

**Canada's crisis of media:
Economists as the “rock
stars” of competition law**

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ABSTRACT

Canada is suffering a crisis of news media attributable in large part to regulatory failure. Its largest newspaper chain, Postmedia Network, took over the second-largest in 2014, but the federal Competition Bureau took no action. Despite promising not to before receiving regulatory approval for its takeover, Postmedia merged in early 2016 the newsrooms at duopoly dailies it owned as a result in four of Canada's six largest cities. Parliamentary hearings on local media quickly convened and issued a report in mid-2017 that recommended changes to the Competition Act to more effectively deal with media mergers and takeovers. This had also been called for by a 2006 Senate report on news media, which accused both the Competition Bureau and the country's broadcasting regulator of "neglect" for failing to curb media ownership concentration. The two largest chains traded forty-one titles in November 2017 and closed almost all of them, which the Competition Bureau is investigating. This paper examines the Competition Bureau's failure to act in response to the ever-increasing level of press ownership concentration in Canada. It finds the regulator to be dominated by economists who may lack sufficient grounding in media issues to effectively deal with mergers and takeovers in news industries. As a result, it concludes that reform of the country's Competition Act, which has been called for by successive federal media inquiries, is more urgently required than ever.

Keywords: Media competition; Canada; Competition Bureau; Postmedia Network

Canada is suffering a crisis of news media attributable in large part to regulatory failure. Its level of media ownership concentration has long ranked among the world's highest and continues to increase despite long-standing attempts to curb it. Notwithstanding a nominal 25 percent limit on foreign ownership of newspapers, Canada's largest chain was bought out of bankruptcy in 2010 by a consortium of mostly U.S. hedge funds, which had acquired the bulk of its distressed debt at deep discounts. Postmedia Network Inc. subsequently made several rounds of layoffs to cut costs amidst falling ad revenues largely to continue servicing the high-interest debt held by its hedge fund owners, which they kept on its books strategically. In 2014, Postmedia took over the country's second-largest chain, Sun Media, and while the federal Competition Bureau investigated, it took no action. Despite promising not to do so before receiving approval for its takeover, Postmedia soon merged the newsrooms at its duopoly dailies in four of Canada's six largest cities. Parliamentary hearings on local media ensued and sat for sixteen months. A report that resulted in mid-2017 recommended, among other measures, changes to the Competition Act to more effectively deal with media mergers and takeovers. This had also been called for by a 2006 Senate report on news media, which accused both the Competition Bureau and the country's broadcasting regulator of "neglect" for failing to curb media ownership concentration (Canada, 2006, p. 15).

Following the 2017 Parliamentary report, the newspaper industry quickly bid for a billion-dollar government bailout, which was almost as quickly rejected. Postmedia's CEO had warned the local news hearings that without government assistance the situation in Canada's newspaper industry would get "uglier." The promised ugliness followed the bailout rejection by months when in November 2017 Postmedia and Canada's now second-largest newspaper

chain, Torstar Corp., traded forty-one titles in the central province of Ontario and closed almost all of them. The Competition Bureau, which had for years ignored similar trades and closures in the far western province of British Columbia, announced it would investigate.

This paper is the third in a trilogy that examines ownership concentration in Canada's newspaper industry and the Competition Bureau's role in enabling it. The first recalculated concentration in the wake of Postmedia's 2014 takeover of Sun Media and found that as a result it published more than 75 percent of the paid daily circulation in Western Canada (Edge, 2016a). The second examined a landmark ruling issued by the Supreme Court of Canada shortly after the Postmedia takeover and found it increased the burden of proof on the Competition Bureau to block such mergers (Edge, 2017). This paper seeks to synthesize understanding of the Competition Bureau's failure to act in response to the ever-increasing level of press ownership concentration in Canada. It examines available information for clues to explain its inaction. It finds the regulator to be dominated by economists who may lack sufficient grounding in media issues to effectively deal with mergers and takeovers in news industries. As a result, it concludes that reform of the country's Competition Act, which has been called for by successive federal media inquiries, is more urgently required than ever.

Background

Canada has a long history of federal inquiries into rising media ownership concentration. Their recommendations for slowing the trend have always been ignored, however, only to see concentration again increase and the cycle of investigation, inaction, and concentration repeat. The result has been levels of media ownership concentration among the world's highest and a federal regulatory system that is apparently powerless to prevent them from rising further. Among Western nations, Canada's level of press ownership concentration

ranks behind only Australia and Ireland in dominance of its newspaper industry by the top few firms (Noam 2016). One journalist who investigated Canada's media ownership confessed astonishment at its state. "I actually didn't expect to discover the degree to which media ownership concentration still beggars belief," admitted Gill (2016, p. 2).

Media ownership has become so concentrated it's a wonder your newspaper or television broadcast doesn't come with a health warning. All this has happened under the noses of regulators who don't do their jobs and reporters who mostly don't do theirs, either. (Gill, 2016, p. 3)

The first major study of Canadian media was conducted in 1969 by a Special Senate Committee on Mass Media, which reported in three volumes the following year. It noted there were then only five Canadian cities where "genuine competition" between newspapers remained. "Of Canada's eleven largest cities, chains enjoy monopolies in seven. The three biggest newspaper chains . . . today control 44.7 per cent of the circulation of all Canadian daily newspapers; a dozen years ago, the total was only 25 per cent" (Canada, 1970, p. 4). The report recommended establishment of a Press Ownership Review Board to approve or more likely reject mergers and acquisitions of newspapers and periodicals. Its guiding principle would have been that "*all* transactions that increase concentration of ownership in the mass media are undesirable and contrary to the public interest – unless shown to be otherwise" (Canada, 1970, p. 71). Considerable debate ensued, but the recommendation was never adopted. A decade later, a Royal Commission on Newspapers was called to investigate the simultaneous closure by the country's largest chains of two major dailies and the sale of a third that created three more local monopolies. The Royal Commission held hearings across the country and issued a report in 1981, along with eight volumes of research reports. "Newspaper competition, of the kind that used to be, is virtually dead in Canada," its report concluded. "This ought not to have been allowed to happen" (Canada, 1981, pp. 215, 218).

Calculating that the top two chains then published 59 per cent of the nation's English-language daily newspaper circulation, the Royal Commission recommended limiting chain ownership to five dailies each, the circulation of which could not exceed 5 percent of the total (Canada, 1981). A proposed Canada Newspaper Act tabled the following year would have set the ownership limit at 20 percent (Lewis, 1981). It died on the order paper, however, with the fall of the Liberal government that had ordered the Royal Commission. Criminal charges of conspiracy and monopoly were laid against the chains by the anti-trust regulator of the day, the Restrictive Trade Practices Commission [RTPC]. Despite an incriminating paper trail which included seized company memos, the case ended in acquittal after a judge concluded the closures constituted "good business sense, not an illegal conspiracy" (Austen, 1983).

The RTPC was replaced due to ineffectiveness by the Competition Bureau in 1986.

According to one legal scholar, its enabling Competition Act "literally rewrote the book on competition law in Canada, particularly with regard to merger control and the review of the activities of dominant firms" (Ross, 1998, p. 1). It used civil procedures instead of criminal charges to counter mergers and monopolies, created the quasi-judicial Competition Tribunal to adjudicate disputes, and allowed appeals to the Federal Court of Appeal [FCA] and the Supreme Court of Canada [SCC]. The Competition Bureau was soon tested when Canada's largest newspaper chain, Southam Inc., bought most of Vancouver's community newspapers to add to its monopoly on dailies there in the late 1980s. It ordered Southam to divest several it found competed directly, but the company refused and a Competition Tribunal held hearings in Vancouver. It reduced to only one the number of titles Southam was required to divest, and company appeals to the FCA and SCC upheld the order (Competition Bureau, 2004).

The 1990s saw the gradual takeover of Southam by Conrad Black's company Hollinger Inc., which already owned the minor Sterling chain in Canada. That brought newspaper ownership by the top three firms to 77 percent by 1999, with 42 percent held by Hollinger alone (Canada, 2004). It sold most of the former Southam newspapers in 2000 to Canwest Global Communications, which owned the country's third television network. That was one of three major media mergers that year which brought a wave of newspaper-television "convergence" that made Canada a world leader in cross-media ownership. Newspaper ownership by the top three chains dropped as a result to 63 percent. Ownership of the former Southam newspapers by Canwest Global proved controversial, however, as its controlling Asper family used the dailies to promote their political agenda and business interests. A Senate inquiry into Canada's news media found that in 2003 three firms controlled 63.3 percent of newspaper ownership by circulation (Canada, 2004). A pair of scholars calculated the following year that Canwest, Quebecor, and Torstar comprised 62.3 percent of the market, concluding: "There is simply too much power concentrated in too few hands, and to believe that all is well would be foolhardy in the extreme" (Soderlund & Romanow, 2005, p. 12).

The Senate inquiry's 2006 final report on news media recommended automatic review of any merger of news gathering organizations that resulted in an audience share of 35 percent or higher. "The media's right to be free from government interference does not extend . . . to a conclusion that proprietors should be allowed to own an excessive proportion of media holdings in a particular market, let alone the national market" (Canada, 2006a, p. 24). The report was critical of both the Competition Bureau and the Canadian Radio-Television and Telecommunications Commission [CRTC] for what it called their "neglect" of news media. "One challenge is the complete absence of a review mechanism to consider the public interest

in news media mergers. The result has been extremely high levels of news media concentration in particular cities or regions" (Canada, 2006a, p. 24). Part of the problem, it noted, was that because they provided by far the bulk of media revenues, the Competition Bureau considered only the economic impact of a media merger or takeover on advertisers, not its impact on news consumers.

While it is true that some readers buy a newspaper for the advertising, most are interested in the news, information and other non-advertising features. . . . Clearly, a principal public interest about the news media should be the diversity of news and opinion. For this reason, advertising costs are not always the best indicator of market conditions for the news media given that rates can stay the same (or even decline) in the wake of increased concentration of ownership. (Canada, 2006a, p. 16)

The narrow way in which the Competition Bureau defined markets as local, rather than regional or national, may also have hindered it from preventing anti-competitive practices in the news media, according to the Senate report. "This definition of the news market, combined with the potentially misleading analysis of prices in the advertising market, has led to significant concentration of ownership of various media in Canada, notably community newspapers, in several regions" (Canada, 2006a, p. 17). What may have worked in an economic sense in most industries, it warned, was not appropriate to such a politically important institution as the nation's press. "The Competition Bureau's operating procedures may be well suited to analysing most markets for goods and services in Canada, but not the news media market" (Canada, 2006a, p. 17). The Bureau's "silo" approach also missed a critical dimension of news and information, added the Senate report. "Namely, the importance of the plurality of owners and the diversity of voices, not just in a given community but in the wider regional and national landscape. This is in sharp contrast to the regulatory regimes in [other] countries" (Canada, 2006a, p. 17).

The Senate report recommended adding a new section to the Competition Act requiring automatic review of news media mergers to prevent dominance by one owner in any market, be it local, regional, or national. As the Competition Bureau was unlikely to have the expertise to deal with the public interest in such mergers, it also recommended that the new section provide for the appointment of an expert panel to conduct the review. None of the measures was enacted, however, as the government had changed earlier in 2006 from Liberal to Conservative (Edge, 2016b).

Postmedia purchase

Prior to Postmedia buying most of the Sun Media chain from Quebecor in 2014, the two companies combined for 53.1 percent of newspaper revenues in Canada (Noam, 2016). A post-purchase calculation of paid daily circulation gave Postmedia 37.4 percent, Torstar 14.3 percent, and Quebecor 10.3 percent, for 62 percent by the top three firms. More troubling was Postmedia's dominance in Western Canada, where it owned eight of the nine largest dailies in the provinces of British Columbia, Alberta, and Saskatchewan, and published 75.4 percent of the paid daily circulation (Edge, 2016a). When it announced its takeover of Sun Media, Postmedia promised to preserve competition in four of the country's six largest cities where it owned both dailies as a result (Artuso, 2014). The purchase was approved the following year by the Competition Bureau, which ruled it was "unlikely to substantially lessen or prevent competition" in those markets (Competition Bureau, 2015a). A combination of factors played into that conclusion, according to a press release issued by the Competition Bureau, including:

- the lack of close rivalry between Postmedia and Sun Media newspapers;
- competition from free local daily newspapers;
- the incentive for Postmedia to maintain editorial quality in order to continue to attract readers and advertisers to its newspapers; and

- the increasing competitive pressures from digital alternatives in an evolving media marketplace. (Competition Bureau, 2015a)

The Bureau noted in a longer statement that it had "reached out to a broad set of market contacts, reviewed thousands of documents from industry participants, and carried out extensive econometric analyses." It said it found "very little evidence of direct rivalry between the parties' newspapers with respect to advertising. . . . the evidence demonstrated that the parties are not close rivals" (Competition Bureau, 2015b). Market contacts indicated that prices for advertisements varied "significantly" between the newspapers, which delivered "largely distinct audiences." The Bureau found that the Sun Media tabloids and Postmedia broadsheet newspapers "tend to serve as complements rather than substitutes" (Competition Bureau, 2015b). Econometric analyses using data provided by the parties and other market participants, it added, "failed to support a finding of strong rivalry between the parties to the proposed transaction" (Competition Bureau, 2015b). Extensive documentary and empirical evidence, according to the Competition Bureau statement, demonstrated that the parties were also "not close rivals from the perspective of readers, a finding that was supported by the views of market participants and by an analysis of the demographic characteristics of the parties' respective audiences."

In short, the parties' newspapers appeal to different types of readers and those readers do not tend to substitute between the parties. Furthermore, the evidence showed the presence of free local daily newspapers in the relevant markets to be an important competitive constraint. (Competition Bureau, 2015b)

Postmedia executives then reiterated that they planned to follow in Calgary, Edmonton, and Ottawa the model that had been used for decades at the Pacific Press newspaper duopoly in Vancouver, seeking efficiencies by combining administrative and production departments, but keeping separate newsrooms (Dobby & Bradshaw, 2015). Within a year, however, a

further sharp drop in advertising revenue prompted another round of corporate cost cutting aimed at achieving an additional \$50 million in savings, half of it from the former Sun Media newspapers (Postmedia aims, 2015). Postmedia announced in January 2016 that it would lay off 90 workers and merge the newsrooms of its duplicate dailies in Vancouver, Calgary, Edmonton, and Ottawa. The announcement was likened to a "miniature Black Tuesday for Canadian journalists," referring to the newspaper closures and consolidation in 1980 that prompted the Royal Commission on Newspapers (Feibel, 2016, p. 12). The Competition Bureau disavowed responsibility and said it would not re-examine its approval of the Sun Media takeover (Bradshaw, 2016). The Parliamentary committee that quickly convened hearings into local news provision issued a report in mid-2017 which recommended, among other things, a new section of the Competition Act to deal with media mergers and the appointment of an expert panel to perform a "diversity of voices" test to guard against market dominance. The Postmedia takeover of Sun Media and its subsequent newsroom consolidation, it noted, had wreaked a "devastating impact" on local news provision

As predicted by the Senate report, the diversity of voices and opinions have been greatly diminished and the principle of democracy, challenged. . . . These warnings, if heeded may well have prevented the situation we face today, where Canada has the highest vertical and horizontal media concentration in the world. (Canada, House of Commons, 2017, p. 58)

Citing confidentiality concerns, the Competition Bureau refused a request for disclosure of its market analysis performed as part of its investigation into Postmedia's purchase of Sun Media (D. Corriveau, personal communication, September 26, 2017).

The quantitative imperative

A landmark Supreme Court of Canada ruling delivered just weeks before the Competition Bureau rendered its Postmedia decision radically altered the common law on mergers and created an important legal precedent. The case of *Tervita v. Canada* triggered long-dormant

provisions in the Competition Act that allowed companies to claim economic "efficiencies" achieved in their operations to justify mergers and acquisitions which would otherwise amount to monopoly. The effect, according to legal analysts, was to raise the bar for the Competition Bureau to prevent monopolies, thus opening the door even wider to more media mergers (Edge, 2017). The Competition Bureau had pointed out in a 2004 background report to the Senate committee on news media that even if it found that a merger would substantially lessen or prevent competition for advertising, the Competition Act "specifically directs that the merger be allowed to proceed if it would also likely result in gains in efficiency that are greater than and offset the effects of the lessening or preventing of competition" (Competition Bureau, 2004). The Competition Bureau noted in allowing the takeover of Sun Media in 2015 that Postmedia "made persuasive submissions suggesting that the effects of any lessening or prevention of competition would be offset by meaningful cognizable efficiencies" (Competition Bureau, 2015c). Postmedia stated publicly in announcing the takeover that by combining non-editorial operations of the two chains, it expected to save \$6-10 million in efficiencies (Artuso, 2014).

When it was introduced in 1986, the Competition Act contained a section which, according to one legal analysis, was "unique among competition/antitrust statutes around the world" (Crampton, 1995, p. 59). Section 96 became known as the "efficiencies defence" because it allowed merging or acquiring parties to avoid an order of divestiture or dissolution by establishing that the economic efficiency gains of a transaction would likely outweigh its anti-competitive effects. According to Crampton (1995, p. 59), this approach was a "total welfare" balancing process as opposed to a "consumer welfare" approach. It was taken because "the government of the day had high hopes that it would play a significant role in

facilitating efficient restructuring in Canada," which went largely unrealized (Crampton, 1995, p. 64).

Efficiencies do not have to be passed on to consumers. This approach occupies the middle ground between the approach of jurisdictions such as the E.U. . . . and the approach of the U.S. Department of Justice, which appears to require efficiency gains to be so great that prices will not rise as a result of the merger. (Crampton, 1995, p. 60)

The efficiencies defence went untested for decades, however, until the SCC rendered its *Tervita* judgment in early 2015. It was its first merger decision under the Competition Act since it ruled in 1997 on Southam's community newspaper purchases in Vancouver, and the first time it had ruled on the efficiencies defence (Assaf & Chernenko, 2015; Grant 2015). *Tervita Industries Ltd.* specialized in hazardous waste removal for oil and gas companies and took over its only regional competitor in 2011. The Competition Bureau ordered it to unwind the transaction or divest its newly-acquired landfill operations, but *Tervita* appealed to a Competition Tribunal and then to the Federal Court of Appeal, both of which upheld the order. It then appealed to the SCC, which agreed that the *Tervita* deal would prevent competition, as evidence before the Competition Tribunal showed that an expected 10-percent drop in hazardous waste remediation costs in the region would be prevented by the merger. "The Tribunal's conclusion that the merger is likely to substantially prevent competition is correct," noted the SCC (*Tervita Corp.*, 2015, p. 6).

While the Tribunal's treatment of the asserted 10 percent reduction in prices that would allegedly have been realized in absence of the merger was flawed, there was sufficient other evidence upon which it could find a substantial prevention of competition as a result of the merger. (*Tervita Corp.*, 2015, pp. 6-7)

It allowed the appeal, however, pointing out that the Competition Bureau had failed to quantify the merger's anti-competitive effects in order to show they would outweigh the minimal gains in efficiency that had been demonstrated by *Tervita*. The efficiencies defence

required the Competition Bureau to put a number on the lessening of competition, the court ruled, just as Tervita had done in quantifying the savings it expected from the merger. "The defence requires an analysis of whether the efficiency gains of the merger, which result from the integration of resources, outweigh the anti-competitive effects, which result from the decrease in or absence of competition in the relevant geographic and product market"

(Tervita Corp., 2015, p. 7).

Effects that can be quantified should be quantified, even as estimates, provided such estimates are grounded in evidence that can be challenged and weighed. If effects are realistically measurable, failure to at least estimate the quantification of those effects will not result in the effects being assessed on a qualitative basis. (Tervita Corp., 2015, p. 58)

The Competition Tribunal, it noted, had accepted that small efficiency gains in overhead expenses would result from the acquired company having access to Tervita's administrative and operating functions. The Competition Tribunal rejected almost all of the efficiencies claimed by Tervita because it ruled they would likely have been achieved in any event, but it accepted overhead efficiencies equivalent to one-half the salary of one full-time junior back office employee. The FCA ruled those efficiencies insignificant and did not count them, but the SCC judged them admissible. "The Commissioner did not meet her burden to prove the anti-competitive effects, and as such, the weight given to the quantifiable effects is zero"

(Tervita Corp., 2015, p. 10).

A pair of economists observed that the Tervita decision put Canadian merger law "far out in front of the wave" of integrating economic principles into merger law (Ware & Winter, 2016, p. 366). They noted that the ruling put a new burden on the Competition Bureau to quantify anti-competitive effects, without which it would lose any challenge to a merger, even with evidence of a substantial lessening of competition. "Tervita thus injected even more

economics and econometrics into merger law – to the point where the commissioner describes the case as solidifying the place of economists as the 'rock stars' of merger law enforcement" (Ware & Winter, 2016, p. 367). The reference was to a 2015 speech by economist John Pecman, who headed the Competition Bureau, which he delivered shortly after the Tervita ruling but before the decision to allow Postmedia's takeover of Sun Media. He told a group of lawyers, no doubt jokingly, that people "have a natural tendency to see economists as the rock stars of competition law enforcement." Referring to the Tervita decision, Pecman added that he was "pleased that this ruling has clearly made that the only possible point of view" (Pecman, 2015).

Media economists

There are two general types of media economists. There are those who have been trained as economists but who typically have a lesser understanding of media issues because they have never worked in or studied the media. Then there are those who study the media but typically have a lesser understanding of economics because they have not been trained in the so-called "dismal" science.¹ The latter are often dismayed by the blindspots exhibited by the former, as typified in a 2004 media economics textbook authored by three Canadian scholars who openly declared their position. "Some commentators claim that economic analysis cannot adequately deal with [media] industries – a view with which we do not agree" (Hoskins, McFayden, & Finn, 2004, p. 288). They went on to ask why broadcasting was regulated in many countries but newspaper publishing was not, and never came up with the answer. That would have required an understanding of such subjects as press freedom history, bandwidth allocation, and all sorts of cultural, technical, normative, and ethical considerations outside of their economic orbit.

¹ including the author

The perils of putting an economist in charge of running a media company were demonstrated in the 1990s when the Times Mirror Co. hired Mark Willes as its CEO. He held a Ph.D. in economics and had been had been a university professor, a bank president, and vice-chairman of a food company, but he had never been a journalist or worked in the media. Willes quickly boosted profits by giving editors profit-sharing incentives, but he encountered a backlash from journalists at the *Los Angeles Times* after partnering section editors there with advertising executives. That breached the "church state wall," a fundamental ethical concept in journalism designed to separate advertising from editorial content to ensure the latter's independence. Willes created considerable controversy and Times Mirror was soon sold to the Tribune Company by its embarrassed owners.

One 2009 study which Postmedia newspapers cited in covering their company's takeover of Sun Media found that a spate of Canadian newspaper acquisitions in the late 1990s did not result in higher advertising rates or cover prices. The economic analysis concluded that "there is no relationship between concentration measures and advertising or circulation prices" (Chandra & Collard-Wexler, 2009, p. 1067). This flew in the face of decades of research in the field of Communication that showed newspaper monopolies usually resulted in higher prices (Picard, 1988; Lacy & Simon, 1993; Shaver, 1995). The study's lead author, an economist, also co-authored an extensive literature review of newspapers and magazines for the 2016 *Handbook of Media Economics* which made scant mention of the vast research on these subjects in the field of Communication (Chandra & Kaiser, 2016). When queried on this discrepancy, he replied that "we felt that we needed to draw the line at research in Economics journals" (Chandra, private communication, August 20, 2015). He told a Postmedia journalist after the Competition Bureau approved the company's takeover of Sun

Media in 2015 that the decision should not concern members of the public because they could find "practically unlimited" news online, adding: "It's hard to believe this merger would have any adverse effect on consumers" (Brownell, 2015). That brought a strong reaction from communication scholars (Benedetti & Compton, 2015; Edge, 2016b).

Hard to believe? The takeover in itself is adverse to information seeking Canadians. It puts virtually every major newspaper in the hands of one corporation. A corporation whose largest share holder is a giant, multinational hedge fund with little or no interest in quality journalism or the information needs of Canadians. (Benedetti & Compton, 2015)

Two-sided markets

The 2009 study examined Canadian newspapers as products that competed in "two-sided" markets, gaining revenues from both readers and advertisers. "Due to the need for two-sided platforms to balance the interests of two different groups of consumers, it is often possible to observe firms in these industries behaving in ways that would be suboptimal for traditional firms" (Chandra & Collard-Wexler, 2009, p. 1046). Standard economic predictions thus did not always hold in these markets, it argued, as even monopolies consistently set prices below marginal cost on one side to increase revenues on the other. "More importantly, we show that it is not necessarily the case that a monopolist will choose to set higher prices than competing duopolists on either side of the platform" (Chandra & Collard-Wexler, 2009, p. 1046).

Noting that very little research had examined the effects of mergers in two-sided markets or the effects of concentration in those markets, they constructed a model that analyzed price-setting in a two-sided market. Their study of the Canadian newspaper industry from 1995-99, when about 75 percent of dailies changed ownership, did not find that increased concentration was associated with higher prices for either circulation or advertising. They counterintuitively concluded that competing firms in a duopoly may actually set higher prices

than a monopolist. "These results are reassuring from the point of view of consumer surplus in that there is no clear economic effect of increased concentration" (Chandra & Collard-Wexler, 2009, p. 1049).

The Competition Bureau ruling which allowed the Postmedia-Sun Media takeover similarly noted that newspaper competition took place in two-sided markets, a subject on which it said it was "guided by a recent and expanding economic literature."² Newspapers were "keenly focused" on readership data and relied on them heavily in selling ads. "The parties focus their subscription efforts on gaining readers of a particular demographic, which they can, in turn, market to advertisers" (Competition Bureau, 2015b). The markets for readers and advertisers in which newspapers competed were both declining, however, which limited the dominance they could exercise. "Key metrics for the newspaper markets demonstrate that the print newspapers in these markets are facing a steady and continuing decline in readership and advertising. As a result, market conditions exert downward pressure on the parties' ability to exercise market power" (Competition Bureau, 2015b). Downward pressure on pricing was also exerted, it added, by the need to compete with free newspapers and to generate additional advertising revenues through increased circulation. It was therefore in their best interests, the Competition Bureau noted, for even monopoly newspapers to provide compelling content in order to attract readers they could in turn market to advertisers. "Editorial investments and engaging content are important to gain and retain readership. . . . Econometric evidence supports the existence of a strong interaction between the advertising and readership sides of the newspaper markets" (Competition Bureau, 2015b).

Changing market conditions

² An economist with the Competition Bureau described the 2009 study as the "leading" one on the subject (N. Janota, personal communication, January 18, 2018).

As news media continued to evolve in the digital age, however, these factors changed rapidly. Free newspapers, which had proliferated at the height of the newspaper advertising bubble in the early 21st century, began to close as advertising revenues declined. Of twenty free dailies published in Canada in 2014, half had been closed by the end of 2017. Four free commuter dailies were included in the Postmedia-Torstar trade late that year, all of which were closed. As print advertising revenues continued to fall and digital advertising revenues went mostly to Google and Facebook, newspapers turned increasingly to readers for revenue, erecting "metered" paywalls on their websites that proved effective at attracting both subscribers and advertisers.

They also raised cover prices and subscription rates sharply. A 2017 study of the 25 largest U.S. titles found they almost tripled their subscription rates on average between 2008 and 2016, with the price increases accelerating after 2012 (Chyi & Tenenboim, 2017). A 2014 study calculated that daily newspapers lost 20 percent of their subscribers after they increased their prices by 40-60 percent from 2006-2011. They did so, the study found, because they could no longer subsidize readers by extracting surplus rates from advertisers due to competition from online media (Pattabhiramaiah, Sriram, & Sridhar, 2014). Newspapers also increasingly charged readers for online access, instituting a successful "metered" paywall system pioneered in the UK by the *Financial Times*. As a result, readers provided a greater percentage of newspaper revenues as advertising revenues fell, bringing the ratio closer to 1-1 from the 7-1 disparity found at the height of the advertising bubble in 2004 (OECD, 2010). By early 2018, the *New York Times* had more than 2.6 million digital subscribers, bringing its reader revenue above \$1 billion a year and accounting for 60 per cent of its sales (Bond, 2018).

While no studies of newspaper price increases have been done in Canada recently, market behaviour there has been very similar to that in the U.S., where circulation rate increases have been pronounced in recent years as publishers attempt to make up for lost advertising revenues. They are able to do so in Canada largely due to their accumulated market power, which has resulted in large part from the failure of Canada's Competition Bureau to preserve competition in this important industry. An unfortunate externality of this failure has been the gradual fading away of local news coverage in Canada. According to the Local News Research Project, 130 local newspapers had shut down in Canada between 2008 and late 2017, with forty closing due to mergers (Short & Melnyk, 2017). A 2017 study found that twenty-four community newspapers had been closed or merged in British Columbia following transactions, including trades, between the province's two dominant chains (Edge, 2018). In addition to relying on readers for more revenue, noted a trio of economists, newspapers began to explore other revenue streams, such as clubs, memberships, events, travel, and consulting. They thus became not just two-sided but "multi-sided" products.

Given all the striking changes that are presently taking place in the media markets, the firms involved in these markets are rethinking their business model. New approaches to the market are being designed and media firms are embracing the model of multi-sided platforms. (Gabszewicz, Resende, & Sonnac, 2016, p. 4)

The economists noted that their field had been late to the study of media, while communication scholars had been studying media economics since the 1950s. Only in the past decade had a rapid expansion in the literature on media in theoretical economics embraced the theory of two-sided markets to explain media businesses. "Surprisingly, the economic aspects of the theory of media markets have escaped the attention of economists for a long time. The theoretical foundations of the field of media economics, formally modelling media markets as two-sided platforms, have only been set up in the late nineties"

(Gabszewicz, Resende, & Sonnac, 2016, p. 4). A 2007 study of two-sided markets in the Italian newspaper industry found evidence that they colluded in setting cover prices but found the advertising market was closer to competition (Argentesi & Filistrucchi, 2007). A 2013 study modeled a merger of the Minneapolis Star Tribune and St. Paul Pioneer Press and predicted decreases in content quality and local news ratio, as well as subscription price increases at both newspapers (Fan, 2013).

In the field of Communication, the concept of two-sided markets had been understood for some time, but in different terms. It had been codified by Picard (1989) in the first North American textbook on media economics. "Media industries are unusual because they operate in what is called a dual product market. They create one product but participate in two separate good and service markets" (Picard, 1989, p. 17). Communication scholars conducted dozens of studies of newspaper pricing behaviour during the second half of the 20th century (Shaver, 1995). A leading 1993 textbook on newspaper economics noted that most such research found that once a monopoly was achieved, newspapers could raise advertising rates and circulation prices at will.

Some studies have found that monopoly power increased the advertising line rate. Other studies have found that competing newspapers tend to have lower advertising prices. . . . Overall, research supports that many monopoly-power newspapers charge monopoly advertising prices. (Lacy & Simon, p. 109)

As one economist who studied Canadian newspapers noted: "These price effects are so powerful that they provide ample motivation for the long and steady trend to newspaper mergers and takeovers" (Kerton, 1973, p. 605).

Limitations of economics

The dominant paradigm in Economics embraced quantitative analysis to the exclusion of more qualitative approaches. Leamer (1983) famously urged his colleagues to "take the con

out of econometrics" and criticized empirical studies as suffering from a lack of robustness due to their often "whimsical" assumptions. Changing your assumptions, noted McCloskey (2002), could alter your conclusions. "Any calculation depends on the validity of the inputs and assumptions. Garbage in, garbage out." (McCloskey, 2002, p. 16) A re-appraisal of Leamer's critique 25 years later found that a new paradigm for merger analysis implicitly imposed restrictions on consumer behavior and used variables and assumptions which seemed arbitrary.

Many new empirical industrial organization studies forecast counterfactual outcomes based on models and simulations, without a clear foundation in experience. But should antitrust regulators favor the complex, simulation-based estimates coming out of the new empirical industrial organization paradigm over a transparent analysis of past experience? At a minimum, we'd expect such a judgment to be based on evidence showing that the simulation-based approach delivers reasonably accurate predictions. As it stands, the proponents of this work seem to favor it as a matter of principle. So who can you trust when it comes to antitrust? (Angrist & Pischke, 2010, p. 22)

The most controversial assumption made by economists in modeling studies was *ceteris paribus*, or that other things would remain constant. They rarely did in the real world. Policy measures based on economic studies, noted Rol (2010), thus often failed due to overconfidence in their external validity. "Realists like to think of economics as an enterprise that seeks truth: the habitual falsity of the *ceteris paribus* clause seems to be in conflict with the realist approach" (Rol, 2010, p. 29). In order to find a realistic level of abstraction, he argued, economists needed to take a more interdisciplinary view complemented by input from other disciplines.

One social science increases its relevance if its practitioners develop an interest in what other social disciplines have to say. So does especially theoretical economics, because economists enjoy a more isolated position among the sciences by default than, say, sociologists. (Rol, 2010, p. 29)

Interdisciplinarity, however, had been eschewed by economists since their field was cleaved from Political Economy in the early 20th century. Creating separate fields of Economics and Political Science expunged the former of any moral element and created a strictly amoral science. Quantitative neoclassical economics, noted Mosco (2009), shed all concern for the social, political, or historical in its ascendancy atop the field.

Unlike political economy, economics was not concerned with determining human needs or rights, natural or otherwise. . . . There was no room for the political in this new science of economics because the tools were not available and probably never would be to examine the political system with certainty. (Mosco, 2009, pp. 46-47)

The substantive weakness of economics, he added, was its "inadequate understanding" of the social world. "Economics is based on the view that one can eliminate what cannot be rendered scientific without giving up what is fundamental to understanding the economy" (Mosco, 2009, p. 63). One especially important element economics left behind in its modern form, he added, was any concern with history. "Mainstream economics set history aside . . . chiefly because history made all the more difficult the drive to turn economics into a science" (Mosco, 2009, p. 26). McCloskey (2002) listed among the "secret sins" of her field historical ignorance, "cultural barbarism," and personal arrogance, noting: "Few economists read outside economics" McCloskey (2002, p. 30).

Conclusions

There are two types of competition regulators, generally speaking. There are economists, who typically have a lesser understanding of legal issues, and lawyers, who typically have a lesser understanding of economics. Lawyers, however, usually at least have an appreciation of the social, political, and historical importance of news media through their study of press freedom law. Some of the most fervent advocates of media competition have been legal scholars (see Baker, 2007). The limitations of economic analysis of media markets are well

known and numerous. Quantitatively, as Chandra observed, media ownership consolidation should not concern the public because of course they can now find "practically unlimited" news on the Internet. Qualitatively, however, the news is increasingly of little use to them because less and less of it concerns their own local communities and more and more of it is vacuous "clickbait" designed simply to attract global eyeballs online. To equate the two is to conflate a public good with a public nuisance. An economist might not appreciate the difference, but a media scholar would.

The Competition Bureau's analysis seems especially blinkered. Its econometric analyses of the Postmedia takeover of Sun Media were admittedly performed using data provided largely by the merging parties. This increased the likelihood of selective disclosure leading to "garbage in, garbage out" results which counterintuitively failed to find that their newspapers even competed. The 2009 study it apparently relied on in approving the Postmedia takeover is an obvious outlier among decades of research on the topic of market power and newspaper pricing, most of it albeit in a field other than economics. Economists didn't discover that media markets are two-sided, and they don't have a monopoly on research into them. The 2009 study's use by Postmedia journalists covering their company's takeover suggests it was well familiar with the study, which it likely also presented to the Competition Bureau as evidence in support of allowing its takeover. Postmedia's noted "persuasive submissions" on any lessening of competition being offset by economic efficiencies begs the question of who argued against the submissions in the public interest. The Competition Bureau, after all, acts as judge of first resort in such cases. Can it also act as prosecutor? As noted by two federal reports on the media in Canada, it lacks the expertise to do so in cases involving news media,

which have layers of complexity. Finally, the Competition Bureau's inexplicable failure to quantify the anti-competitive effects of the takeover needs explaining.

Angrist and Pischke (2010, p. 22) asked if antitrust regulators should rely on the results of simulation-based economic models over "a transparent analysis of past experience." Based on the Competition Bureau's track record, certainly not to the exclusion of the latter. If they are to be the "rock stars" of competition law in Canada, the findings of economists should be listened to in conjunction with those of an ensemble of researchers from other fields.

Economists doing research into media mergers in particular should become more cognizant of research in other fields which shows a negative impact of news media monopolies. One field that studies the need for media diversity and press pluralism is the political economy of communication. It is concerned with "who gets what," as a founding father of the field (who was coincidentally a Canadian) rephrased a then-popular functionalist model of communication that focused on "who says what" (Smythe, 1960). Integrating this perspective might allow theoretical economists a less blinkered view of media markets and provide more valid research that allows competition regulators to more realistically adjudicate cases involving news media.

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