



# Economic, political and socio-cultural welfare in media merger control: An analysis of the Belgian and Dutch competition authorities' reviews of media mergers



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## ARTICLE INFO

### Article history:

Available online 20 July 2015

### JEL classification:

G34 (mergers, acquisitions)

L82 (entertainment, media)

K21 (antitrust law)

D62 (externalities)

P16 (political economy)

### Keywords:

Media mergers

Consumer welfare

Public interest

Competition law

National competition authority

Small media markets

## ABSTRACT

The premise of consumer welfare in competition law entails that National Competition Authorities (NCAs) weigh both economic and non-economic interests of consumers against those of producers. This contribution distinguishes between economic, socio-cultural and political welfare to evaluate whether NCAs examine a merger's impact against the width of consumer interest. A claim analysis is conducted of the NCAs' formal decisions on eight selected cases of proposed media mergers. The analysis shows that, in recent years, these NCAs pay attention to non-economic interests of consumers, but remain vague as to, first, what interests in particular are at stake; second, who the stakeholders are; and, third, how these interests are weighed. The results suggest potential to increase consumer welfare by safeguarding the media's political and socio-cultural role in particular. To this end, first, the perspective of individuals as citizens must prevail; second, specific tests must review the impact of media mergers on political and socio-cultural welfare; and, third, NCAs and Media Regulatory Authorities (MRAs) must bundle strengths.

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## 1. Introduction

Both the research field of competition law and of media regulation acknowledge that, beyond economic interests, there can be non-economic interests at stake in media mergers (Stucke and Grunes, 2009; Baker, 2006). Economic interests refer to fair competition and prices, amongst other factors (Motta, 2005). Non-economic interests include the safeguarding of content diversity, access to content, and (editorial) independence from owners, from commercial influences and from the state (Meier, 2007). In media policy, this is referred to as the public interest

(Freedman, 2008). The primary goal of competition law is to safeguard consumer welfare. This entails the trade-off of consumer's interests over any producers' interest in evaluating the consequences of a (proposed) merger (Buttigieg, 2009; Van Rompuy, 2012). Therefore, in their merger reviews, National Competition Authorities (hereafter: NCAs) must carefully consider the economic and non-economic interests of consumers. But do they? The question is highly relevant in an era in which technological developments and deregulation push a further consolidation in the media industry (hereafter: media or ownership concentration) (Iosifidis, 2014), especially in countries like Belgium and the Netherlands with small geographic markets (Puppis, 2009). For these reasons, the question is: *to what extent are economic as well as non-economic criteria taken into account by National Competition Authorities (NCAs) in reviewing media mergers?*

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The debate about the need for restrictions to media ownership is complex and characterised by divergent interests and a lack of consensus amongst stakeholders (Komorek, 2013). Most fundamentally, the concepts of consumer welfare and of public interest lack conceptual clarity (Stucke, 2012; Feintuck, 2010). Both are vague about who has what interests, and if and how they should be safeguarded in one way or another. Competition law is said to provide insufficient guidance for the trade-off of consumer and producer interests (Drexler, 2011). Furthermore, there is empirical uncertainty about the assumed causal relationships. For example, the relationship between diversity of content and media ownership concentration is not necessarily linear nor systematically proven (Karppinen, 2013). The impact of competition in audience and advertising markets (i.e. two-sided markets) on the accuracy of news coverage is also not straightforward (i.e. media bias, cf. Gentzkow et al., forthcoming).

There is a need for further clarification of consumer interests to better understand what interests are potentially at stake. To this end, we use Van Cuilenburg and McQuail's (2003) concept of the public interest. It distinguishes between economic, socio-cultural and political welfare as sub goals of total welfare. This approach is different from the understanding of welfare in economics. First, it focusses on what welfare instead of whose welfare. Second, it aims to be more specific regarding what total welfare entails. Central values in economic welfare include, for example, competition, consumerism and innovation. Political welfare includes freedom of expression and publication, access, and diversity. Values resulting in socio-cultural welfare include choice and quality, amongst others. Van Cuilenburg and McQuail's approach thus allows for an analysis of consumer's interests that goes beyond fair prices.

These three welfare perspectives guide this contribution's analysis of economic and non-economic interests in the Belgian and Dutch NCAs' formal decisions or merger reviews (hereafter used interchangeably). The analysis uses a claim analysis (Koopmans, 2002) which aims to explore what arguments are used by NCAs in their formal decisions about a selection of merger cases and what type of welfare they reflect. This claim analysis provides a perspective on merger cases that differs from most economic (e.g. Budzinski and Wacker, 2007; Chandra and Collard-Wexler, 2009; Crawford and Yurukoglu, 2012) and legal analyses (e.g. Castendyck et al., 2008).

The results show that a majority (92.3%) of claims in merger reviews exclusively reflects economic welfare in their topics (e.g. definition of relevant market, competition and market power). A minor share (0.7%) of the claims contains exclusively political and socio-cultural welfare topics, for example access to content, consumer choice, editorial control, and content diversity. This is in accordance with the NCAs' priorities. In most cases, however, it remains unclear what exactly the notions of content, diversity and quality entail, and how they should be safeguarded. Concerns that are seldom or not at all addressed include independence, for instance from owners, potential homogenisation of content and the representation of political or ideological groups and minorities.

This contribution concludes that NCAs pay attention to the non-economic interests of consumers but are not specific enough about the interests at stake, about who the stakeholders are, and about how these interests are weighed. It is argued that the concept of consumer welfare has greater potential to safeguard the media's political and socio-cultural role than it currently does. To this end, first, primacy must be given to the perspective of individuals as citizens; second, specific tests must review the impact of media mergers on political and socio-cultural welfare; and, third, NCAs and Media Regulatory Authorities (MRAs) must join forces. This contribution thus supports a call for a more comprehensive review of media mergers that takes both economic and non-economic interests into account.

## 2. Literature review

### 2.1. Business as (un)usual

The academic and public debate on the potential (dis)advantages of media mergers, and the approach to media mergers they evoke, roughly shows two lines of thinking. On the one hand, media constitute a business like any other and there is no need, therefore, to treat media mergers differently from other mergers. Market mechanisms and competition law safeguard diversity of suppliers, outlets and content. The latter here refers to the diversity of issues, viewpoints or opinions and actors in media coverage (Napoli, 1999). This viewpoint fits more general economic theory, in which (sector specific) regulation in addition to competition law is in principle considered undesirable (Veljanovski, 2010). This market approach argues that the public policy approach, which dominated media regulation for a long time (McQuail, 1992; Iosifidis, 2011), is outdated in light of recent media industry developments. First, digitisation generates a plethora of platforms through which media content can be distributed. This makes the traditional spectrum scarcity argument obsolete (Compaine, 2000). Second, the Internet makes an abundance of information and voices accessible to all (Baker, 2007). Third, contemporary media users have an individual responsibility to development skills to access, select, process and review information (Valcke, 2011). Fourth, the use of ownership caps restricts benefits from positive externalities and economies of scale and scope, and is therefore too static and backward-looking (Hope, 2007). These arguments have led to persistent and successful calls from the industry for deregulation (Komorek, 2013) and to the conviction that competition law can be applied to media mergers as it aims to safeguard competition and to prevent abuse and/or creation of dominant positions in any industry (De Streeel, 2008).

On the other hand are those that claim that media can only partly be treated as a business like any other because of their dual interests: media are economic entities with a certain exchange value but also socio-political entities with a certain use value (Van Gompel et al., 2002). This implies that media perform simultaneously in an economic

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