Opening the Gates: Plurality regulation in a post digital world

Justin Schlosberg and Des Freedman

Abstract

This article sets out the emergent challenges and opportunities for developing effective and 'future proof' policy for regulating media plurality, against the backdrop of the UK's recent public interest test of the proposed merger between 21st Century Fox and Sky, and the latest data on the UK's media ownership landscape. The merger review established important precedents for plurality reform, particularly in its acknowledgement that digital intermediaries are not an inherently pluralising force and that regulatory intervention is needed to prevent concentrations of agenda power, especially at the level of wholesale newsgathering. The article goes on to critically examine the UK's legacy public interest test framework, along with a single remaining cross-media ownership rule, against mounting evidence of intensifying consolidation within and across news platforms.

The paper argues that effective plurality reform must start with new legislation that sets out indicative thresholds and detailed guidance on the meaning of plurality sufficiency. This will enable a proper assessment of plurality outside of merger activity and could serve as the basis for periodic reviews, enabling regulators to respond effectively to the challenge of new technologies and dynamic market conditions. We also address problems in the plurality measurement framework developed by Ofcom, namely the inclusion of digital intermediaries as news 'sources' in data collection and analysis. In light of findings from the Fox/Sky merger review, a more effective approach would be to reallocate consumption attributed to major intermediaries based on analysis of the actual news sources consumed via those

platforms. Far from privileging intermediaries, this approach will provide a more robust basis on which to bring them into the fold of plurality regulation, namely through the development of plurality standards for algorithm governance. Such an approach also reflects a new reality in which the inter-play of gatekeeping and agenda power between traditional media and intermediaries is not a zero sum game, amidst growing evidence that major intermediaries are serving to consolidate rather than diversify the news offer in favour of incumbent and mostly legacy publishers.

Introduction

The concept of plurality is entrenched in media policy discourse with roots in both liberal pluralist and deliberative accounts of democratic life (Karppinen 2013). What has become increasingly contentious and complex, however, is the way in which plurality is defined, measured and addressed in media policymaking (Freedman 2014, Iosifidis 2010). There are, broadly speaking, three factors that account for this. First, plurality has all too often been narrowly understood and operationalised by policymakers in relation to quantitative measures of choice and competition (Just 2009, Crauford Smith & Tambini 2012). As a result, plurality objectives have been pursued in wholly instrumental ways that neglect its status as ‘a meeting point for different demands, rooted in different social values, interests, and visions of democracy’ (Karppinen 2013: 18). Second, the development of communication technologies, and especially the emergence of so-called ‘platform monopolies’ in the arenas of online search, social media, and content aggregation, have made concentrations of media power less visible and less attributable solely to specific media owners operating on specific platforms (Schlosberg 2016). Third, the breakdown of a mainstream liberal consensus in much of the democratic world has made questions of media plurality both more urgent and more difficult to probe. The UK General Election in 2017 was widely hailed as a defeat for the ‘billionaire press' (Monbiot 2017) thanks in part to the rise of a new leftist 'fifth estate' whose presence on social media platforms appeared to offer a significant challenge to incumbent media. But, as we will see, their actual reach remains a tiny fraction of their mainstream competitors in an online news sphere increasingly dominated by a small number of mostly legacy national newspapers and broadcasters.

The dangers of co-opting the discourse of plurality were perhaps nowhere more vivid than in 2004 when the Italian Parliament passed the 'Gasparri' law, shepherding in a new method for monitoring and regulating media plurality under the 'Integrated Communications System' (SIC). The SIC broke new ground by introducing a hard 20 percent cap on cross media ownership and promising a new era of 'economic democracy' in the media. It was championed by none other than Silvio Berlusconi, the four times Prime Minister of Italy in the early 2000s who, over the course of his political and business career, had assumed control of Italy's three largest television channels with a combined 90 percent share of national audience and advertising revenues (along with the country's largest publisher and a daily national newspaper). However, the new cap was applied to the share of revenues within a total media market that encompassed everything from book publishing to gaming. The net effect was that Berlusconi's own media empire would never come close to breaching the 20 percent threshold. In fact, the new approach to defining the cross-media market share provided both the political cover and legal space for further expansion and concentration (Just 2009).

Underpinning the SIC's logic was an effort to confront plurality in a converged media market and expand the targets of regulation beyond the traditional purveyors of news and information (broadcasters and publishers). This broad objective finds some resonance in much of the recent scholarly literature which has highlighted, in particular, the need to bring platform monopolies into the fray of plurality regulation (eg Napoli 2014, Goodman 2014).

The emergence of such monopolies apparently signified a profound shift in the locus of gatekeeping power and in the agency of editorial decision-making: from conventional newsrooms to algorithmic code. According to some, it has altered the very basis upon which media plurality should be problematized. No longer is ownership considered central to the plurality question and instead, policy-makers are urged to redirect their focus to control over user access and attention (Helberger et al 2015).

There are, of course, sound reasons for believing that platform monopolies exercise a great deal of influence over the flow of news and information and therefore over the scope and limits of public debate. And media plurality concerns have always been, at least in part, a proxy for concerns about dominance in this respect. It is also certainly true that the phenomenon of personalisation has made 'exposure diversity' more fundamental to plurality concerns than output diversity (Napoli 2011). This paper argues, however, that the inter-play of gatekeeping and agenda power between major content producers and intermediaries is not a zero-sum game. The notion that the latter are fundamentally a disruptive force is embedded in much of the recent scholarly and policy literature but has not been subjected to much in the way of critical scrutiny. There is a risk of creating new blind spots in media policymaking if we overlook the distinction between content producers and intermediaries in terms of the respective and distinct positions they occupy within the news and information supply chain, as well as the emergent inter-dependencies taking shape between them.

These issues became highly salient in both policy and public debate during the UK's recent regulatory review of the proposed merger between 21st Century Fox and Sky. The review marked the first extensive application of the 'plurality measurement framework' unveiled by Ofcom – the UK's converged media regulator – in 2015. In its final report, the Competition and Markets Authority (CMA) established important precedents for plurality reform, particularly in its acknowledgement that digital intermediaries are not an inherently pluralising force and that regulatory intervention is needed to prevent concentrations of agenda power, especially at the level of wholesale newsgathering (CMA 2018a).

At the same time, the merger review also exposed significant limitations in the current regulatory framework. In spite of Ofcom's extensive consultation on plurality measurement, key questions remain about its adopted approach. More fundamentally, the review exposed the regime's presumptive reliance on the present or pre-transactional picture as a benchmark of plurality 'sufficiency'. Yet there is now compelling data and evidence to suggest that the existing news media landscape falls significantly short of Ofcom's stated plurality objectives: to ensure 'informed citizens who are able to access and consume a wide range of viewpoints across media platforms and multiple outlets; and to prevent 'too much influence over the political process being exercised by any one media owner' (Ofcom 2015: 1).

The discussion proceeds in three parts. First, we critically examine the existing measurement framework against the backdrop of the Fox/Sky merger review, with particular attention to measurement issues and the question of sufficiency. Next, we review the latest data and research on media ownership and plurality in the UK in the context of the twin objectives of the UK's public interest test regime, as stated above. Finally, we synthesise findings in order to chart a roadmap towards replacing legacy frameworks with a plurality policy fit for the twenty-first century.

Though the focus is on the UK, there are parallels that can be drawn and principles applied to a range of international contexts. And though we recognise that plurality policy encompasses a potentially broad spectrum of tools and approaches, our focus here is on top-down measures to curb concentrations of media power in order to address a significant impasse that has surfaced in UK media policymaking. Specifically, we call for a review of Ofcom's measurement framework in light of findings from the Fox/Sky merger inquiry; new legislative guidance on the determination of plurality 'sufficiency'; action on long-standing proposals for baseline and regular plurality reviews; and the development of plurality standards against which the performance of major intermediaries can be properly monitored and assessed.

Part One: Enduring and emergent issues in measurement

The UK's current plurality framework traces its roots to the development of media competition law but is primarily derived from the 2003 Communications Act. This created several public interest grounds on which ministers could intervene in media mergers, among them '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.'[1]

This regime largely succeeded 'ex ante' media ownership rules which had been progressively liberalised over the course of the 1990s.[2] But with a scope restricted to merger responses, the public interest test framework fails to capture concentrations of power that can and have developed 'organically', i.e. as a result of dynamic changes in technology and markets not attributable to merger activity. For instance, since abandoning its paywall in 2015, the online edition of *the Sun* newspaper saw its reach grow at an unparalleled and unprecedented rate, becoming the largest online news provider in the UK within three years (Tobitt 2018). This reflected a significant consolidation both within the online news market and across platforms which has not triggered a regulatory review due to falling outside of the current framework.

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[1] Section 58(2C)(a) of the Enterprise Act 2002.

[2] The only remaining rule at the time of writing is a cap on cross-market media ownership that prevents combined control of more than 20 percent of the Channel 3 TV license and more than 20% of the national newspaper market

This problem was first raised by Ofcom in 2010, in its report to the Secretary of State on the proposed merger between News Corporation and BskyB:

> The future market developments explored in this report suggest that the current statutory framework may no longer be equipped to achieve Parliament's policy objective of ensuring sufficient plurality of media ownership. These market developments include the risk of market exit by current news providers, or a steady, organic growth in audience shares and increase in the ability to influence by any one provider. These changes are, by their nature, evolutionary. However, a public interest consideration can only be triggered by a specific corporate transaction. The current statutory framework may therefore fail to deliver its public interest objectives if plurality in the UK is significantly reduced by developments that do not arise from a specific corporate transaction involving media enterprises (Ofcom 2010: 15).

Ofcom's recommendation was echoed and reinforced by the subsequent Leveson Report into Culture, Practices and Ethics of the Press (2012) as well as the House of Lords report on Media Plurality (2014). Even the government promised in 2014 the 'first-ever baseline assessment of media plurality in the UK' (DCMS 2014: 8) to be conducted by Ofcom, following the development of a plurality measurement framework.

However, at the time of writing, no such 'baseline assessment' has been undertaken in spite of Ofcom publishing its measurement framework in 2015. A major stumbling block remains the thorny question of how plurality 'sufficiency' should be defined and the absence of such a definition or substantive guidance within the existing framework has rendered it not fit for purpose. In effect, this has meant that the default benchmark of sufficiency is perennially the status quo, since regulators are tasked only with assessing the likely impact of a proposed merger on existing plurality.

In its supplementary guidance to the Secretary of State, Ofcom asked in 2012 for 'some form of guidance' from Parliament on the question of sufficiency. Specifically: 'indicative ranges, with additional qualitative guidance as to how those ranges should be interpreted.' (Ofcom 2012: 26). There remains a compelling need for Parliament to produce such guidance above and beyond those cited by Ofcom. Liberalisation of media ownership rules over the course of the 1990s and early 2000s effectively left a system in which intervention on plurality grounds was ultimately a decision vested in the Secretary of State, with guidance from regulators. This inevitably heightened the risk of capture in a policy area already fraught with such risk. Indeed, one of the key findings of the Leveson Report concerned the inherent vulnerability of media policy makers to influence capture:

> [T]here have been those in positions of leadership of the press who have shown themselves to be exceptionally dedicated, powerful and effective political lobbyists in the cause of their own (predominantly commercial, but also wider) interests. That lobbying has been conducted in part overtly and editorially, and in part covertly and through the medium of personal relationships with politicians (Leveson 2012: 28).

The unresolved question of sufficiency is compounded by problems in measurement, especially when it comes to classifying and 'counting' news sources online. Ofcom effectively distinguishes between three types: wholesale providers that produce original news content; retail outlets that carry the output of an exclusive wholesale provider; and intermediaries that act as 'gateways' to news consumption such as aggregators, search engines or social media platforms.

But in practice such distinctions are rarely clear-cut. Sky News, for instance, is the exclusive wholesale news provider to the Independent Radio Network (IRN) which supplies content for the majority of the commercial radio sector. However, the two largest commercial radio groups – Global and Bauer – also operate their own 'newsrooms' and do not rely wholly or even predominantly on clips and feeds provided by IRN/Sky. In 2015, Ofcom announced a significant change in its approach, classifying Global and Bauer as wholesale news providers in their own right, and discounting any input attributable to Sky. But this was implicitly questioned by the CMA's final report on the Fox/Sky merger:

> In relation to the supply of content to Global and Bauer radio stations we find that that it is unlikely that Sky News has a high degree of control at the wholesale level over the news content provided by Global and Bauer to listeners. However, we consider that there is some control given that these stations tend to rely on the IRN output [%], and, as such, it is appropriate to allocate some wholesale supply to Sky News (CMA 2018a: 178)

More significantly, Ofcom's cross-platform share analysis factors in major intermediaries as news sources in their own right. This reflects a conceptual flaw regarding the role of intermediaries as gatekeepers of news and information. Much of the scholarly literature has rightly rejected claims by intermediaries to be entirely neutral conduits through which users find, select and consume news and information. However, this has led in some cases to a presumption that they play an editorial role equivalent to, and directly comparable with that of conventional news sources. But since intermediaries by definition do not produce original news content, or carry the news produced by an exclusive wholesale provider, the key question from a plurality perspective turns on *which* wholesale or retails news sources achieve more or less salience on these platforms.

Ofcom's approach on the one hand acknowledges the distinct impact on plurality that intermediaries may have in this sense, by classifying them as news 'gateways' as apart from wholesale or retail news sources (Ofcom 2015). But when it comes to analysis of news consumption, intermediaries are treated as sources in both the collection and analysis of data, with the risk of significantly skewing the results. If, for instance, you get your online news via the BBC website and the BBC News Facebook page, this will be reflected in Ofcom's data as two separate news sources, effectively double counting the BBC. On the other hand, if you get your news from the BBC website plus various sources on Facebook including Sky News, Daily Mail, Guardian and a number of individual bloggers, then Ofcom's data will still record your online news consumption as reliant on two sources, significantly understating the plurality of your actual news diet.

This issue became a critical point of contention during the Fox/Sky merger review. The merging parties sought to argue that intermediaries were inherently pluralising forces (as suggested in the preceding example), widening the range of online news sources to which users are exposed. On this basis, they argued that Ofcom's cross-platform analysis overstated the shares attributable to the merging parties by not taking due account of the actual consumption of news sources via intermediaries.

But the CMA's own analysis appeared to support the inverse of Fox's argument. For instance, data collected on news consumption via Twitter showed that sources with the highest reach (based on impressions) were overwhelmingly large scale conventional news organisations, especially newspapers and broadcasters (CMA 2018b). Though there is some conflicting evidence in regard to the polarising effects of intermediaries,[3] research that examines the performance of mainstream news sources tends to suggest that their dominance is reinforced rather than challenged by these platforms (Harder et al 2017), or as one recent study put it, Google's news agenda 'replicates traditional industry structures more than disrupts them' (Nechushtai and Lewis 2018: 298).

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[3] This is especially the case on the individual level. Thus, whilst some studies suggest that intermediaries have a narrowing or polarising effect on exposure diversity (eg Schmidt et al 2017) others suggest the opposite (eg Webster and Ksiazek 2012, Pew Research 2013).

This resonates with anecdotal evidence suggesting that intermediaries are increasingly prioritising established news sources in both their algorithms and manual interventions into the flow of news across their networks. In 2013, Google's patent application for its updated news algorithm made explicit reference to the perceived quality and importance of large scale, mainstream sources.[4] And in 2016, it was revealed that Facebook had hired a team of journalists with instructions to ensure that headline stories on mainstream media were given a 'boost' if they weren't trending on Facebook 'organically' (Nunez 2016). As for Apple News, a 2018 study of sources recommended by its editors found that these were dominated by 'a few major newsrooms' (Brown 2018).

In the end, the CMA's own sensitivity analysis of Ofcom's cross-market 'share of reference' resulted in the reallocation of intermediary shares to conventional news sources. This marked a decisive turning point in the regulatory approach to assessing media plurality. Intermediaries may have a profound influence in shaping news agendas on both the individual and aggregate levels, but they are not themselves *sources* of news. It is equally clear from the CMA's analysis that, at the very least, we cannot assume that intermediaries make a net positive contribution to news plurality. If anything, we can expect a contracting effect given what looks like an increasing tendency for intermediaries to prioritise and promote newsrooms with established brands and resources.

Part 2: UK media ownership in context

It is a terrible irony that just as public attention starts to shift towards considering the harms emanating from the monopoly structure of platforms such as Amazon, Facebook and Google,

[4] See United States Patent Application Publication No. US 2014/0188859 A1. 3 July, 2014. Available at https://docs.google.com/viewer?url=patentimages.storage.googleapis.com/pdfs/US20140188859.pdf (last accessed 28 March, 2016).

there is now far less concern about the impact of legacy media power in evolving markets. So while Hindman (2018), Moore and Tambini (2018) and Wu (2018) have all highlighted the dangers of an increasingly anti-competitive and anti-democratic tech sector, and while antitrust has re-emerged inside US public policy circles (Khan 2016) and in the US presidential race (Stacey 2019), levels of ownership concentration inside traditional news and media markets generate far less critical scrutiny. This reflects the pressure on policymakers to confront 'disruptive' players and to face up to new problems but it also reflects the lingering sense that digital diffusion dealt a mortal blow to the era of old-fashioned 'media moguls' and 'press barons' – best expressed by Rupert Murdoch's tweet in 2012: 'Haven't you heard of the Internet? No one controls the media or will ever again' (quoted in Freedman 2014: 89). Public policy is now gripped by the need to regulate and to 'rein in' tech platforms whose size and reach is reshaping access to information markets; public policy is far less absorbed by concentrated media power inside newspaper and broadcast markets. Indeed, the conception appears to be that 'legacy media' need *additional* protections from digital intermediaries in the shape of new subsidies and tax breaks (see, for example, Cairncross 2019). Our argument, however, is that the online dominance of a handful of giant corporations is reproducing and intensifying existing patterns of agenda-setting power that continue to exert a substantial influence over media and political culture and that this requires a robust response if we are to secure meaningful plurality. As Schlosberg argues (2018), we are witnessing 'not the demise of concentrated news "voice", but its reconstitution within a more integrated, complex, and less noticeable power structure.'

The Media Reform Coalition has published two reports on media ownership in the UK that provide empirical evidence to back up these concerns (Media Reform Coalition, 2015. 2019). Far from demonstrating a situation in which there is healthy competition and marked diversity across in television, radio and online markets, the reports reveal patterns of concentration that inhibit the broad and varied forms of deliberation that the UK so desperately needs. Indeed, the data suggests a deepening, rather than diminishing, problem of dominance that is threatening to undermine prospects for a democratic media system and a fair distribution of communicative resources.

In 2015 three companies controlled 71% of national newspaper readership; by the end of 2018, the same three companies – Rupert Murdoch's News UK, DMG Media (publisher of the *Mail* titles) and Reach (publisher of the *Mirror* titles) accounted for 83%. By themselves, News UK and DMG, strong supporters of the Conservative Party and purveyors of anti-immigrant and anti-welfarist agendas, dominate over 60% of the market share of national newspapers (Media Reform Coalition 2019: 5). Despite drops in circulation of their leading daily titles of approximately 25% since 2015, their prominent presence in online spaces where the *Sun* and *Daily Mail* alone account for nearly 40% of total daily offline and online UK newsbrand reach (2019: 6) guarantees them continuing attention from politicians and, evidence suggests, from broadcasters. For example, Cushion et al (2018) studied intermedia agenda-setting during the 2015 UK general election and found that television news, while bound by impartiality regulations, nevertheless 'pursued a similar agenda to UK newspapers during the election campaign and followed their lead on some of the major stories' (2018: 178). More than half of all BBC stories on election policy issues had previously been published in newspapers, a figure that rose to nearly two-thirds of stories on Sky News, controlled at the time by Rupert Murdoch's 21st Century Fox (2018: 171).

As we have already noted, digital markets were initially conceptualised as representing the death knell of the blockbuster economy and its replacement by a 'long tail' where *niche* replaces *hit* as overarching logic. According to its main proponent, Chris Anderson (2009: 5): 'This shattering of the mainstream into a zillion different cultural shards is something that upsets traditional media and entertainment no end.' The problem is that the evidence, at least in relation to news and information markets, does not bear out his optimism: the shards may have far more an edge than they used to but they remain overshadowed by the size and influence of the mainstream. So while the left-wing digital native news site, *The Canary*, attracted a very creditable 817,000 UK visits in January 2019, this is less than one per cent of the traffic to the *Guardian* with nearly 104 million visits. During the 2017 General Election campaign period, the Canary outperformed the Daily Mail online when it came to Facebook shares of articles on the two main party leaders. Yet it's actual reach was, over the same period, a tiny fraction of the Mail's (1 percent versus 36 percent). And in the month the election was called, page views of the Daily Mail website outnumbered those of the Canary by a factor of more than 700. Similarly, the right-wing outlet Westmonster saw 614,000 visits to its site in January 2019, approximately 0.6 per cent of that of the *Daily Mail* with 102 million visits. Indeed, despite the optimism of internet pioneers, none of the top ten news websites in the UK (measured by reach) are new start-ups; all of them are legacy newspapers or broadcasters with the BBC, *Sun*, *Mail*, *Guardian* and *Telegraph* occupying the top five positions (Ofcom 2018b: 66).

We are seeing similar patterns of concentration in the local newspaper market where just five conglomerates account for 80% of all titles while 57 smaller publishers have just under 20% of what is left (Media Reform Coalition 2019: 8). Back in 2015, six companies dominated the market but with the purchase of Local World by Trinity Mirror (now Reach), the market is even more compressed. Buffeted by the migration online of classified advertising, there has been a series of closures, mergers and redundancies with important consequences for local democracy. The trade magazine *Press Gazette* estimates that there has been a net loss of 245 local news titles between 2005 and 2018 (Mayhew 2019). In 2018 alone, there was a net loss of 14 titles and at least 222 jobs. Meanwhile, despite the potential for hyperlocal news to take root, a lack of sustainable funding together with the patchy coverage by commercial titles means that we are witnessing the emergence of 'news deserts' that can feed community demoralisation and alienation. Only 80 out of 406 Local Authority Districts in the UK are currently served by a local daily newspaper with a further 53 relying on a title in an adjacent district, 45 per cent of which are served by a single local publisher (Media Reform Coalition 2019: 10).

At a time of significant political polarisation and disenfrachisement, local journalism in the UK ought to be playing a crucial role in giving voice to communities, addressing issues ignored by the national media and scrutinising local power holders. Instead, by most measures, local news is facing an unprecedented crisis: the number of local journalists has been drastically cut, the revenue model of local newspapers has been permanently undermined by shifts in advertising towards online intermediaries, the local news industry has consolidated to the point of near-monopoly coverage in many parts of the country, public interest journalism is being eroded and replaced with clickbait, and the capacity of local journalists to perform their democratic function has been substantially reduced.

Radio audiences remain healthy but this is far from a diversified sector. The BBC has a 51.7 per cent audience share while commercial stations have just over 45 per cent, leaving a very small slice for community radio. Once again, however, the commercial sector is highly concentrated with just two large companies, Global and Bauer, accounting for 46 per cent of all commercial analogue licences and two-thirds of all digital ones (Media Reform Coalition 2019: 20). For those hoping that new DAB licences would facilitate greater diversity and local accountability, the fact that Bauer and Global alone own 87.5 per cent of digital services in Northern Ireland and 85.3 per cent in Northern England provides a salutary warning (2019: 21). The consequences of this form of corporate control was illustrated by the decision of Global in February 2019 to scrap around 40 local breakfast shows and to replace them with just three nationwide programmes, resulting in significant numbers of redundancies and making a mockery of regulatory promises to protect local news and information (Waterson 2019).

The television sector is marked by hundreds of channels and an enormous portfolio of services provided by Subscription Video on Demand (SVOD) operators like Netflix and Amazon. The most salient point in relation to competition is the unequal resources of public service content providers like the BBC, ITV and Channel 4 in relation to their wholly commercial counterparts that include telecoms providers and giant tech companies with vastly more access to capital. While the BBC has annual revenue of approximately £5 billion and ITV just over £3 billion, BT is able to draw on a revenue base of £23.75 billion and Sky of nearly £14 billion – disparities that shape their ability to compete fairly in access to premium content like Premier League football rights and high-quality drama (Media Reform Coalition 2019: 17). Yet despite the fact that the BBC is now one of the poorer participants in British broadcasting – and increasingly unable to compete effectively with cash-rich SVOD operators based in the US – public policy is still oriented on the BBC's 'negative impact on parts of the UK media market' as the government's white paper on the future of the BBC put it during the most recent Charter Review (Department for Culture, Media & Sport, 2016: 64). So while Netflix, for example, 'have stoked inflation for top on-screen and off-screen talent, with rising costs further fuelled by competition from Amazon and Apple' (Sweney, 2018), it is the BBC that is held responsible for potential market distortions: 'The government's market impact study…noted that the BBC could push up input costs which create barriers to entry, or hamper commercial market growth' (DCMS 2016: 64).

In a commercial market, the BBC ought to have a particularly important role to play in fostering a plural information climate. Yet the BBC has reacted to this increasingly punishing environment – one in which its share of audience is declining, its budget is falling in real terms, and where it faces a consistently hostile reception from some Conservative MPs who have an antipathy to any form of public ownership – by embracing an increasingly risk-averse agenda that, as one of its former reporters argues, ‘turns around sanctioned news from officials, corporations and NGOs’ (Bennett-Jones 2018) in an effort to placate those whose hold its purse strings. Even its director general, Tony Hall, has admitted that public perception of the BBC’s impartiality ‘have weakened in recent years’ and has promised to implement new training routines to ‘challenge subconscious bias and test how it might creep into anything from a presenter’s tone to a programme’s running order’ (quoted in Tobitt 2019).

The Media Reform Coalition’s ownership data illustrate how hard it is to secure meaningful plurality in the absence of a genuinely competitive media system. All sectors of UK media are subject to commercial and/or elite forms of control that are based, in part, on ownership models that marginalise the very voices they are supposed to represent. It is difficult, in this context, to see how the *status quo* is delivering the plurality to which Ofcom claims to be committed given that neither of the constituent components of plurality are in evidence today. There remain very powerful voices that have a disproportionate impact to shape public opinion and political agendas; at the same time, there are insufficient incentives and structures to guarantee the circulation of diverse viewpoints and instead a tendency for information markets to be dominated by legacy outlets and established interests. As the Media Reform Coalition argue:

> We believe that concentration within news and information markets in particular has reached endemic levels in the UK and that we urgently need effective remedies. This kind of concentration creates conditions in which wealthy individuals and organisations can amass huge political and economic power and distort the media landscape to suit their interests and personal views. Urgent reform is needed in order

> both to address high levels of concentration in particular media markets and to protect against further concentration in others. (Media Reform Coalition 2019: 3)

How might we start to design a regulatory system that tackles concentrated ownership, checks the power of elite individuals and groups and enhances the plurality of our news and information markets both by breaking the grip of the most powerful interests and by enhancing the prospects for the circulation of a wider range of voices? How might we, as Ed Baker once argued (2007: 7), secure 'the wide and fair dispersal of power and ubiquitous opportunities to present preferences, views, visions' in the context of concentrated media and tech power?

Conclusion: The road to reform

Clearly, there is no panacea that can address these concerns. Public policy needs to encompass both a 'top-down' and 'bottom-up' approach to checking the power of dominant media owners whilst securing new forms of public support for independent media, especially at the local level. But the current trajectory is faltering on a combination of inaction and a misconception of digital dominance.

Inaction has manifest in successive reviews of the media ownership and plurality framework. In its most recent report, Ofcom (2018a) made no mention of the need for a baseline plurality review as promised by the government in 2014. Instead, as in 2015, the regulator batted for the status quo, recommending no change to either the last remaining media ownership rules or the public interest test regime. Against the backdrop of the Fox/Sky merger review and intensifying consolidation especially within newspaper markets, this was a landmark missed opportunity.

The consequence was not just reinforcement of a legacy framework that is no longer fit for purpose, but the propping up of a system that is itself perennially rigged in favour of the status quo. Without at least a baseline plurality review outside of merger activity, we have no means of redressing the rapid consolidation both within and across news markets to which the latest ownership data attests. And without appropriate guidance on sufficiency, existing market conditions will remain the default benchmark of sufficient plurality against which any major merger is assessed, effectively asking not whether there *is* sufficient plurality, but only whether a given merger threatens to reduce plurality further (and beyond that which could be deemed sufficient).

In determining guidance on sufficiency, it would be appropriate for legislators to draw on findings from the Fox/Sky merger review. The identified risks posed by the deal were not just about market dominance per se, but rather the ability of the Murdoch family to wield dominance on multiple platforms and in multiple ways. For instance, the CMA identified a particularly acute risk arising from the combined control not only of leading titles on different platforms, but also combined control of titles with significant reach and those with significant agenda influence:

> [T]he reach and share of reference of Sky News, in addition to that of the News Corp titles, gives them an increased ability to influence public opinion and lead the news agenda. Sky News and The Times are highly trusted and therefore likely to be more influential than raw audience numbers indicate (CMA 2018a: 239).

It follows that any guidance on sufficiency should ensure that concentrations across more than one platform, market or metric should be subjected to close scrutiny. Control of a leading or even dominant news provider on a particular platform may not, on its own, warrant any kind of intervention. But where that control is combined with ownership of another title or channel that has a market leading position on another platform, then such combinations present material risks to plurality under the statutory definition. Similarly, material risks are presented where control of a leading title or channel in terms of reach is combined with another leading title or channel in terms of agenda influence, regardless of platform.

Thus, an effective plurality framework should not be limited to merger responses or pre-emptive controls over combinations of newspaper and television ownership (as reflected in current statutory limits on cross-platform ownership). The Daily Mail and General Trust controls two of the widest read national newspaper dailies, as well as one of the largest online news sites; whilst Reach plc has a commanding share of the local and regional news market as well as leading titles in both the national print and online news spheres. Given the emergent patterns of consolidation outlined in the previous section, an effective plurality framework must confront such existing concentrations, including the cross-platform dominance wielded by News UK. Legislative guidance should also make clear the full range of structural and behavioural remedies that may be applicable in different circumstances, from enforced divestment through to specified public interest obligations aimed at enhancing internal plurality, with emphasis on the need for remedies to be both practicable and effective.

But as well as facing an impasse in plurality reform, current policy momentum aimed at tackling the monopoly power of intermediaries suffers from a fundamental misconception of that power: that it is wielded *at the expense* of conventional and legacy publishers. In reality, intermediaries have increasingly sought to prioritise large scale and 'legacy' news brands over smaller, independent sources. Underlying such 'filters' is a highly questionable association between size and trustworthiness, along with a growing commercial logic which favours large sale and incumbent news sources. As algorithms move progressively towards a more predictive rather than responsive framework, it is inevitable that those sources with relative scale, volume and established audiences will be increasingly favoured in news feeds and search rankings over those with a more specialist focus and/or resource deficit.

Perhaps the most glaring omission from Ofcom's recent review of media ownership rules was the thorny question of how to factor intermediaries into both plurality assessment and remedies, not least given the CMA's implied conclusion that their net contribution offers no guarantee of a boost to plurality. This means, first and foremost, that they should not be factored into any comparative or market share analysis as news sources in their own right, since to do so risks significantly skewing the data. Categorising them as distinct from wholesale and retail news sources means little if they are treated equally in survey questionnaires and in analysis of data.

What also seems abundantly clear from the CMA's conclusions is that the role of intermediaries can and should be properly assessed by reference to the news sources that are actually consumed through their networks. This would help to ensure that market shares are more appropriately attributed to those who produce and provide the news whilst also enabling regulators to develop, monitor and enforce standards of algorithm governance in support of plurality objectives.

In summary, recent patterns of concentration in the UK media landscape combined with findings from the Fox/Sky merger review call for urgent attention to policy reform. A plurality framework that is genuinely future proof must start with a review of Ofcom's measurement approach in order to better account for the particular role and impact of intermediaries on media plurality in the digital sphere. At the same time, we urgently need new legislative guidance on determining plurality sufficiency amidst all the complexities of a converged media environment, which identifies the material risks to plurality posed by *combinations* of control in respect of different platforms, markets and metrics. This framework must then be applied not just in response to referred media mergers, but in a baseline followed by regular plurality reviews outside of merger activity. Moves towards such a framework began in 2010 when Ofcom first recommended reforms to the public interest test regime in order to allow for regular plurality reviews. That they have since fallen by the wayside, in spite of enduring and intensifying patterns of media concentration, raises renewed questions about the degree of capture in media policymaking.

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