

**Evidence to the Leveson Inquiry, Module 3****Professor Steven Barnett, University of Westminster**

1. This is my second submission to the Inquiry, relating specifically to the issues being raised in module 3. This evidence is based on my first-hand experience of political involvement with the Labour Party during the 1980s and 1990s, and the media policy-making process during and since that period. It also draws on my 25 years of involvement in academic research on media ownership policy and on my work as specialist adviser to a House of Lords select committee.
2. Following a short biographical statement of my professional experience relevant to this module, I address first the question of media influence on the Labour Party – including the ownership provisions of the 2003 Communications Act – before assessing more generally why media ownership is problematic and the different ways in which the problems of concentrated ownership can be manifested. I then outline some of the policy changes that I believe are required to guarantee greater plurality, before focussing more specifically on the BBC and on impartiality requirements in broadcasting.

**Relevant biographical information**

3. As a Research Fellow at the Broadcasting Research Unit in the 1980s, I was involved in a number of policy studies involving media ownership and the growing concerns about plurality and media concentration in Britain. As a result I was called to give evidence both to the Sadler Enquiry into Cross-Promotion (see below) and to the Home Affairs select committee for its inquiry into the Broadcasting Bill which subsequently became the 1990 Broadcasting Act.
4. Since then, I have continued to research and publish in this area, as well as giving evidence to parliamentary committees. I was called to give oral evidence to the Joint Parliamentary Scrutiny Committee for the Communications Bill in 2002, and in 2008/9 was appointed specialist adviser to the House of Lords select committee on Communications for its inquiry into News and Media Ownership (and was part of the committee's delegation to Washington and New York where it took evidence from, amongst others, Rupert Murdoch). In 2009/10 I received a grant from the Arts and Humanities Research Council (AHRC) for a study on Media Ownership, Journalism and Diversity, and in March 2012 I organised and chaired two AHRC-sponsored seminars (hosted by Ofcom) on new approaches to thinking about and measuring media plurality. I have just been commissioned by Bloomsbury Academic to write a book on media ownership, to be published next year.
5. During the late eighties and nineties, I was actively involved in developing the Labour Party's approach to media policy making, and served on a number of advisory committees to successive shadow ministers. In addition, from 1985 until the general election of 1992 I was a member of the Shadow Communications Agency working with the late Philip (Lord) Gould and others on re-establishing the Labour Party's electoral credibility. I therefore saw first-hand how negative media coverage affected the Party's morale and subsequent approach to policy-making.

6. Other relevant autobiographical details about my professional and academic career, including recent books and publications and my involvement in the training of journalists, are contained in my first submission to the Enquiry.

### **Impact of media coverage on the Labour Party in the 1980s and 1990s**

7. Much has been made of the Sun's front page headline on election day 1992 when Labour leader Neil Kinnock was framed by a light-bulb next to the words "If Kinnock wins today will the last person to leave Britain please turn out the lights". Psephologists still argue over the impact on voters of the Sun's relentlessly negative stance during the election campaign, and the Inquiry has heard how its then editor Kelvin MacKenzie infuriated his proprietor with a first edition claim (swiftly removed in subsequent editions) that "it was the Sun wot won it".
8. In fact, from the perspective of the Labour opposition – which was convinced until the last few days that it would win that election – the final day's headline was regarded as evidence of two broader, fundamental convictions that had profound and long-lasting repercussions. First, political strategists fervently believed – whatever the arguments of pollsters and academics – that the relentlessly negative coverage in the Sun of the Labour leader personally and Labour party policies generally over the previous five years had materially influenced floating voters. Second, there followed a growing belief that for the party to win power, it would have to convince the one proprietor who commanded a mass daily newspaper readership and was known to be amenable to persuasion. The devastating impact of that election defeat and its repercussions for the Labour Party's belief in media power cannot be overestimated.
9. It was in that context that Tony Blair's overtures to Rupert Murdoch famously took him to speak at a News Corporation convention in Australia in July 1995. The following year, I experienced personally how this political transformation was impacting on the Party's approach to media ownership policy. In May 1995, the Conservative government had published a White Paper on Media Ownership which proposed a measure of deregulation in cross-media ownership: allowing newspaper groups for the first time to own terrestrial television channels, but restricting this licence to those groups with less than 20% of national newspaper circulation. This provision excluded Mirror Group Newspapers and – to his much-publicised fury – Rupert Murdoch's News International.<sup>1</sup>
10. When the subsequent Bill was published incorporating the White Paper proposals almost unchanged, I was part of a small group of Labour Party advisers on media policy who met the shadow minister Lewis Moonie to discuss the party's response. We were told unequivocally that the Party would be advocating abolition of *all* cross-media controls and moreover that this policy directive had "come from the top".<sup>2</sup> There was no discussion about the industrial or cultural merits of such a deregulatory policy, and it was manifestly clear to all concerned (including the shadow minister) that this was a carefully calculated political stratagem rather than a policy shift based on intellectual merit.

<sup>1</sup> Department of National Heritage (1995), *Media Ownership: The government's proposals*, Cm2872, HMSO.

<sup>2</sup> The meeting took place at the House of Commons on 25 March 1996. I describe the background and context in more detail in my co-authored book *Westminster Tales: The 21<sup>st</sup> Century Crisis in Political Journalism*, Continuum, 2001, pp69f.

11. Others more closely involved in the subsequent Labour government will be able to testify to the influence of perceived media power in dictating the wider policy agenda. It is worth, however, quoting four separate sources as indicative of that creeping influence. Lance Price, one of Blair's media advisors from 1998-2001, has written that "at times when I worked at Downing Street [Rupert Murdoch] seemed like the 24th member of the cabinet... No big decision could ever be made inside No 10 without taking account of the likely reaction of three men - Gordon Brown, John Prescott and Rupert Murdoch. On all the really big decisions, anybody else could safely be ignored."<sup>3</sup>
12. Second, in the summer of 2000 a series of damaging leaks from Downing Street included one written by the Prime Minister on 29 April worrying about a sense that the Government was "somehow out of touch with gut British instincts" and advocating a new focus on five specific areas: asylum, crime, defence, the family and a review of sentencing policy. On the same day, a Daily Mail editorial had identified four of those five areas as requiring Government attention.<sup>4</sup>
13. Third, in more general terms, the debilitating effect of uninformed media campaigns on government policy making has been illustrated at some length in a recent book by Malcolm Dean, focussing in particular on the areas of drugs, asylum and law and order.<sup>5</sup>
14. Finally, perhaps the most eloquent first-hand evidence of this unhealthy dependency – and the strategic rationale behind it – emerged last year from Jonathan Powell, Tony Blair's chief of staff from 1997 to 2007. He wrote that he made "no apology for the efforts by New Labour to cultivate Rupert Murdoch and Lord Rothermere in 1994". Acknowledging the dangers for government, however, he continued:

We remained in opposition for 18 years in part because we had no protection from the unremitting onslaught of the Tory tabloids. Trying to pick off at least some of them was a sensible strategy... But we did learn the lessons of opposition too well, and once in government we worried too much about the media moguls, particularly over Europe.<sup>6</sup>

### **Plurality and the politics of the 2003 Communications Act**

15. Current rules – now known as the "Public Interest Plurality Test" – were only included in the 2003 Communications Act after an orchestrated cross-party campaign in the House of Lords which threatened to defeat key sections of the Bill. I have outlined the full history of these negotiations – and prior deregulatory initiatives in UK policy on media ownership – elsewhere, and the Inquiry will be aware of the legislative detail.<sup>7</sup> This parliamentary battle followed surprise announcements by the Labour government that it intended to introduce two major initiatives: to withdraw all foreign ownership restrictions on British broadcasting; and to allow

<sup>3</sup> Lance Price, "Rupert Murdoch is effectively a member of Blair's cabinet" in the Guardian, 1 July 2006.

<sup>4</sup> See the Daily Mail, 18 July 2000 pp 4-5 for the full Downing St memo. It also reproduced its own original editorial.

<sup>5</sup> Malcolm Dean, *Democracy Under Attack: How the media distort policy and politics*, The Policy Press, 2012.

<sup>6</sup> Jonathan Powell, "Labour and the press: This was a battle for power that we just could not win" in the Guardian, 18 July 2011.

<sup>7</sup> Steven Barnett, "Media ownership policy in a recession: redefining the public interest" in *Interactions*, Vol.1 No.2, Autumn 2010, pp217-232; and Steven Barnett, "What's wrong with media monopolies? A lesson from history and a new approach to media ownership policy". London School of Economic Electronic Working Paper No 18, January 2010. <http://www2.lse.ac.uk/media@lse/research/mediaWorkingPapers/ewpNumber18.aspx>

major newspaper proprietors to own the Channel 5 terrestrial licence (though not the Channel 3 licences).

16. It has sometimes been assumed – and has perhaps been an underlying theme throughout module 3 – that the Labour government’s deregulatory approach to media ownership, just like its Conservative predecessors, betrayed its willingness to accommodate major media conglomerates in general and Rupert Murdoch’s expansionist plans in particular. While this reasoning would be consistent with its determination during the 1990s to “neutralise” the Murdoch press, there is no evidence to support an explicit conspiracy theory.
17. Both through my involvement as a participating critic at the time, and through my academic research conducted since (including interviews in 2009/10 with some of the leading protagonists behind the 2003 Act), I am persuaded that these initiatives sprang from a coherent – if naïve – industrial strategy based on free-market thinking. As the crucial votes in the House of Lords approached, I wrote at the time that “I have come to the reluctant conclusion that there is no government conspiracy to “surrender” to Rupert Murdoch or any other media baron. What actually lies behind this Bill is a blind, almost theological conviction that - against all global evidence to the contrary, against the warnings of experts, against the pleas of those at the creative coal-face - markets and competition will deliver more and better creativity.”<sup>8</sup> Subsequent interviews for my academic research project revealed a policy rationale based on a three-pronged strategy: i. attracting inward investment from global corporations through relaxing foreign ownership restrictions; ii. mitigating any adverse effects with strong content regulation through Ofcom; iii. balancing a thriving private sector with a strong and well-resourced BBC retaining mass audience appeal.<sup>9</sup>
18. This does not, however, entirely explain why the government was so determined to resist any public interest safeguards on plurality until forced to compromise. In retrospect, and despite protestations to the contrary, it is at least plausible that there remained a residual unwillingness to provoke a powerful media baron unless coerced into action. Rather than any active conspiracy to make life easier for News Corp, it is far more likely that a passive acquiescence took hold which reinforced resistance to accepting public interest interventions. The fraught parliamentary negotiations which followed the threatened Lords rebellion produced a compromise which – at the time – many of us hailed as a victory for plurality, free speech and common-sense.<sup>10</sup> In retrospect, we were perhaps somewhat blinded to the vague and inchoate nature of the amendment and how it would operate in practice.
19. As the rules now stand, a merger or acquisition can trigger a plurality test under the 2002 Enterprise Act, as amended by section 375 of the 2003 Communications Act. Any such merger or acquisition must satisfy certain public interest requirements, depending on whether they involve newspapers alone or are cross-media. The newspaper public interest consideration involves the need for ‘accurate presentation’ of news, for ‘free expression of opinion’ in the merging newspapers, and for a ‘sufficient plurality of views’ in the relevant newspaper market. The cross-media test places a slightly greater emphasis on the democratic importance of

<sup>8</sup> The Observer, 22 June 2003, Business Section p8. I have attached a copy of the original to this submission.

<sup>9</sup> See Barnett, “Media ownership policy in a recession: redefining the public interest”, op cit.

pluralism, involving the need to ensure a ‘sufficient plurality’ of owners in the relevant market, and the need for a range of broadcasting that is ‘high quality and calculated to appeal to a wide variety of tastes and interests’. As I outline below, these vague and untested criteria now require considerable strengthening, as does the regulatory process for intervention and decision-making.

### **Plurality and editorial influence: why ownership matters**

20. One of the most eloquent statements of why plurality matters in a democracy and the dangers of media concentration was contained in the Conservative government White Paper of 1995:

A free and diverse media are an indispensable part of the democratic process. They provide the multiplicity of voices and opinions that informs the public, influences opinion, and engenders political debate. They promote the culture of dissent which any healthy democracy must have.... If one voice becomes too powerful, this process is placed in jeopardy and democracy is damaged.<sup>11</sup>

21. There is, however, a danger that this and other approaches to the plurality principle are couched in language which is too narrowly political and ignores the wider cultural environment. The influence of corporate values can extend well beyond the confines of news coverage to commissioning policies for drama, comedy or factual programmes. At a seminar on media ownership 10 years ago Tom Gutteridge, one of the UK's top independent TV producers, talked about his own experience of making programmes for the ABC network in the US and offered an insight into the impact of Disney's ownership of the network on programmes: "the effect of Disney on ABC is.... actually to do with the particular slant that ABC's commissioning structure now has, which is all to do with feel-good and family.... Disney's lawyers and Disney's control of ABC network says 'this is going to be an American family network in keeping with the Disney ethic'".<sup>12</sup> In other words, there are consequences for programme content and diversity on ABC which flow directly from the editorial philosophy of the corporate parent.
22. This broader definition of editorial influence was demonstrated in the opposite direction by News Corporation's impact on Fox Television in the US. After buying Fox, Rupert Murdoch launched programmes such as *A Current Affair* and *America's Most Wanted*, injecting a higher level of violent and intrusive content into television that had previously been acceptable on American TV. According to one of his biographers William Shawcross, "In a sense Murdoch was doing for America with Fox what he had done for the British with the Sun".<sup>13</sup>
23. Even beyond the cultural or editorial output of a media company, there are corporate decisions made that will have an impact on the knowledge and ideas that circulate in civil society.

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<sup>10</sup> Having been briefed by a key member of the rebel group in advance of the Lords vote, I was persuaded to write up this triumph in terms which – in retrospect – were far too uncritical. Observer Business, 29 June, 2003, p6, also attached.

<sup>11</sup> *Media Ownership: The Government's Proposals*, op cit, p3.

<sup>12</sup> Hugo Foxwood and Tony Pilch, eds, *Broadcasting: a series of four seminars run between April and June 2002*, Smith Institute, 2004, p29. The seminars were held at 11 Downing Street and designed to inform the Broadcasting Bill, then under discussion. <http://www.smith-institute.org.uk/file/Broadcasting.pdf>

<sup>13</sup> William Shawcross, 1992, *Rupert Murdoch: Ringmaster of the Information Circus*, Chatto & Windus, p430

Editorial decisions, for example, about whether to invest resources in foreign bureaux or investigative journalism or to shift the emphasis to more celebrity-driven coverage will have a material effect on the nature of the information circulating. Nick Davies has given a stark reminder of the influence such editorial values can have on a newspaper's output in his analysis of the culture at Associated News when he says:

24. Thus, it is important to understand that plurality does not only mean – and in my view was not intended by Parliament to mean – simply allowing opposing views to be aired on matters of controversy or political import. It means recognising that in practice a distinct and recognisable corporate culture is likely to determine all aspects of a media company's editorial and cultural output. That, in turn, will materially shape ideas, opinions and knowledge being exchanged within the public sphere. This wider definition of plurality needs to be acknowledged in any new legislative framework.

#### **Plurality and editorial influence: how it operates**

25. Moreover, this corporate culture does not require a heavy-handed interventionist owner or proprietor overtly to prescribe editorial priorities. Editorial influence can be achieved as much through acts of omission as commission and through editorial, investment and personnel decisions being taken by like-minded lieutenants who are trusted to pursue styles or news agendas which are consonant with their owner's view of the world. Through this process of osmosis, media owners routinely influence the nature and style of stories, programmes, ideas and expressions of opinion which are disseminated through their media outlets.
26. Thus, one of Rupert Murdoch's editors described him as running his empire "by phone and by clone".<sup>15</sup> Another senior corporate figure gave a remarkable insight into the corporate modus operandi when describing why Murdoch himself intervened in 1998 (as he himself admitted to the Inquiry) to prevent his company HarperCollins from publishing Chris Patten's Hong Kong memoir. The book was critical of China and therefore potentially endangered Murdoch's business interests there, a fact that ought clearly to have registered with the publisher before he attracted Murdoch's wrath. According to one of his most senior executives in China, Murdoch "very rarely issued directives or instructions to his senior executives or editors. Instead, .... he would make known his personal viewpoint on a certain matter. What was expected in return, at least from those seeking tenure of any length in the Murdoch Empire, was a sort of 'anticipatory compliance'".<sup>16</sup>
27. This notion of "anticipatory compliance" or an almost unconscious absorption of corporate values is a common theme. In his chapter on the Mail's editorial culture, Nick Davies quotes a specialist writer on the paper as saying: "You become so inculcated with all of the doctrine that you know instantly what you are supposed to write."<sup>17</sup> Similarly, in describing his approach to editing the Daily Telegraph under Conrad Black's ownership, Max Hastings acknowledged the

<sup>15</sup> Shawcross, op cit, p244.

<sup>16</sup> Bruce Dover, *Rupert's Adventures in China*, Mainstream Publishing, 2009, p149.

need to accommodate the owner's particular priorities: "I was always sensitive to the fact that, while I enjoyed considerable latitude in many areas, the paper must tread warily in its treatment of the United States."<sup>18</sup>

28. Whatever the protestations of owners and editors, therefore, it does not require the unsubtle interventions of a Beaverbrook or a Maxwell for ownership to have demonstrable and substantial impact on editorial output. More importantly, the professional values which professional journalists claim to embrace – and to which the vast majority certainly aspire – will inevitably be influenced by, and sometimes subordinated to, the corporate world vision and editorial inclinations of the owner and editor. These overarching pressures underline the need to put in place structural and legislative mechanisms which foster the maximum possible plurality of media enterprises.

### **Plurality and power: pursuing corporate self-interest**

29. Those corporate values will also be heavily influenced by the commercial interests of the parent company. News Corp, in particular – whatever the denials of Rupert Murdoch to the contrary – has long demonstrated an understanding of how its media properties can enhance its worldwide commercial activities, calling on its huge editorial presence to mobilise interest in new product launches, pricing innovations, major sports contracts or Hollywood movies. Conversely, it can impede the progress of competitors by failing to publicise rival initiatives, or by distorting coverage against it. Perhaps the best documented example in Britain is one of the earliest: during the launch of Sky TV in 1989, an independent study from Manchester University found that the (then) five News International titles were being exploited as vehicles for promoting Sky at the expense of its satellite rival British Satellite Broadcasting (BSB), devoting over seven times as much space to promotional events than other national newspapers.<sup>19</sup> Shortly afterwards, the newly appointed Arts Editor of the Times, Tim de Lisle discovered that – contrary to explicit promises from the editor Charles Wilson – his arts page had been commandeered for a promotion of Carmen which was being broadcast by Sky along with a "Win a satellite dish" competition splashed across the top of the page.<sup>20</sup>
30. Complaints from BSB and pressure from other campaigners for a serious inquiry into media concentration forced the government to act, but only to deflect mounting concern by setting up an ineffectual enquiry into cross-promotion under John Sadler. The resultant Sadler Report – which concluded merely that there should be more transparency about promotional activities within the same organisation – was a weak and ineffectual political response to what even then had been identified as a growing problem.<sup>21</sup>

<sup>17</sup> Davies, op cit, p383

<sup>18</sup> Max Hastings, *Editor: An Inside Story of Newspapers*, p243.

<sup>19</sup> Events and issues relevant to competition in satellite television between British Satellite Broadcasting and News International, The European Institute for the Media, Manchester University, April 1989.

<sup>20</sup> In the wake of Rupert Murdoch's assertions to the Inquiry that "we have never pushed our commercial interests in our newspapers", De Lisle himself took to the Guardian to remind everyone of his own experience:

<http://www.guardian.co.uk/commentisfree/2012/apr/26/rupert-murdoch-evidence-leveson-inquiry>

<sup>21</sup> I was called to give oral evidence, and was startled to find that the most of the questioning appeared to focus on cross-promotion within the BBC. For an excellent account of the events leading up to the Sadler Enquiry, its conclusions and aftermath, see Jonathan Hardy, *Cross-Media Promotion*, Peter Lang, 2010, pp169-178

31. An integral element of this corporate strategy by News Corp to promote its wider commercial interests involved consistently negative reporting and commentary on the BBC. Although some have suggested that the Times was more immune from calculations of broader corporate advantage, in January 1985 the paper ran an unprecedented three consecutive editorials condemning the BBC's request for a rise in the licence fee. It questioned whether British television was any better than American, and concluded that the BBC should be broken up into a number of public service "franchises", all of which should be allowed to take advertising. My own research in 1989 – a rare attempt to show how the press can directly influence public opinion – demonstrated a clear association between readership of newspapers owned by News International and opinions about broadcasting policy. Its readers were more critical of the licence fee and more hostile to existing terrestrial channels, and better disposed to deregulatory policies in broadcasting. These variations were not attributable to the more downmarket or youthful profile of News International readers, nor to any differences in their political leanings.<sup>22</sup>
32. Other, more recent, examples abound of promoting corporate self-interest. In 1994, in pursuit of his business interests in China, Murdoch removed the BBC's international news from his Asian Star satellite service because the Chinese authorities had been offended by a BBC programme about Mao Zedong. In 1998, as recorded above, he ordered his publishing company HarperCollins to withdraw publication of Chris Patten's Hong Kong memoir. In December 2001, he was given permission to launch a cable TV channel in China.<sup>23</sup>
33. A more recent example emerged in 2010 when an Australian News Corp executive reportedly told an advertising conference about a strategy to make sure that News Corp media outlets – including its television stations – would prominently feature Fox Studio movies while excluding coverage of rival studios. This story was not reported in either of News International's UK papers the Sun or the Times.<sup>24</sup>
34. These overt and covert cross-promotional activities are certainly not confined to News Corp. In the US, it is acknowledged practice for news divisions of broadcasters to steer away from awkward stories about their ultimate owners. The Disney-owned ABC network, for example, abandoned an embarrassing story about Disney theme parks and ABC insiders talked subsequently about an "atmosphere of self-censorship and timidity" in coverage of stories affecting the parent company.<sup>25</sup> The fact that there is, to date, little history of equivalent pressure in broadcast news in Britain – which has no history of being part of a global conglomerate – does not diminish the risk of such influence increasing in a more consolidated and deregulated competitive environment. The former newspaper editor and Ofcom board member Ian Hargreaves wrote some time ago: "As the American networks have settled into

<sup>22</sup> Steven Barnett, *Cross-media Ownership and Its Impact on Public Opinion: A Case Study*. Broadcasting Research Unit Working Paper, BRU, May 1989.

<sup>23</sup> Dover, *Rupert's Adventures in China*, op cit.

<sup>24</sup> Roy Greenslade, "News Corp plan to deny movie coverage reveals its misuse of power", *The Guardian*, 28 October 2010: <http://www.guardian.co.uk/media/greenslade/2010/oct/28/news-corporation-bskyb> . Greenslade quotes the Sydney Morning Herald and Hollywood Reporter as his sources.

<sup>25</sup> The full story is told by Elizabeth Lesly Stevens, see <http://www2.bc.edu/~kimqp/final/mainpage/mouse.html>. For a comment on this and other US examples, see Steven Barnett, "Impartiality redefined: protecting news on commercial television in Britain" in Damian Tambini and Jamie Cowling, eds, *New News? Impartial broadcasting in the digital age*. London, IPPR, 2002. Chapter 4, pp51-64.

ownership by global entertainment companies, their news programmes have been caught out giving handsome coverage to the latest movie blockbuster from the parent company and ignoring a rival company's new release".<sup>26</sup>

35. In Britain, this trend has been vividly demonstrated within Richard Desmond's media holdings by the promotion of his Express and Star of Channel Five shows – most notably Big Brother – as well as Desmond's Health Lottery. Although no systematic research has been carried out, it is demonstrably clear that this cross-promotion dates from Mr Desmond's purchase of Channel Five from RTL in July 2010.
36. Whatever the protestations of media owners, it is axiomatic that their editors and executives will – whether through direct instruction or through "anticipatory compliance" – both support their employers' other media properties and belittle or, more likely, ignore their competitors'. Thus the greater the consolidation, the smaller will become the opportunity for genuinely independent and critical reflection across a whole range of reporting activities. Plurality must therefore take into account the myriad ways in which voices might be constrained or reduced.

### **Plurality and power: influencing the regulatory environment**

37. Beyond the power to control editorial content, overly powerful media conglomerates are able to consolidate and entrench their power (and disadvantage competitors) through exercising disproportionate influence over the regulatory environment. In the UK, while Ofcom has demonstrated its independence and determination to implement its statutory duties under the 2003 Communications Act, it has been vulnerable to the burgeoning power of BSkyB in the television market.
38. BSkyB now has enormous economic power in that market: its revenues of £6.6 billion for the last financial year are not far below the *combined* revenues of the BBC, ITV, Channel 4 and Channel 5. The vast majority of this revenue comes from pay TV, which has increased 40% over the last five years despite the economic downturn and will – according to forecasts – continue to outgrow other revenue sources. Even without News Corp as its controlling shareholder, this would be a hugely powerful media enterprise in the context of British broadcasting. Given that it is 39% owned and effectively controlled by the country's most powerful newspaper proprietor, the implications for plurality are profound.
39. BSkyB derives its strength primarily from its stranglehold over premium sports rights, particularly Premier League football. It has already been deemed by Ofcom to be exploiting its market power in its wholesale pricing strategy for premium sports channels, and also holds exclusive contracts with the six US studio majors for films within the subscription pay TV window as well as securing exclusive access to all HBO programming. Every regulatory decision and investigation by Ofcom is denounced and challenged by Sky through lengthy and costly litigation which drains the resources of the regulator and other competitor parties. These regulatory challenges, along with the purchasing and programming contracts which it works hard to sustain, entrench the power of BSkyB and diminish the competitive muscle of its rivals.

<sup>26</sup> Ian Hargreaves, *Journalism, Truth or Dare*, OUP, 2003, p159

These are all relevant to arguments about and definitions of plurality, and should be factored in to any recommendations about limits on media concentration.

### **Plurality and media policy: what needs to change**

40. As stated above, the last minute amendment to the 2003 Communications Act – now known as the “Public Interest Plurality Test” is insufficient to cope with the complexity of modern communications, nor with the unchecked power that can accrue to individuals or corporations through organic growth. The process is too vulnerable to political intervention and the terms are too opaque to have a material impact either on whether a merger is permissible or, more importantly, on the conditions on which a merger (or organic growth) should be allowed to proceed. For example, in the recent News Corp/BSkyB case, Ofcom chose to base its public interest assessment purely on whether the merger would involve a diminution of voices in the news market, despite there being no such stipulation on the face of the Act beyond ensuring a “sufficient plurality” of owners. While there needs to be some sensitivity to the needs of media businesses to mitigate their economic difficulties – and to allow a measure of consolidation where it will not materially diminish diversity of editorial output – at least five significant changes must be made to the current regime.
41. First, discretion for initiating an inquiry should not be vested solely in the Secretary of State. As recommended by the House of Lords select committee in its *Ownership of the News* report, this should be held jointly by the Secretary of State and by Ofcom partly because such a power would, as the report advises, “sit more comfortably with Ofcom’s duty to *promote* the interests of the citizen”.<sup>27</sup>
42. Second, much more flexibility is required in the circumstances which might trigger such an investigation. This would include mergers or acquisitions, but would extend to exceeding share thresholds laid down by the regulator or by law. How those thresholds might be defined is clearly problematic (see below), but the process would benefit considerably from regular annual audits of ownership and investment patterns. This should be undertaken by Ofcom in the context of its statutory obligation to promote the interests of citizens and consumers, who should also be granted authority and resources to demand the necessary information from relevant enterprises. In the interests of democratic accountability and transparency, pleas to restrict publication for reasons of “commercial confidentiality” should be resisted unless the arguments are overwhelming.
43. Third, there is currently unnecessary regulatory confusion and overlap in the process of investigating media plurality. Under the current regime, both Ofcom and the Competition Commission (CC) have a role in determining whether there are plurality grounds for refusing a merger or acquisition. During the inquiry over BSkyB’s 17.9% stake in ITV, Ofcom and the CC came to opposite conclusions about whether the deal would represent a threat to plurality.<sup>28</sup> Given the fundamental importance of this issue for democracy it should be axiomatic that Ofcom – again, with its obligation to examine issues from the perspective of citizens – is given

<sup>27</sup> House of Lords Select Committee on Communications, 2008, *The Ownership of the News*, Vol I: Report. London: The Stationery Office, HL Paper 122-I, paragraph 261.

authority over such investigations. It could, of course, seek advice or consultation from the CC on competition issues in coming to its conclusions.

44. Fourth, ultimate decisions on divestments, negotiations, and acceptance or refusal of requests for greater consolidation cannot be left to government ministers. If any action is deemed necessary – particularly if this involves dilution of existing ownership arrangements by powerful media owners – it is demonstrably difficult for government ministers to take such decisions in a “quasi-judicial” capacity. Authority must be delegated to the appropriate regulatory authority – Ofcom is again the obvious choice – with some obligation to report to Parliament, perhaps to a mandatory meeting of the Culture Media and Sport select committee.
45. Finally, current legislation offers no explicit recognition of how or why pluralism is integral to democracy, nor the contribution that diverse and high-quality journalism makes to the democratic process. This was recognised by the OFT in its review of the local media merger regime published alongside Digital Britain, which noted that it had received a number of submissions “that the public interest considerations [of the Communications Act] should be expanded to incorporate provisions related to the impact of a merger on news-gathering”.<sup>29</sup> It was also recognised by the House of Lords select inquiry in 2008, which recommended that the public interest test should be amended “to refer specifically to a need to establish whether a merger will impact adversely on news gathering”.<sup>30</sup> This deficiency can be remedied by placing obligations on media enterprises – such as requirements for investment in high quality journalism, or in training, or in subsidising non-profit media initiatives elsewhere – which are commensurate with their size, rather than refusing mergers or requiring divestments.

### **Measuring plurality – the great conundrum**

46. There is a growing assumption that the rise of online and converged media will inevitably require some kind of cross-media measurement or what is commonly referred to as “share of voice”. In an ideal world, it should be both desirable and possible to assess, from the variety of different news and information sources available, whether any particular media organisation commands a disproportionate or democratically undesirable share. There are, however, at least four problems with this approach.
47. First, it is impossible to distinguish between media in terms of their relative power to exercise influence. A concerted effort was made in the 1990s by a group of news organisations, collectively known as the British Media Industry Group, in advance of the 1996 Broadcasting Act. By analysing newspaper circulation, television viewing and radio listening - and after down-weighting radio by an arbitrary 50 per cent – they produced a league table of share of “national voice”. This made entirely unproved assumptions that if the same number of people read an article and watch a television programme with the same message, the impact would be identical, and would be halved if heard on the radio. In fact, it is well established within communications studies that so-called “effects” studies are notoriously difficult to conduct with

<sup>28</sup> Because the CC ruled against the shareholding on competition grounds, this difference of opinion did not affect the outcome. It did, however, indicate the scope for unnecessary regulatory muddle.

<sup>29</sup> Office of Fair Trading, “Review of the local and regional media merger regime”, 2009, Final Report, OFT1091, p53

<sup>30</sup> House of Lords Select Committee on Communications, 2008, op cit, paragraph 243

any reliability. Apart from relying on no empirical evidence, such assumptions are intuitively nonsense.

48. Second, any calculation which equates the impact of television programmes with that of newspaper articles dilutes the manifest influence of those who are permitted to express an opinion. Part of the attraction of newspapers is that they can be as biased and passionate as they want in furtherance of their views, and most are. By contrast, broadcasters are bound by law to be impartial and to ensure that any expressions of opinion are balanced. It is at least a fair working hypothesis that a newspaper will have more influence over its readers' opinions than a television news bulletin over its viewers.
49. Third, even if it were possible to assess accurately the impact of any individual medium on knowledge, opinions or attitudes, there would still be an issue of how news agendas are constructed. Anecdotal evidence suggests, again, that newspapers are influential in driving broadcasting agendas (television newsrooms are invariably immersed in mountains of newsprint) as well as – increasingly – the output of PR releases, news agencies and online sources.
50. Fourth, we should be very careful about assumptions that plurality considerations are vitiated by the proliferation of online, social networking and other news sources which is sometimes interpreted as an “explosion” in new outlets of news and information. Recent research by Goldsmiths College has demonstrated that the vast majority of online news is aggregated material which originates from the main newspaper and broadcast news operations.<sup>31</sup> The real “heavy lifting” of journalism – which holds enterprises, government and politicians to account and which can provide citizens with factual, verified information to allow them to participate in an informed democracy – is virtually all conducted by mainstream news organisations. While online blogging and Twitter may be a wonderful addition to the panoply of opinion and invective which can invigorate public life, their audiences are diffuse and they do not carry the authority or influence of mainstream, well-resourced and high-reach mass media organisations.
51. It therefore remains important, at least for the time being, to provide for a sufficient plurality of media organisations through structural measures, either through limits of total share on revenue or through limits on circulation, viewing or online access that any one organisation is permitted to command. Moreover, as stated above, it is essential that this is monitored on an on-going basis, rather than left to ad hoc inquiries prompted by a merger or acquisition. There is no question that these measurement issues are difficult, especially given a complex world which includes social media and news aggregators. It is, however, imperative that appropriate measures are developed and implemented in a rigorous and transparent manner by a well-resourced regulator.

### **Fighting tomorrow's plurality battle – but not forgetting today's**

52. Just as there is a risk in exaggerating the proliferation of online news sources, most of which emanate from traditional news providers, there is also a risk of exaggerating the significance of

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<sup>31</sup> Natalie Fenton, ed, *New Media, Old News: Journalism and Democracy in the Digital Age*, Sage, 2009.

online as a news consumption platform. According to Ofcom figures, just 9% of UK citizens cite the internet as their main source for world news and just 7% for national news.<sup>32</sup>

53. Some have predicted that the arrival of YouView next year will herald a period of true convergence between TV and online, thus again raising the prospect of whether structural limits are relevant or attainable. This fails to address the issues raised above about the very small number of organisations with the financial muscle to invest in serious journalism or other forms of original content which can have cultural and political implications (such as drama) and therefore establish a political agenda.
54. It also makes unproven assumptions that, because technologies are converging, audience behaviour will follow. We have seen fanciful forecasts before, from assumptions in the 1980s that cable television would revolutionise viewing behaviour to predictions of a rapid take-off in online TV viewing. Most have proved wildly inaccurate. In fact, the role of both television and – despite the decline in circulation – the press in people’s lives has been remarkably resilient in light of the huge technological changes that have taken place over the last 20 years. And while newspaper platforms may become more flexible – moving from newsprint to electronic forms – there remain at the moment powerful consumption and editorial reasons for applying structural limits rather than making assumptions about changing behaviour patterns which may materialise either very slowly or not at all.

#### **Should the BBC be included in plurality calculations?**

55. There are four reasons why we should be very careful in how the BBC is assessed in any plurality considerations. First, because of its public ownership, there are no proprietorial or corporate influences which guide its output. This is not just a matter of the application of impartiality rules, which applies to all broadcasters whether public or private, but the absence of any overarching corporate pressure which can dictate agendas. There are regular allegations of bias levelled at the BBC from all sides of the political spectrum, but none based on rigorous empirical evidence.
56. Second, because the BBC cannot express any views, either explicitly or implicitly, it can have little impact in determining (as opposed to informing) the formation of attitudes and opinions. The ability to be impassioned and to infuse not just commentary and opinion pages but news pages (and their online equivalents) with one-sided argumentation is an integral and powerful element of a free press. We do not know – and cannot measure – to what extent such editorialising drives popular opinion, but intuitively a one-sided approach is likely to carry more influence than a balanced approach.
57. Third, the BBC is accountable to its licence payers and to Parliament through transparent reporting and structural mechanisms – in particular the BBC Trust – which ensure that its output complies with detailed editorial guidelines which in turn are derived from its constitutional obligations laid down in its Charter, Agreement and accompanying Service

<sup>32</sup> Ofcom, Perceptions of, and attitudes towards, television: 2010, part of PSB Report 2010 – Information Pack H. July 2010.

Licences. It cannot be captured for private gain, operates transparently in the public interest, and is universally available. To include it in any plurality calculations, and thereby artificially diminish the potential influence of corporate owners willing and able to promote a single viewpoint, would distort attempts to reflect the range of cultural influences.

58. Fourth, the BBC itself pursues a policy of internal plurality, whereby individual services and programmes are encouraged to develop their own editorial “voices” within an impartiality framework. Both in the way stories are covered and in terms of story selection, there will be different editorial agendas between, say, the Today programme or Radio 1’s Newsbeat or even between two news bulletins on the same channel which are scheduled at different times and therefore aimed at different audiences. This theme is developed further in the BBC’s own submission to Ofcom’s media plurality review.<sup>33</sup>
59. While some consideration should therefore be given to the presence and consumption of BBC services in overall calculations of plurality, it is important to recognise that the BBC’s ability to editorialise and set agendas is severely circumscribed. Most importantly, perhaps, the 16% cut in funding imposed in October 2010 means that both its size and influence is likely to diminish more rapidly over the next few years than at any time in the last fifty.

### **Impartiality and its limits**

60. It is sometimes argued that privately owned broadcast services could be exempt from any plurality calculation because of their obligations to be non-partisan. However, while impartiality rules which govern licensed broadcast services militate against blatant promotion of partisan political views, they cannot cater for stories or for programmes that are marginalised or excluded, or for more subtle instances of editorial influence. It does not require heavy-handed intervention to shift the centre of gravity of a broadcaster’s output: a news channel, for example, might choose to pursue an agenda which concentrates on the “growing problems” of crime, immigration or welfare dependency, or might commission a documentary on the benefits of legalising drugs, without breaching statutory impartiality rules.
61. As outlined above, we must recognise that corporate influence can be exercised in myriad ways and that a prevalent “news culture” can set agendas and reflect the worldview of an interventionist owner without breaching any statutes on impartiality. Moreover, this can be achieved not solely through news, but through documentaries, drama and even comedy. It is quite possible for political satire, for example, to follow a corporate or proprietorial agenda without overtly breaching the impartiality terms of a broadcast licence.
62. These limitations of impartiality rules have been recognised by Ofcom. In its Report to the Secretary of State on BSkyB’s acquisition of ITV shares, Ofcom wrote: “These regulatory provisions, while they represent important controls on impartiality and quality, are not directly concerned with or a substitute for regulatory provisions aimed at ensuring sufficient plurality. They are not designed to remove the ability of broadcasters to set the agenda by selecting the

<sup>33</sup> BBC Response to Ofcom’s Invitation to Comment on Measuring Media Plurality, March 2012.

issues and events that are covered in news broadcasting or by determining the relevant importance that are given to each of these”.<sup>34</sup>

63. Impartiality requirements are therefore not sufficient on their own to protect plurality. They do, however, serve a vital function in two respects that are relevant to the terms of this Inquiry. First, they offer a partial safeguard for professional journalistic values of accuracy and fairness in reporting. Even without some of the egregious journalistic excesses revealed during Module 1 of the Inquiry, there was extensive evidence of how traditional standards of press reporting were being undermined by the transformation in media business models, leading to a greater dependency on news agencies, recycling of PR handouts and “churnalism”. Newsgathering and fact-checking are expensive processes, especially in television; a much cheaper and more cost-effective approach is to fill airtime with a diet of polemical antagonists and opinionated talking heads. Impartiality rules can therefore act as a safeguard for standards of professional journalism and an impediment to the worst excesses of unthinking, prejudiced journalism.
64. Second, impartiality rules help to safeguard public trust in broadcasting. At a time when trust in journalism has taken a very public battering from phone-hacking and associated illegal and unsavoury practices, public trust in *broadcast* journalism remains reassuringly high. That is partly – some would argue almost wholly – attributable to the statutory framework in which it operates. It is therefore important, while accepting the limitations of this framework in terms of its impact on plurality issues, to reinforce the public interest significance of its reputational legacy.

### Concluding thoughts

65. The danger to democracy of an overly concentrated media is not simply in closing down the number of potential voices, but in the undemocratic exercise of corporate power which, if unchecked, can distort the democratic process by wielding too much influence over elected governments. This is precisely the problem which has emerged in Britain after 30 years of successive governments (with the possible exception of the Conservative administration under John Major) allowing concessions to Rupert Murdoch’s News Corporation which have resulted in – until the closure of the News of the World last July – a single organisation owning both 34% of the national press by circulation and the country’s wealthiest broadcaster.
66. Regardless of whether each of these media operations reflected a unified corporate voice, they collectively conferred an unelected power on a single corporation (and ultimately a single individual) which was wholly undemocratic and profoundly unhealthy. This accretion of unaccountable power arguably resulted in the widespread criminality on the News of the World which is only now being uncovered. It is vital that a regulatory system is developed and implemented which ensures that this is never allowed to happen again.
67. In that light, we must beware assumptions – and the conventional wisdom – that new media opportunities and “convergence” means that the direction of travel is automatically towards greater plurality. This is manifestly untrue and contrary to empirical evidence. We can be

<sup>34</sup> Ofcom, *Report for the Secretary of State pursuant to Section 44A of the Enterprise Act 2002 of British Sky Broadcasting plc’s acquisition of 17.9% shareholding in ITV plc*, 27 April 2007, p19, Par 4.39

certain that, over the next decade, pressures towards greater consolidation within the private sector will continue as media enterprises struggle to compensate for the migration of advertising revenue to online, and strive to develop new business models. Statutory and regulatory frameworks must therefore be aimed at maximising the number of gatekeepers which control cultural output, thereby promoting the plurality of voices which are the life-blood of national civic life.

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**Statement of Truth**

**I believe the facts stated in this witness statement are true.**

**Signed ...Steven Barnett.....**

**Date .....21 May 2012.....**