

## Media Reform Coalition – Submission to DCMS consultation on updating the media mergers regime

December 2024

### Executive summary

1. **The government’s proposed changes to the media mergers regime are necessary and long overdue.** Amending the Enterprise Act 2002 is an important first step towards restoring plurality in UK media ownership and promoting a diversity of viewpoints in the UK’s news media. The rapid, widespread and ongoing transformations across the media landscape make these essential democratic principles more important than ever.
2. **However, the proposed changes are not, on their own, sufficient to tackle the UK’s severe crisis in concentrated media ownership. The government should take this opportunity to create a more proactive and accountable media plurality regime.** An effective regime needs to include regular reviews of media markets, defined ownership caps as triggers for intervention, and new powers for a progressive scale of remedies such as public interest obligations, structural remedies and divestment requirements.
3. **Updating aspects of the mergers regime without also addressing the significant impact of online platforms on plurality and diversity reflects a misguided policy approach that ‘misses the wood for the trees’.** The wider plurality regime needs to be updated to account for the pervasive role of online intermediaries and digital platforms in shaping how online news is curated, distributed, discovered and monetised - and thus to the availability, plurality and diversity of news.
4. **The principles of the ‘fit and proper’ test for persons holding a UK broadcasting licence should be extended to Section 58(2C) of the Enterprise Act.** This would ensure that those owning, or seeking to own, any UK media enterprise demonstrate a genuine and sustained commitment to high standards of journalism, editorial and journalistic independence, regulatory compliance, and effective corporate governance.
5. **Section 58(2C) of the Enterprise Act should be enhanced with a new public interest consideration, specifying the need for online intermediaries and digital platforms to promote plurality and diversity in distributing news-related material.** The plurality regime must grapple with the all-encompassing impact of dominant tech platforms in shaping how news is prioritised and presented for UK audiences.

## **Background**

6. The UK is suffering from a severe crisis of concentrated media ownership and a limited diversity of viewpoints in news media.<sup>1</sup> Ofcom's recent claim that "no one media owner or voice has too much influence over public opinion or the political agenda"<sup>2</sup> obfuscates the means by which influence and agenda-setting operate in the UK news media, and is also dismissive of the clear evidence of media market concentration. Just three publishing companies - DMG Media, News UK and Reach - account for 90% of UK national newspaper circulation. DMG Media alone controls two-fifths of total combined weekly circulation, with News UK controlling a further one-third. Concentration in the local press is equally perilously high, with six companies owning 71% of all local print titles. The three largest local publishers - Newsquest, Reach and National World - each control a greater share of the local newspaper market than the smallest 157 local publishers combined. Netflix, Amazon Prime and Disney+ account for 80% of all UK video-on-demand subscriptions, while two companies – Bauer Radio and Global Radio – own 65% of the UK's local commercial analogue radio stations.
7. This crisis of concentrated media ownership has been exacerbated by the growth of a handful of online platforms and digital intermediaries, which control large parts of the 'infrastructure' of online news consumption.<sup>3</sup> Services owned by Meta, Google and X/Twitter are used for news by larger audiences than many of the UK's major broadcast and print media outlets. Approximately two-fifths of the total web traffic going to UK news publishers' websites comes from Google and Facebook, and over half of the British public now uses social media as a main platform for consuming news content.<sup>4</sup> Rather than enhancing news media diversity, these platforms instead reflect and entrench existing patterns of concentrated ownership, benefitting the same handful of companies that already dominate the UK's print and broadcast markets. For instance, the same three publishers that dominate national newspaper circulation account for more than two-thirds of the combined online reach of the UK's 50 largest newsbrands.<sup>5</sup> This further contradicts Ofcom's claim that the plurality regime is functioning because of "an *opportunity* to access a wide range of views from a variety of sources"<sup>6</sup> - this 'opportunity' is heavily contingent on the biases and preferences of how dominant online platforms operate.
8. The media mergers and plurality regime was already ill-equipped to deal with the threats of concentrated media ownership 20 years ago, and it is now woefully outdated and inadequate to address the on-going threats to media plurality and diversity of views in UK news media. Government interventions (or the lack thereof) into recent mergers and acquisitions of UK media, together with their associated regulatory reviews, have exposed the serious deficiencies of the current legislative framework for protecting media plurality. Most notably:

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<sup>1</sup> See Media Reform Coalition '[Who Owns the UK Media? 2023 report](#)' and accompanying data sheets.

<sup>2</sup> Ofcom, [Review of Media Ownership Rules](#), November 2024 (p. 11)

<sup>3</sup> Ofcom, '[Who controls the news we see online?](#)', March 2023.

<sup>4</sup> CMA, [Online platforms and digital advertising market study Appendix S](#) (pg. 6); Ofcom, [News consumption in the UK 2024](#) (p.5).

<sup>5</sup> Media Reform Coalition '[Who Owns the UK Media? 2023 report](#)'

<sup>6</sup> Ofcom, [Review of Media Ownership Rules](#), November 2024 (p. 11, our emphasis)

9. **A failure to act on increasing media concentration outside of merger situations:** It has been over 10 years since Ofcom recommended, and the government endorsed, introducing regular plurality reviews to respond to ‘organic’ changes in media markets that are not captured currently by the *post facto* mergers regime.<sup>7</sup> In that time the three largest national newspaper publishers’ share of circulation has risen from 70% to 90%, and the market control of DMG Media - the largest publisher - has grown from one-third to two-fifths. A lack of ‘clear white lines’ to quantify excessive controlling shares of media markets has allowed already-dominant players to continue consolidating their market position without legal avenues for public interest intervention.
10. **A failure to account for the changed nature of media influence and control:** Online intermediaries like social media platforms, search engines, news aggregators and video-sharing websites play a pivotal role in how news content is distributed, curated, discovered and monetised online. 64% of the UK public regularly uses an OI to access news,<sup>8</sup> and many of the most popular online sources are controlled by a handful of global ‘Big Tech’ corporations. As Ofcom’s recent review of its plurality measurement framework demonstrated, there is an urgent need to expand the current range of tools and metrics used to track changes in media plurality.<sup>9</sup>
11. **The lack of accountability and democratic oversight:** In 2011, the Secretary of State’s decision to wave through News Corporation’s (subsequently abandoned) takeover of BSkyB, against the recommendation of Ofcom’s public interest test<sup>10</sup>, showed the inherent susceptibility of discretionary powers to political pressure from dominant media organisations - exactly the kind of dangerous antidemocratic influence that media plurality policies are supposed to prevent.
12. **Partial application of ‘fit and proper’:** In 2017, Ofcom’s ‘fit and proper persons’ test of 21st Century Fox significantly underplayed corporate misconduct at 21CF subsidiaries, and not did apply sufficient weight to the widespread corporate malpractice, illegal activity and regulatory noncompliance at non-broadcast businesses controlled by the Murdoch Family Trust.<sup>11</sup> New market entrants such as GB News and current/forthcoming merger situations (e.g. the Telegraph titles, The Spectator and The Observer) highlight the need to apply a ‘fit and proper’ standard to all persons acquiring control over UK news media outlets.
13. **Unequal protection against threats to freedom of expression:** The foreign ownership ban, introduced as Section 130 of the Digital Markets, Competition and Consumers Act 2024, applies an unequal standard of protections against editorial interference and restrictions on journalists’ freedom of expression.<sup>12</sup> These concerns are an inherent threat to any media merger, yet the mergers regime leaves these essential principles open to interpretation in deals *not* involving foreign power.

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<sup>7</sup> Ofcom [2010](#) (p. 92) and [2012](#) (p. 28); see also Leveson Report [Executive Summary](#) (p. 46), [House of Lords Communications Committee](#) (p. 54) and [DCMS response](#) (p. 23).

<sup>8</sup> Ipsos/Ofcom, [Media Plurality Quantitative Report](#) 2022 (pg. 10)

<sup>9</sup> Ofcom, Media Plurality and Online News review [Annex 2: Measuring media plurality](#).

<sup>10</sup> Ofcom, [Report on public interest test on the proposed acquisition of British Sky Broadcasting Group Plc by News Corporation](#), December 2010 (p. 14).

<sup>11</sup> AVAAZ, [‘Defiance, not compliance: the culture and behaviour of Murdoch-owned companies’](#), October 2017.

<sup>12</sup> See Media Reform Coalition, [‘Submission to Ofcom public interest test on the potential merger situation in relation to Telegraph Media Group’](#), December 2023.

14. **Reliance on undertakings to mitigate public interest concerns:** Government and regulatory agencies appear predisposed to accepting behavioural undertakings-in-lieu (UILs) offered by acting parties in media mergers. Evidence from past mergers and acquisitions shows that UILs are regularly breached, ignored or fail to remedy the originally identified harm of the transaction.<sup>13</sup> This highlights the need for defined remedies that can be applied by the mergers regime in response to the scale of public interest concerns or harms identified by regulatory assessment.

## **Response to DCMS consultation questions**

### ***Definitions (section 6.2)***

15. We agree with the government's proposed changes to the definition of 'newspaper' outlined in Section 44 of the Enterprise Act 2002. It is essential that the mergers regime is able to apply to a comprehensive range of news publishers serving UK audiences, and that there is minimal distinction or disparity on the basis of producer, format or origin.

16. However, we are concerned that the proposed 'carve outs' for incidental news-related material (as defined in the revised Section 44(10A)(c) and revised Section 58(2H)(b)) could risk slippage, with media organisations that control significant market shares not being subject to proper mergers scrutiny under Section 58. Government should consider carefully the risk of vague or subjective interpretations of when and whether news-related material is deemed 'incidental'. This is particularly important in light of new media ventures such as podcasts, livestreams and video-sharing platforms, as well as 'traditional' operators like GB News, which has attempted to mask some of its news programming as 'comment' or non-news content to avoid regulatory censure.<sup>14</sup> Although this case relates to broadcasting standards rather than plurality, it highlights the changing nature of news and the potentially high impact of ostensibly 'non-news' media outlets on plurality and diversity within audiences' news consumption mix.

17. We are also very concerned that the government's stated policy intention to "exclude news aggregators ... and online intermediaries" from definitions of news demonstrates a reluctance to address the significant role these platforms play in exacerbating concentrations in media ownership and influencing the news production process. Updating aspects of the mergers regime without taking the opportunity to properly address the impact of online platforms on plurality and diversity would reflect a policy approach that 'misses the wood for the trees'. While it is currently (but may not remain<sup>15</sup>) the case that these platforms are not news publishers, and thus outside the scope of the *mergers regime*, they undeniably play a defining role across many parts of the 'news supply chain'

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<sup>13</sup> Media Reform Coalition, '[Fox/Sky merger review: The problem of undertakings](#)', July 2017.

<sup>14</sup> See Ofcom's ruling on five investigations into [GB News breaches of impartiality standards](#), March 2024.

<sup>15</sup> Lewis Mitchell, '[Elon Musk has turned X into a globally influential media platform - and there's more to come](#)', The Conversation 13 November 2024. The official interviews between X owner Elon Musk and then-presidential candidate Donald Trump, organised by and published exclusively via the X platform, also highlight the potential (and likely intended movement) of these platforms towards producing original news content with significant political impact.

for online news - particularly curation, distribution, discovery, interaction and monetisation.<sup>16</sup> This highlights the urgent need for more comprehensive revisions to the legislation concerning media plurality and merger interventions, as we recommend throughout this submission.

### ***Public interest considerations (section 6.3)***

18. We agree with the government's proposals to broaden the scope of Sections 58(2A) and 58(2B) of the Enterprise Act 2002. Accurate news, free expression of opinion, ownership plurality, a diversity of viewpoints and high standards in journalism are essential goals for news media regardless of format, producer or origin. Revising the public interest considerations to apply these conditions to all merger interventions, rather than linking them to narrowly specified acquisitions, is a necessary and long-overdue change.
19. However, we are discouraged by the government's caveat in its consultation statement that it wishes to avoid "[bringing] into scope a very large number of companies, posing a disproportionate burden on business, as well as on government and regulators." The guiding principle behind mergers legislation should be what brings the greatest benefit to the public, and how best to protect their interests through restoring plurality and diversity to the UK's excessively concentrated news media. The purpose of the regime is to enable the government to identify threats to media plurality and act accordingly to safeguard core democratic objectives. Concerns about "bringing into scope additional entities that are less likely to pose public interest concerns", as the consultation statement argues, is back-to-front reasoning.
20. We also note that the government has not applied the same standardisation of scope to Section 58(2C)(c), the public interest consideration regarding media owners' commitment to upholding broadcasting standards. Although it is clearly inappropriate to apply this test to assessments of non-broadcast mergers, the principle remains that any entity seeking to acquire control of UK news media should demonstrate a commitment to high standards of journalism, consistent compliance with regulatory and legal codes, and effective corporate governance structures (particularly for guaranteeing editorial independence, staff welfare and press sustainability).
21. Given the government recognises that the mergers regime needs to apply to a much wider range of news media than just print newspapers and broadcast outlets, then it should also apply the spirit of 58(2C)(c) to the expanded scope of this regime. **We recommend that the government therefore revise paragraph (c) to introduce a broader 'fit and proper' public interest consideration in the mergers regime:**

(c) the need for persons carrying on media enterprises, and for those with control of such enterprises—

(i) to have a genuine commitment to high standards of journalism;

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<sup>16</sup> Ofcom, '[Media plurality and online news: discussion document](#)', November 2022.

- (ii) to demonstrate compliance with, and have a genuine commitment to complying with, the standards codes and complaints procedures of a relevant independent regulatory body; and
- (iii) to have in place structures of corporate governance and effective management that protect parts of the enterprise involved in creating news-related material from proprietorial interference and unethical or corrupt practices;

For the purposes of this section, a ‘relevant independent regulatory body’ is (in the case of media enterprises involved in broadcasting) Ofcom or (in the case of media enterprises involved in the supply of newspapers) an approved press self-regulator recognised by the Press Recognition Panel.

This would empower the Secretary of State to intervene on media mergers where there are reasonable grounds to consider that an acting entity would not uphold high standards of journalism (beyond concerns for accuracy and free expression), would not adhere to UK regulatory standards (either under the Broadcasting Code or the standards code of a recognised press self-regulator), or has demonstrated patterns of corporate governance incompatible with controlling a UK news media outlet.

22. Section 58(2) of the Enterprise Act should also be enhanced with a new public interest consideration, specifying the need for online news intermediaries and digital platforms to promote plurality and diversity in the news-related material they distribute. The plurality regime must grapple with the all-encompassing impact of a few dominant tech platforms in shaping how news is accessed, prioritised, sorted and distributed for UK audiences. As Ofcom noted in its recent review of the media ownership rules,<sup>17</sup> mergers between intermediaries are not within the scope of the current Public Interest Test regime - but these platforms have fundamentally transformed how news is distributed and consumed, and thus weakened the effectiveness of traditional tools used for intervening.

***Other considerations (section 6.4): Creating a proactive and accountable media plurality regime***

23. The proposed changes to the media mergers regime are not, on their own, sufficient to tackle the UK’s severe crisis in concentrated media ownership. The government should take this opportunity to create a more proactive and accountable media plurality regime, one which is equipped with a comprehensive understanding of the changing nature of media ownership and influence, as well as empowered to remedy excessive media concentrations through a progressive scale of positive and negative regulatory interventions.

24. **Regular plurality reviews:** It has been over 10 years since Ofcom recommended, and the government endorsed, introducing regular plurality reviews to account for and respond to ‘organic’ changes in media markets that are not captured currently by the *post facto* mergers regime.<sup>18</sup> **Section 391 of the Communications Act should be amended to create a new statutory duty on Ofcom,**

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<sup>17</sup> Ofcom, [Review of Media Ownership Rules](#), November 2024 (p. 24)

<sup>18</sup> Ofcom [2010](#) (p. 92) and [2012](#) (p. 28); see also Leveson Report [Executive Summary](#) (p. 46), [House of Lords Communications Committee](#) (p. 54) and [DCMS response](#) (p. 23).



**requiring it to conduct regular plurality reviews (RPRs) within and across media markets at least once every four years.** Distinct from Ofcom's existing duty to report on the functioning of plurality rules, the purpose of RPRs would be to determine whether there is a sufficient range of news providers that is (a) consistent with the principle of a broadly informed populace and (b) resistant to the potential for media proprietors to exercise undue influence over news production and the political agenda. RPRs would be equipped with the full suite of tools currently used in Ofcom's measurement framework for public interest tests of media mergers, together with more direct assessments of power of voice (i.e. dominance within individual media markets) and cross-media agenda setting.

25. **'Clear bright line' ownership caps:** the functioning of the mergers regime in relation to media plurality rests on the phrase 'sufficient plurality' as used in Section 58(2B) and Section 58(2C) of the Enterprise Act 2002. This phrase is not defined or specified, leaving the lynchpin of the regime open to subjective interpretation by Ofcom's own measurement and by the Secretary of State as the final decision-maker. **The government should introduce 'clear bright line' thresholds for intervention on media market ownership.** If, during the course of an RPR or merger public interest test, any media owner found to control more than a 15% share a single news media market, or more than 15% across combined cross-market news consumption, this threshold would trigger one or more proportionate interventions designed to remedy the identified threat to plurality. These interventions would scale on the basis of the severity of a media owner's impact on plurality, and also provide for a mix of positive and negative regulatory outcomes. These should include, but not be limited to:
26. **Structural remedies:** A requirement for structural remedies within the operations of dominant market players would help to guarantee internal independence and plurality. These could include the legal separation of management and editorial bodies, rank-and-file journalist representation on company boards or transitions to co-operative or pluralistic ownership structures that further safeguard news functions from proprietorial influence. The form and function of these remedies should be distinct from the traditional undertakings offered by acting parties in mergers, as these are typically utilised as a means to assuage regulatory processes rather than to meaningfully improve plurality or diversity.
27. **Public interest obligations:** Plurality interventions could also help to offset the negative impact of ownership concentration by requiring dominant media businesses to invest in public media enterprises or to provide funding for local public interest journalism. This might take the form of levies to sustain an independent Local Media Fund for local community outlets, or through financial support for an enhanced Local Democracy Reporter Scheme (currently funded exclusively by the BBC). Other public interest obligations might include requirements for minimum levels of investment in original newsgathering or investigative reporting.
28. **Divestment:** In extreme cases where RPRs identify that a media owner has acquired excessive levels of ownership and influence over a news media market, and where other remedies are unlikely to substantively reduce the overall harm its market position is posing to media plurality and diversity, a requirement for divestment should be available to regulatory authorities.