POWER AND INFLUENCE – THE REAL ISSUES BEHIND MEDIA PLURALITY

On 19 June media regulator, Ofcom, published “Measuring media plurality: Ofcom’s advice to the Secretary of State for Culture, Olympics, Media and Sport”, in response to the Culture Secretary Jeremy Hunt’s request to assess the feasibility of measuring media plurality across platforms, and recommend the best approach1. Hunt also asked Ofcom to consider how practical it is to set limits which would protect plurality without unnecessarily restricting growth or producing perverse incentives.

FTI Consulting recently hosted a breakfast briefing to discuss the principal recommendations in the Ofcom report. Ray Snoddy, one of the country’s most respected media commentators, chaired a panel of leading industry and policy experts.

POWER AND INFLUENCE
In his opening gambit, David Elstein of Open Democracy and the Broadcasting Policy Group stated that media plurality is essentially concerned with influence and views, and the concern that one particular voice will have undue influence. The question is, how do we measure influence? Do we have psychological insight at our disposal to measure this? Can we ever measure this?

Elstein noted that the latest Ofcom report effectively made its 2010 report (on the public interest test of News Corp/Sky) obsolete — in his mind a positive development.2

UNDUE INFLUENCE
Elstein welcomed the acknowledgement from Ofcom (not present in the 2010 report) that the operational structure of the BBC does not support plurality — and that an individual who gains the majority of his or her news and current affairs knowledge from the BBC is unlikely to have enough range or variety of opinion. Elstein thought this new stance might be explained by Ofcom’s latest figures on share of TV news consumption: both in 2002 and 2011, the BBC and ITV between them were responsible for 88% of such consumption, but the balance between them has shifted from 2:1 to 5:1, with ITV at just 14% and the BBC at 74%. It has a similar share in radio news consumption, and even in online news consumption, it is easily the dominant player. Effectively, he said, one organisation is responsible for some 60% of news consumption.

1 See: http://stakeholders.ofcom.org.uk/binaries/consultations/measuring-plurality/statement/statement.pdf
COMPETITION LAW
Antonio Bavasso, partner in the international antitrust team at law firm Allen & Overy suggested there is a gap in the relationship between media plurality and competition law, but one which is often overstated in debates. In Sky/ITV, the case was actually approved on the grounds of media plurality but blocked due to competition law concerns.

Bavasso praised the recent report by Ofcom and agreed with Elstein that it highlighted the inadequacies of its predecessor. He thought that there was no case for the definition of plurality to go beyond news and current affairs. The point had been considered and settled by the Competition Commission and the Court of Appeal in Sky/ITV. He said that the case for a special regulatory regime – in addition to competition law – in relation to other aspects of media services, notably entertainment, is not made out. If there are valid concerns about promoting independent productions they should be dealt with specific regulatory tools, not a plurality review.

It is important that media plurality reviews do not circumvent the rigorous analysis of competition law on issues relating to market behaviour. Bavasso argued that the hysteria surrounding the Sky/ITV deal was formed on issues beyond the remit of plurality. Bavasso suggested that other forms of regulation (including the presence of a powerful regulated player such as the BBC) already interfere with pure market forces and these elements must be taken into account in the overall analysis. It is a mistake not to consider these important forms of regulation when looking at media plurality and to look at things in isolation. Ofcom appears to endorse this approach with their reference to “contextual factors”.

The role of the politician in regulatory enforcement has changed over the years. Media review is one of the few in which the Government can intervene to protect the public interest. However their role is overstated. Whilst the legislative framework allows them to take a view that differs from that of regulators who are required to advise them, in practice they do not. In News Corp/Sky both Ofcom and the OFT advised the Secretary of State that the undertakings in lieu were acceptable to address the preliminary concerns identified by Ofcom. This point is often confused in the public debate.

EXPAND THE DEFINITION?
Chris Goodall a leading industry consultant who provided research as to why News Corp’s bid raised plurality issues, then gave his opinion.

Goodall noted that it was only in 2007 that the remit of media plurality narrowed and became defined solely by news and current affairs from the means by which plurality ensured access to the consumer. On this point, Goodall argued that the 2010 report was impressive and the new one vague and weak. In essence Ofcom has pulled back from saying anything.

Media plurality is about everything, according to Goodall. It is important so content creators can have free access to the audience. To have a concentrated choke point is dangerous, as a very small number of people will have power and strength to create this stranglehold.

As such you have to accept that the economy may in some way be damaged as there is no such thing as perfect competition.

THE JOURNALIST PERSPECTIVE
Ben Fenton, former Chief Media Correspondent at Financial Times, spoke from the journalist’s perspective. He paraphrased the famous quote of United States Supreme Court Justice Potter Stewart by describing media plurality as being rather like pornography, you know it when you see it but actually can you be bothered to describe it.

Alison Sprague: “How governments and regulators define, measure and regulate media plurality is a crucial matter: for citizens, for consumers and for media businesses today and how they may flourish in future.”

David Elstein: “We’re actually trying to discuss influence and we’re trying to discuss views and our proxies for both of those are ownership.”

Ray Snoddy: “Declaring myself deeply shocked by this; that for the first time in living memory Ofcom has come up with a reasonably sensible piece of work.”

Ben Fenton: “Media plurality is like pornography, you know it when you see it but actually can you be bothered to describe it.”
doesn’t exist on its own. There are many basic points that need to be considered. In the case of the News Corp bid, Fenton suggested that all arguments were simply negated by the fact that the political class disliked Rupert Murdoch.

**KEY ISSUES OF DISCUSSION**

A 15% revenue cap and the extension of media plurality to all media sectors.

Antonio Bavasso suggested that economic arguments are countered by 50 years of competition law. In addition, the 15% cap is too blunt and unsophisticated and as shown by international experience ultimately ineffective. In the scheme of evolution such a rule is ancient history. Goodall argued that competition law was ineffective at ensuring that competition doesn’t reach its natural conclusion. Interestingly, Goodall argued that in the natural order there is a tendency towards monopolisation, and legislation should be introduced to counter this.

David Elstein looked to the BBC and asked what would happen if it breached the cap of 15%? The Corporation would have to divest activity. Ray Snoddy rather pertinently asked where the figure of 15% came from? Interestingly the 15% sum had apparently been back-engineered as this would have served to prevent the News Corp bid.

What is apparent therefore is that many of the problems stem from structures that predate the argument. Elstein suggested that in the final analysis of the argument we had to be honest, politicians didn’t want Rupert Murdoch to own such a large proportion of newspaper and television revenue. Goodall argued that it wasn’t personal. The fact is that people who have economic power use it. What is to stop them gaining power and influence?

What are the implications for the declining newspaper industry?

Ray Snoddy asked who else might be prepared to invest in such a declining industry as newspapers. Isn’t Rupert Murdoch doing the public a service? Goodall admitted this was the case, however at the moment his interest didn’t exceed 15%. Ben Fenton made the point that whilst some newspaper proprietors have sought to use the power that the platform gives them, either as a vanity project or charitable action, others have run extremely profitable businesses and so newspapers are not always used as trophy assets.

Goodall then stated that newspapers have always been propaganda sheets to reflect the owner’s personal attitudes. If Rupert Murdoch were to sell The Times, there are many others who would buy it.

The increasing influence of the internet in the debate

Antonio Bavasso suggested that the internet has broken the link in that we now have indirect access to the masses, as well as to the views of media proprietors and politicians. We have instant access to their thoughts and stance. To use such an old tool as a 15% cap is absurd and outdated. In addition Elstein added that to measure influence by revenue is too crude a measure. In fact any assessment should consider cash flow, return on investment, the list could go on.

---

**David Elstein:**

“I do think Alison is correct in picking up one very important point, out of the report which is a change of tone in relation to the BBC. Any news organisation, explicitly or implicitly, shapes the news.”

**Chris Goodall:**

“All the legislation that surrounds the issue of plurality encompasses the diversity within the whole media sector, not just news and current affairs, and I think it’s a mistake since 2007 to see it entirely as a matter of news plurality.”

**David Elstein:**

“The problem with a 15% cap on all media revenues is that we’re now further and further away from the underlying point which is undue influence.”
Alison Sprague: “One thing that is for sure, if you don’t get it right, any new plurality regime could have far-reaching consequences for the future of UK media.”

Chris Goodall: “In ten years time, the threat is not going to be BSkyB, it’s going to be the influence of Google over mass media.”

In conclusion?
As acknowledged towards the end of the debate, there is a suggestion that the Ofcom report was a necessary instrument in order to acknowledge the very real concerns of the industry. Whilst it is unclear where the report will take us, the range of the debate perhaps will only increase due to the advancement in technology. So instead of asking what are the next steps for this report, it may be more pertinent to ask, what are the questions for the next? With the increasing role of the internet and instant access to opinions, should we in fact turn our attention to the role of Google and how it may pervade our television sets?

CONTACT
For further information please contact Alison Sprague
alison.sprague@fticonsulting.com

*Please note that the views expressed are those of the individuals and not necessarily representative of their firm or company.