

## Leveson Inquiry: Witness Statement from Robin Foster

July 17, 2012

### 1 Introduction

I am pleased to submit this witness statement on media plurality to the Leveson Inquiry into the culture, practices and ethics of the press. It draws on work I have recently completed for the Reuters Institute for the Study of Journalism at the University of Oxford, which was supported by the Joseph Rowntree Reform Trust. That report, “News Plurality in a Digital world”, examines the implications for news plurality of digital media and in particular the role of new digital gatekeepers, and is attached as an annex to this statement. This statement also addresses the wider questions raised by the Inquiry.

#### 1.1 Current and recent career history

I am an independent adviser on regulatory, policy and strategic issues in the communications sector, and a founder member of the UK-based media consulting group, Communications Chambers, in which capacity I have advised various clients on media policy, including plurality.

I have previously held senior executive positions at Ofcom, which I joined in 2003 as a founding partner in charge of strategy, at its predecessor the ITC, and – from 1993-2000 -at the BBC. I was an independent member of the previous Government’s Digital Britain Steering Board, which developed proposals for UK broadband policy and regulation, and was one of the four independent advisers to the UK Convergence Think Tank, which preceded Digital Britain. I ran the Global Communications Consortium research programme at London Business School from January 2006 to March 2008, and was previously Research Fellow at Bournemouth Media School. I am currently a member of the Ofcom Spectrum Advisory Board, and a member of the Electronic Communications Expert Advisory Panel at the Irish Communications regulator, ComReg.

I have written extensively about media policy and public service broadcasting. My recent publications include reports on the economic impact of the audio-visual sector (“Creative UK”), and the importance to plurality of television news (“Informing the UK”). I was author of a paper on plurality for an Ofcom/Reuters Institute book published in 2008 (“Plurality and the Broadcasting Value Chain”, in “The Price of Plurality”). As noted above, I have recently completed a comprehensive review of plurality and digital media, again for the Reuters Institute.

### 2 Plurality in context

#### 2.1 The importance of plurality

I would like to start with a short summary of the context for the current debate, before moving on to address the specific questions of interest to the Inquiry. Media in general play a vital role in shaping our culture, values and society. News media in particular have a significant part to play in supporting the effective functioning of a democratic society, by ensuring wide and free dissemination of a diverse range of information, opinions and arguments. High quality news helps us find out what is going on in the world and enables us to debate key issues of the day. Effective journalism can play an important role interrogating the work of public and private institutions, and holding authorities to account.

For that reason, media plurality is an important goal. The European Commission in its Working Document on Media Pluralism<sup>1</sup> argues that media pluralism means “all measures that ensure citizens’ access to a variety of information sources, opinion, voices etc. in order to form their opinion without the undue influence of one dominant opinion forming power”.

In my view, there are three main approaches to securing media plurality: structural and behavioural regulation, and various forms of public support. Structural rules include limits on ownership and concentration. Behavioural approaches focus on the conduct and content of news providers. Public support uses direct and indirect funding to secure news provision which the market, left to itself, would not deliver. These approaches should be seen as complements rather than as substitutes. Their relative importance is likely to change over time as markets change and public expectations evolve.

## 2.2 Structural approaches

Rules aimed at preventing undue concentration or influence in news media are found throughout western democracies<sup>2</sup>. The most common approaches outside the UK are either to limit the number of media enterprises that can be owned in any single medium (no-one can own more than one TV station in each market, for example), or to establish caps on market share in each medium, typically set with reference to some measure of readership or audience share (for example no-one can own more than, say, 25% of the national newspaper market). These might be “bright line” limits (i.e. limits which cannot be breached), or thresholds above which some form of review is triggered. They are sometimes complemented by limits on cross-media ownership, especially across print and broadcast media.

Such limits are typically applied only in the event of a proposed merger or acquisition, but in a few countries, triggers/thresholds are set such that if a company becomes too big through organic growth, regulatory action could also then be considered.

## 2.3 Behavioural approaches

In parallel, various types of behavioural regulation are sometimes used. These can include obligations placed on news media to provide certain types of coverage. For example, commercial public service broadcasters in the UK are required to broadcast specified amounts of local and national news each week, and to observe due impartiality rules. In some countries, news media mergers are allowed to proceed only after guarantees have been given by the merging parties to invest in certain types and volumes of news content –such as investment in local news. Other measures might include requirements on merging parties to make space available in their newspapers or on television for the inclusion of alternative viewpoints.

## 2.4 Public support

Where commercial markets cannot provide sufficient plurality, and regulation on its own is not enough, direct public support for high quality news may be an option. Many western democracies for example, have used a mix of direct public funding and other forms of support for both broadcasting and the press.

In Europe, public funding for public service broadcasting is common. Publicly funded broadcasters are typically charged with providing high quality, diverse and impartial news. The BBC, for example, is expected to go even further than its commercial broadcast counterparts in representing a diverse range of news and views on its airwaves.

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<sup>1</sup> “Media Pluralism in the Member States of the European Union”, SEC (2007)32

<sup>2</sup> A summary of international comparisons is given in a Communications Chambers report for the BBC, of which I was the joint author, attached as an annex to the BBC’s submission to the Ofcom consultation on measuring media plurality.

Other examples of public support cited in a recent Reuters Institute report<sup>3</sup> include general VAT exemptions for newspaper sales (e.g. in the UK and Finland), distribution support for national newspapers (e.g. in Finland, France and the US) and targeted subsidies for national minority or regional language newspapers (e.g. in Italy and Finland).

## 2.5 Plurality and competition

It is worth noting that plurality is not the same thing as competition, although they are linked. Competition law helps protect the economic interests of individuals *as consumers* and acts to secure a reasonable level of choice and value in any commercial market. Insofar as competition law can prevent the emergence of monopolies, it will also have some positive effect on plurality. Society as whole, however, may take the view that the outcome of a competitive market does not fully serve the interests of *individuals as citizens*. For example, markets might provide high quality news to only the most commercially attractive segments of a population, society would prefer all to benefit. Markets might focus only on the most popular types of news; society would like a much deeper and more diverse range of news and views to be widely available, reflecting minority as well as majority viewpoints. Markets might tend towards an oligopolistic structure (with only a few big suppliers) while society would prefer a larger number of different suppliers.

## 3 Risk of over-concentration

Turning to the Inquiry's specific questions, a major issue for any plurality framework is the market environment in which it must work. Will the market for news become more concentrated over the medium term?

Drawing on my recent work for the Reuters Institute, I would argue that there are two important, contradictory but related trends affecting the UK (and worldwide) news market at present, which have complicated consequences for market concentration: economic pressures facing established news providers, and continued growth in popularity of new digital and social media. The former is partly but not wholly caused by the latter. Economic pressures may push news markets towards further concentration. Digital media could, in contrast, lead in some areas to greater plurality. We will be in a difficult transitional period for some time to come. Tighter plurality rules which would risk making it harder for established news providers to sustain a viable business into the future should therefore be treated with caution.

### 3.1 Economic pressures

As many commentators have explained, established news media are facing multiple competitive threats as traditional revenue sources dry up and consumers slice and dice their content with the help of new digital media. It is not guaranteed that commercial news markets will always provide financial support for the quality and range of news and analysis demanded by a properly functioning democratic society. Some of these threats are:

- An increase in competition for readers/audiences and advertisers, as previously distinct markets converge and new entrants emerge.
- Changing demand as lifestyles change and consumers find other uses for their time and money.
- Fragmentation and disaggregation, with consumers selecting stories that appeal (e.g. through search and social media) rather than reading their favourite newspaper brands from cover to cover.
- Rapid move of classified and now display advertising to other more effective media.

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<sup>3</sup> "Public Support for the Media", Rasmus Kleis Nielsen with Geert Linnebank, Reuters Institute, August 2011

- As yet no clear sign that enough consumers will be willing through direct payment to make up the gap in lost advertising revenues in order to support a “full service” news proposition.

Even markets the size of the UK may not in future be able to support the range of competing local or national news brands that have been available to date: consolidation, not diversity, might be the dominant future trend.

## 3.2 Digital developments

Convergence may at the same time create opportunities for new forms of digital news services, offering more sources of news, opportunities for multiple sourcing by consumers, and greater participation by citizens in setting the news agenda.

### More news

Digital media already provides access to a wider range of news than has ever been available before. In addition to the websites offered by established UK news media such as the Guardian, BBC or Telegraph:

- Alternative internet-only news sources are available – ranging from generalists such as the Huffington Post, to specialists such as Gawker (entertainment) and TechCrunch (ICT).
- News aggregators –such as Yahoo – provide users with easy access to a much wider range of news material from many different sources than they could ever have easily accessed in the analogue world, and also increasingly invest in their own content.
- All online users now have easy access to a vast number of websites produced by local news media in countries around the world, from the NY Times, to the Sydney Morning Herald.

However, online-only investment in news origination is still comparatively small<sup>4</sup>, and mainstream news brands still account for a large share of digital news supply and consumption:

- In the UK, Ofcom’s public interest test report shows that in terms of share of page views and minutes, the top 50 news sites are dominated by old media news brands.
- In the US, two thirds (17) of the 25 most popular news sites are run by traditional news organisations.

This is not surprising. Mainstream news providers are often the only organisations with the resources and expertise to sustain effective newsgathering and journalism around the world. Even successful new entrants such as the Huffington Post rely heavily on third party content and blogs alongside their own material.

### A wider debate

If news *supply* of direct relevance to the UK itself is only modestly improved by the internet, there is a much greater increase in the volume and diversity of discussion, commentary and opinion. Some of this is, of course, uninformative babble, but that should not devalue the importance overall of the internet in providing a much more open and democratic forum for debating the big (and small) ideas of the day. Blogs and niche discussion sites can have an important influence on the way in which their users form their own opinions on the main political issues. The importance of blogs can also extend beyond their direct audience because they are so widely read within other news organisations.

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<sup>4</sup> In a recent report for Ofcom, for example, consultants Mediatique estimate that UK online spend on news provision was only £111m compared with around £2bn for the whole news market. This supported 660 full time posts compared with 24,000 in total. (“The provision of news in the UK”, Mediatique, June 2012).

### Multi-sourcing of news

Arguably a bigger impact on plurality arises from the ways in which digital media change both patterns of news consumption and how users debate and discuss the news. A world in which everyone accesses a range of news sources is inherently more pluralistic than one in which most people watch only one TV news channel or read only one newspaper.

Here the data are encouraging. Ofcom's latest cross-media audience research suggests that the average number of sources consumers use for news is 4.8, drawn from 2.4 platforms. 77% use three or more sources. Clearly the more that online news encourages multi-sourcing – as it appears to do – the more we can feel comfortable about the range of news and views actually accessed by the UK public.

### Search and social media

Most recently, social media – especially Facebook and Twitter – are bringing another sea change in the way users find out about news stories and communicate them to each other. New Facebook apps enable mainstream news providers to access a new demographic and achieve much wider circulation of their news content than might otherwise have been the case. Social media also has the potential, through the engagement of large numbers of users, to create an alternative news agenda, with different priorities to those selected by mainstream news editors, and allows individuals in the news to communicate directly with news users in an unmediated way. Most recently, the process has been seen with great impact in the so-called Arab Spring and now in Syria.

### The “filter bubble”

These developments have not been universally positive. Early criticisms of digital news media focused on the uneven quality of internet news - for example the challenge of separating fact from prejudice and of finding something of value among the multiplicity of unreliable or inaccurate content sources. These concerns have to a degree been addressed by the increasing effectiveness of search, social media and mainstream news brands in helping users find content which is relevant and trustworthy.

More worrying from the plurality perspective is the contention that, through the filtering of stories via friends, or via the personalisation of search, digital media encourages people to remain within their own comfort zone. Eli Pariser<sup>5</sup> uses the term “filter bubble” to describe this phenomenon – in which search engines and social networks use algorithms and personal data to select only content which matches existing tastes and preferences. The risk, some have suggested, is that people access only those news stories in their direct field of interest, and read only those opinions with which they are familiar and agree. As a result, they get less exposure to conflicting viewpoints and become closed to new ideas, subjects and information.

### **3.3 New digital intermediaries**

As I explain in my recent report for the Reuters Institute, many of these changes depend on another key development - the rise of new digital intermediaries or gatekeepers, who are playing an increasingly important role in helping news providers get to market and news users find and access news content on a range of digital devices.

Increasingly, access to digital content is being mediated through third parties. They help users navigate the open web, but also – in the form of new closed networks – can exercise much greater control over the delivery of content and the devices on which it can be accessed. If they wish to

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<sup>5</sup> “The Filter Bubble: What the Internet is Hiding from You”, Eli Pariser, Penguin Press, May 2011.

reach the widest possible audience, news providers now need to find ways of distributing their content via these digital intermediaries to ensure they reach their intended market:

- Via content aggregators like Yahoo and MSN
- Via search engines like Google and Bing
- Via social networks like Facebook and Twitter
- Via digital stores linked to specific consumer devices, like Apple's iTunes, Amazon and Google Play.

In their different ways, these intermediaries all have a key role to play in helping users find, use, create and share high quality news material, and in enabling news providers to make money from digital media. Equally, they can all also be thought of as potential bottlenecks or gatekeepers who may, deliberately or otherwise, control or constrain access to news, or affect its commercial viability. These new digital players are increasingly important to the distribution of and monetisation of news in the digital world, but the current plurality framework has little to say about their activities at all.

### **3.4 Implications of market trends for plurality**

In my view, these market trends, especially given the uncertainties in this transition from an old to new media world, mean that we should act cautiously when considering the introduction of any new structural rules to address shortfalls in media plurality. Tighter plurality rules might be unnecessary in the longer run if digital developments meet their more optimistic expectations, while they could risk the viability of established news providers in the short to medium term.

Ownership/concentration rules in particular have their limitations:

- They may well ensure the existence of a number of different news providers, but they cannot in themselves ensure that a diverse range of news is supplied.
- They ignore the nature of the content being supplied. Some news organisations take pride in representing different perspectives and opinions (so-called internal plurality); others take a more partisan line. Simple market concentration measures do not distinguish between these approaches.
- They say nothing about the ethics and conduct of the news media. Structural rules would not necessarily have prevented illegal phone hacking or any of the legal but unpleasant conduct apparently pursued by some UK newspapers.
- They may be counter-productive in a market which is facing serious economic challenges – see below.

Mergers or acquisitions can be stopped, but at the risk of harming long-term market prospects. Consolidation – both within and across media - may increasingly be necessary to secure on-going viability of news provision (and to provide a better product to consumers). If a news provider becomes “too powerful” through organic growth, options for intervention are even more limited. It is hard to imagine much public good coming from mandating a successful media company to close titles, divest parts of its business, sell fewer newspapers, or make its product less attractive to consumers. If plurality has diminished not because one company has become too successful, but because one or more have declined or dropped out of the market, then it is even harder to conceive of appropriate remedies.

## **4 Changes which could deal with problems and risks**

### **4.1 A different focus**

In my view, future plurality policy might more profitably be focused in the following areas:

- Improved measurement and processes – we need a better understanding of how to measure plurality, what “sufficiency of plurality means in the UK, and how best to monitor and respond to market changes.
- Behavioural remedies – if large news providers are an inevitable consequence of market trends (and of value to society because of the financial support they provide for high quality newsgathering), then perhaps more emphasis in future should be placed on influencing the way they behave rather than constraining their scale and scope.
- Access rules – as noted, new digital gatekeepers could have a huge impact on the range and diversity of news which UK citizens can access. The incorporation of rules to secure continuing open and fair access for all news suppliers to these networks and gateways could be an important new part of the future plurality framework.
- Positive support for plurality – to address enduring market shortfalls, it will also be important to use available regulatory levers and public funding to continue to secure high quality and impartial news from designated suppliers.

## 4.2 Improved measurement and processes

I suggest we can look to improvements in a number of areas, many of which have already been recognised by Ofcom and others.

### Periodic reviews

Plurality is currently only considered in the event of a merger or acquisition. This means that there are no available tools for dealing with excessive media concentration that arises through, for example, organic growth of a particular company, or because other companies exit the market. There are arguably good reasons for this, as noted above: intervention in such cases might penalise success or act as a disincentive to growth and innovation. Nevertheless, there are grounds for considering whether our approach to plurality could be modified in a way which would allow proportionate responses to such changes in market concentration over time, without imposing high costs on the sector.

It would therefore be sensible to introduce, as Ofcom has recently proposed, periodic reviews of plurality alongside existing provisions for a public interest test.

These reviews should take place every 3-4 years, and be formed of 2 stages: a quick preliminary review to assess whether there are grounds for significant concern/major changes since the last review, and then (if concerns/changes are identified) a full review. It is my sense that, if Ofcom were to put in place a process for on-going collection of data on agreed metrics, a full review would require in the region of 6 months to complete, and Ofcom would be the organisation best placed to carry it out. The review would be charged with assessing whether or not plurality is sufficient, using transparent and widely understood indicators and informed by guidance from Parliament.

Like Ofcom, I do not think that it would be sensible to carry out plurality reviews in response to changes in market share or concentration which occur through organic growth (or decline) of companies. Given market volatility, there would be a risk of constant reviews, which might then have a chilling effect on investment and innovation.

### Improved measurement

Second, there is no widely accepted common currency which can be used in assessing and measuring plurality, or lack of it, in the provision of news. Much of the debate at the time of News

Corporation's proposed acquisition of BSkyB was fuelled by disputes over the measurements adopted by Ofcom, their validity, and what they really showed.

As Ofcom's recent report concludes, there is no single metric or indicator which can capture plurality effectively. Consumption shares describe which news providers are most used, but do not necessarily explain relative impact. Revenue shares capture economic power, but do not necessarily say much about ability to influence the news agenda. Measuring the number of news suppliers tells us that news is available but not whether it is actually consumed. An understanding of how many different news sources are accessed by users (multi-sourcing) can offer a significant insight into levels of plurality not captured by simple market share data.

Nevertheless, it should be possible through use of a small set of indicators to build up a good picture of the different aspects of plurality, which can be used to gain consensus for any review process and its outcome. Ofcom's proposals to focus on availability, consumption (reach, share, multi-sourcing) and impact (importance) seem a sensible start, but I would suggest that more work needs to be done in two areas:

- First, to improve our understanding of how audiences/readers use their different sources of news, and how they use news sources to form their views on matters of public debate.
- Second, to develop further thinking on how to create a robust way of comparing consumption across different media on a consistent basis.

### Parliamentary guidance

Third, and linked to this point, we do not have a clear sense of what a "sufficiency" of plurality would look like. There is no objective measure, and Parliament has offered no guidance on this matter to Ofcom. In the absence of any such clear view, any assessment of whether, for example, a merger leads to "insufficient" plurality, will be problematic.

To date, there has been no successful attempt to define what in the UK we think is an acceptable level of plurality – when is plurality sufficient? Ofcom sets out some thoughts on this in its recent report, and argues persuasively that sufficiency cannot be reduced to a single metric. However, neither is it sensible to leave this important issue to the regulator alone.

Rather, there would be value in Parliament providing more guidance to Ofcom in the next Communications Act on what is meant by "sufficiency" and the criteria to be used by Ofcom in assessing whether it exists, either in applying public interest tests or in its periodic reviews. For example, in defining sufficiency, Parliament might wish to establish some guidelines or benchmarks for the different market share indicators which Ofcom could then use to inform its plurality assessments. Alternatively, Parliament could express sufficiency in the terms suggested by Ofcom in its recent report, which included a diverse range of providers, high reach, active multi-sourcing, and low barriers to entry. Reflecting economic realities, there may need to be different expectations for national and local media – local news markets may be unable to sustain the same degree of plurality as national markets.

### Include digital media

Fourth, current plurality rules were designed with old media – newspapers and broadcasters – in mind. They do not easily accommodate the effects of online news in their application, and they do not apply to the new digital gatekeepers referred to earlier.

Clearly, any future review of plurality must take into account the changes associated with digital media referred to earlier. Online news providers should be included in the plurality metrics used to assess plurality, although careful thought will be needed in selecting which types of online provider



are most relevant to UK plurality. Online news providers should also be brought within the scope of any future public interest test – so that mergers/acquisitions between established media players and new online news providers would be properly captured.

As my report for the Reuters Institute explains, large digital intermediaries or gatekeepers should similarly be included in periodic reviews and in the public interest test framework. One option, as suggested by Ofcom, would be to widen the current definition of media enterprise to include online news providers and large digital intermediaries like Google, Apple and Facebook as well as broadcasters. Alternatively, Ofcom could be simply required to have regard to the activities of a newly defined category of digital intermediaries when determining whether or not there is sufficient plurality. Intermediaries would not be classified as full media enterprises, but would still be relevant to any plurality review.

#### More thinking on remedies.

Fifth, there has been little considered analysis of the range of “remedies” or actions which might be available to the regulator should plurality be found in any review to be under threat. If caps on single or cross-media ownership are thought to be ineffective (see above), then what other regulatory approaches are available?

In the News Corporation/BSkyB case, the merging parties were asked to propose undertakings, which the regulators then assessed. A better approach might be to have greater visibility in advance of the range of such remedies which regulators might consider, their benefits and costs, together with a clear assessment of how they might work in practice.

#### Accountability

One important process issue is whether it is appropriate for the Secretary of State to retain final responsibility for taking a decision in the event of a media merger or- in future – should Ofcom find in a periodic review that plurality is at risk. Those who believe that it should be the case, argue that such decisions, which are inevitably judgmental, should be democratically accountable and not left to regulatory technocrats. Others argue that plurality decisions should be taken out of the political arena to avoid perceptions of bias. My view is that both sets of concerns could be addressed by securing, as I have suggested, a greater role for Parliament in setting out the parameters within which Ofcom can reach any plurality judgement, but then allowing Ofcom or the relevant competition authority to take the final decision on individual cases. Consideration could be given to setting up an appeals process, which might involve the right to appeal to a specially-convened body of individuals with expertise in plurality issues. Such a group would not need to sit permanently, but could be drawn together as needed on a case by case basis.

### **4.3 Behavioural remedies**

In the absence of effective structural tools, we will need to take a closer look at so-called “behavioural” interventions which might be used to improve the range of content available, or to place constraints on the extent to which owners can influence the editorial decisions made by their news media. For example, in the case of a media merger, or if one owner is considered to have become too powerful through organic growth, then behavioural interventions might include:

- requiring the relevant party or parties to put in place content investment commitments,
- requirements to make space available for the inclusion of alternative viewpoints,
- effective right of reply procedures,
- and independent editorial boards.

A weakness of some behavioural remedies is that they are hard to enforce if they are clearly not in the interests of the parties to which they have been applied. Nevertheless, it should be possible to specify and track performance against specific requirements if carefully formulated and capable of being measured – as has been the case to date with public broadcasting obligations.

#### 4.4 Access

As my report for Reuters argues, special consideration should be given to the impact on plurality of the activities of new digital intermediaries, and in particular their role in providing access to news.

Digital intermediaries like Google, Facebook and Apple can have a significant and potentially positive role to play in news plurality. They help us find news stories from a wider range of sources and play a big role in enabling multi-sourcing of news, with friends sharing news stories through social media more widely than would otherwise have been possible. Smartphone and tablet apps help sustain news brands, improve access to existing product, and provide a platform for improved product features, as well as making charges for news more acceptable to users. These more compelling news products may help sustain and build future demand for high quality news.

They also give rise to some public interest concerns, though:

- They occupy an increasingly influential gatekeeper position for news, which could allow them, if they chose to do so, to determine which sources of news we have easy access to, through search engine ranking of news stories, for example, or the degree of prominence given to different news sources in app stores.
- Although few intermediaries are active in producing their own news content, they do make editorial-like judgements which, at the margin, might affect the nature of news content which we can access in the UK.
- Whether or not intentionally, they could have a big impact on the economics of news provision, and the way in which they do business with news providers has implications for the longer term viability of high quality news in the UK.
- Their capacity and appetite for engaging in the wider political debate is an important issue for the future: although they have no sign of wanting to behave like the press barons of old, they could wield significant power if they chose to use it, especially if they at some stage also decided to invest in or acquire news and other content provision.

Perhaps most of all, there are questions about the level of engagement with local sensibilities and concerns, and the accountability to the public and politicians in the UK of companies that see themselves as more global than national. A new plurality framework needs to consider how it would address those challenges for the next decade and beyond.

In my report for the Reuters Institute, I suggest a four-tiered approach for addressing these issues:

- Securing effective competition. Active use of existing competition rules to ensure that news consumers and suppliers are protected from any anti-competitive behaviour.
- A new “plurality dialogue”, involving government, intermediaries and other relevant parties, to ensure that intermediaries understand and are fully engaged with UK citizenship priorities, and are properly accountable to the public.
- Incorporation of digital intermediaries within the new plurality review framework proposed recently by Ofcom.
- Consideration of remedies or backstop regulatory approaches, particularly in the area of access, that might be called on should intermediaries over time prove to be a threat to plurality.

If plurality concerns are identified, Ofcom would need to consider the available remedies or actions it could take. The focus should be on ensuring transparent and open access to news. Approaches might include:

- A requirement that digital intermediaries who account for a significant share of news access should guarantee that no news content or supplier will be blocked or refused access, unless for legal or other good reason, such reason to be explained with reference to publicly available criteria.
- A requirement that such digital intermediaries should link to or carry in a prominent position a range of news content deemed to be in the public interest.
- The establishment of an independent review body which could audit access practices and ensure greater transparency than is possible with purely internal rules.

Such steps could be taken after Ofcom has carried out a plurality review and in the event that there are significant concerns, or by introducing ex-ante regulation if thought necessary<sup>6</sup>.

## 4.5 Positive support

Finally, consideration should also be given to the more positive or pro-active tools available to government and regulators to secure continuing availability of high quality and impartial news. Currently, public support for news in the UK is focused on the BBC (via the licence fee), and commercial PSBs (via certain privileges given to Channels 3, 4 and 5). Zero-rating of VAT for printed newspapers can also be seen as a form of public support. The role of these interventions in helping to secure news plurality should not be underestimated. Future policy could focus on:

- Securing existing provision – for example by ensuring the BBC licence fee is sufficient in the longer term to support high quality news, and requiring continued provision of national and regional news on Channel 3.
- Addressing local news shortfalls -pressures on the commercial supply of local news are particularly acute, so a high priority could also be given to exploring opportunities for more ambitious cross-media approaches to local news provision, building on existing local TV plans and perhaps in partnership with local news media and the BBC.
- Plurality and the BBC – as Ofcom suggests in its recent report, the BBC could be given a more explicit responsibility to deliver plurality through its extensive news outlets, and to report periodically on how it is achieving that goal.

## 5 Effects of these changes

I hope I have explained clearly the problems which I think need to be addressed and how my proposals might help.

At a more general level, I suggest that a new plurality framework should aim to:

- Provide a sensible balance between safeguarding plurality and enabling the news market to grow and innovate.

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<sup>6</sup> A precedent for such access regulation is found in the existing application of “must carry” and “appropriate prominence” rules to broadcast content on digital transmission networks and electronic programme guides.

- Be forward looking - taking a truly cross-media approach with enough flexibility to adapt to changing circumstance over time.
- Provide greater clarity to the market about approaches, measurements and processes – and hence help create a less uncertain investment climate.
- Provide more effective accountability to Parliament (through more detailed guidance to Ofcom) while depoliticising each individual decision by taking away those decisions from the Secretary of State.
- Include new as well as old media and be prepared to address new concerns as they arise, for example as may be the case with new digital gatekeepers.

I believe that the proposals I have set out would help contribute to meeting those aims.

**Robin Foster**

**July 17, 2012**