



Media Plurality Draft Bill: Introduction

The following is designed as a starting point for debate and discussion among policy makers, civil society groups, commercial stakeholders and the general public. It is intended to provide a legislative framework for periodic media plurality reviews, as recommended by Lord Justice Leveson, OFCOM and the Department for Culture Media and Sport. As such, it is envisioned that this legislation will work alongside existing provisions for the Public Interest Test in respect of media mergers (as contained with the Communications Act 2003 and the Enterprise Act 2002).

The draft builds on and adapts OFCOM's proposed measuring framework so as to provide comprehensive guidance in regard to what counts as 'sufficient' plurality. It also sets out a range of applicable safeguards and remedies that account for the dynamic nature of media markets, as well as the complexities of a convergent media landscape. Above all, it introduces the concept of 'bright lines' so as to minimize discretionary power in the hands of either the Secretary of State or OFCOM, whilst allowing some flexibility for decisions on a case by case basis.

The bill as a whole is structured in two main parts corresponding to instruments that *safeguard* or *redress* media plurality among large media owners, and 'bottom-up' measures that *promote* plurality via support for community journalism, independent start-ups etc. Finally, part 3 introduces amendments to the existing public interest test provisions in respect of media mergers.

Thank you for taking a look, and please don't hesitate to contact us if you have any questions or comments (alistair@mediareform.org.uk).

PART 1: PROTECTING MEDIA PLURALITY

Definitions of Service Providers

1. Content Providers

(1) For the purpose of the Act, a content provider is deemed to be a person or entity that exercises editorial control over news content whereby;

- a. Editorial control refers to the capacity to determine the range and nature of news output at the last point of consumption within the news supply chain.
- b. News content refers to journalistic reports and feature articles that are produced and/or distributed on a daily basis covering a breadth of current affairs topics, where

“distributed” means made available to or continues to be made available to the public or a section of the public whether freely or following payment.

(2) “wholesale news provider” includes any entity which distributes news content to any retail news outlet;

a. Where a retail news outlet serves as a carrier for a single wholesale news provider then, for the purposes of the Act, editorial control is attributed to the wholesale provider.

(3) “retail news outlet” includes any entity which distributes news content for consumption by the public or a section of the public (whether freely or following payment);

a. Where a retail news outlet serves as a carrier for multiple wholesale providers then, for the purposes of this Act, editorial control is attributed to the retail news outlet.

2. Content Intermediaries

(1) A content intermediary is a person or entity that serves primarily to direct consumers toward news content providers and does not produce or aggregate original news content as its core concern. Examples may include, but are not limited to;

- a. Search Engines
- b. Social Networking Sites
- c. Internet Service Providers
- d. Content sharing platforms

Assessing Media Plurality

3. Duty to investigate plurality of ownership

(1) The Office of Communications (“OFCOM”) shall conduct plurality reviews within and across news markets at least once every four years.

(2) The objective of plurality reviews is to determine whether there is a sufficient range of news media stakeholders that is;

a. Consistent with the principle of a broadly informed populace which receives its news content from a broad range of diverse viewpoints.

b. Resistant to the potential for media proprietors to exercise undue influence inconsistent with S3(2)a above.

- c. Otherwise in the public interest.

4. Data Inputs

1) In conducting plurality reviews, OFCOM may make use of a range of indicators as deemed appropriate including, but not limited to;

- a. Standard industry measurement data.
- b. Additional and bespoke survey-based research conducted or commissioned by OFCOM.
- c. Online user data supplied by content providers and digital intermediaries in accordance with the provisions set out in section 7.

5. Three step sufficiency test

(1) As part of its plurality Review, OFCOM is required to conduct a plurality test that involves the following steps;

- a. Identification of content providers and intermediaries that exercise Significant Power of Voice.
- b. Determination of content providers with significant power of voice that have adopted plurality safeguards, in accordance with the provisions set out in section 8.
- c. Measurement of sector-specific and cross-platform levels of market concentration.

Determining Power of Voice

6. Meaning of Significant Power of Voice

(1) A content provider will be deemed to exercise Significant Power of Voice if it;

- a. Reaches an audience of [xx] people across radio, television and newspaper markets, or
- b. attracts more than [xx] unique online users in any given month.

(2) A content intermediary will be deemed to exercise Significant Power of Voice if it attracts more than [xx] unique users in any given month.

7. Disclosure Requirement

- (1) All content providers that reach above 50% of the limits set out in s6(1) and 6(2) above are required to submit quarterly online traffic data to OFCOM, in confidence, and for the exclusive purpose of assisting plurality reviews. This data shall be provided in a format determined by OFCOM.

8. Duty to report

- (1) Following the commencement of a plurality review in accordance with s3(1) above, OFCOM shall, within 12 months of the commencement of that review publish its report to parliament setting out its findings as required by this part of this Act.

9. Plurality Safeguards

- (1) Content providers deemed to exercise significant power of voice may be required by OFCOM to implement plurality safeguards that protect the editorial autonomy of journalists and editors from interference by management, owners or external sources.
- (2) In respect of 8(1), the range of applicable safeguards may include, but are not limited to;
 - a. Appointment of independent editorial boards consisting of a rotating panel of staff journalists with responsibility for overseeing key editorial appointments and decisions.
 - b. Appointment of independent board of trustees with responsibility for overseeing key editorial appointments and decisions.
 - c. Re-distribution of a proportion of shareholder voting rights among staff journalists.
- (3) In determining whether or what type of safeguards are applicable, OFCOM shall have regard to a range of contextual factors and criteria. These include but are not limited to;
 - a. (in the case of news broadcasters) the degree of existing internal plurality requirements imposed as part of public service or broadcast licensing terms;
 - b. (in the case of news publishers) whether or not the content provider is party to a recognised self-regulator in accordance with the Royal Charter on Self-Regulation of the Press;
 - c. Other existing forms of governance that promote editorial autonomy and internal plurality, including trust or co-operative ownership structures.

- (4) For the purposes of s9, “independent” means that the individual appointed to the position has been recruited according to published criteria which must include but are not limited to the following;
- a. That they exercise independent editorial control
 - b. That sufficient measures are put in place to limit (with a view to eliminating) the capacity for the content provider to influence the relevant decisions of the editorial board or trustees.
 - c. That they have regard to s3(2)a when exercising their editorial powers.
 - d. That a term or terms confirming such independence will be written into the contracts of employment or service.

10. Plurality Remedies

- (1) As part of its plurality review, OFCOM is required to measure news market concentration both within and between sectors, as set out in s5(1)c.
- (2) In measuring market concentration OFCOM will determine market shares of persons with a controlling interest in content providers within television, radio, print and online sectors, as well as across these sectors.
- (3) In calculating market shares, OFCOM should rely on consumption metrics as follows;
- a. Within sectors, standard industry measurement systems should be used wherever possible.
 - b. Across sectors, bespoke consumer research should be used with a view to capturing cross market influence of particular content providers.

11. The meaning of control

- (1) A person will be deemed to exercise control of a content provider if they;
- a. hold a majority interest OR
 - b. exercise de facto control OR
 - c. are party to a control arrangement
- (2) A majority interest is defined by ownership of more than 50% of shareholdings or shareholder voting rights;

- a. Where a majority interest is held by a company, the majority interest will be attributed to the person who holds more than 50% of shareholdings or shareholder voting rights in the ultimate beneficiary.
- (3) Even where a person does not have a majority interest, he is regarded as controlling a company where it is reasonable, having regard to all the circumstances, to expect that he would (if he chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the company or entity are conducted in accordance with his wishes. This may manifest in a range of circumstances including, but not limited to;
- a. Where a content provider is dependent on a third party for loans or other direct funding arrangements.
 - b. Where dependent relationships exist with suppliers or other third parties, including advertisers.
- (4) Where a controlling interest cannot be attributed to a single person, OFCOM may determine a controlling arrangement to exist. In such cases, market shares may be apportioned between two or more persons.
- (5) In circumstances where no controlling interest can be identified, such as in the case of co-operative, public or pluralistic ownership structures – market share will be attributed to the content provider itself.

12. Thresholds and remedies

- (1) If a person or group of persons via a control arrangement has more than 20% market share either within a sector or across sectors, OFCOM may consider a range of structural remedies with a view to reducing ownership concentration. These may include but are not limited to;
- a. Enforced divestment.
 - b. Equity carve-out.
 - c. Shareholder dilution.
- (2) In determining which if any remedies are applicable, OFCOM may give due consideration to a range of contextual factors including but not limited to;
- a. Existing plurality safeguards in accordance with the provisions of section 8.
 - b. Public service obligations.
 - c. Public, co-operative or pluralistic ownership structures.
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PART 2: PROMOTING MEDIA PLURALITY

Media Plurality Trust

13. Appointments and Functions

- (1) A Media Plurality Trust is to be established with the express function of promoting media plurality at local, regional and national levels.
- (2) It shall be staffed of five Trustees recruited by OFCOM through open tenders on four year cycles with renewable terms.
- (3) Criteria for appointments shall be based on appropriate expertise and representation of diverse political and cultural perspectives.
- (4) The Trust's primary function is to collect, administer and disburse funds for the support of qualifying non-profit news initiatives, as set out in section 14.
- (5) The Trust's secondary function is to develop resources and provide advice and assistance to prospective non-profit news start-ups for the purpose of supporting their emergence into the market.

14. Media Plurality Levy

- (1) The Trust shall be responsible for collecting a 2 per cent levy on the net profits of content providers and intermediaries classified as exercising significant power of voice, in accordance with the provisions set out in s6(1) and 6(2).
- (2) Proceeds from the levy will support the operations of the Trust, subject to remuneration and administrative cost limits established by OFCOM.
- (3) Surplus funds shall be dispersed to a range of independent non-profit news initiatives via grant schemes and other funding mechanisms for the purpose of promoting plurality.
- (4) Criteria for awards are to be based on the principle of redistributing proceeds from profitable media within the news supply chain, towards non-profitable news initiatives that have potential to redress identifiable plurality deficits. Priority is to be given to initiatives engaged in original newsgathering and funding targets may vary by platform, news locality/region, and audience. The range of funding targets may include, but are not limited to;

a. Co-operative local newspaper ventures;

- b. Community radio stations with a local or investigative news focus;
 - c. Local and national newsgathering hubs and agencies.
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PART 3 AMENDMENTS TO THE PUBLIC INTEREST TEST

13. The Public Interest Considerations for Media Mergers

The public interest considerations specified in section 58 of the Enterprise Act 2002, as amended by the Communications Act 2003 will be amended as follows [**amendments in bold type**]:

Section 58, Media public interest considerations:

(1) After subsection (2) of section 58 of the Enterprise Act 2002 (considerations specified as public interest considerations for the purpose of the main merger regime) there shall be inserted—

“(2A)The need for—

(a)accurate presentation of news; and

(b)free expression of opinion;

in newspapers is specified in this section.

(2B)The need for, to the extent that it is reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the United Kingdom or a part of the United Kingdom is specified in this section.

(2C)The following are specified in this section—

(a)the need, in relation to every different audience in the United Kingdom or in a particular area or locality of the United Kingdom, for there to be a sufficient plurality of persons with control of the media enterprises serving that audience;

(b)the need for the availability throughout the United Kingdom of a wide range of broadcasting **and on-demand audiovisual media (VOD)** which (taken as a whole) is both of high quality and calculated to appeal to a wide variety of tastes and interests; and

(c)the need for persons carrying on media enterprises, and for those with control of such enterprises, **to comply with the standards and requirements of the relevant national regulatory authority.**

For the purposes of section 58 an enterprise is a media enterprise if it consists in or involves the provision of **audiovisual media services.**