisition; and
- Future possible adverse developments in the provision of national television news as a result of the acquisition

## **Content types**

A2.173 National news was the relevant content type to be considered for these purposes in the BBC's view.

## **Audience and media platforms**

A2.174 The BBC stated that there were a variety of audiences – both by platform and by socioeconomic group – that would potentially be relevant to Ofcom's analysis.

A2.175 The BBC noted a number of points regarding relevant media platforms, namely:

- that television was the largest and most trusted source of news, cited by 74% of the population as their main source. Sky News was the second biggest provider of TV news in the UK by hours broadcast and the third biggest provider by total hours viewed.
- that newspapers and radio were considered to be the next most important sources of news, with the BBC and Sky / IRN as the only two significant suppliers of national radio news in the UK.
- that the majority of people still rely largely on traditional sources of news and traditional news providers rather than the internet as a source of news (only 6% of people rated online as their main source of UK news in 2009)

A2.176 BBC Management had undertaken audience analysis which indicated that between 3.5 million and 5 million people (depending on the definition used to measure newspaper consumption) consumed news from both a national newspaper title from News Corp and Sky produced news (either Sky News or Five).

A2.177 Given this, the BBC felt that the transaction would have an impact on the plurality of national news providers available to:

- The audience for national news delivered by national newspapers
- The audience for national news delivered by television news, and
- The UK cross-media audience for national news.

A2.178 The transaction was considered potentially to have an impact on each audience as a whole and with respect to particular socio-economic groups within them.

### **Control of media enterprises**

A2.179 The BBC said that whether there is a change in control for the purposes of media plurality relied on: (1) either the standard merger change of control assessment, or (2) whether there is an "actual extent of the control exercised and exercisable over a relevant enterprise by another". The actual extent of the control exercised was therefore deemed to be a factual question for Ofcom based on what it considered the likely outcome in the shift in ownership to be.

A2.180 The BBC believed that the proposed change to the relationship between News Corp and Sky would significantly change Sky incentives, indicating a risk of a resulting loss of plurality. The directors of Sky could operate solely for the benefit of News Corp, taking actions that advantaged News Corp newspaper titles, such as cross-promotion. News Corp would be able to appoint and dismiss all Sky directors, and in the BBC's view, the editorial staff of Sky News would be under the control or influence of News Corp.

A2.181 The BBC stated that it was important to consider whether the transaction allowed – either directly or through an 'understanding' of the interests of their common owner – an alignment of the choices each media outlet would make in deciding the news agenda and whether such an alignment would be detrimental to the interests of the various news audiences highlighted.

A2.182 The current impartiality regulations were not thought by the BBC to would prevent the news agenda of Sky's news outlets being influenced (either directly or indirectly) by the agenda of News Corp's newspaper titles to the detriment of cross-media news audiences. The submission highlighted that previous evaluations by both

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Ofcom and the Competition Commission had concluded that the impartiality requirements does not on its own ensure a sufficient plurality of news.

- A2.183 The BBC also believed that cross-promotion between Sky News and the News Corp newspapers could have a potential detrimental impact on competing news outlets and all news audiences.

### **Future developments in the media landscape**

#### *UK newspaper sector*

- A2.184 The BBC recognised that a strong and varied national newspaper sector is a vital component of news plurality in the UK.
- A2.185 Independent forecasts were highlighted which suggested that national newspaper industry revenues from advertising are likely to reduce between 2009 and 2014, whilst circulation revenues could hold roughly steady in nominal term. News Corp was predicted to increase its share of national press circulation to more than 40% by 2014.
- A2.186 The BBC stated that that having access to the revenue of Sky would strengthen News Corp's ability to grow its position still further, and that the proposed acquisition would give News Corp the ability and incentive to bundle its pay-TV subscriber base with newspaper and/or online subscriptions. Both of these outcomes would have potentially negative effects on other newspaper groups.

#### *UK TV news*

- A2.187 The BBC believed that TV news programme supply in the UK is already concentrated, with only three significant suppliers of television news. It expressed concern that ITV and Channel 4 could change their news provider from ITN to Sky, noting that Sky participated in the tender process when the ITV News contract was last up for renewal (2008) and was likely to do so again at the next tender in 2012. There was an incentive for both channels to seek the cheapest high quality bid that they could, although in the case of ITV, this might be countered by an ownership incentive to continue to select ITN (in which it has a 40% stake).
- A2.188 The BBC noted that under this scenario there would be a cross-media concentration of news supply covering the vast majority of commercial TV news, all national commercial radio news and a sizeable share of the newspaper market. The current cross-over of News Corp readership and news viewing on Sky News / Five News / ITV News / C4 News was estimated at between 7.5 million and 10.9 million.
- A2.189 The BBC highlighted the Competition Commission's statement in 2007 that the loss of ITN as a competitor to Sky News could reduce the ability of other channels to provide an independent voice. Given this role, the BBC believed it important to consider a scenario where the proposed transaction increases the risk of ITN being 'damaged irreparably'. It was thought that the combination of the newsgathering activities of Sky and News Corp may strengthen Sky's position when bidding for the opportunity to supply news to ITV and Channel 4 in the future.

### **BECTU**

- A2.190 BECTU's submission indicated strong support for the principle of media pluralism as a necessary component of democratic society. Given the role of the media in

reflecting and informing opinion, this ownership control was necessary over and above existing competition controls.

- A2.191 BECTU stated that its concerns over the proposed transaction stemmed in part from the existing size and range of the media assets (both in the UK and abroad) already owned by News Corp. It said that this scale, coupled with News Corp's strategy for growth and the 'editorially-interventionist' approach of Rupert Murdoch meant the requirement for media pluralism in the UK would be breached if the proposed acquisition went ahead.
- A2.192 BECTU did not accept the argument that increasing News Corp's stake in Sky from the existing level of 39% to 100% would make no difference. It highlighted that Sky currently had an existing independent editorial structure, independent directors and a different shareholding structure. Moving to 100% ownership would remove all such institutional barriers and independent interests, leaving Sky in the direct and immediate control of News Corp.
- A2.193 BECTU argued that any reduction in pluralism risked undermining impartiality requirements as well, noting that a dominant media owner could exert significant and undue influence over which issues were covered and how they are prioritized. Lying behind these concerns were BECTU's views on the editorial preferences of News Corp - the 'rabidly right-wing' approach of Fox News, conservative leanings of News Corp newspapers and the interventionist approach of Rupert Murdoch.
- A2.194 There was also concern that Sky could be successful in future bids for news provision to ITV and Channel 4, leaving only two providers of television news.
- A2.195 BECTU believed that the proposed acquisition would allow News Corp the opportunity to cross-subsidise and cross-promote. Such actions would not merely be a competition issue but would also have implications for media pluralism, with a further potential narrowing of media and editorial choice.
- A2.196 The submission rejected the argument that the rise in online news provision would offset any reduction in media plurality arising from the proposed transaction. Online bloggers were suggested to be subjective and focused more on commentary, lacking the resources to engage in significant newsgathering.
- A2.197 BECTU was strongly opposed to the proposed transaction. It also noted suggestions that the acquisition could be permitted to go ahead in the event of Sky divesting itself of the Sky News channel. BECTU was unconvinced of this proposal, questioning whether Sky would not then simply seek to initiate a further news and current affairs channel raising the same concerns.

### **[X] [A submission]**

A2.198 [X]

A2.199 [X]

### **BT**

- A2.200 BT believed that the proposed acquisition raised serious media plurality issues and that it would be in the UK national interest for this issue to be reviewed by the Competition Commission.

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- A2.201 BT stated that the serious media plurality issue was that the proposed acquisition would vastly increase News Corp's ability to "set the agenda" for UK national life.
- A2.202 BT was already concerned about the extent to which News Corp's "world view" was reflected in its newspaper titles. It highlighted extracts from the Competition Commission report on the Sky/ITV case which indicated involvement from Rupert Murdoch and News Corp in decisions relating to newspaper titles. The submission also gave other examples, including the widespread support from News Corp newspapers of the Iraq war.
- A2.203 The submission acknowledged that News Corp did not have the means of controlling Sky's editorial policy, but said that after the proposed acquisition it would. BT believed this raised the risk that News Corp's "world view" would creep into Sky News. The submission stated that it was not reasonable to expect that internal controls would be sufficient to safeguard editorial independence. The loss of the independent Sky shareholders would allow News Corp greater opportunity to influence, tacitly or otherwise, the editorial coverage of Sky News and other Sky channels.
- A2.204 BT also highlighted that the transaction would allow News Corp control of Sky's operational approach. This could include the consolidation of the news and current affairs operations of the different entities into a single infrastructure or the production of single subscription products.
- A2.205 BT stated that the proposed acquisition would lead to a reduction in media plurality as a matter of law. It cited the Court of Appeal judgement of the Sky/ITV case, which considered the correct interpretation of the phrase "sufficient plurality of persons with control of ... media enterprises" in section 58(2C)(a). The effect of the judgment was that a change in the quality of control satisfies the test under section 58(2C) as to whether there is insufficient plurality of persons with control of media enterprises.
- A2.206 BT highlighted that the merged entity would have absolute control over 67% of content to UK pay TV customers and be the leading commercial provider of TV and radio news and print news, controlling 37% of the newspaper market. No other media organisation would control so much of the UK's media assets across such a broad range of media.
- A2.207 This extensive control over multiple media threatened plurality in BT's view because the merged entity, in particular through the consolidation of news and opportunities for bundling, would have an advantage over its competitors that it would be impossible to replicate, as a result of which one could expect a long term reduction in media "voices".
- A2.208 BT also highlighted Sky's 'dominant and increasingly aggressive competitive position in the UK TV markets', which the submission suggested would in itself have implications for plurality. The proposed transaction would in BT's view reinforce Sky's dominant position in pay TV markets, and this would threaten the market position and the number of retailers and wholesalers of alternative views and opinions.
- A2.209 BT also provided a copy of the submission it made to the OFT explaining why BT believed that the proposed acquisition by News Corp of Sky should be referred back to the OFT under Article 9(2) of the EU Merger Regulation.

## Campaign for Press and Broadcasting Freedom

- A2.210 CPBF believed that the proposed transaction would be a cross-media merger which would represent a transformative shift in UK media ownership and would have a considerable negative impact on media plurality. This impact would become more pronounced as Sky's operations became integrated into the overall global business and media operations of News Corp.
- A2.211 The submission highlighted that Sky and News Corp were already the largest companies in their respective sectors. It noted that News Corp would be able to absorb losses in order to gain market share where other competitors would be faced to make significant cost savings in order to sustain margins. Sky's high revenue was also noted, with increases being attributed to a growth in subscriber base, bundling of products and Sky's marketing approach.
- A2.212 CPBF outlined Sky's strong position in the provision of premium sports and movies on pay TV. It also highlighted acquisitions in other areas of programming (including the purchase of the Virgin Media TV portfolio), and Sky News' role as one of three TV news providers and two radio news providers.
- A2.213 Citizens' access to information sources and opinions was said to be provided overwhelmingly through the media. Concentration of ownership could lead to viewpoints being excluded or under-represented, while media owners could use outlets as a means of lobbying politicians to pursue policies which suit those owners' political and commercial interests. CPBF stated that Rupert Murdoch's position in relation to successive UK governments demonstrated this point.
- A2.214 CPBF rejected the viewpoint that the internet provided a diversity of news and information sources, suggested that citizens mainly accessed news stories by going to the online sites of traditional news outlets, or to news aggregators or search engines which rely on traditional news organisation sources.
- A2.215 The submission noted that News Corp already owned more media in the UK than it would be permitted to own in the US and Australia. If News Corp was to acquire the remaining 60.9% of Sky it would move from a minority shareholder to full ownership and gain important financial advantages which would allow it to destabilise other UK media groups and therefore have a direct impact on plurality.
- A2.216 CPBF gave examples of actions by News Corp which it suggested were aimed at weakening or destroying competitors, including Sky's acquisition of ITV shareholdings in 2007 and recent critical comments relating to the BBC.
- A2.217 Several potential policies if the transaction was permitted were highlighted which would have a 'deeply disruptive impact':
- Greater opportunity to influence the editorial coverage of Sky News and the content of other Sky channels, with the selection of news stories or the cross-promotion of stories from other News Corp sites to introduce indirectly particular viewpoints and issues.
  - The cross-promotion of stories from News Corp titles on Sky and vice versa would 'inevitably happen', resulting in the merging into one stream of fact and opinion, to the detriment of plurality.
  - Products currently offered separately by Sky and News Corp could be bundled, discounted or provided without charge. Other groups without such assets would find it difficult to compete with this practice.

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- A2.218 The submission referred to the concept of 'infocapitalists' (identified by Manuel Castells) who build 'self-reinforcing networks of business and political power by owning the production of information and knowledge'. CPBF submitted that the expansion of News Corp's cross-media presence through the proposed Sky acquisition was an example of this process.
- A2.219 CPBF urged Ofcom to consider the 'vital issue' of journalistic standards. The submission suggested that journalistic endeavour was subordinated to News Corp's own national and international political or commercial considerations. It stated that 'a process of self-censorship' resulted in News Corp journalists avoiding subjects which contradict the views and interests of their owner, and that the influence of News Corp newspapers was used to persuade politicians to pursue policies which furthered News Corp business interests and to excoriate those which don't.

**[X] [A submission]**

A2.220 [X]

A2.221 [X]

A2.222 [X]

A2.223 [X]

A2.224 [X]

A2.225 [X]

A2.226 [X]

A2.227 [X]

A2.228 [X]

A2.229 [X]

A2.230 [X]

A2.231 [X]

A2.232 [X]

A2.233 [X]

**Church of England**

- A2.234 The Church of England welcomed the inquiry and said that the vitality and plurality of the media was essential to the maintenance of a well-informed democracy. It was noted that there was an ongoing need for strong and effective regulation of cross-media ownership and media plurality, with no diminution in the range of views and voices that could hold government and other interests to account.
- A2.235 The Church of England was not concerned about the nature of News Corp, but was concerned that a combined entity would comprise one of the three significant



suppliers of TV news (BBC, ITN and Sky), one of the two suppliers of radio news (BBC, Sky) and the group with the biggest market share of national press in the UK, thus dominating both the television and newspaper landscape.

- A2.236 The submission highlighted that Sky News demonstrated innovation and quality in its journalism, and that it had been influential in political debate despite its relatively small audience. The Church of England believed that News Corp could exercise subtle editorial influence if the transaction were permitted, including through selecting which news items are to be covered and which left out.
- A2.237 If the bid were to be allowed, the Church of England suggested that an assurance be sought that the independence and editorial integrity of Sky News would be preserved.

## Enders Analysis

- A2.238 Enders Analysis provided Ofcom with three documents: an updated version of the analysis submitted on a confidential basis to the Secretary of State in July 2010, a document addressing Issues 4 and 5 of Ofcom's invitation to comment and a report by Charlotte Brewer, Professor of English Language and Literature at Oxford University, on the meaning of the word 'plurality', which was amended on 12 December 2010.

## Updated submission to Secretary of State

- A2.239 The submission examined the proposed transaction's potential effects on 'plurality' in the UK in the context of the UK TV and newspaper markets.

### UKTV market

- A2.240 The UK TV market totalled approximately £11.11 billion in 2009, and comprised three significant sources of revenue: the licence fee (24%), advertising (27%) and pay subscription revenues (43%). The remaining 6% came from a variety of other sources, including global programme sales.
- A2.241 Enders noted the position of Sky as the UK's leading supplier of residential and business pay TV services, and also supplies residential telecommunication services.
- A2.242 The submission said that Sky had acquired growing economic significance in the UK TV market due to the surge in pay revenue in recent years. In contrast, the revenues from TV advertising that fund commercial PSB operators were relatively flat between 2004 and 2008 before plummeting in the recession, while the BBC's licence fee income has risen but at a lower rate than pay TV.
- A2.243 Between 2009 and 2014, Enders expected pay TV revenue to continue to show strong growth, rising from £4.75 billion to £6.4 billion, and accounting for over 70% of the projected increase in overall TV revenues. Structural change and a continued weak economic environment pointed to limited nominal annual average growth of about 2% over the next four years for TV advertising (i.e. to 2014) – in real terms a significant decline of around 20%. Meanwhile, a significant reduction in the licence fee funding allocated to the BBC's TV service was expected as a result of the spending review.

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- A2.244 The surge in Sky's pay revenues was attributed to a two-pronged strategy of expanding the number of subscribers and selling more products and services to each subscriber, thus lifting annual revenue per user. Sky pay TV subscriber growth had been assisted by very high levels of promotional spend. In addition, upfront costs to the Sky customer, chiefly installation and the Sky+ box, had been reduced and were nil for certain packages
- A2.245 Enders noted that to spur product adoption, Sky had announced that it would provide HD capable boxes as standard equipment to new subscribers to enable an upgrade to HD without having to replace their set-top box. For Sky, this eliminated the incremental set-top box subsidy when a customer decides to upgrade, making it more difficult for new entrants relying on the sale of set-top boxes to engage the customer in paying for their services.
- A2.246 Enders also noted that Sky has been cross-selling telecoms services to pay TV subscribers since July 2006, when Sky broadband launched.

*Sky's broader TV activities*

- A2.247 Enders stated that Sky's activities and its ability to influence other players in the market extended well beyond its core pay TV retail operations into other areas, namely:
- News provision - Sky News was one of three substantial providers of UK TV news, supplying its own channels and also Five, while Sky News and the BBC were the only two suppliers of news for UK national radio.
  - Freeview presence - Sky had three free-to-air channel feeds on Freeview, with a current offering of Sky News, Sky 3 and Sky 3+1.
  - Advertising sales – Enders estimated that Sky would account for approximately 14% of UK TV advertising sales through its airtime sales house, making it the third largest group, and that this was expected to rise.
  - Third party channel provision – the submission stated that Virgin Media's withdrawal from content ownership put Sky in a 'commanding position' over the market for pay channels, including third party basic channel carriage fees. Sky was said to be able to dictate terms that allow its third party channels to be viable, while at the same time offer other non-PSB channels incentives to stay exclusively on the pay TV platform. Enders understood that Sky was in the process of consulting on its EPG, the result of which could further strengthen Sky's position in relation to other parties.
  - Premium sports and films – Enders stated that Sky occupied an 'uncontested position of dominance' in the provision of televised sports in the UK, reflected in its budget of over £1 billion for this programming segment (out of £1.9 billion total) in 2010. The submission also highlighted the strong investment of Sky in films, although noted that this was decreasing. The decrease in investment was said to be a result of Sky's market power as a wholesale purchaser, able over time to negotiate successively lower fees as the film contracts become due for renewal.

UK newspaper market

- A2.248 The UK national press market was worth £4.1 billion in 2009 according to the Advertising Association, and comprised two significant sources of revenue: consumer purchases of newspapers (62%), and advertising (38%). Structural changes in the advertising market combined with cyclical pressures had reduced newspaper industry revenues from advertising, forcing greater reliance on consumer purchases.

- A2.249 News Corp's market position was noted, with its newspapers accounting for over 37% of national newspaper circulation in the UK (the same share as the two next competitors, Trinity Mirror and Daily Mail and General Trust combined). Enders highlighted that News Corp has been slowly gaining share in the UK national newspaper market.
- A2.250 Enders' view was that, despite some strong growth in advertising in recent months, the long-term pattern for the newspaper industry in aggregate would continue to be a decline in advertising in real terms due to structural factors, exacerbated by over-supply. The submission projected national newspaper industry revenues from advertising to compress by about 6% between 2009 and 2014 due to ongoing substitution of advertisers for new media, whilst circulation revenues could hold roughly steady in nominal terms.
- A2.251 Enders predicted that News Corp's share of national press circulation would steadily increase to more than 40% by 2014, assuming there were no material supply changes to the market. It was considered 'inevitable' that organisations able to absorb losses would gain market share over those that were forced to make significant cost savings to sustain margin.

#### *News Corp strategy*

- A2.252 Enders stated that News Corp had a history of discounting cover prices to grow market share and reduce circulation decline. Purchasing the outstanding Sky shares it did not already own would provide News Corp with the financial resources to sustain its newspapers for the very long term. News Corp would also be able to experiment with media discounting and bundling in a much broader manner. These strategies could 'severely upset the competitive landscape to the detriment of competitors'.
- A2.253 The submission also suggested that that free editions and press and digital bundles for households could become critical developments for News Corp's UK operations as a whole in the future.
- A2.254 Enders also highlighted growing problems in newspaper distribution, noting that those publishers which were best able to absorb steep cost increases and overcome distribution challenges (such as News Corp) would clearly be better positioned to survive.
- A2.255 The submission stated that another core feature of News Corp's strategy was to market its titles aggressively through advertising.
- A2.256 Enders emphasised the importance of display advertising to newspapers, noting that the main challenges to display advertising categories were over-supply of titles and inventory. In this environment, the strongest titles would gain further market share, as some lesser titles fall off the roster for an increasing volume of campaigns.
- A2.257 The submission also considered that online news subscriptions may play an important role in determining the pace and scale of business model development. However, it highlighted the early difficulty which had faced the Times Online following its move to a paywall system, and speculated whether the Times may adopt a different strategy in the future. This could include aggregating services sourced from a variety of different assets and media, and so offering bundles.

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A2.258 Enders outlined the relative size of major competitors to Sky and News Corp, separating the companies into three groups: multi-product, TV and newspapers. Sky and News Corp were already the largest companies in their respective sectors (in terms of adjusted consumer revenue) and following the acquisition, the combined group would have annual revenues in the region of £7 billion.

The potential impact on plurality

A2.259 Enders noted that UK governments and regulators had consistently maintained that a healthy and informed democratic society required media 'plurality'. In Enders' view, this required there to be a significant number of broadcasters (radio and TV) and newspapers designed to appeal to 'a wide variety of tastes and interests'.

A2.260 The submission noted that impartiality was distinct from plurality, referencing Ofcom's conclusion in 2007 that the broadcasting code requirements were not designed to remove the ability of broadcasters to set the agenda by selecting the issues and events that were covered.

*Implications on media plurality of the proposed News Corp transaction*

A2.261 Enders stated that News Corp already owned more media in the UK than it would be permitted to own in the US and Australia. If the proposed transaction were permitted, News Corp would gain financial advantages which would improve its ability to compete, notably in the newspaper market (noting the weak position of most newspaper publishing groups).

A2.262 The submission stated that the group would acquire several important new strategic opportunities, namely:

- The ability to take Sky and News Corp products and combine them in bundles, discount them or provide them without charge. Enders believed that strategic initiatives of this nature could lead to a much more rapid decline in competitor newspaper circulations than we have assumed, boosting News Corp's newspaper market share above 40% by 2014.
- The ability to cross-promote - stories from Sky News could be carried more and more frequently on News Corp websites, while links to newspaper stories could appear at the bottom of the Sky News screen. The submission stated that 'progressively, News Corp papers and Sky channels, particularly Sky News, may merge into one stream of fact and opinion', noting that plurality would decline in this situation, even if the combined organisation continued to maintain nominally separate newsrooms.
- A greater opportunity (through the loss of the independent directors) for News Corp to influence, tacitly or otherwise, the editorial coverage of Sky News and other Sky channels. Enders said that this concern was heightened by Mr Rupert Murdoch's position as a 'traditional proprietor' of certain media properties, exercising editorial control on key policy debates or political events.

A2.263 Enders rejected the argument that that the widespread availability of other news outlets, especially online, protected the UK public and its political leaders against the excessive influence of media proprietors. The submission argued that Newspapers and TV news programmes still provide the bulk of news gathering operations in the UK, rather than independent online news sources.

A2.264 Enders stated that the link between endorsement and voting intentions was not necessarily important. The crucial point was that newspapers and TV affected

citizen perceptions of political and economic life by deciding which stories were most important and how information, analysis and personalities were portrayed to their audience. Similar issues were said to apply to coverage by Sky News and/or News Corp's titles of product launches and pricing innovations from competitors.

- A2.265 The submission said that in this context, regulatory control of strong and increasingly powerful companies such as Sky was central to maintaining the conditions of competition on the relevant markets. Enders noted, however, that the process was 'challenging, expensive and time-consuming for Sky, its competitors and the regulator'.
- A2.266 Enders noted that if Sky were to win the ITV contract from ITN, ITN would have to dramatically reduce its costs and news gathering operations, potentially leading to a duopoly of TV news provision.
- A2.267 The submission stated that there was little evidence to date that IPTV would provide a threat to traditional TV. While about 72% of UK households were on broadband, online video consumption accounted for just 2% of all minutes viewed per day. Consequently, Enders continued to anticipate no material challenge to Sky from the Internet space in the next five years.

#### Conclusion

- A2.268 Enders concluded that there was a risk of a material reduction in media plurality, potentially to an unacceptably low level. It considered that the intervention was particularly timely as the leading positions of Sky on the UK TV market and of News Corp on the UK newspaper market would strengthen in the period to 2014.

#### **Issues 4 and 5 of Ofcom's invitation to comment**

##### Control of media enterprises

- A2.269 In Enders' view, News Corp exerted 'material influence' over Sky via its shareholding of 39.1%. This was established by the Competition Commission in its report issued in December 2007 on the purchase of ITV shares by Sky.
- A2.270 The submission further stated that the proposed acquisition by News Corp of the shares in Sky it did not already own would shift the latter's degree of control over Sky from 'material influence' to 'control'. This would imply the loss of any independent Sky shareholders, and the loss of the independent directors of the company, which also exerted some degree of influence over Sky, in addition to News Corp, its existing principal shareholder. Full ownership could lead to proprietor intervention.
- A2.271 Enders stated that a methodology for quantifying the amount of plurality before and after a transaction to ensure an intellectually robust assessment of the impact of a merger. However, it was noted that there was no consensus on any such methodology.
- A2.272 To this end, Enders assessed the loss of plurality implied by the proposed acquisition by measuring the anticipated changes in news supplier shares of adult viewing / reading / listening of national news combined. The submission outlined the assumptions and approached used for this assessment.
- A2.273 The key conclusions of this assessment were:

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- The average person is exposed to news for about 60 minutes a day. About half the time spent is occupied by newspapers and slightly less than half is TV. Radio, internet news sites and news magazines were much less important.
- The BBC provided about 34% of all news exposure, via its broadcast and online activities (no print media), News Corp had a 17% share.
- Merging the Channel 4 audience share with that of ITN, and the Five audience share with that of Sky News, yielded adjusted audience shares. After this adjustment, the top four suppliers of news had a share of about 71% of all news consumption, and the UK had 10 separate companies each providing more than 1% of all news seen or heard by its adult citizens. Cross-media news concentration was therefore stated to already be high.
- Assuming the transaction was completed, the share of news consumption combined from News Corp audience shares of 17% (newspapers) with those of Sky's TV, radio and Five audience (4.5%), takes the new entity's share up to about 21.6% of UK news consumption. Other providers remain the same.
- The transaction increases the share of the top four providers of news to 75% and reduces the number of providers with more than 1% from 10 to 9.

A2.274 We received an updated analysis on 12<sup>th</sup> December 2010 correcting a number of issues with the original submission on minutes of news use. This new analysis showed:

- Average minutes of news use, per head per day increased to 70 minutes
- The BBC accounted for 39.3%, ITV had 6.7%, and Channel 4 had 7.7%.
- News Corp had a share of 14.6%, while Sky had a share of 7.4%.
- Enders estimated that the merged entity, including News Corp and Sky's TV, radio and Five News audience would account for 22.7%.

A2.275 Enders said that the previous Competition Commission and Ofcom investigations noted the increased penetration of News Corp and Sky offerings among people in the C2DE demographic group, and said that this would probably still be true today. The submission suggested Ofcom could assess the level of plurality in individual demographics.

A2.276 Enders also computed the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI rose from 1,793 to almost 2,000 after the transaction takes place, a measure of high concentration. The submission stated that '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.

Further developments in the media landscape

A2.277 Enders forecast News Corp's UK newspapers market share rising from about 37.3% of UK national press circulation in 2009 to about 41.1% in 2015. Projections on Sky's subscribers and share of news viewing also indicated strong growth. Taken together, Enders believed that by 2015, News Corp's share of total consumption of news across all media could exceed 25%.

A2.278 The submission estimated that by 2015, if current trends continue, both Sky and News Corp's share of revenues in their respective markets would probably be 40% or more. These segments of the cross-media market were by far the most

financially important, meaning that News Corp's overall share would likely be particularly high. Enders suggested that it would be, for instance, above the 30% threshold of the KEK method of analysis which German law used to assess transactions.

- A2.279 Enders repeated concerns outlined in the submission to the Secretary of State (detailed above) relating to the position of ITN in the future.

*Additional comments*

- A2.280 Enders also identified four ways in which the proposed acquisition could result in future loss of plurality. These issues were all separate and additional to the immediate loss created by the combination of the two companies.

- A2.281 The deep interconnectedness of UK media meant that News Corp could influence the future course of all other media companies. The British media landscape was said to be dominated by a small number of firms. The submission listed some factors which it stated would make the industry more likely to suffer from 'co-ordinated effects', the tendency for the participants in a market to work together rather than to compete actively. These factors included shared production and distribution facilities, Sky's control of the satellite platform and Sky's status as an advertiser with other media groups. Enders stated that the degree of genuine diversity would therefore be lower in a market like this with such strong links between the firms.

- A2.282 News Corp had far greater financial strength than other companies in the news market. Similarly, Sky had substantially greater turnover than other major companies in the TV market and this disparity was tending to widen. Enders suggested that the influence of Sky over the media scene was thus even greater than its share of news provision. Its ability to influence the evolution of the wider media market would affect the prospective degree of plurality in the offerings of news and comment.

- A2.283 Sky'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 Corp newspapers, at the expense of other media.

- A2.284 Similarly, Sky may be able to disadvantage non-News Corp newspapers by bundling its associated papers, either in paper or electronic form, into an offer to TV customers.

**Additional comments on definition of plurality**

- A2.285 Enders' third submission focused on the definition of the word plurality. It noted the Court of Appeal's judgement, which found that the word 'plurality' could connote more than just a number exceeding one, possibly carrying an implication of range and variety as well. Enders stated that neither the Court of Appeal nor the Competition Commission provided a definition of what 'plurality' means, or indicated what a 'sufficient plurality' would be.

- A2.286 Enders commissioned Charlotte Brewer, Professor of English Language and Literature at Oxford University to assess the meaning of the word 'plurality' in current UK usage. Her report analysed a number of dictionary definitions of the term.

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A2.287 Professor Brewer concluded that there was '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". She stated that 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.

## **Goldsmiths Leverhulme Media Research Centre**

A2.288 With reference to a 4 year programme of research into new media and the news, the submission argued that the full acquisition of Sky plc by News Corp would mark a significant limitation of the public interest, particularly in the area of news plurality.

A2.289 The research project aimed to investigate the impact of new media on the news in the UK including local and national news, commercial and public service broadcasting, print, broadcast and online, mainstream and alternative news.

A2.290 The submission stated that this research revealed that news media are in crisis:

- newspaper circulation and readership levels are at an all time low;
- there has been a tremendous growth in the number of news outlets available;
- a decline in advertising revenue combined with increased investment in new media technologies alongside staffing cuts have all had a negative impact on journalism.

A2.291 The response suggested that the role of journalists was changing, with fewer exchanges with sources and a greater focus on 'cut and paste, administrative journalism'. In this context, journalists were now monitoring and often rewriting other news stories, with the result being that stories were often covered from the same angles and different news organizations repeatedly present the same information in their stories.

A2.292 The submission highlighted that UK citizens predominantly used sites that were run by existing news providers, further asserting their dominance. Other popular websites were run by internet based organisations, either as news aggregators or by relying in the main on almost entirely on news agency reports. This meant that online voices would be dominated by the larger, more established news providers, leading to 'anything but increased diversity'.

A2.293 It was also noted that there was little evidence to support the view that the internet has been established as a primary source of news except for a very small minority. Moreover, the organisation of web search tended to send more users to the most popular sites in a "winners take all pattern".

A2.294 News Corp was highlighted as dominating national newspaper circulation, with strong growth expected in its market share. Further market strength was predicted come from cover price revenues, with News Corp having a history of discounting cover prices to grow market share and reduce circulation decline, which would help to protect it from the structural shift in ad revenue.

A2.295 Sky News was also noted as being one of only three television news providers in the UK. The submission stated that there was a danger that further market power could be used to diminish the ITN news provision, either by forcing ITN to cut costs



to retain its contracts, or by Sky News successfully winning these news contracts itself. This would be far from the plurality of news providers expected.

- A2.296 The submission noted that Ofcom had raised concerns about the position Sky held in the pay TV market, and indicated concern that this would be intensified should News Corp acquire full control of Sky (with associated cross-promotion and cross-subsidisation of services and products). Similarly, it also highlighted the attitude of News Corp towards the exit from the market place of competitors, suggesting that, when combined with substantial economic resources, this was likely to 'present a serious challenge to the future of news provided in the public interest'.
- A2.297 The response concluded that despite the increase in media outlets, there was still a dominance of a limited number of players controlling news, information content and public debate. Plurality, in the context of a media environment in which News Corp is able to deploy the enormous revenues of Sky was likely to be further constrained.

## Guardian Media Group

- A2.298 GMG submitted that Ofcom should advise the Secretary of State that the Transaction may be expected to result in there being insufficient media plurality in the UK as a whole, and with respect to specific audiences in the UK, such that it may be expected to operate against the public interest. The submission covered concerns of GMG that were not covered adequately in that joint submission by Slaughter and May (see below).
- A2.299 The proposed transaction would involve the integration of the UK's largest newspaper group with a the UK's dominant pay TV company, the UK's second largest commercial television news provider, the monopoly third party provider of news content for UK commercial radio and a significant provider of online news content. As such, in GMG's view, it would represent an unprecedented and unacceptable concentration of cross-media news interests.
- A2.300 The submission noted the underlying policy behind the public interest assessment, highlighting that it was particularly focused on cross-media concentrations. In GMG's view, the change from a minority interest of 39.1 % to outright control would represent a material alteration of the relationship between News Corp and Sky that will have an impact on the companies' incentives and behaviour and thereby reduce plurality of the media to a level below the critical "minimum level" identified by Lord McIntosh.
- A2.301 GMG also emphasised that Ofcom should attach particular importance to the need to ensure sufficient plurality in the provision of news by commercial providers, over and above the BBC.
- A2.302 GMG considered that the transaction would reduce plurality across a range of content types, although viewed news as the key focus, given the strength of the merging parties in news provision and the importance of news plurality for the formation of opinion, for informing the terms of public debate and, ultimately, for the democratic process itself.
- A2.303 The impact of the transaction should, in GMG's view, first be assessed on the basis of a UK-wide cross-media news audience. The submission also suggested that it be assessed by reference to its impact on narrower audiences, including the group of people who would be solely served by the combined entity (which Ofcom should seek to identify).

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- A2.304 GMG stated that the proposed acquisition would create a unique cross-media news provider, being the only UK media company providing national news content on television, in print, on the radio and online (which neither the BBC nor other news providers replicated). GMG submitted that Ofcom should consider the impact of the transaction on each of these platforms, as well as on cross-media news provision.
- A2.305 GMG argued that 'external plurality' should be the focus of Ofcom's analysis, having due regard to the explanatory notes of the provision. The submission indicated support for the approach adopted by the Competition Commission in the Sky/ITV case, where the sufficiency of plurality was assessed qualitatively, by reference to the actual circumstances of the case. This would entail an assessment of editorial control, but GMG believed that such internal plurality would not ensure *sufficient* plurality in a situation where external plurality was not ensured.
- A2.306 The UK media landscape was said to be in a state of flux. A combined News Corp / Sky would, in GMG's view, be uniquely well placed to influence developments in this sector, given its presence in content across platforms, and its role in providing platforms itself.

**Specific GMG concerns**

- A2.307 The submission highlighted the strong status of Sky in TV and radio news markets, supported by its position in pay TV content and platforms. Similarly, News Corp was noted as holding a strong position in the newspaper market. A combination of the two would, GMG believed, account for 21 % of cross-media news consumption (the BBC providing 34% and DGMT 12%). Other commercial competitors were noted as being heavily reliant on one particular medium.
- A2.308 GMG's believed that the group of people who took news only from News Corp and Sky may span a wide demographic and age range. The submission stated that a situation in which consumers of news content from a range of sources would be consumer only news originating from and controlled by News Corp would raise significant concerns over media plurality and the implications for democratic debate.
- A2.309 GMG noted that were the transaction to be permitted, News Corp would gain full control and benefit of Sky's profit making ability. A merged business would have a strong incentive to offer consumers a bundle of Sky TV and a News Corp newspaper subscription, to the detriment of competitors. Given the fact that physical supply of newspapers often exceeded demand, GMG suggested that any diversion of readers to News Corp titles arising from such a bundling strategy would not lead to a material reduction in cost for the titles losing readers but would instead translate directly into greater financial losses for those titles. This could lead to a material weakening of competitors, or even exit from the market, reducing diversity and plurality.
- A2.310 The submission highlighted that changes in the state of the media sector were leading to new business models being considered, often involving some form of paid digital content. News Corp had led the way in charging for general online news content through the use of paywalls. Overall revenues generated from the bundling of paid-for access to online newspaper content with other products, such as Sky pay TV, telephony and internet access subscriptions, could materially impact the viability of News Corp's paywall strategy. As the only mainstream newspaper group currently charging for general online content, only News Corp was able to put together such a bundled offering.

A2.311 [X]

A2.312 Previous experience in relation to Sky subsidising set top boxes led GMG to expect a strategy in which devices were given away or sold cheaply to establish a user base that could then be exploited, at the expense of rival content sources.

A2.313 The potential adverse impact of a merged News Corp/Sky strategy of bundling a device with content could be exacerbated in GMG's view if combined with internet access, using Sky's own internet service provider. The merged group would be free to give preferential treatment on its own devices and internet delivery services to its own content, while degrading access to content from rival content providers.

A2.314 GMG would not support any remedy – short of outright prohibition of the acquisition of additional shares in Sky by News Corp – given its views on the deficiencies of relying on 'internal plurality' and the past behaviour of News Corp in this manner.

### International Consumer Policy Bureau

A2.315 The ICPB stated that the proposed transaction risked a serious reduction in media plurality. One of the consequences would be an increase in 'the use by News Corp of news and editorial channels of communication with citizens to promote its own commercial interests' to the detriment of competitors. Citizens would have less choice for sources of information, and thus would find it increasingly difficult to form a true picture of events that may be connected to one or other of News Corp's commercial ventures.

A2.316 The submission cited several examples in support of this viewpoint. These included Harper Collins' refusal to publish Lord Patten's memoirs, perceived critical attacks on the BBC, coverage of the launch of Sky in the late 1980s, interventions by Rupert Murdoch in the editorial affairs of *The Times* and the lack of focus on the recent phone hacking stories.

### [X] [A submission]

A2.317 [X]

A2.318 [X]

A2.319 [X]

A2.320 [X]

A2.321 [X]

A2.322 [X]

A2.323 [X]

A2.324 [X]

A2.325 [X]

A2.326 [X]

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## Jewish Funds for Justice

- A2.327 The submission from the Jewish Funds For Justice (JFFJ) outlined the organisation's concern that the acquisition of Sky would further consolidate media power into the hands of News Corp, to the detriment both of media plurality in the UK and to democratic debate. It highlighted that the experience of the JFFJ in the US gave it a unique perspective on the risks to the public interest of media consolidation.
- A2.328 The JFFJ believed that should the proposed acquisition be permitted, News Corp could use Sky's television channels to pursue a political agenda in line with its political and commercial interests. This concern was based on News Corp's behaviour in the US, where it had aggressively promoted strategies which were not in the public interest. The proposed acquisition would be damaging both to fair and responsible reporting but also to specific audiences 'that [had] previously been targeted in the United States'.
- A2.329 Concerns were held over both News Corp's motivations in seeking to acquire Sky, and News Corp's ability to leverage ideological and political views across both free-to-air and pay TV channels. The JFFJ believed that News Corp in the US had a 'track record of failing to ensure fair and responsible reporting and broadcasting of news', with tolerance and even promotion of extreme views.
- A2.330 The submission suggested that Fox News broadcasted biased reporting, affecting specific audiences in the United States and that News Corp could continue to follow this policy in the UK if the transaction occurred. This would result in 'harmful' reports becoming more widely available in the UK and repeated across a number of media platforms due to News Corp's ownership of media outlets.
- A2.331 The submission cited as an example of this Fox News' broadcast of what JFFJF labelled 'unevidenced, unjustified and unacceptable anti-Semitic attacks' against George Soros in a series presented by Glen Beck. News Corp's political stance was said to have been noted by other bodies, including the Anti-Defamation League (ADL). Mr Beck was suggested to have carried out similar 'attacks' on other individuals, including Simon Greer, the CEO of the JFFJ.
- A2.332 News Corp's reporting style was said to have 'polarised' audiences in the United States, with the potential for a similar effect on UK audiences. The JFFJ indicated concern for the effect that such 'extreme and offensive' views would have on audiences in general.
- A2.333 [X]
- A2.334 [X]
- A2.335 The JFFJ stated that these materials demonstrated that the public interest would be harmed if media power was consolidated in the hands of News Corp. The submission suggested that it was inevitable that audiences and specific consumer groups were likely to be negatively impacted upon by the types of content that will be more widely disseminated across the UK. By being available across various media platforms, the potential harm caused by the acquisition of Sky by News Corp would be exacerbated. The JFFJ said that a loss of plurality combined with a politically motivated agenda could lead to the erosion of tolerance and cohesion within the UK.

**[X] [A submission]**

A2.336 [X]

A2.337 [X]

A2.338 [X]

A2.339 [X]

**[X] [A stakeholder]**

A2.340 [X] [A stakeholder] stated that it was particularly well placed to comment on the proposed acquisition as the only other UK media group with significant assets in both national newspapers and television. It was [X] [The stakeholder]'s belief that there were significant synergies to be gained from owning both print and television assets (including cross-promotion and cross-media buying opportunities).

A2.341 [X] [The stakeholder] highlighted the present market position of Sky and News Corp, noting that Sky was the 'best funded broadcasting business' in the UK, while News Corp owned the market leader in three of the four newspaper sub-markets alongside a 37% share of national newspaper circulation.

A2.342 [X] [The stakeholder] outlined its view of likely future trends in the relevant market. The submission highlighted that newspaper circulation was declining, with no guarantee that all existing titles would survive. Similarly, Sky was set to continue its growth following heavy investment in its platform and the benefits of having secured commercial agreements in a staggered manner.

A2.343 The submission described Sky's 'virtuous circle' as contributing to likely further growth – using its predominant position in pay TV to acquire exclusive content, which attracted more customer subscriptions, in turn boosting revenues and providing for a further investment cycle. [X] [The stakeholder] stated that this gave Sky a greater position in the market, made it more difficult for commercial free-to-air broadcasters to compete against it.

**The advantages of full acquisition**

A2.344 [X] [The stakeholder] believed that acquisition would strengthen Sky's position in the television market and increase the ability of News Corp to stifle competitors. Potential strategies included:

- Cross-subsidy of TV revenues to loss-making newspapers
- Amalgamation of news operations of Sky News and News Corp's newspaper titles, both in terms of staff and of content itself (particularly on websites as convergence develops further)
- Bundling of Sky and News Corp products at preferential rates, which standalone businesses under separate ownership would not be able to match
- Use of Sky's subscription database to offer products, services and subscriptions from the newspaper side
- Greater integration of other News Corp businesses and Sky (e.g. joint or preferential sourcing of programming from the Fox network). [X] [The stakeholder] suggested that as part of this, the merged company could expand into television production even becoming a vertically integrated production and

## Report on public interest test

broadcast business (with no obligation to source any programming from independent producers)

- Cross-promotion and leverage of content, talent and acquisitions
- A reduction of the cost base of the business through merging back-office functions and other synergies such as cross-promotion and cross-media advertising sales

### The threat to media pluralism

A2.345 [X] [The stakeholder] believed that such developments would be likely to lead to a reduction in media plurality in both the short and the long term. The submission identified a number of risks:

- A reduction in the diversity of media ownership, through one company controlling 37% of newspaper circulation and the most lucrative TV platform, with a powerful position in the pay TV market and the television market as a whole.
- A likely reduction in the number of national newspaper titles, with News Corp being able to sustain losses and undercut rivals through cross-subsidy from Sky.
- A partial merger of news operations, reducing the range of available media voices and bringing Sky News and the newspaper titles under a single editorial control.

A2.346 [X] [The stakeholder] stated that the TV landscape had changed considerably. The relative decline in the revenues of free to air broadcasters and the parallel rise of multi channel and pay television meant that media plurality could no longer be considered in traditional terms.

A2.347 [X] [The stakeholder] concluded that the proposed acquisition would lead to the creation of a single powerful media business 'of exactly the kind that cross-media ownership rules have been designed to prevent', and as such should not be permitted.

### National Union of Journalists

A2.348 The NUJ indicated strong support for the principle of media pluralism as 'a necessary component of any democratic society, in which the range of opinions and information made available through the media should not be solely determined by market forces'.

A2.349 The NUJ opposed the transaction, believing that the proposed acquisition would represent 'a transformative shift in UK media ownership'.

A2.350 The submission noted that Sky and News Corp were already the largest companies in their respective sectors, and highlighted the sheer scale of the resources which News Corp could deploy against its UK competitors in broadcasting and publishing should the transaction be permitted.

A2.351 The NUJ highlighted the strong positions of both Sky (accounting for 80% of pay TV revenue in 2009) and News Corp, and outlined the substantial extent of the media assets. The NUJ expressed concern that if the acquisition were to be permitted, the 'market dominance of Rupert Murdoch coupled with his significant influence on the editorial decisions and stance of his publications and news outlets would breach the requirement for media pluralism in the UK'.

- A2.352 The submission rejected the claim an increase in ownership would make no practical difference, noting that Sky had an independent editorial structure, a separate board with independent directors and a different shareholding structure. The NUJ said that a move to 100% ownership would remove any institutional barriers or independent interests and leaving Sky in the direct and immediate control of News Corp.
- A2.353 The transaction would also, in the NUJ's view, allow News Corp opportunities to undertake activities such as cross-subsidisation and cross-promotion, joint subscriptions packages and joint operations (including newsgathering). These could act to the detriment of competitors, new market entrants and editorial independence.
- A2.354 The NUJ rejected the argument that the growth of online sites such as blogs would be sufficient to counter the significant influence of a combined News Corp / Sky entity. These were stated to 'lack the resources to provide any meaningful competition'.
- A2.355 The submission suggested that 'quality journalism' would be harmed by the proposed acquisition, and that it may also act to the detriment of media impartiality, allowing media to be used to exploit political and / or commercial power.
- A2.356 According to the NUJ, Rupert Murdoch's media power had 'played a corrosive role in UK politics with governments, fearful of antagonising him, shaping policies to win or hold on to his support'. The submission noted the recent phone hacking story, and expressed concern that the perceived power of News Corp may have played a role in dissuading politicians or other bodies from pursuing enquiries on this point.
- A2.357 The NUJ concluded that Ofcom should acknowledge the strong opposition from the NUJ, the Trade Union Congress (TUC), other stakeholders, organisations, campaigning groups and individuals and reject the proposed acquisition.

**Slaughter and May (responding on behalf of BT, Guardian Media Group, Associated Newspapers Limited, Trinity Mirror plc, Northcliffe Media and Telegraph Media Group)**

- A2.358 The submission outlined what Slaughter and May believed to be the 'clear case' for recommending a full assessment by the Competition Commission, given that the proposed transaction may be expected to operate against the public interest.

**European intervention notice – relevant law**

- A2.359 Slaughter and May highlighted the relevant section (58(2C)) from the Enterprise Act, noting the explanation provided in the DTI guidance in May 2004 that the plurality assessment was concerned with "ensuring that control of media enterprises is not overly concentrated in the hands of a limited number of persons", because of the potential ability for a person to influence opinions and control the agenda.
- A2.360 Slaughter and May noted (with reference to Article 5(3) of the Enterprise Act) that if Ofcom considered that media plurality may be relevant to the proposed transaction, it must provide advice and recommendations on whether to refer this to the Competition Commission.

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A2.361 The test was said to be a 'low hurdle', with a referral decision appropriate if it "is or may be the case" that the proposed transaction "operates or may be expected to operate" against the public interest. Slaughter and May stated that Ofcom's role was not to advise on whether media plurality concerns were conclusively established, but on whether there may be concerns, that would warrant a fuller second stage investigation.

### **Content types**

A2.362 Although the transaction would, in Slaughter and May's view, reduce plurality across a range of content types, the submission focused on news plurality, given that the merging parties' position as important news providers, and the importance of news plurality to the democratic process. The submission cited various sources which supported this assertion, including the DCMS consultation on Media Ownership Rules in 2001, the Competition Commission's report in 2007 and academic research.

A2.363 Slaughter and May stated that the key social role of news had important implications for Ofcom's assessment. Any transaction that may result in insufficient news plurality would be expected to operate against the public interest.

### **Audiences**

A2.364 The submission focused primarily on the UK cross-media news audience, noting that relevant legislation indicated that that plurality could be assessed on a cross-media basis, and that cross-media mergers could give rise to plurality concerns, and that this was supported by the DTI Guidance.

A2.365 Slaughter and May stated that the rationale for adopting this approach was that:

- most people consumed news from more than one medium, meaning a cross-media merger was at least as likely to reduce the choice of news sources available to the audience as a merger within a single medium; and
- each medium was influenced by the news agenda of other media when setting its own agenda (so that consumers of one medium indirectly receive news from other media), meaning that a cross-media merger had the potential to reduce the diversity of news by distorting the flow of news between media.

A2.366 It was noted that this assessment focused on plurality of the supply-side, academic literature also examined the importance of the demand-side. A full analysis would therefore consider whether substantial groups source their news wholly or mainly from News Corp and Sky, such that the transaction would result in those groups receiving little or no diversity of news. A proper consideration of the key aspects of media plurality would therefore, in Slaughter and May's view, require a Competition Commission referral.

### **Media platforms**

A2.367 Slaughter and May outlined key features the relevant platforms, and the inter-relationship between these.

TV

A2.368 The submission noted that TV was the main source of UK news for the majority of people (74%). TV was also important because it set the news agenda in "real time"



such that the output of other media was often influenced by TV. Rolling news channels were noted as playing an influential role, providing coverage of breaking news and often framing the subsequent coverage by selecting early reactions / analysis. This influence extended to the agenda and approach of other non-TV news providers.

A2.369 The agenda-setting function of rolling news was also said to be reflected in the nature of their audiences in two ways:

- Their audience tended to include many people who are themselves opinion formers (e.g. newspaper newsrooms)
- Their audiences tended to be focused on news consumption (by virtue of the fact that they have selected a news channel) rather than being incidental viewers.

Slaughter and May suggested that rolling news channels therefore had a larger impact than their viewing figures may suggest.

### *Newspapers*

A2.370 Newspapers were highlighted as an important source for news, playing a distinctive role in setting the news agenda.

A2.371 Slaughter and May noted that newspapers had a track record of investigative journalism, holding those in positions of authority to public account. Furthermore, it was highlighted that many newspapers were associated with a particular political viewpoint. In aggregate therefore, the newspaper sector generated news stories representing a diverse range of views.

A2.372 Slaughter and May believed that the ability of newspapers to influence the news agenda depended heavily on their content being reported on other platforms. The submission suggested that stories broken by newspapers would often receive a higher profile when subsequently reported on TV, citing the recent MPs expenses affair as an example of this.

### *Radio*

A2.373 Although radio was only the third most popular source for news, Slaughter and May noted that radio audiences themselves were large (reaching over 90% of the UK adult population). Radio played an important role as a source of news for people who did not consume news pro-actively. The news agenda of radio was stated to be important in serving people who may not otherwise be engaged in the democratic process.

A2.374 Radio was also said to hold an important role in agenda-setting, with a day's major news stories often developing from interviews on early morning radio news programmes.

### *Internet*

A2.375 The internet was growing in importance as a news source, becoming more popular with consumers and allowing for a proliferation of news outlets. However, Slaughter and May did not believe that online news outlets contributed significantly to plurality over and above that provided by the existing broadcast and print media, for three reasons:

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- all of the most popular sites were provided by existing broadcast and print organisations – 80% of online news traffic in the UK was accounted for by five established titles (BBC, The Daily Mail, The Sun, The Guardian and The Telegraph);
- few independent websites were able generate original news content. Hardly any had a significant editorial staff, instead relying on news feeds. As such, Slaughter and May did not believe this contributed additional news plurality.
- Ofcom had found that online news still had gaps in demographic coverage (for example the elderly, or the poor)

*Cross-platform dynamics*

A2.376 Slaughter and May submitted that there was a two-way relationship between TV and newspapers. TV news influenced stories covered in newspapers, while newspaper content was more widely distributed by TV.

A2.377 Slaughter and May said that this process resulted in a 'cross-fertilisation of news and ideas', given both audiences exposure to a more diverse news agenda. It was highlighted that the process relied on objective reporting of each platform's output by the other which would be threatened where there is cross-ownership of important outlets in both newspapers and TV, due to 'the resulting loss of objectivity'.

**Control of media enterprises – external ownership and control**

A2.378 "External plurality" was stated to be the primary concern of the legislation. Slaughter and May examined both the current plurality of persons with control of news media organisations in the UK and the effect of the acquisition on that plurality.

*Current plurality*

A2.379 Slaughter and May stated that the supply of news was already highly concentrated, such that any significant further reduction in plurality would 'clearly give rise to concerns'. While the number of news outlets was noted as increasing, the submission stated that there were only a small number of news suppliers, which in turn set the news agenda for all other outlets.

TV news

A2.380 Slaughter and May highlighted that there were only three significant suppliers of TV news (accounting for 99% of total news hours viewed) – the BBC, ITN and Sky News. Sky was stated to be an important provider of TV news because:

- it is one of only two commercial TV news suppliers in the UK – especially important given the BBC's reliance on state funding
- it is the second biggest TV news supplier by hours broadcast, and the third by hours viewed
- Sky News was one of only two mainstream rolling news channels, accounting for 1/3<sup>rd</sup> of rolling new hours viewed
- as per the Competition Commission finding in 2007 (which, Slaughter and May suggested, concluded that day-to-day editorial control of output remained with the news provider), Sky could be said to have day-to-day editorial control over the news output of Five

Newspapers

- A2.381 Slaughter and May noted that the newspaper sector exhibited a higher of plurality than TV. Eight groups accounted for national newspaper circulation, although this was dominated by the top three groups, with News Corp, DMGT and Trinity mirror accounting for 75% of circulation.
- A2.382 News Corp was noted to be the largest UK newspaper supplier. It also occupied a unique position in owning both mass market quality newspapers and tabloids. This gave it unrivalled audience coverage, and Slaughter and May cited newspaper readership statistics which showed that News Corp was the only group with a title achieving more than 10% coverage in each socio-economic group.

Radio

- A2.383 Slaughter and May noted that there were only two significant suppliers of UK national radio news (accounting for 97.7% of all national radio news), and that Sky was the only private sector supplier.
- A2.384 Given the reach of commercial radio, the fact that almost all national commercial radio news was provided by Sky meant that it extended its broad coverage. The broad range of stations served also gave Sky wide coverage over different audiences of the population.

Online

- A2.385 The submission reiterated that no company other than the existing broadcasters and newspaper publishers has a significant portion of the online news audience

*Effect of the transaction*

- A2.386 Slaughter and May made a number of statements relating to the effect that the transaction would have on plurality.

The transaction would combine two of the largest contributors to plurality

- A2.387 Slaughter and May stated that News Corp and Sky were two of the most important voices in UK news, and combining these two voices into one would result in 'a major reduction in plurality'.
- A2.388 The potential scale of the merged organisation was demonstrated by reference to audience reach. Using a standard advertising measurement of reach (which ignored most of Sky's reach through commercial radio), Slaughter and May estimated that the news outlets of the merged entity would reach at least 52% of the adult population. In contrast, only one other newspaper group had a title that reaches more than 10% of the population.
- A2.389 In addition to this, News Corp and Sky were considered important by Slaughter and May because of the scale of their news gathering and production capabilities. This was stated to be particularly important in light of the effect that financial constraints were having on the news-gathering infrastructure of news providers (such as the increasing reliance on news agency feed and PR material, with the result being that there was less diversity of news content than is suggested by the number of outlets).

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- A2.390 Slaughter and May highlighted the strong revenue generating power of News Corp and Sky, which far outstripped the income of their competitors. It was estimated that News Corp and Sky combined had an editorial staff of over 2,100, almost as many as the other national newspapers combined (estimated at around 2,650). The submission stated that this illustrated the unrivalled ability of the merged entity to generate news content and set the agenda.
- A2.391 This scale meant that both entities could play a key role in offering an alternative view of events, which other organisations could not cover independently. Slaughter and May suggested that both News Corp and Sky were well placed to support investigative journalism, which could have a major influence on the news agenda.
- A2.392 The transaction would therefore have what Slaughter and May termed the 'particularly damaging effect' of combining the two commercial organisations with the greatest ability to invest in news-gathering.

The transaction would distort cross-platform dynamics

- A2.393 Slaughter and May stated that a merged entity would have the ability to distort the exchange of news between platforms, and so restrict the ability of other media organisations to contribute to news plurality.
- A2.394 Slaughter and May suggested as an example that Sky News could choose to give disproportionate coverage to stories featured in News Corp newspapers, reducing the likelihood that stories in other newspapers would be consumed by wider audiences. The role of Sky News in agenda-setting also meant that excluded stories would be less likely to be covered by other news outlets.
- A2.395 The submission stated that evidence from other jurisdictions suggested that the incentives created by cross-ownership could undermine the practice of objective reporting. It cited a US study which found that media outlets tended to give disproportionate coverage to the activities of their own corporate group.
- A2.396 The transaction would therefore, in Slaughter and May's view, undermine the ability of third party news providers to contribute to the broader news agenda.

There would be insufficient plurality post-transaction

- A2.397 Slaughter and May highlighted that following the proposed acquisition there would be two large UK news groups, with News Corp as the only major private sector news group.
- A2.398 ITN was noted as having a 'diminishing presence', with the submission highlighting the decline in audiences and the constraints placed on its news gathering capacity by the financial circumstances.
- A2.399 Only one remaining newspaper group would have that achieved coverage of more than 10% of the population. Slaughter and May also said that rival groups would be constrained by Sky News' incentive to feature News Corp content.
- A2.400 Slaughter and May also believed that the enhanced cross-media position of News Corp post-transaction would lead to a material weakening, or exit, of one or more newspapers, leading to a further loss of plurality.

A2.401 The submission stated that this analysis made clear that there would be an insufficient plurality of persons controlling the news media following the transaction, and that it should not be possible for Ofcom to conclude that no further investigation is required.

### **Control of media enterprises – internal control**

A2.402 Slaughter and May noted the ‘limited relevance’ of “internal plurality” in circumstances where each of the relevant enterprises will be 100% owned by News Corp.

#### *Law*

A2.403 Slaughter and May stated that the public interest test related to control of the enterprise rather than control of the enterprise’s editorial policy. Where News Corp held 100% control over Sky, Slaughter and May said that nothing in the statute required or permitted an enquiry into whether that control would be used to control the enterprise’s editorial policies.

A2.404 The submission stated that this approach was consistent with the Court of Appeal’s judgement in the Sky/ITV case. Nothing in that case suggested that, where complete control of the enterprise was established, it would be permissible to consider how that control might be used. Slaughter and May said that it was not found in the Court of Appeal that, in circumstances of full control, *de facto* editorial independence was relevant to the statutory test.

#### *Policy*

A2.405 Slaughter and May said that this analysis was consistent with the underlying policy considerations: a clearance based on internal plurality considerations would delegate the task of safeguarding the public interest to the controlling party. The submission stated that such a vulnerable situation would not represent “sufficient” plurality of persons for the purposes of the statutory test, and that this was supported by the House of Lords Select Committee on Communications.

A2.406 Slaughter and May therefore stated that it was irrelevant to consider possible editorial diversity of separate media outlets under the 100% ownership of the same corporate group.

#### *News Corp internal plurality*

A2.407 Slaughter and May argued that, even if internal plurality were considered, News Corp outlets did not have sufficient editorial freedom to remedy the external plurality concerns.

A2.408 The submission stated that News Corp’s Chairman and Chief Executive (Rupert Murdoch) had spoken of his interventionist role in The Sun and The News of the World to the House of Lords Select Committee on Communications.

A2.409 Slaughter and May also said that there was also ‘significant evidence’ that News Corp played a role in setting the agenda for the Times and the Sunday Times, citing accounts from previous editors. The submission also noted that Mr Murdoch had reported that he regularly spoke to editors, which Slaughter and May believed illustrated ‘the fundamental difficulty of seeking to rely on internal diversity to uphold plurality’.

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A2.410 The support News Corp's newspapers for the Iraq War was also cited by Slaughter and May as indicative of both the 'dominant force of the proprietor', and the limits on internal plurality.

A2.411 Slaughter and May submitted that News Corp appeared to have influenced the agenda of The Times titles despite the conditions set out in the DTI's consent to the original acquisition of those titles. None of the parties were aware of independent directors having exercised the right of veto and the submission highlighted that at least two former editors had expressed doubts over the effectiveness of this system.

A2.412 The track record of News Corp was said to be significant by demonstrating that that, even if internal plurality was relevant to the assessment in this case:

- it was appropriate to treat the various News Corp titles as one voice for plurality purposes; and
- when assessing the post-transaction situation, there would be no reason to believe that Sky News will enjoy editorial independence such that it could constitute a separate voice to News Corp.

A2.413 Slaughter and May stated that the plurality issue would not be addressed by broadcasting impartiality requirements, noting the Competition Commission's conclusion that the measures do not cover what content selected or the prominence given to particular stories.

A2.414 Slaughter and May concluded that it was clear that there was 'no sound basis' to expect significant internal plurality within the merged entity.

### **Future developments**

A2.415 Slaughter and May stated that a thorough consideration of future developments was essential to the proper application of the public interest test. When considering whether the level of news plurality was "sufficient" for the purposes of Section 58, it was essential to consider future reductions in plurality that might be expected regardless of the relevant merger. To be sufficient, the level of plurality must be sufficient in light of any reductions in plurality that might be expected to occur in the foreseeable future.

#### *Key developments – declining revenue*

A2.416 Slaughter and May said that the main news media groups had suffered downward pressure on revenues for several years, noting the decline in TV and newspaper advertising revenues. In contrast, online advertising revenues had been increasing, although this had not been matched by investment in news gathering.

A2.417 The online experience was said to be presenting a challenge to the traditional model of financing news gathering. Traditional media relied on a degree of cross-subsidy between inexpensive but popular content and costlier news content. Conversely, consumers could access very specific content directly online, and along with targeted advertising technology, this meant that significant traffic and revenues had been diverted away from news content. This trend was expected to continue.

- A2.418 Slaughter and May said that the threat to plurality of declining revenues arose from there being fewer companies in the future (or at least those with the resources to invest in news-gathering).
- A2.419 The submission stated that the financial health of ITN was a key point in this regard, with concerns over ITN's ability to contribute to news plurality in the coming years. ITN was said to be heavily reliant on its contracts for the supply of news to ITV, and the loss of this contract would threaten ITN's viability.
- A2.420 Similarly, Slaughter and May said that the recent BBC licence fee settlement would result in the BBC having to fund a wider range of operations from the same level of funding, which could adversely affect its ability to fund news-gathering at its current levels.

*Key developments – media convergence*

- A2.421 Media convergence was said by Slaughter and May to be an ongoing process, with developments in technology and evolving consumer preferences reducing the differences in the output and consumption of media which used to be distinct. The submission gave examples such as VoD services and the use of video and audio on newspaper websites.
- A2.422 Slaughter and May believed that convergence presented challenges for news production and distribution. For example, a scheduled TV bulletin or a daily newspaper may not be deemed sufficient to meet consumers' expectations, with other content (e.g. an up-to-date website) required. Convergence therefore required a greater investment in technology.
- A2.423 Additionally, media was said to be converging around web-based platforms, meaning the internet was an important route to market for media companies. Slaughter and May noted Sky's position as a major broadband provider, giving it a substantial marketing advantage over competitors. The submission stated that because of this, convergence was likely to lead to an increase in Sky's share of audience even absent the transaction.

*Implications for plurality assessment of transaction*

- A2.424 These trends were said to have a number of effects on the transaction:
- the pressures on news media organisations meant it would be 'unjustifiable' for Ofcom to assess sufficiency of plurality on the assumption that all of the existing voices in UK news media would continue to exist in their current form for the foreseeable future;
  - News Corp and Sky were particularly well-placed to survive the current pressures even in the absence of a merger, meaning that a takeover would combine two of organisations that would otherwise be important contributors to news plurality; and,
  - it was necessary to consider the possibility that the transaction would give the combined entity the ability and incentive to engage in strategic behaviour that had the effect of removing or weakening other news suppliers.

**Effect of the transaction on Sky**

- A2.425 Slaughter and May outlined why the transaction would result in a relevant change for plurality purposes notwithstanding News Corp's existing 39% stake in Sky.

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*The legislation specifically provides for intervention in these circumstances*

- A2.426 Slaughter and May stated that the media plurality provisions in the Enterprise Act specifically provide that where two media enterprises serving the same audience are part of a "merger situation" and thereby "cease to be distinct" (which would include a move from 39% to 100%), then "the number of such enterprises serving that audience shall be assumed to be more immediately before they cease to be distinct than it is afterwards".
- A2.427 The submission noted statements relating to this provided in the DTI Guidance and the Court of Appeal judgement in the Sky/ITV case. Slaughter and May stated that, even if it was the case that News Corp already had material influence over Sky for the purposes of the Enterprise Act 2002, it was 'clear as a matter of law' that an increase to 100% ownership could result in a relevant reduction in plurality.

*Sky is separate from News Corp*

- A2.428 Slaughter and May emphasised the limits of News Corp's existing influence over Sky, which indicated that a move to 100% ownership would be of a significant impact.
- A2.429 It was highlighted that the Sky directors had a duty to promote the success of the company for the benefit of the shareholders as a whole, and treat all shareholders equally. They also had to ensure that certain transactions with News Corp were carried out on terms that were fair and reasonable to shareholders as a whole and to seek the prior approval of minority shareholders for certain transactions.
- A2.430 Therefore, the directors could not seek to favour News Corp. If the transaction were permitted, however, directors would be able to take account of the benefit to the News Corp group as a whole, and Sky's operations could then be directed for the benefit of News Corp.
- A2.431 Slaughter and May noted that Sky had put procedures in place to ensure that the company did not discriminate in favour of News Corp. News Corp's minority ownership meant that it only had limited influence over the appointment of Sky's management (with five of the fourteen directors as being News Corp employees or former employees). This would not be maintained if Sky were 100% owned by News Corp.
- A2.432 Slaughter and May stated that News Corp's own actions suggested that it did not have control over Sky. News Corp had notified the transaction to the EU Commission for competition clearance, and since jurisdiction only arose under the European Union Merger Regulation in the event of a change of control of the target company, News Corp must itself recognise (and the EU Commission must accept) that the Transaction would result in a change in the control of Sky.
- A2.433 Slaughter and May also said that News Corp's minority shareholding in Sky did not translate into any ability to influence the news agenda of Sky News. The submission noted findings from the Competition Commission's report into the Sky/ITV case, which suggested that News Corp did not have the ability to influence Sky's news content. This was said to be consistent with Rupert Murdoch's submissions to the House of Lords Select Committee on Communications.
- A2.434 The editorial independence of Sky News from News Corp was also said to be demonstrated by its strong record of reporting on stories even where they are



potentially prejudicial to News Corp, such as the allegations of illegal phone-tapping by The News of the World or BBC Director-General, Mark Thompson's riposte to criticisms made by News Corp executive, James Murdoch in 2009.

A2.435 Slaughter and May concluded that it was clear that Sky's news output should be treated as distinct from News Corp for the purposes of assessing the impact on plurality of a move to outright control over Sky.

## Remedies

A2.436 None of the parties were aware of any measures (short of divestment) which would provide an effective remedy. Slaughter and May emphasised that behavioural undertakings to guarantee the editorial independence of Sky from News Corp were likely to be ineffective, for a number of reasons:

- the output of Sky News was likely to be influenced by the preferences of News Corp – 'editorial self-censorship' was said to be likely as Sky News editors would not be expected to act with disregard to the views of their owner.
- it would be possible to undermine or circumvent any behavioural remedy without necessarily breaching the letter of the undertaking (for example by encouraging the departure of a news editor by cutting their budget).
- a behavioural remedy based on editorial independence would be unlikely effectively to secure the need for any independent editor to have access to an independent news-gathering capacity – therefore if News Corp sought to cut costs and share news gathering functions, Sky News stories would be selected from the same sources as News Corp ones.

A2.437 Slaughter and May stated that it was clear that, whatever behavioural remedies were put in place, Sky could not provide an independent contribution to news plurality when under the 100% control of News Corp.

## Conclusion

A2.438 Slaughter and May concluded that there was a compelling case for OFCOM recommending that the Secretary of State refer the transaction to the Competition Commission.

## Trinity Mirror plc

A2.439 Trinity Mirror submitted a response in addition to the Slaughter and May submission

A2.440 Trinity Mirror outlined its position in the market and its media assets, including, five national newspapers (director competitors of *The Sun* and *The News of the World*), 150 regional newspapers, 400 digital products and its role as the largest newspaper contract printer.

A2.441 [redacted]

## Public interest

A2.442 Trinity Mirror stated that news was essential to the proper functioning of democratic society, and that a free flow of news from various sources (which Trinity Mirror took to mean plurality) was at the centre of societal importance. It followed that if the number of sources of news was reduced or if its supply was concentrated in ownership, plurality would be diminished and the democratic process threatened.

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- A2.443 Trinity Mirror was concerned that the scale of a merged News Corp/Sky would have a detrimental effect on the viability of Trinity Mirror and the long term health of its newspapers. It highlighted that the Mirror titles were the only national newspapers to adopt a consistent left of centre political position and as such were a vital part of the democratic system in the United Kingdom.
- A2.444 Similarly, the regional press was stated to play a very significant role in local communities. Local and regional newspapers were often the only media outlets that reported on the work of individual members of parliament and allowed them to speak directly to their constituents.

**Ofcom test**

- A2.445 Trinity Mirror believed that the test Ofcom was required to apply was set at a low hurdle and that a recommendation of a referral to the Competition Commission would be appropriate if it "is or may be the case" that the proposed transaction "operates or may be expected to operate" against the public interest.
- A2.446 Trinity Mirror asserted that transaction would be highly likely to operate against the public interest by the mere fact of the reduction in the number of owners of news suppliers.

**Change in control**

- A2.447 Trinity Mirror argued that at its present level of ownership News Corp could only exert negative control (i.e. preventing certain events) but could not impose positive control (i.e. compel Sky to take a particular direction).
- A2.448 The submission acknowledged that News Corp had material influence over the running of Sky both by the size of its shareholding and by the number of News Corp employees or representatives on the Sky board, but stressed that a move to 100% ownership would be a 'clear change in status'.
- A2.449 Trinity Mirror believed there had been an attempt to 'underplay' the influence of the presence of independent non-executive directors on the Sky board, and noted that their constraining influence would disappear in the case of a successful takeover.

**News Corp / Sky presence in the market**

- A2.450 Trinity Mirror noted that the newspaper market was highly concentrated, with News Corp possessing by far the biggest share (more than the next two players combined). By combining both popular titles and influential 'quality' titles, News Corp was said to have 'an unparalleled readership drawn from the widest spread of socio-economic groups'.
- A2.451 The TV news sector was also said to be highly concentrated, with only three significant suppliers of TV news. Sky was noted as being the second biggest TV news supplier in the UK by hours broadcast and third biggest by total hours viewed.

**Editorial interference**

- A2.452 Trinity Mirror stated that there was a 'well documented' culture of "proprietary" interference or influence on editorial policy and coverage within News Corp. The submission highlighted that this was a concern only in the context of the number of media "voices" being reduced.

A2.453 Trinity Mirror provided two attachments in support of this assertion. One was a Times editorial dated 13 October which criticised the BBC's comments on the proposed News Corp takeover of Sky. The other was an article by Kelvin MacKenzie in the Sun dated 14 October which was critical of other media providers commenting on the proposed acquisition.

A2.454 The submission rejected the argument that impartiality regulations precluded any influence editorially, saying that such an argument ignored the impact that could be exerted over the news agenda by the choice of stories to cover.

### Potential for Commercial actions against Trinity Mirror

A2.455 Trinity Mirror stated that News Corp was 'aggressively protective of its market share', citing previous strategies in support of this. Trinity Mirror was concerned that, if the proposed transaction were permitted, decisions that were not commercially sound in the short term could be taken in the perceived greater long-term good of News Corp.

A2.456 Possible actions included:

- [X]
- A bundling of products (e.g. TV, newspaper and online subscriptions). Trinity Mirror suggested that such a proposition would be entirely unmatchable by stand-alone newspaper publishers.
- Cross-promotion, whether through straight "house ads" or through cross fertilisation of star columnists, presenters and flattering TV reviews and features.
- The ability to create "packages" for advertisers which would be unmatchable by other media outlets, giving a combined News Corp and Sky an 'unfair advantage'.
- Negotiation of "solus" arrangements or share deals with advertisers. Trinity Mirror asserted that the size of a combined News Corp/Sky and its reach within the UK would give it a significant advantage in this respect.
- Cross subsidy of cover price discounting on News Corp titles, to the long-term detriment of their competitors.

A2.457 Trinity Mirror recognised that a number of these concerns could be categorised as "competition" matters rather than having any immediate and direct impact on plurality. However, the submission indicated that it was the ability of the combined entity to use a all or some of these activities to protect its position to the detriment of others that was of concern.

A2.458 Trinity Mirror expressed concern that the long-term impact of these activities would have a detrimental impact on the commercial viability of its existing portfolio of products, with an additional threat to the plurality of news supply in the UK.

### [X] [A submission]

A2.459 [X]

A2.460 [X]

A2.461 [X]

A2.462 [X]

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A2.463 [REDACTED]

A2.464 [REDACTED]

A2.465 [REDACTED]

## Individual submissions

### Avaaz

- A2.466 Avaaz presented Ofcom with a spreadsheet of 39,105 messages indicating opposition to the proposed acquisition.
- A2.467 Most of these messages repeated the Avaaz standard text, which stated that independent analysis indicated that the proposed acquisition could enable News Corp to own half of UK media in a few years time. This would, in the view of signatories, 'dangerously limit' media choices, stifling democratic debate.
- A2.468 Around 1,330 submissions contained substantially different text and raised points in addition to the standard message.
- A2.469 Many signatories highlighted News Corp's (and Rupert Murdoch's) perceived track record of editorial influence with News Corp newspapers. Similarly, a number of submissions indicated that News Corp already exercised a strong influence on politicians, with several respondents making reference to (amongst other examples) the Sun switching its support to the Conservative party ahead of the general election in 2010.
- A2.470 There was a focus by some on the fact that Rupert Murdoch was able to exercise such political influence through his media assets despite not being a UK citizen. Several signatories indicated that this meant that there was a lack of accountability to the UK public of News Corp's editorial stance.
- A2.471 Some messages suggested that there would be a lack of commitment to UK original programming, which could undermine the UK content industry and culture.
- A2.472 Many submissions expressed concern that the acquisition would result in Sky News becoming more akin to Fox News. Respondents often implied that this would encompass a lowering of standards, or more partisan coverage of issues.
- A2.473 Other respondents were concerned that a greater News Corp would seek to target the position of the BBC. Some submissions suggested this was already an increasing trend, evidenced by public comments by both Rupert and James Murdoch
- A2.474 Some submissions argued that the News Corp paywall strategy served to limit the public access to content/news and therefore limiting the democratic process
- A2.475 A number of messages highlighted News Corp's past record of offering undertakings in relation to transactions of this nature, with references to the "broken promises" in relation to acquisition of The Times and other non-UK newspapers
- A2.476 There were also references to a variety of competition arguments outside the public interest test, mainly centring on the Sky platform. These included the possibility of

content exclusivity limiting consumer choice, and the perceived existence of excessive prices.

## 38 Degrees

A2.477 The 38 Degrees submission consisted of around 19,500 messages to Ofcom, the majority (up to 15,000) of which replicated the standard text proposed by 38 Degrees. This argued that Rupert Murdoch controlled too much of the media already, and that the proposed transaction would result in:

- Too much media control in the hands of one individual
- Less choice for consumers
- Too much political influence for Rupert Murdoch.

A2.478 Many of the ‘customised’ messages advanced similar arguments as those described above for the Avaaz submissions. In addition, a number of other arguments were raised:

- Concerns about giving Murdoch more opportunity to cross-promote his TV and newspaper holdings
- That the proposed transaction would have a negative effect on democratic trade union activity
- Some submissions voiced concerns about the impact on British journalism. For example- that News Corp fails to develop in-house talent and just poach talented people from the public sector – which leads to extra expense for the public, and that independent journalists would be forced to work abroad.
- There was a concern that News Corp could later be sold on to someone with dubious/dangerous political or religious beliefs, with serious consequences.
- There were a number of references to the fact that this transaction would cause the UK’s media to be similar to Berlusconi’s situation in Italy
- That the proposed transaction would have a negative effect on innovation
- There were a number of references to content being effected, particularly on the news – in particular that it might be “dumbed down”, overly-inflammatory, or racist.
- Some people expressed general concerns about this transaction setting a precedent for big business to dominate the UK (not just in terms of media industry).

## Private individuals

A2.479 Ofcom also received 104 direct submissions in response to our Invitation to Comment. The vast majority opposed the proposed transaction, although some (7 in total) were in favour or suggested that it did not create media plurality concerns.

A2.480 Individuals who opposed the proposed transaction presented arguments in keeping with those identified above in the Avaaz and 38 Degrees summaries.

A2.481 Those who were in favour of the transaction cited a number of reasons for this, including:

- That the transaction would facilitate further investment and innovation in broadcasting

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- That media choice and plurality would remain high regardless of the transaction being permitted
- That Sky / News Corp should not be 'penalised' for establishing and growing successful companies
- That News Corp already exercised control of Sky by virtue of its large shareholding

A2.482 Some individual submissions submitted anecdotal evidence such as articles to support their views. One individual submitted a significant volume of documents to support his view that the proposed acquisition formed part of a coordinated effort between many parties to exert influence in the interests of particular religious or cultural groups.

A2.483 Some specific individual responses are summarised below.

### **David Elstein, former Sky employee**

A2.484 Mr Elstein noted the concerns of parties opposed to the proposed transaction, and in particular the submission to the Secretary of State by Enders Analysis. He stated that Enders had 'misunderstood' the nature of Sky, treating it as a media business along the lines of ITV or the BBC, when in fact it derived a significant part of its revenue from technical aspects rather than content (e.g. set-top box installation, Sky+ set-top boxes etc). In this respect, it was more similar to Virgin Media or BT.

A2.485 Mr Elstein asserted that Sky's relative position in the pay TV sector was not relevant to Ofcom's assessment, which should instead be focused on 'control of viewership'. The submission also stated that the terms of the review 'explicitly exclude cross-media ownership issues, as these are dealt with under the 2003 Communications Act, and clearly do not apply to the News Corp proposal'.

A2.486 The submission argued that the sale of the remaining shares in Sky to News Corp would not constitute a reduction in the number of media owners. This was partly because the current shareholders could not, in Mr Elstein's view, be characterised as 'media owners' given their identity (i.e. largely investment institutions) and that News Corp had previously been treated by UK authorities as being in effective control of Sky.

A2.487 Mr Elstein further argued that the number of media outlets was not likely to be reduced by the proposed acquisition. Sky News accounted for only a small amount of viewing, but would remain in operation on account of being 'a creation of News Corp's'.

A2.488 Mr Elstein stated that in his previous role of having had responsibility for all Sky programming for four years, no pressure was ever applied to Sky News. The only 'blemish' on its impartiality in Mr Elstein's view related to reporting on the Sky bid for Manchester United in 1998, which was quickly addressed. The submission highlighted a number of recent stories which had been fully reported despite being potentially negative for News Corp (for example, the recent phone hacking stories).

A2.489 It was stated that if Sky were compelled to sell Sky News to allow the deal to go through, the most likely outcome would simply be a closure of the channel, as it would be difficult to sell given that the service was loss-making.

A2.490 Mr Elstein rejected the suggestions that News Corp would divert Sky's cash flows to News Corp's newspapers (to the detriment of its rivals), or to allow the cross-media

opportunities that would not be available to News Corp's disadvantaged newspaper competitors. It highlighted that these opportunities were already available and did not require Sky / News Corp to be a combined entity. The fact that they had not already been acted suggested that they were not sufficiently attractive opportunities. Mr Elstein also said that it was unclear why some kind of merged operations between News Corp's newspapers and Sky would be an issue, as there was no legal or regulatory inhibition to such co-operation.

A2.491 The submission stated that some concerns expressed by third parties – such as the use of pay-walls, and aggressive strategies including price cutting by News Corp – did not appear relevant to the matter of the proposed acquisition of Sky. It also highlighted that the launch of Sky TV had led to the provision of a large number (14) of 24 hour news channels, which would not have been possible otherwise.

A2.492 Mr Elstein concluded that third party concerns were not enough to trigger a formal plurality investigation into a transaction that 'clearly does not reduce media ownership or outlets now, and cannot be realistically projected as doing so in the future'.

## Dr Des Freedman

A2.493 Dr Freedman's submission focused on competing definitions of plurality which he stated had 'very different public policy consequences'. It was noted that plurality in this context refers to both 'external control' (the number of different people owning media organizations) and 'internal control' (the diversity of content circulated to audiences by individual companies).

### 'Narrow' plurality

A2.494 Dr Freedman submitted that there was an assumption in some quarters that the new digital environment would inevitably deliver competition, choice and plurality (the submission highlighted that Rupert Murdoch had previously made this argument). This definition referred to a conception of plurality related simply to the number of media outlets available, as opposed to the distinctive character of these outlets and the contribution they make to diversity.

A2.495 Dr Freedman argued that this definition served two purposes for News Corp:

- it supports criticism of existing regulatory regimes by arguing that plurality is best served through market forces, unrestricted by competition legislation, content regulation and restrictions on ownership. Plurality, according to this approach, is facilitated even when competition leads to the closure of titles and services.
- it allows News Corp to challenge the BBC's position in the UK media market (hiding what Dr Freedman referred to as 'the greater truth' that Sky's income is far greater than the BBC's). This interpretation denied the significance of the 'internal pluralism' of a publicly-funded, public service institution.

### 'Robust' plurality

A2.496 Dr Freedman argued (with reference to Ofcom's discussions on plurality in the Media Ownership Review in 2009) that plurality should not be reduced to the number of different outlets, as there is no guarantee that a 'plural' media environment of competing groups will provide a platform for the range of views and information sufficient for a democratic society.

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A2.497 The submission highlighted that the DCMS consultation on ownership rules in 2001 conceived of plurality in a more robust fashion, via four functions:

- 'Plurality ensures that no individual or corporation has excessive power in an industry which is central to the democratic process.'
- 'A plurality of ownership should secure a plurality of sources of news and editorial opinion...A healthy democracy depends on a culture of dissent and argument, which would inevitably be diminished if there were only a limited number of providers of news.'
- 'A single, dominant source of news would be in a position fully to define the news agenda'.
- 'Plurality maintains our cultural vitality...A plurality of approaches adds to the breadth and richness of our cultural experience'

Dr Freedman stated that it would be difficult to argue that these functions would not be affected by a News Corp / Sky merger.

A2.498 Dr Freedman said that News Corp with full ownership of Sky would be in a particularly powerful position to withstand current economic pressures and to place severe pressure on the viability of its rivals. Furthermore, the organisation would be under no obligation to cater for a range of editorial views nor to promote 'a culture of dissent'.

A2.499 News Corp would also be able, in the event of acquisition, to leverage its already significant influence on the news agenda onto the emerging digital news environment, with Dr Freedman citing Claire Enders analysis on the possibility of Sky News and News Corp newspapers increasingly becoming similar. In addition, the submission argued that in the event of the transaction being permitted, Sky would have no obligations other than to serve the long-term financial interests of its owners and would be highly unlikely to prioritise 'cultural vitality' as a strategic aim.

A2.500 Dr Freedman concluded that the impact of News Corp being allowed to take full control of Sky would be to limit the plurality of the UK media environment. News Corp would have strategic control over a large portion of the UK television, newspaper and broadband markets, and would be likely to occupy a dominant position, with negative implications for plurality.

**[X] [A submission]**

A2.501 [X]

A2.502 [X]

A2.503 [X]

A2.504 [X]

A2.505 [X]

A2.506 [X]

A2.507 [X]

A2.508 [X]



## Lord Puttnam

- A2.509 Lord Puttnam's submission highlighted the debate in the House of Lords on November 4, 2010 entitled "To call attention to the case for maintaining a broad plurality of media ownership in the United Kingdom". It noted that in the course of that debate, various speakers set out the reasons why they believe allowing News Corp to acquire 100% ownership of Sky would lead to a serious reduction in the plurality of the media in the UK.
- A2.510 The debate is available at <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101104-0002.htm#10110446000798>

## Professor Vincent Porter

- A2.511 Professor Porter argued that the acquisition by News Corp of the remaining shares in Sky plc would constitute the takeover of a British broadcaster by an American company, and thus reduce the plurality of media organisations fulfilling the needs of UK audiences.
- A2.512 The submission stated that Ofcom should look beyond the five issues identified in the Invitation to Comment, and consider the relations between these issues.
- A2.513 Professor Porter noted that the acquisition would reduce by one the plurality of persons with control of media enterprises in the UK. He further submitted that section 58 of the Enterprise Act 2002 appeared to be concerned with the effect on *audiences*, a term which would not seem to include the citizen's need for newspapers, and therefore suggested that Ofcom's advice would be restricted to the plurality of persons serving television audiences.
- A2.514 Professor Porter highlighted that News Corp held a material influence over Sky's affairs, but that the proposed acquisition would give it control over Sky. The submission noted that UK competition law draws a distinction between material influence and control, recognising that the latter gives the controlling party more powers than mere material influence.
- A2.515 The submission also stated that as News Corp was registered in the USA, the transaction would effectively move the control of the new enterprise outside the United Kingdom. This could lead to a de facto reduction in the plurality of people serving the UK television audience.
- A2.516 Professor Porter noted that Sky was a commercially successful company, highlighting the attractiveness of the Sky platform as a reason for this.
- A2.517 The submission urged Ofcom to take a long-term view of the future relationships between a global media market and the information and media needs of UK audiences. It highlighted that there may be possible 'tensions' between a narrow interpretation of EU competition law and the public interest provisions of both the Communications Act 2003, and the Enterprise Act 2002.
- A2.518 Professor Porter proposed that if the transaction were permitted, the UK authorities should seek to ensure six undertakings from News Corp in order to ensure that there continues to be a sufficient plurality of persons with control of the media enterprises serving UK audiences:

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- Sky would remain as a UK-based company, which is accountable to the UK regulatory and tax authorities
- The new enterprise would fulfil the minimum quotas for transmitting EU programmes and commissioning independent producers required by the EU Audiovisual Media Services Directive
- The new enterprise would not transfer outside the UK (or possibly the European Economic Area) the ownership of any of the intellectual property rights either in its own programmes, or of those programmes which it produces in the UK in the future.
- The new enterprise would not prevent, by means of exclusive contracts, other UK broadcasters from acquiring the UK rights to foreign films and television programmes which Sky also seeks to broadcast in the UK
- After a specified period of time – possibly one month – the new enterprise would offer its own productions for sublicensing to UK free-to-air channels.
- News Corp would require any third party, to which it assigned control of new enterprise, or to which it sold any of its assets, to fulfil these same conditions.

**Robert Beveridge, Lecturer in Media Policy**

- A2.519 Mr Beveridge said that Ofcom should recommend that the matter be examined by the Competition Commission. The submission stated further that it could be argued that changes in the media ecology warrant a Royal Commission to examine questions of pluralism and diversity of voice in the media as a whole.
- A2.520 The submission cited evidence in Cardiff University research on the quality of broadcast reporting of impartiality and accuracy in news in the context of devolution, which suggested that ITV, Channel 4 and Sky only achieved accuracy in some 35% of their content
- A2.521 It was argued that the proposed acquisition would increase the likelihood of costs and content to be shared across the gathering and reporting of news between the two organisation. Mr Beveridge argued that this would lead to an increasing emphasis on headlines rather than impartial analysis.
- A2.522 The submission noted that there may be a move towards partnership and content sharing (particularly in the context of increasing cost cutting), and that the sourcing of media content from a limited or smaller number of newsrooms might have implications for levels of impartiality or plurality as a whole.
- A2.523 Mr Beveridge stated that it was 'self evident' that Rupert Murdoch already held what many would perceive as an 'undue influence' on British politics and democracy.

**Professor Steven Barnett**

- A2.524 Professor Barnett highlighted the existing market share of News Corp, noting it's strong position relative to competitors and also that it was predicted to grow further in the near future. The submission also outlined Sky's strong position in the pay TV market, and the role that premium sport and movie rights played in maintaining and strengthening this position.
- A2.525 The submission noted that Sky was one of three television news providers in the UK, and that ITN was in a particularly vulnerable position. If ITN existed the market, Sky News would become the only commercial television news alternative to the

- BBC. This would match the structure of the radio news sector, where by virtue of its contract with IRN, Sky was 'the only radio news competitor to the BBC'.
- A2.526 Professor Barnett stated that, were the acquisition to be permitted, there would remain just one viable commercial provider of television and radio news in the UK, wholly owned by a single corporation and ultimately controlled by a single individual who also owned over a third of Britain's national press. This concentration was, in Professor Barnett's view, 'surely... unacceptable for a healthy democracy'.
- A2.527 Professor Barnett said that News Corp and its Chairman Rupert Murdoch had 'a long and well established track record both in direct intervention and in exercising indirect influence over his media properties'. The submission argued that impartiality rules would not guarantee that internal plurality was maintained, as they did not cover the selection or omission of stories.
- A2.528 It was also noted that editorial influence could be achieved through the selection of like-minded senior editorial staff who are trusted to pursue styles or news agendas which are more acceptable to the owner', and noted the editorial stances of News Corp newspapers in relation to the Iraq war as indicative of this.
- A2.529 Professor Barnett stated that a broadcaster's output could be shifted without 'heavy-handed intervention'. He said that plurality did not only mean allowing opposing views to be aired on matters of controversy, but that it involved recognising that corporate influence could be exercised in a number of ways throughout a media company's output, and that a prevalent "news culture" could reflect the worldview of an interventionist owner without breaching any statutes on impartiality.
- A2.530 The submission said that corporate values and editorial positions were likely to be heavily influenced by the commercial interests of the parent company. It stated that News Corp had previously used its editorial presence to generate interest in new product launches, pricing innovations, major sports contracts or Hollywood movies. Conversely, News Corp had also, in Professor Barnett's view, failed to publicise rival initiatives on occasions, or distorted coverage against in this respect.
- A2.531 Professor Barnett gave examples of this practice, including the establishment of the Sadler Inquiry on cross-promotion following complaints from British Satellite Broadcasting over the amount of promotion that News Corp titles were granting to the launch of Sky in 1989.
- A2.532 The submission stated that if the transaction were approved, similar editorial pressures could be applied which would lead to extensive reporting of negative stories involving competitors, or minimal coverage of controversial stories related to News Corp itself, such as the recent phone hacking allegations.
- A2.533 Professor Barnett rejected arguments that there an 'explosion' of news and information outlets (most notably through the internet) had rendered any merger restrictions unnecessary. He highlighted that the origination of news stories was still largely undertaken by mainstream news organisations, and that the role of television as the primary source of news remained for most people. Professor Barnett emphasised the latter point, highlighting that the importance of television had remained high despite technological changes, and that this indicated that it was likely to remain significant in the future.
- A2.534 Professor Barnett stated that this analysis was applicable to content types beyond news and journalism, given that a 'corporate ethos' could spread through all

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aspects of a media organisation's operations, including the commissioning of content such as drama or comedy.

- A2.535 The submission concluded by stating that there were arguably already too few voices dominating the main media outlets, and to reduce this further would be contrary to the public interest.