

 News Corporation



## **News Corporation/ BskyB**

Presentation to the Office of  
Communications  
22 November 2010

**Confidential**

# **Agenda**

- 1. Background**
- 2. The legal framework and relevant public interest consideration**
- 3. The Transaction will not change the editorial influence over Sky News**
- 4. No impact on setting of the news agenda**
- 5. Sufficient plurality post-Transaction**
- 6. Conclusions**

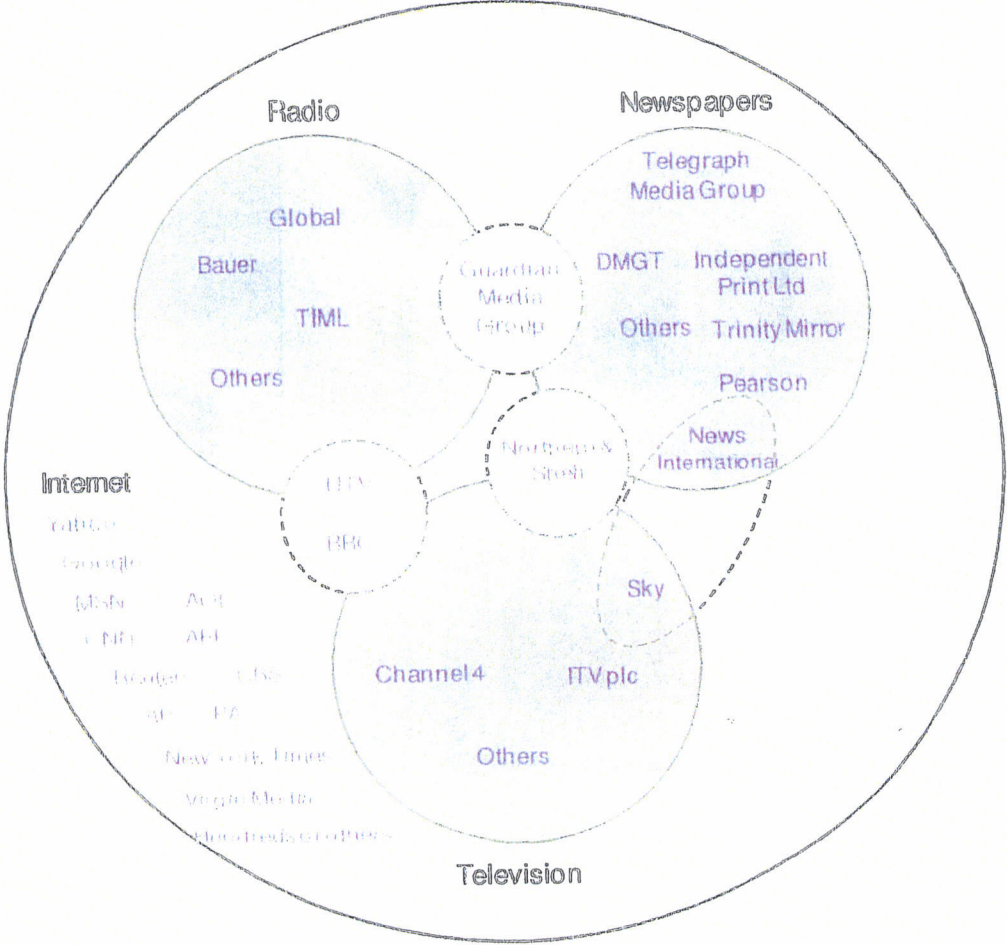
# Background

Background information

# Rationale

- **Transaction allows News Corp to develop and consolidate a core business**
  - **diversifying the geographic scope** of its activities by acquiring a significant presence in two markets, such as the UK and Ireland, where, as of today, News Corp's activities in the TV sector are rather limited
  - **diversifying sources of earnings** by consolidating a business, such as BSkyB's business, whose earnings are less dependent on advertising than other News Corp activities in the UK/ Ireland and elsewhere

# UK news provision by medium and cross-media



Source: Ofcom and FTI

Google News

Bloomberg NEWS

YAHOO! NEWS

TIMES ONLINE

Telegraph.co.uk

Daily Mail

msn News

ACL NEWS

The Daily Telegraph

art news blog

MENTERS

NEWS OF THE WORLD

THE TIMES

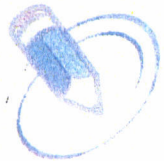
Blogger

Blog Network

FRANCE 24

guardian

guardian



THE INDEPENDENT

VEJOURNAL

BBC RADIO 1

Channel 4 News

itv NEWS

FT

PRIVATE EYE

orange

channel 4

The Economist

FINANCIAL TIMES

NewStatesman



ALJAZEERA

BBC NEWS 24

BBC NEWS

5 NEWS

SKY NEWS

# The legal framework and relevant public interest consideration

# The legal framework

- A **qualitative assessment** of the range and variety of voices available to audiences, taking into account both external and internal plurality
- Focus of analysis should be the provision of **news**
- Transaction can conceivably only affect a **cross-media audience**, if at all
- **Does the Transaction result in insufficient plurality?**



# Public interest consideration

- Need to consider whether there are **serious** public interest concerns
- Public interest identified is:
  - “the need, in relation to every audience in the UK....for there to be a sufficient plurality of persons with control of media enterprises serving that audience” (s58(2C)(a) EA 02)
- In 2007, in BSkyB/ ITV the CC considered in detail what an assessment of the sufficiency of plurality requires
- It should not be necessary for Ofcom to re-open debate where there have already been clear findings

# Plurality requires assessment of the range and number of voices

- In BSkyB/ ITV the CC described its process as follows:

“We took the concept of plurality of persons with control of media enterprises to refer both to the range and number of persons with control of media enterprises. ***We concluded that a plurality of control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences.*** We thought it important to draw a distinction between the plurality of persons with control of media enterprises and the implications of that plurality for the range of information and views made available to audiences. We also thought that it was appropriate to distinguish between the range of information, and views that are provided across separate independent media groups (external plurality) and the range that are provided within individual media groups (internal plurality)” (para. 5.32)
- The Court of Appeal confirmed that a plurality analysis involves consideration of more than just number and must encompass both internal and external plurality

# **Focus of analysis should be news**

- The CC decided in BSkyB/ ITV that the focus of analysis should be on the provision of news:
  - "We concluded that a plurality of control within the media is a matter of public interest because it may affect the range of information and views provided to different audiences" (para 5.10)
  - "The parties overlap in a broad range of content, but news and current affairs are the genres most closely connected with the formation of public opinion about issues of national significance through the communication of a range of information and views" (para. 5.32)
- Consideration of other types of content provision, as raised in Ofcom's consultation document, does not assist in assessing plurality and should be regarded as irrelevant
- Supply of raw news to third parties (like Channel 5 and radios) which do not confer control over editorial policy is **not** relevant

# **Transaction can conceivably only affect a cross-media audience, if at all**

- The only possible impact is on **cross-media** audiences looking at provision and consumption of news from TV, radio, newspapers, magazines and online
- **In the UK News Corp is mainly a newspaper enterprise (for these purposes) and Sky serves mainly a TV audience**
- The Transaction would not reduce the number of controllers of TV news broadcasters (Sky, the BBC, ITV and Channel 4 remain in entirely separate control)
- The Transaction would not reduce the number of controllers of newspaper enterprises (NI, DMGT, Trinity Mirror, N&S, Telegraph, Guardian, Independent and Pearson remain in entirely separate control)

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

- Once the Secretary of State has established what **qualitatively** changes post-Transaction as compared with pre-Transaction, and for which audience, he must then assess whether that change results in sufficiency of plurality
- There is no indication that Parliament considered plurality to be insufficient at the time of Communications Act 2003
- In BSkyB/ ITV, BSkyB and NI were treated as a single enterprise
- On that basis, an acquisition by BSkyB of material influence over a more significant news broadcaster (ITV) was **not** found to threaten plurality
- **Today there is an even more rich and diverse media environment**

**The transaction will not change the editorial  
influence over Sky News**

# Overview

- UK authorities have recognised that News Corp has a strong degree of commercial influence over BSkyB
- Sky News has always been editorially independent, regardless of the degree of influence News Corp has enjoyed or exercised over BSkyB's commercial policy over the years, as recognised by the CC in the BSky/ ITV case
- **A stepping up in the level of News Corp's influence over BSkyB to full legal control will not jeopardise the editorial independence of Sky News**

# **UK authorities have recognised that News Corp has a degree of control over BSkyB when reviewing BSkyB/ ITV**

- **OFT**
  - “[BSkyB’s] largest shareholder is News Corporation (News Corp) with a 39.02 per cent stake, along with several directorships, which is sufficient to confer control over BSkyB” (OFT Report, para. 25)
- **CC**
  - “News Corporation [has] material influence over BSkyB” (CC Report para. 5.64)
- **Ofcom**
  - Review of the BSkyB/ ITV transaction on the basis that it established an ownership link between ITV and News Corp whereby News Corp and BSkyB were deemed to be part of the same enterprise (Ofcom Report, paras. 4.4 – 4.7)
- **CAT**
  - Notes that Ofcom, in its initial report, “assumed that Sky is or may be controlled by News Corporation (39.1% shareholding held through a number of News Corporation subsidiaries)” (CAT Judgment, para. 247)



# **Commercial influence does not necessarily equate with editorial influence over Sky News**

"when it comes to assessing the plurality of the aggregate number of relevant controllers and to considering the sufficiency of that plurality, the Commission may, and should, take into account the ***actual extent of the control exercised and exercisable over a relevant enterprise by another***, whether it is a case of deemed control resulting from material influence under section 26 or rather one of actual common ownership or control"

(Court of Appeal Judgment, BSkyB/ ITV, para. 121)

# **Sky News has always enjoyed editorial independence**

- **Sky News has always been editorially independent, regardless of the degree of influence News Corp has enjoyed or exercised over BSkyB's commercial policy over the years, as recognised by the CC in the BSkyB/ ITV case**

**“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” (para. 5.57)**

# **News Corp already has commercial influence over BSkyB**

- News Corp holds 39.14% of issued equity capital of BSkyB
- 4 of the 12 BSkyB non-executive directors hold executive positions at News Corp
  - James Murdoch (non-executive director and Chairman of BSkyB)
  - David F. DeVoe (non-executive director of BSkyB)
  - Thomas Mockridge (non-executive director and CEO of Sky Italia)
  - Arthur Siskind (non-executive director of BSkyB)
- Active role of James Murdoch as Chairman

# **No material change in the *status quo***

- **BSkyB's editorial policy is not a matter for Board determination**
- **News Corp directors have not sought to influence the editorial policy Sky News even in circumstances where it is the major shareholder with material influence over commercial policy**
- **Sky News editorial directors are experienced individuals, each with expertise to manage and direct the editorial policy of Sky News**
- **Independent directors have not had to "defend" the editorial policy of Sky News against influence by News Corp executives**
- **News Corp has no special arrangements with Sky News which would confer on it control over editorial policy**

# **Regulatory safeguards and a culture of editorial independence**

- Impartiality requirements bolster a culture of editorial independence, as recognised by the CC in BSkyB/ITV

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

# **No impact on setting of the news agenda**

# Highly unlikely that News could influence the wider news agenda post-Transaction

News Corp would need to be able to influence Sky's news agenda ...

... and this would need to lead to a change in the wider news agenda

But there are major constraints in both cases:

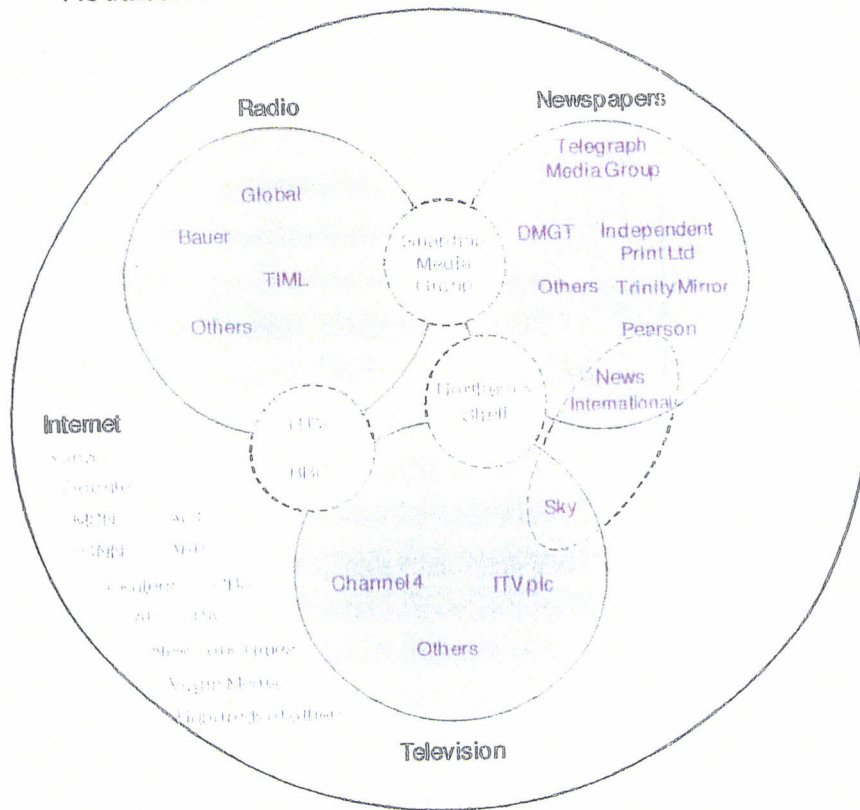
- Audiences have very particular expectations of TV news, which is a powerful force for a similarity between outlets
- The TV news agenda is mainly driven by events of the day and access to shared news gathering resources
- Impartiality requirements are important constraints, since they do influence story choice as well as how stories are treated
- For areas where plurality is critical (eg election coverage), it is inconceivable that a broadcaster would ignore the topic, and once covering a story, impartiality rules apply
- Multiple requirements of the Broadcast Code reduces the scope for any integration of operations with newspapers
- News rooms have their own strong independent culture
- Consumers are 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
- The BBC is 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. It is most unlikely to become a follower of a News Corp/ Sky News agenda
- Sky has at most a 6% share of TV news consumption, suggesting limited ability to influence third parties
- Neither News Corp nor Sky are particularly important sources of stories for other outlets

# Sufficient plurality post-Transaction

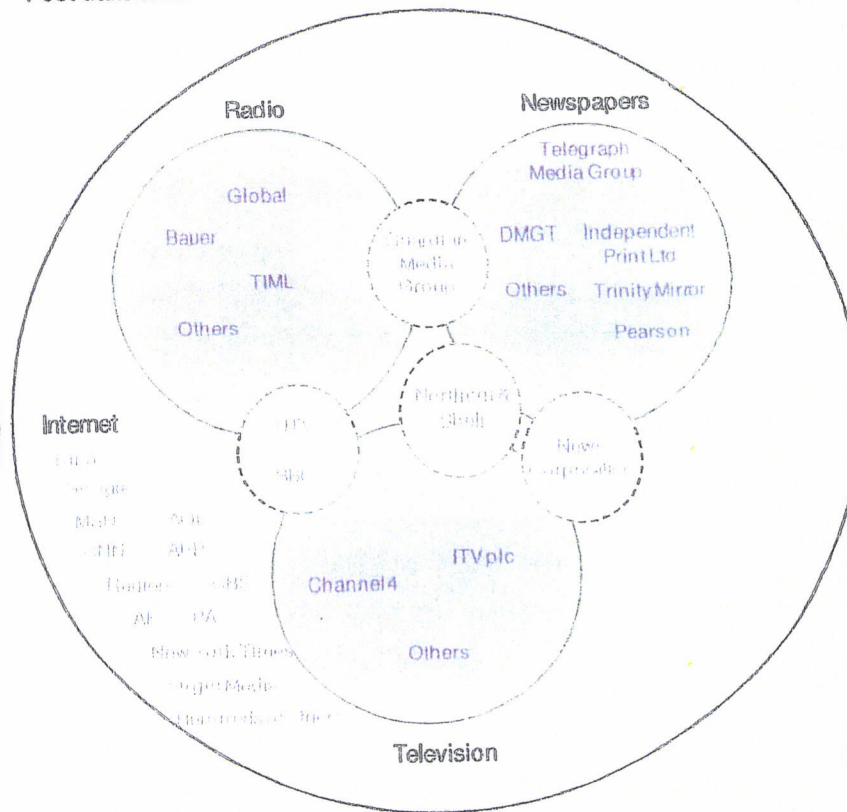


# Pre and post-Transaction: Supply side

Pre-transaction



Post-transaction



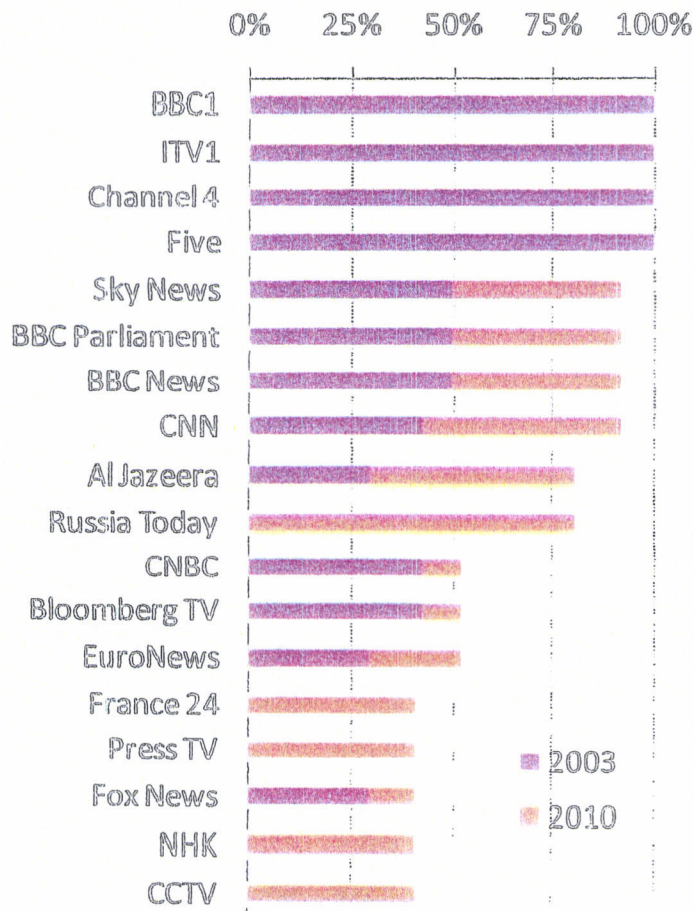
Source: Ofcom, FTI

**Does the Transaction result in sufficient plurality?**

No change in TV  
No change in press  
No change in radio

# Much wider array of TV news available

Availability of TV News sources, 2003 and 2010  
(Portion of households)



- A significantly wider array of news is now available to consumers, including channels from owners that are new to the UK or new to many households
- This is as a result of:
  - More households taking digital TV
  - Existing channels spreading on to more platforms (e.g. CNN joining Freeview)
  - New channels entering the market (e.g. Russia Today)

Note: ITV News Channel left the market in 2005

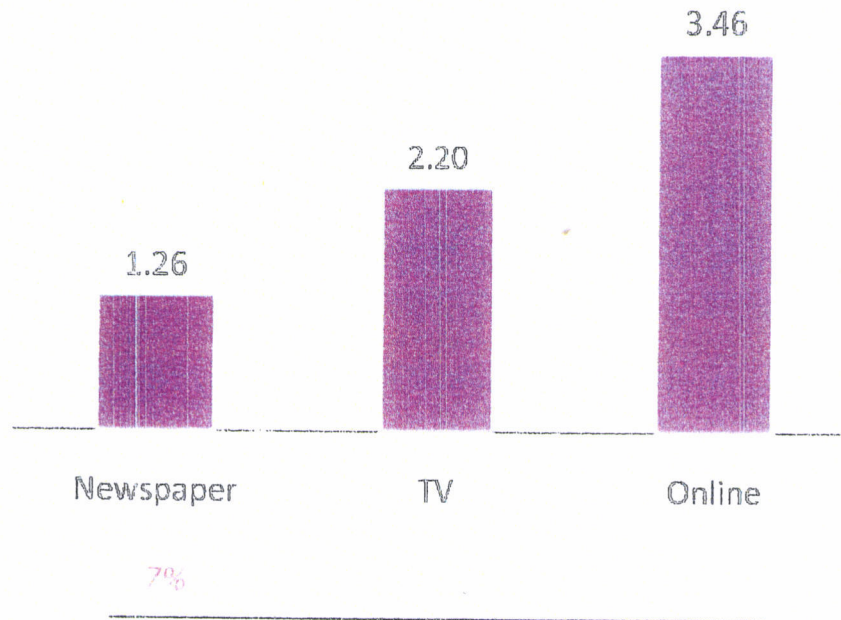
# Main changes in news provision since 2003

Medium	Changes in provision of news	Access to news
TV	New digital channels (e.g. Al Jazeera, France 24, Press TV) Several digital channels available on Freeview	Increased digital penetration (48% in 2003 to 92.7% by Q2 2010)
Newspapers	Independent launched 'I' newspaper in October 2010	Reduced average daily circulation (-3.5% CAGR) Increased freesheets Some regional closures
Radio	Fewer regulations on localness	Increased DAB penetration (2% in 2003 to 35% by Q1 2010). Reduced radio listening (CAGR -1.5%)
Internet	Increased number of news sites (Comscore in 2010 tracks UK visitors to more than 475 news websites) Increased range of news sites (range of owners – press agencies, other off-line media, specialist sites, aggregators, including regional, national and global providers) Increased blogs Increased apps Increased personalisation Increased broadcaster live and catch-up services (e.g. ITV Player launched 2008) available on the internet	Increased online penetration (64% in 2003 to 73% by 2010) Increased broadband penetration (52% in 2003 to 71% by Q1 2010) Increased reach of online services (broadband 11% in 2003 to 71% by 2010) Increased access to broadband by other devices (mobile phones (23%) and tablets (2% of households by Q1 2010)) Increased access to online radio, online news websites and broadcaster catch-up services.

Source: Ofcom; IPA Touchpoints; Ofcom Digital Television Update - 2010 Q2, Communications Market Report, Ofcom, 19 August 2010; Comscore; FTI research

# Consumption shifting to more plural media

News sources used per news user, by medium

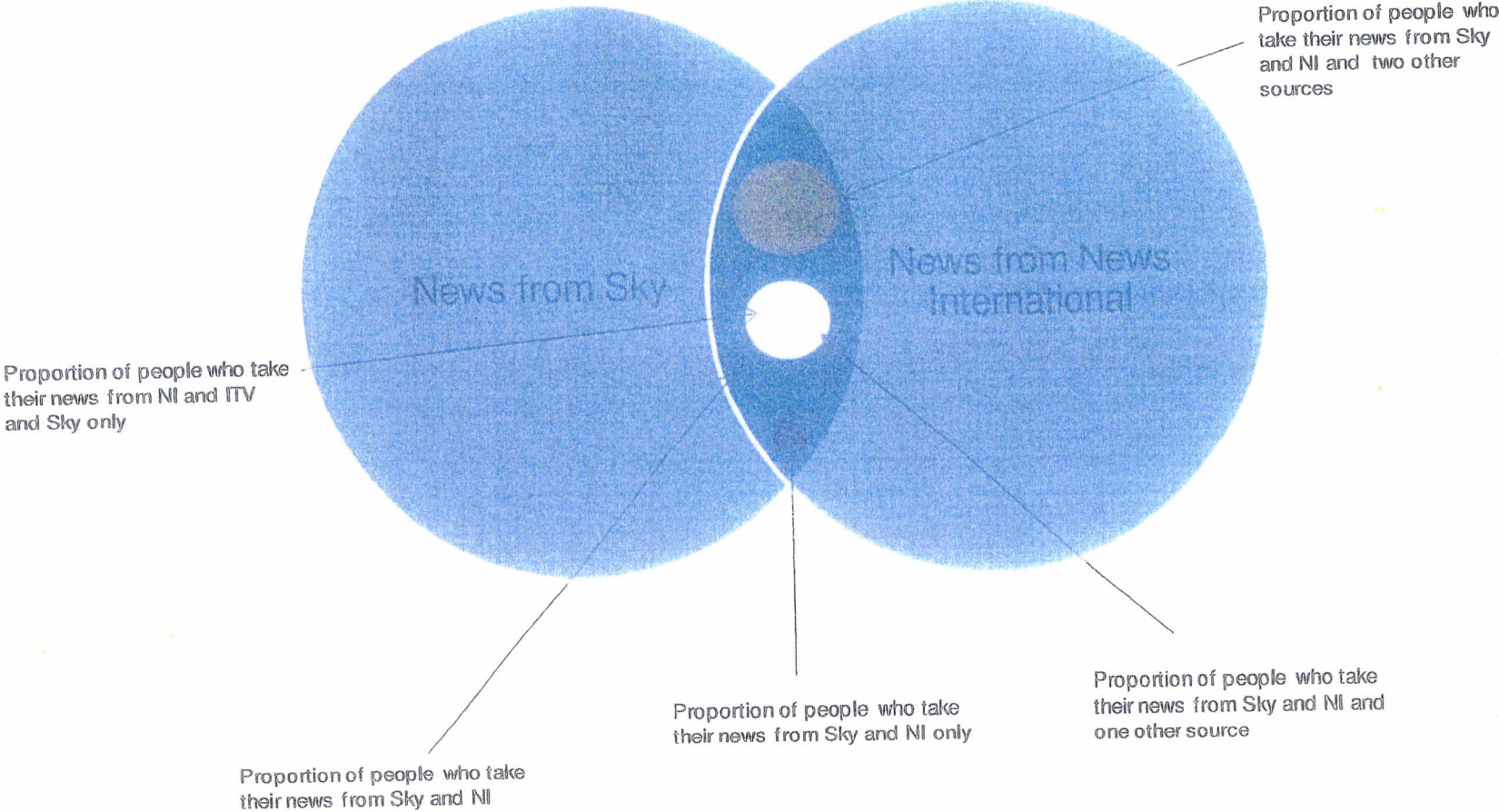


*Percentage points change since 2004 of those saying this medium is their 'main source' of news*

Source: Ofcom, NRS, BARB, ComScore, Perspective analysis (per weekday)

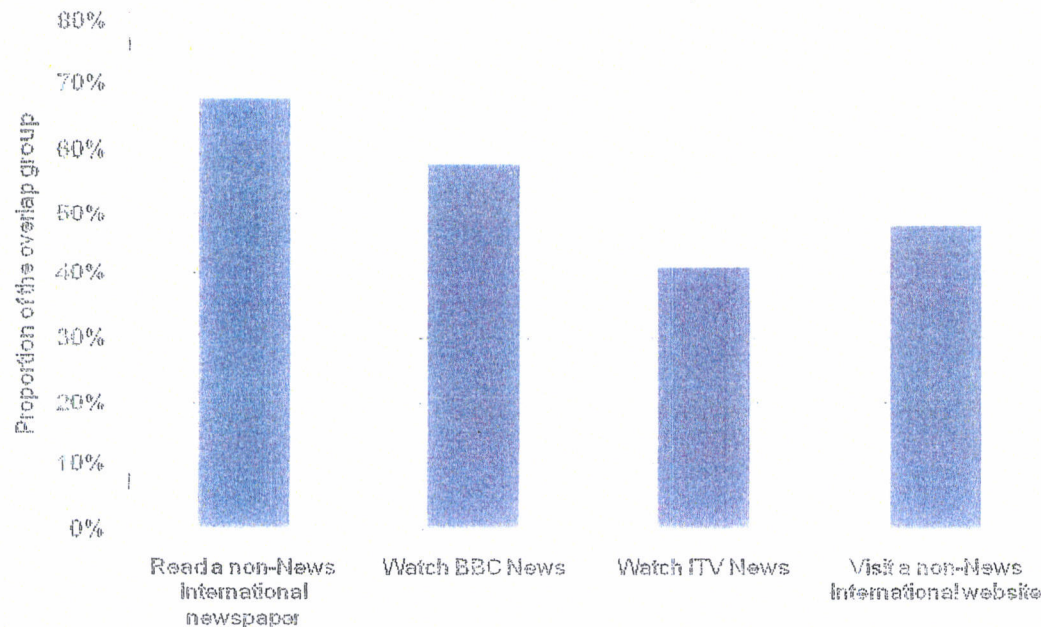
- Newspapers, a media where users typically consume from a single outlet on most weekdays, are falling in importance
- Conversely the importance of plural sources is growing, particularly the internet and TV
- Online consumers are promiscuous in their use of different sources
  - Many more sources are available
  - Barriers to switching are very low and content is mostly free (56% say they look at different newspapers online than those they look at in print)
  - News aggregators and search result in 'topic led' consumption, not outlet led
- **As a result the typical consumer is exposed to a much wider variety of news today than in 2003**

# Evidence on news access, provision and consumption habits shows the proportion (in the overlap) is likely to be low



# The overlap group represents only 4% of the UK population (6% including online)

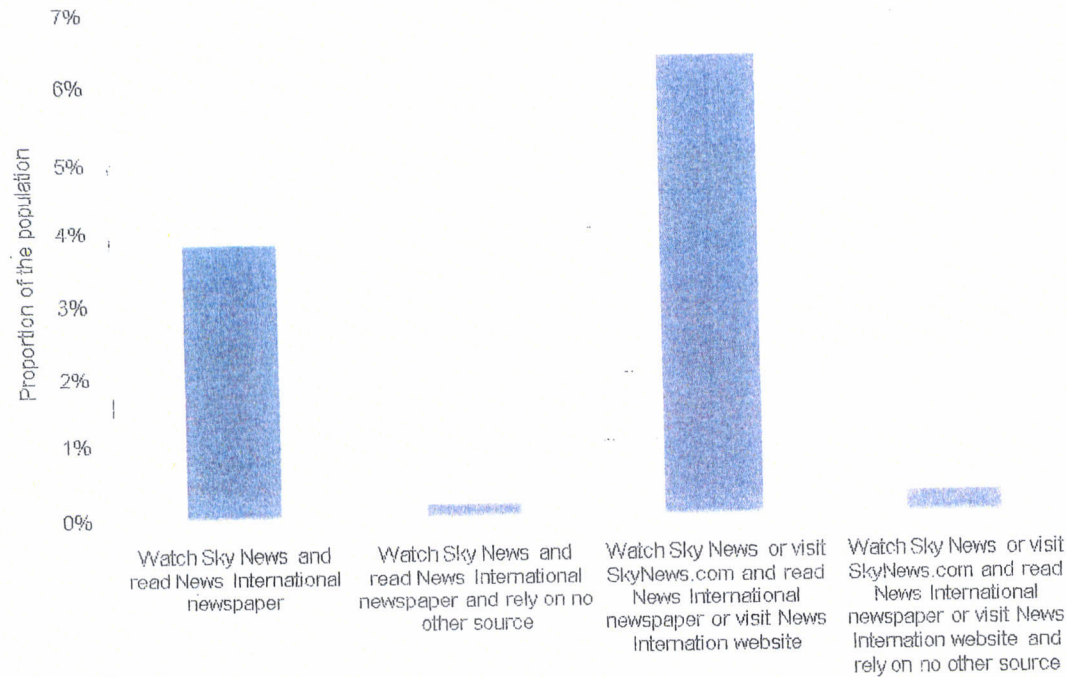
News consumption behaviour of the proportion of the population who watch Sky News or visit SkyNews.com and read News International newspaper or visit News International website (the overlap group)



And approximately 96% of the overlap group rely on other news sources in addition to Sky and News International sources

Source: TGI

# Assessment of the overlap group



Source: TGI

0.2%

0.3%

Only **0.3%** of the UK population receive news from **only Sky and News International**

Those consumers in any event have access to additional sources

These results are similar in magnitude to the findings of the CC in BskyB/ ITV which concluded that no more than 1% of the population received news from only ITV and Sky and/ or News International

**We have to conclude that the Transaction will result in sufficiency of cross-media plurality**

# Conclusion

- Sky News has always been editorially independent, regardless of the degree of influence News Corp has enjoyed or exercised over BSkyB's commercial policy over the years
- The change to full legal control will not change this as editorial independence for UK TV broadcasters is deeply rooted in the regulatory and cultural grain of the industry
- Any effects of the Transaction on the relevant cross media audience (if at all) are likely to be minimal
- The strength and number of cross media voices has increased since enactment of EA 02 and will continue to increase
- **There is clearly a sufficient plurality of voices available to cross-media audiences following the Transaction**