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Media Pluralism and the Overlapping Instruments Needed to Achieve it.

Professor Richard Collins and Professor Martin Cave.

Richard.Collins.2@city.ac.uk Martin.E.Cave@btinternet.com

Abstract.

The authors review recent scholarly and policy initiatives in respect of media pluralism and argue that contradictions between policy objectives, in analytical approaches and deficiencies in some established methodologies mean that robust conclusions have been hard to secure. They argue that concerns about diminishing pluralism are likely to grow in consequence of changes in a dominant “legacy media” funding model as advertising revenues move online. Examining UK data, they argue that a contemporary focus of concern, growing concentration in privately owned media, is overshadowed by the striking dominance of the publicly owned BBC and suggest established analytical methodologies used to analyse market power may offer a valuable analogy in the definition and measurement of pluralism issues. They consider possible alternatives to regulation as means of enhancing pluralism and propose the use of subsidised entry.

Keywords.

Policy and Law (Media systems), Internet, International Communications, Public Service Broadcasting, Media Ownership, Economics of Media.

1. Introduction.

Concerns about media pluralism are pervasive. In Australia, media ownership regulation came under review in 2001 (updated in 2002, 2003 and 2006) and again in 2007 (Parliament of Australia 2001 and 2007). In Canada, the Canadian Radio-television and Telecommunications Commission (CRTC) promulgated new media ownership rules in 2008 (CRTC 2008). In October 2011, a European Commission Vice-President, Neelie Kroes, established a Committee on Freedom and Pluralism of the Media “to advise and provide recommendations for the respect, protection, support and promotion of media freedom and pluralism in Europe” (European Commission 2011) following extensive earlier studies and publications (eg Council of Europe 1994, European Commission 2007 and KUL 2009). In the USA, the Federal Communications Commission (FCC) began the latest of its four yearly reviews of media ownership in 2010 (FCC 2010), though in 2011 most of its earlier recommendations for liberalisation of media ownership in the USA were blocked by a judgement of the US Court of Appeals (see United States Court of Appeals for the Third Circuit 2011). In Germany, the Kommission zur Ermittlung der Konzentration im

Medienbereich (see KEK 2010 and 2011) regulates commercial broadcasting to secure diversity of opinion (Meinungsvielfalt), and in the UK Jeremy Hunt, the Secretary of State for Culture, Media and Sport, announced that he had asked Ofcom

to look at whether or not it is practical or advisable to set absolute limits on news market share; whether they believe a framework for measuring levels of plurality could or should include websites and if so which ones; and whether or how it should include the BBC (Hunt 2011).

Hunt's mandate to Ofcom followed numerous UK studies on media ownership (see, *inter alia*, House of Lords 2008) and Ofcom's most recent report (like the FCC, Ofcom is charged with regularly reviewing media ownership rules – though triennially rather than in a quadrennial cycle) in which, like the FCC, it had recommended (modest) liberalisation (Ofcom 2009). Scholarly activity has been no less energetic – see for example the special section of the *International Journal of Communication* on media pluralism (IJOC 2010), Czepek et al (2009); Doyle (2002); Harcourt (2005); Hulten et al (2010); Meier (2005) etc.

Why are such concerns widespread and recurrent? For three reasons, first, there is abundant empirical evidence that the partial advertiser-supported model which sustained print media in particular is under threat, leading to closures and merger. Second, in democratic societies, the mass media are supposed to have an important political role – both in their purported capacity to influence political behaviour (notably voting) and in their purported duty to hold power to account. If media ownership is wrongly apportioned, by being insufficiently diverse (or/and insufficiently national), then democracy, and the social solidarity on which it is based, may be undermined. Regulations which require either or both national and diverse ownership are supposed to step into the breach and mitigate these adverse trends. But, third, regulation is less and less effective as government control of entry to and shares of media markets declines (broadcasting satellites, the internet etc). Here, the focus is on ownership regulation to secure pluralism, rather than national ownership, but it is noteworthy that in some jurisdictions a striving for national media ownership has had the unwanted effect of diminishing media pluralism.

Many theories of democracy, including those most cited in debates about media policy and regulation (notably rooted in Mill, Habermas and Mouffe – see Karpinnen, Moe and Svensson 2008), emphasise the importance of diversity. Followers of Mill foreground

arguments from *On Liberty* that: "if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility" (Mill 1986: 115); those of Habermas emphasise the need for an untrammelled forum for collective and rational deliberation and those of Mouffe appeal to the inherent pluralism and incommensurability of values in modern societies. But all these viewpoints shelter under the umbrella of a common rationale, expressed by Bagdikian (1987, 3), that "Modern democracies need a choice of politics and ideas, and that choice requires access to truly diverse and competing sources of news, literature, entertainment and popular culture."

There can be little doubt that democracy is unlikely to thrive without diverse and competing sources of news, although much is left out here - notably the independence of news and the media's capacity to hold power to account. But can there be too much diversity? This may seem a fanciful question but too much diversity may lead to fragmentation of the collectivity (polity, demos, state, nation or something else) in question. Indeed, this is (one of) the rationale(s) underpinning national media content and ownership rules – too much external content (or ownership) may lead to a lethal erosion of identification with the demos. Too much diversity can weaken the media's ability to hold power to account.

Furthermore the presumption that diversity of ownership will necessarily lead to diversity in content has seldom been tested - and remains to be demonstrated. Milyo's recent study for the FCC found that:

local television newscasts for cross-owned stations contain on average about 1-2 minutes more news coverage overall, or 4%-8% more than the average for non-cross-owned stations..... Newspaper cross-ownership is also associated with more candidate coverage, more candidate speaking time and more coverage of opinion polls.....With regard to the partisan slant of news coverage, there is little consistent and significant difference between cross-owned stations and other major network-affiliated stations in the same market (Milyo 2007: npp).

Milyo's findings, which refer to a specific United States context, may not be generalisable, but they are remarkable both as a rare empirical enquiry into the ownership/content nexus and for putting into question conventional wisdom concerning the relationship between media content and ownership. Such multiple uncertainties and contradictions may explain why

debates about media ownership seem never to go away. But why do they never seem to reach a resolution?

First, any proposals for change are likely to disadvantage media incumbents, and their political allies, who are likely to resist change. All this is simply to state the obvious: media ownership regulation is highly political and scholarship too is often highly politicised. Change, at least in part, depends not on rational argument but on political interest.

This has implications for the applicability of recommendations such as those of the Media Pluralism Monitor (MPM) – the European Commission’s most recent engagement with the media ownership question (see KUL 2009), which, almost certainly, constitutes the most fully elaborated attempt to construct an instrument to measure media pluralism.

The MPM eloquently demonstrates the difficulty of reaching rational, impartial and, above all, operationalisable assessments of the media pluralism issue. Its 166 indices, 75 possible threats and 43 distinct risks (KUL 2009: 89, 92) testify to the heroic labour required for its implementation. For example, to reach a conclusion on **one** of the 166 individual indicators, that for determining the extent to which “Political bias in the media” is present, requires a “Quantitative content analysis for measuring the proportion of actors representing different political viewpoints and groupings by dividing them into 4 groups: government, governing parties, opposition parties, and other political and ideological groupings” (KUL 2009: 46). The labour involved in reaching such a judgement needs no emphasis and neither does the extent to which the judgments involved in making such distinctions are likely to be open to question and challenge. Moreover, the MPM methodology’s attribution of “**equal weight** to all indicators” (KUL 2009: 26) is highly contestable: are magazines, radio, television and newspapers equivalent and equal in their importance? The problem raised by this question is amplified when the importance of book publishing companies, web sites, cable stations and others (KUL 2009: 78) has to be taken into consideration. Further, the MPM’s recourse to criteria such as “excessive” and “insufficient” (KUL 2009: 35, 37) suggests that considerable uncertainty is likely to surround any judgements based on its methodology and that any real life use of the MPM is likely to provide ample employment for lawyers. So complex are the instrument’s measurements and recommendations that it seems unlikely that it will ever be unleashed in anger.

Problems of this kind in determining both the rationale and the means of implementing any action on media pluralism help to explain why the issue remains, seemingly immovably, on the policy and scholarly agendas without resolution. Its high contemporary salience though may also reflect recent changes in the economics of the mass media, briefly described in the next section.

2. The commercial background: advertising budgets switch from legacy media to the internet.

The period since 2005 has seen a significant change in the distribution of global advertising expenditures, as shown in Table 1.

Table 1 Compound annual growth rate (%) of global advertising expenditure in 2005-2010.

All	-1.0
Newspapers	-4.3
Magazines	-3.1
Television	5.1
Radio	-0.7
Cinema	6.4
Outdoor	3.4
Internet	24.5

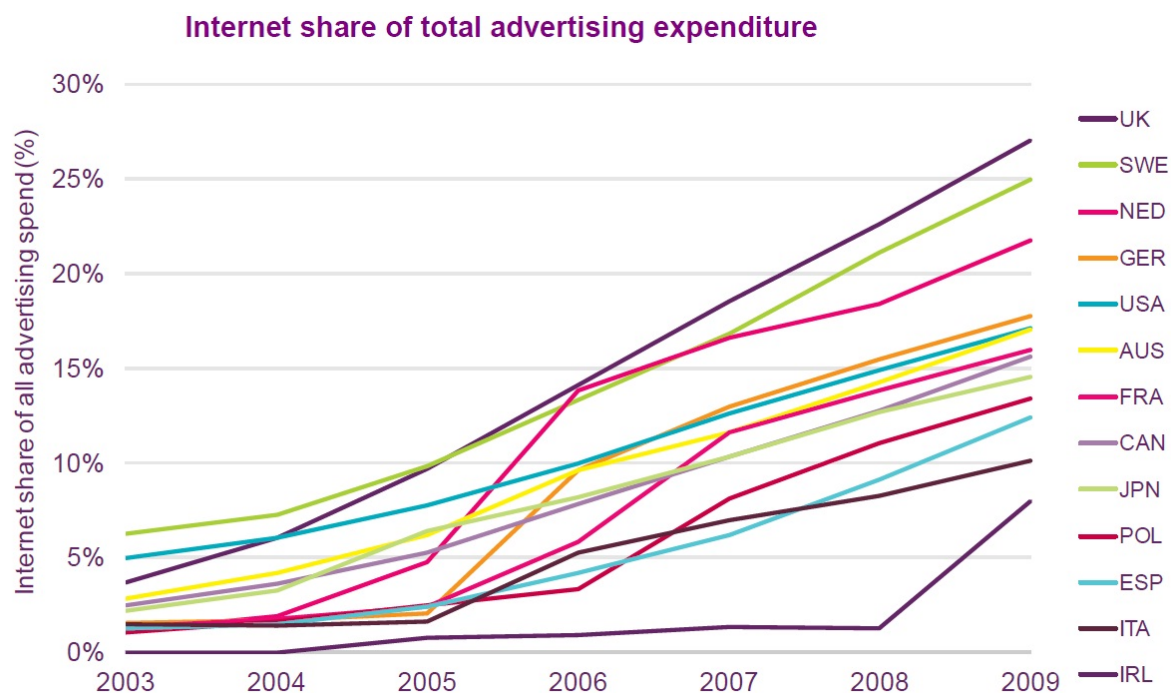
Source: Ofcom 2011, p.21

Unsurprisingly, countries differ in the speed at which internet advertising is replacing advertising on the traditional media. Thus in the BRIC countries (Brazil, Russia, India,

China), most notably in China and India, the newspaper sector¹ and television advertising funding are growing².

Figure 1 shows conveniently how the internet's share of advertising expenditure has risen in each of the 12 countries tracked in Ofcom (2010: 214).

Figure 1.



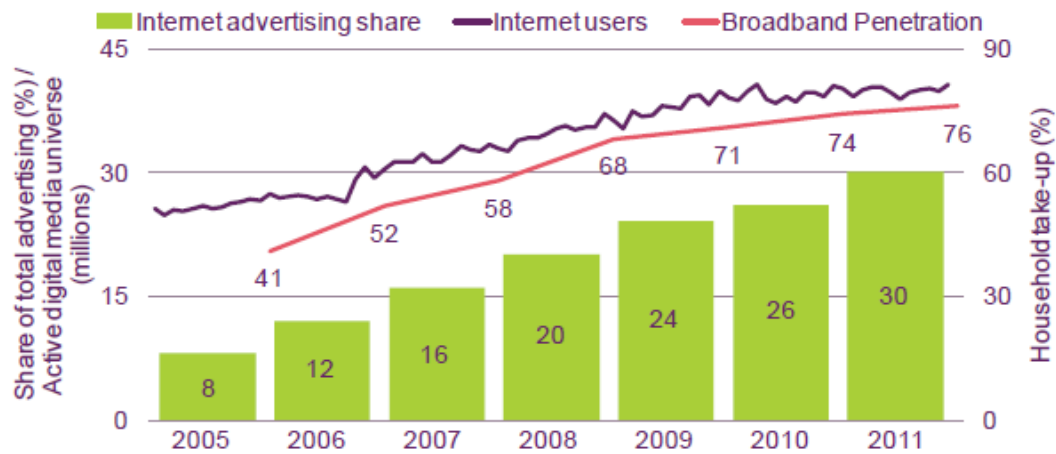
Source: Ofcom 2010: 214.

The UK leads this particular pack, and a further useful Ofcom figure (figure 2 below) provides an illuminating possible explanation. It shows the strong apparent correlation between internet advertising as a share of total expenditure and measures of broadband penetration and the proportion of internet users.

Figure 2 . Internet advertising share, active internet users, and broadband penetration in the UK, 2005-2011.

¹ See World Association of Newspapers 2009.

² World Press Trends 2009 (World Association of Newspapers 2009: 312) states that 2008 advertising revenues in China grew 13.22% for television, 10.21% for the internet and 6.36% for newspapers. Newspaper circulation in China has grown year on year between 2004 and 2007 as has, with a downward blip in 2005, the number of newspaper titles (World Association of Newspapers 2009: 315). In India, both circulation and number of newspaper titles has grown consistently between 2004 and 2007 (World Association of Newspapers 2009: 492).



Source: Internet Advertising Bureau, Nielsen Work and Home Panel, Ofcom
 Note: Broadband household take-up figures are from Q1 of the following year.

Source: Ofcom 2012a: 229.

In the period covered by the data in figures 1 and 2, the UK has seen significant numbers of newspaper closures and mergers³, notably in the local/regional sector. But the economic health of the national press also remains shaky: papers have reduced pagination (eg the *Financial Times*), closed free access to websites (*The Times*) and raised prices (the *Financial Times* doubled its price between 2007 and 2010 and further increased it in 2012). In television Channel 3 (ITV) has foreshadowed closure of its regional news services.

The decline in advertising spend accruing to “legacy” media thus has several important consequences: public access to affordable content (most importantly, news) is likely to decline; the quality of content is likely to decline and the plurality of sources of content (most importantly, of news) may decline – not least as firms merge in order to reduce costs in response to diminishing revenues and/or as control of bottleneck essential facilities (subscription management systems, encryption and API protocols, transmission and distribution platforms etc) in electronic communications services endows a few firms with sufficient market power to exercise dominance. This contributes to pervasive disquiet about the future of a robust and pluralistic “fourth estate” – a disquiet for which media concentration provides a convenient lightening rod and one particularly attractive when, in the UK, the largest commercial media player, putatively exemplifying the baleful consequences of concentration, is the Rupert Murdoch/News Corporation/BSkyB nexus of media interests.

³ See, for example, the table showing declining circulations of twenty representative non-national UK newspapers over twenty years compiled by Peter Robins in August 2010 at <http://www.guardian.co.uk/media/organgrinder/2010/aug/25/long-fall-local-press>

What can be done? First we consider the possibilities, and difficulties, of rigorously measuring media plurality – a necessary basis for any legal and/or regulatory prohibition of further concentration - and then, given our view that economic changes in the sector driving closures and mergers are likely to be of long standing, whether effective alternative remedies are available to policy makers.

3. Assessing plurality.

There is no quick fix to the assessment, still less the measurement, of media plurality (see Iosifides 2010). But as it becomes a regulatory concept, pronounced upon by agencies and litigated in the courts, it is inevitable that a journey will be begun along the long road towards the development of more practicable data-driven ways of assisting judgement. This process has already been started in the US, the EU and the UK – with mixed results. In our view, some of the pessimism is due either to a mismatch between the degree of elaboration of the concepts underlying plurality and the available data, or to unrealistic expectations about what measurement can do in its initial stages.

Any assessment or attempt to assign numerical values to pluralism must start with decisions about the scope of the content the plurality of which is to be assessed, the degree of granularity in specifying the relevant audiences, the universe of media capable of contributing to a plural supply, and the basic source of evidence or data. These issues are usefully discussed in Ofcom's (2010a) work on plurality, undertaken as part of its evaluation of the consequences for plurality of a proposed takeover in the UK, now abandoned, by News Corporation of BSkyB, the satellite broadcaster and broadband supplier. An assessment was required of the Secretary of State (who charged Ofcom with this task) of whether the transaction conflicted with the need 'in relation to every different audience....for there to be a sufficient plurality of persons with control of the media enterprises serving that audience' (Ofcom 2010a: 4). Ofcom has since further developed its analysis in response to the mandate given to it by the Secretary of State for Culture, Media and Sport referred to at the start of this article (Ofcom 2012).

In relation to the first issue – the scope of content whose plurality of supply is being tested – there is a considerable range of possible options, all or most of which might be appropriate in particular circumstances. For example, if the fundamental question concerned plurality in matters concerning the underlying values of society, the coverage, and any process of evidence-gathering, would necessarily be wide. If, however, the issue at stake was political

impact, then a restricted focus on the supply of news and current affairs would be appropriate (though this would not imply that fiction is free from political implications). Further, consideration would need to be given to the geographical scope of the enquiry: in the UK case the statute refers to ‘every different audience in the United Kingdom or in a particular area of locality of the United Kingdom’ (Ofcom 2010a: 4).

Which media would be included? If the focus were political, then those supplying news and current affairs would naturally be included. However, the principal platforms – newspapers, television and on-line – provide content of all sorts. In principle, non-news and current affairs access should be excluded⁴. Online included? The case for including on-line sources of news and current affairs gets stronger day by day. This immediately raises the issue of weighting. Some platforms, for example those using video, may provide a preferred service with a greater impact. Alternatively different platforms may have their own particular advantages. Any decisions about weighting will depend on objective data, such as levels of consumption/circulation, but also on matters which can be determined with less certainty – is the impact of broadcasting greater than that of print; does the “pull” nature of online media amplify/discount their effect relative to “push” media such as broadcasting?

The final issue concerns the source of the basic data. Where there is strong interest in rates of change, this will be determined to a large extent by data coverage in early periods (and the periodisation chosen may significantly influence findings). It is likely that any such inquiry will include the collection of data on both reach (proportion of audience using a service at least once in a time period) and consumption (in hours per week or in proportion of audience self-reporting as regular users) and further, where one platform subcontracts its provision to another, a decision has to be made about whether to allocate the audience to the wholesale provider or to the retailer (or to split it).

Ofcom’s 2010 assessment was focused on:

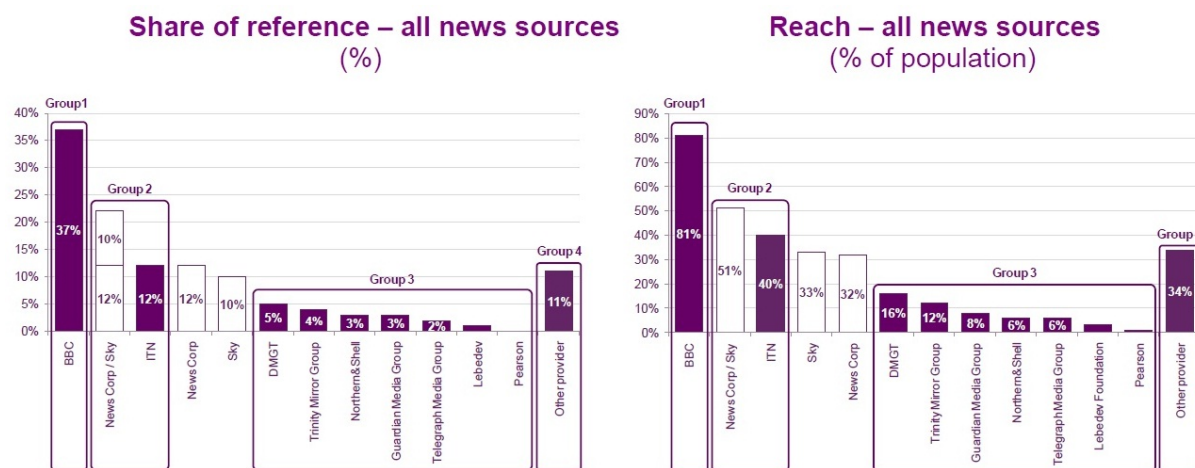
- news and current affairs exclusively;
- a national audience;
- newspapers, radio and television, while on-line services were excluded;

⁴ This is not to imply that drama, documentaries and other programming genres are unimportant only that issues are both more acute in news and analytically more manageable when focused on the single genre of news. For an excellent discussion of the issues in respect of news see Ofcom 2007.

Measures of reach, and wholesale and retail consumption shares⁵ were utilised.

In relation to reach and wholesale consumption, the resulting data are shown below:

Figure 3. Percentage of regular news and current affairs consumers – 96% of UK population.



Source: Ofcom, cross-media audience research, 2010²⁰. Represents 96% of the GB (excludes Northern Ireland) adult population aged 16+.

Source: Ofcom 2010a: 9.

Ofcom's analysis, Figure 3 above, underscores the importance of the BBC (and broadcasting in general) in the UK public's news diet. In its 2012 report, Ofcom moreover noted 'a potential risk that people who rely primarily on the BBC for news of not being exposed to a sufficient diversity of perspectives, contributors, subjects or treatment of news stories.' (Ofcom 2012, p. 42)

The search for measures (or indicators) of plurality can be, and has been, likened to the search in competition law and policy for measures or indicators of market power. It took several decades to generate the consensus that operates today – that data, including share data, have a role to play in making an assessment of market power, but there is no 'silver bullet,' in the form of a single piece of evidence, which can take the relevant competition agency immediately to a precise evaluation of market power. It is also fundamental to market power appraisals in competition law that they are made with reference to a defined market. Although analytical procedures are available to determine the relevant market, in most cases

⁵ Where company A provides a news service for company B, A is the wholesaler and B the retailer.

it relies on the decision-makers' judgement, just as a decision as to whether to include on-line sources of news and current affairs does in the case under consideration here.

In European competition law, a key threshold in the level of market power is the transition to 'dominance,' defined as the 'a position of economic strength ... affording [the firm] the power to behave to an appreciable extent status independently of its competitors, customers and ultimately of its consumer' (Whish, 2009, p. 174). Leaving aside the question of whether this definition might be adapted to describe a media universe without plurality, we note that in competition law and policy, a well-known single index of market concentration is the Hirschman-Herfindahl index or HHI. It provides a neat and economical way of assessing concentration and is calculated by expressing the market shares of all participants as percentages, squaring the individual percentages and adding up the result. It can range between 10,000 in the case of a 100% monopoly and 0 where there are a very large number of firms each with a vanishingly small market share. The application of the squaring rule has the effect of giving high weight to large firms. Thus a firm with a 20% share will add 400 points to the index, which is twice the combined contribution of 200 points of two firms each with a share of 10%.

Is there a logic behind the formula? In fact, it can be shown that under conditions there is a direct link between the size of the index and the expected mark up over costs in product prices (Belleflamme and Peitz 2010: 58-9).⁶ Nonetheless, its principal use in competition law is as one characterisation of market structure and as a filter to identify merger proposals where their impact on concentration is insufficient to warrant further examination.

Applying the HHI to the Ofcom consumption data suggests the following contribution to the index of each media firm:

BBC	1369
News Corporation	144
ITN	144
Sky	100
DMGT	25

⁶ The key underpinning of this result is the so-called Cournot assumption, that each firm sets its prices on the hypothesis that all other firms will keep their quantities supplied at the existing levels.

Trinity Mirror	16
Northern & Shell	9
Guardian	9
Telegraph	4
Others (estimate)	<u>10</u>
Total	1830.

On this basis, a hypothetical merger of News Corporation and Sky would increase the index by 240.⁷ However, it is notable that the resulting firm would still account for a share considerably lower than that of the BBC.

So far, the discussion has emphasised the parallels between indicators of pluralism and indicators of market power. But there are profound differences as well. One concerns ‘internal pluralism’, the possibility that one part of a media firm will adopt a different stance on current issues than another. Doing so may enhance profitability, but it is less likely that strongly competitive internal competition between two goods or services produced within a single group will do so. The question of internal pluralism acquires a particular salience when a media firm, such as the BBC, is under a statutory or other obligation of impartiality. Impartiality is a fugitive quality and is, logically, discontinuous with pluralism. If impartiality were achievable there would be scant need for pluralism. But, of course, impartiality (though an attribute worth striving for) is unachievable and pluralism stands in for failure to achieve impartiality.

Secondly, the fact that consumers of news and current affairs multi-sourcing (relying for news on different firms over the same period) may have different effects than applies in the case of multi-sourcing other goods or services. In the latter case, multi-sourcing may show the ability to switch, but overall consumption market share may still be a useful partial indicator of market power. In relation to plurality, limited exposure at the consumer’s

⁷ $(22 \times 22) - (12 \times 12 + 10 \times 10)$. Co-incidentally, such a change in the HHI based on existing market shares would render a merger subject to further investigation by the USA Department of Justice. If alternatively, Sky left the market, and half of its audience went to the BBC, the index would increase by 395, simply because the BBC had such a large share to begin with.

discretion to alternative sources of news may be enough to meet the public interest requirement for plurality.

It took decades for a consensus to become established about how to assess market power, by applying expert judgement to a variety of structural and behavioural observations, and commissioning research into particular aspects. Work on such a consensus has begun but is far from being completed in respect of media pluralism. Can anything be done while this process (the success of which is not guaranteed) unfolds.

4. The role of public finance.

The consequences of the impact on content (particularly news) production of the above-noted shift of advertising revenues away from “legacy” media and to the internet (particularly to search engines) has been addressed differently in different countries. In Europe, France and the UK, as ever, provide a convenient vignette of the range of responses. In both countries, and in most European states (Australia, Canada, Japan, South Korea and elsewhere provide further cases in point), there is already a high (and in some countries very high) level of public intervention in media markets through the provision of public service broadcasting and, less important and not so widely spread, press subsidies), but recent developments have stimulated proposals for and the implementation of new forms of public intervention. The French Government, with its customary active interventionism, has required public service broadcasting to cease to take advertising (with obvious benefits to advertising funded commercial television in France); increased subsidies to the newspaper sector – notably by providing 600m euros in support over three years; offered free hard copy newspapers to young people; and imposed a levy of 0.9% on the turnover of telecommunications firms and ISPs for a content fund⁸. There has been no such bold initiative in the UK, although the last Labour government (which lost office in May 2010) proposed to fund three pilot schemes to provide news (located in northern England, Scotland and Wales) with up to £47m over two years, the money taken from an underspent BBC budget line, initially identified for digital television switchover.⁹ However, the necessary legislation was not passed.¹⁰

⁸ See EUBusiness 2010. The conformity of the French levy with European Union stipulations is a matter of dispute.

⁹ See: http://www.culture.gov.uk/reference_library/media_releases/6782.aspx
http://www.culture.gov.uk/what_we_do/broadcasting/6549.aspx
http://www.culture.gov.uk/what_we_do/broadcasting/6721.aspx

¹⁰ For informative and penetrating analyses of these issues in the UK context see House of Commons 2010, House of Lords 2008 and Ofcom 2007.

5. New initiatives and entrants.

The decline of legacy media has been accompanied by a collapse of entry barriers and the blossoming of a host of specialist internet based media: websites; e-zines; Web 2.0 collaborations¹¹ manifesting the flourishing of what is variously been called “citizen”, “distributed” or “networked” (Beckett 2008) journalism or a “fifth estate” (Dutton 2007). And in the USA (and Australia), “crowd financed” or “community funded” sites, such as www.spot.us, have developed through which readers/supporters can contribute to the financing of enquiries, resulting in publication, proposed by journalists. However, despite the growth of news and comment internet sites/media and a host of blogs such sites tend to have a mayfly life.

Despite the promise of “fifth estate” journalism and the contributions to pluralism made by new web based entrants to the UK media there are solid grounds for supposing that the basis on which authoritative, affordable and pluralistic public media have been available for around the last hundred years is falling away. In television, first resources and then consumption are shifting way from free to air to subscription (pay wall protected) television; in radio no viable subscription model has been developed but, in the UK at least, advertising revenues are falling slowly though consumption is shifting faster to licence fee funded services; and in the press sector, advertising funded newspapers are (with the qualified exception of free sheets) in decline with no viable pay wall or other alternative emerging.

The change in the advertising market seems, if the trends identified above are sustained, to presage a significant qualitative change in the general mass media environment: for legacy media, threats seem most salient; for new media, opportunities. But in both legacy and new media these changes point to considerable uncertainty about how the core social and political role of public media – to provide pervasive and affordable access to diverse, high quality, content – is to be sustained particularly in a context where mergers, closures and diminishing legacy media pluralism seems inevitable.

¹¹ Much of the content of such sites, eg *Wikinews*, is dependent on material derived from legacy media. Paterson (2005) found that news websites were heavily dependent on a few sources, notably the international news agencies Reuters, AP, AFP and the BBC. And Davies’ (2008) account of a content analysis of more than 2207 stories drawn from five top UK national daily newspapers argued that more than 70% of stories are derived from press releases or news agency sources and, at most, 20% (and possibly as few as 12%) were originated by journalists.

Are online media satisfactory substitutes for legacy media? The answer is - not yet. Despite the fact that OxIS (Dutton, Helsper and Gerber 2009: 19) found that “The Internet has become the first port of call when people look for information, ” as great as is the potential of “crowd sourced” media and “webzines”, such as www.openDemocracy.net, and as impressive is the expansion of the consumption base of “legacy” media made possible by online access (enabling the UK based *Guardian* newspaper to aspire to the status of “the world’s leading liberal voice”¹²), online media do not have either the salience and authority (or the resources)¹³ yet to challenge effectively legacy media, in holding to account the powerful or in acting as conduits for the democratic functions variously identified by followers of Mill, Habermas and Mouffe.

Compare, for example, the UK’s most important political story of recent years, the *Daily Telegraph*’s 2009 release of data concerning UK Members of Parliament’s (MPs’) abuse of the Parliamentary expenses system and *WikiLeaks*’ 2010 release of US military and diplomatic Documents (c500,000). *The Daily Telegraph*’s release resulted in changes to the rules governing UK MPs’ expenses; MPs’ resignations; successful criminal prosecutions and so on. Whereas *WikiLeaks*’ release, though orchestrated with highly legitimised legacy institutions, has yet to exert a comparable impact. In the future, new media may acquire an institutional force comparable to contemporary legacy media’s. But, to date, they have not done so. However, there can be no doubt that legacy media’s capacity to hold the powerful to account is declining – and without a commensurate rise in the capacity of the online “fifth estate”¹⁴ to hold politicians to account. But this decline is not a consequence of declining media pluralism – rather both declining media pluralism and declining media capacity to hold the powerful to account stem from falling media revenues. As Holznagel and Schumacher (2012: 9) claim “Das Internet” really does “ändert alles”¹⁵.

6. What can be done?

¹² See <http://www.guardian.co.uk/sustainability/strategy-worlds-leading-liberal-voice> accessed on 7.11.2011. see also *Le Monde* 2011.

¹³ Of course, abundant revenues do not guarantee effective media performance: but adequate funding may be seen as a necessary, but not sufficient, condition for such effectiveness.

¹⁴ Our distinction between legacy and online media is a convenient analytical distinction, of course most legacy media have an online presence (though, thus far, without making much of a contribution to the bottom line); online and legacy media are symbiotic with respect to content; hybridised on/offline entities have developed and so on.

¹⁵ The internet changes everything (authors’ translation).

The difficulties of objective measurement of concentration; the pressure of a changing advertising market, increasingly compromising the economic viability of “legacy” media and leading (almost) inevitably to further closures and mergers in many media markets; and the public service broadcasting elephant in the room, making regulatory action directed only towards private sector media concentration intellectually indefensible, makes recourse to traditional remedies – prohibiting mergers, requiring dis-aggregation etc – unlikely to be effective. What alternatives exist?

First, a conceptual shift is needed. Focusing on prohibition of mergers and establishing a floor level for media concentration is unlikely to be effective when the economic base on which a pluralistic mass media has been established is fast eroding. Already there have been perverse outcomes arising from the implementation of “legacy” concentration regulation – such as the forced closure, as a consequence of regulatory requirements designed to inhibit concentration of ownership, of radio services following the merger of EMAP and Scottish Radio Holdings.¹⁶ Rather than conceiving of media pluralism as an objective to be realised by prohibiting mergers, it should be thought of as pointing towards intervention designed to facilitate and encourage entry. Here Ofcom’s 2005 proposal for a Public Service Publisher (PSP)¹⁷ deserves resurrection, in relation to the media content and structure under discussion here. Much would need to be done to develop criteria for eligibility for funding and assessment of performance but these matters are not our concern here. However, the current context is one in which extraordinary and damaging economies are being made in news gathering and provision; this is exemplified in the report, in a study (Ofcom 2011) of the proposed merger of Kent Messenger Newspapers and Northcliffe Media, that there is only one political correspondent in the whole UK local newspaper sector. Simply ensuring that there is a satisfactory number – whatever that number is to be – of media enterprises operating in a particular market is unlikely adequately to safeguard the public interest. Hence the need to re-think matters in terms of encouraging supply rather than simply limiting concentration of ownership of a given set of activities. Pluralism in outlets (titles/services), though desirable, is but one element in an ensemble of forms of provision which are required

¹⁶ The *Smash Hits* service in Aberdeen, Ayr and Dundee closed so that the post-merger service offer conformed to what was then Ofcom’s concentration of ownership regulations. See Guardian 2006.

¹⁷ A PSP would allocate public funds to foster entry and support media pluralism. See, inter alia, Ofcom’s News Release publicising its “request for comments” on its PSP proposal at <http://media.ofcom.org.uk/2004/11/03/ofcom-invites-detailed-responses-on-public-service-publisher/> accessed on 14.11.2011.

if citizens are to have access to media which enable them to function as informed citizens, hold power to account and deliberate together.

Second, both “old style” concerns about excessive concentration and the exercise of dominance and “new style” proposals for consideration of public support, eg on PSP lines, for qualifying firms (and particularly new entrants) point towards a comprehensive policy review of established public interventions and notably public service broadcasting. Recall that the BBC’s 37% share of news consumption in the UK, when assessed by analogy with the HHI market concentration methodology, which attaches a high score to ‘large’ firms,¹⁸ represents 1369 in a total score of 1830, or 75% of the concentration measure. This provides additional grounds, at a time of overall public expenditure cuts, for allocating a portion of the broadcasting licence fee to non-BBC media players.¹⁹

7. Conclusion.

Diminishing media pluralism is a pervasive global concern. Tendencies towards concentration in the sector, driven by the quest to realise high potential returns to economies of scope and scale, have been amplified by structural change in the media advertising market which have significantly diminished revenues accruing to the legacy mass media. A symptom of this global concern has been a search for new methods of assessing concentration – that developed by the KUL (2009) for the European Commission is exemplary. However, such a methodology may be excessively complicated and vulnerable to criticism on the grounds that too many of the judgements involved in its implementation are just that – matters of judgement. Instead, a developmental approach to definition and measurement has been recommended similar to that successfully applied in competition law to address issues of market power. It is hard to avoid the expectation that, applied in a contemporary UK context, this will reveal that in the UK media environment the BBC will emerge as a primary locus for concern in respect of diminishing media pluralism.

However, this will be a long-drawn out and possibly fruitless venture. And regulation is not the only instrument available to address problems of declining pluralism. Moreover, a fundamental change is taking place in the legacy mass media sector which makes such measures less and less effective. Advertising revenue, which has underpinned the economics

¹⁸ We repeat our earlier caveat about this ‘read across’.

¹⁹ Precedents have been established by reserving a portion of the licence fee to fund the introduction of commercial television in the 1950s (in the event funding from the BBC was not required) and more recently by funding S4C from the licence fee.

of the sector for more than a century, is migrating away from legacy media. Business failures are likely to intensify – not least as media firms respond to declining revenues by closing/merging titles and services - and this points towards review and revision of established forms of public intervention. In a declining market, enforcing ownership limits may be counter-productive, in the sense that they may lead to the closure of salvageable outlets. A better policy is to contemplate use of public funding of the new entrants and alternative voices to promote plurality. In the UK, this might best be found by “topslicing” the present, generous, public funding of the BBC.

Thus essentially a two-track approach is suggested. One track is to encourage competition in the development of measures of pluralism and of the design of regulatory mechanisms to maintain it. The other is to ensure that current ownership rules are saving rather than destroying media products, while considering how existing desirable forms of public funding can best promote the objective of pluralism. In the UK the natural terrain within which this approach can be applied is the distribution of the compulsory broadcasting licence fee.

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