

Enabling Postmedia: Economists as the “Rock Stars” of Canadian Competition Law

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ABSTRACT

Background Canada is suffering a crisis in local news largely attributable to regulatory failure. Its largest newspaper chain, Postmedia Network, took over the second-largest chain in late 2014, and in early 2016 it merged the newsrooms at its duplicate dailies in four of Canada's six largest cities. Parliamentary hearings on local media ensued, and a mid-2017 report recommended, among other things, changes to the Competition Act to more effectively deal with news media mergers and takeovers.

Analysis The Competition Bureau is dominated by economists who may lack sufficient grounding in media issues to effectively deal with mergers and takeovers in news industries.

Conclusion and implications Reform of the country's Competition Act, which has been called for by successive federal media inquiries, is more urgently required than ever.

Keywords Newspapers; Postmedia; Competition Bureau; Concentration of press ownership

RÉSUMÉ

Contexte Le Canada est en train de souffrir d'une crise dans les nouvelles locales, largement attribuable à un échec de réglementation. La plus grande chaîne de journaux au pays, Postmedia Network, a acquis la seconde chaîne fin 2014, et début 2016 elle a combiné les salles de nouvelles de ses quotidiens rivaux dans quatre des six plus grandes villes du Canada. Il s'est ensuivi des audiences parlementaires sur les médias locaux, et en mi-2017 un rapport a recommandé, entre autres, des changements à la Loi sur la concurrence afin de mieux gérer les fusions et acquisitions parmi les médias d'information.

Analyse Le Bureau de la concurrence se voit dominer par des économistes n'ayant peut-être pas assez de connaissances sur les médias pour traiter de fusions et d'acquisitions dans ce domaine.

Conclusion et implications Plusieurs comités fédéraux successifs ont recommandé la réforme de la Loi sur la concurrence. Une telle réforme s'avère plus urgente que jamais.

Mots clés Journaux; Postmedia; Bureau de la concurrence; Concentration des médias

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Introduction

Canada is suffering a crisis in local news largely attributable to regulatory failure. The country's level of media ownership concentration has long ranked among the world's highest and continues to increase in spite of attempts to curb it. Despite a nominal limit of 25 percent foreign ownership of newspapers, Canada's largest chain is 92 percent owned by U.S. hedge funds, which acquired it out of bankruptcy in 2010 after buying up the bulk of its distressed debt at pennies on the dollar. Postmedia Network has since exploited regulatory laxity to increase its dominance of the newspaper industry at the expense of news coverage. It has made successive rounds of layoffs to cut costs due to falling ad revenues largely in order to continue servicing its large high-interest debt held mostly by its hedge-fund owners, which they kept on its books strategically as an income source. In late 2014, Postmedia took over the country's second-largest chain, Sun Media, and while the federal Competition Bureau investigated, it took no action to stop the acquisition or to ameliorate its possible effects. Postmedia promised informally not to merge its duopoly dailies in four of Canada's six largest cities before receiving approval for the takeover, but in early 2016 it merged their newsrooms. Parliamentary hearings on local media quickly convened and sat for sixteen months in Ottawa. The report that resulted in mid-2017 recommended, among other measures, changes to the *Competition Act* to more effectively preserve media pluralism. 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" (Canada, 2006, p. 15) for failing to curb ownership concentration.

The history of media regulation in Canada arguably justifies the charge of neglect, although the well-recognized phenomenon of regulatory capture might be a more apt analysis (Horwitz, 1989; Pickard, 2014). In previous decades, however, press policy in Canada was at least well scrutinized, with extensive media coverage and considerable debate attending the 1969–1970 Senate report on mass media and the 1980–1981 Royal Commission on Newspapers (Canada, 1970, 1981). In Canada's converged and diminished news media of the 21st century, however, news coverage of media policy fell into a so-called "black hole." Little reporting was found, for example, of the 2003 Lincoln report on broadcasting (Edge, 2007). A 2006 Senate report on news media called for long-sought limits on ownership, which were rejected by a newly elected Conservative government headed by free-market economist Stephen Harper. During his almost decade-long term in office, Ottawa turned a blind eye first to the majority foreign ownership of Postmedia, and then to its takeover of Sun Media. From nationwide public hearings held by a royal commission after the closure of two dailies in 1980, the oversight of even greater newspaper consolidation devolved to faceless bureaucrats operating behind closed doors. The Competition Bureau, which approved the takeover of Sun Media without holding hearings, was admittedly hindered by a recent Supreme Court of Canada (SCC) ruling that required it to provide a quantitative estimate of harm in order to block a monopoly (Edge, 2017a). It was also, however, apparently dominated by economists who proved either unable to provide such an estimate or reluctant to do so. Its operations were as mysterious as they were ineffective.

The 2016–2017 parliamentary hearings on local media chaired by Vancouver Member of Parliament Hedy Fry were called by a Liberal government, which took power in late 2015, but they were overshadowed in the news media by the coverage of an associated “think tank” report on news media that was released in early 2017. A newspaper industry campaign, meanwhile, pushed for the foreign digital giants Google and Facebook to be taxed and the proceeds used to subsidize Canadian news media. Following the release of the Fry report in mid-2017, the industry association News Media Canada (NMC) quickly bid for a billion-dollar government bailout, which was almost as quickly rejected. Postmedia’s then-CEO, Paul Godfrey, had warned the Fry committee hearings that without government assistance Canada’s newspaper industry would get “uglier.” The promised ugliness followed the rejection of NMC’s bailout proposal by mere months, when Postmedia and the Torstar Corp., which had become Canada’s new second-largest newspaper chain, traded 41 mostly Ontario titles in late 2017 and closed almost all of them. The Competition Bureau, which had for years ignored similar trades and closures in British Columbia, finally acted. It raided the offices of Postmedia and Torstar in 2018 after a whistleblower reportedly provided documents that outlined, despite corporate denials, a detailed scheme to reduce competition. Later that year, the federal government announced in a budget statement that it planned to provide \$595 million in subsidies for news media outlets, largely in the form of tax credits.

This article is the fourth in a series that examines ownership concentration in Canada’s newspaper industry and the Competition Bureau’s role in enabling it. The first article recalculated ownership concentration in the wake of Postmedia’s 2014 takeover of Sun Media and found that it published 15 of the 22 largest dailies in Canada, including eight of the nine largest in the three westernmost provinces (Edge, 2016a). The second article examined a landmark ruling issued by the SCC shortly after the Postmedia takeover of Sun Media and found that it greatly increased the burden of proof on the Competition Bureau to block it (Edge, 2017a). The third chronicled newspaper trades and closures in Canada from 2010–2017 (Edge, 2018). This article seeks to synthesize understanding of the Competition Bureau’s ineffectiveness in preventing the ever-increasing level of press ownership concentration in Canada. It finds that the regulator is hamstrung by its own enabling *Act* and has also been dominated by economists who may lack sufficient grounding in news media issues to effectively deal with mergers and takeovers in this industry. It concludes that an overreliance on economists in making policy, to the exclusion of scholars from other fields, has resulted in a free-market approach that has failed to serve the news needs of Canadians and has contributed to the local news crisis. As a result, it urges that reform of the *Competition Act*, which has been called for by successive federal inquiries, finally be implemented.

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 that are among the world’s highest and a regulatory system that is apparently power-

less to prevent them from rising further. Among Western nations, Canada's level of press ownership concentration ranks behind only Australia, New Zealand, and Ireland in control of its newspaper industry by the top few chains (Noam, 2016).

The first major study of Canadian media was commenced in 1969 by a Special Senate Committee on Mass Media, which reported in three volumes the following year. It noted that 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 ... 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 the 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 of two major dailies by the country's largest chains and the exchange of a third, which created yet more local monopolies. The Royal Commission held hearings across the country and issued a report in 1981, along with eight book-length studies. "Newspaper competition, of the kind that used to be, is virtually dead in Canada," its report noted, adding: "This ought not to have been allowed to happen" (Canada, 1981, pp. 215, 218).

Calculating that the top two chains then published 58.3 percent 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 five percent of the national 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 Thomson and Southam chains by the antitrust regulator of the day, the Restrictive Trade Practices Commission (RTPC). Despite an incriminating paper trail that included seized company memos suggesting collusion, the case ended in acquittal after a judge concluded that the closures constituted "good business sense, not an illegal conspiracy" (Austen, 1983, p. 34).

The Competition Bureau replaced the RTPC in 1986 due to its ineffectiveness. 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 deal with mergers and monopolies, created the quasi-judicial Competition Tribunal to adjudicate disputes, and allowed appeals first to the Federal Court of Appeal (FCA) and finally to the SCC. The Competition Bureau (2004) was soon tested when the Southam chain bought most of the Vancouver area's community newspapers in the late 1980s to add to its monopoly on local dailies. It ordered Southam to divest several titles it found competed directly, but the company appealed to a Competition Tribunal, which held hearings in Vancouver. It reduced to

only one the number of titles Southam was required to sell, and company appeals to the FCA and SCC upheld the order.

The mid-1990s saw the gradual takeover of Southam by Conrad Black's company Hollinger, which already owned the minor Sterling chain in Canada. That brought newspaper ownership by the top three firms to 77 percent in 1999, with 42 percent held by Hollinger alone (Canada, 2004). Hollinger sold most of the former Southam dailies in 2000 to Canwest Global Communications, the owner of Canada's third television network. It 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 (Canada, 2004). A pair of scholars calculated the following year that Canwest, Quebecor, and Torstar owned 62.3 percent of the market for daily newspapers, warning: "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 2006 final report of the Senate inquiry into news media recommended the automatic review of any merger of news-gathering organizations that resulted in an audience share of 35 percent or higher, arguing: "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, 2006, 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" (Canada, 2006, p. 15) 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, 2006, p. 24). Part of the problem, it noted, was that the Competition Bureau considered only the economic impact of a media merger or acquisition 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. ... 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, 2006, p. 16)

The Senate report recommended that a new section dealing with news media mergers be added to the *Competition Act*, requiring automatic review to prevent dominance by one owner in any market, whether 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 were enacted, however, as the government had changed earlier in 2006 from a Liberal one to Harper's Conservatives.

Postmedia purchase

Prior to Postmedia buying most of the Sun Media chain from Quebecor in 2014, which effectively brought the convergence experiment to an end in Canada, the two compa-

nies combined for an estimated 53.1 percent of newspaper revenues (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 British Columbia, Alberta, and Saskatchewan (Edge, 2016a). When it announced its takeover of Sun Media, Postmedia promised to preserve competition in four of the country's six largest cities, three in Western Canada (Artuso, 2014), where it would own both dailies. The purchase was approved the following year by the Competition Bureau (2015a), which counter-intuitively concluded that it was "unlikely to substantially lessen or prevent competition" (par. 1) in those markets. A combination of factors played into that conclusion, according to a press release it issued, 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 Competition Bureau (2015b) 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" (Analysis section 2, par. 1). 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, Analysis section 2, par. 1). Market contacts indicated that prices for advertisements varied "significantly" between the newspapers, which delivered "largely distinct audiences." The Competition Bureau (2015b) found that Sun Media's tabloids and Postmedia's broadsheet newspapers "tend to serve as complements rather than substitutes" (Analysis section 2, par. 1). 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, Analysis section 2, par. 2). Extensive documentary and empirical evidence, according to the Competition Bureau (2015b) 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" (Analysis section 3, par. 1).

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, Analysis section 3, par. 1)

Postmedia executives reiterated that they planned to follow in Calgary, Edmonton, and Ottawa the model that had been used for decades at the Pacific Press newspaper partnership in Vancouver, seeking efficiencies by combining administrative and production

departments, but keeping separate newsrooms (Dobby & Bradshaw, 2015). The separation of editorial control between the *Vancouver Sun* and the *Daily Province* had been a condition of their 1957 merger, which had otherwise been ruled an illegal monopoly by the RTPC (Edge, 2001). Within a year of its Sun Media takeover, however, a further sharp drop in advertising revenues prompted Postmedia to make more cost cuts aimed at achieving an additional \$50 million in savings, half of it from the former Sun Media newspapers (Postmedia aims, 2015). The company announced in early 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 described as a “miniature Black Tuesday for Canadian journalists” (Feibel, 2016, p. 12), referring to the newspaper closures and ownership consolidation in 1980 that prompted the Royal Commission on Newspapers. The Competition Bureau disavowed responsibility for failing to formalize Postmedia’s promises and declined to re-consider its approval of the Sun Media takeover (Bradshaw, 2016). Fry quickly convened a parliamentary committee and held hearings into local news provision. In mid-2017, the committee issued a report that 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” (Canada, House of Commons, 2017, p. 58) test to guard against market dominance. The Postmedia takeover of Sun Media and its subsequent newsroom consolidation, it noted, had had a “devastating” (Canada, House of Commons, 2017, p. 58) impact.

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 the disclosure of its market analysis performed as part of its investigation into Postmedia’s purchase of Sun Media (MacKay, personal communication, October 9, 2015).

The quantitative imperative

The Competition Bureau’s enabling of Postmedia’s dominance of the Canadian daily newspaper industry can be explained in part by a landmark SCC ruling delivered just weeks previously that radically altered the common law on mergers in Canada and created an important legal precedent. The case of *Tervita v. Canada* (*Tervita*) triggered long-dormant provisions in the *Competition Act* that allowed companies to claim economic “efficiencies” achieved in their operations to justify mergers and acquisitions that would otherwise amount to monopoly. This raised the bar for the Competition Bureau to prevent future monopolies, thus opening the door even wider to more media mergers (Edge, 2017a). 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” (p. 9). In allowing the takeover of Sun Media,

the Competition Bureau (2015b) noted that Postmedia “made persuasive submissions suggesting that the effects of any lessening or prevention of competition would be offset by meaningful cognizable efficiencies” (par. 3). Postmedia stated in announcing the takeover that by combining the non-editorial operations of the two chains, it expected to save between \$6 and \$10 million in efficiencies (Artuso, 2014).

When it was introduced in 1986, the *Competition Act* contained a section that, 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. The defence went untested for decades, however, until the SCC rendered its 2015 judgment in *Tervita*. 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 ever ruled on the efficiencies defence (Assaf & Chernenko, 2015; Grant, 2015). *Tervita Industries Ltd.* specialized in hazardous waste removal for oil and gas companies in northern British Columbia, where it took over its only regional competitor in 2011. The Competition Bureau ordered it to unwind the transaction or divest its newly acquired 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* takeover would prevent competition, as evidence before the Competition Tribunal had shown that the merger would prevent an expected 10-per cent drop in hazardous waste remediation costs in the region.

The SCC 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 quantify the lessening of competition, the court ruled, just as *Tervita* had done in estimating the savings it expected to make from the merger. “Effects that can be quantified should be quantified, even as estimates, provided such estimates are grounded in evidence that can be challenged and weighed” (*Tervita Corp.*, 2015, p. 58). The Competition Tribunal, noted the SCC, had accepted that small efficiency gains in overhead expenses would result from the acquired company utilizing *Tervita*’s administrative and operating functions. It had rejected almost all of the claimed efficiencies, however, because it ruled that they would likely have been achieved in any event, but it did accept that overhead savings would be achieved equivalent to one-half the salary of one junior back-office employee. The FCA ruled the efficiencies insignificant and did not count them, but the SCC found them admissible. The fact that the Competition Bureau did not similarly at least estimate the takeover’s anti-competitive effects thus prompted the SCC to allow the appeal. “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). In 2018, *Tervita* merged with *Newalta Corp.* to form Canada’s largest hazardous waste removal company with estimated annual revenues of \$2.6 billion, a transaction that the Competition Bureau did not challenge (Canada Newswire, 2018).

A pair of economists observed that the SCC's ruling in the Tervita case put Canadian merger law "far out in front of the wave" (Ware & Winter, 2016, p. 366) in integrating economic principles into merger law. 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 John Pecman (2015), an economist who headed the Competition Bureau, that was 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 Tervita, Pecman (2015) added that he was "pleased that this ruling has clearly made that the only possible point of view" (Tervita section, par. 11).¹

Media regulation in Canada

Government regulation worldwide has been marked in recent decades by two trends, an understanding of which helps to explain the failure in antitrust oversight of Canadian media industries. The first has been the increased influence of economists since World War II (Christensen, 2017, 2018; Fourcade, 2009; Fourcade, Ollion, & Algan, 2015; Hirschman & Berman, 2014). Postwar prosperity elevated them to positions of influence in many burgeoning bureaucracies around the world, according to Marion Fourcade (2009), and economics thus emerged as a leading "technique of government" (p. 2). The discipline came to be characterized, however, by an "overwhelming domination of U.S.-based scholars, scholarship, and institutions" (Fourcade, 2009, p. 256), which brought a paradigm shift from interventionist Keynesian economics to free-market neo-classical economics. Quantitative approaches came to dominate methodologically, using econometric modelling based on advanced mathematics. "Scientization," noted Johan Christensen (2017, p. 295), brought a change not only in who provided policy advice but also in the basis for that advice, which was "increasingly based on scientific knowledge and claims" (p. 295). The formal modelling of theoretical arguments was relied on to claim that economic analysis produced scientific conclusions (Christensen, 2017). The increased authority granted to economists over how to organize economies, and thus societies, resulted from their field being perceived as a "more legitimate source of arguments than other forms of knowledge" (Christensen, 2018, p. 293). As their influence increased, that of lawyers, civil servants, and scholars from other academic disciplines waned. As Daniel Hirschman and Elizabeth Berman (2014) noted: "Every sociologist, anthropologist and political scientist knows that economics is the most politically influential social science" (p. 779).

An associated trend, noted Christensen (2018), was "the politicization of policy advice, that is, the growing use of partisan political advisers and greater political steering of the policy formulation process" (p. 295). In Canada, policy advice during the Harper years came increasingly from partisan "think tanks," as public policy institutes became known (Gutstein, 2014). By the time the Liberals had retaken office, noted

Dwayne Winseck (2017), this had turned into “an unending firehose of reports from well-heeled think tanks across the country” (par. 150) aimed at influencing potentially lucrative federal cultural policy. For example, news media outlets often cited the 2017 report of the Ottawa-based Public Policy Forum (PPF), “The Shattered Mirror,” as evidence of their industry’s financial problems. The report so exaggerated the plight of newspapers, however, that it drew criticism from academics (Britneff, 2017; Edge, 2017b). Winseck (2017) called the report “badly flawed” (par. 5), noting that it “cherry-picks evidence and gooses the numbers” (par. 5) to make its case for government assistance. On the other hand, Winseck (2017) noted, the report turned a “blind eye to high levels of media concentration” (par. 85), which was not surprising given that many of those involved in producing the report “have been leading cheerleaders for the processes of consolidation” (par. 132). Shortly after the release of its report, the PPF began working with the newspaper industry group News Media Canada on its bailout proposal (Edge, 2017b).

Two-sided markets

Economists came late to the study of media, noted one study, only embracing the theory of two-sided markets, in which firms sell to customers of more than one type, to explain the workings of media industries in the late 1990s. Communication scholars, on the other hand, had been studying media economics since the 1950s (Gabszewicz, Resende, & Sonnac, 2016). They were often dismayed by the blind spots of economists who researched media industries, as typified in a 2009 study cited widely by Postmedia newspapers in covering their own company’s takeover of Sun Media (Edge, 2016b). The study of Canadian newspapers from 1995–1999, when about 75 percent of dailies changed hands, found that the acquisitions did not result in higher advertising rates or cover prices. It thus 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 (Lacy & Simon, 1993; Picard, 1988; Shaver, 1995). When queried on why the study made little mention of this vast literature, its lead author replied that “we felt that we needed to draw the line at research in economics journals” (Chandra, personal communication, August 20, 2015). He told a Postmedia reporter 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” (Chandra, quoted in Brownell, 2015, p. C9).

Chandra’s study noted that very little research had examined the effects of mergers in two-sided markets or the effects of concentration in those markets. In the field of communication, however, the concept of two-sided markets had been studied and understood for some time, only in different terms. It had been codified by Robert Picard (1989) in one of the first textbooks on media economics, which noted, “Media industries are unusual because they operate in what is called a dual product market,” adding: “They create one product but participate in two separate good and service markets” (p. 17). Numerous studies into pricing behaviour by newspapers had similarly been

conducted by communication scholars during the second half of the 20th century. Mary Alice Shaver (1995) tracked the application of pricing theory in studies of newspaper competition and advertising rates over a quarter century of research. A 1993 textbook on newspaper economics noted that most such research found that once a monopoly was achieved, advertising rates and circulation prices could be raised at will, resulting in increased profits (Lacy & Simon, 1993). 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).

Changing market conditions

The Competition Bureau (2015b) ruling that allowed Postmedia’s takeover of Sun Media echoed the theme of two-sided markets, a subject on which it said it was “guided by a recent and expanding economic literature” (Background section, par. 2).² The markets for readers and advertisers in which newspapers competed were both declining, however, which limited the dominance they could exercise. Downward pressure on pricing was exerted, it added, by the need to compete with free newspapers and to generate additional advertising revenues through increased circulation. It was thus in their best interests, the Competition Bureau (2015b) noted, for even monopoly newspapers to provide compelling content in order to attract readers they could in turn market to advertisers: “Econometric evidence supports the existence of a strong interaction between the advertising and readership sides of the newspaper markets” (Analysis section, Question 4, par. 8).

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 years of the 21st century, began to fold as advertising revenues rapidly declined. From 20 free dailies in Canada in 2014, only 10 remained by the end of 2017. As print advertising revenues continued to decline and digital advertising went mostly to Facebook and Google, newspapers also turned increasingly to readers for revenue, erecting “paywalls” around their online content, which increased their revenues from both subscribers and advertisers. While only four percent of Canadian newspapers were behind a paywall in 2011, by 2018 that number had risen to 65 percent when measured by circulation (Winseck, 2018). They also raised their cover prices and subscription rates sharply. While no research on Canadian newspaper pricing was found, a study of the 25 largest U.S. titles found they tripled their weekday subscription rates on average between 2008 and 2016, with price increases accelerating after 2012 (Chyi & Tenenboim, 2019). As a result, readers provided a greater percentage of newspaper revenues as advertising fell, bringing the ratio closer to one-to-one from the seven-to-one disparity found in the U.S. at the height of the advertising bubble (OECD, 2010). In addition to relying on readers for more revenue, noted a trio of economists, newspapers began to explore other revenue streams, and as such became not just two-sided but “multisided” 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)

Limitations of economics

The dominant paradigm in economics came to embrace quantitative analysis over qualitative approaches to such an extent that Edward Leamer (1983) famously urged his colleagues in 1983 to “take the con out of econometrics.” He found that empirical studies often suffered from a lack of robustness due to their “whimsical” assumptions. Changing your assumptions, noted McCloskey (2002), could change your conclusions: “Any calculation depends on the validity of the inputs and assumptions. Garbage in, garbage out” (p. 16). A re-appraisal of Leamer’s critique 25 years later found that although a new paradigm of merger analysis had emerged, it implicitly imposed restrictions on consumer behaviour and used arbitrary variables and assumptions. “Many new empirical industrial organization studies forecast counterfactual outcomes based on models and simulations, without a clear foundation in experience” (Angrist & Pischke, 2010, p. 22).

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 was *ceteris paribus*, or that all other things would remain constant. They rarely do in the real world. Policy measures based on economic studies, noted Menno Rol (2010), 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” (p. 29). In order to find a realistic level of abstraction, Rol (2010) argued, economists needed to take a more interdisciplinary approach informed by research 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” (p. 29).

Economists have eschewed interdisciplinarity, however, since their field was cleaved from political economy in the early 20th century. Creating separate fields of economics and political science also expunged the former of any normative element and created a strictly amoral science. Neoclassical quantitative economics, noted Vincent Mosco (2009), shed all concern for social, political, and historical factors 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” (pp. 46–47). The substantive weakness of economics, Mosco (2009) 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” (p. 63). One especially important element economics left behind in its modern form, Mosco (2009) 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” (p. 26).

Discussion

It might not be overstating the case to characterize the antitrust regulation of the newspaper industry in Canada as an almost complete failure that has led to its domination by one company owned mostly by foreign hedge funds. This need not have been the case. It has not been the case in other countries with more empowered antitrust regulators. In the U.K. and Australia, for example, legislation requires media regulators to perform a “diversity” or “plurality” test in determining whether news media mergers or acquisitions should be allowed. They are blocked if they would result in the number of distinct editorial voices in a market falling below a given level (Edge, 2008). A similar approach was proposed in both the 2006 Senate report on news media and the 2017 Fry report on local media. It is an approach that seems more sensible than relying, as the Competition Bureau now does, on the econometric modelling of advertising markets.

Antitrust regulators in other countries are also more vigilant in enforcing existing laws against reducing competition. The U.S. Department of Justice regularly intervenes in news media mergers and acquisitions, as it did in preventing the planned 2016 purchase of the *Orange County Register* by the giant Tribune Company, which owned the area’s largest daily, the *Los Angeles Times*, because it would have resulted in market dominance (Steele, 2016). In New Zealand, the Commerce Commission blocked a proposed 2016 merger of the two largest chains, which together published almost 90 per cent of the country’s newspapers. An appeal to the High Court of New Zealand upheld the ruling as justified on the grounds of public interest and plurality (Myllylahti, 2018). Contrast that with the focus in Canada on economic efficiency and “good business sense,” and it is no wonder that our antitrust oversight of news media is ineffective.

To answer the question posed earlier by Joshua Angrist and Jörn-Steffen Pischke (2010), antitrust regulators should not favour “complex, simulation-based estimates ... over a transparent analysis of past experience” (p. 22). Economists, as Rol (2010) suggested, should take a more interdisciplinary approach informed by research from other disciplines. One type of economics that emphasizes the need for media diversity and press pluralism is political economy. It is mainly concerned with “who gets what from whom,” as a Canadian founding father of media economics quipped, paraphrasing the then-popular “who says what to whom” (Smythe, 1960, p. 564) model of communication. Political economy focuses on the political and social considerations that were expunged from economics in its emergence as an independent field. It is less concerned than economics is with quantitative measurement, scientific justification, or even objectivity, instead openly advocating for social good rather than economic gain. Far from considering it a non-factor, political economy recognizes that the ideological orientation of researchers is often a determining factor in the outcome of re-

search studies. “All of us have our predispositions, either to criticize and try to change the existing political-economic order, or to defend and strengthen it,” noted Dallas Smythe and Tran Van Dinh (1983, p. 117). “The frequent pretense of scientific ‘neutrality’ on this score is a delusion.” The advice of political economists should thus be considered at least equally to that of quantitative economists in deciding whether to allow news media mergers and acquisitions.

Conclusion

A litany of unfortunate events has marked the failure of antitrust regulation in Canada to deal effectively with media ownership concentration. Ill-timed changes in government have thwarted the best opportunities for media ownership reform provided by the reports of the Royal Commission on Newspapers in 1981 and the Senate committee on news media in 2006. The otherwise confounding Competition Bureau ruling that allowed Postmedia’s takeover of the Sun Media chain in 2015 becomes clearer in light of the quantitative imperative imposed on it by Tervita. The ascendancy of economists atop Canada’s antitrust regulator also helps to explain why the law enforcement agency was unable or unwilling to prevent Postmedia’s dominance of the country’s newspaper industry and its monopolies in numerous local markets. The dominant paradigm of free-market neoclassical economics prefers a *laissez faire* approach to mergers and acquisitions that, while perhaps appropriate in other sectors of the economy, may be incompatible with providing comprehensive enough news coverage to enable citizens to effectively self-govern. The elevation of quantitative methodologies over qualitative concerns likewise privileged the measurement of finances, such as advertising revenues, over more subjective concerns, such as adequate community journalism. The demonstrable blind spots of economists in dealing with news media arguably render them incapable of assessing such civically essential services alone.

The inclusion of efficiency in the *Competition Act* as an exemption for mergers and acquisitions that would otherwise result in an illegal monopoly may have been justified by a laudable desire for economic growth. Its codification as the common law of the land by Canada’s highest court, however, even as the largest news media merger in the country’s history was being decided, was more than just bad timing. It opened the door to even more media mergers based on a principle of increased efficiency that, if carried to its extreme, would eliminate competition in newsgathering. This would be contrary to the “marketplace of ideas” concept that recognizes a diverse and pluralistic news media as essential to democracy. Tervita is thus another reason to heed the calls of the 2006 Senate report and the 2017 Heritage committee report to amend the *Competition Act* in order to preserve what little competition remains in Canadian news media. Economists, as the Senate report noted, may lack the expertise to adequately deal with the public interest in industries engaged in such public goods as journalism. A new section of the *Competition Act* requiring the appointment of an expert panel to conduct a review in such cases is thus more needed than ever. Such a panel should include social scientists other than just economists, including political economists who would consider the public interest.

Recent developments in news media consolidation point up the need for the reform of Canada’s competition laws to account for more than just quantitative concerns.

They also emphasize the need for economists, if they are to be the “rock stars” of competition law in Canada, to at least become more cognizant of research in communication, which has long found negative social and political effects of news media consolidation. Economists should not be the solo voice heard in deciding such important questions but should instead be considered in concert with those of other social scientists.

Notes

1. Pecman's five-year term as head of the Competition Bureau expired in 2018; a lawyer succeeded him.
2. An economist with the Competition Bureau described the 2009 study as the leading one on the subject of two-sided markets (Janota, personal communication, January 18, 2018).

Personal communication

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