

The Never-ending Story: Postmedia, the Competition Bureau, and Press Ownership Concentration in Canada

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Abstract

The 2014 purchase by Canada's largest newspaper chain of its second-largest chain increased concentration of newspaper ownership considerably. The deal's 2015 approval by the Competition Bureau, some scholars noted, provoked little outcry over the latest federal regulatory failure to stop the increased concentration level. A series of inquiries, from the 1981 report of the Royal Commission on Newspapers to Senate reports in 1970 and 2006, all identified increased concentration of newspaper ownership as a problem and proposed measures to solve it. Formed in the 1980s, the Competition Bureau took action against a local newspaper monopoly in Vancouver in the early 1990s but has been ineffective since. This study charts the historical progress of newspaper ownership concentration in Canada and calculates that Postmedia now publishes 37.6 percent of Canadian paid daily newspaper circulation and owns fifteen of the twenty-two largest English-language dailies. That includes 75.4 percent in the three westernmost provinces, where Postmedia owns eight of the nine largest dailies. Possible explanations for a lack of outcry include the company's use of the "death of newspapers" meme as justification and the fact the deal's effect was felt mostly in Western Canada, far from the corridors of power.

Keywords: Newspapers, media ownership concentration, Restrictive Trade Practices Commission, Competition Bureau, Postmedia, Sun Media.

Introduction

When the federal Competition Bureau approved in March 2015 the purchase by Postmedia Network, Canada's largest newspaper chain, of 175 newspapers from the Sun Media newspaper chain, a pair of communication scholars lamented that the takeover evoked "almost no critical commentary or even concern" (Benedetti and Compton, 2015). The \$316-million acquisition essentially merged Canada's two largest newspaper chains, as seller Quebecor Inc. retained only three French-language tabloids, *Le Journal de Montreal*, *Le Journal de Quebec*, and the free-distribution *Montreal 24 Heures*. It made Postmedia, which was the latest corporate owner of the historic family-owned Southam newspaper chain, by far the largest publisher of dailies in Canada, with almost three times the paid daily circulation of second-place Torstar Corp. (See Table 1) It gave Postmedia, which was owned mostly by U.S. hedge funds, 37.6 percent of Canadian paid daily newspaper circulation, including fifteen of the twenty-two largest English-language dailies. (See Appendix 1) Even more pronounced was the dominance Postmedia achieved in Western Canada, with a 75.4 percent share of paid daily newspaper circulation in the three westernmost provinces. It owned eight of the nine largest dailies in B.C., Alberta, and Saskatchewan, including the two largest newspapers in Vancouver, Calgary, and Edmonton. (See Appendix 2) In addition to its long-standing duopoly in Vancouver, where Postmedia and its predecessors Canwest, Hollinger, and Southam owned both dailies, Postmedia gained similar market dominance in Calgary, Edmonton, and Ottawa, where it acquired its main competition.

Table 1 - Daily newspaper ownership concentration¹

| | 1970 | 1980* | 1994 | 1999 | 2003 | 2014 | 2015 |
|------------------------------|------|-------|------|------|------|------|------|
| SHCP ² | 18.0 | 32.8 | 27.0 | 42.0 | 28.5 | 21.0 | 37.6 |
| FP Publications ³ | 18.2 | | | | | | |
| Thomson | 8.5 | 25.9 | 20.6 | 10.7 | 6.4 | 8.6 | 8.7 |

¹ As measured by paid daily circulation.

² Southam/Hollinger/Canwest/Postmedia.

³ Acquired by Thomson in 1980.

| | | | | | | | |
|-----------------------------|------|------|------|------|------|------|------|
| Torstar | | | | 13.7 | 13.8 | 14.2 | 14.3 |
| Independents ⁴ | 42.5 | 25.7 | 17.4 | 3.5 | 3.1 | 4.2 | 9.1 |
| Sun Publishing ⁵ | | 8.3 | 11.0 | | | | |
| Quebecor | 1.3 | | 8.8 | 21.3 | 21.0 | 26.7 | 10.6 |
| Power Corp. | 6.8 | | 6.0 | 5.7 | 9.1 | 11.1 | 11.2 |
| Other chains | 4.7 | 7.3 | 9.2 | 2.1 | 18.1 | 14.2 | 8.5 |
| Top 3 chains | 53.7 | 67.0 | 58.6 | 77.0 | 63.3 | 61.9 | 63.1 |

* English language only

Sources: Senate Report on Mass Media (1970); Report of the Royal Commission on Newspapers (1980); Senate Interim Report on News Media (1994-2003); Newspapers Canada (2014-15).

After reviewing the acquisition for five months, but without holding hearings, the Competition Bureau issued Postmedia a “no action” letter, meaning it would not challenge the purchase. Its investigation counter-intuitively concluded that the sale was “unlikely to substantially lessen or prevent competition” in the markets where Postmedia suddenly owned both daily newspapers (Competition Bureau, 2015a). A combination of factors played into its decision, according to 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 Competition Bureau’s ruling and lack of outcry over it left media critics non-plussed as Postmedia set about consolidating its operations with those of Sun Media. As Benedetti and Compton (2015) noted,

⁴ Including the *Toronto Star* until 1999.

⁵ Acquired by Quebecor in 1998.

Postmedia CEO Paul Godfrey gleefully admitted that ten years ago such a merger would not have been allowed and would likely have provoked a public outcry and calls for “another royal commission into the newspaper industry.” This time around, it sparked, well, nothing.

This paper examines the historical progression of press ownership concentration in Canada, the Competition Bureau’s role in it, the reasons behind the Competition Bureau’s approval of Postmedia’s purchase of the Sun Media chain, and the reaction to it. It concludes that a number of factors may have played into the deal’s easy approval, including regulatory capture and the fact that it mostly impacted newspapers in the country’s far-flung western provinces.

Press ownership concentration

Concerns about increased concentration of press ownership and growing control of Canadian newspapers by corporate chains were first expressed officially in the 1970 report of the Special Senate Committee on Mass Media. “There are only five cities in the country where genuine competition between newspapers exists,” the report noted. “Of Canada’s eleven largest cities, chains enjoy monopolies in seven. The three biggest newspaper chains – Thomson, Southam, and F.P. – 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: 4). The committee forced the chains to open their books and it not only found their profits “astonishing,” it also decried the secrecy surrounding them. “An industry that is supposed to abhor secrets is sitting on one of the best-kept, least-discussed secrets, one of the hottest *scoops*, in the entire field of Canadian business – their own balance sheets” (Canada, 1970: 63). Its report recommended establishment of a Press Ownership Review Board to approve or reject mergers and acquisitions of newspapers and periodicals. The board’s 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: 71). After considerable national debate,

the recommendation was not adopted, nor were several others made in the report.

A decade later, the newspaper industry in Canada was convulsed by the events of August 27, 1980, or what came to be called “Black Wednesday.” The Southam chain closed its *Winnipeg Tribune* and the Thomson chain closed its *Ottawa Journal*, which gave each chain another local monopoly. The Liberal government of the day quickly called a Royal Commission on Newspapers to investigate and criminal charges of conspiracy and monopoly were laid against the chains. The Royal Commission held hearings across the country and issued a report in 1981 that was accompanied by eight book-length research studies. “Newspaper competition, of the kind that used to be, is virtually dead in Canada,” its report noted. “This ought not to have been allowed to happen” (Canada, 1981: 215, 218). Noting that the Southam and Thomson chains then controlled 59 per cent of the nation’s English-language daily newspaper circulation, the report proposed to limit chain ownership to five dailies each. Because of the country’s regional nature, it went so far as to call for divestiture to enforce limits on the percentage of any region’s press that one chain could control. “No company . . . should continue to own or control two or more papers . . . which are the sole or predominant (that is, having 75 per cent or more of the circulation) newspapers in one language published in a province or in a distinct region” (Canada, 1981: 241). A proposed Canada Newspaper Act would have imposed less strict controls, but it was never tabled in Parliament as the government changed to Progressive Conservative. The chains were acquitted after a trial on the criminal charges against it in 1983. The criminal test for obtaining a conviction of proof beyond a reasonable doubt in antitrust cases was reduced to the lower civil test of proof on a balance of probabilities three years later when the Restrictive Trade Practices Act was replaced by the Competition Act.

Largely forgotten amid the furore over the closing of two long-publishing newspapers was the sale by Thomson to Southam the same day of the *Vancouver Sun*, which gave Southam ownership of both dailies there. The 1957 merger of the then Cromie family-owned *Sun* and Southam’s *Daily Province* had prompted hearings in both

Ottawa and Vancouver by the Restrictive Trade Practices Commission, which ruled the Pacific Press partnership an illegal monopoly. It was allowed to stand, however, on the basis of “economic necessity,” after the chains argued that, under the prevailing Natural Monopoly Theory of Newspapers, one of the dailies would inevitably go out of business if they were not allowed to merge. Two decades later, Southam bought the *Sun* from Thomson, giving it ownership of both dailies (Edge, 2001).

Southam, noted the Royal Commission report, recognized it was “about as big as it should be” and agreed that “any further marginal acquisitions should be judged by an ownership review board according to whether or not they created an additional predominance of the chain in a particular region” (Canada, 1981: 241). Failure of the Royal Commission’s proposed reform measures, however, seemingly emboldened Southam to regional dominance, and it began to buy up most of the Vancouver-area community newspapers later in the decade. That brought the intervention of the newly-formed Competition Bureau, which was charged with enforcing the Competition Act. It ordered Southam to sell several of the newspapers but the chain balked and hearings were held before a Competition Tribunal, which reduced the number of publications Southam had to sell to only one (Competition Bureau, 2004). The case was appealed by Southam first to Federal Court and then to the Supreme Court of Canada, which upheld the order.

Another Senate inquiry

The newspaper monopolies in Ottawa and Winnipeg created by the “Black Wednesday” closures did not last long. Soon colourful tabloids sprang up in those markets, modelled after the successful *Toronto Sun*, which had been founded in 1971. The tabloid format proved so successful that it quickly spread across Canada and effectively repealed the Natural Monopoly Theory of Newspapers, with Southam even converting its Vancouver *Province* to the format in 1983. Key to the success of tabloids was that they were a “differentiated” product that appealed more to young people and commuters than did traditional broadsheets. The Sun Media chain was initially employee-

owned, but it was sold to Quebecor in 1998. As a result of that and other transactions, newspaper ownership concentration grew so high by the turn of the millennium that another Senate inquiry was convened in 2003. The Southam chain had been taken over by Conrad Black in the mid-1990s and added to his Hollinger chain of newspapers. Black then founded the *National Post* in 1998 as competition for the *Globe and Mail*, but he sold the dailies in 2000 to Canwest Global Communications, which owned the Global Television network. That deal, and a partnership between the CTV network and Thomson's *Globe and Mail* the same year, brought "convergence" of newspaper and television ownership to Canada. The centralizing of editorial writing at Canwest's headquarters in Winnipeg, however, alarmed many of its journalists. Reporters at the *Montreal Gazette* went on a "byline strike" in 2001 to protest the ordered "national" editorials, some columnists at its other newspapers quit in protest, and Canwest fired the publisher of the *Ottawa Citizen* in 2002 after it ran an editorial contrary to company policy (Edge, 2007).

The Standing Senate Committee on Transport and Communications launched a study of Canadian news media in 2003. It issued an interim report the following year that found concentration of newspaper ownership by the five largest chains had risen from 73 percent in 1996 to 93 percent in 1999 (Canada, 2004). Its final report issued in 2006 recommended automatic review of any merger of news gathering organizations that gave an owner an audience share of 35 percent or higher in any market. Presciently, in light of subsequent events, it also recommended that the Canadian Revenue Agency strengthen its procedures for determining whether a periodical is Canadian owned and controlled for tax purposes. It also recommended that all news media outlets be required to state regularly in their reports the identity of their controlling shareholder(s). Press freedom provisions in the Charter of Rights and Freedoms, the senators reasoned, should only go so far. "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: 24). By then, however, momentum for media ownership reform in Canada had once again stalled with

the election earlier that year of a deregulationist Conservative government. Bev Oda, Canada's new minister in charge of broadcasting (and a former CTV and Canwest executive), issued a policy response to the Senate report before 2006 ended which officially blessed convergence as a business model for media: "The government recognizes that convergence has become an essential business strategy for media organizations to stay competitive in a highly competitive and diverse marketplace" (Canada, 2006b: 13).

The Competition Bureau

In a 2004 background report to the Senate committee on its work in media industries, the Competition Bureau pointed out that its governing Competition Act was "essentially an economic law. . . common to all products and services" (Competition Bureau, 2004). As such, in considering mergers and acquisitions of media companies, the Bureau was required to consider only their revenues, the bulk of which came not from audiences but from advertisers. Audiences, it pointed out, were merely a means to an end for media companies in gaining revenues.

In media markets, advertisers, not the final consumer, are often the most important players from a competition policy perspective. Cases to date have stressed the important role that media markets play in providing an audience to advertisers. Specifically, in cases where there were competitive concerns, the Bureau's investigation concluded that it was likely that the proposed transaction would adversely affect the price paid by advertisers (Competition Bureau, 2004).

Even if it found that a merger would substantially lessen or prevent competition for advertising, the Competition Bureau pointed out that 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). In chronicling its recent investigations into mergers involving

newspapers, the Bureau noted that it found the convergence deals by Canwest Global and CTV at the millennium had not posed a threat to competition. It concluded there was “no evidence that newspapers, the Internet and television compete directly for retail advertising normally found in newspapers” (Competition Bureau, 2004). Its 1998 review of a proposed takeover of Sun Media by Torstar, however, found it would have “substantially” lessened competition in the Toronto area. “The Bureau’s research found that Torstar’s *The Toronto Star* and Sun Media’s *The Toronto Sun* competed vigorously for retail and classified advertising” (Competition Bureau, 2004).

The Senate committee’s final report on news media was sharply critical of the Competition Bureau and the Canadian Radio-Television and Telecommunications Commission (CRTC) for what it called their “neglect” of Canada’s news media industries. “One challenge is the complete absence of a review mechanism to consider the public interest in news media mergers,” it noted. “The result has been extremely high levels of news media concentration in particular cities or regions” (Canada, 2006a: 24). Part of the problem, it noted, was that the Competition Bureau was only empowered to consider the economic impact of a media merger on advertisers, not the impact on information needs of Canadians.

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: 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: 17). What may have worked in an economic sense in most industries, it warned, was not appropriate to such a politically important – and constitutionally protected – 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: 17). The Bureau’s “silo” approach missed a critical dimension of news and information, added the senators. “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: 17).

The Senate report recommended that a new section dealing with mergers of newsgathering organizations be added to the Competition Act requiring automatic review of 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.

Postmedia’s purchase

Despite operating both its television network and its newly-acquired newspaper division profitably, Canwest Global Communication was forced to declare bankruptcy in 2009 because of its heavy debt load and the fact its revenues had been reduced during a severe recession. CTV and the *Globe and Mail* voluntarily split their operations the following year, bringing an end to their decade-long experiment with convergence. Canwest was also de-converged when its television operations were purchased out of bankruptcy by the Shaw cable company and its newspapers were acquired by a consortium of its debt holders which called itself Postmedia Network after the chain’s

flagship daily, the *National Post*. Postmedia financed its bid for the former Southam chain with the backing of several U.S. hedge funds which specialized in buying distressed companies at low prices. Ownership of shares in the new company by these funds, principally GoldenTree Asset Management and Silver Point Capital, was estimated at 58 percent, which should have negated Postmedia's tax status as Canadian owned. That would have jeopardized its largest revenue stream, as its advertisers would no longer have been able to deduct the cost of advertising as a business expense. Instead, in an end run around the tax law, the company created a new class of non-voting shares, in which the U.S. hedge funds held their ownership that was beyond the allowable limit, for tax purposes, of 25 percent (Gutstein, 2014).

Postmedia's announcement in October 2014 that it had agreed to buy the Sun Media chain from Quebecor surprised many because news reports had portrayed it as a deeply-indebted company that was losing money. Instead Postmedia had earned operating profits in the 16-17 percent range over the previous three years, albeit on a declining revenue base (Edge, 2014). A prospectus Postmedia filed with the Ontario Securities Commission, which disclosed details of its purchase, showed that Sun Media had also earned healthy operating profits ranging from 17-19 percent over the previous three years. Postmedia was required to file the prospectus because its purchase would be financed largely by the issuing of more Postmedia shares to GoldenTree Asset Management, potentially bringing its equity in the company to a majority of 52 percent (GoldenTree, 2015). The *Toronto Star* estimated total ownership of Postmedia shares by foreign hedge funds at 92 percent (Anonymous, 2014).

Postmedia CEO Paul Godfrey expressed confidence the acquisition would be approved by the Competition Bureau. "I don't consider newspapers competitors at all," he said. "It's Google, Facebook and every other major website that's taking all the revenue away from us. . . . When the transaction is approved, we will be able to offer advertisers the opportunity to reach the full scale and scope of their target audiences with a Canadian option for their marketing programs" (Sparks and Flavelle, 2014). Godfrey added that

by combining non-editorial operations of the two chains, Postmedia expected to save an estimated \$6-10 million in cost cutting efficiencies, or so-called “synergies.” The *Toronto Star* remarked in an editorial that Postmedia’s pending newspaper dominance wasn’t raising much concern.

It should. If the deal is approved by the federal Competition Bureau, one company will own almost all the significant daily papers in English Canada. In most cities, the choice for newspaper readers will be between Postmedia – and Postmedia. Most worrisome, the big decisions that will shape much of English Canada’s media landscape will be made south of the border (Anonymous, 2014).

There were several other media outlets that also carried critical commentary. A guest columnist in the *Globe and Mail* observed that Postmedia had “thrown down the gauntlet to Canadian regulators, and forced the country to have a conversation that it has long avoided: How much are we willing to compromise the principles of a diverse and competitive press in the name of keeping it alive? . . . This doesn’t just alter Canada’s print-media landscape, it takes a bulldozer to it” (Parkinson, 2014). Some academics also spoke out against the proposed takeover. “It’s a bad deal for Canadians because we do have this increase in concentration and the reduction of editorial independent voices at the local level,” Carleton University professor Dwayne Winseck told CTV News (CTV, 2014). Sean Holman of Mount Royal College told the CBC the takeover should raise concerns because of such questionable practices as Postmedia publishing “sponsored” content designed to look like news on behalf of such advertisers as the Canadian Association of Petroleum Producers (Foster, 2014). Ross Howard, a recently retired journalism instructor from Langara College, told the *Toronto Star* that the takeover was “simply not healthy” for cities like Calgary and Edmonton that would now have both their dailies owned by one company. “My God, we have the most narrowly-controlled print media, probably among western democracies. And we’re getting

dangerously close to risking the loss of the independent watchdogging role by journalists” (Quoted in Hunter, 2014).

Other academics, however, justified the takeover by pointing to the shrinking revenues of newspaper companies. “Obviously, I would see it as a terrible thing if the Toronto Star and the Globe and Mail were to be owned by the same owner,” Ivor Shapiro of Ryerson University told the *Star*. “That would be awful. But what we’re talking about here is two organizations that were on a death watch. I’d rather have one news organization that is not on death’s door, than two news organizations that are. Together they are stronger competitors than they were apart” (Hunter, 2014). Christopher Waddell of Carleton University echoed that sentiment in an interview with CTV. “A year or year and a half from now, how many of those 175 newspapers are still open, and how many does Postmedia own,” he asked. “And I would be very surprised if some of them aren’t closed” (CTV, 2014). The Canadian Association of Journalists (CAJ), however, issued a warning that approval of the takeover by the Competition Bureau would pose “a direct threat to press freedom and the public’s right to know across Canada” (Canadian Association of Journalists, 2014). Searches of the Internet and the Canadian Newsstand database, however, found no online or print publications that picked up those comments. “If one company can dictate editorial policy to most major newspapers, the absence of any competition threatens press freedom,” said CAJ vice-president Nick Taylor-Vaisey in a press release. “The public’s right to know is more important than one company’s desire to expand its operations” (Canadian Association of Journalists, 2014).

Postmedia embarked on a two-pronged campaign to head off criticism of its acquisition. Several of its columnists offered arguments for allowing it. “Newspaper owners aren’t bluffing this time,” warned John Ivison (2014) in the *National Post*. “They are fighting to survive. Everyone knows this – they see it before their eyes as their papers shrink in size, personnel and ambition. Against this gloomy backdrop, it seems unlikely that the regulator or the federal government will be motivated to intervene and block a deal that offers ballast to an industry buffeted by choppy waters.” His

colleague Peter Foster (2014) went on the offensive against critics of the deal, derisively quipping that it had “produced predictable wailing about foreign control and ‘corporate media concentration.’”

The rationale for the deal is to survive and compete in a fast-changing media environment that is increasingly dominated by other, far larger, U.S. concerns, such as Google, Facebook and Twitter. Like most investors, including Postmedia’s Canadian shareholders, U.S. hedge funds want to make profits. The way to make profits is to provide paying customers with products they want to read, in a form they want to read them (Foster, 2014).

Another way in which Postmedia headed off criticism of the deal was by consulting with a wide range of politicians in advance. Postmedia’s chairman called the mayors of Edmonton and Ottawa, reported the *National Post*, as well as the premiers of Alberta and Ontario. Godfrey reportedly made similar calls to the mayor of Calgary, the federal Heritage Minister, the Prime Minister’s Office, and several other cabinet ministers. “Even the leaders of the Opposition parties were brought into the loop,” noted the *National Post* in a backgrounder to the deal that was published in several of Postmedia’s other dailies across the country. “Liberal leader Justin Trudeau was reached moments before Postmedia executives took to the microphones to announce the deal” (Tedesco, 2014). Ivison also mentioned in his column that he had polled three MPs, one from each major party, on whether they would oppose the deal. “Provided that there are no mass layoffs, and all titles keep publishing, they said they were relaxed about the union” (Ivison, 2014). He also cited a 2009 study of newspaper mergers in Canada during the 1990s by a pair of economists that showed the increased ownership concentration did not lead to higher prices. “One possible explanation for our results is that newspapers do not constitute an industry by themselves but are part of a wider media market,” concluded the economists. “If consumers view these various sources of news and information as reasonably close substitutes for each other, then consolidation in the

newspaper market does not imply an ability by publishers to set higher prices” (Chandra and Collard-Wexler quoted in Ivison, 2014).

Competition Bureau review

Following the public pleadings by Postmedia and a pair of recent Competition Bureau rulings involving media mergers, legal and regulatory observers expected the Bureau to modify its definition of the product market for print advertising to account for competition from digital media. The purchase by Transcontinental of community newspapers from Quebecor and by TVA of Transcontinental’s magazine division had both passed scrutiny in the previous year in part because the Competition Bureau found the degree of substitutability between print and online advertising was “evolving.” The online legal publication *The Competitor* speculated that “it is therefore possible that something of a shift in the Bureau’s analytical framework for media mergers may be underway” (Kilby, 2015). Instead, the Competition Bureau found that because newspapers excel at “price/product information,” newspaper advertising was still imperative in some industries, and businesses that did not advertise in newspapers risked being at a competitive disadvantage. “Non-newspaper media are more likely complements than true substitutes for newspapers,” it concluded in a statement explaining its ruling, “especially for local advertising.”

Some advertisers have already significantly reduced their newspaper advertising budgets. . . . Others indicated that despite the increasing importance of digital media, at this time they would not be able to substitute away from newspaper advertising and would not do so even in the case of a price increase (Competition Bureau, 2015b).

Many “potentially captive” newspaper readers also expressed a strong preference for getting their news from printed sources, the Competition Bureau added. “There remains a portion of readers that still has a strong preference for local print newspapers; that places a high value on local content; that actively seeks out the type of

advertising that is available in local newspapers; and that is resisting digital options” (Competition Bureau, 2015b). In assessing the degree of competition for advertising between the affected newspapers, the Bureau said it “reached out to a broad set of market contacts, reviewed thousands of documents from industry participants, and carried out extensive econometric analyses.” It found “very little evidence of direct rivalry between the parties’ newspapers with respect to advertising. Rather, in this particular matter, 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.” Accordingly, the tabloid and 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, also “failed to support a finding of strong rivalry between the parties to the proposed transaction” (Competition Bureau, 2015b).

Extensive documentary and empirical evidence 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).

Another factor considered by the Competition Bureau was 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.” Because they took in revenue from both readers and advertisers, newspapers actually competed in two markets instead of the usual one. “The parties are keenly focused on their circulation and readership figures, and rely on them heavily in

marketing to potential advertisers,” noted the Competition Bureau. “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 advertising that newspapers competed in were 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 pricing pressure was also exerted on them to compete with free newspapers and to generate additional advertising revenues through improved circulation. It was therefore in the newspapers’ best interests, the Competition Bureau noted, 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,” it found. “Econometric evidence supports the existence of a strong interaction between the advertising and readership sides of the newspaper markets” (Competition Bureau, 2015b).

Finally, in explaining why it decided not to block Postmedia’s purchase, the Competition Bureau mentioned that it “also weighed substantive efficiencies submissions by Postmedia suggesting that the proposed transaction is likely to bring about meaningful cognizable efficiencies” (Competition Bureau, 2015b). This referred to provisions in the Competition Act that allowed “cost savings from substantiated efficiency gains” to offset the anti-competitive effects of a transaction. As stated in its 2011 Merger Enforcement Guidelines, “the Bureau considers whether, as a result of true cost savings . . . the parties to the merger are better positioned to compete in a competitive market or are less likely to engage in coordinated behaviour” (Competition Bureau, 2011).

Another factor may have played a significant part in the Competition Bureau choosing not to challenge Postmedia’s acquisition of the Sun Media newspapers. A ruling by the Supreme Court of Canada two months before the Competition Bureau issued

its decision in the Postmedia case likely set a precedent it was bound to follow. The Competition Bureau had blocked the merger between two companies operating hazardous waste landfills in northern British Columbia. The Supreme Court overturned the ruling because, while the companies had shown it would lead to marginal efficiency gains, the Competition Bureau had failed to quantify the anti-competitive effects the merger would bring (See Tervita, 2015). “After losing twice, once before the Competition Tribunal and then again on appeal,” noted the *National Post*, “the Supreme Court affirmed that efficiency trumps anticompetitive behavior” (Bitti, 2015).

Reaction

There was indeed more published reaction to the Competition Bureau’s approval of Postmedia’s takeover of the Sun Media chain from lawyers and economists than from journalists and media scholars. The introduction of two-sided markets as a factor in considering media mergers, according to the online publication *Competition Bulletin*, was likely to make it easier for future acquisitions in such markets to gain approval.

This has always been true for newspapers but had not been as expressly recognized by the Bureau in its previous media reviews. It is likely to be a constant and explicit aspect of future media merger reviews – and likely a feature of all mergers in industries involving two sided platforms (Musgrove and Chad, 2015).

In a front-page story that was reprinted in Postmedia dailies across Canada, the *National Post* quoted one of the economists who had studied the two-sided effects of the newspaper mergers in the 1990s and found they did not lead to higher prices for advertisers or readers. “The bureau is more likely to let mergers go through in industries that are seen as struggling, where growth seems to be slow or uncertain for the future,” said Ambarish Chandra of the University of Toronto. “That’s essentially what we see with traditional newspapers” (Brownell, 2015). The offsetting effects of efficiencies,

while enshrined in the Competition Act, took on a new legal significance with the Supreme Court of Canada's recent ruling in the Tervita case. "The court ruled that the burden is on the CB to quantify anticompetitive effects when it determines there is a substantial lessening or prevention of competition," noted one legal analysis, "and that where the regulator cannot, even minimal efficiencies can justify a transaction" (Leger, 2015). One economist, however, thought the Supreme Court was "asking too much of economic theory," according to a guest columnist for the *Globe and Mail*. "While quantification may look objective from a distance, in the economic weeds, it's not as concrete a standard" (Myers, 2015).

Efficiencies, however, proved to be a two-edged sword for Postmedia as its revenues continued to fall throughout 2015. Following a 20-percent plunge in advertising revenue in the company's fiscal third quarter, Postmedia announced a further round of cost-cutting in mid-2015 that was aimed at achieving \$50 million in efficiencies, including \$25 million from the Sun Media newspapers (Anonymous, 2015). That followed a three-year program of cutbacks at Postmedia newspapers that started in mid-2012 that reduced annual spending by \$136 million, or 20 per cent of operating costs (Bradshaw, 2015). Sun Media newspapers had cut about 1,000 jobs in 2013, diminishing their product so much that Godfrey said when Postmedia's takeover was announced that they would get more staff, not fewer. "They'd become too thin and need some boosting up," he said (Sparks and Flavelle, 2014). Conrad Black, a minor Postmedia shareholder, claimed that was not true. "Management could have spoken more candidly about the cost savings that a merged company could effect," Black wrote in his *National Post* column. "They will be larger than was stated, for public and personnel relations reasons" (Black, 2014). Black, whose company Hollinger was notorious for cost-cutting at newspapers it acquired, ironically urged Postmedia to invest more in its newspapers. "Some of [them] have deteriorated a long way from what I remember," Black told company executives on a conference call with investors. "Some of it you can't avoid. Some of it you can. But please build the quality. Otherwise, you're going to retreat right into your own end zone, if you'll pardon the sports metaphor" (Bradshaw, 2015).

Following election of a majority Liberal government in late 2015, a Parliamentary committee chaired by long-time Vancouver MP Hedy Fry convened hearings into news provision to local communities in February 2016. It was prompted by the announcement the previous month that Postmedia would merge the newsrooms of its newspapers in Vancouver, Calgary, Edmonton, and Ottawa. The merger of newsrooms was ironically met with considerably more outrage than the Competition Bureau's 2015 approval of Postmedia's acquisition of Sun Media.

Conclusions

Federal approval of Postmedia's takeover of the Sun Media chain was gained as a result of several factors. A lack of political outcry over the ensuing local newspaper monopolies resulted in part from Postmedia executives skillfully heading off opposition to the deal by informing key politicians of it in advance and thus defusing possible political opposition. The company also successfully used the "death of newspapers" meme as justification for the increased industry consolidation in the press. This meme was similar to what the late Ben Bagdikian (1973) called "the myth of newspaper poverty," which had been used by newspaper owners for decades in gaining regulatory advantage. The recent financial crisis had seen newspapers play up the misconception that they were losing money and were even dying (Chyi, et al., 2012; Edge, 2014). Even most media scholars apparently believed this. In the case of Postmedia's acquisition of the Sun Media chain, none seemingly stopped to wonder why a company in a supposedly dying industry wanted to buy another such company. The answer that may have never occurred to most was that they were quite possibly not dying.

Another possible factor in the easy approval Postmedia gained for its takeover of the Sun Media chain was the fact that its effect was felt mostly in Western Canada, far from the corridors of power. That Postmedia was able to control more than 75 percent of the paid daily newspaper circulation in the three westernmost states is not easily reconcilable with historic concerns over regional press ownership concentration. Both the 1981 report of the Royal Commission on

Newspapers and the 2006 Senate report on news media warned against regional control of the country's press. The Standing Senate Committee in 2006 even urged changes to the Competition Act in order to differentiate news media from other industries. Its warning proved prophetic when the Tervita decision was coincidentally rendered by the Supreme Court of Canada while the Postmedia takeover was under review by the Competition Bureau.

The Competition Bureau's legacy of ineffectualness in cases involving media companies leads to the inescapable conclusion that it had fallen victim to "regulatory capture." As described by Horwitz (1989: 29), this occurs when a regulatory agency "*systematically* favors the private interests of regulated parties and *systematically* ignores the public interest." The public interest thus becomes "perverted" as the agency instead "serves to protect its industry" (Horwitz, 1989: 30). With a newly-elected Liberal majority government taking power in late 2015, a belated opportunity arose to enact some of the recommendations of the 2006 Senate report on news media that were rejected by the previous government and could have prevented Postmedia's takeover of Sun Media and the merger of newsrooms. Whether it was too late to reverse the tide of ownership concentration that had engulfed Canadian news media as a result remained an open question, however.

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Appendix 1 – Ownership of Canadian Daily Newspapers 2015*

| Postmedia (43) | Paid circ./week |
|------------------------------|------------------------|
| Toronto Sun | 715,189 |
| Vancouver Sun | 541,405 |
| National Post | 511,306 |
| Ottawa Citizen | 467,331 |
| Vancouver Province | 429,636 |
| Edmonton Journal | 382,498 |
| Calgary Herald | 382,385 |
| Montreal Gazette | 381,910 |
| London Free Press | 304,743 |
| Windsor Star | 242,473 |
| Edmonton Sun | 224,199 |
| Saskatoon StarPhoenix | 210,050 |
| Ottawa Sun | 198,162 |
| Calgary Sun | 195,327 |
| Leader-Post, Regina | 180,396 |
| Winnipeg Sun | 110,715 |
| Kingston Whig-Standard | 93,711 |
| St. Catharines Standard | 81,205 |
| Brantford Expositor | 74,683 |
| Peterborough Examiner | 58,206 |
| Sault Star | 57,379 |
| Sudbury Star | 55,417 |
| Sarnia Observer | 55,242 |
| Owen Sound Sun Times | 53,888 |
| Orillia Packet & Times | 51,924 |
| North Bay Nugget | 49,663 |
| Niagara Falls Review | 48,227 |
| Welland Tribune | 45,064 |
| Cornwall Standard-Freeholder | 44,170 |
| Timmins Daily Press | 42,726 |
| Belleville Intelligencer | 41,111 |
| Barrie Examiner | 38,739 |
| Stratford Beacon-Herald | 38,664 |
| Brockville Recorder & Times | 35,334 |
| Chatham Daily News | 31,574 |
| Simcoe Reformer | 26,400 |
| Woodstock Sentinel Review | 22,278 |
| Pembroke Daily Observer | 19,986 |
| St. Thomas Times-Journal | 19,758 |

| | |
|-------------------------------------|--------------------------|
| Grande Prairie Daily Herald-Tribune | 18,485 |
| Northumberland Today | 15,840 |
| Kenora Daily Miner & News | 10,385 |
| Fort McMurray Today | 9,440 |
| | 6,617,224 (37.6%) |
| Transcontinental (9) | |
| St. John's Telegram | 102,046 |
| Cape Breton Post | 99,142 |
| Charlottetown Guardian | 85,031 |
| PEI Journal Pioneer | 35,140 |
| Prince Albert Daily Herald | 31,425 |
| Corner Brook Western Star | 30,840 |
| New Glasgow Evening News | 26,958 |
| Truro Daily News | 26,268 |
| Moose Jaw Times-Herald | 24,252 |
| | 461,102 (2.6%) |
| Glacier (6) | |
| Victoria Times Colonist | 342,085 |
| Lethbridge Herald | 85,986 |
| Medicine Hat News | 55,500 |
| Prince George Citizen | 53,789 |
| Sherbrooke Record | 20,745 |
| Fort St. John Alaska Highway News | 10,715 |
| | 568,820 (3.2%) |
| Groupe Capitals (6) | |
| Quebec Le Soleil | 499,359 |
| Trois-Rivieres Nouvelliste | 220,451 |
| Chicoutimi Le Quotidien | 174,493 |
| Ottawa/Gatineau Le Droit | 165,282 |
| Sherbrooke La Tribune | 163,140 |
| Granby La Voix de l'Est | 74,936 |
| | 1,134,521 (6.4%) |
| Torstar Corp. (4) | |
| Toronto Star | 1,772,991 |
| Hamilton Spectator | 455,181 |
| Grand River Valley Record | 235,672 |
| Guelph Mercury | 56,803 |
| | 2,520,647 (14.3%) |
| Black Press (6) | |
| Red Deer Advocate | 60,727 |
| Nanaimo Daily News | 19,617 |
| Alberni Valley Times | 15,440 |
| Cranbrook Daily Townsman | 14,630 |

| | |
|---------------------------------|--------------------------|
| Trail Times | 13,610 |
| Kimberley Daily Bulletin | 5,915 |
| | 129,939 (0.7%) |
| Brunswick News (3) | |
| Moncton Times & Transcript | 172,872 |
| Saint John Telegraph-Journal | 161,178 |
| Fredericton Daily Gleaner | 96,300 |
| | 430,350 (2.4%) |
| Continental (3) | |
| Thunder Bay Chronicle Journal | 121,905 |
| Kelowna Daily Courier | 61,874 |
| Penticton Herald | 37,258 |
| | 221,037 (1.3%) |
| Quebecor (2) | |
| Le Journal de Montréal | 1,280,228 |
| Le Journal de Québec | 582,766 |
| | 1,862,994 (10.6%) |
| FP Newspapers (2) | |
| Winnipeg Free Press | 459,767 |
| Brandon Sun | 54,593 |
| | 514,360 (2.9%) |
| Independent (6) | |
| Globe and Mail | 1,532,970 (8.7%) |
| Montreal La Presse | 846,645 |
| Halifax Chronicle-Herald | 431,244 |
| Montreal Le Devoir | 189,743 |
| Caraquet (NB) L'Acadie Nouvelle | 108,612 |
| Fort Frances Daily Bulletin | 12,495 |
| Whitehorse Star | 6,860 |
| | 1,595,599 (9.1%) |
| Total 90 | 17,589,563 |

Source: Newspapers Canada data

Table 2 – Ownership of Daily Newspapers BC-AB-SK 2015*

| | |
|------------------------|------------------------|
| Postmedia (10) | Paid circ./week |
| Vancouver Sun | 541,405 |
| Vancouver Province | 429,636 |
| Edmonton Journal | 382,498 |
| Calgary Herald | 382,385 |
| Edmonton Sun | 224,199 |
| StarPhoenix, Saskatoon | 210,050 |
| Calgary Sun | 195,327 |

| | |
|-------------------------------------|-------------------|
| Leader-Post, Regina | 180,396 |
| Grande Prairie Daily Herald-Tribune | 18,485 |
| Fort McMurray Today | 9,440 |
| | 2,573,821 (75.4%) |
| Glacier (7) | |
| Victoria Times Colonist | 342,085 |
| Lethbridge Herald | 85,986 |
| Medicine Hat News | 55,500 |
| Prince George Citizen | 53,789 |
| Nanaimo Daily News | 23,535 |
| Alberni Valley Times | 15,440 |
| Fort St. John Alaska Highway News | 10,715 |
| | 587,050 (17.2%) |
| Continental (2) | |
| Penticton Herald | 37,258 |
| Kelowna Daily Courier | 61,874 |
| | 99,132 (2.9%) |
| Black Press (4) | |
| Red Deer Advocate | 60,727 |
| Cranbrook Daily Townsman | 14,630 |
| Trail Times | 13,610 |
| Kimberley Daily Bulletin | 5,915 |
| | 94,882 (2.8%) |
| Transcontinental (2) | |
| Prince Albert Daily Herald | 31,425 |
| Moose Jaw Times-Herald | 24,252 |
| | 55,677 (1.6%) |
| Total 25 | 3,412,562 |

Source: Newspapers Canada data

* calculations based on 2014 circulation figures