



## **News Corporation/ BSkyB**

**Preliminary comments on the Issues Letter  
15 December 2010**

# Agenda

1. The concerns expressed in the Issues Letter are based on the wrong test and therefore cannot be relied by SoS
2. Ofcom's "Issue A": News' ability to influence cross-media market
3. Ofcom's "Issues B & C": internal plurality / existing regulatory constraints
4. Ofcom's "Issue D": News' influence over other media outlets
5. Ofcom's forward view of the market
6. Ofcom's "Issues E & F" are highly relevant and should be an integral part of the qualitative analysis

**Statutory question to be addressed in  
Report to SoS v. approach in the Issues  
Letter**

# The Issues Letter does not address question to be addressed by SoS under Enterprise Act

- Ofcom is obliged under s4A(3) of the 2003 Order to report to the Secretary of State on the relevant public interest consideration (PIC) which he has identified
- In this case the PIC 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”*
- The ultimate purpose of the PIC is clearly set out in the letter from BIS to News of 25 November 2010:
  - *“[...] to prevent unacceptable levels of media and cross-media dominance and ensure a minimum level of plurality”*

# As a result of application of an incorrect test...

- Ofcom's focus is whether the transaction will strengthen News/Sky's relative position compared with other enterprises
  - why is a strengthening of relative market position relevant in assessing the sufficiency of plurality?
  - an increase in the "relative strength" of News would not lead to insufficient plurality in the range and variety of other voices
- The Issues Letter:
  - Does not assess – as it should do – the range and variety of views available to any relevant audience
  - Does not contain any view on whether plurality is "sufficient" pre-Transaction or post-Transaction
  - Does not engage with the reality of what has changed as a result of the Transaction given that News has already been found to have material influence over Sky
- Multi-sourcing in consumption of news and the role of online news provision, both of which ADD to plurality are dismissed/relegated to sections E and F
- The specific concerns provisionally identified by Ofcom do not provide any indication that the Transaction would lead to insufficient plurality
- Moreover those concerns contain a number of flaws in and of themselves

# Ofcom's "Issue A": News' ability to influence cross-media market

# Failures in numerical and qualitative analysis of News' relative strength and influence

- The Issues Letter indicates that Ofcom has conducted an analysis of “*number, range and variety and strength*” - in fact only ‘headcount’ and relative strength are assessed
- Serious questions about the assessment as a whole:
  - Attribution of the audience share of media enterprises which currently choose to source wholesale news from Sky to Sky
  - BBC seems to be downplayed or overlooked
  - Role of broadcasters with a small audience share (who nevertheless contribute to plurality)
  - Role of online news providers
  - Importance of multi-sourcing in news consumption

# Preliminary Finding#1: Reduction in controllers of media enterprises

"Across media platforms there would be a reduction in the number of persons controlling media enterprises. Following the proposed acquisition, the number of persons controlling media enterprises will decrease from 11 to 10 if we consider wholesale news provision; or 16 to 15 if we consider channels or publishers as opposed to from whom they source their wholesale news. **This suggests there is likely to be a reduction in the range and variety of voices within the market**" (emphasis added) (para. 21)

- How does a reduction by one in the number of providers (which will apply in all mergers) point to an insufficiency of plurality?
- Reduction in number  $\neq$  reduction in "*the range and variety*" of voices
- Analysis apparently disregards:
  - Some newspaper enterprises (Johnston Press)
  - Local radio broadcasters
  - A wide range of media controllers with a less than 1% share of TV audiences who collectively make a significant contribution to plurality
- Relevance of multi-sourcing by consumers/online provision of news?



# Preliminary Finding#2: Unmatched presence and relative standing

*"Increase in News Corp's:*

- 1. Presence across media platforms;*
- 2. Relative share of cross media news consumption;*
- 3. Ability to influence; and*
- 4. Relative resources compared to other news providers" (para. 22)*

*"We are concerned that News Corp and Sky combined would have a presence and relative standing across the main news platforms that would be unmatched by any other news provider" (para. 26)*

- What is the link between an "unmatched" presence cross platforms and insufficient plurality?
- Para 22. is not correct
- The BBC is by far the strongest and most influential news organisation in the UK (54% - see Para 29)
- Ofcom looks at share data in the context of newspapers but does not reference Sky News' relatively low share in broadcast news
- Emphasis on the reach of Sky News but no indication of comparative reach of other broadcasters
- Relevance of the relative strength of individual media components - newspaper readership is declining, online is growing

# Preliminary Finding#3: Increase in share of voice

*"We are concerned that the proposed transaction will result in an increase in News Corp's relative strength of voice, as measured by share of news and current affairs consumption in the context of a cross media market with one less large provider of news and current affairs"*  
(para. 34)

- What is the link between "relative strength of voice" and insufficient plurality?
- Ofcom relies on two sources of data (i) a new survey it has conducted and (ii) Enders Analysis. Data which pre-date this Transaction are not considered - cf the FTI report which uses pre-existing third party data
- Ofcom's new data appear to differ in their findings from other sources (e.g. most newspapers register extremely low)
- As Ofcom notes, "TV news is one of the most powerful news media" (para. 25) - in this segment, Sky News has only 6.3%
- At worst, Ofcom identifies a 15% share of news (13% excluding wholesale) across platforms - would shares at this level really cause Ofcom concerns?

# Preliminary Finding #4: Ability to influence public opinion

*"Our concern is that access to TV news may give News Corp a greater ability to influence the news agenda and public opinion as a result of the proposed acquisition" (para. 37)*

- How does a greater ability to influence link with an assessment of the sufficiency of plurality?

## Perspective key findings

- News outlets cite a wide range of sources for their stories; at least 10 of the sources considered were cited by each of the news outlets
- BBC is a consistently important news source, being the most cited for all outlets except for the Guardian and Reuters (where it was second)
- Tabloids such as the Mirror cite far fewer of the news outlets, although the BBC remains the most frequently mentioned
- Combined, the Times and Sky make up 6% of the Guardian's citations of the set of sources analysed (a subset of the universe), 10% of the BBC's and 11% of Reuters'

# Preliminary Finding#5: Access to resources

*"News Corp and Sky are two of the best resourced providers of news in the UK, both in terms of financial and journalistic resources. Both have a significant ability to invest and innovate in news provision given their scale and relative financial strength. Third parties have argued that the BBC is the only provider with a comparable scale and ability to invest and innovate. It has been argued that the proposed acquisition could mean the loss of one of the most financially secure independent news providers, creating a market structure that sees two organisations (BBC and News Corp / Sky) of significant scale in provision of news and current affairs, with other players substantially smaller in terms of scale and resources" (para.38)*

- Does Ofcom regard this as a key finding?
- Does Ofcom believe this is relevant to a sufficiency of plurality analysis?
- On what basis could it be assumed that apart from News and Sky only the BBC is able to invest and innovate?
- Other significant media enterprises who have invested in the provision of news and who have access to considerable resources include:
  - TV: ITV, Channel 5 (wholly owned by Northern & Shell), CNBC, Bloomberg,
  - Newspapers: Associated Press, Independent (owned by Lebedev), Pearson (Financial Times), Guardian
- Also:
  - News specialists and online providers: Thomson Reuters, Google, Yahoo, AOL and countless others

# Preliminary Finding#6: Market exit

*"our preliminary view is that any imbalance in resources also raises additional future risks given the prospect of market exit, discussed further below" (para. 39)*

- Surely cannot be true that "any imbalance" would give rise to risks?
- Has Ofcom considered the remoteness of this risk, i.e. the proximity or otherwise of any concern to the transaction?
- A wide variety of players are able to invest and are investing in the provision of news (see previous slide)
- Which of the existing media enterprises does Ofcom consider to be at real risk of exiting the market as a result of the transaction?
- Is this expected to occur in the short term?
- How expected to lead to an insufficient plurality?

# **Ofcom's "Issues B & C": internal plurality / existing regulatory constraints**

# Ofcom dismisses the role of internal plurality and existing regulatory constraints

- Do internal plurality considerations in relation to TV news have some role to play in the overall sufficiency of plurality assessment?
- News believes that the Broadcasting Code's role is a key "safeguard" of plurality in the broadcasting context – News has counsel's opinion re application of the Code to issues of selection and prominence of news
- Why does Ofcom not rely on clear findings in this respect by the CC?

# Preliminary Finding #7: Internal plurality

*"The approach we have taken is that where a proprietor owns 100% of a media enterprise, and in light of the conflicting representations that have been put to us, we cannot properly rely on internal plurality as providing sufficient plurality in the provision of news and current affairs" (para. 41)*

- As recognised by the CC in the Sky/ ITV case, internal plurality and a culture of editorial independence in TV news contribute to plurality:
  - “... we concluded that the regulatory mechanisms, combined with a strong **culture of editorial independence within television news production**, were likely to be effective in preventing any prejudice to the independence of ITV news” (emphasis added) (CC Report, Summary, para. 41)
- Ofcom does not need to rely exclusively on "internal plurality" to satisfy itself that there remains sufficient (external) plurality post-transaction but internal plurality adds to the level of external plurality
- News has not attempted to drive or influence Sky News' editorial agenda in the past and there is no basis to conclude that it would have greater ability to do so post-transaction



# Preliminary Finding#8: Impartiality requirements in the Broadcasting Code

*"The impartiality requirements of Ofcom's Broadcasting Code govern the impartiality and accuracy of news as broadcast. However, these rules do not apply to the selection of news or current affairs stories for broadcast, i.e. the setting of the news agenda. Our preliminary view is that the existing impartiality requirements do not address potential concerns" (para. 43)*

- The CC noted in Sky/ 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" (CC Report, para. 5.54)*
- There is no reason why News would jeopardise Sky News' reputation for impartial reporting by favouring News' titles since it has no economic or other incentive to do so
- Impartiality requirements also apply to the balanced selection of stories as well as the relative prominence accorded

# Ofcom's "Issue D": News' influence over other media outlets

# Preliminary Finding#9: Influence over other news outlets

*"As we noted above, there is no certainty that Sky News would retain editorial independence from News Corp post-transaction. Our concern is that the merged entity may be able to exert some influence over the news agenda of other outlets" (para. 47)*

- How does “some influence” lead to an insufficiency of plurality?
- Two issues: (i) whether News will have influence over Sky News' agenda and (ii) whether News will influence the broader news agenda in the UK
- On (i) see above
- On (ii) it does not follow that, if Sky News lost its editorial independence, the merged entity would or may be able to exert greater influence than News has today over the news agenda of other outlets
- Data from Perspective as to the BBC's influence on the news agenda (mentioned above) shows any impact from the transaction on the wider news agenda would be minimal

# Ofcom's forward view of the market

# **Forward-looking “concerns” identified are irrelevant to an assessment of plurality**

- Ofcom's theories of possible future concerns lack any direct or reasonably foreseeable connection with the Transaction
- If these concerns had any merit they would be part of a competition law analysis and outside Ofcom's jurisdiction
- The Transaction will only proceed as and when the European Commission has decided that it will not lead to a significant impediment to effective competition on any relevant market
- In addition:
  - Even taking its analysis at face value, Ofcom's theories of future harm seem exceedingly weak, penalise investment and innovation, and cannot possibly translate into plurality concerns
  - Ofcom does not attempt to make any clear assessment of the likelihood of any strategy adopted by Sky materially disadvantaging competitors, let alone having a material effect on the sufficiency of plurality

# Preliminary Finding#10: Cross-promotion

*"the proposed acquisition would create greater ability and incentive for Sky to reciprocate through either overt cross-promotion (e.g. direct references to sister titles) and more subtle forms (e.g. the use of Sky News audio-visual content on The Times website; sharing on-screen/visible "talent", such as correspondents, trailing stories). Both are potential ways to influence consumers of one news source to increase consumption of commercially related sources" (para. 50)*

- Ofcom recognises that *"incentives already exist for News international print titles to promote Sky"* (para. 50) and does not explain how or why these would be increased post-transaction
- Ofcom does not provide evidence that:
  - such strategies would be likely to be effective in influencing consumer purchasing habits
  - there would be a significant migration of consumers to News at the expense of rivals
  - insufficient plurality would result for the relevant cross-media audience

# Preliminary Finding#11: Bundling

*"However, there may be types and forms of bundling that build on Sky's unique presence in the platform market, its ability to bundle a range of services into a single product proposition drawing on multiple distribution channels, and its direct relationship with a significant base of customers that were less replicable by other news providers. This could in turn weaken plurality in the situation where other news providers found they could not offer customers a similar quality of product or level of functionality" (para. 54)*

- As Ofcom recognises in para. 54, such strategies would be available today
- The transaction does not materially enhance News' ability and incentives to engage in bundling and Ofcom does not explain why it believes the contrary to be true
- Even if this were the case, there is no evidence that this would be likely to lead to the exit of other media players or that this would result in insufficient plurality

# Preliminary Finding#12: Wholesale provision

*"The risk of a change in wholesale news provision in a way that reduced plurality (for example a combined News Corp / Sky News winning the contract to provide wholesale news to Channel 4) is more significant where there is an asymmetry in the economic power between possible providers" (para. 55)*

- *Ofcom notes that its "preliminary view is that wholesale news provision is relevant for the purposes of reporting on the effects of the specified public interest consideration, although our preliminary view is also that this would not materially affect the analysis set out below. This is because we are concerned with the sufficiency of plurality of persons with control of media enterprises serving the audiences we consider relevant" (emphasis added) (para. 10)*
- *Even on Ofcom's analysis, the transaction can result at most in a 15% share of a cross-media audience including wholesale news provision and with the BBC accounting for 54% and ITN 14% (para. 64)*



# Preliminary Finding#13: Integration of newsrooms and operational synergies

*"While this is the case at present, the economics of broadcasting and of news in particular imply a tendency towards concentration to reduce, where possible, the fixed costs of news production. Future opportunities for operational synergies may arise, for example joint development of platforms and technologies to deliver multi-media and cross media news and content propositions. A merged entity would be better placed to be able to effect such integration. This could involve some sharing of journalists or editorial staff, reducing internal plurality within the merged group" (para. 57)*

- Ofcom does not explain why operational synergies would lead to a reduction of internal plurality
- This is not the rationale of the Transaction
- News is not aware of any successful synergy of this kind
- Ofcom recognises various impediments to merged newsrooms:  
*"News Corp has indicated that it has no plans to integrate its news facilities at present and has not done so in the past... We note representations that such integration is difficult, notably in TV and newspaper mergers in part due to internal constraints created by the existing cultures of press and TV newsrooms" (emphasis added) (para. 56)*

**Ofcom's "Issues E & F" are highly relevant and should be an integral part of the qualitative analysis**

# Preliminary Finding#14: Multiple sources and critically challenging news

*"We do not at present consider that this information is particularly instructive in considering whether or not there is sufficient plurality" (para. 62)*

- Ofcom does not explain why the information is not "*particularly instructive*" or what conclusions, if any, it has in fact drawn from it
- The fact that consumers draw on multiple sources is highly relevant for plurality and the range and variety of voices available to consumers
- It shows that, even if the independence of Sky News were lost (which is not accepted), consumers would still have access to multiple sources of news in addition to News / Sky News

# Preliminary Finding#15: Role of online provision in the future

*"Our research suggests that to date online news consumption has not replaced traditional media. We also note that the internet often represents an additional distribution platform for news providers already present on other platforms and still has a relatively limited role as a source of stories that are not already covered in traditional media" (para. 64)*

- Ofcom does not explain why it apparently underweights online news simply because it has "not replaced traditional media"
- As Ofcom notes, the online news environment is rich and diverse. News would endorse Ofcom's finding that:  
*"When compared to traditional platforms, online platforms are characterised by a larger number of providers, given the lower barriers to content production and distribution. If these trends continue, over time the contribution of online sources to plurality will increase. We also note arguments that have been put to us on the nature of online consumption being more 'active' when compared to traditional media consumption, implying that online consumers may be less subject to the risk of agenda setting by news providers" (emphasis added) (para. 63)*
- On Ofcom's own assessment, online is and will continue to be important in injecting plurality into news consumption
- Ofcom recognises at para. 25 that *"use of online news is growing"*
- One of the key reasons why online is highly relevant is precisely that for many consumers online news adds rather than replace traditional media, thereby increasing plurality



# PERSPECTIVE

**Setting the news agenda:  
Media's use of other media outlets as a  
source for stories**

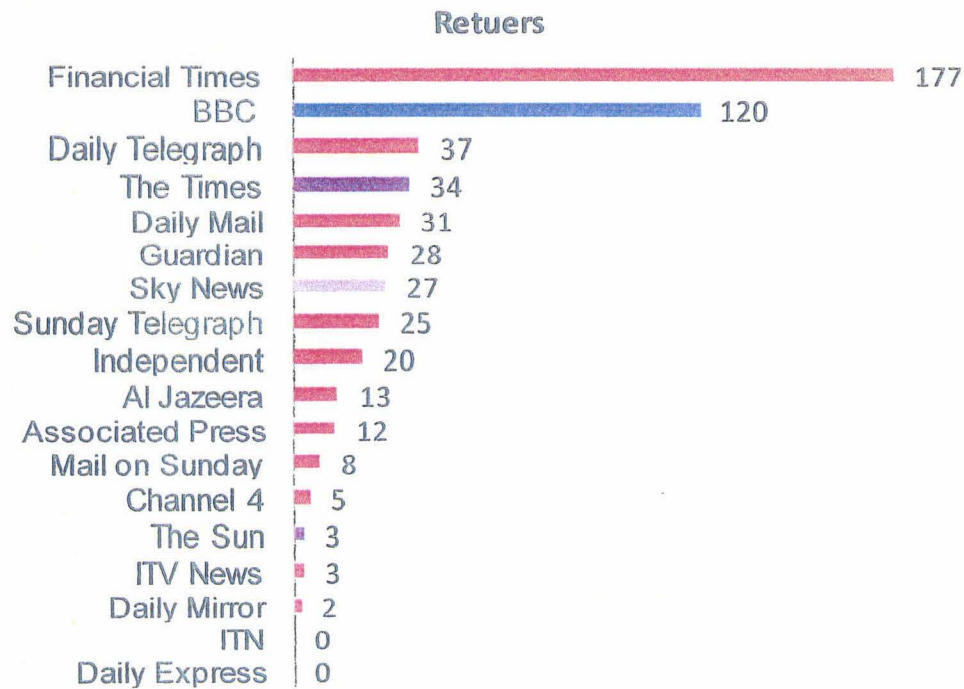
15<sup>th</sup> December 2010

## Key points

- To understand which news sources influence other news sources (and thereby potentially influence the wider news agenda), Perspective has analysed six months of news stories from a variety of UK news outlets, and measured the number of cross-citations of a set of key UK news sources. [See final slide for notes regarding methodology]
  
- Our key findings are:
  - News outlets cite a wide range of sources for their stories; at least 10 of the sources we considered were cited by each of the news outlets
  - The BBC is a consistently important news source, being the most cited for all outlets except for the Guardian and Reuters (where it was second)
  - Tabloids such as the Mirror cite far fewer of the news outlets, although the BBC remains the most frequently mentioned
  - The Times and Sky News' influence is only moderate (and in each case far greater than the Sun's).
  - While not a focus of this analysis, it is clear non-traditional news providers are increasingly important - to take an extreme case, WikiLeaks has been a more frequently cited news source for the Guardian over the last month than the Associated Press, Reuters, the BBC, The Times and Sky News combined

For Reuters, the FT and the BBC are particularly important news sources

*Count of cited sources of news stories*

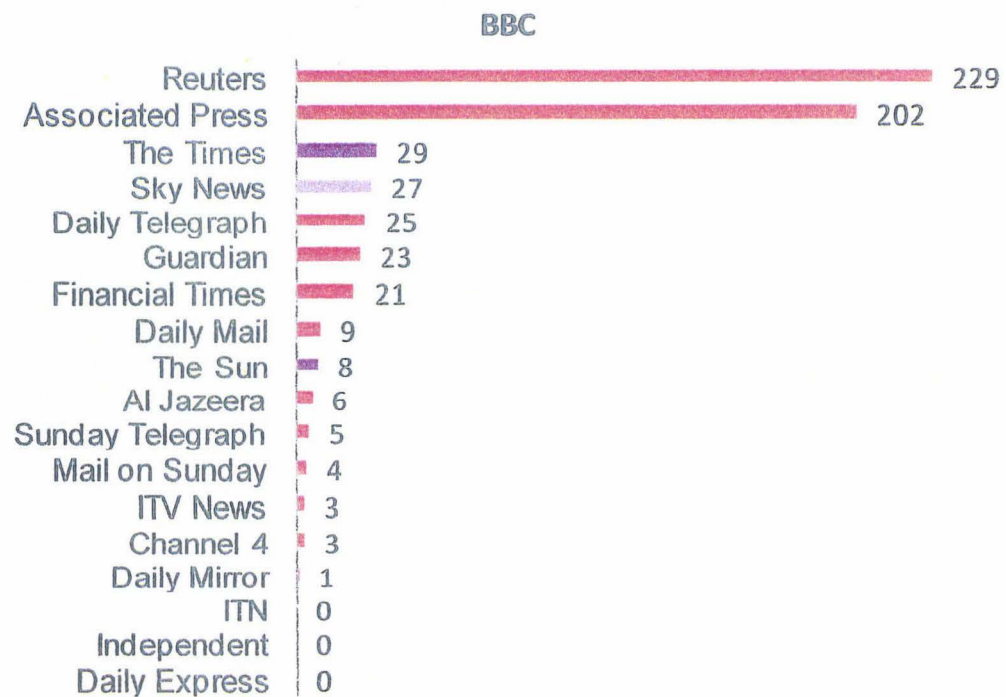


- The FT was the single most frequently cited news source for Reuters
- The BBC was also particularly important, with 120 citations



## For the BBC, news agencies play an integral role

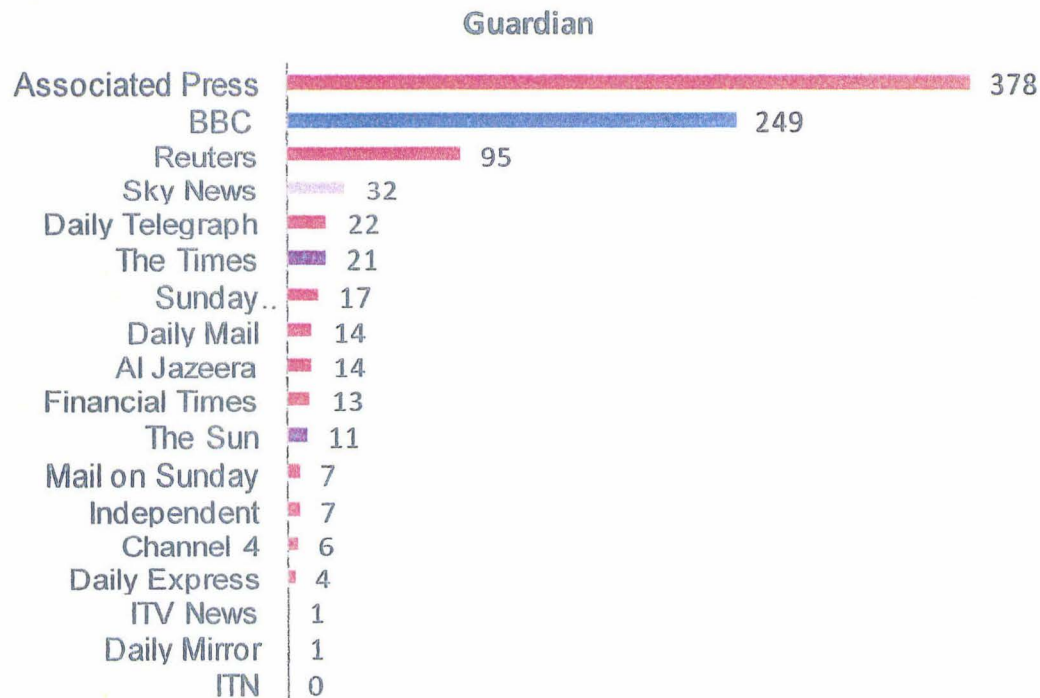
*Count of cited sources of news stories*



- 15 of the 18 publishers analysed were used as news sources for the BBC
- Reuters and Associated Press were cited as sources for over 430 news stories
- The Times and Sky News, however, were sourced in just 29 and 27 stories respectively

# For the Guardian, AP is the most frequently cited news source

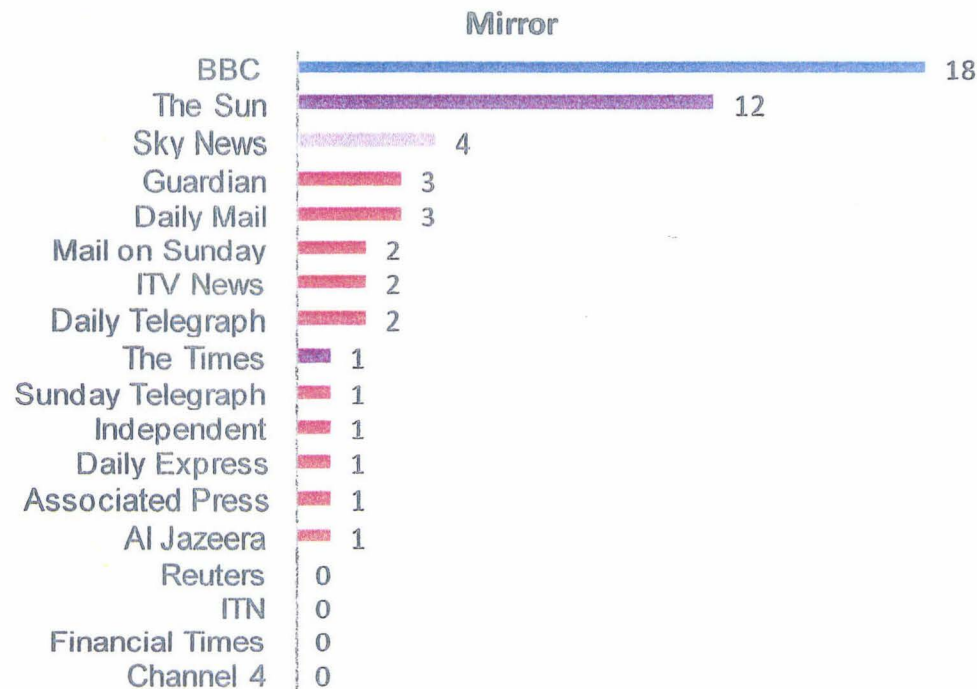
Count of cited sources of news stories



- Nearly 400 articles cite the Associated Press as a news source
- The BBC also plays an important role, with almost 250 news citations

## The Mirror cites comparatively few news sources

Count of cited sources of news stories



- The BBC is again the most frequently cited news source
- The Sun is the second source, but virtually all these stories were sports or entertainment related
- However, volumes are low, with comparatively few news sources cited by the Mirror

## Methodology

- The citations analysis is based on those stories tracked by Google News for 6 month period 1 June 2010 – 30 November 2010 that were available at 8-9 December 2010
- The following stories / cross references were excluded
  - Those about a media outlet rather than citing it (eg coverage of BBC Licence Fee settlement not counted as a citation of the BBC)
  - Historically referenced stories (e.g. quotes in a biography)
  - Stories from newspaper reviews / gossip columns