MEDIA REFORM COALITION

Evidence submission to Select Committee on Communications: Media Plurality

May 2013

The Media Reform Coalition was established in 2011 to consult and coordinate responses of various civil society groups to the Leveson Inquiry and the Communications Review, and to draw up policies designed to sustain the public interest and foster a more democratic media system. As such, media plurality has been a core concern from the outset and a key feature of our evidence and testimony submitted to the Leveson Inquiry. Since then, the Leveson Report has called for the development of a new system for both measuring and tackling media concentration of ownership (pp. 1461-1476). It is a tacit acknowledgement that existing and preceding regimes have allowed some media groups to accumulate vast amounts of revenue and influence with adverse consequences for ethical journalism and democracy. One such consequence has been the development of intimate relationships between political and media elites in a way which, according to Lord Justice Leveson, "has not been in the public interest" (p.1956). We believe that a new system of effective ownership thresholds and remedies applied both within and across media sectors is possible. Indeed, it is the only way to ensure that regulation of media plurality is fair, free of discretionary power vested in ministers, and impervious to capture by dominant media groups.

It is clear that plurality concerns have not been offset by the promise of diversity associated with the spread of digital media. Online news consumption has been converging around traditional news brands for some time and testimony presented to the Leveson Inquiry demonstrated the enduring capacity of dominant media groups to pressure and influence the policy agenda in surreptitious ways.

We need a new approach to plurality that recognises (but does not shy away from) the complexities in both measuring and remedying media concentration. Furthermore it should adopt a twin focus on both the ownership and funding of news and current affairs. The following page is a summary of our recommendations. This is followed by detailed evidence and justification in response to the questions listed in the call for evidence.

Summary of recommendations

1. We need a system of clear ownership thresholds, established in law, and applied both within and across key sectors for news and current affairs. These should act as triggers for intervention rather than definitive market caps.

2. 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. For newspapers, television and radio, these should be derived from established regular industry audits. For online news, audience share should be based on traffic to the top 50 news websites (as adopted by Ofcom's public interest test report on News Corp's proposed buy-out of BSkyB).

3. 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.

4. A second level threshold within sub-markets should be a 20 percent audience share, triggering structural remedies in the form of **shareholder dilution** or **equity carve-out.** These should be aimed at ensuring that no individual or entity has a controlling share in an outlet, or group of outlets, that commands more than 20 percent of a given audience.

5. At the cross-media level, measurement of plurality should be based on the core industry revenues of the aforementioned key sectors. A 15 percent threshold should trigger a structural remedy in the form of enforced divestment.

6. A fund should be established along the lines agreed recently between Google and news publishers in France and Belgium. This should be administered by an independent **Public Media Trust** with a clear set of funding criteria, transparent procedures and an accountable system of appointments and administration. The body will support local and niche news providers either directly, or via dominant media groups (for whom funding will be contingent on commissioning content from independents).

Responses to Consultation Questions

1. **Does a clearer objective to plurality policy need to be thought out and incorporated into statute than is currently the case? What should this be?**

We believe that plurality policy should be geared towards two broad objectives. First, it should ensure that dominant providers within key sectors have public interest obligations which will guarantee a degree of internal plurality both in terms of shareholdings and journalist autonomy. Second, it should ensure a minimum number of providers across sectors.

2. **In the absence of a definition of plurality in statute, Ofcom have provided a working formulation. Is this the best definition, or should it be improved?**

There has long been a broad political consensus both in the UK and elsewhere concerning the principles of media plurality which are invoked in Ofcom's definition, i.e. that there should be 'a diversity of viewpoints available and consumed across and within media enterprise' and that plurality policy should 'prevent any one media owner or voice having too much influence over public opinion and the political process/agenda'. Our research suggests that if such principles are to be effectively upheld, we require remedies which will reverse as well as prevent further concentration of media ownership. The primary challenge in plurality policy therefore resides not in defining the problem, but in designing and implementing both workable and effective solutions.

3. **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?**

We believe that plurality policy should focus on the provision of news and current affairs due to its particular role in holding power to account and fostering an informed citizenry. But policy should also acknowledge the importance to democracy attached to wider cultural diversity, and the increasingly blurred boundaries of news in a converged media environment. This is reflected in our proposals which target the reach of news providers specifically within key sectors, and overall media market dominance at the cross sector level.

4. **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?**

We welcome recent recommendations by Ofcom for periodic plurality reviews in addition to existing triggers based on merger activity under the Public Interest Test. Lord Leveson has similarly recognised that plurality policy ought to address the threat of dominance stemming from organic growth within and across media markets, as well as ad hoc mergers and acquisitions.

But in order to identify what Leveson refers to as "levels of influence that would give rise to concerns in relation to plurality" (p. 1470), we need to establish clear ownership thresholds. We believe this is the only means by which plurality can be maintained in a consistent, fair and effective way. It is particularly important if remedies are to address concentration as a result of organic growth as well as merger activity. 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).

Lord Justice Leveson has recommended that discretionary power remain with the Secretary of State in respect of public interest decisions over media mergers (p. 1476). But this is in conflict with much of the evidence and testimony submitted to his Inquiry. Evidence of a tacit 'deal' between political leaders and media industry lobbyists may never be substantive but we did learn a great deal about the pervasive nature and influence of industry lobbying. This was particularly evident in the run up to key decisions by the Secretary of State such as Jeremy Hunt's near-approval of News Corp's bid to buy out BskyB, prior to the unfolding of the phone hacking scandal.

5. **For the purposes of a review of media plurality, what should 'sufficient plurality' mean as described in section 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?**

We welcome Lord Justice Leveson's affirmation that triggers for intervention should be "considerably lower" (p. 1470) than those appropriate to ordinary competition concerns. But the precise number of providers needed to guarantee sufficient plurality is a difficult question and one which invokes concerns about sustainability in news markets (an issue which we address in question 10 below). Our proposed thresholds are based on both international precedent and established principle. In the US, for example, at least eight remaining independent voices are required for newspaper/television mergers to be acceptable in the largest media markets. Although such a threshold might be unrealisable under current market conditions in the UK, we believe that less than seven providers within and across sectors is an appropriate trigger for intervention. Though this in itself may not guarantee a sufficient diversity of viewpoints (it is worth noting, in this respect, that six out of the seven largest national newspapers in the UK are currently editorially aligned with the Conservative Party), it will nevertheless ensure appropriate checks to the dominance of individual providers and proprietors.

In regards to the growing role played by digital intermediaries acting as gateways to content, we believe this is a moot point since they produce relatively little original news and do not exercise editorial control over third party content. And contrary to common assumptions, they have enhanced rather than diminished the reach of traditional media brands. Whilst the *Daily Mail* had an average daily print circulation of just over two million in 1997, today it is reaching just under ten million taking into account average daily unique visitors to its website. The majority of this traffic is driven by intermediaries such as Google, Yahoo and Facebook (Alexa.com 2013).

6. How should 'sufficient plurality' be measured?

One of the historical stumbling blocks in media ownership regulation has been the inherent difficulties in measuring media plurality. What is needed is an approach which takes account of both the enduring agenda setting power of dominant news outlets within traditional media markets, as well as the growing significance of cross-media concentration in an increasingly converged media environment. With regard to the former, the Media Reform Coalition has established a clear framework for measuring and identifying excessive market power in four designated sectors - national newspapers, television, radio and online news.

Since Ofcom's plurality formula is intimately concerned with the ability of individuals or groups to dominate public conversation, any system of measurement must take into account audience share. In the case of newspapers, television and radio, audience share can be deduced from the regular industry surveys of ABC, BARB and RAJAR. Respectively, these provide comparable data as follows:

- National newspaper circulation
- Multichannel television audience ratings*
- Radio listening shares*

*(Since a large proportion of broadcasting news services are outsourced, market share should be attributed to wholesale news providers rather than channel/station).

Measuring audience share in online news is more complex since there is no comparable regular industry audit and there are considerably more providers compared to conventional platforms. However, patterns of news consumption online have been converging around traditional news brands for some time. According to a recent Ofcom report, the top five online news providers are the BBC, Daily Mail and General Trust, News Corporation, Guardian Media Group and Telegraph Media Group. Collectively, they account for more than 70 percent of traffic to the top 50 news sites, by both page views and browsing time (Ofcom 2011). Ofcom should commission regular surveys such as this in order to provide a clear and sensible measure of audience share for online news providers.

Finally, 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.

7. Should the BBC's output be included in a review of it?

There is a long-established policy principle in the UK that public responsibilities should be attached to significant media power. To date, this principle has been invoked in respect of broadcasting – and the BBC in particular – but as media markets and services converge it is increasingly applicable to other platforms. 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. Media plurality reviews and intervention should therefore be focussed on dominant commercial media groups, rather than the BBC.

This does not mean that commercial media should be subjected to forms of intervention that threaten their independence or free speech rights, and the exclusion of public service broadcasters is not to confer favour on these providers over purely commercial groups. On the contrary, we do not think that commercial media groups should be subject to the same onerous form of regulation as PSBs and it is for this reason that we are advocating a distinct regime based on dominant market shares and a limited prescription of remedies outlined in section 9 below.

8. How can internal plurality be sensibly measured against external plurality?

Any comprehensive attempt to measure internal plurality would have to take account of the structures and cultures of production specific to large scale media organisations and will inevitably fall back on subjective interpretations of media output. However, we can measure internal plurality quantitatively in terms of shareholdings, and qualitatively in terms of the relative autonomy of journalists and editors from senior management and proprietors. These should be factored into structural and behavioural remedies respectively, as outlined below.

9. What structural and/or behavioural remedies are appropriate if insufficient plurality is found?

Our proposals stipulate that media groups with a dominant audience share within markets of between 15 and 20 percent, (based on the principles outlined in section 5 above), should be subject to a new set of public interest obligations to ensure editorial and journalist autonomy, as well as a commitment to supporting original newsgathering and those sectors of journalism currently being squeezed out of the market. These obligations are akin to behavioural remedies which have strong and growing precedent under current anti-trust regimes adopted in both the EU and US.

It should be emphasised that what we are proposing falls well short of imposing editorial standards. An example of a public interest obligation in this context would be an undertaking to protect journalist and editorial autonomy. One of the chief concerns emerging from the hacking scandal is the extent to which both the independence and integrity of journalists can be compromised by a chain of command and institutional culture fostered by senior management. One way of addressing this issue is to introduce institutional arrangements that limit the absolute prerogative power of proprietors and senior management. As a minimum requirement, this should ensure that qualifying news organisations set up an editorial panel, including a minimum of five staff journalists, which is empowered to oversee key decisions affecting editorial policy as follows:

- The appointment and dismissal of the editor-in-chief, or equivalent, by management or proprietors must be approved by the editorial panel on the basis of majority vote.
- The panel must be consulted on decisions taken by management or proprietors which affect the definition or direction of editorial policy and content, including editorial codes and guidelines.

- The panel must have the ability to pass a motion of no confidence in an editor-in-chief, or equivalent, by majority vote.
- The panel must have the capacity both to hear and air grievances of staff journalists in relation to particular assignments, and to consult the National Union of Journalists or the new independent regulator.

Commercial press groups enjoy a significant public subsidy through VAT exemption so, in addition to the above, it is entirely appropriate that they make a commitment to support minimal levels of investment in original newsgathering, either directly or through the commission of content from third party providers (examples of the latter include the series of recent exclusives commissioned by both national newspapers and broadcasters from the Bureau of Investigative Journalism).

In tandem with these behavioural remedies, we have also proposed a structural remedy to be triggered by a system of cross-media and sub-market thresholds. But each type of threshold warrants a distinct form of structural intervention. The objective of forced divestiture is usually to create a new viable competitor, or to strengthen the position of existing competitors through the break-up of a company's assets. In the case of the media, this might be feasible and sensible when a company has acquired a number of assets across sectors such that it commands a dominant share of cross-media market revenues. To this end, we support proposals put forward by Enders Analysis (see section 6).

But this will not solve the problem of concentrated power *within* particular media markets and we recognise that monopoly control policies based on divestment can raise difficulties when applied to these cases. We are therefore proposing a different structural remedy to be applied in these cases based on shareholder dilution or equity carve-out. 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. That is, after all, the primary concern attached to media plurality and is precisely the kind of intervention that is most needed - especially in the UK where individual proprietors are still dominant and to some degree resurgent in the newspaper industry (in contrast to the US for instance). Furthermore, a remedy based on shareholder dilution will not deter growth or interfere with consumer sovereignty within media markets; and it can be implemented relatively easily based on Ofcom's existing criteria for measuring 'de facto control' of media companies. We also believe that it will meet Ofcom's objections to market caps—that they are a disincentive to innovation and are unduly inflexible—that were noted by Lord Justice Leveson in his Report (p. 1468).

Recent examples of shareholder activism in many industries, including shareholder pressure at News International, demonstrate that there is a growing appetite to exert influence on large companies on the basis of shareholdings. This trend indicates that 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.

Although the above remedies target news organisations operating on the national level, Ofcom should also have powers to intervene on public interest issues at the local level. Given the added complexities in measuring local news concentration, intervention should be triggered by public concern via the Sustainable Communities Act which is uniquely fit for this purpose, based on “the principle that local people know best what needs to be done to promote the sustainability of their area.”[1]

10. 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)?

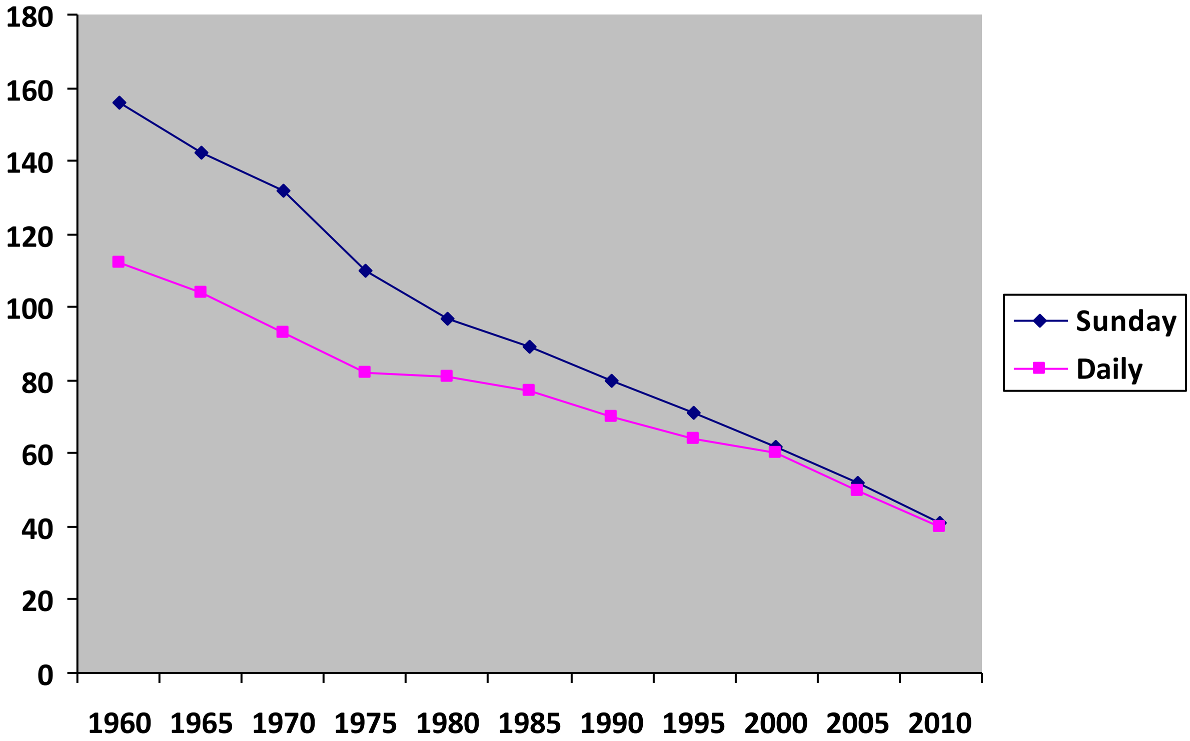
It is no secret that newspapers are in the midst of structural decline and revenue models have experienced an unprecedented assault in recent years as a result of both cyclical and technological pressures. But there are two widely held misconceptions about the funding crisis affecting the news industry.

First, it is often assumed or asserted that the crisis threatens the sustainability of professional journalism across the board. In fact, the volume of professional news output is increasing as outlets proliferate across platforms. But particular areas of journalism have faced the sharp end of resource cuts for some time. What’s more, it is precisely these areas of journalism that are central to the ability of news to serve democracy: to hold power to account and to produce well resourced, innovative and relevant news stories. In particular, the funding crisis in both investigative and local journalism has been well documented (House of Lords 2012, Media Trust 2010). Our proposals for plurality policy have been designed with a view to safeguarding these vital sectors of public interest journalism, rather than offering blanket protection to traditional media business models that, if anything, risk exacerbating plurality problems.

This leads us to the second common misconception which is that further consolidation of media markets can preserve the sustainability of news in the face of technological disruption. It is on this basis that Ofcom recently recommended the lifting of remaining cross-media ownership restrictions on local and regional news providers. But there is simply no evidence that consolidation of ownership improves the prospects for sustainability and some evidence to the contrary. It is worth noting in this respect that both consolidation and structural decline in newspapers long predate the internet. The graph below illustrates the steady trajectory of decline in the paid circulation of national newspapers since 1960, unaltered by either consolidation trends or the spread of the internet:

[1] http://www.communities.gov.uk/publications/localgovernment/sustainablecommunitiesact

Total national daily / national Sunday newspaper paid circulation as % of households, 1960-2010[i]



At the local and regional level, revenue declines have been considerably steeper and accompanied by consistent long-term patterns of ownership consolidation. Far from preserving sustainability, resource cuts and rationalisation accompanying market consolidation may in fact have a deleterious impact on consumer demand, a point underlined in a recent consumer survey of US news consumers (Pew Research 2013).

But a truly effective policy on plurality must address both the ownership and funding of news in the public interest, as emphasised in the Committee's recent report on the Future of Investigative Journalism. Like the problem of media ownership, the need for policy to address the funding crisis in journalism is a point of broad consensus among journalists, editors and campaigners.

Outside the UK, there is both well-established precedent and a wind of change blowing across Europe in favour of new methods of funding for journalism beyond the state-corporate framework. One pertinent example is Google's recent announcement that it has agreed to create a 'digital fund' to the tune of £50million to support French publishers and new digital news initiatives. The move was in effect a settlement following several years of lobbying by publishers and murmurings by legislators. This threatened to force Google to 'pay' for the content it appropriates from news providers in its search listings. Such arguments were given added force by the fact that Google itself is effectively afforded a huge public subsidy by virtue of the tax loopholes it exploits. According to one analysis, Google pays less than 3 percent of the tax it would have to pay if these loopholes were closed (Mondaynote.com 2013). Google is also the prime beneficiary of digital migration by newspaper advertisers, a process which has fatally undermined the models that have traditionally paid for both local and investigative journalism.

In principle, the idea that Google should contribute to supporting those areas of public interest journalism increasingly under-served by the market need not threaten the free flow of information online, nor amount to a form of state-sanctioned protection for 'old' media revenues. It reflects rather a longstanding tradition in European democracies of cross-subsidising journalism in favour of its 'merit good' attributes in which both consumers and producers tend to under-invest. From the creation of Channel 4 to the licensing of local TV stations, this principle has been invoked in UK media policy for several generations and it is the sole reason why a newspaper such as the *Times* has survived for as long as it has.

But cross-subsidies cannot be left solely to the discretion of conglomerates such as News International or indeed Google. Without proper and transparent public oversight, the Google 'settlement' with news publishers risks enhancing the former's gatekeeping power online and/or amounting to a 'blank cheque' to newspapers that will do little more than slow down an already painfully slow demise. Worse – like the blanket subsidy the UK government gives to the press through VAT exemption (to the tune of half a billion pounds a year) – it risks directing any redistributive proceeds to sustaining 'bad' journalism practices, exemplified in the phone hacking scandal.

Some will argue that any form of public oversight in respect of third sector media funding will intrinsically compromise the independence of grantees. But such claims are not borne out by the evidence in relation to international examples. All of the top five countries in rankings for press freedom conducted by both Freedom House and Reporters Without Borders (2011) have long had in place systems of direct public subsidies to support diversity in the press. The UK ranked only 26 and 19 respectively in the two reports. And if we are prepared to accept the Arts Council as an independent funding body for non-commercial cultural initiatives, there is no basis on which to reject journalism from that equation. Arguments concerning the need for independence of the arts and cultural industries from the state are no different from those pertaining to journalism. Indeed, the distinction of journalism from broader cultural pursuits is increasingly unclear in the age of convergence.

For those outlets that remain committed to investigative journalism, its inherent risks and uncertainties are adding to acute pressure on their business models. At the same time, several new news initiatives have emerged in recent years that exploit hybrid models of funding, multi-platform strategies and crowd-sourcing techniques in an attempt to revitalise public interest news. The example of the Bureau of Investigative Journalism demonstrates a growing willingness on the part of traditional news organisations to commission this kind of content from third party providers. At the local level, there are several examples of digital initiatives such as the *Caerphilly Observer* which has established itself in an area not served by a local newspaper and recently announced commencement of a print edition supplement. The *West Highlands Free Press* and the *Camden New Journal* are examples of local news providers that have succeeded as independent, co-operatively owned outfits in radically different markets. We need more of these initiatives, and we need to shore up the ones that already exist. Google's recent announcements in respect of the settlements in France and Belgium suggest that it is amenable to a solution that positions it as a supporter of diversity, innovation and niche providers – exemplified by the aforementioned titles.

There is therefore an unprecedented opportunity for a way out of the prolonged stand-off between Google and traditional news providers that could be amenable to all players as well as serving the public interest. A digital fund should be established along the lines agreed in the French and Belgium settlements. This should be administered by an independent Public Media Trust with a clear set of funding criteria, transparent procedures and an accountable system of appointments and administration. Organisations such as the Arts Council England offer appropriate models for structuring and instituting such a body. The body will support local and niche providers either directly, or via dominant media groups for whom funding should be contingent on commissioning content from independents.

11. With whom should power to deploy these remedies ultimately reside? What process for their deployment should be observed?

Given its existing statutory footing and its relative autonomy from both government and industry, Ofcom, advised by a range of stakeholder and civil society groups, is better placed to intervene in media markets on plurality grounds. We believe that ministerial powers should be eliminated in respect of plurality policy and that discretionary power afforded to Ofcom should be minimised by establishing a clear and comprehensive system of measurements, guidelines and remedy prescriptions. This is the only way to ensure that plurality policy is not compromised by the well-documented lobbying influence of media conglomerates.

12. 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?

We welcome recommendations made by the EU High Level Working Group for Media Plurality, and are encouraged by the prospects of the recently launched European citizens' initiative for media pluralism. However, we recognise that there are distinct contextual factors applicable to individual member states. Whilst the development of EU standards might provide impetus and a framework for policy reform at the national level, it is unlikely that a 'one size fits all approach' would be either workable or sufficient to meet plurality goals across the board. In view of recent developments, we believe the UK Parliament is in a unique position to lead by example in reform of media plurality rules and establish new precedents appropriate to the current economic and political climate.

13. What should the UK learn from international approaches to these areas?

We believe there is much to learn from international approaches and have produced a comprehensive and up-to-date overview of media ownership regimes in a range of western democracies (Media Reform Coalition 2013). There are some well-established international precedents for our proposals, particularly in the context of funding mechanisms to promote greater media plurality. But the overriding picture is one of progressive liberalisation of ownership rules. Much like the UK, plurality concerns in other countries have not been offset by the promise of diversity associated with the spread of digital media. We need a new approach that recognises (but does not shy away from) the complexities in both measuring and remedying media concentration. In particular and in conclusion, we need a system of clear ownership thresholds applied both within and across key sectors for news and current affairs, accompanied by appropriate and workable remedies.

References

House of Lords (2012) *Communications Select Committee – Third Report: The future of investigative journalism.* Available at: http://www.publications.parliament.uk/pa/ld201012/ldselect/ldcomuni/256/25602.htmhe

Media Reform Coalition (2013) *The Elephant Next Door: New report on media ownership abroad.* Available at http://www.mediareform.org.uk/media-ownership-2/the-elephant-next-door-new-report-on-media-ownership-abroad

Media Trust (2010) *Meeting the news needs of local communities.* Available at: www.mediatrust.org/uploads/128255497549240/original.pdf

Mondaynote.com (2013) *Google vs. the press: Avoiding the lose-lose scenario.* Available at http://www.mondaynote.com/2013/01/20/google-vs-the-press-avoiding-the-lose-lose-scenario/

Ofcom (2010) *Report on public interest test on the proposed acquisition of British Sky Broadcasting Group Plc by News Corporation.* Available at http://stakeholders.ofcom.org.uk/binaries/consultations/public-interest-test-nov2010/statement/public-interest-test-report.pdf

Pew Research (2011) *State of the News Media 2011.* Available at http://stateofthemedia.org/overview-2011/

Pew Research (2013) *State of the News Media 2013.* Available at http://stateofthemedia.org/

---

[i] Source: Communications Management Inc (2011) *Sixty Years of Daily Newspaper Circulation Trends: Canada, United States, United Kingdom*. Available at http://media-cmi.com/downloads/Sixty_Years_Daily_Newspaper_Circulation_Trends_050611.pdf

For more information, please contact the Media Reform Coalition:

www.mediareform.org.uk

info@mediareform.org.uk