

HOUSE OF LORDS

Select Committee on Communications

1st Report of Session 2013–14

Media plurality

Ordered to be printed 21 January 2014 and published 4 February 2014

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£14.50

HL Paper 120

The Select Committee on Communications

The Select Committee on Communications was appointed by the House of Lords on 22 June 2010 with the orders of reference “to consider the media and the creative industries.”

Current Membership

Baroness Bakewell
Lord Clement-Jones
Baroness Deech
Lord Dubs
Baroness Fookes
Baroness Healy of Primrose Hill
Lord Inglewood (Chairman)
Bishop of Norwich
Lord Razzall
Lord St John of Bletso
Baroness Scotland
Earl of Selborne
Lord Skelmersdale

Declaration of Interests

See Appendix 1.

A full list of Members’ interests can be found in the Register of Lords’ Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

Publications

All publications of the Committee are available on the internet at:

<http://www.parliament.uk/hlcommunications>

Parliament Live

Live coverage of debates and public sessions of the Committee’s meetings are available at:

www.parliamentlive.tv

General Information

General Information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at:

<http://www.parliament.uk/business/lords>

Committee Staff

The current staff of the Committee are Anna Murphy (Clerk), Alan Morrison (Policy Analyst) and Rita Logan (Committee Assistant).

Contact Details

All correspondence should be addressed to the Clerk of the Select Committee on Communications, Committee Office, House of Lords, London SW1A 0PW.

The telephone number for general enquiries is 020 7219 6076/8662

The Committee’s email address is: holcommunications@parliament.uk

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
Summary		5
Chapter 1: Introduction—the case for a media plurality policy		
What is media plurality?	1	7
The case for a plurality policy	4	7
Acknowledgments	13	10
Chapter 2: Scope	14	11
Genre	16	11
Geography	28	14
Publicly-funded media	41	17
Media Channels	46	18
The Lifecycle of News	53	20
The value chain	57	21
Chapter 3: Approach	64	23
Figure1: Approaches		23
Conceptual Shift (Positive Intervention)	74	24
No Intervention	97	29
Caps	102	30
Hybrids	123	35
Ofcom’s Proposal	148	41
Box 1: What is a metric?		43
Chapter 4: Decision	180	50
The Secretary of State	183	50
The Regulator (Ofcom)	187	51
A hybrid	189	52
A plurality commission	191	53
Chapter 5: Our proposal on media plurality policy	194	54
Overview	195	54
The periodic plurality review	196	54
Box 2: Recap of conclusions from chapter 2 on scope		54
The transactional review	223	59
The ‘Kent Messenger Group scenario’	247	63
Box 3: The relevance of the Kent Messenger Group case		63
Figure 2: Transactional Review		65
Other features of the ‘plurality landscape’	255	65
Chapter 6: Summary of recommendations	259	67
Appendix 1: Select Committee on Communications	304	73
Appendix 2: List of Witnesses	304	74
Appendix 3: Call for Evidence	304	77
Appendix 4: Current legal and regulatory context of media plurality	304	80

Box 4: A summary of the current legal and regulatory context of media plurality from Ofcom's advice to the Secretary of State **80**

Evidence is published online at <http://www.parliament.uk/hlcomms> and available for inspection at the Parliamentary Archives (020 7219 5314)

References in footnotes to the Report are as follows:

Q refers to a question in oral evidence

SUMMARY

Media plurality is not a goal in itself but a means to an end. That end is generally conceived in terms of UK democratic life; if there is sufficient media plurality, we can expect that citizens have the opportunity to be informed through access to a diversity of viewpoints, and that media owners do not have too much influence over the political process.

Issues surrounding media plurality have come under the policy spotlight during the present Parliament, prompted by concerns raised about the proposed (and then dropped) acquisition of BSkyB by News Corporation; Ofcom's report on Measuring Media Plurality; the Leveson report; the report by the European Commission's High Level Group on Media Freedom & Pluralism; and most recently the Government's own consultation on media ownership and plurality. Together these have raised a number of ways in which the policy and regulatory framework currently surrounding plurality needs updating.

The focus placed on plurality across these various institutions might create the expectation that a consensus is forming and that momentum is now building behind reform. However, the questions we raised in our call for evidence elicited a range of submissions with very different views about how to proceed. We have found that making clear comparisons between different policy approaches to media plurality is not straightforward. This is not only because they do not generate consensus, but because the different perspectives—at least those we have heard—tend to enter the debate on such different terms: technocratic, polemic, and pragmatic.

Against that background, we have evaluated the different proposals put to us, giving consideration to their merits and demerits; our survey of the evidence can be found in chapters 2–4 of this Report. Our analysis highlights major concerns with some of these proposals and as such helped us arrive at a clear set of principles which we believe any reform to plurality policy should respect. For example, the focus for assessment should be on news and current affairs rather than other genres, and there must be a way to assess the impact on plurality of organic market change as well as the impact of specific transactions. In addition, assessing plurality properly requires more than one form of measurement, although these should be limited so as not to proliferate out of control. It follows that certain automatic interventions such as statutory caps are not the best option; they have to be set on a single scale and thus inherently impoverish the assessment that can be made about whether and how to intervene. Following an assessment, plurality policy should be revised to strike a new balance between the regulator and Government in terms of decisions to be made about intervention: there should be accountability for politicians where appropriate but the onus should be on Ofcom to balance the citizen and consumer interests. More generally, the Government should revise the present system of reviews of media transactions in order to clarify the relationship between competition and plurality policy.

Bringing these principles together, we submit our own proposal for reform; this is contained in chapter 5. Our intention is to help the Government to find a way through the vexed maze of debates surrounding media plurality. We call on the Government, in their ongoing work, to build on our approach, which incorporates

elements from a range of sources and provides a model, around which we believe a consensus may be found.

Our proposal is for a framework of two key elements. The first, which is new, is the undertaking of a plurality review on a predictable periodic basis, which should set the context for the second: a modification of the existing arrangements for a review of specific transactions which occur in the interval between one periodic review and the next. We would expect the latter to happen infrequently.

In a nutshell, Ofcom's task in conducting the periodic review will be to identify plurality concerns which exist in relation to specific media markets and across media, or with particular players. This should provide guidance about the prospects of any subsequent transaction being called in for a specific transactional review. Only in the most extreme circumstances should interventions in the interests of plurality be imposed outwith the context of a transaction, but where immediate and pressing concerns resulting from organic change are discovered in a periodic review, it should be possible for Ofcom to recommend that a media enterprise be forced to divest. A high bar should be in place for Ofcom to make such a recommendation and indeed the Secretary of State should have a role to play, on the basis that he or she should accept the recommendations in Ofcom's report or publish good reasons for not doing so.

Transactional reviews should consist, where relevant, of two distinct processes: one concerned with plurality to be conducted by Ofcom; the other concerned with the competition aspects of the transaction to be conducted by the competition authorities. In reality, we expect that these would occur infrequently, not least because periodic plurality reviews should be written so as to limit the need for transactional plurality reviews. The final step in the transactional review should be the submission of the competition and plurality assessments to the Ofcom Board which should be responsible for reconciling the recommendations of the two reports and implementing them as a single Public Interest Decision. The Ofcom Board would be expected to carry out this function mindful of its twin statutory duties to further and, therefore, balance the consumer and the citizen interest.

There are a number of important reforms in our proposal. We strike a new balance between the regulator and Government in terms of decisions to be made about intervention; Ofcom, not the Secretary of State, should have the final say about media transactions. However, the Secretary of State should have a role in giving political authority to the conclusions of periodic plurality reviews which establish the context in which transactions are made. There should be clear blue water between competition and plurality policy and their assessments should be distinct with the responsibility for reaching a final Public Interest Decision falling to a body with the appropriate statutory duties to give all considerations due weight. Interventions in the interests of plurality should, generally speaking, only be imposed in connection with specific transactions, but there must also be a mechanism for intervening where this can be justified and organic market change causes immediate and pressing concerns.

Many of the detailed questions of implementation remain to be answered, but we hope we have submitted a set of recommendations which the Government can accept and which will stimulate greater consensus and action towards reform than appears hitherto to have been possible.

Media plurality

CHAPTER 1: INTRODUCTION—THE CASE FOR A MEDIA PLURALITY POLICY

What is media plurality?

1. The call to define, or at least describe, media plurality elicited the strongest consensus we encountered in this inquiry.¹ The clearest expression of its generally accepted meaning came from Ofcom:
 - “Plurality is not a goal in itself but a means to an end ... a well-functioning democratic society.”²
 - “Plurality contributes to a well-functioning democratic society through the means of:
 - (a) Informed citizens—able to access and consume a wide range of viewpoints across a variety of platforms and media owners.
 - (b) Preventing too much influence over the political process—exercised by any one media owner.”³
2. The existence of a strong consensus around this description came as no surprise; a number of prominent publications have remarked on it before:

“There is no definition of media plurality in statute; however, in advice to the Department in 2012, Ofcom provided a useful definition of the desired outcomes of a plural market ... Lord Justice Leveson noted in his report that this approach to both the diversity of views available and the influence wielded seems to be generally accepted.”⁴
3. We add our voice to this consensus: the twin elements of Ofcom’s formulation both represent important “desired outcomes of a plural market.”⁵ They describe what plurality is for and by doing so define plurality as the state of the media which successfully brings these outcomes about.

The case for a plurality policy

4. A less clear-cut matter than finding an agreed description of media plurality is the question: why do we need a media plurality policy at all? Curiously, this is less clear-cut not because it was an area of significant dispute between

¹ It would be remiss, however, not to mention that this consensus was not universal. Some witnesses claimed that Ofcom’s description should explicitly embrace social and cultural dimensions of plurality as well as the democratic one. We turn to this question which relates to the scope of media plurality policy in the following chapter, Scope.

² Ofcom.

³ *Ibid.*

⁴ *Department for Culture, Media and Sport: Media Ownership and Plurality Consultation, July 2013.* Available online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225790/Media_Plurality_Consultation_2013.pdf

⁵ Ofcom, 6 June 2012. *Measuring media plurality: Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport.* Available online: <http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf>

witnesses but rather the opposite: the answer appears to be taken largely for granted: yes, a policy is required and all that remains is to determine what that policy should be. We agree on the need for a media plurality policy, but we also think that the basic case for one—in the most general terms, rather than for a specific proposal—should be made at the outset. This has proved a more difficult task than we imagined.

5. The definition of the problem naturally frames the range of credible solutions. Ofcom’s description contains two different but related outcomes of media plurality. If the case for reform rests more heavily on one than the other, this will have an effect on the relevance of any solution. For example, if the purpose of a media plurality policy were defined in terms of preventing too much influence over the political process, then the solution could include measures designed to rein in democratic imbalances of power and access in the most general sense. Alternatively, if its purpose were defined in terms of the ability of citizens to access and consume a wide range of viewpoints, then the focus is more likely to be on the way the industry’s regulatory framework can stimulate the availability of diverse editorial voice. The hierarchy of these two elements must clearly be set. Accordingly, across chapters 2–4, we explore each approach to media plurality policy put to us in evidence together with its version of the case for one.
6. Having said that, there are one or two preliminary points to be made about the case for a media plurality policy which are neutral with respect to the approach any policy might take. These arise from considering the implications of having no plurality policy at all: what would its absence mean in practice?
7. First, there is a regulatory context to media plurality policy which we do not, generally speaking, regard as being part of plurality policy itself,⁶ e.g.:
 - Broadcast standards including due impartiality;
 - Positive obligations on PSBs, e.g. to show an appropriate amount of national, international and regional news; and
 - Restrictions on TV/radio licences being granted to particular types of person whose influence might cause concern, e.g. advertising agencies.
8. The case for these interventions does not rest solely on their effect on media plurality. Indeed, the only provisions which are very specifically an implementation of a media plurality policy are the “20/20 rule”⁷ and the Public Interest Test.⁸ Both of these provisions relate to media ownership. As such, not having these provisions would allow shifts in media ownership to proceed unchallenged, other than by the normal processes for assessing their impact on competition by the competition authorities.
9. This prompts a more precise question: would it matter if there were no policy on media plurality such that decisions on media ownership were made strictly on competition grounds? To this, our emphatic answer is: yes. There

⁶ Further detail on the regulatory context to media plurality can be found in Appendix 4.

⁷ This prohibits a newspaper group with more than 20% of national newspaper share from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%. The restrictions apply to both licensees/newspaper owners and persons controlling licensees/newspaper owners, the participation threshold being 20%.

⁸ Enterprise Act 2002, section 58(2B) and (2C)(a).

is a fundamental difference between the interests of competition and the consumer on the one hand, and the interests of the citizen and media plurality on the other; in matters of media ownership, both need to be considered. Robin Foster explained this point:

“Plurality is not the same thing as competition, although they are linked. Competition law helps protect the economic interests of individuals as consumers and acts to secure a reasonable level of choice and value in any commercial market. Insofar as competition law can prevent the emergence of monopolies, it will also have some positive effect on plurality. Society as whole, however, may take the view that the outcome of a competitive market does not fully serve the interests of individuals as citizens. For example, markets might provide high quality news to only the most commercially attractive segments of a population, society would prefer all to benefit. Markets might focus only on the most popular types of news; society would like a much deeper and more diverse range of news and views to be widely available, reflecting minority as well as majority viewpoints. Markets might tend towards an oligopolistic structure (with only a few big suppliers) while society would prefer a larger number of different suppliers”⁹

10. Professor Martin Cave helped explain these differences further:

“Plurality is basically a social and collective goal ... That means that, as with many collective endeavours, the definition of the goal and the metrics for the goal have to be set top-down ... I interpret competition policy as being ... essentially an individualistic analysis. What we are trying to do is take the customer ... and try to ensure that that customer is able to exercise, without constraint, their own choices as to what they consume. We are not really interested so much in the outcome of what they consume; we are interested more in the ability of the customer to be able to make choices in a way that constrains firms from raising their prices. That is fundamentally it ... But when somebody is trying to achieve pluralistic objectives ... they may observe a situation, for example, in which people make consumption decisions of their own free will and without any presence of market power, but the outcome turns out to be very unpluralistic. For example, suppose everybody chose to read the same newspaper. That would be, in competition terms, in the absence of market power and in the absence of any kind of abusive behaviour, quite a satisfactory outcome ... It is the best newspaper so people buy it. But in terms of achieving the objective for pluralism, which is to ensure that a broad range of opinions are consumed and that no proprietor or owner is in a position to exercise power by virtue of his or her capacity to determine what is in those newspapers, that objective will not be achieved.”¹⁰

11. Competition and plurality policy are clearly separate but parallel policies, and one way this can be seen is in outcomes which would be satisfactory in a competition assessment but unsatisfactory in a plurality assessment, or vice versa. Therefore, without prejudice to any particular solution, a case can clearly be made for a media plurality policy in the most general sense. This rests on the unsatisfactory situation from a civic perspective which would

⁹ Robin Foster.

¹⁰ Q 288.

arise in the absence of such a policy, with decisions on media ownership made solely on competition grounds.

12. In the following three chapters we analyse the proposals which we received on plurality policy. In chapter 2 we consider different ways to define its scope. In chapter 3 we evaluate various models for how to approach assessment and intervention and in chapter 4 we assess different ways to allocate institutional responsibility for any decision. In chapter 5 we set out our own proposal on media plurality policy, including a set of principles and mechanisms which will be fundamental to the Government's current and ongoing work. A description of the existing arrangements for media plurality is contained in Appendix 4.

Acknowledgments

13. We would like to thank everyone who gave evidence to us, both at oral evidence sessions, which we held between June and November 2013, and in writing.¹¹ We also wish to thank our Specialist Adviser, Tim Suter, whose expertise greatly enhanced our work.

¹¹ See Appendix 2 for a list of all those who submitted evidence.

CHAPTER 2: SCOPE

14. In this chapter, we consider the major questions which arose during the inquiry relating to the scope or target of a plurality policy.
15. We address the following aspects of the scope of a plurality policy:
 - Genre;
 - Geography;
 - Publicly funded media;
 - Media channel;
 - The lifecycle of news; and
 - The value chain.¹²

Genre

Should genres beyond news and current affairs be included in the scope of a plurality policy?

16. One of the questions we posed in our call for evidence was, “Should [the scope of media plurality policy] encompass news and current affairs or wider cultural diversity in content provision as well?” Voice of the Listener and Viewer made the case for a wider variety of content being included in any plurality policy:

“The availability of a range of genres, including drama, comedy and even, in some instances, light entertainment, especially where these involve content produced within the national culture, is important; these can be a powerful force in influencing the agenda or debate. They can also engage a different audience from that for news and current affairs programmes and should be included in the scope of media plurality policy.”¹³
17. Lord Puttnam agreed that the scope of plurality policy should be wider than only news and current affairs,

“By way of an obvious example, one of the reasons we fund and support public-service broadcasters is to secure plurality beyond simply news and current affairs. We rightly concern ourselves at the possibility of a narrowing taste of the market. ... the clear solution, surely, is to achieve a plurality of offering, so that audiences have an optimal opportunity to access the widest possible range of works.”¹⁴
18. Whilst not dismissing these views, others have pointed out that reforming plurality policy is a difficult task and that getting it right with regard to news and current affairs is the priority. Accordingly, Suzanne Rab and Dr Alison Sprague acknowledged that some genres such as soaps might influence one’s viewpoint but, nonetheless, recommended that the scope of media plurality

¹² In other industries, this might be termed the “supply chain;” we explain further what is meant by “value chain” later in this chapter.

¹³ Voice of the Listener and Viewer.

¹⁴ Q 149.

should encompass news and current affairs only.¹⁵ Lord Fowler was emphatic on this point:

“I think you do what it is possible to do and you also do what is most important. I think what is most important is news and current affairs ... it is going to be difficult enough to do that without getting into new areas, like drama with messages ... My own feeling would be to concentrate on what we can achieve ... and what has the most impact, ... news and current affairs. That has the most direct effect on the proper functioning of a democracy. If we can achieve that, we will be achieving a vast amount.”¹⁶

19. The BBC concurred that news and current affairs are the most important genres in terms of driving the news agenda and developing public debate, and so therefore should be the primary genres to be considered in any plurality policy.¹⁷
20. There are also practical difficulties associated with a wider scope of genre for a plurality policy. Ed Vaizey MP, Minister for Culture, Communications and Creative Industries explained that,

“Unless one is prepared to not let the best be the enemy of the good, you could have this debate almost endlessly. Should films form part of the debate—individual films can be extraordinarily influential, wildlife documentaries, for example—video games, books being published, clearly polemical books on particular issues? You would be hard pressed to come to any kind of manageable system that incorporated that wide a scope.”¹⁸
21. Conversely there are good practical reasons for limiting the scope of a plurality policy to news and current affairs. Ofcom gave two examples—the genre “news and current affairs” is already used in television and online measurement systems and it is also easily understood by respondents in consumer research.¹⁹ As a category, news and current affairs can be identified for the purposes of assessment.

Does limiting the scope of plurality policy to news and current affairs ignore important aspects of media power?

22. Other witnesses have argued that plurality policy should include genres outside news and current affairs because plurality policy should be concerned with the ability of media organisations to merge and concentrate power, and the implications which this has for agenda diversity in and beyond the genre of news and current affairs.
23. Mr Goodall explained that, “Our belief is that most of the malign influence of extremely high market shares in media arises not necessarily from the ability to influence the political process, but to influence the economics of

¹⁵ Suzanne Rab and Dr Alison Sprague.

¹⁶ Q 149.

¹⁷ BBC.

¹⁸ Q 426.

¹⁹ Ofcom.

the industry in this large company's favour."²⁰ Professor Barnett gave some practical examples of this,

"there are two ... aspects to it. One ... is pure commercial self-promotion. If you are an organisation that holds sports rights ... you are much more likely to play news about those sports in your bulletins ... Also, by virtue of your commercial power, you will have influence over the regulator ... It is important to remember that there are other aspects to plurality beyond the influence on citizens and the public, which are all about the nature of exercising power in a democracy."²¹

24. Following this argument through leads its principal proponent, Enders Analysis, to recommend a cap of 15% on each player's revenue share of the overall media market. Mr Goodall admitted that this cap was arbitrary,

"We have gone for a relatively simple, extremely arbitrary rule—I use that word carefully because to me that is a good thing—because it is then very much easier for regulators to maintain control and to make sure that the rules are well understood by every participant."²²

The merits and demerits of a "revenue cap approach" are discussed in the following chapter.

25. Some witnesses however claimed that the 15% cap on revenues is more deliberate with respect to the scope of plurality policy than its proponents claim. Professor Collins told us that whatever measurement instrument is taken by regulators and policymakers, "it is not an innocent choice. We know that your Committee has received evidence suggesting that a revenue measure should be taken ... the choice of the measuring instrument takes the regulator in very different directions."²³

26. Mr Elstein was rather more specific in explaining his objection to the 15% revenue cap proposal,

"It is just another way of dealing with Murdoch. I said to [Enders Analysis]: Be open about it. Ask the House of Lords to put forward a Bill banning Murdoch. ... Whatever you want to do, just do it, but do not muck up our media plurality regime for the sake of a personal campaign against a particular proprietor. However well intentioned you are and however well merited that campaign might be, that is not the point of this."²⁴

27. We recognise that all genres and channels of information used by UK citizens play a role in the ideas and perspectives available to them. Accordingly, there is some justification for including within plurality policy any channel or genre through which those ideas and perspectives are spread. But, for the practical and pragmatic reasons outlined above, **we recommend that a plurality policy should be limited to the activities of media enterprises engaged in news and current affairs content. Content diversity in other genres is not unimportant but is a matter of independent commissioning or the stipulations set out in licence and**

²⁰ Q 108.

²¹ Q 81.

²² Q 114.

²³ Q 30.

²⁴ Q 253.

Charter renewal agreement which create the context in which commissioning decisions are made.

Geography

28. Citizens of the United Kingdom can receive news and current affairs content from suppliers based all over the world and this is especially true of internet-based content. This raises the question of whether and how the United Kingdom's plurality policy, which is by definition embedded in the national jurisdiction, should take account of this international dimension. Suzanne Rab and Dr Alison Sprague pointed out that whilst there was a broad international consensus supporting pluralism, "there is no internationally recognised regulatory model as to how this goal is best served."²⁵ Certainly, a broad-based international approach to plurality does not appear to be in prospect. However, we did hear evidence on the possibility of greater European involvement in this area.

The European dimension

29. The European Commission is involved, to a limited extent, in UK media plurality policy through the EC Merger Regulation²⁶ under which competition aspects of large international mergers which satisfy certain jurisdictional criteria fall to be considered by the European Commission's Competition Directorate. Only the competition aspects of the merger are considered by the Commission leaving Member States free to take appropriate measures to protect their 'legitimate interests,' including plurality of the media. As such the media public interest considerations raised by these mergers remain to be considered by UK authorities.²⁷ Put simply, "Only when media mergers pose issues of market dominance across the EU does the EU Competition Commission intervene."²⁸
30. There is a debate about whether European Union competence in this area should be extended. The European Initiative for Media Pluralism (EIMP) claimed that, "An EU-wide standard framework of rules on media ownership would provide a clear and important foundation for free and independent media."²⁹ This statement followed to some extent from the High Level Working Group on Media Freedom and Pluralism set up by the EU Commissioner for Digital Agenda, Neelie Kroes, which recommended that "The EU should be considered competent to act to protect media freedom and pluralism at State level."³⁰
31. There was, however, considerable scepticism in the evidence we received about the idea of a pan-European policy on media plurality *per se*. Professor Collins explained that "We think that the media markets of

²⁵ Suzanne Rab and Dr Alison Sprague.

²⁶ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation). Available online:

<http://ec.europa.eu/competition/mergers/legislation/regulations.html>

²⁷ Competition Commission.

²⁸ EIMP.

²⁹ *Ibid.*

³⁰ *A free and pluralistic media to sustain European democracy The Report of the High Level Group on Media Freedom and Pluralism. Jan 2013.* Available online:

<http://ec.europa.eu/digital-agenda/en/high-level-group-media-freedom-and-pluralism>

European Union member states are so diverse that it is very, very hard to imagine a coherent and meaningful pan-European policy coming into existence ... and we think continued effort is not really worthwhile—to formulate a coherent and effective European policy on this.”³¹ Similarly Dr Craufurd Smith said that “the EU has tried to intervene in this field before and was unsuccessful ... because a number of member states feel quite strongly that these issues are better dealt with, and ... can be better contextualised and developed at the national level.”³² Dr Tambini developed this point further: “News markets are still very national ... given that polities remain national and so, in many cases, do language groups.”³³

32. Despite the general scepticism amongst our witnesses about a European media plurality policy *per se*, two areas were identified where a pan-European (or wider than UK-only) approach could be of potential merit:

- to address digital intermediaries; and
- to remove state aid constraints which might block Member States’ endeavours to use targeted and proportionate public funding to stimulate and support greater agenda diversity in their national media.

33. In relation to the first Mr Foster told us that:

“The EU already has well developed competence in telecommunications access regulation, and these are big pan-global companies that operate at European scale. There may be some scope for encouraging thinking at the European level about how access regulation could be developed to apply to these digital gateways.”³⁴

With regard to the second area he said that,

“there is a more important role for public funding of high-quality journalism in future, which does raise issues of state aid ... We need to make sure, working at the EU level, that proposals that seem to make sense here and no doubt in other member states do not fall foul of those sorts of constraints.”³⁵

34. **There appears to be a strong consensus that UK media markets should be the focus of UK media plurality policy; we agree. We recognise that plurality policy remains broadly a matter for the UK and this report relates to a UK plurality policy.**

35. However, that is not to say that it may not be appropriate and necessary for any assessment of plurality in the UK to take into account the presence of internationally-sourced content in UK citizens’ news diets. Indeed it would be important that **any plurality policy approach may take into account media enterprises based in the UK as well as those outside UK jurisdiction to the extent that they are consumed by UK audiences if this is considered relevant to the overall assessment.**

³¹ Q 57.

³² Q 10.

³³ Q 12.

³⁴ Q 27.

³⁵ Q 27.

National v local media plurality policy

36. There is some agreement around the idea that plurality concerns are finely balanced against the issue of financial sustainability, particularly at the regional/local level. RadioCentre told us that “local media companies ... are already under considerable financial strain to survive.”³⁶ The Media Standards Trust pointed to the decline in plurality of provision of regular and sustainable sources of news and current affairs content at the local and regional level in the United Kingdom.³⁷ Professor Barnett described this dramatically in his written evidence:
- “the decline of the local press and inadequacy of other local media ... is producing a severe democratic deficit within local communities.”³⁸
37. Against this background, we were interested to hear from Ashley Highfield, Chief Executive Officer of the Johnston Press that whilst, “The last seven years has been extremely brutal for the regional press industry ... we are now at a level, provided that we can cut our cloth accordingly, that is sustainable for the long term as we move to the predominantly digital world.”³⁹
38. Whether or not the commercial prospects of the local and regional media may improve, there were clearly grounds in Ofcom’s advice to the Secretary of State to acknowledge that plurality may be under greater pressure in relation to local media than at the national level.⁴⁰ Indeed, for this reason we expressed hope in a previous Report, *The Future of Investigative Journalism*,⁴¹ that the Government’s removal of rules relating to local cross-media ownership would provide an opportunity for local media organisations to develop a sustainable business model through consolidation in future if they wish to do so, although we do note that the effectiveness of consolidation as a route to improving the commercial prospects of local and regional media is contested. On the one hand, the Media Reform Coalition claimed that, “there is simply no evidence that consolidation of ownership improves the prospects for sustainability and some evidence to the contrary.”⁴² On the other, the Newspaper Society warmly welcomed the abolition of local cross-media ownership restrictions in 2012.⁴³
39. In any case, the understandable concerns about the commercial health of local and regional media suggest that these considerations should form an integral part of any media plurality policy. As Professor Barnett explained, “At the local level, [the pertinent questions may] be different [to those at the national level] ... “How do we shore up the kinds of media enterprises that we want and need?” Not necessarily just for plurality, but just so that there are some local news information sources that exist.”⁴⁴ We leave consideration

³⁶ RadioCentre.

³⁷ Media Standards Trust.

³⁸ Professor Barnett.

³⁹ Q 340.

⁴⁰ Ofcom 5 October 2012. *Measuring media plurality: Supplementary advice to the Secretary of State for Culture, Media and Sport and the Leveson Inquiry*. Available online: <http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/letters/advice.pdf>

⁴¹ Select Committee on Communications, *The Future of Investigative Journalism* (3rd Report, Session 2010–12, HL Paper 256).

⁴² Media Reform Coalition.

⁴³ Newspaper Society.

⁴⁴ Q 71.

of the exact approach a policy might take to the next chapter on Approach. The important point is the following:

40. **The scope of any plurality policy should encompass both local and regional media as well as national media in the devolved nations and UK-wide media enterprises. In dealing with local or regional media, those tasked with making decisions should in reaching their conclusions pay particular attention to the question of financial sustainability.**

Publicly-funded media

Should the BBC be included in a plurality assessment?

41. The evidence we received was unanimous that the BBC should be included in any assessment of media plurality. The consensus appears to be that not including the BBC in a media plurality assessment would be difficult to justify. News Corporation told us that,

“It is ... difficult to conceive of any sensible regulatory regime which would ignore the role and position of the BBC”⁴⁵ and Ms Rab and Dr Sprague told us that the “BBC’s position in news provision means that it would be incongruous not to consider it in any measure of viewpoint diversity.”⁴⁶

The Government appear to agree. Mr Vaizey told us that “The BBC, clearly because it has got its huge share of voice, has to be taken into account when you are considering media plurality.”⁴⁷

42. Whilst there was consensus that the BBC should be included in any assessment of media plurality, we heard that it should not necessarily be subject to any control measures as a result of that assessment, at least from outwith its own regulatory framework. For some, this was because this framework imposes requirements on the BBC which are themselves a sufficient safeguard to ensure that its conduct in relation to plurality is addressed satisfactorily. This echoes a view put in the Leveson report:

“governance controls in place to ensure internal plurality within the BBC, and the effect of the impartiality requirements meant that its size gave rise to no plurality concerns”⁴⁸

43. A similar view was expressed by Avaaz:

“the BBC is subject to a substantial range of public interest regulation that make it exceedingly difficult for it to threaten democracy in the ways privately-owned entities do, to whom these regulations do not apply. Aside from requirements to maintain balance, impartiality and offer the right of reply in all its news programmes, the BBC is also subject to a range of quotas and governance requirements designed to ensure its accountability, internal plurality and diversity of output.”⁴⁹

⁴⁵ News Corporation.

⁴⁶ Suzanne Rab and Dr Alison Sprague.

⁴⁷ Q 422.

⁴⁸ *An inquiry into the culture, practices and ethics of the press: report [Leveson] Volume 3*. Available online: http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_iii.pdf

⁴⁹ Avaaz.

44. Whether or not the existing requirements on the BBC are sufficient in addressing the organisation's role in respect of plurality, there is a more straightforward case to make that control measures should not be imposed from outwith its own regulatory framework. The current BBC governance structure places a responsibility on the body which oversees the organisation to monitor and intervene in the BBC's direction if necessary. Under the existing governance rules this is the BBC Trust. To argue that control measures should be imposed on the BBC from outwith this governance structure is to open up a debate about these arrangements which would be a matter for an entirely separate inquiry. Quite straightforwardly, therefore, as long as these arrangements remain as they are, it is appropriate that control measures are a matter for the body which oversees the BBC at present.
45. As such, we agree with the overwhelming balance of the evidence we have received. **The BBC should be included in any assessment of media plurality but it should not be subject to any control measures imposed from outwith its own regulatory framework as a result of that assessment. It is for the body which oversees the BBC, under the existing governance rules this is the BBC Trust, to ensure that the BBC's conduct in relation to plurality is addressed satisfactorily.**

Media Channels

Should online media be included in the scope of media plurality policy?

46. Ofcom's plurality report observed that "newspapers, online and radio are perceived by consumers to be broadly similar in terms of importance," with use of online news steadily growing from 15% who "ever used" it in 2002, to 27% in 2007, to 41% of UK adults who use the internet for news in 2012.⁵⁰ The growing importance of the online delivery of news and current affairs was also described by Mr Foster:
- "for the under-45s ... the internet is now a more important source of news than television or newspapers, probably for the first time. There is a real split in the market between the over-45s, who still like print and television, and the under-45s, who rely much more on digital media. That just shows it has to be included in any assessment."⁵¹
47. This highlights an issue with the current plurality arrangements which were designed with newspapers and broadcasters in mind—not online providers. Indeed, for the purposes of plurality, the Communications Act 2003 does not recognise online-only enterprises as "media enterprises" at all, leading Lord Puttnam to stress that the "challenge that confronts us as legislators ... is to get from where we are now, based on legislation framed principally in an analogue age, to where we ought to be in a digital age."⁵² The consensus across the evidence was very clear: that this issue should be resolved and online media should be in scope for the assessment of media plurality.

⁵⁰ Ofcom, 6 June 2012, *Op. Cit.*

⁵¹ Q 18.

⁵² Q 141.

Should digital intermediaries be included in the scope of media plurality policy?

48. We heard oral evidence from two digital intermediaries—Facebook and Google. Mr Simon Milner, Policy Director, UK and Ireland, Facebook, told us that Facebook was open to the “Government wanting to include all the different ways in which people find out about what is going on in the world via digital and traditional analogue media within that [media plurality policy] framework” but was keen to stress that Facebook was not a media platform or a news organisation.⁵³ Similarly Mr Peter Barron, Director of Communications and Public Affairs for Europe, Middle East and Africa, Google stressed that Google was not a publisher. It did not create content but helped people to access content.⁵⁴ While no witnesses made a specific claim that digital intermediaries are a present threat to UK media plurality, we received some evidence that they could represent a potential threat if not properly monitored.
49. Mr Foster explained that “The public interest concern is whether they have an incentive and an ability to decide what sources of news we can get to through their platforms. At the moment, I suspect it is not a major concern, but you can see that in the future, the way in which [digital intermediaries] operate could start to determine which news sources get priority treatment and which get pushed down the list; which news sources they willing to carry and which they are not.”⁵⁵
50. Dr Schlosberg made a similar point that digital intermediaries had a kind of “gate-keeping” power which was potentially open to abuse.⁵⁶ While the influence of these enterprises may not represent a present threat to media plurality, there was a clear consensus around the view that the impact on plurality of digital intermediaries must be kept under review and taken into account as part of any assessment.
51. **We recommend that media plurality policy should not be limited by the media channel through which content is primarily delivered: print, broadcast and content delivered over the internet may all be relevant, as could be the influence of digital intermediaries on the consumption of this content. It should, therefore, be open to an assessment of plurality to determine which media channels should be in scope based on whether they are relevant to the overall assessment of plurality at the time.**
52. There is a separate question about whether some of the major digital intermediaries can be brought within the jurisdictional reach of any plurality remedies or interventions. We leave this matter to Chapter 5 where we describe our proposal for a media plurality policy.

⁵³ Q 387.

⁵⁴ Q 387.

⁵⁵ Q 22.

⁵⁶ Q 334.

The Lifecycle of News

Should plurality policy focus on the supply or consumption of media, or both?

53. To recap, in Ofcom’s advice to the Secretary of State, media plurality is described as a means to an end which should have two desired outcomes, the first of which is:
- “Ensuring there is a diversity of viewpoints available and consumed across and within media enterprises.”⁵⁷
54. For some, the inclusion of the word “consumed” was conspicuous and raised a question about whether Ofcom’s intention had been to suggest that media plurality policy should actively seek to stimulate the demand for and consumption of diverse viewpoints. As a result, Professor Picard was keen to stress that “There is no way you can force consumption, but you want to make it readily available to everybody, make it readily available to people at a price that is acceptable for them, and make sure that you are not excluding them in some way along the way.”⁵⁸ Similarly Mr Foster told us that one could not require the public to consume different viewpoints “The first priority should be to focus on ensuring the public has at least the option of finding a diversity of viewpoints, even if in the end it chooses not to take advantage of them.”⁵⁹
55. Robert Kenny explained that the inclusion of the word “consumed” was important. It did not necessarily suggest that media plurality policy should seek to intervene in consumer behaviour, but rather to capture the importance of making an assessment of consumption of diverse viewpoints across and within media enterprises. He told us that assessing “availability by itself is insufficient, and it is appropriate therefore to include ‘consumed’.”⁶⁰ In oral evidence, Steve Gettings of Ofcom explained its inclusion in a similar way, noting that an assessment of plurality should take into account certain characteristics of the way in which consumers behave, for example, that,
- “consumption of ... different sources is high among all sections of society ... and that there is good evidence of multi-sourcing, ... For us that was quite an important metric [because it would help reveal whether any] provider of ... content has what policymakers might regard as an unreasonably high level of consumption, in other words dominates the news media market.”⁶¹
56. **We recognise the importance of ensuring that no content provider has an unreasonably high level of consumption and recommend that a media plurality policy should take into account both the supply and consumption of content, albeit that any interventions available will have to be limited in application to the supply side.**

⁵⁷ Ofcom, 6 June 2012, *Op. Cit.*

⁵⁸ Q18.

⁵⁹ Robin Foster.

⁶⁰ Robert Kenny.

⁶¹ Q 407.

The value chain

57. The value chain for the supply of news is complex. Ofcom explain this in their advice to the Secretary of State:⁶²

“Content might be originated by one company (e.g. a newswire such as Reuters), aggregated by another (e.g. a wholesale news provider such as ITN), and made available to citizens by yet another (e.g. a broadcaster such as Sky).”

58. Ofcom’s document refers to content produced in-house as retail content and content sourced from third parties as wholesale content. We note that the use of these labels attracts a mixed reception from the media enterprises involved. For example, Mr Clive Marshall, CEO of the Press Association told us that he is “very happy with the description of wholesaler. Our role is to provide the building blocks of the news for our news subscribers.”⁶³ By contrast, Mr John Hardie, CEO of ITN, told us that he is “rather unhappy with the expression “wholesalers” being used about us ... A wholesaler to me implies the middle man in the distribution chain ... That is nothing like what we do. ITN is an originator of television news.”⁶⁴ However, these labels have been useful to us in discussing the role played by different media enterprises in the value chain of news and current affairs, and so we have continued to use them in this Report.

Should ‘wholesalers’ of news be taken into account in a review of media plurality?

59. We considered whether wholesalers of news should be taken into account in any media plurality policy or assessment. The evidence we received was that a judgment needed to be made about where in the value chain editorial control was exercised: if editorial control was exercised by wholesalers, they should be included in the assessment. Professor Collins acknowledged that it was not always easy in practice to work out where editorial control was exercised:

“Editorial control is the key issue, and that that may be at the wholesale or retail level ... teasing out those chains [however] would be a nightmare task for any regulator ... [influence may be exercised] at many places along the chain.”⁶⁵

60. The commercially-funded PSBs⁶⁶ however, were all firm in their view that the editorial control lay with them rather than their “wholesaler,” ITN. Mr Magnus Brooke of ITV explained “We are the customer so we set the overall strategy and editorial objectives for our news programmes and we are in charge. We are paying for them, which is not to say we are in day-to-day editorial charge ... we are not consulted on a daily basis about what stories to run but we certainly have control.”⁶⁷ Similarly Mr Dan Brooke of Channel 4 told us that “From our point of view we hold the whip hand. We have a commercial contract with ITN, which is very detailed”⁶⁸ and Mr Marcus Lee

⁶² Ofcom, 6 June 2012, *Op. Cit.*

⁶³ Q 276.

⁶⁴ Q 276.

⁶⁵ Q 61.

⁶⁶ ITV, Channel 4, Channel 5.

⁶⁷ Q 239.

⁶⁸ Q 239.

of Channel 5 told us “It is not so much a concern that ITN ... has too much of a powerful voice ... our news output is ... Channel 5’s voice and it just so happens that ITN create that for us.”⁶⁹

61. We heard evidence from ITN and the Press Association, two news wholesalers. Mr Marshall was clear that “At the Press Association, the editorial control rests with our customers, so at the retail part of the process ... We do not editorialise. We would not produce opinion columns.”⁷⁰ But whether ITN exercises editorial control seems less clear-cut than this, “Day-by-day we are making the editorial choices, consulting with them. They get to see what our running order may be and so forth, but we are not debating on a day-by-day basis: what is first up tonight?”⁷¹
62. Ofcom’s advice to the Secretary of State allows for the possibility that a degree of editorial control may be exercised by the wholesaler and recommends that a new media plurality regime should not rule out the possibility of influence being attributed to “wholesale” providers of news:

“The value chain is likely to continue to evolve; as, for example, new types of online aggregators become more significant ... [and therefore] we recommend that flexibility is required to consider at which points in the value chain editorial control is most likely to be exercised, and therefore how best to measure diversity and influence.”⁷²
63. **We recommend that a media plurality policy should be flexible enough to take into account both the wholesale and retail provision of news and current affairs content. It should establish an approach to determining how to attribute content to media enterprises operating at different points in the value chain. This determination will require the location of editorial control in the value chain to be identified in each case.**

⁶⁹ Q 240.

⁷⁰ Q 279 and Q 280.

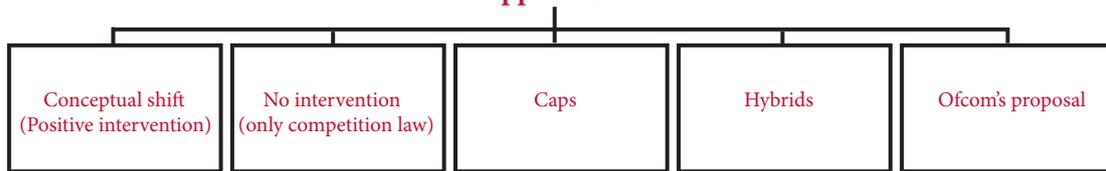
⁷¹ Q 279 (Mr Hardie).

⁷² Ofcom, 6 June 2012, *Op. Cit.*

CHAPTER 3: APPROACH

64. Across the evidence we received, five broad models of procedures and interventions were put forward as candidates for new approaches to media plurality policy; these are captured roughly in the diagram below.

FIGURE 1
Approaches
Approaches



65. The purpose of this chapter is to present our analysis of these different approaches to media plurality policy: their motivating concerns, their pros and cons, and other relevant questions. Our hope is that our presentation of these issues will help to clarify, for expert and uninitiated audiences alike, the merits and demerits of these different approaches as compared to each other.
66. However, making clear comparisons between different policy approaches to media plurality is not straightforward. This is not only because they do not elicit consensus, but because the different perspectives—at least those we have heard—tend to enter the debate on such different terms: technocratic, polemic, and pragmatic. Each of these ways into the plurality debate is likely to get some parts right and to miss others.
67. Against that background, we will make concluding remarks on each of the possible approaches put to us and we try to give understandable and balanced reasons for reaching these conclusions. To be clear, our conclusions are also informed by certain principles which we arrived at in the course of our analysis. A summary of these is set out in chapter 5, but as two of these principles, in particular, shed light on our thinking in this chapter, we include them here first:
68. **The framework of plurality assessment and intervention must strike a balance between providing certainty to the market and flexibility to the regulator—both are important.**
69. **The assessment of plurality should drive the decision about which remedy or intervention is appropriate, not the other way around.**
70. Finally, we note that the background to all of these approaches is a fairly common set of criticisms about the current arrangements for media plurality, including that they fail to address digital media enterprises or the impact on plurality of organic change. These points are well documented, so we do not comment on them further, other than briefly to address the “20/20” rule about which we did take some evidence.
71. The “20/20” rule applies to cross-media ownership at a national level and consists in the following:⁷³

⁷³ A useful summary of the “20/20 rule” is provided in the DCMS submission to the Leveson inquiry: *Narrative on media ownership*. Available online: http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/DCMS-submission_Narrative-on-media-ownership.pdf

- No one can own more than 20% of a Channel 3 licence⁷⁴ and at the same time own national newspapers with more than 20% market share.
 - The same restriction applies to anyone who is more than 20% owned by someone who has more than 20% of the national newspaper market.
72. For some, the argument for retaining the “20/20” rule is weakening because they claim that the relative importance of the media to which it applies has waned. For example, David Elstein questioned “whether the famous 20/20 rule ... any longer makes sense, given that the first of these “20”s (ownership of more than 20% of the national newspaper market) related to daily sales of 16 million newspapers when the clause was enacted, but now relates to daily sales below 9 million.”⁷⁵ Others, such as Professor Barnett, still see the Channel 3 licence and the national newspaper market as particularly important in the context of plurality: “The notion of separating what are still the most powerful forms of mass communication is entirely appropriate. I would keep that rule.”⁷⁶
73. The balance of the evidence about whether to retain or remove the “20/20” rule did not point heavily in one direction or the other. The important point was made by Dr Tambini: “the answer to all of these questions depends on what is replacing it”⁷⁷ which chimes with Ofcom’s argument in its supplementary advice to the Secretary of State: “the main factor that might inform ... whether the 20/20 rule is the most effective way of addressing the original policy aims—is the extent to which a new regulatory regime ... might address these same aims.”⁷⁸ This can only be decided with any certainty once it is clear what that new regulatory regime should be, and perhaps even only when it is in place. We, therefore, leave our conclusion on this point to chapter 5 in which we set out our proposal on media plurality, having first considered in this chapter the range of approaches put to us in the evidence we received.

Conceptual Shift (Positive Intervention)

What are the motivating concerns for proponents of this approach?

74. Proponents of a ‘conceptual shift’ towards positive intervention generally have serious concerns about measures designed to prevent media enterprises from growing, such as media ownership caps. Indeed their call for a conceptual shift is often triggered by a fear that such proposals and the analysis behind them are barking up the wrong tree, focussing too heavily on abuses of concentrated media power and not enough on the growing fragmentation of the media and the decline in its commercial sustainability. Professor Collins told us that “there is a significant structural change going on in the media sector, notably, the migration of advertising revenue to the internet, which is undermining a business model that has sustained relatively high quality and relatively pluralistic media in the UK and elsewhere for a

⁷⁴ There are 15 regional Channel 3 licensees and one licensee providing the national breakfast-time service.

⁷⁵ David Elstein.

⁷⁶ Q 94.

⁷⁷ Q 14.

⁷⁸ Ofcom, 5 October 2012, *Op. Cit.*

long time.”⁷⁹ Accordingly, he added that “changing the regulatory order is going to have relatively little bite on this structural problem. Focusing on changing media ownership regulation is taking attention away from looking at what the main issue is.”⁸⁰

75. As a result they call for a new focus within plurality policy on positive interventions to promote diversity, either as a principal recommendation in and of itself—as is suggested by Professors Collins and Cave—or as part of a wider package of measures—as is suggested by Professor Picard and Mr Foster. The premise of this approach is that, ultimately, “media plurality depends largely on commercial organisations investing in news and journalism.”⁸¹ Accordingly, it is argued that “a conceptual shift is needed ... Rather than conceiving of media pluralism as an objective to be realised by prohibiting mergers, it should be thought of as pointing towards intervention designed to facilitate and encourage entry.”⁸²

76. This case is made with particular reference to newer, smaller online providers of news and current affairs content, ‘minnows’ as some have called them:

“maybe we should spend a bit less time limiting ... and a bit more time fostering ... so that these minnows ... can establish themselves as genuine authoritative alternatives to the ... media we have now.”⁸³

77. Proponents of this view also point out that positive interventions are not unprecedented. Accordingly, the conceptual shift they call for may simply involve thinking more widely and imaginatively about the purpose of existing public intervention in the media.

“We see the remedy—if there is a remedy—more in terms of public intervention to redress or mitigate classic market failure. We have got that very well established in the UK with the BBC and other publicly funded broadcasters, other jurisdictions, press subsidies and so on.”⁸⁴

What might public intervention for media diversity look like in practice?

78. There has been no definitive answer to this question. Indeed responses have generally suggested that it is a vast and complex question to consider in its own right and would deserve its own inquiry:

“That would be a very interesting topic for another inquiry. One would not want to hand out public money to just anyone who applied; you have to think of the criteria.”⁸⁵

79. Nonetheless a number of tentative early thoughts on what positive intervention might look like were mentioned. Professor Collins told us that “There are two past papers of Ofcom that really bear on this issue very interestingly. The first is the one in which they advocated the establishment of a public service publisher. Secondly, I think it is 2007 and I am pretty sure the reference is in our evidence to you: New News, Future News. This paints

⁷⁹ Q 29.

⁸⁰ Q 33.

⁸¹ Q 15 (Robin Foster).

⁸² Professor Richard Collins and Professor Martin Cave.

⁸³ Q 42 (Professor Collins).

⁸⁴ Q 33 (Professor Collins).

⁸⁵ Q 42 (Professor Collins).

a rather gloomy picture of how this sector is going to develop.”⁸⁶ Professor Barnett also put forward as a model:

“Independently Funded News Consortia ... which were finally passed in the wash-up under the old Labour Government and then dismantled by the coalition Government. I believe they offered at least a sort of model for allowing local media platforms—TV, radio, online, newspapers—to come together, partly with some help from public funding, to ensure that something existed at that local level.”⁸⁷

80. Even these tentative early suggestions, however, raise difficult challenges. One of the criticisms which the newspaper industry regularly makes is, of course, that the BBC is in receipt of public money and it is a competitor. There can be little doubt that any case for additional public money to be spent on public interest media would attract understandable criticism from a range of players currently in the marketplace who are suffering difficult economic times.

How would positive intervention to promote media diversity fit in with existing public funding of the media?

81. While views we heard about the specific manifestations of public intervention to support diversity were overwhelmingly tentative, debate over how any such idea might interact with existing forms of public support for the media (such as funding of the BBC) was, by contrast, relatively firm and occasionally heated.
82. A very clear divide, for example, exists between those who believe that the question of public intervention merits a reconsideration of licence fee funding, particularly in light of existing precedents for this money being used for non-BBC purposes such as S4C, and those who do not, and instead believe that additional public funding to support media diversity should come from new sources such as a levy on digital intermediaries. For example, on one side there are those like Professor Collins who told us that “if one ... ask[s] ... Where would the money come from?” ... the only obvious candidate for that funding is the licence fee. We have had a number of precedents where very small amounts of the licence fee have been directed to ... supporting new media entrants. We think that might not be a bad way to go in future.”⁸⁸ On the other side there are those like Professor Barnett who put it to us that:

“top-slicing the BBC ... is a profoundly bad idea ... Punishing the BBC by taking money away from an organisation that is not just world-renowned but deeply trusted in this country to give that money to other start-up operations that may or may not be successful is frankly a daft idea ... there are other potential sources of public funding through levies on the news aggregators, on ISPs.”⁸⁹

83. The evidence we have heard also featured discussion not simply about allocation of public funds for media diversity but about the—perhaps slightly softer—matter of what the BBC’s responsibilities towards fostering plurality

⁸⁶ Q 44 (Professor Collins).

⁸⁷ Q 71.

⁸⁸ Q 49.

⁸⁹ Q 72.

should be. On internal plurality, the BBC agreed that it did not have a specific duty to promote internal plurality, but equally did not believe that introducing such a duty would necessarily be helpful:

“It does not have a specific requirement but despite not having that specific requirement, the trust regards that as a major requirement of the BBC and it is a key part of our editorial policy guidelines. It is infused structurally and culturally in the organisation. You are right, there is not something in the charter and agreement that says we must do it, and that may be something that Government and Parliament want to look at. I would be slightly nervous about overly prescribing how the BBC conducts its news affairs within the charter and agreement, but it is certainly an interesting idea”⁹⁰

84. Whether or not the BBC should have a specific duty to foster internal plurality, others suggested there is a strong case for the BBC to adapt more generally with a view to creating greater internal plurality. In his oral evidence to the Committee, David Elstein accused the BBC of being a ‘unitary organisation’ and suggested that BBC radio, News channel, World Service and Online are insufficiently independent from each other editorially.

“[The BBC] is a unitary organisation ... Under John Birt and his then head of news and current affairs, Tony Hall ... news and current affairs were merged inside the BBC ... My concern is ... with the lack of pluralism in the way BBC news and current affairs is organised. I would love to see Tony Hall taking the principled view that the way to deliver internal plurality is to reverse the process that he has played such a large part in, which is to allow BBC radio, the BBC News Channel, BBC World Service and BBC online to be independent editorially.”⁹¹

85. The BBC Trust rejected this view and indeed it is overstated. As Diane Coyle, Vice Chairman of the BBC Trust told us: “I do not recognise that monolithic BBC that he is describing. Nobody dictates an editorial line to BBC journalists ... The services and programmes serve different audiences and they are very different in character.”⁹²
86. In addition, while recognising the importance of presenting a diverse range of views on any one topic within its individual services, the BBC argue that in the context of Delivering Quality First, the BBC’s programme of cuts, the organisation needs to find efficient ways of working which may not be compatible with the establishment of competing centres of editorial control. The cuts being made, they claim, are being implemented with the goal in mind, as far as possible, to maintain investment in public interest journalism, locally and internationally:

“The hope is that, with all BBC news funded from the same source under one roof, you can start to develop a more integrated news operation where the domestic benefits from the international and the international benefits from the domestic.”⁹³

⁹⁰ Q 227 (Mr Heath, BBC).

⁹¹ Q 249.

⁹² Q 414.

⁹³ Q220 (Mr Heath, BBC).

87. Moreover, the BBC put it to us that there is clearly an important role for a diversity of views to be presented in any one service, but that the idea of delivering internal plurality through a system of alternative and competing news agendas did not necessarily reflect audience demands. These tend to rate more highly than internal plurality the importance of finding, across any service from the BBC, a news offer which is trusted, impartial, accurate and up-to-date:

“When we ask audiences why they choose a news provider the top answers they give are around impartiality, accuracy, trustworthiness and being up-to-date. For us, those have to be the priority. So, while internal plurality is important, it is not the top audience priority”⁹⁴

88. By contrast, when it came to external plurality, the BBC itself appeared to be more open to the potential of developing its activities and responsibilities further:

“the extent to which the BBC could play a broader role in enhancing external plurality, I agree that the BBC, given its scale in the market, should think hard about how it uses that scale and presence to support other parts of the market. An obvious way in which it does this is around online. Effectively, online news gives you the shelf space to do far more in-depth analysis and detailed treatment and background and context on stories, and what you can do there is effectively push consumers to a range of other suppliers in the market, whether that is to other newspaper websites or other sources of news. That is something the BBC does and the stats are quite significant on the amount of traffic it pushes outside BBC Online. They could be stronger. We could be more sophisticated in how we link out to websites, both local websites and national websites, but that is one obvious example. We would be up for a conversation, dialogue, with newspaper groups about how the BBC can use its position in the market in a positive way, something that we have tried to do in the past with the way we syndicate our news content. It is something we did in the Olympics whereby we shared Olympics audio-visual footage with newspapers. There are also other things we are up for an active discussion on with newspaper organisations.”⁹⁵

The Committee's view

89. As a Committee we have looked at the idea of new exercises in public and charitable funding of the media before in our Report on *The Future of Investigative Journalism*.⁹⁶ We recognise there may be some potential merit in these ideas. We support those working in this area.
90. **On the BBC, we think that the proper place to consider its responsibilities, including with regard to matters such as internal or external plurality, is within the Charter Review framework.**
91. On internal plurality, David Elstein's idea of rerouting the internal wiring of BBC news services to establish different editorial centres of control is certainly, in some respects, an attractive intellectual proposal. We are

⁹⁴ Q221 (Mr Wilson, BBC).

⁹⁵ Q227 (Mr Heath, BBC).

⁹⁶ Select Committee on Communications, *The Future of Investigative Journalism* (3rd Report, Session 2010–12, HL Paper 256).

persuaded, however, that there are practical pressures and other priorities in the BBC which compete with this, which argue against the idea of establishing—now, at any rate—a distributed system of editorial centres creating competing news agendas available across BBC’s services. However, in light of the foregoing discussion about external plurality and the potential for the BBC to act not only as a trusted provider of its own news and current affairs content but also as a gateway to external sources of diverse opinion on news and current affairs, at least in its online incarnation, we make the following recommendation:

92. **We encourage the Government and the BBC in negotiating Charter Renewal to consider whether the BBC might be given a more explicit responsibility—with respect to its online offer for news and current affairs content—to stimulate consumption of diverse viewpoints from different external sources.**
93. As a separate matter, we also note that licence fee money is already being allocated, as far as we can tell at the Government’s request, to projects external to the BBC such as S4C with—if not explicit—tacit approval of the BBC Trust. It is not out of place, therefore to make the following recommendation:
94. **We recommend that the Charter Review process makes clear what licence fee funding is for, and that, as long as it is conceivably available for projects external to the BBC, it is also made clear what strategic role, if any, this funding might play in positively promoting external plurality in the wider UK media.**
95. **For our part, we urge the Government to support our view that the licence fee should be for the BBC alone, though we do not argue that funding to S4C should now be removed.**
96. Our sense is that if this principle is not observed, people can too easily look to the licence fee as a source of funding for other projects, and the Government of the day can too easily blur the issue, indeed as it is doing at present. Clarity and transparency are important and required in this.

No Intervention

What motivates the proponents of this idea?

97. In reality, there have been no proponents of this idea across the evidence submitted to the Committee. Only one witness, Professor Collins, has appeared to come close: “In our bolder moments, we do flirt with that idea, my Lord Chairman.”⁹⁷
98. While no one has argued for this approach, it has, however, arisen a number of times in our evidence sessions. This is because it has provided witnesses with a way of discussing the value of having a media plurality policy over having none, or perhaps more accurately, the value of having a media plurality policy over allowing decisions on media ownership to be made strictly on competition grounds or only by competition authorities, as described in chapter 1.

⁹⁷ Q 53.

99. As noted there, those who have made a point of opposing this idea highlight the differences between competition policy and plurality policy, underlining that plurality policy is not secondary to competition policy but that there are good arguments for considering it to exist in parallel with it.
100. Not disconnected from this, others have also argued that, institutionally, competition authorities are not the appropriate bodies to carry out the thinking required by a media plurality assessment. Professor Picard, for example, told us that “regulators ... are very often very tightly focused in their competencies to deal with things, or in the methods that they can use to analyse things, or in the remedies they have. If [a plurality assessment] gets thrown to a competition authority, they are going to deal with it as a competition issue.”⁹⁸ He added that:

“The Office of Fair Trading, and the Competition Commission have the ability and skills to undertake appropriate inquiries in areas involving ownership and mergers/acquisitions, but their remits do not include continuous monitoring of broader pluralism issues and the authority and tools to work to proactively improve media pluralism. They also lack the organisational ethos and capabilities for positively promoting media pluralism.”⁹⁹

The Committee’s view

101. As indicated in chapter 1, we believe that determining clear demarcation lines between plurality and competition policy is crucial. We will not repeat those arguments here. We only note that the current overlap between the two seems partly responsible for the fact that at play in the political discussion of this subject are a number of matters which in reality run parallel to media plurality policy.

Caps

102. A cap has been proposed in two contexts: first, as a stand-alone measure, and second, as a single element within a package of hybrid measures. The latter will be considered later under ‘hybrids’. For now, a number of questions arise in relation to a cap as an approach in its own right.

What proposals have been made for a cap as an approach in its own right?

103. Across the evidence the principal witness to have proposed introducing a cap as a stand-alone measure is Enders Analysis. Their specific proposal is for a cap of 15% on the revenues any enterprise can earn across the ‘total media market’. They argue that “the most effective way of ensuring plurality is to introduce a cap on the share of the revenues of the total media market controlled by any company ... a cap of, say, 15% would ensure that no one company could completely dominate the UK media industry”¹⁰⁰
104. The ‘total media market’ includes: “national newspapers; Regional newspapers; Consumer magazines; Video games; Television advertising; Television subscription fees; Books both in physical and digital form; Recorded music both in physical and digital form; Cinema; Video/DVD

⁹⁸ Q 26.

⁹⁹ Professor Picard.

¹⁰⁰ Enders Analysis.

rental and purchase; Internet subscriptions; Internet advertising; [and] Radio advertising.”¹⁰¹

What motivates proponents of the Enders cap?

105. Proponents of this approach are clearly motivated by a range of concerns relating to media plurality policy. Still, given its distinctive features it is probably fair to say that chief among these is a concern with market power—and stopping any one entity having too much of it. This was made clear by Mr Goodall from Enders Analysis in his oral evidence: “I absolutely believe that if we think plurality and diversity are important, we have to stop one dog in the industry becoming too powerful.”¹⁰² He added that:

“Our belief is that most of the malign influence of extremely high market shares in media arises not necessarily from the ability to influence the political process, but to influence the economics of the industry in this large company’s favour.”¹⁰³

More specifically, why do its proponents set the revenue cap at 15%?

106. There appear to be three main reasons why the cap’s proponents believe it would be an effective measure. First, as long as the market can sustain them, it provides the closest thing to a guaranteed ‘floor-level’ of media players across the whole media market. As Professor Barnett told us, “The Enders notion of a 15% cap, which gives you six or seven major players ... The rationale behind it seems to me to be entirely appropriate.”¹⁰⁴
107. Secondly, it draws a symbolically significant line in the sand for UK democracy. Again, Professor Barnett told us that a cap is a “bright white line that says ‘thus far and no further’. At that point it is becoming too uncomfortable for democracy to allow someone with that much circulation of national newspapers or that much share of the national television audience to be in one person’s hands or one private company’s hands. At that point we are saying, ‘We are going to have to ask you to divest’. It is important to have that rule and that cap.”¹⁰⁵
108. Thirdly, it gives certainty to the market and removes discretion from either the regulator or Government in implementing media plurality policy. It is argued that this has a number of benefits. It makes the policy more workable from the perspective of a regulator responsible for it; indeed it is argued that a policy may be entirely unworkable without removing discretion from the process. Mr Goodall explained that “we have gone for a relatively simple, extremely arbitrary rule—and I use that word carefully because to me that is a good thing—because it is then very much easier for regulators to maintain control and to make sure that the rules are well understood by every participant.”¹⁰⁶ This point was underlined by Dr Craufurd Smith:

“If you are going to start having a cross-media metric that covers sectors like film, video and games, which is what she [Enders] is proposing, it

¹⁰¹ Enders Analysis.

¹⁰² Q 115.

¹⁰³ Q 108.

¹⁰⁴ Q 78.

¹⁰⁵ Q 94.

¹⁰⁶ Q 114.

may be that revenue is the only way that you can do that without imposing some enormous burden on the regulator in order to convert all them.”¹⁰⁷

109. One further reason alleged by some witnesses to be behind support for setting this cap at 15% is that it would meet a desire on the part of some to accommodate the BBC’s share of ‘revenues’ while blocking the growth in revenue-share of Murdoch-owned media enterprises, if, for example News Corp (as was) were to have tried once more to acquire the remaining shares in BSkyB. Mr Elstein claimed that “it is designed for a purpose, which is to limit the influence of Murdoch or Sky or whatever ... I think Claire is very open as to why she is recommending it ... It is just another way of dealing with Murdoch.”¹⁰⁸

Why do its proponents set the cap across the ‘total media market’?

110. To some extent, this point is addressed in the previous chapter on Scope. A ‘total media market’ cap appeals to those in favour of a broader scope for media plurality policy for the following reason:

“The things that affect us culturally, the kind of society we are, the kinds of things that matter to us and the views that we then come to are much more broadly based than that. That is why I am—bringing it back to brass tacks—attracted to the Enders revenue proposal, because it takes into account that much bigger cultural environment.”¹⁰⁹

111. Separately, the use of a cap across media markets appears to be driven by an apparent dissatisfaction among some with the competition authorities in the way they take cross-media market power into account:

“What we proposed at Enders Analysis was to address what is the cross-media problem ... the regulators have tended very much to concentrate on market share with individual media: the press, video games, or whatever. But, in fact, a lot of the strengths of an operator in these markets can come from its presence in more than one market.”¹¹⁰

112. As noted above, our view is that issues such as this have been unhelpfully blurred with the debate over media plurality when in fact they are matters running parallel to it, reflecting perhaps a frustration with the way the competition authorities have conducted recent assessments of the media market.

Which arguments are used by opponents of the Enders proposal?

113. A range of objections to the Enders approach have been put to us. Firstly, the breadth of the market to which the Enders cap would apply is reasonably large and some have argued that it would, contrary to its own aims, permit alarming concentrations of power. Taking the 2010 data which Enders cite in their written evidence, a 15% cross-sector revenue cap would not be crossed even if a merger were to take place between all of the following: all Non-News International national newspapers, all of the UK’s regional

¹⁰⁷ Q 7.

¹⁰⁸ Q 253.

¹⁰⁹ Q 77 (Professor Barnett).

¹¹⁰ Q 108 (Mr Goodall).

newspapers, and 50% of radio services. Similarly, taking the 2015 (projected) data they cite, the cap would not be crossed if a merger were to take place between all of the following: all non-News International national newspapers, all regional newspapers and one of either a) all consumer magazines or b) all radio services). Concern with this aspect of the Enders proposal was expressed by a number of witnesses. Dr Craufurd Smith told us that the Enders approach “is not in itself sufficient, because you could have one company that completely dominates news and the newspaper sector and the Enders approach does not pick that up.”¹¹¹ Similarly Dr Hardy of the Campaign for Press and Broadcasting Freedom told us that a “central concern is that if you include in the calculation book publishing and video games, the market is defined so broadly the net impact would be too liberalising.”¹¹²

114. Second, others have argued that the use of a single metric across the total market assumes equivalence between genres which is not necessarily reasonable from the perspective of plurality. It is implicitly the case in the Enders approach that different genres of media are like for like, such that £1 of revenue from video games is seen as equivalent, for example, to £1 gained from news and current affairs. This does not reflect the special nature of news and current affairs in the context of media plurality policy as explained in the chapter on Scope. Asked whether the Enders proposal assumes equivalence between genres in this way, Chris Goodall of Enders told us himself that: “In terms of ability to dominate a market and act as the gatekeeper, approximately, yes.”¹¹³
115. Third, others have highlighted potential problems associated with a cap in general terms, particularly one that applies to revenues gained beyond NCA:
- “It is tempting to seek a simple, single metric with a ‘bright line’ threshold for sufficiency. Italy, for example, sets a maximum share of revenues (across a wide set of media related industries). However, such tests are too crude. In particular it unfairly penalises those with interests beyond news. For instance, why should ITV’s ability to acquire other entities be blocked because it happens to have substantial revenue from Downton Abbey and other general TV? Clearly these revenues are quite unrelated to influence over the news agenda or the debates of the day.”¹¹⁴
116. Fourth, caps are also argued by some to be too inflexible:
- “... ownership regulation has produced perverse outcomes where media outlets have been forced to close rather than to continue under new ownership (albeit more concentrated ownership): a striking case in point arose following the merger of EMAP and Scottish Radio Holdings.”¹¹⁵
117. Fifth, implementing a revenue cap would also confront practical challenges. Neither determining relevant revenues (eg. of international companies providing services in the UK) nor extracting them from those beyond UK jurisdiction would necessarily be straightforward.

¹¹¹ Q 7.

¹¹² Q 110.

¹¹³ Q 114.

¹¹⁴ Robert Kenny.

¹¹⁵ Professor Richard Collins and Professor Martin Cave.

“This would be more difficult to administer than some other aspects. But let us say you were dealing with a non-UK, non-EU-based platform—call it Facebook or Google—that carries advertising. That advertising is for a product where the money is paid in Ireland, just as an example. So there are undoubtedly going to be issues about where that revenue was acquired and whether it represents media industry revenue in the UK. I believe it is not beyond the wit of a regulator to get on top of that.”¹¹⁶

118. Additionally, some have argued that revenues, technically speaking, are an inappropriate metric for assessing the diversity of the media market:

“What does revenue have to do with anything? Then you have to decide which bits of revenue. Why should it matter that Sky sells hardware to its customers on multi-room subscriptions or landlines or telephony or broadband? That makes up over a third of all Sky’s revenue. What do we include and what do we exclude? If you have bundled products, how do you divide them? To say that 15.1% of media revenues gives you complete dominance, blimey, we could have six organisations with complete dominance of the media industry according to Enders Analysis. It just does not make any kind of sense at all.”¹¹⁷

119. Finally, as noted before, much of the case put for a conceptual shift towards positive intervention to promote media diversity is triggered as a reaction against the arguments used for caps, and therefore against proposals such as that made by Enders. Professor Richard Collins and Martin Cave, for example, claimed that “Rather than conceiving of media pluralism as an objective to be realised by prohibiting mergers, it should be thought of as pointing towards intervention designed to facilitate and encourage entry.”¹¹⁸

The Committee’s view

120. Certainly, we have no disagreement with the motivation to find a simple, user-friendly way accurately to measure and bring about plurality in our media. We must admit, however, to remaining somewhat sceptical that the Enders model would achieve it. In particular, while 166 ways of measuring plurality (as recommended by the European Commission’s report, authored by Peggy Valcke)¹¹⁹ is surely overkill, we are not entirely persuaded that a concept as complex as plurality can legitimately be reduced down to one.
121. Following on from that, it may be clarifying to say that it was the Enders proposal—and others like it—which prompted our arrival at the principle stated at the beginning of this chapter: that the assessment of plurality should drive the decision about which remedy or intervention is appropriate, not the other way around. It is inherent to an approach based on statutory caps that the decision about which remedy or intervention is appropriate (for its proponents, a cap) drives the way in which plurality should be assessed (an arbitrary and potentially misleading single metric in whose terms the level of the cap has to be set). Plurality is unfortunately a more complex concept

¹¹⁶ Q 125 (Mr Goodall).

¹¹⁷ Q 253 (Mr Elstein).

¹¹⁸ Professor Richard Collins and Professor Martin Cave.

¹¹⁹ *Independent Study on Indicators for Media Pluralism in the Member States—Towards a Risk-Based Approach*. Available online: http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/pfr_report.pdf

than that; it cannot be reduced down to a single figure. For example, beyond a simple numerical assessment of the share of the market accounted for a media enterprise, a plurality assessment might also consider the diversity and range of independent news voices; overall reach and consumption and propensity of consumers actively to multi-source; barriers to entry and competition to spur innovation; economic sustainability and so on.

122. In addition, the Enders approach appears to be motivated by a frustration with the way the competition authorities do their business when it comes to the media—which may or may not be a legitimate gripe—but competition policy and plurality policy are not the same thing as we have already explained, and therefore the sorts of arguments put forward do not form, we think, a sensible basis for constructing a plurality policy. In a nutshell, the counter-arguments seem to us to outweigh those in its favour.

Hybrids

123. As noted above, a cap has been proposed both as a stand-alone measure, as in the Enders model, and as a single element within a hybrid package of measures. Below are a number of questions which arise in relation to hybrid approaches which have been put to the Committee.

What is a hybrid approach?

124. A hybrid approach is one which incorporates structural and behavioural remedies. Structural remedies involve absolute “bright line” limits, also known as caps; behavioural remedies oblige media enterprises to introduce certain practices or controls to their operations.¹²⁰
125. More specifically, the standard hybrid approach sets two quantitative thresholds in terms of market share: companies breaching the lower % may be subject to certain behavioural remedies, while companies breaching the higher % will be subject to structural remedies.

“the hybrid role would be both structural and behavioural ... this is something that ... Harriet Harman talked about it in her speech at the Charles Wheeler Lecture—two bright lines. The first would be a trigger where you would say, ‘you have gone above that level, but that is that point at which you are going to be obliged to commit to certain’—I do not know if I would call them behavioural remedies— ‘certain obligations’. There is another bright white line that says “thus far and no further”. At that point it is becoming too uncomfortable for democracy to allow someone with that much circulation of national newspapers or that much share of the national television audience to be in one person’s hands or one private company’s hands. At that point we are saying, ‘We are going to have to ask you to divest’. It is important to have that rule and that cap.”¹²¹

Which hybrid proposals have been put to the Committee?

126. Three hybrid approaches have been put to the Committee: one by the Media Reform Coalition (MRC); one by the Campaign for Press and Broadcasting

¹²⁰ Further detail on the differences between structural and behavioural remedies and real world examples of these can be found in Ofcom’s advice to the Secretary of State, Annex 2. Ofcom, 6 June 2012, *Op. Cit.*

¹²¹ Q 94 (Professor Barnett).

Freedom (CPBF); and one by Avaaz. Rt Hon Harriet Harman QC MP has appeared to support something akin to these approaches in her recent public statements as well.¹²²

127. The three proposals have distinctive features but share much in common. An important distinction lies in the percentage at which they set their thresholds. For the MRC they are set at 15% and 20% of audience share; for the CPBF at 15% and 30% of market share; and for Avaaz at 20% of either audience size or revenue. Unlike the Enders proposal whose ‘bright line’ limit applies to the ‘total media market’, the MRC, CPBF and Avaaz models set their thresholds within specific sectors or ‘designated media markets.’ Dr Hardy of CPBF set out that “we favour an approach that identifies designated markets, such as news and television services, rather than a total market approach such as Enders has proposed.”¹²³ He explained his view that:

“there is real diversity across the cultural industries. Diversity in terms of content creation: how the economics of the business work, how goods are sold, what kinds of control are exercised. We have real concerns about trying to put all of that together into a single total market calculation”¹²⁴

Similarly the MRC told us that “the key sectors for news and current affairs include newspapers, television, radio and online news. Plurality should be measured based on standard audience share indicators.”¹²⁵ Avaaz made a similar point, arguing that “the key sectors for applying these limits are those through which news and current events are most commonly consumed: newspapers, online news, television and radio.”¹²⁶

128. However, both the CPBF and MRC proposals do see merit in the Enders model (or a refinement of it focussing on the total news market) as a cross-media measure to sit alongside their hybrid approach which focuses on designated markets. The MRC explain in written evidence that:

“when it comes to measuring cross-media power we clearly need a single, one size fits all approach. To this end, we support proposals put forward by Enders Analysis to base the measure on a share of total cross-media revenues (Enders Analysis 2012). This is the simplest and most effective indicator of overall dominance.”¹²⁷

Amending this, Dr Hardy of CPBF told us that “we would not suggest a total market measure along the lines Enders has suggested. There is a suggestion floated, for example, to define a total market in news across all platforms and set a cap there of 15%. I am much more sympathetic to that approach.”¹²⁸

¹²² Harriet Harman, Charles Wheeler Lecture, University of Westminster, 13 June 2013. Available online: <http://www.harrietharman.org/charles-wheeler-lecture-on-media-ownership---130613>

¹²³ Q 110.

¹²⁴ Q 111.

¹²⁵ Media Reform Coalition.

¹²⁶ Avaaz.

¹²⁷ Media Reform Coalition.

¹²⁸ Q111.

Under these hybrid models, what would happen when a designated market threshold is breached?

129. While the MRC, CPBF and Avaaz proposals place their thresholds at different levels—and indeed the Avaaz proposal is different in only having one threshold—they recommend similar remedies and interventions at the point at which they are breached.
130. For the CPBF, at a lower threshold,
- “the kind of obligations range from what you could call light to strong. At the light end, we think they should include compliance with things like codes of conduct agreed across an industry. They should also include some commitment to basic working conditions and pay. I think that is an important issue across the creative industries. A little bit higher up the scale ... agreements at the level of the firm to open up access to other suppliers, to independent providers and so on. At the strong end of the market, we think there needs to be divestment and change of ownership ... All of these measures have to trade off viability with ensuring public interest standards. We think some flexibility there about what measures are used is the right approach.”¹²⁹
131. Similarly the MRC told us that:
- “a first level threshold within sub-markets should be a 15 percent audience share, triggering behavioural remedies in the form of public interest obligations. These should be aimed principally at ensuring journalist and editorial autonomy within dominant news organisations so that owners and shareholders cannot exert undue influence over news output.”¹³⁰
132. At the higher threshold, both talk about transfers in ownership. The MRC told us that:
- “where a single outlet or group of outlets breach a given threshold of 20 percent, steps should be undertaken to ensure that no single entity or individual has a controlling share of that title or group of titles. The particular advantage of this approach is that it is aimed specifically at limiting the influence of powerful interests ... shareholder dilution or equity carve out could genuinely increase internal plurality, as civil society groups and socially-oriented investors (such as pension funds) may well take up the opportunity to buy released shares in order to hold media companies to account.”¹³¹
133. Similarly, Dr Hardy of CPBF told us that “At the top end, we believe that private operators should not have greater control than 30% as an absolute maximum. At that point, firms would need to be reconfigured into public trusts, co-operative ventures and so on, so that a private entity stayed within a 30% threshold.”¹³²
134. With only one threshold, the Avaaz proposal envisages a slightly different process. In this, “any entity that already has now or in the future achieved more than 20 per cent of a sector would undergo a public interest test that

¹²⁹ Q 114 (Dr Hardy, CPBF).

¹³⁰ Media Reform Coalition.

¹³¹ Media Reform Coalition.

¹³² Q 122.

could result in either forced divestment or special regulatory measures to ensure it operated in ways that promote rather than undermine democracy.”¹³³ In other words, there is no lower and upper threshold to trigger consideration of behavioural and structural remedies separately. Instead, the single threshold is used to trigger a consideration of whichever remedies—either behavioural or structural—are most appropriate in that case. The implication of their evidence, however, is that the default intervention to be imposed on a media enterprise breaching the 20% threshold would be a structural divestment—not least because they describe their threshold as a market ‘cap’—and that in a case of breach, “it is up to media companies to make a compelling case if they disagree [with blocks on consolidation].”¹³⁴

135. All three groups argue that while the BBC could breach the designated market thresholds, the mechanisms through which the BBC and its role are considered should be entirely separate, as noted previously in the chapter on Scope. For them, this is because the BBC is already obliged to commit to a significant degree of public service regulation and the provision of some level of internal plurality. The thresholds are intended only to apply to media enterprises not subject to such regulation. As Dr Hardy of CPBF explained, “we believe that the mechanism to deal with the BBC’s market presence and any problems that arise from that should be handled elsewhere ... So the market thresholds that should apply to other market actors should not include the BBC”¹³⁵
136. Similarly the MRC told us that “There is a need to ensure that dominant media voices which are not subject to public service regulation are nevertheless committed to maintaining a degree of internal plurality and accountability.”¹³⁶
137. It is also clear that the hybrid approach is intended to target the national media rather than local or regional enterprises, where its proponents suggest a different set of criteria and a different model would be required.

“At the local level, I think the criteria have to be different, which is, “How do we shore up the kinds of media enterprises that we want and need?” Not necessarily just for plurality, but just so that there are some local news information sources that exist.”¹³⁷

What motivates proponents of a hybrid approach?

138. Proponents of a hybrid model are clearly motivated by a range of concerns relating to media plurality policy. Some of these are inevitably shared with those favouring a pure cap-based model (see above), e.g. to remove discretion from the Government and regulators when it comes to measuring media plurality and to draw a symbolically significant line in the sand for UK democracy. In addition, they believe in the need for flexibility in the interventions imposed on those with a share of the market growing between the fixed thresholds, as these should, in their view, be targeted at

¹³³ Avaaz.

¹³⁴ Avaaz.

¹³⁵ Q 117.

¹³⁶ Media Reform Coalition.

¹³⁷ Q 71 (Professor Barnett).

demonstrating a principle: that with increasing share of media markets comes increased public responsibility.

139. First, it is clear that ‘hybridists’ share some of the same motivations as proponents of a cap-based model. As the MRC put to us:

“to shy away from establishing ownership thresholds is to place unnecessary powers of discretion in the hands of regulators and ministers. In the absence of clear ownership thresholds, established in law, the door will always be open to both commercial capture (politicians may be induced to take certain decisions under pressure from media groups) and/or politicization (certain media groups may be unduly favoured or disadvantaged by political decisions).”¹³⁸

140. In addition, their approach purposefully builds in a degree of flexibility in order that public interest obligations can be targeted at ensuring the principle is met: that with greater media market share comes greater public responsibility. Dr Hardy of CPBF told us that “the guiding principle of our approach is that with size and reach comes responsibilities. Those providing media content or public communication services are providing services that matter for democracy, for social and cultural life, for the creative economy.”¹³⁹ He added that between the two thresholds “the key point ... is the degree of flexibility. All of these measures have to trade off viability with ensuring public interest standards. We think some flexibility there about what measures are used is the right approach.”¹⁴⁰ This flexibility is evident in the Avaaz approach too where they contemplate that it should be possible for a media enterprise to breach its 20% threshold as long as it were possible to demonstrate that a “breach [of] the 20 per cent limit was in the public interest.”¹⁴¹

Which arguments are used by opponents of hybrid approaches to media plurality policy?

141. While the cap envisaged by ‘hybridists’ applies only to designated markets rather than to a total media market, many of the arguments made against a pure cap-based model apply to the upper “bright line” limit in the hybrid model. These were rehearsed above. A number of additional challenges to hybrid approaches have been put to us, arising specifically from the distinctive features of their proposals.
142. For example, it has been put to us by a number of witnesses that fixed thresholds are unsuitable for markets as dynamic as the media. The exit or decline of one company is inextricably linked to the increasing share of others. Under a system of fixed thresholds, it seems possible that relatively arbitrary conclusions could be reached about the plurality concerns raised by a media enterprise between one day and the next; whether this were to lead a regulator to intervene or simply to undertake an investigation, the unpredictable and arbitrary nature of the trigger would have inevitable consequences for innovation and investment.

¹³⁸ Media Reform Coalition.

¹³⁹ Q 108.

¹⁴⁰ Q 114.

¹⁴¹ Avaaz.

“Intervention in such cases might penalise success or act as a disincentive to growth and innovation. Given market volatility, there would be a risk of constant reviews, which might then have a chilling effect on investment and innovation.”¹⁴²

143. Some argued, from a purely practical perspective, that the implementation of behavioural remedies may be an appealing idea in principle, softer than the structural options to impose divestment, but would be extremely hard in practice to agree, monitor or enforce.

“I think what he [Dr Hardy] has proposed ends up being too complicated and its regulation extremely difficult to administer. In a perfect world, it might be the right way to go. I fear it would impose strains upon any regulator that was asked to administer it, and it would prove impossible to deal with.”¹⁴³

144. Others have argued that setting a share of designated markets above which obligations begin to be introduced struck some as implying that plurality policy would be driven by a decision on the part of the Government or regulator about what citizens’ and consumers’ choices should be rather than leaving such decisions to citizens and consumers themselves:

“You have to be very careful before you start bringing in share because you are effectively determining what number of people is the right number to have freely chosen what kind of news service they want to consume. We are generally driven by the view that consumers are free to choose. So long as they have a range and a sufficient number of choices, that is up to them.”¹⁴⁴

145. In addition, not all witnesses were persuaded of the fairness of allowing the BBC to breach such thresholds while others cannot.

“We are very nervous about the idea that you can come in and determine what the right share is because you are effectively calling into question the free choice of the customers. Of course, if you go down that route, you run into the issue of the BBC because its share is, by some margin, greater than anybody else’s.”¹⁴⁵

The Committee’s view

146. In their favour, the hybrid approaches seem designed to avoid the undisguised arbitrariness of the Enders model. We must admit, however, to finding a good number of the challenges we have heard raised against them difficult to overcome. In particular, some of the arguments used against a cap-based approach seem to apply here too: in assessment, the relatively arbitrary and potentially misleading reduction of the concept of plurality down to one metric in whose terms the thresholds must be set. This breaches the principle which we consider to be important that the assessment of plurality has to be free to drive the decision about which remedy or intervention is appropriate, not the other way around. It is inherent to an approach incorporating statutory caps that the decision about which remedy

¹⁴² Robin Foster.

¹⁴³ Q 114 (Mr Goodall).

¹⁴⁴ Q 191 (Mr Wheeldon, BSKyB).

¹⁴⁵ Q 191 (Mr Wheeldon, BSKyB).

or intervention is appropriate drives the way in which plurality has to be assessed. In our view, only drawing on one single metric to assess plurality is insufficient. As we noted above, beyond a simple numerical assessment of the share of the market accounted for a media enterprise, a plurality assessment might also consider the diversity and range of independent news voices; overall reach and consumption and propensity of consumers actively to multi-source; barriers to entry and competition to spur innovation; economic sustainability and so on.

147. Moreover, we cannot help but think that for a framework of plurality interventions to work in the real world, it will have to find some mechanism for taking the dramatically different traditions of each medium into account, and unfortunately, we are unable to see that these approaches would garner very wide acceptance. We can see the arguments in favour of behavioural remedies being in the armoury of the regulator when considering how to intervene in the interests of plurality. However, taking into account the need to find a way to enforce them and to monitor their effectiveness, an approach which places them front and centre is likely to create more problems than it solves.

Ofcom's Proposal

What is Ofcom's proposal?

148. Ofcom's proposal can be found in two documents submitted in response to specific questions and requests for advice on the question of media plurality from the Secretary of State.¹⁴⁶ One of these questions was: "What could trigger a review of plurality in the absence of a merger?" Ofcom considered the merits of different triggers and concluded that there was a good argument for the introduction of a new plurality review to be conducted on a periodic basis—not triggered by a particular event but by the regular lapse of time.
149. A point of clarification may be helpful. Ofcom envisaged "a periodic review of media plurality (undertaken every four or five years), operating alongside the provisions of the existing merger-based public interest test."¹⁴⁷ Having only been asked a limited set of questions about non-transactional triggers for review, Ofcom did not go so far as to contemplate any changes to the existing arrangements for the Public Interest Test.¹⁴⁸ Ofcom recognised, however, that the establishment of a periodic review would raise questions about how two different reviews, one periodic and one transactional (under the current arrangements, the Public Interest Test), would influence and potentially risk overlapping each other. As it wrote in its supplementary advice to the Secretary of State, these considerations would merit further consideration, although Ofcom—rightly—considers these to be matters for Parliament and the Government:

"In our June report, we said that further consideration was required to determine whether the existing merger process sits within a new plurality regime or continues in parallel with it. Either scenario may be desirable, but in any case, the regulatory framework needs to be consistent and avoid a double jeopardy outcome such that more than one plurality

¹⁴⁶ The two documents are the following: Ofcom, 6 June 2012, *Op. Cit.* and Ofcom, 5 October 2012, *Op. Cit.*

¹⁴⁷ Ofcom, 5 October 2012, *Op. Cit.*

¹⁴⁸ Further detail on the regulatory context to media plurality can be found in Appendix 4.

review is triggered by the same cause. We believe that these matters are fundamentally a matter for Parliament and the Government.”¹⁴⁹

150. Accordingly, Ofcom’s proposal should not be taken as a wholesale redesign of media plurality policy where some other proposals put to this Committee have been. Instead, it should be seen as the response to some specific questions from the Secretary of State. The standout features of this response are the introduction of a new periodic plurality review to be undertaken every four or five years and beyond this, aspects of the specification for this review, some of which we consider below.

Why does Ofcom argue for the introduction of periodic reviews?

151. In response to the Secretary of State’s question noted above, Ofcom analysed four options for triggering a review:

- a metric-based trigger, which would require a plurality review to be carried out if organic growth resulted in a specific metric being breached;
- a time-based trigger, which would require a plurality review to be carried out automatically on a periodic basis;
- an event-based trigger, which would require a plurality review to be carried out at the time of a specific event; the current arrangements for the Public Interest Test fit into this latter category; and
- discretion, which would require a plurality review to be carried out at discretion of an appropriate authority.

152. They provide a thorough analysis of the pros and cons of these options in their advice to the Secretary of State¹⁵⁰ and ultimately argue that the most suitable of these is a time-based review. Their reasoning is two-fold. First, this avoids many pitfalls of the alternatives which we do not rehearse here; they are articulated clearly and in some depth in Ofcom’s report. Second, a time-based review also provides a positive mechanism by which the impact of organic change can be captured while still ensuring that a measure of certainty, simplicity and transparency can be provided to all stakeholders. We heard no evidence to dispute these specific points other than the general countervailing views we address below.

How often would a periodic review need to be undertaken?

153. There is at least one risk associated with a time-based trigger for a plurality review identified by Ofcom in their advice to the Secretary of State: the capacity of a periodic review to deal with the impact on plurality of rapid organic change.

“In a market driven by rapid change in technologies and consumption, it is possible that a review may be required that would not be triggered by a defined event, and that could not wait until the next periodic review. While the normal expectation is that organic change is slow, this is not always the case. For example, if consumption of news were to switch rapidly from newspapers to tablets, this could have a significant effect on

¹⁴⁹ Ofcom, 5 October 2012, *Op. Cit.*

¹⁵⁰ Ofcom, 6 June 2012, *Op. Cit.*

plurality, over a short timescale, and without being caught [by the existing merger-based public interest test].”¹⁵¹

154. In light of the potential for rapid organic change, Ofcom suggests that the key question which follows is the length of time between periodic reviews.

“Setting it too frequently—to three years or less—would create a cycle of near-perpetual review, which would be potentially wasteful and a disproportionate burden on industry. Setting it too infrequently—greater than five years—would risk the trigger not being effective, due to the pace of change in the market. Neither scenario looks sensible; we recommend that the timetable for a periodic review be every four or five years, with the frequency set by Parliament.”¹⁵²

155. We did not receive any evidence, suggesting an alternative time interval.

Who would be included in a periodic plurality review?

156. Ofcom is in agreement with some of the substantial conclusions we reached in the previous chapter on Scope: that plurality policy should focus on news and current affairs and be open to assessing the impact of online media:

“We remain of the view that news and current affairs play the primary role in delivering the public policy goals”¹⁵³ associated with media plurality and that “these genres should be considered across television, radio, the press and online.”¹⁵⁴

How would periodic reviews measure plurality?

157. Before an answer to this can be given, a preliminary question has to be addressed: to what extent should the measurement framework including the metrics to be used in a plurality review be prescribed to the body conducting that review? There are two broad approaches:

- either, to set down in statute the designated metrics to be used as part of any plurality review assessment;
- or alternatively, to set down guidance in statute for which principles and considerations should be taken into account in determining the metrics to use for a plurality review, and to instruct the reviewing body, as part of its reviews, to take this guidance into account alongside the market context in determining which metrics are most relevant and useful for the purposes of any individual assessment at the time.

BOX 1

What is a metric?

In the context of this Report, metrics refer to measures relevant to quantifying a news media market’s plurality. In summary, the range of metrics generally considered fall into three categories: availability; consumption; and impact.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

Availability metrics capture the number of providers available at the point of Consumption. Consumption metrics capture the number of people using news media, and the frequency or the time they spend consuming it. Impact metrics need to capture the influence of news content consumption on how people's opinions are formed.

As Dr Craufurd Smith told us, "Ofcom identified ... a number of different [metrics]. One is availability—the number of individual sources—which is relatively easy to count, but in itself will not tell you what the share or the potential power and influence is of each of those particular sources. They also talked about consumption, which in my view is probably a rather more helpful metric if you are talking about influence. That focuses on a number of potential features of a particular market ... and impact is the third one that they mention,"¹⁵⁵ which, could provide very useful insight but, as Ofcom notes, is challenging: "Our attempts to measure impact through quantitative research have revealed complexity in how people's opinions are formed."¹⁵⁶ Accordingly, when it comes to impact, Ofcom concludes that "one needs to assess a range of sources in the round and apply a degree of judgement."¹⁵⁷

158. In their advice to the Secretary of State, Ofcom makes the case for the latter approach: that there are good reasons for the precise set of metrics to be used in a plurality review to be open to re-evaluation as part of each review itself, taking into account their usefulness and relevance at the time.

"Given the dynamic nature of the news market, the metrics framework itself should be assessed during each review to ensure its continuing efficacy and relevance."¹⁵⁸

159. As a result, Ofcom does not specify the precise nature of the measurement framework for their periodic review proposal. They suggest that determining this framework would be an important task at the time of each review and that this task would be likely to be most onerous at the time of the first review. We note that in their recent consultation on Media Ownership and Plurality, the Government mention their intention to "commission the development of a clear measurement framework, to be worked up in partnership with industry."¹⁵⁹

160. Ofcom does, however, identify some characteristics of the nature and number of metrics to be used. On the number, Ofcom identifies a clear tension between economy and capturing complexity. In other words, the choice of the number of metrics is about finding the right balance between ensuring that they are manageable and that they sufficiently reflect the complexity of the state of media plurality. Across the evidence we received, there appears to be a consensus that the appropriate number falls somewhere between 5 and 15. Steve Unger, Director of Strategy, International,

¹⁵⁵ Q 7.

¹⁵⁶ Ofcom.

¹⁵⁷ Ofcom, 6 June 2012, *Op. Cit.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Department for Culture, Media and Sport: Media Ownership and Plurality Consultation, July 2013.* Available online:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225790/Media_Plurality_Consultation_2013.pdf

Technologists and Economists, Ofcom told us that “when you get to 100 you are doomed because you can no longer explain what you have done. I think one or two is too few to capture the complexity.”¹⁶⁰ Professor Picard gave a similar warning based on his experience:

“One of the strangest things I have ever done as a researcher was the European Commission’s measuring pluralism report. We came up with about 170 measures. It can be done by a regulatory agency; why they would want to spend six months doing it, I do not know, because in the end you can actually do it with half a dozen measures or so. Essentially, what you want to make sure is that the viewpoints being represented in the media represent across society.”¹⁶¹

161. Similarly, Mr Foster told us that:

“from my experience as both a regulator and working with media organisations, once you get past five or six metrics or indicators, there is huge scope for reaching any answer you would like to reach. The aim should be, notwithstanding the complexities, to try to focus on a few key metrics and then have a general discussion around these other issues.”¹⁶²

162. On the nature of the metrics to be used, it is broadly accepted that there are three families of metric available for the purposes of conducting a plurality review each suited to measuring separately consumption, availability impact metrics. For the meaning of metrics, see Box 1 above.

163. In their advice to the Secretary of State, Ofcom argues that a plurality review will need to draw on a basket of measures, including some from each of these families. In addition, Ofcom suggests that limiting a plurality assessment to quantitative measures would underplay the importance of contextual factors, and for that reason the measurement framework of a periodic plurality reviews would, they suggest, include a qualitative assessment of factors such as “regulation and oversight, the potential power or editorial control exercised by owners/proprietors within commercial organisations, governance models, and internal plurality.”¹⁶³

How would the periodic review determine whether there is a plurality concern?

164. Ofcom’s answer to this is clear: in order to undertake a periodic review, it would require guidance from Parliament on the definition of sufficient plurality. There are two options: first, Parliament can lay down a tight definition of sufficiency in legislation; or second, Parliament can lay down general guidance and a narrative description of sufficiency, which Ofcom can interpret and use as a qualitative benchmark against which to assess the state of plurality at the time of each review.

165. We have not received a great deal of evidence arguing strongly either case. However, some witnesses did underline the basic point that it would be critical to provide some guidance on the definition of media plurality for Ofcom to use in reaching its conclusions.

¹⁶⁰ Q 397.

¹⁶¹ Q 23.

¹⁶² Q 23.

¹⁶³ Ofcom, 6 June 2012, *Op. Cit.*

“there would be value in Parliament providing more guidance to Ofcom in the next Communications Act on what is meant by “sufficiency” and the criteria to be used by Ofcom in assessing whether it exists, either in applying public interest tests or in its periodic reviews. For example, in defining sufficiency, Parliament might wish to establish some guidelines or benchmarks for the different market share indicators which Ofcom could then use to inform its plurality assessments. Alternatively, Parliament could express sufficiency in the terms suggested by Ofcom in its recent report, which included a diverse range of providers, high reach, active multi-sourcing and low barriers to entry. Reflecting economic realities, there may need to be different expectations for national and local media—local news markets may be unable to sustain the same degree of plurality as national markets.”¹⁶⁴

166. Were a narrative description considered most appropriate, Ofcom’s own view is that any such description would need to include a number of different features, including: “a diverse range of independent news voices; high overall reach and consumption with consumers actively multi-sourcing; sufficiently low barriers to entry and competition to spur innovation; economic sustainability and no single organisation accounting for too large a share of the market.”¹⁶⁵

What would happen if a review discovered insufficient plurality?

167. Ofcom suggests that a range of remedies might be relevant to address plurality concerns identified as part of a review process.

“They can be grouped into five broad categories: structural remedies that raise levels of external plurality; behavioural rules that may help to increase levels of internal plurality; behavioural rules that impose standards on providers of news; behavioural remedies that improve access by citizens to providers of news; and positive interventions to encourage more news provision. There is unlikely to be a ‘one size fits all’ approach.”¹⁶⁶

168. However, they are clear that “It is firstly for Parliament to consider the set of remedies which should be available in principle within a new framework, and it is then for the decision-maker tasked with selecting and implementing remedies to determine which of these is best suited to a specific set of circumstances” on a case-by-case basis.¹⁶⁷ An important aspect of these considerations is whether there any circumstances outside a transaction which could justify intervention. Further, as noted above, it would remain to be determined how interventions imposed through the mechanism of a periodic review would stand in relation to any future transactional review. We consider both of these points point in chapter 5, Our proposal for a media plurality policy.

¹⁶⁴ Robin Foster.

¹⁶⁵ Ofcom, 6 June 2012, *Op. Cit.*

¹⁶⁶ Ofcom.

¹⁶⁷ Ofcom.

Who should conduct a periodic plurality review?

169. Two options have been suggested to us; plurality reviews could be conducted either by the competition authorities or by Ofcom. The Competition Commission itself suggested that:

“it (and in the future, the Competition and Markets Authority (CMA)) is well placed to consider mergers raising media plurality issues. It has the appropriate skills, necessary expertise and economic awareness to investigate media mergers, to report facts and either give advice to Ministers or (should Parliament consider it appropriate in future) to determine issues relating to public interest matters.”¹⁶⁸

170. By contrast, others have argued that, institutionally, the competition authorities are not the appropriate bodies to carry out the thinking required by a media plurality policy. Professor Picard told us that:

“the Office of Fair Trading, and the Competition Commission have the ability and skills to undertake appropriate inquiries in areas involving ownership and mergers/acquisitions, but their remits do not include continuous monitoring of broader pluralism issues and the authority and tools to work to proactively improve media pluralism. They also lack the organisational ethos and capabilities for positively promoting media pluralism.”¹⁶⁹

171. The argument has also been made that: “regulators ... while they do have independence, are very often very tightly focused in their competencies to deal with things, or in the methods that they can use to analyse things, or in the remedies they have. If it gets thrown to a competition authority, they are going to deal with it as a competition issue.”¹⁷⁰

172. On the other hand, others made the argument that media plurality is a specific concern of media policy and requires expertise in the communications sector.

“Ofcom was set up as a body with specialisation in the communications industry, and it has specific statutory obligations to take into account the interests of citizens and consumers, as well as business. The competition authority has competition powers and expertise in that field, but why do you have a specialised communications regulator if, in a sense, it cannot be the body that decides issues relating to the media? This is a policy issue that relates to the media.”¹⁷¹

Which arguments are used by opponents of Ofcom’s proposal?

173. The opponents of this overall approach tend to argue that (what they see as) important principles of their own approach are ignored by it. Ofcom’s proposal, for example, gives a degree of responsibility to the regulator to devise at each periodic review the details of the process to take. This would appear to be unappealing to proponents of the Enders approach; Chris

¹⁶⁸ Competition Commission.

¹⁶⁹ Professor Picard.

¹⁷⁰ Q 26 (Professor Picard).

¹⁷¹ Q 9 (Dr Craufurd Smith).

Goodall, for example told us: “Whatever you decide to propose, I hope you leave no discretion to anybody.”¹⁷²

174. Others have suggested that there is a risk of periodic review being toothless; without clearly specified thresholds at which intervention is automatic, a regulator may be unlikely to act; as some have put it: “measuring media plurality isn’t enough.”¹⁷³

The Committee’s view

175. Our view is that Ofcom’s proposal for the introduction of periodic plurality reviews raises a number of important questions about how such a system of reviews would interact and avoid overlap with a system of transactional reviews. As such, it also prompts the question: what would be the relationship between periodic plurality reviews and competition processes which are engaged in the current arrangements for a transactional review, the Public Interest Test. However, the idea of the periodic review itself has a number of features in its favour which make it preferable to the alternatives which have been put to us. One feature in particular stands out.
176. By placing at its core an assessment of plurality, able to draw on a measurement framework incorporating a limited number of different metrics as well as a qualitative dimension, Ofcom’s proposal is unique among the approaches put to us in this inquiry. It is the only one able to live up to the principle we set out at the start of this chapter: that the assessment of plurality should drive the decision about which remedy or intervention is appropriate, not the other way around. It provides a mechanism whereby plurality can be assessed unencumbered by an arbitrary commitment to a specific metric or intervention.
177. As noted above, some argue that this discretion is its demerit. Our view, however, is that the flexibility required for an assessment to do justice to the concept of plurality is a more legitimate concern than a fear of regulatory discretion. Of course, there may be merit in developing Ofcom’s proposal further to ensure that its discretion is exercised with good judgement and under appropriate oversight.
178. Indeed, Ofcom’s proposal is by no means a complete one, as noted above. There remain a number of open-ended questions to be thought through, some of which Ofcom has identified itself:
- What should be the relationship between periodic reviews and transactional reviews?
 - What remedies should be available at the conclusion of a periodic plurality review?
 - What circumstances outwith the context of a transaction could justify intervention?
 - In all of this, how should the relationship between competition and plurality policy be clarified?

¹⁷² Q 124.

¹⁷³ Freedman, Professor Des (2012) ‘Measuring media plurality isn’t enough.’ *LSE Media Policy Blog*, 25 June 2012. Available online:

<http://blogs.lse.ac.uk/mediapolicyproject/2012/06/25/measuring-media-plurality-isnt-enough/>

179. We will set out the way we believe these questions can be answered in chapter 5, Our proposal on media plurality policy. In addition, we leave to that chapter our assessment of other aspects of Ofcom's proposal, including the role for statutory guidance on the meaning of sufficiency of plurality and on the design of the measurement framework.

CHAPTER 4: DECISION

180. In the previous chapter, we consider a range of approaches to media plurality policy. Most of these leave some room for discretion about whether and how to intervene. In this chapter we analyse the evidence we received regarding different ways to allocate institutional responsibility for this discretion. Naturally, this evidence tended to focus on alternative models for the decision-making arrangements which arise in the existing transactional review, the Public Interest Test. However, the models and principles involved could equally apply to the decision-making arrangements which arise in other proposed processes such as a periodic review.
181. Across the evidence we received we found four different ways to allocate institutional responsibility for the decisions in cases where plurality concerns arise, with any possible decisions being left to one of the following:
- The Secretary of State;
 - The regulator (Ofcom);
 - A hybrid of the first two options; and
 - A plurality commission.
182. We will examine each of these in turn.

The Secretary of State

183. The current arrangements for discretionary intervention in the interests of plurality give a prominent role to the Secretary of State.¹⁷⁴ More specifically, the Public Interest Test process, which was introduced by the Communications Act 2003, gives the Secretary of State (originally of Business, now of Culture) three decisions to make: first, whether to issue an intervention notice citing media public interest test considerations raised by a transaction; second, having received a report from the OFT on the competition aspects of the transaction, and from Ofcom on the media public interest considerations, the Secretary of State has to decide whether to clear the transaction, refer the case for further investigation by the Competition Commission, or consider undertakings in lieu of this reference; finally, the Secretary of State, on receipt of the Competition Commission's report, decides whether to clear the transaction, do so subject to conditions or block the transaction.
184. Some witnesses favoured leaving the decision-making powers with the Secretary of State. Professor Collins told us that,

“We think the current arrangements, where essentially Ofcom does the analysis and the Secretary of State decides, is as good as it is likely to get The chain of accountability has to stop somewhere. It seems to us that with the Secretary of State is probably the least worst place.”¹⁷⁵

Mr Foster, whilst not espousing that view himself, explained that,

“At issue is whether it is appropriate for the Secretary of State to retain final responsibility for taking a decision in the event of a media merger

¹⁷⁴ Further detail on the regulatory context to media plurality can be found in Appendix 4.

¹⁷⁵ Q 54.

or—in future—should Ofcom find in a periodic review that plurality is at risk. Those who believe that it should be the case, argue that such decisions, which are inevitably judgmental, should be democratically accountable and not left to regulatory technocrats.”¹⁷⁶

185. Whilst some witnesses favoured the Secretary of State maintaining these decision-making powers, they wanted to see the establishment of an appeals process which would take account of “matters of substance as well as process”.¹⁷⁷
186. A number of witnesses were convinced that the decision-making powers should not belong to a politician. Avaaz explained that the Secretary of State should not retain this power because of the risk of politically motivated decisions, “given the natural desire for politicians to seek favourable coverage and the financial incentives for media owners to trade such coverage for decisions that allow them to grow.”¹⁷⁸ Professor Lewis pointed out that, “No matter how impartial a Minister tries to be, there will always be an appearance of political partiality that I think is unavoidable.”¹⁷⁹ Similarly Sir Harold Evans told us that, “It cannot be left to the Secretary of State, who is a political person, to decide on something like this without revealing the full reasons”¹⁸⁰ and Dr Tambini warned that it was, “problematic for elected politicians to be involved in too much discretion over media mergers, or indeed decisions about divestiture or behavioural remedies and so forth.”¹⁸¹ For his part, the former Secretary of State for Culture, Media and Sport, Jeremy Hunt, also told the Leveson inquiry that when forced into the position of exercising discretion himself: “even though the decision I took was totally impartial, I always felt there were going to be elements of the public that would never believe it was.”¹⁸²

The Regulator (Ofcom)

187. For many of the witnesses who wanted the decision-making power to be taken away from the Secretary of State, the solution lay in giving this authority to Ofcom as the industry regulator. Lord Fowler expressed this directly, “I am for an independent regulator and taking it out of the hands of politicians.”¹⁸³ Mr Foster likewise suggested this might be the appropriate arrangement but pointed out that, ahead of this power being delegated to Ofcom, Parliament needed to play a greater role in “setting out the parameters within which Ofcom can reach any plurality judgement.”¹⁸⁴
188. Others, similarly, recommended that decision-making powers should move to Ofcom but added certain conditions. Mr Robert Beveridge, for example, sounded a warning that, “there has to be the will in the regulator, in the case

¹⁷⁶ Robin Foster.

¹⁷⁷ This Is Global.

¹⁷⁸ Avaaz.

¹⁷⁹ Q 378.

¹⁸⁰ Q 314.

¹⁸¹ Q 9.

¹⁸² Leveson inquiry, transcript of afternoon hearing, 31 May 2012. Available online:

<http://www.levesoninquiry.org.uk/wp-content/uploads/2012/05/Transcript-of-Afternoon-Hearing-31-May-2012.pdf>

¹⁸³ Q 156.

¹⁸⁴ Robin Foster.

of the citizen interest, to advance that rather than to choose among the varying competing clauses that are in a Bill like the Communications Act.”¹⁸⁵ Whilst Dr Murphy supported any decisions lying with, “an independent commission that is within the umbrella of Ofcom” he emphasised the importance of ensuring that those making plurality decisions were, “representative of the people ... people who have a good feel for what is happening on the ground.”¹⁸⁶

A hybrid

189. In his report Sir Brian Leveson proposed a model for decision-making in the context of reviewing a transaction which provides a role for both the Secretary of State and Ofcom. On his hybrid, the Secretary of State should be required to accept the advice provided by the independent regulator or explicitly explain why he or she has chosen to reject that advice.¹⁸⁷ Steve Unger from Ofcom described this approach as an, “attempt to try to find compromise solutions between the role of the regulator and the role of Government.”¹⁸⁸ Mr Foster favoured this approach which he said was, “more or less as it is now, but would “tighten up the explanation of the rationale for any decision taken by the Secretary of State.”¹⁸⁹ The Guardian Media Group were likewise in agreement with this idea, “...as a method of ensuring that media transactions are subject to the appropriate scrutiny and the Secretary of State is not allowed to waive them through for political reasons. We would contend that this model should not be limited to reviews triggered by a transaction but should be extended to cover periodical reviews by the regulator. ...This is the most effective way of ensuring that ultimate decision making is accountable to Parliament, whilst being free from political interference.”¹⁹⁰
190. The Media Reform Coalition claimed that the Leveson recommendation that discretionary power remain with the Secretary of State in respect of public interest decisions over media mergers was, “in conflict with much of the evidence and testimony submitted to his Inquiry.”¹⁹¹ Ed Vaizey MP analysed the model suggested by the Leveson report in more favourable terms,
- “There is ... a feeling that there should still be political accountability in this decision ... there is that opportunity to have an ultimate political candidate ... but who follows a very transparent process in terms of taking advice, that advice being made public, and where the accountable Minister differs from that advice, explaining why and being able to be examined by either a committee like this or in Parliament.”¹⁹²

¹⁸⁵ Q 358.

¹⁸⁶ Q 378.

¹⁸⁷ *An inquiry into the culture, practices and ethics of the press: report [Leveson] Volume 3*. Available online: http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_iii.pdf

¹⁸⁸ Q 405.

¹⁸⁹ Q 26.

¹⁹⁰ Guardian Media Group.

¹⁹¹ Media Reform Coalition.

¹⁹² Q 429.

A plurality commission

191. The fourth option for decision making which was put to us was for the creation of a new body which we have called, for ease of reference, a “plurality commission.” Those who recommended it believed that it would overcome the problems associated with giving this authority to either the Secretary of State or the independent regulator.

192. Professor Picard suggested the creation of,

“a special joint commission or council ... (drawing upon existing resources and approaches in ministries and departments concerned with media, competition, culture, and consumer welfare and incorporating Parliamentary and civil society representatives), which has the authority to promulgate regulation within a scope delegated by the Parliament, to act on issues of media pluralism in its broader conceptualization, and to make recommendations of actions requiring further Parliamentary consideration.”¹⁹³

Other witnesses, however, did not see,

“any merit in establishing another institution that would require its own research and analytical secretariat.”¹⁹⁴

The Committee’s view

193. We recognise that if an appropriate basis can be found on which to ensure a role for democratic accountability, transparency and expert advice, each of these elements are potentially important features of the way in which decisions on media plurality should be made. However, it is impossible to come to a concrete conclusion about how this can be achieved and where these decision-making powers should reside without identifying the specific decisions which will need to be taken as part of a new media plurality policy. Therefore, we leave our proposal on the different ways to allocate institutional responsibility for these decisions to the following chapter, Our proposal on media plurality policy.

¹⁹³ Professor Picard.

¹⁹⁴ Q 55 (Professor Collins).

CHAPTER 5: OUR PROPOSAL ON MEDIA PLURALITY POLICY

194. In the previous chapters, we set out our analysis of the different models proposed in evidence for the scope, approach and decision-making arrangements of a plurality policy. In this chapter, we put forward our own view on the best way to proceed.

Overview

195. In overview, our proposal is for a framework of two key elements. The first, which is new and similar to Ofcom's proposal, is the undertaking of a plurality review on a predictable periodic basis, which should set the context for the second: a significant modification of the existing arrangements for a review of specific transactions which occur in the interval between one periodic review and the next.

The periodic plurality review

196. **The centre-piece of our approach is that the Government should introduce a statutory periodic review of the plurality of the media markets to be undertaken by Ofcom on a 4–5 yearly basis, which will reshape the role for Government, Parliament, regulator and competition authorities in protecting the public interest.**
197. This approach is uniquely able to live up to the principle, stated in Chapter 3, that the assessment of plurality should drive the decision about which remedy or intervention is appropriate, not the other way around. Other approaches put to us were unable to meet this principle. For example, consider intervention based on statutory caps or on a hybrid model incorporating caps. It is inherent to these approaches that the decision about which remedy or intervention is appropriate (for its proponents, a cap) drives the way in which plurality should be assessed (an arbitrary and potentially misleading single metric in whose terms the level of the cap has to be set). In such approaches, the decision about how to assess plurality is hamstrung by a commitment to a particular intervention.
198. The scope of periodic reviews should be as described in the chapter on Scope, summarised in the box below:

BOX 2

Recap of conclusions from chapter 2 on scope

Periodic plurality reviews ...

- should be able to take into account media enterprises based in the UK as well as those outside UK jurisdiction to the extent that they are consumed by UK audiences if this is considered relevant to the overall assessment;
- should encompass both local and regional media as well as national media in the devolved nations and UK-wide media enterprises.
- should be limited to the activities of media enterprises engaged in news and current affairs content.

- should not be limited by the media channel through which content is primarily delivered: print, broadcast and content delivered over the internet may all be relevant, as could be the influence of digital intermediaries on the consumption of this content. It should, therefore, be open to an assessment of plurality to determine which media channels should be in scope based on whether they are relevant to the overall assessment of plurality at the time.
- should take into account both the supply and consumption of content
- should be flexible enough to take into account both the wholesale and retail provision of news and current affairs content. It should establish an approach to determining how to attribute content to media enterprises operating at different points in the value chain. This determination will require the location of editorial control in the value chain to be identified in each case.

199. **Ofcom’s periodic assessment of plurality should be based on a limited number of different measures which address availability, consumption and impact.**
200. **There should be a role for Parliament in setting guidance for this new framework of assessment, but the metrics themselves to be used in assessing plurality should not be set down in statute. Instead, there should be flexibility for Ofcom to interpret statutory guidance, design the assessment framework and select appropriate metrics according to the circumstances at the time of the review, but with an emphasis, wherever possible, on longitudinal consistency of the measures applied.**
201. The Government’s stated intention, in their recent consultation on Media Ownership and Plurality, is to “commission the development of a clear measurement framework, to be worked up in partnership with industry.”¹⁹⁵ The Minister clarified the potential risk, however, of setting this in stone while also recognising the need for market certainty:
- “As you quite rightly say, a set of measurement frameworks put together in 2014 may not be adequate even in 2016 or 2015, given the pace of change of technology. At the same time, I think the people working in this industry want an element of certainty.”¹⁹⁶
202. We agree with the Minister’s view. An important principle for any plurality policy is that the framework of assessment strikes a balance between providing certainty to the market as well as flexibility to the regulator—both are important. Flexibility is required to ensure that plurality is measured and promoted in the way that makes sense as the media market changes over time. It is unrealistic to expect to find a fixed measurement framework which can adequately assess the sufficiency of plurality as media enterprises’ products and consumers’ and citizens’ behaviours change. However, the work which the Government plan to commission could very usefully inform

¹⁹⁵ Department for Culture, Media and Sport, *July 2013. Op. Cit.*

¹⁹⁶ Q 424.

Ofcom's decisions at the time of the first periodic review. At that point, market certainty can be provided by giving the responsibility to Ofcom, as far as possible, to strive to maintain longitudinal consistency in the measures it applies. This should not only provide the greatest possible certainty to the market but also serve the secondary purpose of making useful comparative analyses possible between successive periodic reviews.

203. **The work which the Government intend to commission relating to the development of a clear measurement framework should not seek to find a 'right way' of measuring media plurality which can then be set in stone. Instead its output should provide Ofcom with a starting point and input to the decisions it will have to make, at the time of the first periodic review, about how to design the assessment framework and select appropriate metrics in a way most likely to balance the twin objectives of delivering certainty to the market and sufficient flexibility for a proper assessment of plurality at the time.**
204. **Ofcom should select the metrics to be used in a plurality assessment which are most likely to assist it, given the state of the market at the time of each periodic review, in reaching defensible conclusions about the following:**
 - **the sufficiency of diversity of viewpoints available and consumed across and within media enterprises; and**
 - **the extent to which any one media owner or voice may have too much influence over public opinion and the political agenda.**
205. **The periodic plurality review report should contain both a narrative assessment of the sufficiency of plurality in specific media markets and across media; and a clear indication of where plurality may be under threat, which will guide the decisions over intervention in the event of any transaction.**
206. **In producing the narrative description of the degree of sufficiency of plurality, Ofcom should be able to rely on new guidance relating to the definition of sufficient plurality to be set down in statute. This guidance should be qualitative and descriptive rather than quantitative and tightly prescriptive.**
207. **The content of this guidance should be clearly stated in statute and might include certain key elements such as a diverse range of independent news voices; high overall reach and consumption with consumers actively multi-sourcing; sufficiently low barriers to entry and competition to spur innovation; economic sustainability and no single organisation accounting for too large a share of the market.**
208. **The Government could, as part of the next phase in their work programme on media plurality, also begin to develop statutory guidance relating to the meaning of sufficiency of plurality upon which Ofcom can rely in making an assessment of plurality at the time of a periodic review.**
209. **For the most part, we do not expect periodic reviews to result in any direct market intervention. Only in the most extreme circumstances should interventions in the interests of plurality be imposed outwith the context of a transaction.**

210. Not to respect this principle would create a risk of retrospectively penalising acquisitions and other past decisions made by media enterprises on an entirely legitimate basis. However, there is nonetheless a clearly identified need to correct the absence in the current arrangements of a mechanism to defend against severe plurality concerns which can arise through organic growth, entirely outside the context of transactions.
211. **Where immediate and pressing concerns resulting from organic change are discovered in a periodic review, it should be possible for Ofcom to order a media enterprise to divest. The bar for this imposition should be high and hinge on a demonstration of the following:**
- **That there is a real problem now;**
 - **That the specific proposed divestment measure is the only way to remedy the problem;**
 - **That the specific proposed divestment measure will be effective in remedying the problem.**
212. **Before making the recommendation that a media enterprise should be ordered to divest, Ofcom must ask those players affected to submit representations, in which they can put forward their own divestment measures in lieu of Ofcom's initial recommendation. Ofcom can then make a final recommendation if, in light of these representations, Ofcom believes there is a divestment measure, either of its own or of the media enterprise's design, able to pass the tests above.**
213. In a nutshell, Ofcom's task in conducting the periodic review will be to identify plurality concerns which exist in relation to specific media markets and across media, or with particular players. One sensible way in which Ofcom might do this is to list them in one of three categories, indicating an escalating level of concern. Of course, not being placed in any of these categories might be taken as good news, as an indication that Ofcom found no reason at the time of the review to express a concern.
- (1) Moderate concern. Describing a market or a media enterprise in this way would mean that Ofcom judges that any further consolidation would be a potential concern. A plurality review of any transaction either in this market or with the named players between the present and next periodic review could be merited.
 - (2) High concern. Describing a market or media enterprise in this way would mean that Ofcom judges that any further consolidation would be very likely to result in a material lessening of plurality. A plurality review of any further transaction either in this market or with the named players between the present and next periodic review is all but guaranteed.
 - (3) Severe concern. Placing a media enterprise in this category means that Ofcom's recommendation is that the enterprise be ordered to divest immediately. There must be a high bar to justifying this measure, as set out above in paragraph 210.
214. There are three aspects to the rationale for setting out the review's conclusions in this way. First, it would send very clear signals and guidance to all concerned about the prospects of future possible transactions. Second,

it provides a mechanism for dealing with organic change that has resulted in unacceptable concentration but creates a significant hurdle for the regulator to cross if they wish to recommend it. As such, it is able to deliver some of the benefits which proponents argue in favour of a statutory cap: a way of being able to say that a level of consolidation identified in the review is such a severe concern for democracy that there may be an appropriate basis on which to oblige divestment. Finally, it provides a running, longitudinal account of the state and sufficiency of media plurality in the UK, ensuring so far as possible the definition of sufficiency does not become removed from the realities of a changing industry and is able to evolve in a way around which there can be consensus.

215. The first of these points—that the review should act as a form of forward guidance—deserves emphasis. **The report to result from the periodic review should be written so as to limit the need for transactional plurality reviews, by sending very clear signals and guidance to all concerned about the prospects of consolidation in future possible transactions before they are formally proposed.**
216. As suggested in Chapter 2 on Scope, although it is conceivable that a periodic review could conclude that there are concerns with respect to the influence of digital intermediaries on plurality, there is a question about whether digital intermediaries, generally speaking, are within the jurisdictional reach of any remedies or interventions which the regulator could impose. We considered a similar issue in our previous Report on Media Convergence,¹⁹⁷ and recommended there that Ofcom should be required to establish and publish on a regular basis the UK public’s expectations of major digital intermediaries. The rationale for this approach is contained in that Report, but lies inter alia in applying positive pressure on digital intermediaries to take responsibility to work with the Government and regulators here to help achieve our wider societal goals. As Robert Madelin, DG Connect, European Commission put to us during that inquiry:
- “if the big players have a view as to how much regulation they would like, they ought to embrace the opportunity to take responsibility. It is then up to us; it is up to legislators and societies around the world to decide whether that is good enough.”¹⁹⁸
217. **Ofcom should publish in its periodic plurality report any plurality concerns associated with digital intermediaries. Indeed this might be the vehicle through which Ofcom could on a regular basis express the UK public’s expectations of major digital intermediaries, as recommended in our previous Report on *Media Convergence*.**
218. **Finally, once complete, Ofcom’s report on the periodic plurality review must be submitted to the Secretary of State.**
219. **The process for agreeing a final report should proceed as follows: The Secretary of State should have an obligation to accept the content and recommendations of the periodic review report or publish good reasons for not doing so. Ofcom should be permitted to submit an amended report in the light of the reasons given by the Secretary of**

¹⁹⁷ Select Committee on Communications, *Media Convergence* (2nd Report, Session 2012–13, HL Paper 154).

¹⁹⁸ *Ibid.*

State but should not be able to submit a third report. If agreement cannot be reached, the Secretary of State should have the final say, and accordingly, if this arises, the Government rather than the regulator should revise and publish the final version of the periodic plurality report.

220. There are a number of reasons why Ofcom should submit its review to the Secretary of State. First, it ensures a high bar is in place should Ofcom choose to recommend divestment of any media enterprise, as these recommendations can only proceed with the Secretary of State's approval. Second, it ensures politically accountable endorsement and weight is given to the signals Ofcom's conclusions send to stakeholders; that there is as wide an acceptance as possible and political authority behind Ofcom's narrative description of media plurality and its categorisation of specific media enterprises. Finally, it provides a mechanism for the Secretary of State to have a say about media plurality, and to be accountable for doing so, outwith the often more contentious context of evaluating specific media transactions.
221. This represents an evolutionary development of the Levson hybrid described in chapter 4. The rationale for the Leveson hybrid is as stated in that chapter; it provides a mechanism by which democratic accountability can be combined with appropriate transparency and expert advice. The rationale for our development is simply to allow for the possibility that Ofcom might wish to acknowledge the Secretary of State's reasons for challenging the report, and see fit to clarify or amend its report in that light.
222. Finally, although we haven't heard this expressed in evidence, we note the legitimate possible concern that periodic plurality reviews could entail an additional public cost. However, we would expect Ofcom to approach this in a way that limited costs beyond what is already incurred by them in other data gathering exercises and so on.

The transactional review

223. The periodic plurality review should send clear signals to all concerned about the prospects of future possible transactions. Still, when any such transactions arise, a process must exist for determining its specific impact on plurality as well as of course on competition, and hence whether it is in the public interest overall for it to proceed.
224. For this, our proposal is for a review to be undertaken on specific transactions which occur in the interval between periodic plurality reviews. This transactional review should consist of two distinct processes: one concerned with plurality, to be conducted by Ofcom, the other concerned with the competition aspects of the transaction, to be conducted by the competition authorities. In reality, we would expect this to be an infrequent occurrence.
225. **The Government should revise the present system of transactional reviews, in order to clarify the relationship between competition and plurality policy when dealing with specific transactions.**
226. **To that end, plurality assessments and competition assessments of transactions should be conducted as two distinct processes, by regulators with the appropriate set of priorities, expertise, methods and ultimately ethos for each. Competition authorities should remain**

responsible for the assessment of a transaction's impact on competition, but Ofcom should be given a new statutory responsibility for the assessment of a transaction's impact on plurality.

227. This separation of the competition assessment from the plurality assessment is a notable difference between our proposal and the existing arrangements for the evaluation of a media transaction engaging plurality concerns. Our argument for this separation begins with the observation we made in Chapter 1: that competition policy and plurality policy are actually different concepts, quite radically so. While a competition assessment will promote the interest of the consumer, a plurality assessment must focus on the interest of the citizen.
228. There are two reasons to think Ofcom better placed than the generalist competition authorities to promote the interests of the citizen: first, its statutory obligation to further the interests of the citizen, not just the consumer;¹⁹⁹ second, and by extension, its expertise in regulating the media not only to serve legitimate commercial but also important social and collective ends. The rationale, therefore, for separating the competition assessment from the plurality assessment lies in the fact that this allows each to be undertaken by a regulator with the appropriate set of priorities, expertise, methods and ultimately ethos.
229. While the plurality and competition assessments of a transaction should be made distinct and be undertaken by appropriate reviewing bodies, this is not to say that that either assessment need necessarily be undertaken on any single transaction at all. With regard to competition assessments, we have heard no evidence to suggest that the decision as to whether these proceed or do not proceed should be taken in a different way than at present. Currently, transactions falling beneath certain thresholds set out in the Enterprise Act 2002 are not investigated. We have, however, heard evidence to suggest that the way in which the competition assessment is conducted should be modified, and we address this below under the heading: the "Kent Messenger Group scenario."
230. **The plurality assessment of a transaction should proceed on the basis of a judgement by Ofcom. Right at the outset, Ofcom will have to form a reasonable belief prima facie that a specific transaction may be expected to result in a material and unacceptable lessening of plurality, and that it therefore merits closer assessment.**
231. **In reaching a decision about whether there may be a material and unacceptable lessening of plurality as a result of a transaction and therefore whether to proceed with a plurality assessment, Ofcom should draw on the most recent periodic plurality report, and consider the relevance of any readily observable changes to plurality in the UK since.**
232. In most cases, it should be straightforward for Ofcom to decide not to investigate further.
233. **In conducting a plurality assessment of a specific transaction, Ofcom should reach a decision about whether or not the transaction should go ahead based on an assessment of the likelihood of its leading to a**

¹⁹⁹ Communications Act 2003, section 3(1).

material and unacceptable lessening of plurality as compared to a scenario in which the transaction does not go ahead, taking into account in both scenarios:

- **the sufficiency of diversity of viewpoints available and consumed across and within media enterprises; and**
- **the extent to which any one media owner or voice may have too much influence over public opinion and the political agenda.**

234. **The final step in the transactional review should be the submission of the competition assessment and the plurality assessment to the Ofcom Board who should be responsible for reconciling the recommendations of the two reports and implementing them as a single Public Interest Decision.**
235. We recognise that, having undertaken the plurality assessment, Ofcom will need to ensure that its board is open to consider both competition and plurality reports without any kind of conflict and we address this point below.
236. **Where the two reports reach the same conclusion, the Ofcom Board must be responsible for ensuring the implementation of the regulators' mutual view either to block or allow the transaction, but there must be a clear mechanism in place for resolving potential conflicts between plurality and competition assessments of transactions.**
237. **Further, this mechanism should be designed to resolve such conflicts on the very clear principle that, where plurality is concerned, the citizen interest should have greater weight than at present in relation to the consumer interest, and a democratic and informed society should have greater importance than at present when weighed against the cost of advertising.**
238. **Responsibility for resolving such conflicts and as such for making a final Public Interest Decision should therefore be given to the Ofcom Board, rather than the competition authorities, as at present.**
239. **The Ofcom Board, mindful of its twin statutory duties to further the citizen and consumer interest should publish this Public Interest Decision, having weighed up the merits of each case and determined whether overall it is in the public interest for the transaction to proceed.**
240. The rationale for giving responsibility to the Ofcom Board for the resolution of potential conflicts between plurality and competition assessments is straightforward: it should have the effect of promoting, more than has been the case, the role of the citizen's interest in these decisions. At present, these challenging judgements, in which the public and citizen's interest must be weighed with the consumer interest, are made based on recommendations from the competition authorities. The competition authorities have no founding statutory duty to the citizen's interest. By contrast, Ofcom has statutory duties to further and thus balance both the citizen and consumer interest. The transfer of the responsibility for making these challenging judgements from a body without these duties to one with them should have the effect of promoting, more than has been the case, the role of the citizen's interest in reaching a final decision. Its twin duties mean that the Ofcom

Board is better placed to make a judgement about how the public interest will best be served.

241. There are two possible concerns about handing this role to the Ofcom Board: first, the conflict of interest in weighing recommendations made by Ofcom against those made by another regulator; and second, the level of independence of the Ofcom Board from Government. On the latter point, Dr Tambini, for example, told us that:

“Ofcom would have to think hard if it were going to take on more of the discretion that the Secretary of State has, with advice from Ofcom and the Competition Commission, currently. Ofcom would need safeguards on its independence ... It may need a specialist media plurality panel within Ofcom, with security of tenure and some independence of operation, for example. This is not something that Ofcom could take on without thinking about it seriously and being reformed in some way.”²⁰⁰

242. This concern is founded, presumably, on the appointment mechanisms in place for the Ofcom Board. The Board’s Non-Executive Members including the Chairman are appointed jointly by the Secretaries of State for Business, Innovation and Skills and for Culture, Media and Sport, while the Chairman and other non-executive members of the Board appoint the Chief Executive subject to the approval of the Secretary of State and also appoint any other executive Board members.
243. The recent debates over press regulation and the independence from Government of a “recognition body” to oversee it have revealed a rich array of mechanisms and notional intermediary bodies by which independence might be secured. We are not persuaded that these are required in this case, but we do note that such mechanisms can be introduced should they prove to be.
244. With regard to the concerns which might be raised about a conflict of interest on the Ofcom Board, there are two ways in which it should be possible to guard against this. First it will be important, for the Ofcom Board Members to have had no involvement with the team conducting Ofcom’s transactional plurality assessment, and for the Executive Members of the Board to remove themselves from the Public Interest Decision if they have. Second, it will be important for the Ofcom Board members to be mindful of the potential for judicial review; and we expect that this should act as sufficient stimulus for the Ofcom Board to conduct its responsibility towards the final Public Interest Decision on media transactions in an appropriate manner.
245. We note that one conspicuous difference between our overall approach to the transactional review and the current arrangements lies in the role of the Secretary of State. In our model, there is a justifiable role for the Secretary of State in approving the periodic plurality review report which represents the centre-piece of our proposal, and sets the context in which media transactions are proposed and assessed. The absence of a role for the Secretary of State in exercising discretion over specific transactions follows from the discussion on this point in Chapter 4 on Decision; the evidence we have received points clearly towards the conclusion that it is impossible for

²⁰⁰ Q 9.

the Secretary of State to do so without the appearance of being influenced by political motives. By contrast, the Ofcom Board should be in a position to reach a defensible Public Interest Decision on specific transactions for the range of reasons we have already given. Accordingly, we have concluded that revisions to plurality policy should be guided by the following statement of principle:

246. **As a whole, plurality policy should be revised to strike a new balance between the regulator and Government in terms of decisions to be made about intervention: there should be accountability for politicians where appropriate but the onus should be on Ofcom to balance the consumer and citizen interests.**

The ‘Kent Messenger Group scenario’

247. Where a transactional review does arise, there is a scenario to guard against which is potentially problematic with regard to plurality: how to avert what might be called a “Kent Messenger Group scenario;” see Box 3 below.

BOX 3

The relevance of the Kent Messenger Group case

The current arrangements for a transactional competition assessment prescribe a two phase process. Phase 1 involves a decision by the OFT about whether to refer a case onto the Competition Commission for Phase 2, a full investigation. In 2011 the OFT was faced with a decision about whether to refer the proposed acquisition in 2011 of the Northcliffe titles in Kent by the Kent Messenger Group. To help inform this decision, the OFT asked Ofcom to provide a Local Media Assessment (LMA), a formalised way for Ofcom to assist the OFT in its assessment of mergers involving local media.

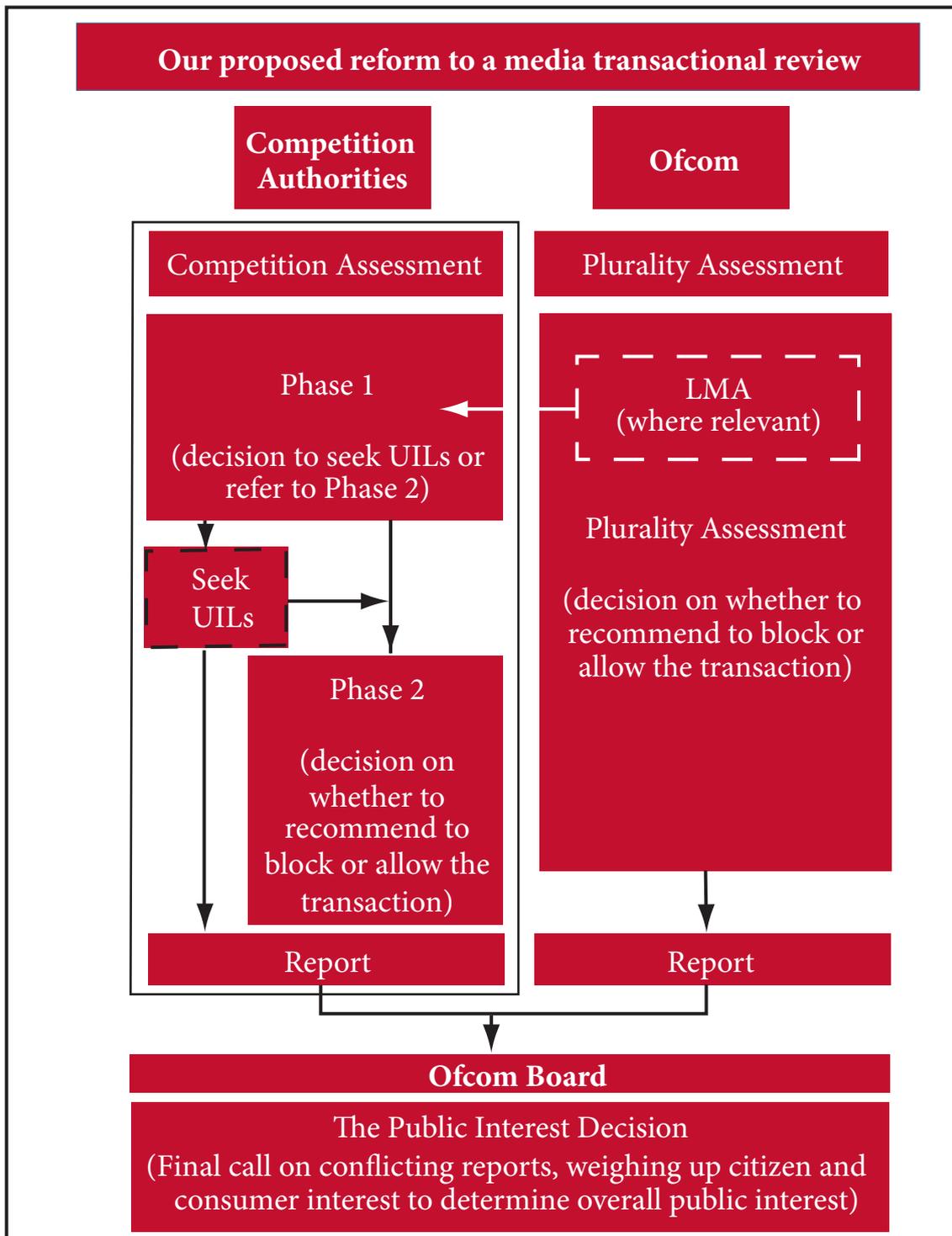
248. From a public policy perspective, the issue that arose in the case of the Kent Messenger Group’s proposed acquisition of the Northcliffe titles in Kent in 2011 boiled down to what appears to be the underweighting of the local media plurality concerns and the advice given in Ofcom’s LMA, especially on the relevant counterfactual, in the decision about whether to refer the case onto a full Phase 2 investigation by the Competition Commission. Further it did not seem to be a relevant consideration that the costs which this sort of investigation imposes on local media enterprises may have to be drawn from resources, the lack of which provided the impetus for consolidation in the first place.
249. We believe that a clear principle should guide the development of a solution: the interests of the citizen should have greater weight than at present in relation to the interests of the consumer; and the interests of plurality and a democratic and informed society should have greater importance than at present when weighed against the cost of advertising. We have considered a number of routes to realising this principle in the context of transactional competition assessments. It seems to us that the most proportionate response at this stage would be to give greater weight than is presently the case to Ofcom’s Local Media Assessment (LMA), the

mechanism by which Ofcom is able to feed into the competition authorities' decision about whether to refer the case onto Phase 2.²⁰¹ In view of the fact that only two LMAs have been produced, and this procedure is clearly still a relatively new one, the competition authorities should be given an opportunity to show they have learned from the past before more radical measures are considered.

250. **Ofcom's Local Media Assessment (LMA) should be given greater weight than at present in the competition authorities' decision about whether to refer a specific local media transaction onto a full Phase 2 investigation. The competition authorities should make this change clear in their guidance on mergers, before the new competition authority, the Competition and Markets Authority, comes into existence, at present anticipated in April 2014.**
251. **We note that this recommendation bears a striking resemblance to one we made in a previous Report, *The Future of Investigative Journalism*, paragraph 161. We urge the competition authorities, in cooperation with Ofcom, to make greater progress towards implementing this recommendation following the present Report. Should the competition authorities fail to act on this recommendation, we urge the Secretary of State to consider the introduction of a measure by which the relevant section of the competition authorities' merger assessment guidance would have to be approved by the Secretary of State.**
252. Following on from this, we note the possibility of other media markets emerging, for example, perhaps online, in which moving a competition assessment from phase 1 to phase 2 could be so onerous on its players as to deter transactions which may be in the public interest. We, therefore, make the following recommendation:
253. **One of the outcomes of Ofcom's periodic plurality review might be a consideration of whether there is a case for the more in-depth assessment of media-specific considerations provided by the LMA procedure to apply more widely to players in other fragile or emerging media markets.**
254. In overview, the model we put forward for a transactional review is summarised in the graphic below.

²⁰¹ *Ibid.*

FIGURE 2
Transactional Review



Other features of the ‘plurality landscape’

255. One feature of the ‘plurality landscape’ which we have not yet addressed in this chapter is the “20/20” rule. We discussed the merits and demerits of its removal in Chapter 3 and conclude, with the evidence, that there may be weakening arguments to keep it in place. Indeed it would appear as something of a curiosity and an anachronism within the approach we are arguing for because its formulaic automaticity succumbs to the criticism we have made on caps. However, as long as an approach able to live up to the

principles we have set out in this Report remains unimplemented, it seems sensible to keep the “20/20” rule in place as a safeguard.

256. **We do not recommend the removal of the “20/20” rule, but equally would not argue for its retention. Were the Government to implement a revised plurality policy which lives up to the principles contained in this Report, there may be a case for its removal. However, absent such a policy, it remains a potentially important safeguard which should be kept in place.**
257. Finally, during the course of this inquiry we have found that certain policies and interventions which may be seen by some to have an indirect bearing on the core concerns of plurality policy but which are, as a matter of fact, separate policies can become unhelpfully entangled in discussion of plurality policy.
258. **The relationship should be clarified between the public interest and plurality as we have defined it in our Report and other related but separate policies and interventions such as licensing, PSB reviews, fit and proper person tests and so on.**

CHAPTER 6: SUMMARY OF RECOMMENDATIONS

259. We recommend that a plurality policy should be limited to the activities of media enterprises engaged in news and current affairs content. Content diversity in other genres is not unimportant but is a matter of independent commissioning or the stipulations set out in licence and Charter renewal agreement which create the context in which commissioning decisions are made. (Para 27)
260. There appears to be a strong consensus that UK media markets should be the focus of UK media plurality policy; we agree. We recognise that plurality policy remains broadly a matter for the UK and this report relates to a UK plurality policy. (Para 34)
261. Any plurality policy approach may take into account media enterprises based in the UK as well as those outside UK jurisdiction to the extent that they are consumed by UK audiences if this is considered relevant to the overall assessment. (Para 35)
262. The scope of any plurality policy should encompass both local and regional media as well as national media in the devolved nations and UK-wide media enterprises. In dealing with local or regional media, those tasked with making decisions should in reaching their conclusions pay particular attention to the question of financial sustainability. (Para 40)
263. The BBC should be included in any assessment of media plurality but it should not be subject to any control measures imposed from outwith its own regulatory framework as a result of that assessment. It is for the body which oversees the BBC, under the existing governance rules this is the BBC Trust, to ensure that the BBC's conduct in relation to plurality is addressed satisfactorily. (Para 45)
264. We recommend that media plurality policy should not be limited by the media channel through which content is primarily delivered: print, broadcast and content delivered over the internet may all be relevant, as could be the influence of digital intermediaries on the consumption of this content. It should, therefore, be open to an assessment of plurality to determine which media channels should be in scope based on whether they are relevant to the overall assessment of plurality at the time. (Para 51)
265. We recognise the importance of ensuring that no content provider has an unreasonably high level of consumption and recommend that a media plurality policy should take into account both the supply and consumption of content, albeit that any interventions available will have to be limited in application to the supply side. (Para 56)
266. We recommend that a media plurality policy should be flexible enough to take into account both the wholesale and retail provision of news and current affairs content. It should establish an approach to determining how to attribute content to media enterprises operating at different points in the value chain. This determination will require the location of editorial control in the value chain to be identified in each case. (Para 63)
267. The framework of plurality assessment and intervention must strike a balance between providing certainty to the market and flexibility to the regulator—both are important. (Para 68)

268. The assessment of plurality should drive the decision about which remedy or intervention is appropriate, not the other way around. (Para 69)
269. On the BBC, we think that the proper place to consider its responsibilities, including with regard to matters such as internal or external plurality, is within the Charter Review framework. (Para 90)
270. We encourage the Government and the BBC in negotiating Charter Renewal to consider whether the BBC might be given a more explicit responsibility—with respect to its online offer for news and current affairs content—to stimulate consumption of diverse viewpoints from different external sources. (Para 92)
271. We recommend that the Charter Review process makes clear what licence fee funding is for, and that, as long as it is conceivably available for projects external to the BBC, it is also made clear what strategic role, if any, this funding might play in positively promoting external plurality in the wider UK media. (Para 94)
272. For our part, we urge the Government to support our view that the licence fee should be for the BBC alone, though we do not argue that funding to S4C should now be removed. (Para 95)
273. The centre-piece of our approach is that the Government should introduce a statutory periodic review of the plurality of the media markets to be undertaken by Ofcom on a 4–5 yearly basis, which will reshape the role for Government, Parliament, regulator and competition authorities in protecting the public interest. (Para 196)
274. Ofcom’s periodic assessment of plurality should be based on a limited number of different measures which address availability, consumption and impact. (Para 199)
275. There should be a role for Parliament in setting guidance for this new framework of assessment, but the metrics themselves to be used in assessing plurality should not be set down in statute. Instead, there should be flexibility for Ofcom to interpret statutory guidance, design the assessment framework and select appropriate metrics according to the circumstances at the time of the review, but with an emphasis, wherever possible, on longitudinal consistency of the measures applied. (Para 200)
276. The work which the Government intend to commission relating to the development of a clear measurement framework should not seek to find a ‘right way’ of measuring media plurality which can then be set in stone. Instead its output should provide Ofcom with a starting point and input to the decisions it will have to make, at the time of the first periodic review, about how to design the assessment framework and select appropriate metrics in a way most likely to balance the twin objectives of delivering certainty to the market and sufficient flexibility for a proper assessment of plurality at the time. (Para 203)
277. Ofcom should select the metrics to be used in a plurality assessment which are most likely to assist it, given the state of the market at the time of each periodic review, in reaching defensible conclusions about the following:
- the sufficiency of diversity of viewpoints available and consumed across and within media enterprises; and

- the extent to which any one media owner or voice may have too much influence over public opinion and the political agenda. (Para 204)
278. The periodic plurality review report should contain both a narrative assessment of the sufficiency of plurality in specific media markets and across media; and a clear indication of where plurality may be under threat, which will guide the decisions over intervention in the event of any transaction. (Para 205)
279. In producing the narrative description of the degree of sufficiency of plurality, Ofcom should be able to rely on new guidance relating to the definition of sufficient plurality to be set down in statute. This guidance should be qualitative and descriptive rather than quantitative and tightly prescriptive. (Para 206)
280. The content of this guidance should be clearly stated in statute and might include certain key elements such as a diverse range of independent news voices; high overall reach and consumption with consumers actively multi-sourcing; sufficiently low barriers to entry and competition to spur innovation; economic sustainability and no single organisation accounting for too large a share of the market. (Para 207)
281. The Government could, as part of the next phase in their work programme on media plurality, also begin to develop statutory guidance relating to the meaning of sufficiency of plurality upon which Ofcom can rely in making an assessment of plurality at the time of a periodic review. (Para 208)
282. Only in the most extreme circumstances should interventions in the interests of plurality be imposed outwith the context of a transaction. (Para 209)
283. Where immediate and pressing concerns resulting from organic change are discovered in a periodic review, it should be possible for Ofcom to order a media enterprise to divest. The bar for this imposition should be high and hinge on a demonstration of the following:
- That there is a real problem now;
 - That the specific proposed divestment measure is the only way to remedy the problem;
 - That the specific proposed divestment measure will be effective in remedying the problem. (Para 211)
284. Before making the recommendation that a media enterprise should be ordered to divest, Ofcom must ask those players affected to submit representations, in which they can put forward their own divestment measures in lieu of Ofcom's initial recommendation. Ofcom can then make a final recommendation if, in light of these representations, Ofcom believes there is a divestment measure, either of its own or of the media enterprise's design, able to pass the tests above. (Para 212)
285. The report to result from the periodic review should be written so as to limit the need for transactional plurality reviews, by sending very clear signals and guidance to all concerned about the prospects of consolidation in future possible transactions before they are formally proposed. (Para 215)
286. Ofcom should publish in its periodic plurality report any plurality concerns associated with digital intermediaries. Indeed this might be the vehicle through which Ofcom could on a regular basis express the UK public's

expectations of major digital intermediaries, as recommended in our previous Report on *Media Convergence*. (Para 217)

287. Finally, once complete, Ofcom's report on the periodic plurality review must be submitted to the Secretary of State. (Para 218)
288. The process for agreeing a final report should proceed as follows: The Secretary of State should have an obligation to accept the content and recommendations of the periodic review report or publish good reasons for not doing so. Ofcom should be permitted to submit an amended report in the light of the reasons given by the Secretary of State but should not be able to submit a third report. If agreement cannot be reached, the Secretary of State should have the final say, and accordingly, if this arises, the Government rather than the regulator should revise and publish the final version of the periodic plurality report. (Para 219)
289. The Government should revise the present system of transactional reviews, in order to clarify the relationship between competition and plurality policy when dealing with specific transactions. (Para 225)
290. To that end, plurality assessments and competition assessments of transactions should be conducted as two distinct processes, by regulators with the appropriate set of priorities, expertise, methods and ultimately ethos for each. Competition authorities should remain responsible for the assessment of a transaction's impact on competition, but Ofcom should be given a new statutory responsibility for the assessment of a transaction's impact on plurality. (Para 226)
291. The plurality assessment of a transaction should proceed on the basis of a judgement by Ofcom. Right at the outset, Ofcom will have to form a reasonable belief *prima facie* that a specific transaction may be expected to result in a material and unacceptable lessening of plurality, and that it therefore merits closer assessment. (Para 230)
292. In reaching a decision about whether there may be a material and unacceptable lessening of plurality as a result of a transaction and therefore whether to proceed with a plurality assessment, Ofcom should draw on the most recent periodic plurality report, and consider the relevance of any readily observable changes to plurality in the UK since. (Para 231)
293. In conducting a plurality assessment of a specific transaction, Ofcom should reach a decision about whether or not the transaction should go ahead based on an assessment of the likelihood of its leading to a material and unacceptable lessening of plurality as compared to a scenario in which the transaction does not go ahead, taking into account in both scenarios:
 - the sufficiency of diversity of viewpoints available and consumed across and within media enterprises; and
 - the extent to which any one media owner or voice may have too much influence over public opinion and the political agenda. (Para 233)
294. The final step in the transactional review should be the submission of the competition assessment and the plurality assessment to the Ofcom Board who should be responsible for reconciling the recommendations of the two reports and implementing them as a single Public Interest Decision. (Para 234)

295. Where the two reports reach the same conclusion, the Ofcom Board must be responsible for ensuring the implementation of the regulators' mutual view either to block or allow the transaction, but there must be a clear mechanism in place for resolving potential conflicts between plurality and competition assessments of transactions. (Para 236)
296. Further, this mechanism should be designed to resolve such conflicts on the very clear principle that, where plurality is concerned, the citizen interest should have greater weight than at present in relation to the consumer interest, and a democratic and informed society should have greater importance than at present when weighed against the cost of advertising. (Para 237)
297. Responsibility for resolving such conflicts and as such for making a final Public Interest Decision should therefore be given to the Ofcom Board, rather than the competition authorities, as at present. (Para 238)
298. The Ofcom Board, mindful of its twin statutory duties to further the citizen and consumer interest should publish this Public Interest Decision, having weighed up the merits of each case and determined whether overall it is in the public interest for the transaction to proceed. (Para 239)
299. As a whole, plurality policy should be revised to strike a new balance between the regulator and Government in terms of decisions to be made about intervention: there should be accountability for politicians where appropriate but the onus should be on Ofcom to balance the consumer and citizen interests. (Para 246)
300. Ofcom's Local Media Assessment (LMA) should be given greater weight than at present in the competition authorities' decision about whether to refer a specific local media transaction onto a full Phase 2 investigation. The competition authorities should make this change clear in their guidance on mergers, before the new competition authority, the Competition and Markets Authority, comes into existence, at present anticipated in April 2014. (Para 250)
301. We note that this recommendation bears a striking resemblance to one we made in a previous Report, *The Future of Investigative Journalism*, paragraph 161. We urge the competition authorities, in cooperation with Ofcom, to make greater progress towards implementing this recommendation following the present Report. Should the competition authorities fail to act on this recommendation, we urge the Secretary of State to consider the introduction of a measure by which the relevant section of the competition authorities' merger assessment guidance would have to be approved by the Secretary of State. (Para 251)
302. One of the outcomes of Ofcom's periodic plurality review might be a consideration of whether there is a case for the more in-depth assessment of media-specific considerations provided by the LMA procedure to apply more widely to players in other fragile or emerging media markets. (Para 253)
303. We do not recommend the removal of the "20/20" rule, but equally would not argue for its retention. Were the Government to implement a revised plurality policy which lives up to the principles contained in this Report, there may be a case for its removal. However, absent such a policy, it remains a potentially important safeguard which should be kept in place. (Para 256)

304. The relationship should be clarified between the public interest and plurality as we have defined it in our Report and other related but separate policies and interventions such as licensing, PSB reviews, fit and proper person tests and so on. (Para 258)

APPENDIX 1: SELECT COMMITTEE ON COMMUNICATIONS

The Members of the Committee which conducted this inquiry were:

Baroness Bakewell
 Lord Bragg (until 2 July 2013)
 Lord Clement-Jones
 Baroness Deech
 Lord Dubs
 Baroness Fookes
 Baroness Healy of Primrose Hill
 Lord Inglewood (Chairman)
 Bishop of Norwich
 Lord Razzall
 Lord St John of Bletso
 Baroness Scotland of Asthal (from 2 July 2013)
 Earl of Selborne
 Lord Skelmersdale

Declarations of Interest

The following relevant interests were declared:

Bakewell Baroness
Professional broadcaster
 Inglewood, Lord
Non-executive Chairman, CN Group (a media group based in Carlisle)

A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>

Specialist adviser

Tim Suter, founding member of Communications Chambers, acted as Special Adviser for this Inquiry.

Tim Suter specialises in advice on media and communications sector policy and regulatory issues, and has worked for a wide range of clients in the UK and internationally.

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at www.parliament.uk/hlcommunications and available for inspection at the Parliamentary Archives (020 7219 5314)

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with * gave both oral evidence and written evidence. Those marked with ** gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

**	QQ 1–14	Dr Rachael Craufurd Smith
*		Dr Damian Tambini
*	QQ 15–28	Robin Foster
*		Professor Robert Picard
*	QQ 29–61	Professor Richard Collins
*	QQ 62–107	Professor Steven Barnett
*	QQ 108–125	Campaign for Press and Broadcasting Freedom
*		Enders Analysis
**	QQ 126–139	Will Hutton
**	QQ 140–159	Lord Fowler
*		Lord Puttnam
*	QQ 160–181	Guardian Media Group
*	QQ 182–198	British Sky Broadcasting (BSkyB)
*	QQ 199–214	National Union of Journalists
*	QQ 215–233	BBC
**	QQ 234–247	Channel 4
**		Channel 5
*		ITV
*	QQ 248–260	David Elstein
**	QQ 261–275	Professor Roy Greenslade
**		Steve Hewlett
**	QQ 276–285	ITN
		Press Association
*	QQ 286–297	Professor Martin Cave OBE
**	QQ 298–311	Helen Goodman MP
**		Harriet Harman QC MP
**	QQ 312–321	Sir Harold Evans
*	QQ 322–338	Avaaz

*		Media Reform Coalition
*	QQ 339–352	The Newspaper Society
**	QQ 353–363	Professor Robert Beveridge
**	QQ 364–380	Professor Justin Lewis
**		Dr Colm Murphy
**	QQ 381–393	Facebook
**		Google
*	QQ 394–409	Ofcom
**	QQ 410–421	BBC Trust
*	QQ 422–430	Department for Culture, Media and Sport

Alphabetical list of all witnesses

*	Avaaz (QQ 322–338)
*	Professor Steven Barnett (QQ 62–107)
*	BBC (QQ 215–233)
**	BBC Trust (QQ 410–421)
**	Professor Robert Beveridge (QQ 353–363)
	British Film Institute
*	British Sky Broadcasting (QQ 182–198)
*	Campaign for Press and Broadcasting Freedom (QQ 108–125)
*	Professor Martin Cave OBE (QQ 286–297)
**	Channel 4 (QQ 234–247)
**	Channel 5 (QQ 234–247)
*	Professor Richard Collins (QQ 29–61)
	Commercial Broadcasters Association
	Competition Commission
**	Dr Rachael Craufurd Smith (QQ 1–14)
*	Department for Culture, Media and Sport (QQ 422–430)
	DMG Media
*	David Elstein (QQ 248–260)
*	Enders Analysis (QQ 108–125)
	European Initiative for Media Pluralism
**	Sir Harold Evans (QQ 312–321)
**	Facebook (QQ 381–393)
*	Robin Foster (QQ 15–28)
**	Lord Fowler (QQ 140–159)

- ** Helen Goodman MP (QQ 298–311)
- ** Google (QQ 381–393)
- ** Professor Roy Greenslade (QQ 261–275)
- * Guardian Media Group (QQ 160–181)
- ** Rt Hon Harriet Harman QC MP (QQ 298–311)
- ** Steve Hewlett (QQ 261–275)
- ** Will Hutton (QQ 126–139)
- International Broadcasting Trust
- ** ITN (QQ 276–285)
- * ITV (QQ 234–247)
- ITV Scotland
- ITV Wales
- Johnston Press
- Robert Kenny
- ** Professor Justin Lewis (QQ 364–380)
- * Media Reform Coalition (QQ 322–338)
- Media Standards Trust
- Max Mosley
- Chris Mullin
- ** Dr Colm Murphy (QQ 364–380)
- * National Union of Journalists (QQ 199–214)
- News Corporation
- * The Newspaper Society (QQ 339–352)
- * Ofcom (QQ 394–409)
- Dr Chris Paterson
- Press Association (QQ 276–285)
- * Professor Robert Picard (QQ 15–28)
- * Lord Puttnam (QQ 140–159)
- RadioCentre
- Suzanne Rab
- Dr Alison Sprague
- * Dr Damian Tambini (QQ 1–14)
- Telegraph Media Group
- This is Global
- Voice of the Listener and Viewer
- The Welsh Language Commissioner

APPENDIX 3: CALL FOR EVIDENCE

The House of Lords Select Committee on Communications, chaired by Lord Inglewood, is announcing today an inquiry into media plurality. The Committee invites interested organisations and individuals to submit written evidence as part of the inquiry.

Written evidence is sought by Wednesday 1 May 2013. Public hearings are expected to be held in June, July and in the Autumn. The Committee aims to report to the House, with recommendations, in the late Autumn. The report will receive a response from the Government and may be debated in the House.

Achieving a workable approach to plurality, particularly in provision of news and current affairs, is generally considered fundamental to a well-functioning democratic society, ensuring as far as possible informed citizens and a media without any single set of views or individuals wielding too much influence over the political process. Any consideration of plurality is, of course, heavily tied in with the wider context of the future of news provision more generally, particularly of newspapers which, under the current framework, remain the principal force in agenda-setting and informed, opinionated commentary.

While one of the Committee's previous reports looked at *The Ownership of the News*, issues surrounding media plurality are once again under the policy spotlight, prompted by concerns raised about the proposed (and then dropped) acquisition of BSkyB by News Corporation; Ofcom's report on Measuring Media Plurality; Lord Justice Leveson's report; the report by the European Commission's High Level Media Group on Media Freedom & Plurality; and the recently launched European citizens' initiative for media pluralism.

Together these have raised a number of ways in which the policy and regulatory framework currently surrounding plurality needs updating. The focus placed on plurality across these various fora might create the expectation that a consensus is forming and that momentum is now building behind reform. However, plurality has been rather absent from recent debates and we hope, having considered it carefully, to make recommendations which will lead to action.

The need for a Committee of Parliament to undertake this inquiry is clear. While Ofcom and Lord Justice Leveson have made a number of proposals relating to plurality, both have insisted that in a whole range of areas, it is for Parliament to give guidance on the objectives and broad principles of policy relating to plurality. The following quotes are indicative:

- (a) "There are ... areas where a high degree of judgement is required. The appropriate approach to exercising such judgement is ultimately for Parliament to debate and determine."²⁰²
- (b) "Along with other aspects of this Report, I agree that this is a choice for Parliament to make."²⁰³

²⁰² Ofcom, *Measuring media plurality, Ofcom's advice to the Secretary of State for Culture, Olympics, Media and Sport*, 19 June 2012. Available online: <http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf>

²⁰³ The Leveson Inquiry, *An inquiry in the culture, practices and ethics of the press, report, volume III*, November 2012. Available online: http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_iii.pdf

Finally, we note that this inquiry makes for an almost seamless follow on to our inquiry into media convergence. Evidence received during that inquiry underlined ways in which convergence has created new threats and exacerbated long-standing concerns about pluralistic provision of news and current affairs (e.g. breakdown of traditional market boundaries, threats to the business model for journalism, news aggregation, the ‘filter bubble’, concentration of ownership, vertical integration, etc.). While time did not allow for these issues to be considered in their own right, the previous inquiry has primed them and we look forward to receiving more focussed evidence on these points now.

The Committee would welcome written submissions on the main concerns associated with the current legal and regulatory framework for plurality, and particularly proposals, or endorsements and criticisms of existing proposals, on how this framework might be brought up to date. The Committee will draw on this evidence to make forward-looking but concrete recommendations. To assist those making written submissions, what follows are a number of the broad questions on which the Committee would be interested to receive evidence and opinion. You need not address all of these areas or questions. The Committee would also welcome any other views, and practical proposals, of which stakeholders think the Committee should be aware.

- Does a clearer objective for plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?
- In the absence of a definition of plurality in statute, Ofcom have provided the following working formulation. Is this the best definition, or should it be improved?
 - (a) “ensuring there is a diversity of viewpoints available and consumed across and within media enterprises and;
 - (b) preventing any one media owner or voice having too much influence over public opinion and the political process/agenda.”²⁰⁴
- What should the scope of media plurality policy be? Should it encompass news and current affairs or wider cultural diversity in content provision as well?
- What are the appropriate triggers for a review of media plurality and with whom should discretion to trigger a review reside, or indeed should reviews be periodic? Alternatively, should reviews be periodic while still retaining the possibility that a review can be triggered under certain circumstances? What should those circumstances be?
- For the purposes of a review of media plurality, what should ‘sufficient plurality’ mean as described in Sections 3 and 375 of the Communications Act 2003? How should the growing role played by digital intermediaries acting as gateways to content be taken into account?
- How should ‘sufficient plurality’ be measured?
- Should the BBC’s output be included in a review of it?
- How can internal plurality be sensibly measured against external plurality?

²⁰⁴ Ofcom, 6 June 2012. *Measuring media plurality: Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport*. Available online:

<http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf>

- What structural and/or behavioural remedies are appropriate if insufficient plurality is found?
- How should the deployment of these either structural or behavioural remedies be balanced with considerations of the wider context of news provision (e.g. the future of news provision and its financial viability)?
- With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?
- To what extent should plurality be seen in a wider EU context, particularly given the argument recently made that the Commission has competence to review and impose obligations in these areas?
- What should the UK learn from international approaches to media plurality?

28 March 2013

APPENDIX 4: CURRENT LEGAL AND REGULATORY CONTEXT OF MEDIA PLURALITY

A useful summary of the current legal and regulatory context surrounding media plurality is contained in Ofcom’s advice to the Secretary of State. For information, the relevant section is copied in the box below without the references and footnotes which can be found in the original document.²⁰⁵

BOX 4

A summary of the current legal and regulatory context of media plurality from Ofcom’s advice to the Secretary of State

The regulatory context

Ofcom’s duties

In the carrying out of its functions, Ofcom is required to secure “the maintenance of a sufficient plurality of providers of different television and radio services.” There are essentially two approaches to achieving this duty:

- Measures which are defensive in nature, and prevent actions taking place which would reduce media plurality. These include the existing regulatory framework governing media mergers, media ownership and broadcast standards.
- Positive mechanisms to promote media plurality—such as the current PSB obligations secured in return for implicit subsidies (as set out in Annex 3). These are likely to be particularly important in circumstances where the desired level of media plurality may not be commercially sustainable, and include the provision of news by public service broadcasters.

Media mergers

Currently, certain mergers may be subject to intervention on media public interest grounds. There are threshold tests based on turnover and share of supply or demand, but there is no requirement that turnover be generated from the “public interest” activity; nor that the supply of goods or services which triggers jurisdiction be the supply of goods or services which raises the public interest concern.

There are two “plurality” media public interest considerations: plurality of views in newspapers and plurality of persons with control of media enterprises. The statutory definition of “media enterprise” does not include providers of internet content or wholesalers of broadcast content who do not hold the broadcast licence.

A public interest review of a merger is triggered by an intervention notice issued at the discretion of the Secretary of State. He needs reasonable grounds to suspect that a specific public interest concern may be “relevant” to the merger.

If the intervention specifies a “media” public interest consideration, Ofcom must report to the Secretary of State on whether, having regard only to the public interest consideration he has raised, it is or may be, the case that the merger may

²⁰⁵ Ofcom, 6 June 2012. *Measuring media plurality: Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport*. Available online.

<http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf>

be expected to operate against the public interest. Competition assessment takes place separately.

Once Ofcom has reported in accordance with the intervention notice, it is for the Secretary of State to determine whether or not the merger should be referred to the CC for further review of plurality concerns and, if necessary, consideration of remedies. Once the CC has reported, the final decision on whether there is a plurality concern and, if so, on remedies overall is for the Secretary of State.

Since the current framework was established, there have been media public interest interventions in only two cases: Sky/ITV and News Corporation/Sky. In both cases, the public interest consideration concerned was “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”.

Controls on media ownership

The main remaining *ex-ante* statutory restrictions on media ownership are:

- The “20/20 rule”. This prohibits a newspaper group with more than 20% of national newspaper share from holding a Channel 3 licence or a stake in a Channel 3 licensee that is greater than 20%.
- To prevent or restrict TV/radio licences being granted to particular types of person whose influence might cause concern (e.g. advertising agencies).
- To require Channel 3’s appointed news provider not to be excluded by the above rules, and to be suitably well remunerated.

Broadcast standards and the role of impartiality

Broadcasters licensed by Ofcom are subject to the Ofcom Broadcasting Code (the “Code”) which among other things requires both due accuracy and due impartiality of television and radio news. The BBC is subject to its own Editorial Guidelines—as Section 5 of the Code that relates to accuracy and impartiality does not apply to services funded by the licence fee. As set out in the Code: ““Due” is an important qualification to the concept of impartiality.

“Impartiality” itself means not favouring one side over another. “Due” means adequate or appropriate to the subject and nature of the programme. So “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context ... is important.”

In our PIT report, we said that impartiality cannot be measured precisely and broadcasters have a degree of editorial discretion in the selection of the news agenda. There could be cases where deliberate exclusion of stories could potentially be a breach of the Broadcasting Code. However, in practice, the partial selection or omission of news stories would be a subtle one which it could be difficult, through regulation, to identify and/or prove. The rules would not necessarily prevent an individual with control of a media organisation from influencing the news agenda through the selection or omission of stories.

We recognised that the impartiality rules may contribute as a safeguard against potential influence on the news agenda by media owners, but they cannot themselves necessarily ensure against it. The regulatory framework, while relevant to the plurality of news and, hence, the statutory public interest assessment, does not on its own ensure a sufficiency of plurality of news. This was the position adopted by the Competition Commission in Sky/ITV.

Positive obligations on public service broadcasters

The public service broadcasting framework acts to ensure certain levels of content provision, including news, by the BBC and other public service broadcasting.

Ofcom regulates Channel 3, Channel 4 and Channel 5 through licence conditions intended to promote the fulfilment of the purposes of public service television. Licence commitments are currently focused on meeting public service purposes in a small number of core programming genres regarded by audiences as the most important (in particular news and current affairs).

In return, the licensees receive specific benefits. These include the right to appropriate prominence on Electronic Programme Guides ('EPGs') as well as access to spectrum that enables them to make their services available to 98.5% of the UK population on the digital terrestrial platform.