

Claire Enders evidence to the Leveson Inquiry

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Lord Justice Leveson's inquiry has asked me to comment on media plurality. The letter says first that the Inquiry is 'interested in hearing evidence about how plurality can be monitored'. I have written a response to this below.

I then go on to answer the three further questions that the Inquiry has asked me:

2. Is there a risk that there is, or could be, over-concentration of control over news and current affairs provision?
3. Do you recommend any changes, to the law or otherwise, to deal with any such problem...?
4. What effects would you seek to achieve...?

My colleagues and I are available to expand on our submission and can provide further data.

My background

I undertook my first project in television in 1982 whilst at the London Business School and have spent the last 30 years working as an analyst, strategist and forecaster in the media and technology sectors in the UK. I spent almost 15 years working in cable TV, satellite TV and commercial Public Sector Broadcasting before setting up Enders Analysis in 1997. My company creates comprehensive models and forecasts of all parts of the UK media, telecoms and technology sectors and provides its research and expertise to 140 organisations (see Annex 3). I am a Trustee of Glyndebourne and a member of the Advisory Board of the Natural History Museum and am of British nationality.

How can plurality of news provision be monitored?

1. In our answer to this question we assume that the Inquiry is interested in quantified assessments of the degree of news plurality at any one moment, and over time.
2. There are several ways of monitoring and measuring news plurality. They include:
 - a. calculating the *share of public consumption* of news held by individual news providers.
 - b. calculating the *weekly or monthly 'reach'*. (Reach is the number or percentage of a particular demographic group that sees a particular news source in a stated time interval).
 - c. estimating the degree of *'multi-sourcing' of news*. (This metric calculates the number or percentage of a particular demographic group that sees news from more than one source or from more than one proprietor).
3. *Share of consumption*. We favour this measure of news plurality. It is calculated by:

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- a. estimating the total number of minutes of viewing of TV, listening to news on radio and reading newspapers, news magazines and web sites by all people in the UK over a period of time. This data is available from standard market research sources. Better estimates can be generated by tailored research but, in general, precision is not absolutely essential.
 - b. each minute of news consumption can be regarded as equal, or individual media can be up or down-weighted. For example, TV minutes can be seen as more or less important than newspaper minutes.
 - c. individual media are allocated to their owners (e.g. minutes spent reading the Mail and the Mail on Sunday are combined).
 - d. the percentage share of news consumption held by particular owners can then be derived.
 - e. a plural news market is one in which no one owner has a large share of news consumption and/or a large number of owners each have non-trivial shares.
4. In the UK, our work shows that although there are an unusually large number of national newspapers, the BBC has a high and growing share of all news consumption. This is due to the range of TV and radio services that the BBC operates, public trust in its overall approach and the decline of print consumption. Preponderance of public service broadcasting in news consumption is a feature of every European market but the BBC's performance is exceptionally strong (presumably due to increased funding in the last decade).
5. Ofcom calculates that the BBC commanded a 74% share of national and international TV news consumption in 2011, whilst originating 31% of all TV news broadcast. Some observers view the BBC's predominance as being indicative of a low level of plurality in the UK. My view is that a high level of concentration is inevitable in TV and radio news due to its cost and the paucity of commercial models. The BBC is also subject to strict impartiality requirements, which help to mitigate some of the risks associated with its high share of news consumption, and claims "internal plurality" across its myriad services.
6. *Reach*. In our view this has less value. It is calculated by:
- a. using standard market research sources or tailored research, estimating the number of people who consume the output of a news provider for at least a specified minimum time (e.g. 5 minutes) during a specified period (e.g. a week).
 - b. the reach of a particular news source is therefore the percentage of a particular group (e.g. women aged 16-24) who have had any exposure to the source during a week or month.
 - c. to assess the reach of a particular owner of news media, the reach of individual media cannot be added. This would involve double-counting. A separate calculation has to be done to estimate the aggregate reach of multiple news sources.
 - d. a plural news market is one in which many sources have large percentage reaches. The existence of multiple providers with large

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reaches means that many people are being exposed to different news sources.

7. *Multi-sourcing*. This has some use but less than the consumption measure. It is calculated by:
 - a. probably using tailored research, estimating the number or percentage of people who are exposed to a minimum specified amount of news from zero, one, two, three or more different sources over a specified period of time, such as a month.
 - b. Multi-sourcing estimates can be created treating all news media as separate or, for example, combining related weekday and Sunday versions of a newspaper or by combining all the sources owned by a particular news provider. So, for example, we might calculate the degree of multi-sourcing assuming the Times and the Sunday Times are separate or not, and by treating reading of the Sun and Sun on Sunday as within the same ownership group.
 - c. The multi-sourcing measure is normally expressed as an average: the average UK citizen who follows any news is exposed to 4.8 media sources.
 - d. A plural news market is one in which there are high levels of multi-sourcing.
8. Many people have expressed uncertainty about the meaning of the word 'plurality' as applied to news provision. They have sometimes said that it is so vague as to be meaningless. As part of our work surrounding the public interest intervention by Vince Cable, we commissioned an academic specialist to assist our thinking. Professor Charlotte Brewer concluded that in the context of mass media 'plurality' unambiguously means 'a large number' and not, for example, a number more than one.¹ To be clear, when we talk of 'plurality', we are talking of a profusion, a multiplicity and an abundance. It is reasonable to assume that Parliament had this in mind when it voted for legislation emphasising the importance of multiple owners of media. Professor Brewer's work was included in our submission to the Ofcom Public Interest review which is appended to this document (Annex 2).

Question 1 – Is there a risk that there is, or could be, an over-concentration of control over news and current affairs provision?

9. Society has said that news plurality is important.
 - a. Higher levels of plurality are regarded as better than lower levels.
 - b. All other matters being equal, plurality is greater if providers have roughly equal shares of news consumption than if one or two news sources have large shares and others have very small shares.
 - c. Plurality can wax and wane:
 - i. as a result of takeovers of one news source by another
 - ii. by the growth of one larger medium at the expense of all others
 - iii. by the withdrawal of a news source

¹ See the short post by Professor Charlotte Brewer on the meaning of the word plurality at <http://blogs.lse.ac.uk/mediapolicyproject/2011/03/02/guest-blog-what-does-the-word-plurality-mean/>

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- iv. by the launch of new services (viz. Al Jazeera)
 - d. Although this is very poorly expressed in legislation, regulatory and court judgments and departmental guidance documents, it seems to be the conventional assumption that at some point decreasing plurality would result in 'an over-concentration of control over news and current affairs provision'.
10. As background, it may be worth noting that the legislation obliges regulators involved in assessing a **newspaper** merger to determine whether it will maintain 'to the extent reasonable and practicable, a sufficient plurality of views in newspapers in each market for newspapers in the UK or a part of the UK'.²
 11. However in the case of *cross-media or broadcast* mergers the public interest intervention can be directed at answering the question as to whether there is 'a sufficient plurality of persons with control of media enterprises serving that audience'.³
 12. Parliament thus decided that in the case of a merger between newspapers the issue as regards plurality was whether a distinctive *point of view* would be lost. The background to this concern is important. The preceding legislation (The Fair Trading Act 1973) had been used to protect plurality in several cases, usually in Northern Ireland. In these proposed mergers the Competition Commission (then the Monopolies and Mergers Commission) or the Secretary of State had decided that there was a risk of a disappearance of a distinctive unionist or nationalist viewpoint and blocked the transaction.⁴ It is the loss of a voice adding range and diversity that matters.
 13. Precedent therefore clearly suggests that the regulatory authorities (and the relevant Secretary of State) have concluded in the past that 'over-concentration' (in the language of the Inquiry's question) is a risk. As an aside, plurality of views in regional and local media has declined in recent years, and will continue to do so as a result of economic forces affecting regional and local newspapers.
 14. In a recent report prepared for Ofcom, Mediatique calculated that of a total £2,063 million invested in UK news provision in 2011, print media accounted for £1,345m (65% of the total), TV for £461m (22%), radio for £146m (7%) and online for £111m (5%). As newspaper industry revenues decline, their investment in news provision will inevitably continue to shrink.
 15. The specific risk in the case of low levels of 'views' plurality is that the range of news, comment and opinion reaching the citizen is lower than is beneficial for a healthy democracy. Put at its simplest, conventional opinions and views of the world are not challenged. People wanting to dissent from the standard political viewpoint are not given the ammunition to defend their iconoclastic or heretical views by using the ideas and examples provided by skilled commentators in the press. The lack of plurality of views means that stale ideologies are ineffectually challenged. Political power is exercised with less of

² Section 58 (2A) and (2B) of the Enterprise Act 2002 as amended by the Communications Act 2003.

³ Section 58 (2C) of the Enterprise Act 2002 as amended by the Communications Act 2003.

⁴ See, for example, the Monopolies and Mergers Commission report into the Trinity plc/Mirror Group plc and Regional Independent Media Holdings Ltd/MirrorGroup plc proposed merger (July 1999)

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- a check from independent and critical outsiders. This becomes true of all other power blocks, such as the business and City establishments.
16. The proposed News Corporation/BSkyB merger was not assessed under the newspaper rubric of the Enterprise Act. In the News Corporation case Ofcom was initially asked to determine whether the transaction may affect the 'sufficiency of plurality of persons with control of media enterprises'.⁵ (By contrast to plurality of views, we call this 'ownership' plurality). Implicit in this wording is that a greater concentration of ownership may move the UK from having a sufficiency of owners of media enterprises to an insufficiency. It is reasonable to suppose that, if the legislation seeks to block transactions that result in insufficient plurality, Parliament must have thought that low levels are indeed likely to result in a 'risk... of over-concentration'.
 17. Low levels of 'ownership' plurality cause problems for different reasons to poor plurality of views. A country with few owners of mass media is vulnerable to those owners seeking to gain advantage – political, financial or otherwise – from politicians. We know from British history that powerful proprietors do not hesitate to seek to manipulate the political system. Aitken, Rothermere and Beaverbrook made and unmade governments in the first quarter of the 20th century.⁶ Whatever we may think of the situation today, the position was far worse a hundred years ago when a small number of powerful newspaper owners contested political favour.
 18. A more recent illustration of a perceived attempt to use media ownership to advance a political agenda has been seen in Australia. In the last few weeks, billionaire mining magnate Gina Rinehart has been trying to obtain board seats at Fairfax Media, the publisher of the Sydney Morning Herald, but she refused to sign up to the company's charter of editorial independence. Ms Rinehart is a leading opponent of the Australian government's proposals on carbon and mining taxes, making many suspicious that she wanted to use her ownership to push for an editorial line that opposes the new levies. The major Australian newspapers are largely owned by Fairfax and News Corporation and ownership plurality is low. In the end, Ms Rinehart failed and has now sold a substantial shareholding in the last week; Fairfax Media may not survive.
 19. More generally, powerful media owners with substantial interests including news media are liable to enter into compacts with governments and politicians. Owners require that their financial interests are enhanced by government in return for the news media controlled by these proprietors providing support for a particular party or group of politicians. In the academic literature on the subject, this process is called 'capture'. It is this aspect of the News Corp/BSkyB transaction that I found most urgent and troubling at the time and still today. This issue is far more important than any other in regard to plurality, in my opinion.
 20. The evidence is that countries with a larger number of participants in news media are less susceptible to this form of corruption. A recent survey paper from the LSE says simply that 'pluralism makes capture harder'.⁷ It is more

⁵ The Public Interest European Intervention Notice is at <http://www.culture.gov.uk/images/publications/bskyb-intervention-notice-nov-2010.pdf>

⁶ David Cannadine's *Aristocracy* gives some details of this corruption on pages 328 et seq.

⁷ Andrea Prat and David Stromberg, *The Political Economy of Mass Media*, available at <http://econ.lse.ac.uk/staff/prat/papers/mediasurvey11.pdf>

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expensive for politicians to buy off companies, and the influence of any one media owner is lower, making the corruption less profitable to both parties.

21. It would be naïve and idealistic to posit the existence of politicians and governments who are not subject to this kind of influence. The means and resources of the world's largest media companies dwarf those of many governments and certainly those of individual politicians. Politicians must be protected from moral hazard, in my opinion, because they do not understand or grasp the media forces around them and are easily corrupted by them.
22. As part of my answer to the second question posed by the Inquiry, I now want to move on to discuss whether the concept of plurality refers just to news and current affairs, or whether it applies also to other types of information and entertainment. Our conclusion is that plurality matters both in news and across all other types of content. This provides me with a second reason to say why an over concentration of control of mass media matters.
23. First, I should point out that the recent emphasis on news plurality, and solely news plurality, represents a change from previous interpretations. For example, in its 2001 consultation document on media ownership laws, the DCMS included the following as one of several statements about the importance of plurality.⁸

Plurality maintains our cultural vitality. Different media companies produce different styles of programming and publishing, which each have a different look and feel to them. A plurality of approaches adds to the breadth and richness of our cultural experience.

24. I agree. Media companies act as the link between the creative person, whether journalist, TV producer, musician or games developer, and his or her public. They are, in effect, gatekeepers. A large media company can determine what the citizen sees and how much the producer receives in payment.
25. The purpose of plurality regulation is therefore to ensure that these gatekeepers do not become too powerful. Rules on plurality, here or anywhere in the world, are intended to protect the range and diversity of creative material reaching the citizen as well as to stop the malign influence of media owners on political or regulatory systems. Indirectly they also attempt to restrict the ability of large media companies to extract an unfair share of the price paid by the purchaser. (This is called 'rent seeking' by economists).
26. Policy makers have tended to assume that digital communications technology would naturally reduce the economic power of large media companies, making conventional plurality much less important. The thought was that the internet reduced the role of the media intermediary. Musicians, for example, would be able to profitably sell their songs directly to listeners rather than relying on record companies. Journalists would find new outlets outside conventional models, in the blogosphere or elsewhere online, and be able to survive and prosper.
27. So far, this 'disintermediation' has had limited effect. The vast majority of audio-visual entertainment and information still passes through large media

⁸ DCMS Consultation on Media Ownership Rules, November 2001
<http://webarchive.nationalarchives.gov.uk/20100407120701/http://www.culture.gov.uk/images/consultations/mediaownership2001.pdf>

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companies. Most coverage of news stories originates in the press and radiates outwards into other media. The growth of the internet is not, in itself, reason to dispose with plurality rules. Moreover, the internet has not thus far created highly trusted mass media and we believe that it will not.

28. The need for plurality is enhanced by the unusual economics of mass media. The marginal cost of serving an extra customer is often zero. For example, a TV programme viewed by one million people costs the same amount to produce as if the same programme was seen by two million. The company with the most customers makes far more money than the next placed business. Monopolies and oligopolies in TV broadcasting are the norm rather than the exception, everywhere. Access to capital and to other markets, and regulatory and political capture, can greatly assist or hinder these competitive dynamics. This feature means that large companies tend to get larger, while smaller businesses suffer. Plurality rules can help protect the economic survival of the less powerful companies.
29. To be clear, plurality rules must have as their explicit purpose the distortion of the natural processes of competition. They have to hold back the more successful, larger, financially stronger companies in order to help the smaller competitors. The most important example of this in recent decades was the legal requirement that UK TV companies had to use productions made by independent companies. From 1990 onwards the independent production quota has mandated that the biggest broadcasters cannot source all their own programmes from their subsidiaries, and Terms of Trade were mandated to ensure the survival of successful programme producers. This law created by far the most successful TV production industry outside the US and, even after 30 years, is still considered important to the operation of that market.

Question 2 – Do you recommend any changes, to the law or otherwise, to deal with any such problem or risk?

30. In this section, I want to explore one idea that might serve to protect plurality of *owners*, which is the establishment of an arbitrary cap on the share of the media market that can be held by any one company, or linked group of companies.
31. I intend to focus in this evidence on the establishment of a rule on the maximum share of the media market that can be held by one company. There are other, additional, measures that could be considered as well, including strengthening Ofcom's powers of intervention in media matters to the same level as in telecoms. The aim of my proposal is to:
- a. reduce the chance of a company systematically making exchanges of corrupt favours with government
 - b. or exerting undue influence on the political process
 - c. minimising the possibility of a media industry gatekeeper having excessive control over content providers, restricting the availability of information and entertainment to citizens and customers or increasing its price.
32. The outline of the proposal is simple. We believe that Ofcom should measure the size of the UK media market revenues each year. Each major participant should be obliged to report its turnover inside that market. If any participant wishes to enlarge its activity through a merger or acquisition, it must consider

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- the effects on its overall share of the market and take steps, if necessary, to keep below a certain share of the market.
33. A precise definition of what is included in the media market and what is not is up to Ofcom to determine. Our draft proposal includes TV, radio, newspapers, magazines, internet advertising and several other sectors. (A copy of the proposal is appended to this submission – Annex 1). Although delimiting the precise extent of the market is a far from easy task, it is entirely possible for an expert regulator already with substantial experience in market definition and market sizing.
34. In our quantitative analysis of how our cap might work, we showed a total media market value of between £30bn and £40bn and we suggest a maximum share of 15%. In other words, the largest single company could have no more than about one seventh of the total market. If the market definition were tightened to include only TV, newspapers, magazines, radio and internet, then the percentage cap might be set at a higher percentage level. Clearly this is a subject in which Parliament, as well as Ofcom, can be expected to take a close interest.
35. This proposal – whatever the final decisions on the percentage limit and the definition of the market – has the great advantage of utter clarity. In the language of regulators it offers a 'bright line' over which companies cannot go. It would only affect a very small number of the very largest existing media businesses in the UK.
36. Those who have commented unfavourably on this proposal have tended to focus on two aspects they find unappealing:
- a. the arbitrary limit
 - b. the sense that the idea 'penalises success'
37. *The arbitrary limit.* Most regulatory interventions in the UK weigh a variety of factors, some quantified, some not, before the decision taker reaches a conclusion. We think that this produces uncertain, complex processes that are often subject to appeals lasting several years. Among other effects this delays changes, drains Ofcom's resources and diverts energy from innovation. The inestimable advantage of an arbitrary limit is that it offers complete regulatory certainty to companies and dramatically reduces the grounds of appeal. It is also cheap and quick to administer. In my career and that of my colleagues working on regulatory matters we have seen many interventions fail because powerful companies are able to outgun or capture regulators. In our view, apparently brutally arbitrary rules are the only way to protect against this risk.
38. *Penalising success.* The whole aim of plurality regulation is to stop one or two companies coming to completely dominate a market. So although our idea does mean that growing companies might face a block on growing further, through major corporate activity, we stress that this is a necessary part of any effective plurality regime.

Question 3 – What effects do you seek to achieve? Why do you consider these effects to be desirable?

39. The principal effect of our proposal is to block any single owner controlling too large a share of the total media market, now or in the future. It is through financial muscle that proprietors exert most of their influence and we seek to

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ensure that no company ever gets too large. The UK is a unique country with its own history, culture and economic structures. It has a unique and uniquely successful media ecosystem. It has always protected plurality at some level and despite the infinite quantity of online content, it will always be important to guard against the political, cultural and economic effects of over-concentration.

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