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Plurality Regulations – Still a Wise Market Intervention?

Robert Kenny
Communications Chambers

PLURALITY REGULATIONS – STILL A WISE MARKET INTERVENTION?

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ABSTRACT:
Plurality rules have long been used to ensure diverse ownership of media, with the expectation that this leads to the availability of diverse news coverage to citizens, which in turn supports democratic discourse. In several countries there is current debate as to whether plurality rules need to be strengthened, and particularly so in the United Kingdom, where News' bid for Sky and the subsequent phone-hacking scandal have brought plurality issues to the fore. However, fundamental developments in the market mean that the costs of plurality interventions are rising, and the benefits are falling. This paper examines how the costs and benefits of plurality regulation are changing, using the United Kingdom as a case study.

I. INTRODUCTION

Plurality rules (rules relating to the number of persons with control of media companies) have long been used to ensure diverse ownership of media, with the expectation that this leads to the availability of diverse news coverage to citizens, which in turn supports democratic discourse. In several countries there is current debate as to whether plurality rules need to be strengthened, and particularly so in the United Kingdom, where News' bid for Sky and the subsequent phone-hacking scandal have brought plurality issues to the fore.

However, fundamental developments in the market mean that the costs of plurality interventions are rising, and the benefits are falling. These developments include:

- the rapid growth of online news;
- the associated rise of multi-sourcing - the extent to which consumers hear news from many different sources;
- the disintermediation of news providers by politicians, organizations, and other subjects

* Robert Kenny is a founding member of Communications Chambers, which advises on issues of telecoms and media strategy and policy. He has worked extensively on issues of plurality, advising Sky, News International, Global Radio, and the BBC and has written reports for submission to Ofcom and the Leveson Inquiry.

of news coverage, who can now speak to citizens directly via the internet; and
- the serious economic challenges facing the newspaper business (and, to a lesser extent, TV news).

These trends suggest that citizens are likely hearing an ever-wider spectrum of opinion - plurality measured by consumption is rising. Conversely, the cost of plurality of ownership - or put another way, market fragmentation - is increasing. This calls into question the merits of increasingly strict controls of media ownership in pursuit of the benefits of plurality.

This paper examines how the costs and benefits of plurality regulation are changing, using the United Kingdom as a case study. My focus is on national news providers, though many of the same issues apply to regional and local news.

II. THE WANING BENEFITS OF PLURALITY RULES

A. The Expected Consequences of Plurality

Securing media plurality has been an objective of legislation around the world. While there are ancillary cultural goals, at heart the reason for seeking plurality has generally been to safeguard democratic discourse.

The European Commission noted in its 2007 report, "The European Union is committed to protecting media pluralism as an essential pillar of the right to information and freedom of expression."[1] In the United Kingdom the House of Lords Communications Committee described the thinking behind the U.K.'s plurality legislation[2] as follows:

> In 2001, the Government published a consultation paper on media ownership in which it was stated that "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." This was a sentiment shared by the previous Conservative administration "A free and diverse media are an indispensable part of the democratic process. They provide the multiplicity of voices and opinions that informs the public, influences opinion, and engenders political debate. They promote the culture of dissent which any healthy democracy must have. If one voice becomes too powerful, this process is placed in jeopardy and democracy is damaged.[3]

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[1] European Commission, *Media Pluralism in the Member States of the European Union* (January 2007).
[2] Communications Act 2003.
[3] House Of Lords Select Committee on Communications, *The ownership of the news* (June 27, 2008).

The plurality is a "proxy" objective, sought for its likely (but not certain) consequences for the content offered to consumers.

It is clear from this that plurality, as measured by number of media owners, is a means to an end - it does not have value in of itself, but rather through intermediary steps (critically a multiplicity of voices) is seen to support the healthy functioning of democracy.

Indeed, ownership plurality is a blunt instrument and not guaranteed to deliver this outcome. For instance, a press with many owners, but where all titles happened to take the same political perspective, would do little to support a "culture of dissent and argument." Conversely the news media as a whole might be closely held, but if each owner owned multiple titles with highly distinct stances this could easily be just as effective in supporting democracy as a more diversely held media.

Thus plurality is a "proxy" objective, sought for its likely (but not certain) consequences for the content offered to consumers. (It sits alongside much more direct interventions regarding news content, such as impartiality rules for broadcasters.)

B. The "Chain of Influence"

The rationale for legislating for plurality implicitly depends on the assumption of a "chain of influence." In this chain, the opinions of owners or proprietors influence the output of the media outlets they own. This output, in turn, influences the knowledge and opinions of the members of the audience, which is particularly relevant when they are acting as citizens engaged in the democratic process and political debate.

Figure 1: Illustrative "Chain of Influence"

Naturally this is just a simple model, but I believe a helpful one.

In practice neither of the links in this chain is static. The degree of linkage can wax or wane, and in practice both links have become much weaker over the last decade, since (as I discuss in more detail below):

- Citizens are increasingly sophisticated news consumers, taking a healthily skeptical view and drawing on multiple sources – this inevitably reduces the influence of content from any one provider.

- That content itself is ever more subject to a range of influences quite separate from proprietors and editors. These influences include the consumers themselves (via the internet) and increasing financial pressure. This dilutes the influence of proprietors.

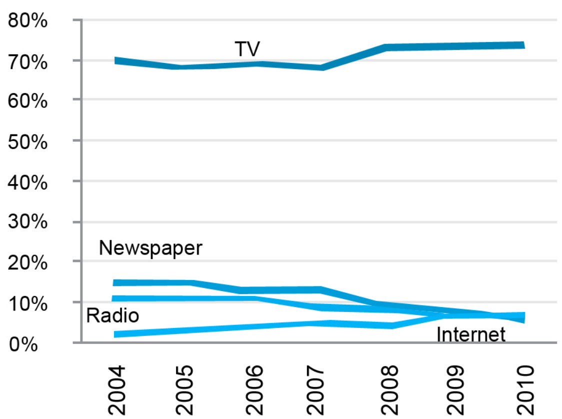
Consequently the impact on the democratic process at the right end of the chain is significantly less dependent on the state of ownership at the left end of the chain. By extension this would suggest that "owner focused" regulation (such as plurality) is less likely to make a meaningful difference to the ultimate objective of a healthy democracy than it once was.

C. Waning Influence of Individual News Outlets on Consumers

Over the last decade news consumption has changed significantly. As we set out below, the internet (and, to a lesser extent, the wider availability of multichannel TV) has enabled far greater multi-sourcing of news - that is, consumption of news from more sources by the average consumer. Perhaps as a result, news consumers have become more sophisticated and skeptical. This suggests that the ability of any one outlet to influence citizens has diminished. These changes in news consumption are set out below.

1. The Rise of the Internet as a News Source

Figure 2: "Main Source of U.K. News" for Consumers[4]

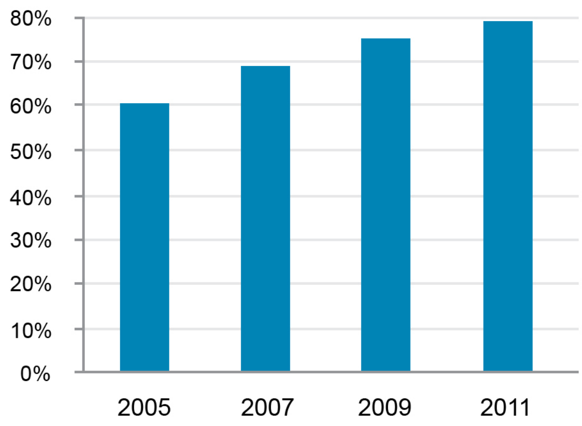


What media citizens favor for news has changed dramatically. In 2004, according to Ofcom, 15 percent of consumers cited newspapers as their main source of U.K. news. By 2010 this figure had fallen to 6 percent. At the same time, those citing the internet as their main source had risen to 7 percent, overtaking newspapers (Figure 2: "Main Source of U.K. News" for Consumers). (U.S. research shows an even starker picture, with

[4] Ofcom, *The Ofcom Media Tracker survey: 2010 survey results* (July 2011) and Ofcom, *Report to the Secretary of State (Culture, Media and Sport) on the Media Ownership Rules* (November 17, 2009).

the internet overtaking newspapers as far back as 2008, and now gaining on TV.)[5]

Figure 3: Portion of Those Online Using the Internet for News[6]



This reported preference is confirmed by data on online news usage. When the U.K.'s current plurality rules were established by the 2003 Communications Act, broadband penetration was 13 percent. Today it is 76 percent.[7] Further, those online are ever more likely to use the internet for news - 79 percent now do so (see Figure 3: Portion of Those Online Using the Internet for News).

The daily traffic of individual national newspaper sites is substantial. The *Guardian* has 1.5 million daily U.K. visitors online (higher than its daily print readership) and the *Mail* has 2.7 million.[8] Both are dwarfed by the BBC, by some margin the largest U.K. news site. The combination of more people online, and those online using news more, means that online news has expanded very rapidly.

2. The Rise of Multi-Sourcing

One consequence of the move online has been the rise of multi-sourcing - the consumption by individual consumers of news from multiple outlets. When citizens multi-source their news, they can hear diverse voices, cross check, and make up their own mind. Moreover, multi-sourcing significantly inoculates audiences against the possibility of one media organization burying an important story. As we will see, the vast majority of consumers do in fact multi-source, to a substantial and increasing extent.

[5] Pew Research Center, *Internet Gains on Television as Public's Main News Source* (January 2011).

[6] Oxford Internet Institute, *Next Generation Users, The Internet in Britain* (Oct. 2011).

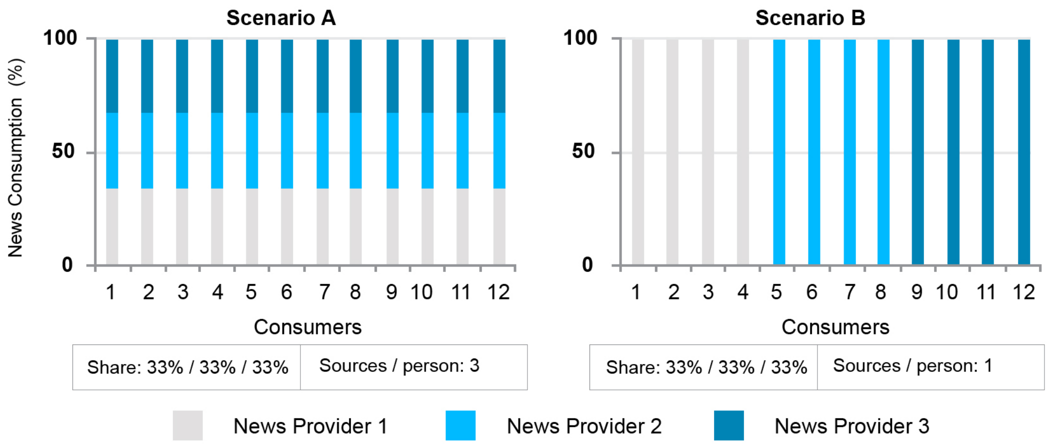
[7] Ofcom, ONS.

[8] ABC (July 2012).

Competition regulators, used to using market share as a key yardstick, can sometimes miss the importance of multi-sourcing to plurality. Consider Figure 4: Illustrative Multi-Sourcing Scenarios:

Thus multi-sourcing is today the dominant mode of news consumption.

Figure 4: Illustrative Multi-Sourcing Scenarios



In both scenarios, the market share of the three news providers is one-third each, and a typical competitiveness assessment might see little difference between the two. However, in Scenario A, each consumer hears from three different news sources. In Scenario B, each consumer hears from one only. Thus it is undoubtedly the case that Scenario A is healthier for society and less concerning from a plurality perspective.

This is much more than a theoretical issue, since most consumers do in fact multi-source (and, as we will see, do so deliberately). Recent Ofcom research[9] has found that the typical U.K. news consumer takes news from 3.1 news providers,[10] and only 14 percent rely on a single source (primarily the BBC).

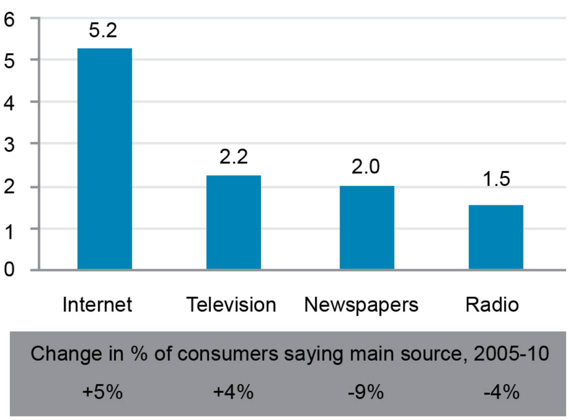
Thus multi-sourcing is today the dominant mode of news consumption. Moreover, it is

[9] Kantar Media for Ofcom, *Measuring News Consumption and Attitudes* (June 29, 2012).

[10] Ofcom's figure is at a "wholesale" level; it is based on ownership not on outlet (so someone using BBC TV news and bbc.co.uk would be counted as taking news from one provider).

almost certainly increasing, not least because of the internet where news consumption is inherently more "promiscuous" than offline consumption.

Figure 5: News Sources Per News User, by Media[11]



Those using news online consume news from 5.2 sources. This compares to newspapers, where the average newspaper reader sees 2.0 titles (national and local). As Figure 5: News Sources Per News User, by Media also shows, consumers are shifting their news consumption from media with lower multi-sourcing (such as radio and newspapers) to media with higher multi-sourcing (the internet and, to a lesser extent, TV).[12]

There are numerous reasons for high levels of multi-sourcing online, including:

- It is (generally) free to use news from multiple sources, encouraging sampling and diverse consumption.
- Social media points users to news stories, encouraging use of outlets they might not normally default to.
- Users search for stories about a particular topic and may select by - say - relevance or immediacy, rather than going to a familiar outlet. (Those using search as their main way to look for information online has risen from 20 percent to 61 percent since 2005.) [13]

Users can access specialist titles for a particular topic that might not have been

[11] Level of multi-sourcing from PaidContent.org, *Research: Internet Is UK's No. 2 News Source, But Only 3.8 Percent Pay* (December 28, 2011), Change in main source derived from Ofcom, *The Ofcom Media Tracker survey: 2010 survey results* (July 2011), and Ofcom, *Report to the Secretary of State (Culture, Media and Sport) on the Media Ownership Rules* (November 17, 2009).

[12] O&O have also reported broadly similar figures for multi-sourcing, see Paidcontent.org, *Research: Internet Is UK's No. 2 News Source, But Only 3.8 Percent Pay* (December 28, 2011).

[13] Oxford Internet Institute, *Next Generation Users: The Internet in Britain* (October 2011).

available offline. For example, the *New York Times* is an important online news source for those in the United Kingdom, perhaps for its U.S. coverage (though of course it also covers U.K. stories).

Cross-checking of stories is not merely a happy by-product of online consumption—it appears to be a deliberate habit of many consumers.

Aggregators such as Google News introduce unfamiliar or less used outlets. (For example, use of Google News' Local News feature resulted in a 12 percent uplift in the number of local news outlets visited.)[14]

3. Cross-checking of News Sources Online

As we have noted, multi-sourcing enables (indeed implies) cross-checking of stories and news agendas. This cross-checking of stories is not merely a happy by-product of online consumption - it appears to be a deliberate habit of many consumers. According to a 2010 Mintel survey of online news consumers, 51 percent said they agreed they "often check more than one source to confirm news stories I've read."[15] Mintel goes on to highlight that this has been enabled by changes in the market, not least the possibility to hear directly from the source of the story:

> With the variety of written and broadcast media channels providing news, including the internet, this is now much more possible than it was five or ten years ago, so that people can check other media sources but can also go direct to the subject of the news itself because it will often have a website.

Fleischman Hillard makes a similar point:

> Internet users tend to look at many sources when seeking information, not relying on one source, apparently believing the truth is something average to the information found on those outlets. This appears to be one more example of

[14] S. Athey & M. Mobius, *The Impact of News Aggregators on Internet News Consumption: The Case of Localization* (February 2012).

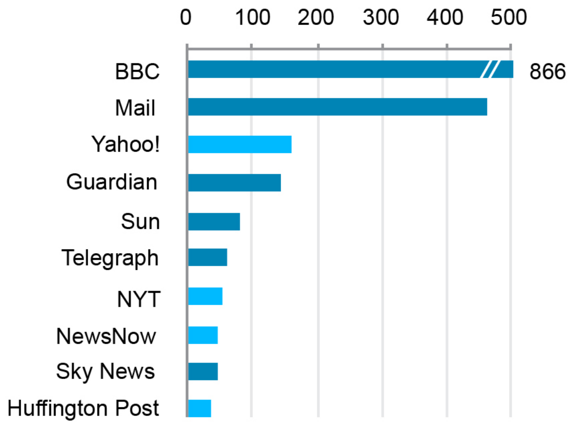
[15] Mintel, *Consumer Perceptions of News Media*, (September 2010).

> the disintegration of the old mass media model. Where consumers once trusted information funneled to them through a few mass channels, the credibility of the information they consume today seems tied to their ability to retrieve information from a variety of sources and cross-check among them.[16]

Clearly such an approach reduces the extent to which any one organization can influence citizens' outlooks.

4. Different Sources of News Online

Figure 6: UK Time on Website (mins/month)[17]



Online news is not simply the websites of traditional news sources (though they are certainly important). The top ten most used national news sites in the United Kingdom include four "non-traditional" news sources for U.K. consumers - three online-only properties, and the *New York Times*. In addition, there is a long tail of lesser-known non-traditional sites serving various niches that individually are small, but in aggregate are important. Such sites contribute one-quarter of the time spent online within Comscore's news and information category.[18] Clearly this represents a dilution of influence for traditional media outlets.

5. The Ability of Non-Media Organizations to Reach Citizens Directly

A further change wrought by the internet is that citizens can now hear directly from the subjects of news stories, diluting the influence of all media, new or old.

Before the internet, organizations and individuals had very limited options to reach a mass

[16] Fleishman Hillard, *Understanding the role of the internet in the lives of consumers* (2010).

[17] Comscore, November 2011.

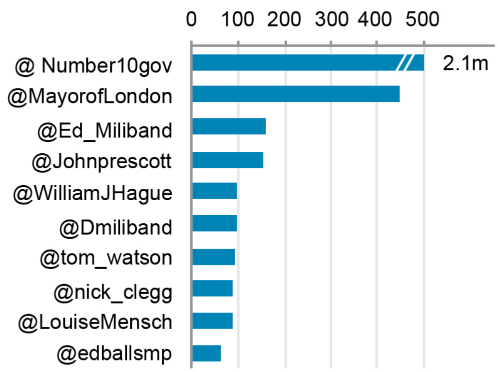
[18] Author's analysis of Comscore, November 2011. Includes online-only and non-U.K. sites.

audience other than via the media. They could buy advertising or direct mail, but this was expensive and not a practical regular option for many. Consequently, which stories the media chose to cover, and how they chose to cover them, had the potential to materially influence the attitudes of their audience.

The internet has transformed this. Politicians, government departments, companies, charities, and many other institutions can speak directly to relevant audiences. This can be via direct emails, blogs, websites, Twitter, Facebook, YouTube, or other means - each is suited for different purposes. The critical point is that each enables the disintermediation of traditional media.

This has a two-fold impact. It lessens the extent to which such organizations are beholden to the media, and it dilutes the influence of media. If citizens can hear directly from a particular politician (say), this presents an alternative view to that which may be being painted by the media. Neither view is necessarily inherently more accurate, but the critical point is that the audience has more viewpoints on which to base their own judgment. Moreover, the audience well understands this. As we have seen, many report actively cross-checking and, according to the Mintel survey, 66 percent agree that "[t]he internet means that it is easier to access news directly from its source (e.g. via websites, Twitter feeds, etc.)."[19]

Figure 7: Twitter Follower Count ('000) of Select U.K. Politicians[20]



Consider the Twitter accounts of just ten politicians. The group shown in Figure 7: Twitter Follower Count ('000) of Select U.K. Politicians has a total follower count of 3.4 million. (The total for all MPs and leading politicians will be appreciably higher.) There will undoubtedly be some duplication within this, with some individuals following more than one of these politicians, but this is substantial reach. Compare, for instance, to the

[19] Mintel, *supra* note 15.

[20] *Twitter*, follower count as of September 5, 2012. Ten leading accounts, though not necessarily the ten largest.

readership of the *Telegraph* (the best selling broadsheet) at 1.4 million.[21] Moreover, Twitter will allow these politicians to communicate with their followers in real time, multiple times per day. As we have noted, Twitter is just one means of internet communication open to them, in addition to email, websites, and so on.

This is not to argue that everything on Twitter should be regarded as authoritative. Twitter is no more inherently trustworthy than a letter, but the existence of junk mail does not invalidate the bank statement. Twitter users are well able to distinguish pub banter among the friends they follow on Twitter from tweets announcing new policies from @10Nomber10gov or @BarackObama.

Indeed, the media themselves take Twitter (or rather some of the individuals on it) to be credible and important. According to Steve Hermann, editor of the BBC News website, "it is taken as read for anybody working in news gathering that Twitter is a key source that you need to be across."[22] Anthony de Rosa, Social Media Editor at Reuters, says: "To bury our head in the sand and act like Twitter … isn't increasingly becoming the source of what informs people in real-time is ridiculous."[23]

Twitter is just one online tool that organizations and individuals are using to communicate with each other (albeit an important and rapidly growing one). For more extensive commentary, blogs tend to be the tool of choice.

There is limited aggregated data for blogs, but one single provider, Wordpress, hosts over 55 million blogs (globally)[24] attracting approximately 400,000 U.K. visitors per day.[25] Tumblr, another blogging service, has 72 million blogs[26] with 300,000 U.K. visitors per day.[27] These blogs cover a wide range of topics from the profound to the trivial (not unlike newspapers).

Among them are a number of blogs focused purely on U.K. politics (though of course these are not the only blogs offering political comment). TotalPolitics tracks over 1000 of them just for England.[28] Some are national in their focus, some regional. Many are highly partisan. Any one may have a small voice, but in aggregate they are more significant. Ten of the largest

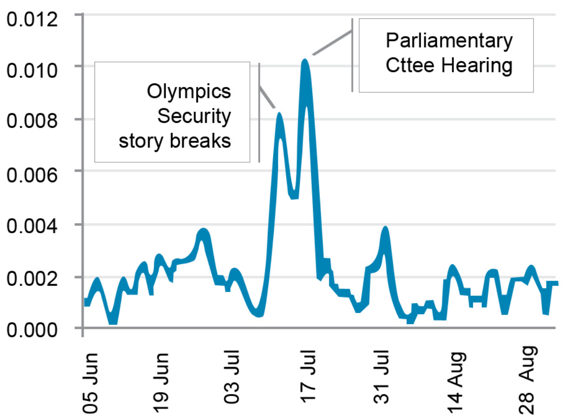
[21] *NRS*, July 2011 – June 2012.
[22] Nic Newman (Reuters Institute for the Study of Journalism), *Mainstream Media and the Distribution of News* (September 2011).
[23] Quoted in BBC, *Associated Press reporters told off for tweeting*, (November 17, 2011).
[24] Wordpress website.
[25] Google Ad Planner.
[26] Tumblr website.
[27] Google Ad Planner.
[28] TotalPolitics Blog Directory.

have a summed reach of 180,000 people in the United Kingdom each month.[29] While this is small relative to the total audience of a typical newspaper website, it is likely more significant when compared to the usage of hardcore political content on a given newspaper site, which is the more relevant comparison.

Twitter is just one online tool that organizations and individuals are using to communicate with each other (albeit an important and rapidly growing one). For more extensive commentary, blogs tend to be the tool of choice.

Even quite obscure subjects can receive substantial coverage via blogs. There have, for instance, been almost 6,800 blog posts on "media plurality."[30]

Figure 8: Global Reach (%) of G4S Website[31]



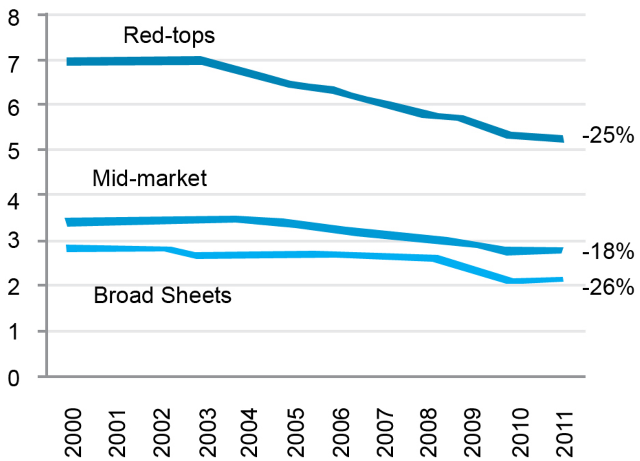
Websites are another tool for organizations to communicate directly to citizens, by-passing the media. Consider the case of security firm G4S, which failed to provide promised security guards for the Olympics, resulting in widespread media criticism and hostile questioning of its CEO by a parliamentary committee. Traffic to the company's website surged at the time of those events, giving it an opportunity to put its side of the story directly to consumers, rather than relying on the media.

[29] Google Ad Planner.
[30] Google search of blogs for the phrase "media plurality" (September 8, 2012).
[31] Alexa.

Thus Twitter, blogs, websites, and other online communications tools have become, among other things, a means for experts and stakeholders in many fields (in addition to ordinary citizens) to reach out directly to the audiences interested in those topics. This increasingly dilutes traditional media's influence.

6. Declining Consumption of Newspapers

Figure 9: Daily National Papers' Circulation (m)[32]



Traditional media's influence (and, in particular, newspapers') is further reduced because they are simply being consumed less. All U.K. newspapers have been seeing rapid declines in circulation, with national dailies each losing at least 2 percent per year since 2006, and most have been facing declines of 6 percent or more.[33] As a result, newspaper circulation has in aggregate fallen by just under one-quarter since 2000, and all segments of the market have suffered, as Figure 9: Daily National Papers' Circulation (m) shows. (By contrast, U.K. TV news consumption continues to hold steady, with a spike in 2010 likely caused by the election.)

[32] ABC. Figures for January of respective year. "Red-tops" are mass market titles, with a greater portion of "soft" news (such as celebrity gossip) in addition to hard news. "Broadsheets" are the more traditional titles (such as the *Times of London*), more similar to, say, the *New York Times*.

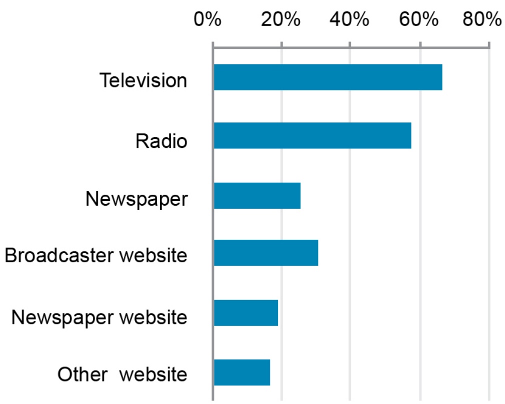
[33] While the United Kingdom is facing relatively high declines, it is far from alone. Among 34 OECD countries, 30 saw declining paid newspaper circulations between 2000 and 2008. OECD, *The Evolution of News and the Internet* (June 2010).

Clearly, if the print editions of newspapers are today less read, they must be less influential. This critical point is often missed - there can be undue focus on share of the newspaper market, but in assessing influence it is the absolute level of consumption that matters.[34]

7. Consumers as Sophisticated News Users

Of course even consumption does not guarantee influence. As we have seen, multi-sourcing is increasing, and the evidence suggests that consumers have a sophisticated and healthily skeptical understanding of the news they consume.

Figure 10: Portion of Individuals Saying News Source is Impartial[35]



As noted above, consumers actively cross-check, and they are well aware that newspapers are less likely to be impartial than broadcast news. (In the United Kingdom, broadcast news has a regulatory obligation to be impartial.) Nor is it simply the case that they are aware of the partialities of papers but all choose to read one that matches their own partialities. For instance, though the *Sun* is regarded by many as right-leaning, and though the title endorsed David Cameron at the last election, only a minority of its readers actually voted Conservative in 2010.[36]

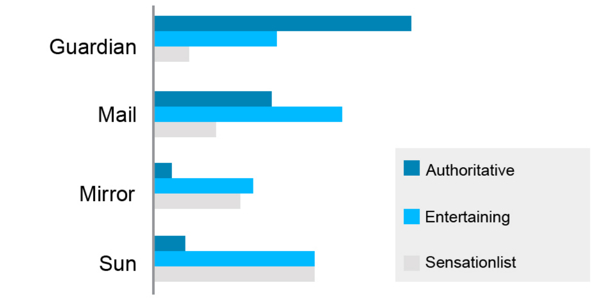
All this argues against the idea that readers take their outlook "spoon fed" from their daily paper.

[34] Looking at this specifically in a political context, Prof. Deacon and Dr. Wring of Loughborough University have observed, "downward trend in circulation between [the 2005 and 2010 electoral] campaigns inevitably diminishes the electoral potency of the press," *See* D. Wring & D. Deacon, "*Patterns of press partisanship in the 2010 General Election*," 5 British Politics 436–454 (2010).

[35] Ofcom, *The Ofcom Media Tracker survey: 2010 survey results*, (July 2011). Those scoring 1 or 2 on a scale of 1 to 5 of decreasing impartiality.

[36] Wring & Deacon, *supra* note 34.

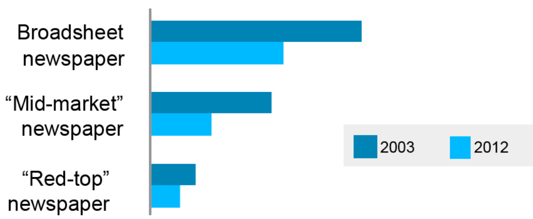
Figure 11: Words Associated With Newspaper Titles by Their Readers[37]



Moreover, within media, consumers have very different perceptions of the newspapers they read. Some titles (such as the broadsheet the *Times*) are read for their perceived authority and accuracy. Others (such as the red-top the *Sun*) are read for their entertainment and sensation.

Notably, the ratings given to the *Sun* by its readers across a wide range of such dimensions are not notably different than those given to the *Sun* by the population in general.[38] This also suggests that the readers of the *Sun* are not in some way "captured" by it - they see its strengths and weaknesses in much the same way as non-readers do.

Figure 12: Percent of Individuals Trusting Journalists From Different News Organizations[39]



Moreover, across news outlets, consumers have become much less trusting over the last decade. While those outlets lament this development, from a societal perspective it may be positive that audiences are applying more skepticism to what they see and read.

This all suggests an audience that is sophisticated in its news consumption, and one with a healthy caution that is a counterbalance to the influence that individual media outlets might have on citizens.

[37] Mintel, *supra* note 15.
[38] *Id.*
[39] YouGov, *Whom do the public trust?* January 2012. Those saying trust "a great deal" or "a fair amount."

8. Conclusion

Across news outlets, consumers have become much less trusting over the last decade

In the "chain of influence," the link between news content and citizen outlook has come under particular pressure. A number of major trends have acted to weaken it:

- consumers are increasingly getting their news from multiple sources;
- they are accessing completely new news sources online;
- they are increasingly skeptical of the news they consume;
- perhaps because of this skepticism they are consciously cross-checking what they consume among ever more news sources;
- they also now hear directly from expert commentators, politicians, and other major subjects of news stories, diluting the influence of all media; and
- the influence of newspapers in particular has been greatly reduced by their fall in circulation over the period.

We now turn to the initial link in the chain - how much influence proprietors have on the content consumed.

C. Waning Influence of Proprietors on News Content Consumed

The evidence suggests that the influence of proprietors on what content is consumed is waning. There are two strands to this - less influence on which stories are covered and how, and less influence on which covered stories are actually consumed by audiences.

For a variety of reasons, the choice of news stories, the way in which they are treated, and their prominence are all subject to much greater external influences than they once were. Some of these developments are positive, some are negative, but all act to dilute the influence of owners on a news outlet's content.

1. Dependency on Wire Services

As news outlets, and newspapers in particular, have come under increasing financial pressure (and increased their editorial page count), they have been making heavier use of wire copy (from the Press Association and other news agencies) as a way to save costs. Research by Cardiff University (in 2006) found that 49 percent of stories in the four main broadsheets and the *Mail* were entirely, or largely, based on wire copy. A further 19 percent were entirely or largely based on PR material.[40]

To the extent to which newspapers (and broadcasters) are dependent on the same set of news agency and PR material, this will inevitably lead to homogenization of output. This has the side effect of reducing the possibility of proprietorial (and indeed editorial) influence. An editor is in a weaker position to set the news agenda or the angle of his stories if he is substantially dependent on third parties for much of his copy.

2. Declining Overall Importance of the Media's News Agenda

While a news agenda is, in part, about which stories get covered, it is at least as much about the hierarchy of stories. A critical choice for editors is which stories to lead with - to place on the front page, top of a bulletin, and so on. Offline, such choices have material impact - what is on the front page is certainly more likely to be read. However, news consumption online is much more atomized. Audiences typically do not consume (in order) a slate of news from a particular provider - they may arrive on any page of a website, not just the home page.

A consequence is that editors' views (regardless of whether or not they match the proprietor's) of which stories are most important matters much less online. The correlation between lead stories and which stories are actually read most is far weaker.

Consider the news home page of the BBC at the time of writing.[41] Of the five lead stories on that page (those selected by the editor as the most important), only two make it into the list of the ten "most read" stories. Clearly the news agenda, as experienced by the reader, is rather different from the agenda as set out by the editor.

As we have noted, one of the reasons why consumption does not follow the editor's hierarchy is that readers may arrive at any page in the site, not simply the home page. Indeed, this is true of much of a typical newspaper's traffic. There are two prime reasons for this: search and

[40] J Lewis et al (Cardiff School of Journalism, Media and Cultural Studies), The Quality and Independence of British Journalism, 1 February 2008

[41] bbc.co.uk/news/ at 7pm (September 7, 2012).

social media.

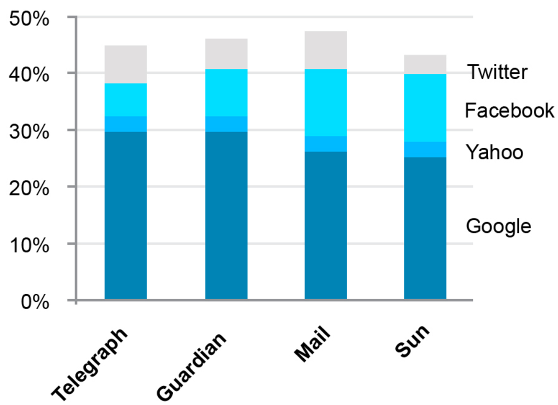
The correlation between lead stories and which stories are actually read most is far weaker.

Search is an important aspect of online news consumption - users frequently search for topical terms to find coverage. Such searches will result in direct links to relevant pages from many different news sources (and the web more generally). As Athey & Mobius put it:

> there are a number of longer-term threats to news outlets created by news aggregators, including loss of the curation role which affects the brand perception of the news outlet as well as its ability to promote news that is for any reason not selected by Google news.[42]

News consumption via social media is generally more reactive. A tweet or a Facebook post provides a friend's recommendation of an interesting story (or an interesting angle on a well-known story). Up to that point, the reader might have had no particular interest in that story, and of course the choice of news source is the recommender's, not the readers.

Figure 13: Sources of Traffic for Sample U.K. Newspaper sites: [43]



In aggregate, search and social media account for almost 50 percent of traffic to a typical newspaper website (see Figure 13: Sources of Traffic for Sample U.K. Newspaper sites:). Such inbound traffic is fundamentally driven by the agenda of the audience, rather than the editor of the site itself, which is one of the reasons for the disconnect we saw with the

[42] S. Athey & M. Mobius, *supra* note 14

[43] Alexa, January 2011, based on upstream sites—those visited immediately prior to visiting the newspaper site. Note that due to Alexa's limitation (e.g. a non-representative panel of users) these figures should be taken as indicative. However, they are broadly consistent with those in, for instance, Nic Newman (Reuters Institute for the Study of Journalism), *Mainstream Media and the Distribution of News* (September 2011), allowing for the rapid growth of social media traffic. Note that for technical reasons Twitter referral traffic has been frequently underreported until recently, see TNW, *Twitter just got the respect it deserves* (August 21, 2011).

While editorial judgment remains critical in all these newsrooms, it is now tempered and influenced by the wisdom of the online crowd (or at least its opinions).

BBC site. According to Alan Rusbridger of the *Guardian*, "[p]eople on Twitter quite often have an entirely different sense [from the press] of what is and what isn't news."[44] The audience is (effectively) taking a collective view of the news agenda, which dilutes the power of any one news outlet to set the general agenda for all.

Finally, social media is influencing which stories remain visible. For example, a *Daily Mail* article about the Olympics opening ceremony provoked a strong reaction on Twitter and blogs, with many saying they found the article racist. The *Daily Mail* quickly substantially rewrote the article, and then deleted it entirely.[45]

3. Increasing Influence of Users on Offline Content

For the reasons set out above, the choice of stories consumed online is much more in the control of the reader than the editor. That said, important though online is, it is only one form of news media. However, the data news organizations get from their online audiences is increasingly influencing their output on other media such as print and TV.

According to the *Economist's* Digital Editor Tom Standage:

> In parts of [2010] we were growing by 20% a month on the amount of traffic from these [social media] sites so we've started to adjust and have started to think about doing journalism in a different way.[46]

Alan Rusbridger of the *Guardian* makes a similar point:

> What seems obvious to journalists in terms of the choices we make is quite often markedly different from how others see it – both in terms of the things we choose to cover and the things we ignore. The power of tens of thousands of people articulating those different choices can wash back into newsrooms and affect what editors choose to cover. We can ignore that, of course. But should we?[47]

[44] Guardian, *Alan Rusbridger: Why Twitter matters for media organisations* (November 2010).
[45] Guardian, *Language, Laughter and the Paralympics*, (September 6, 2012).
[46] Nic Newman (Reuters Institute for the Study of Journalism), *Mainstream Media and the Distribution of News* (September 2011).
[47] Guardian, *Alan Rusbridger: Why Twitter matters for media organisations* (November 19, 2010).

According to BBC News Channel anchor Ben Brown, interacting with the audience via the internet "gives us a better idea of what they are actually interested in if we can hear from them not day-by-day, but minute-by-minute." The Sky newsroom has screens informing staff in real time of the most popular stories on the broadcaster's website.[48]

Online interaction is influencing not just what to cover, but how to cover it. According to Nic Newman (writing in 2009):

> Indeed, on several occasions the strength and immediacy of reader opinion has influenced the BBC's wider editorial line. … [S]trong and consistent negative reaction to the Archbishop of Canterbury's speech on Sharia Law (9,000 emails) changed the agenda that afternoon, prompting the 6 o'clock news to "feature the strength of reaction and lead on the story.[49]

While editorial judgment remains critical in all these newsrooms, it is now tempered and influenced by the wisdom of the online crowd (or at least its opinions). Internet traffic is influencing the agenda choices and story content for print and broadcast as well as online itself. Again, the effect of this is to dilute the influence of the proprietor.

4. Conclusions

For a variety of reasons, media content is far more subject to external forces that it was. These reasons include:

- Greater reliance on wire services;
- Greater flexibility for audiences to select particular stories rather than accept an agenda; and
- Far greater audience influence (articulated via online traffic) on editorial choices.

This inevitably means that owners have lost appreciable control of what their audiences consume (the first link in the chain of influence).

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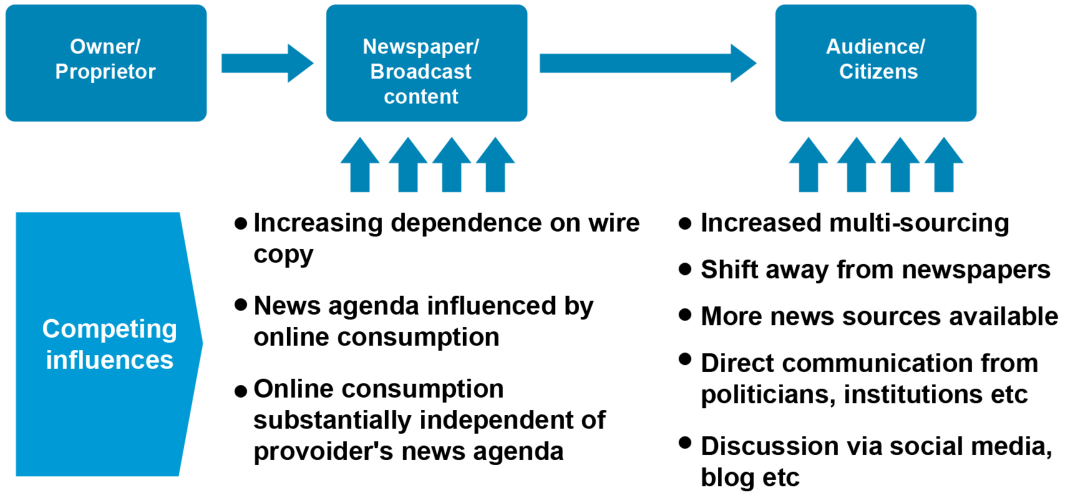
[48] *New Media, Old News* (N. Fenton, ed. 2010).

[49] Nic Newman (Reuters Institute for the Study of Journalism), *The rise of social media and its impact on mainstream journalism* (September 2009).

D. Implications for the Benefits of Plurality Regulation

As we have seen, the "chain of influence" between proprietor/owners and the democratic process has been weakened substantially. In particular, any one news source is far less likely to be able to dominate the perspective of a given citizen, given the changes in the news market:

Figure 14: Changes to the "Chain of Influence"



Influence has become both more diffuse and more iterative (in that audiences now influence news content much more than previously). The effect has been to dilute the influence of owners. Moreover, these trends will continue, with ever more news consumption shifting online, as use of social media rises, as newspaper circulation continues to fall, and so on.

As we have noted, the purpose of plurality regulation is to achieve outcomes on the right-hand side of this diagram - primarily to ensure a healthy and informed political discourse between citizens and politicians.

However, if the chain is growing weaker, then regulatory interventions at the left-hand of the chain are ever less likely to bring substantial benefit. Plurality rules are just such an intervention, and simply tightening plurality rules looks unlikely to enhance their ability to achieve their objective.

III. THE GROWING COSTS OF PLURALITY RULES

In the United Kingdom (and in most other markets with such rules), plurality rules function by preventing mergers and acquisitions. Almost any market intervention carries costs to be weighed against its benefits. In the case of plurality, those costs are the direct administrative burdens of the application of the rules, and the more intangible burden of the potential inappropriate blocking of "healthy" market consolidation. (Of course, more general competition rules apply to media mergers, and these should anyway block consolidation that is unhealthy from a consumer perspective.)

A. The Administrative Burden and Uncertainty

Many jurisdictions have relatively simple, "bright-line" tests in their regulations for plurality. For instance, in Australia one person may not own a TV station, radio station, and newspaper with overlapping coverage.[50] In France a person may not own more than 49 percent of a national TV broadcaster with 8 percent audience share or greater (with an exclusion for France Télévision).[51] In the United States no entity can own more than one local TV channel in an area (or two in an area with at least eight channel operators).[52]

Such bright-line tests do have the great virtue of simplicity, both in application and in anticipation. Potential merging parties can easily assess in advance whether their merger is likely to be acceptable, rather than making a public offer and then seeking uncertain approval.

However they are, by their very nature, somewhat blunt instruments. It is easy to imagine scenarios below these thresholds that would be problematic and, conversely, scenarios above these thresholds that would present no meaningful threat to democratic discourse. They also need regular updating, to ensure they are still set at the right levels - both the United States and Australia have recently reassessed their plurality rules.

Finally, bright-line tests can be more challenging to frame for cross-media mergers - for instance, a newspaper group buying a broadcaster. What should be the common currency between (say) one newspaper reader and one viewer of an evening news bulletin? Italy has a rule that says that no one player shall have more than 20 percent of the revenues of the "integrated

[50] Broadcasting Services Act 1992 (as amended). Note that, as with the other examples that follow, this is only one of the restrictions for plurality contained within the Act.

[51] Loi relative à la liberté de communication 1986 (as amended) [Léotard Law].

[52] Telecommunications Act 1996.

communications system," which includes traditional media, pay TV, the internet, film, and so on.[53] However, it is far from clear that influence is proportional to revenue - is, for instance, the revenue that a pay TV operator garners from sports channels relevant?

Other jurisdictions simply block cross-media ownership. The United States does not allow common ownership of a newspaper and a broadcaster serving the same area (with some exceptions). The U.K.'s approach has been to avoid bright-line tests.[54] The 2003 Communications Act cites as a public interest (on which grounds mergers may be blocked) "the need, in relation to every different audience in the United Kingdom .... for there to be a sufficient plurality of persons with control of the media enterprises serving that audience."[55]

While this allows for a case-by-case assessment, taking into account the specifics, it creates a number of different problems. Not least, the Act does not offer any guidance as to how to measure plurality, nor what a "sufficient" level might be.

At its crudest, plurality might simply be the number of persons with control, but it is widely accepted that this is far too blunt a definition. In seeking to apply this test, Ofcom has, therefore, considered issues of market share, internal plurality,[56] levels of multi-sourcing, wholesale versus retail provision,[57] and so on. (It did not, however, go as far as recommended by a 2009 study published by the European Commission, which suggested a battery of 166 metrics to be used for assessing plurality.)[58]

All parties involved in U.K. media mergers under review have wrestled with what might represent sufficiency. Absent any explicit benchmark, reference has been made to the situation as it was in 2003 when the relevant legislation was passed - post merger, would plurality be higher or lower than it was pre-merger? However, there is no guidance as to whether plurality in 2003 was ample (meaning that even if plurality dropped to below that level it still might be

[53] Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI-Radiotelevisione italiana Spa, nonché delega al Governo per l'emanazione del testo unico della radiotelevisione 2004 (as amended).

[54] One exception is the "20/20" rule, which says that an entity that owns national newspapers with a 20 percent market share may not also own 20 percent of a Channel 3 license (the licenses held by ITV, the leading commercial broadcaster).

[55] For newspapers in particular, the same Act cites "The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers."

[56] Content diversity within a single media group.

[57] Ofcom used "wholesale" to refer to situations where an entity prepared news bulletins on behalf of a third party, though that party was the brand evident to consumers, and which retained ultimate editorial control and responsibility.

[58] KU Leuven et al., *Independent Study on Indicators for Media Pluralism in the Member States – towards a risk-based approach* (April 2009).

sufficient) or borderline, meaning that even the smallest diminution should be blocked.

At its crudest, plurality might simply be the number of persons with control, but it is widely accepted that this is far too blunt a definition.

While competition cases often involve a degree of subjectivity, there is at least a corpus of case law, metrics such as the Herfindahl–Hirschman Index with recognized thresholds that might indicate excessive concentration, and so on. There is no equivalent body of precedent and practice for plurality assessment. Indeed, since the Act was passed in the United Kingdom almost ten years ago, the plurality test has only been applied in two cases - Sky's acquisition of a stake in ITV, and the abandoned News Corp. bid for Sky. (A third case is now under consideration - Global Radio's bid for GMG Radio.) And because media is a relatively small industry, and one where mergers are perhaps less likely than in some others (for instance, because of major state-owned entities in many markets including the United Kingdom), any body of practical experience is likely to be slow to build.

The combination of a highly subjective test coupled with a lack of precedent results in significant regulatory uncertainty. Bids may be made that are doomed to be blocked on plurality grounds and, conversely, bids may be left unmade out of an inappropriate belief that they might be blocked.

The U.K. government is currently considering a "standing" plurality test - that is, potential interventions that would not be triggered by M&A, but rather by market developments. While it is clear (as Ofcom has argued) that plurality problems could arise otherwise than by a merger, such a standing test has even greater potential for unintended consequences. For instance, an organization could be subject to plurality remedies simply as a result of launching a product that was attractive to consumers, or even because of the demise of a news provider in an entirely different media. Thus there appears to be the potential for a material chilling effect on innovation and competition (particularly given that the boundaries of a plurality problem are so unclear).

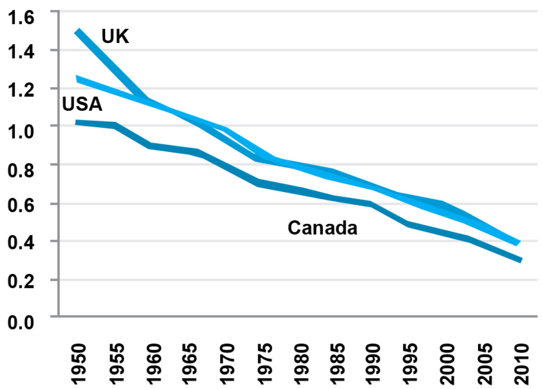
B. Blocking Media Consolidation

Desirable media plurality has the potential to be problematic media fragmentation. In markets facing significant challenges, consolidation may bring benefits for consumers by creating a smaller number of healthy players, rather than a plethora of weaklings. As we will see, news provision is certainly facing great challenges, and might (plurality concerns aside) greatly benefit from consolidation. Interventions to support plurality need to be seen in this context.

Desirable media plurality has the potential to be problematic media fragmentation.

1. Declining News Consumption and Revenues

Figure 15: Daily National Newspaper Paid Circulation, Copies Per Households (m)[59]



As we have already seen, newspaper circulations in the United Kingdom have been fallen rapidly over the last decade. This reflects a long running and international trend (see Figure 15: Daily National Newspaper Paid Circulation, Copies Per Households (m)) Declining circulation has led to falling revenue. U.K. national newspaper revenues fell 14 percent in real terms between 2005 and 2010, both due to declining copy sales and the associated loss in advertising revenue.[60] (The latter problem has been exacerbated by the dramatic shift of advertising online, particularly classified.)

Note that the fall in revenues would have been even worse had newspapers not been increasing their cover prices significantly. U.K. broadsheet prices rose by 61 percent in real terms from 2000 to 2008 and tabloids by 13 percent.[61] Clearly such a strategy is not sustainable in perpetuity.

Consumption of TV news has held up better, with total viewing broadly flat from 2006 and 2011. However, this aggregate picture hides a stark contrast between the BBC and commercial news consumption - while the former rose 27 percent, the latter fell 24 percent.[62]

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[59] Communications Management Inc., *Sixty years of daily newspaper circulation trends* (May 2011).
[60] Author's analysis of figures in Clare Enders, *Competitive pressures on the press* (October 2011).
[61] *Advertising Association, Advertising Statistics Yearbook 2009* (2009).
[62] Author's analysis of figures from Ofcom, *PSB Report 2012 – Information Pack: Section C – PSB Viewing* (June 2012).

2. Reduced Spend

News outlets have reacted to declining consumption and pressure on their revenues by cutting costs. Spend on national news and current affairs programming by the main U.K. broadcasters[63] has fallen by 15 percent in real terms since 2006, and again it is likely that the drop is starker for the commercial players.[64] Between 2005 and 2010, national newspapers cut their operating expenses by 14 percent in real terms.[65] (Setting aside the *Financial Times*, which increased its spend, the decline would be 17 percent.)

While some of these reductions (which represent the continuation of a longer-term trend) have come through efficiencies, such as integrated newsrooms, others have come at the expense of the quality of output. Such changes[66] include:

- increased use of wire copy (from news agencies);
- increased use of PR material;
- a reduction in coverage of regional stories;
- a reduction in foreign correspondents;
- a reduction in budgets for investigative journalism; and
- an increase in soft news.

Some of these changes, such as increasing reliance on wire copy, represent a reduction in content diversity, even if the number of media owners remains unchanged. If all titles are dependent on the Reuters version of a particular event, then the potential for diverse coverage is clearly reduced.

3. Absence of Consolidation

In most industries facing such a continuing decline in revenues (particularly coupled with the relatively high fixed costs of news), one might expect to see consolidation to create fewer,

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[63] BBC, ITV, Channel 4, and five

[64] Ofcom, *PSB Report 2012 – Information Pack: Section B – PSB Output and Spend* (June 2012).

[65] Author's analysis of figures in Clare Enders, *Competitive pressures on the press*, (October 2011).

[66] For discussion of these issues see, for example, Nick Davies, Flat Earth News, Vintage (2008); and Martin Moore, *Shrinking World – The decline of international reporting in the British Press*, MST (November 2010).

The range of potential acquisitions is far smaller than might be the case in another industry with similar economics and number of participants. This raises the possibility that titles could simply shut down rather than be merged.

healthier market participants. There has been no such consolidation in U.K. national news. The number of national newspapers and their owners is unchanged since 1995 (though the *News of the World* has closed and the *i* has launched). The number of broadcast news players has increased in the same period, with niche players such as *Al-Jazeera* and *Russia Today* joining the market, and new services such as the BBC News Channel coming from existing players.

There are at least two reasons for this lack of consolidation.

First, some market participants are unlikely ever to be bought due to their ownership. The BBC is a major player and is, of course, state-owned. The *Guardian* is owned (and substantially subsidized) by the charitable Scott Trust, which has as its objective the financial and editorial independence of that paper. TV news operations are generally embedded within broadcasters with much wider interests, and would be awkward to separate out.[67]

Second, newspapers are owned for reasons other than financial return. They are "trophy assets" which bring prestige, or they may be owned for the wider influence they bring. For instance, when Alexander Lebedev acquired the *Independent* in 2010, he commented "I do not treat newspapers as business. I treat them as my responsibility. I think newspapers are the only instrument which, through investigative reporting, can ferret out everything about international corruption."[68]

These factors mean that the range of potential acquisitions is far smaller than might be the case in another industry with similar economics and number of participants. This raises the possibility that titles could simply shut down rather than be merged. For instance, the *Guardian*'s rate of losses is such that it may in time exhaust the resources of the Scott Trust. Some are worried that the loss-making *Times* has been kept afloat for sentimental reasons by Rupert Murdoch, and that more financially oriented owners of News Corp Publishing might shut it down.[69]

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[67] In pursuit of its acquisition of Sky, News Corp agreed to separate out the Sky News channel, to satisfy plurality concerns. However, Sky News was substantially loss making and therefore required a guaranteed subsidy from the merged entity. Even so, considerable doubts were raised about the viability of this arrangement.

[68] BBC, *The Independent bought by Lebedev for £1* (March 25, 2010).

[69] MediaTel, *The only surprise is that Murdoch didn't do it before...*(June 27, 2012).

4. The Costs of Blocking Consolidation

Against this background, it is clear that there is a risk in blocking consolidation for plurality reasons. It may maintain an unhealthy level of fragmentation in the market, resulting in many weak players with limited news-gathering budgets, rather than fewer, potentially stronger, players. As we have noted, this may have the perverse consequence of reducing diversity of content, the very opposite of the intent of the plurality intervention. Since there are relatively few potential mergers given the nature of media ownership, each blocked merger is more significant in its implications for reduced consolidation.

These are general comments, and obviously each potential merger needs to be considered on its specifics. However, they do suggest that the costs of the plurality intervention may be rising.

IV. CONCLUSIONS

A well-informed citizenry, exposed to diverse viewpoints, is a key underpinning of democracy and civil society. In decades past, traditional media was uniquely placed to deliver such diversity, and owners of traditional media played a pivotal role in media content.

However, media owners' influence on the content of media, and the influence of that content on citizens, are both waning. This suggests that market interventions at the owner level - in the form of plurality regulations - are likely to have diminishing benefits.

Moreover, as the economics of news media provision grow ever more challenging, consolidation looks to be a natural market outcome. To the extent to which plurality rules block such consolidation, they may carry increasing costs.

Thus those considering whether to tighten plurality rules, or extend their scope, should proceed with caution. The costs may outweigh the benefits.