CONCENTRATION AND COMPETITION WITHIN THE CANADIAN NEWSPAPER INDUSTRY: AN ARGUMENT FOR POLICY CHANGES

by

Dana M. Spielmann

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Name: Dana Margaret Spielmann

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Examining Committee:

Chairperson: Thomas J. Mallinson, Professor Emeritus.

Liora Salter
Associate Professor
Senior Supervisor

William H. Melody
Professor

Richard Schwindt
Associate Professor
Department of Economics
Simon Fraser University
External Examiner

Date Approved: October 19, 1984.

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Author: ______________________
(signature)

Dana Margaret Spielmann
(name)

October 19, 1984.
(date)

ABSTRACT

The ownership of more than one newspaper or type of newspaper in a single market constitutes a new and problematic aspect of the increasingly high levels of concentration of ownership in the Canadian newspaper industry. Responding to this problem, and to the demise of two daily newspapers in 1980, the Canadian government commissioned an inquiry (the Kent Commission), but its recommendations have not been adopted.

The thesis examines the newspaper industry in terms of concentration of newspaper ownership in local markets and general concerns of concentration about ownership. It provides a systemic view of newspaper competition, a review of the legal environment in which newspapers operate, and a critical review of the work of the Kent Commission. The thesis concludes with a recommendation for an alternative policy approach to newspaper competition.

Research was conducted on concentration of ownership and control and on competition within the newspaper industry. The literature analysed included theoretical materials, industry reports and legal and policy documents. Several newspaper industry representatives were interviewed and two years of newspaper reports concerning the Kent Commission were reviewed.

The thesis argues that concentration of ownership within local markets impedes opportunities for economic competition by erecting barriers to entry for new firms. The social implication of this lack of competition is that potentially it discourages

news diversity. News diversity is the central purpose of newspapers if they are to function as part of the democratic process. American legal cases are used to illustrate how anti-competitive behavior is manifest where concentration in local markets is attempted.

The thesis argues that the government's apparent failure to make policy changes after the Kent Commission is due in part, to the approach taken in the Kent Report, to the lack of a Canadian tradition or an institutional framework to support government intervention to prevent mergers and monopoly, and to the delicate symbiotic relationship between newspapers and politicians. The thesis concludes that another policy approach could be taken which would include recommendations to attach an amendment to existing anticombines legislation directly relating to newspaper ownership in local markets, and to revise certain tax laws to discourage additional mergers and takeovers. It is further advised that a task force involving the Justice and Commerce departments and newspaper industry representatives be formed to further consider and make recommendations upon this problem of concentration of ownership of newspapers in local markets.

DEDICATION

To My Father

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CHAPTER 1

INTRODUCTION

Newspapers are perceived by Canadians as having a special role in society. Newspapers not only provide most people with an intelligible package of information, news and entertainment, but they also serve as an integral element in the successful functioning of democratic society. Information on the issues before government and on the behavior and attitudes of government officials helps the citizenry to remain politically involved and thus to keep politicians in step with its concerns and needs.

It has been thought that competition among newspapers provides economic efficiencies in the quantity, quality and variety of newspaper packages. Furthermore, with competing news outlets, it is generally believed that, the readership will gain a more truthful or accurate understanding of what is going on in their society. However, in the last century the newspaper industry has undergone considerable changes that impede the ideal of competition.

Certain economic forces and technological changes have fuelled the rapid restructuring of the industry to the point where more newspapers are being controlled by fewer companies. As this thesis attempts to demonstrate, it is the effect of concentration of the control of newspapers on competition in an economic and social sense that is of greatest concern. It is argued that measures can and should be taken to remedy the situation.

Concentration of the control of newspapers in Canada has been increasing since the 1930's. In 1913, 138 publishers owned 138 dailies. In 1930, 99 publishers owned 116 dailies. By 1953, 57 publishers owned 89 dailies and in 1966, 63 publishers owned 110 dailies.[1] But by 1980, 12 groups owned 89 dailies or 76 percent of the 117 dailies, and two corporations, Thomson Newspapers Inc. and Southam, together accounted for 54 dailies or 46 percent of the industry.[2]

During this same period of time, the increase in newspaper readers was also considerable. The combination of new technology such as the linotype and high speed presses and rapid population growth prompted the total daily circulation in Canada to double between 1900 and 1911 from 600,000 to 1.38 million. In 1940, circulation had risen to 2.17 million and in 1965, daily newspapers had 4.25 million subscribers. In 1980, the figure had risen to 5.41 million readers.[3] As more readers became interested in newspapers, greater concern was expressed over questions of ownership and concentration in the newspaper

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[1]Report of the Special Senate Committee on Mass Media. The Uncertain Mirror. Sen. Keith Davey, chr. (Ottawa: 1970), Vol. 1, p. 90.

[2] Royal Commission on Newspapers. A Report Tom Kent, chr. (Ottawa: 1981) p. 90.

[3]Ibid. p. 65.

industry.

For the most part, these questions were directed at the relationship of the newspaper business and freedom of the press. In a somewhat nebulous fashion, a very generalized concern over the rapid increase in concentration was whether freedom of the press had acquired a dual meaning as a fundamental freedom and as protection for a profitable industry. A warning was issued to the newspaper industry in the Fowler Report that "freedom of the press is not...a right of the publisher to be left free from government interference or control.[4]

Four years later, the Royal 1981 Commission on Publications issued a similar notice stating that too much power was being funneled into the small minority of newspaper owners, a development which could only offset the rights of other individuals in the community.[5] Again, these comments reflected a generalized discomfort with the changing structure of the newspaper industry in Canada.

However, by the early 1960's, the trend toward greater concentration was exacerbated by two other social and technological phenomena, adding another very serious dimension to the problem. One (1) movement was the mass exodus of the city dweller into connecting suburbs. The (2) other was the introduction of computer technology into the operations of newspapers. To

[4]Royal Commission on Broadcasting. A Report J. Fowler, chr. (Ottawa: 1957) p. 83.

[5] Royal Commission on Publications. A Report. Grattan O'Leary, chr. (Ottawa: 1961) p. 10.

some extent, these phenomena have redirected the focus of concern in Canada from strictly a national one, that of chain ownership, to a more local one, concentration within newly extended "local" markets.

The "megalopolis" has become a new reality in North America. Jean Gottman observes in his book Megalopolis that in the U. S., vast urbanized population belts have developed. Urban sprawl became manifest along interwoven freeways and commuter lines. Towns were situated very closely together with little distinctive separation other than the odd focal point. Small towns surrounding larger cities were slowly engulfed by urban sprawl.[6] The implication of this development is that some of the traditional definitions of community, city, or market have become obsolete. Members of "rural" communities have been afforded easy access by the interconnecting highways to metropolitan areas. Confusion has since surfaced over the meaning of what is "local."

The everyday activities of individuals, such as working, shopping, going for entertainment or to church, are no longer restricted to "Main Street" or within close proximity to home. Core city dwellers go to the suburban shopping malls, just as the suburban residents travel into the city for work or the night life and entertainment. Leo Bogart states:

To be sure they retain residual loyalties to those

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[6]Jean Gottman, Megalopolis: The Urbanized Northeastern Seaboard of the United States as noted in Leo Bogart, Press and the Public (Hillside, NJ: Lawrence Erlbaum Associates, 1981) p. 19.

> institutions rooted in their community or residence to the common schools and churches...But these functions may assume relatively less significance in a community that lacks the consensus that arises in suburbia where everyone is oriented toward the same metropolitan center.[7]

This kind of urban upheaval has played a central role in the demise of the large metropolitan daily newspapers. The unbridled fragmentation of the newspaper audience and the new found power of television caused serious losses in advertising dollars.[8]

However, at about the same time, the newspaper industry was on the verge of a major technological revolution in its attempt to recapture its readership, upgrade its production capabilities and lower its costs. Use of computer technology such as off-set web presses and front-end computer systems were quick to replace the slow and expensive labor-intensive hot metal presses and type-setting operations.

In more recent years, newspapers have used computers to develop sophisticated market-targeting techniques to militate against the effects of their market fragmentation. The computerized presses and sorting equipment have allowed newspapers to cater to or develop new segments of their market by printing zoned editions with specialized editorial and advertising copy.

These technological transformations within the industry have, indeed, changed the nature of competition between

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[7]Bogart, Ibid., p. 20.

[8]James Rosse, "The Evolution of One Newspaper Cities," Stanford University, Studies in Industry Economics, 1970.

newspapers and other media. For instance, faster production times and the addition of the zoned-editions, have enabled newspapers to extend their distribution ranges. Today, the Los Angeles Times has subscribers up to 400 miles from the main plant. This has placed the paper in a position to compete with many more suburban daily newspapers. In June 1984, the Times opened up a new suburban bureau staffed with 40 editorial staff and a $96 million printing plant in the San Fernando Valley. These kinds of satellite operations set up a relatively new kind of competitive pressure for the Valley's smaller non-dailies, as well as for the existing daily newspaper, The Daily News.[9] Likewise, suburban dailies are penetrating more deeply into city-core markets. The Everett(Wash.)Herald, an award-winning daily located 30 miles away from Seattle, has attracted a considerable Seattle readership for its Wednesday edition which features an attractively-designed and comprehensive entertainment section.

Furthermore, the marriage of telecommunications and the technique of pagination, which allows full pages of a newspaper layout to be reproduced vis-a-vis satellite communiques at several regional printing plants simultaneously, has encouraged a number of newspapers to embrace national market coverage. This technology is currently being used by the Globe and Mail, and several newspapers in the United States including the New York Times and USA Today.

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[9] Editor and Publisher, (June 9, 1984) p. 63.

These two events are particularly significant when analyzed in light of the coinciding trend toward increasing concentration of control within the newspaper industry. The study developed in this thesis, investigates whether the new technology is now allowing more newspapers to penetrate effectively the geographic and demographic markets that were previously unavailable to them. This condition would inevitably intensify competition among daily newspapers and among other types of newspapers, and with other media. Furthermore, readers in the "greater" metropolitan areas are becoming more interested in news and information generated by the metropolitan daily and their local suburban daily, as well as, their neighborhood non-daily newspapers.

Since most newspapers operate primarily in local markets, an operational definition of a newspaper's "relevant market" will be as follows: A relevant or local market is one that centers around the largest circulation daily in a metropolitan area and includes all media outlets that carry an audience of at least two percent of the total market for a distance of 350 kilometers from the core paper.

The purpose of the study is to examine problems connected with lack of competition in local markets. Since newspapers, like other business firms, are interested in profits, they will likely attempt to gain dominance in any potentially competitive market. Currently, in Canada, there is no effective legislation or government policy uniquely related to newspaper economics.

This lack of legislation exists despite efforts of a royal commission that recommended action to constrain newspaper firms from gaining dominance in a single market by either merger or takeover. Nor are newspapers restrained from practicing anti-competitive tactics to prevent potentially threatening competitors from entering the market.

Yet, with newspapers, the issue of a lack of competition in relevant markets transcends the economics of reduced competition to greater social concern over the implications for a democratic society. An assumption is made that it is essential for the citizenry to have diverse sources of news and information. Arguments are presented which suggest that where a single newspaper group owns more than one type of newspaper in the same market, there is a greater potential for news homogeneity from existing newspapers and less opportunity for new entrants. It should be stressed that the primary emphasis in this thesis is on the number of newspaper outlets, rather than the quality or content of newspapers. In other words, it is argued that newspaper competition provides a better opportunity for the citizenry to enjoy a diversity of news and information. Note that more news outlets does not guarantee diversity, it only provides an opportunity for diversity of news and information that would otherwise not exist in a non-competitive situation.

In Chapters Two and Three, the thesis examines the nature and degree of economic concentration in the Canadian newspaper industry and the implications of such concentration for economic competition and for the availability of diverse ideas and information. Chapter Four focuses on the legal and policy environment within which the newspaper industry operates. This discussion includes references to the U. S. legal experience for comparison. Chapter Five examines the government's most recent attempt to redress the problem of concentration of control in the newspaper industry, the Kent Commission. Chapter Six points out the difficulties encountered in achieving changes in the current situation affecting the structure and/or economic conduct of the newspaper industry. Finally, this thesis concludes that some steps can and must be taken to address the problems identified in this thesis and to some extent, by the Kent Commission. These policy options will be incorporated into a set of recommendations.

CHAPTER 2

ECONOMIC AND SOCIAL IMPLICATIONS OF CONCENTRATION

Today, most Canadian newspapers are members of a newspaper chain or conglomerate owning newspapers.[10] The following graph illustrates the situation.

Newspaper Ownership

Year	Total Newspapers	Chain Owned	Independent Owned
1970	108	65	43
1980	114	87	27
1981	111	84	27

Source: RCN (1981) p. 43.

In fact concentration of ownership is common to the newspaper

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[10]A newspaper chain may be defined as a single company or owner controlling multiple newspapers and in many cases, also owning fully or in part firms that support the production of the newspapers including paper mills or trucking fleets.

A conglomerate comprises a group of firms that do not necessarily relate to each other. Thus, the conglomerate may have one or more newspaper firms, among its other interests. For example, Thomson Newspapers Ltd. and its subsidiary companies reportedly owned in 1980, 128 daily and non-daily newspapers in Canada and the U.S.. Other Thomson companies are engaged in wholesaling and retailing (Hudson's Bay Company and Simpson-Sears), real estate, oil and gas (North Sea oil), insurance, travel and tourism, financial and management services, technology communications, and others, most of which have no direct relationship with newspaper publishing. Public data show that in 1980 all of the Thomson interest had combined gross revenues from all operations in excess of $6.6 billion, gross assets in excess of $5.2 billion and net income of $195 million. According to the Kent Commission, of the $140 million in dividends paid by Thomson newspapers between 1973 and 1980, $100 million had flowed into other Thomson interests. Royal Commission on Newspapers. Op. Cit., p. 91.

industries of most Western democracies. Smith reports that these nations have uniformly expressed alarm over concentration of ownership. He notes that many European and Scandinavian countries have already instituted special policies such as subsidies, development loans, or ownership limitations.[11]

To stem the declining number of newspapers, especially "opinion" papers, the Swedish government, in 1965, devised an elaborate subsidy system. Revenues are drawn from a tax that is placed on all advertising. A matching amount is supplied by the government and the cash is eventually distributed to those newspapers that fail to reach 40 percent of the households in the market in which the newspapers circulate. France and Italy also offer significant subsidy programs to defray the high costs of newspaper operations. Both countries cover a newspaper's telecommunications and newsprint expenses. These governments also have a system of adjusting the levels of the Universal Value Added Tax (VAT) on advertising to aid the struggling political papers at the expense of the larger, profitable papers.[12]

Britain and the United States have also demonstrated their concern over the consolidation of their respective newspaper

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[11] Anthony Smith, ed., Newspapers and Democracy: International Essays on a Changing Medium (Cambridge, MA: MIT Press, 1980).

[12] Anthony Smith. Goodbye Guttenberg: the Newspaper Revolution of the 1980's. (Oxford: Oxford University Press, 1980).

industries.[13] However, both countries rejected the European model of direct intervention in light of their historic positions on freedom of the press and government intervention. Both governments essentially opted for the continued reliance upon existing antitrust provisions to deal with the problem.

West Germany is another Western nation with a mixed economy which relies on its anti-cartel laws to deal with the concerns over concentration and declining direct newspaper competition. Since 1954 the number of independent newspapers dropped from 225 to 107 in April 1976. The five largest newspaper groups in West Germany increased their share of total national circulation of daily newspapers from 35 percent in 1967 to 45 percent in 1976. In that year, Parliament approved the Third Amendment to the Act against Restraints of Competition in order to preserve still existing diversity in the newspaper industry, particularly on the regional and local levels. The most important feature of the amendment is the compulsory registration of combines, mergers, and anticompetitive cooperative agreements between newspaper groups that have a continued annual turnover greater than DM 25 million.[14]

The Canadian government has also attempted to grapple with the high levels of concentration in the newspaper industry. In

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[13]See Royal Commission on the Press, Report. (London: HMSO, 1977) and Federal Trade Commission Conference on Concentration in the Media, Vol. I&II, Dec. 14-15, 1978 (Washington, D. C.).

[14]Hermann Hollman, "Antitrust Law and the Protection of Freedom of the Press in the Federal Republic of Germany," Antitrust Bulletin, (Spring 1979,) pp. 153-155.

1970, the issue was addressed, to some extent, by the Special Senate Committee on the Mass Media, chaired by Senator Keith Davey. Following the report of the Davey Committee, several voluntary provincial press councils were initiated and within a year the Director of Combines and Research undertook its first monopoly and merger case involving newspapers. Charges were brought against the Irving family when it purchased its fifth newspaper, giving this family corporation a monopoly over New Brunswick's English language dailies. The Crown eventually lost this case in the Supreme Court. To some observers, this served as confirmation that Canada's anti-combines law was totally ineffectual in preventing mergers.[15]

In 1980, after a series of large-scale corporate transactions involving two major newspaper chains, the government appointed a Royal Commission to examine the state of concentration in the newspaper industry and to make recommendations. Although, legislation based on the Commission's recommendations was eventually drawn up, it never left the Cabinet. In Canada, concentration in the newspaper industry goes unchallenged by even the most minimal anti-combines law. The government has yet to demonstrate it's commitment to taking steps toward improving the situation.

The following discussion attempts to present the economic and social assumptions underlying the expressed concern over

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[15]G. B. Reschenthaler and W. T. Stanbury, "Benign Monopoly: Canadian Merger Policy and the K. C. Irving Case" Canadian Business Law Journal (August 1977)

newspaper concentration and to draw attention to the specific nature of concentration within local markets. The approach will include a survey of concentration in the Canadian newspaper industry and of the theoretical concerns as they relate to economic competition and the 'marketplace of ideas.'

In measuring the levels of concentration in the Canadian newspaper industry, it should be emphasized that reference is being made to concentration of the control of business assets, rather than concentration of ownership. The reason for this somewhat technical distinction is rooted in the assumptions inherent in the use of these terms. The concept of concentration of ownership engenders concern for the individual shareholder (as a separate ownership unit), interlocking directorships, and other issues related to the aggregation of power. This orientation, although interesting and important, falls outside the scope of this study.[16]

Concentration of control of business assets, on the other hand, condenses the complex structure of a corporation--its holding companies and/or subsidiaries--to a single controlling unit. Management, in effect, replaces shareholders or owners in an analysis of decision-making powers. This approach directs

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[16]For this orientation, see Wallace Clement, The Canadian Elite (Toronto: McClelland & Stewart, 1975); Peter Newman, The Canadian Establishment, Vol. 1&2, (Toronto: McClelland & Stewart, 1975); Jorge Niosi, The Economy of Canada: Who Controls It (Montreal: Black Rose Books, 1978); or from the American perspective, David Halberstam, The Powers That Be (New York: Dell Publishing Company, 1979); and, Ben Badikian, The Media Monopoly (Boston: Beacon Press, 1983).

attention to the number and size distribution of newspaper firms in any given market, e. g., national, local, regional or by language. However, it does not recognize the existence of "concealed" lines of higher level control, as would be most evident in a conglomerate structure. In other words, Thomson Newspapers, Ltd. is viewed as the control unit for its 40 Canadian daily newspapers, rather than the K. C. Thomson Group, a multinational conglomerate, of which Thomson Newspapers is a member. The conglomerate and the extent to which it can affect concentration will be discussed separately.

Concentration in the Canadian newspaper industry is considerable on all market levels.[17] The market concentration ratio will be used to measure the degree of concentration. This standard measurement shows the percentage of total circulation sales accounted for by the four largest corporations or ownership units. In 1980, four newspaper companies accounted for 65.1 percent of national circulation. This is a considerable increase from twenty years earlier when, the four largest firms controlled 35.7 percent of national circulation. In 1981, nearly 90 percent of the circulation was controlled by the 10 largest newspaper publishers. By contrast, in the U. S. in 1984, the four largest newspaper companies control approximately 24.7

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[17]A market is defined as a closely interrelated group of sellers and buyers including sellers in any individual industry, and all the buyers to whom they sell.

percent of national circulation.[18] The fact that Canada has only 10 major urban centers compared to the large number of urban centers in the United States further illustrates the gravity of the high levels of concentration.

In most instances, the largest newspaper enterprises are newspaper chains or media conglomerates. In fact, in 1982, 12 of these newspaper groups produced 88 of Canada's 117 daily newspapers. This is vastly different from the period just before World War I, when 135 firms controlled the nation's 138 newspapers.

English

The degree of concentration ~~becomes even~~ more pronounced when it is viewed in terms of the English and French-language markets and regional markets. Of the nearly six million newspapers circulated daily in Canada, almost five million are in English and one million in French. Corporations including Southam, Thomson, Quebecor, Gesca, and Unimedia account for 90 percent of the French newspaper circulation.[19]

Regionally, in eight of Canada's ten provinces, one publisher controls at least 65 percent of newspaper circulation. In New Brunswick, the Irving family holds a monopoly with its five dailies. The Thomson chain controls more than 80 percent of newspaper circulation in Newfoundland and Manitoba, and 68 percent in Prince Edward Island. In Saskatchewan, the Armadale Corporation controls 86 percent. Southam dominates Alberta and

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[18] Editor and Publisher, (April 28, 1984) p. 76.

[19] Kent Report, Op Cit., p. 13.

British Columbia with more than 65 percent control over circulation in each province. Halifax Herald, Ltd. is the dominant publisher in Nova Scotia with 73 percent of total provincial circulation. In Ontario, circulation is distributed more evenly with Thomson controlling 27 percent of circulation and Torstar and Southam with 22 percent each. Similarly, in Quebec, 40 percent of circulation is controlled by the Peledeau group, while another 25 and 13 percent is controlled by the Trans-Canada group and Unimedia, respectively.

The concentration ratio, however, does not reflect what this thesis will argue is even more significant, the incidence of concentration within the local market. An example of this kind of concentration is in Toronto, where the Torstar Corporation, in addition to publishing the Toronto Star, controls 27 non-daily newspapers within 40 kilometres of downtown Toronto.

Actually, the market concentration ratios presented not only fail to reflect the sales of non-daily newspapers, but also of competing products such as television. Furthermore, they are measured within imprecise market boundaries. An attempt is made to deal with this shortcoming in Chapter Three where a more encompassing examination of the extent of competition is presented. However, even with these qualifications control of the Canadian newspaper industry can still be considered more concentrated than in any other nation in the developed Western world.[20]

The following discussion examines the economic implications of control in the newspaper industry. that concentration of control, especially in smaller geographic markets, is both a cause and consequence of certain economic forces, such as product differentiation, scale economies and absolute costs, which tend to affect economic competition. Concentration of control of newspapers in local markets has the economic consequence of creating or enhancing barriers to entry that potentially discourage entrants into the newspaper market. Newspapers other than metropolitan dailies are most typically affected. Socially, entry barriers deny the citizenry possible opportunities for a more diverse offering of news, information and ideas. The assumption here is that more sources of information will provide the public a more accurate or well-rounded understanding of newsworthy occurences and that it is in the interest of a democratic society that the public be informed.

The Economics of Concentration

Economic theory suggests that with high market concentration the character, intensity, and effectiveness of competition will be signficantly less than would be expected in

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[20]Arthur Siegel, Politics And the Media in Canada (Toronto: McGraw-Hill Ryerson, 1983) p. 111.

relatively unconcentrated industries. It is often argued that concentration (and the resulting reduced competition), gives the few sellers more latitude in pricing and greater opportunity to engage in some form of tacit collusion with sellers who recognize the nature of their interdependence. In other words the sellers may come to some agreements or policies which wou allow them to maintain profitability, even though they may operate inefficiently in terms of cost. Theoretically, this results in a misallocation of resources within the economy. Another important finding is that this relationship between competition and concentration is much more evident within smaller markets than large markets.[21] This has particular relevance to the newspaper industry since newspapers primarily operate within local markets.

Economic competition in the newspaper industry is desirable since the atomistic structure of buyers and sellers required for competition disperses the power of newspaper owners and tends to resolve economic problems impersonally or with direct manipulation. Furthermore, competition provides freedom of opportunity; ideally, individual entrepreneurs should have no barriers to entering a newspaper market, except for limitations of talent and availability of required capital.

However, although concentration may be inversely related to the degree of competition, Markham contends that concentration

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[21]Joe S. Bain, Industrial Organization, 2nd Ed. (New York: John Wiley & Sons, 1968), p. 113.

levels alone do not fully indicate whether a firm or industry is reaping any monopoly power benefits.[22] In fact, concentration may be as much a symptom as it is a cause of a lack in competitive behavior. The degree of competition may also be determined by the firm's ability to successfully differentiate its product(s), to attain some level of market segmentation that is competitively advantageous and to establish and/or maintain other forms of barriers to entry such as scale economies and cost advantage positions.

Barriers to entry are the advantages established sellers have over potential rivals. If barriers exist, the established seller should obtain prices at least somewhat above a "pure" competitive level without attracting new rivals.[23] The following provides a more detailed discussion of product differentiation, scale economies, and cost.

Product differentiation

Chamberlin observes that product differentiation occurs if "any significant basis exists for distinguishing the goods (or services) of one seller from those of another...where such differentiation exists, even though it may be slight, buyers

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[22]J. W. Markam quoted in Louis Stern and John Grabner, Jr., Competition in the Marketplace (Glenview, Illinois: Scott, Foresman and Company, 1970), p. 17.

[23]Bain, op. cit., pp. 252-255.

will be paired with sellers, not by chance and at random (as under pure competition), but according to their preferences."[24] The degree of product differentiation refers to the extent to which buyers "distinguish, or have specific preferences among the competing outputs of the various sellers established in an industry."[25]

In the newspaper industry, product differentiation can be characterized in terms of differences in general format or location of publication. For instance, in 1983, the Southam organization redesigned the Vancouver Province into a tabloid in an attempt to differentiate its morning paper from its other paper, the Sun, an afternoon broadsheet. It sought to achieve even greater segmentation of the market and attract more advertisers. This kind of product differention/market segmentation, could in itself, make it difficult for a potential entrant to carve out a market of its own.

Other forms of product differentiation include the use of particular wire services or syndicated features and cartoon services. This type of product differentiation can erect barriers to entry, especially when certain newspapers gain special contracts for territorial exclusivity of services over other papers in the same market, leaving one paper with better quality editorial syndicates than other papers.

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[24]E. H. Chamberlin as quoted in Stern and Grabner, Jr., Ibid., p. 20.

[25]Bain, op. cit., p. 223.

Bain argues that there is a interrelationship between the degree of seller concentration and product differentiation: "Great product differentiation in a market does usually seem to lead to or be associated with high seller concentration." He adds that, again, this relationship is more evident in smaller markets, than national markets.[26]

In addition to product differentiation, scale economies and, to some extent, cost are also important barriers to entry.

Scale Economies

Economies of scale are prominent in most aspects of newspaper economics. This is based on the inherent technological structure of the newspaper industry: the larger firm is more efficient in providing subscribers for advertisers at a lower per unit cost than the smaller firm. [27]

There are three primary sources of scale economies. First, the initial expenses incurred from editorial news gathering and marketing (fixed costs) are embedded in "first copy" costs. Thus, the average cost per copy falls as circulation rises. Secondly, the unit fixed cost of reproduction, including plant

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[26]Bain, op. cit., p. 329.

[27]For documentation see Nixon and Ward, "Trends in Newspaper Ownership and Media Competition," Journalism Quarterly (Vol. 38(5), 1961) p.3; J. N. Rosse, "Evolution of One Newspaper Cities" Studies in Industry Economics. No. 95. (Palo Alto: Stanford University, 1978)

capital and management, also decreases as the number of copies printed increases. With increases in the numbers of copies per edition, the firm may be able to employ more sophisticated equipment and improved production procedures which would tend to lower unit costs per edition. Furthermore, because of higher capital availability the firms may also be in a position to attract better management. Finally, economies of scale exist in the distribution process. The distribution cost of one newspaper serving a given number of readers in a particular area are lower per subscriber than are the costs of multiple firms delivering to the same total number of readers.

The problem with respect to barriers to entry, according to Scherer, is that in order for a new firm to be absorbed by the market, it generally must enter the market with lower prices. But, if the established sellers should lower their prices or work out pre-arranged agreements with buyers, the new entrant could be caught with average revenues below average costs. If this scenerio is anticipated, it would clearly serve as a deterrent.[28]

Rosse notes that scale economies may be less significant for those newspapers with circulation differences at large figures. He states: "It may be that diseconomies of scale persist for large outputs, thus the difference in per unit cost between two newspapers whose circulations are 200 and 300

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[28]F. M. Scherer, Industrial Market Structure and Economic Performance, 2nd Ed.(Boston: Houghton Mifflin, 1980) p. 244.

thousand should be smaller than between two newspapers whose circulations are 20 and 30 thousand."[29] Rosse regards scale economies as a "fundamental cause of the [monopoly] structure of the American daily newspaper industry."[30]

On the question of the effectiveness of scale economies on newspaper groups versus the independent single-plant newspaper, some analysts argue groups have an advantage primarily in the area of management and marketing. In other words, newspaper groups benefit from centralized administration which lessen costs of marketing, sales and public relations, especially in the area of national or regional advertising sales.

Compaine reports that newspaper groups commonly offer high salaries to attract top management. He quotes Robert Marbut, president of the Harte-Hankes chain in the U. S., as saying he would "pay 100 times earnings for a newspaper which wasn't making money if he thought it had potential under new management to become a profit maker." He further illustrates this by pointing to the Gannett group, the second largest American newspaper chain, which makes available to its member firms a marketing team that provides them with in-house consulting over

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[29]J. N. Rosse, "Daily Newspapers, Monopolistic Competition and Economies of Scale, 1966" (unpublished Ph. D. thesis, University of Minnesota) p. 15-16 as quoted in Keith Roberts, "Anti-trust Problems in the Newspaper Industry," Harvard Law Review, (Vol. 82 (2), December 1968) p. 353.

[30]Rosse in Roberts, Ibid., p. 83. Also Dertouzos empirically supported Rosse's contention regarding the relationship of scale economies in "Description of Competition in the Newspaper Industry: A Probability Analysis" Studies in Industry Economics, No. 68. (Palo Alto: Stanford University).

issues of advertising and circulation enhancement.[31] Thus, as long as the newspaper group can avoid bureaucratization to the point of inefficiency in using these scale economies, the multi-firm newspaper corporations could have significant entry-deterring power.[32]

Absolute Costs

Although absolute costs are not an actual barrier for new entrants into the newspaper industry, the large capitalization requrirements do severely limit the field of potential entrants. In other words, there exist in Canada multimillion dollar corporations that are financially capable of buying newspapers which can cost upwards of $100 million and more. For instance in 1978, Thomson Newspapers, Inc. purchased the FP Publications newspaper chain, which included seven newspapers and the prestigous Globe and Mail for of $164.4 million. In 1979, the Hartford (Conn.) Courant, a large daily was sold to the Times Mirror Corporation for $105.6 million.

Furthermore, these costs have continued to increase. The annual operating expenses of a composite large city newspaper

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[31] Benjamin Compaine, Who Owns the Media? Concentration of Ownership in the Mass Communications Industry(New York: Harmony Books, 1979) p. 130.

[32] See Yves Rabeau, "A Study of the Principles of Competition in the Newspaper Market in Canada," A paper submitted to the Royal Commission on Newspapers. Ottawa: 1980.

between 1967 and 1978 rose by more than 100 percent. In 1967, total expenses were $12 million and 11 years later, they amounted to $25.5 million.[33]

It should be noted that in Canada there have been few, if any, corporate takeovers of newspaper assets by companies that have no newspapering background. The Thomson conglomerate was begun with newspapers and Southam continues to restrict its investments to media-related projects.

A possible illustration of how capitalization costs may discourage even the most apt candidate may be drawn from the 1980 closure of the Winnipeg Tribune. The Southam corporation sold the fixed assets associated with the publication of the Tribune, i. e., the presses, building, etc., to Thomson for $2.25 million. The exclusive sale was intended to "accommodate Thomson's possible need for additional production capacity in its operation of the Winnipeg Free Press."[34] (Interestingly enough, the Thomson organization, has to date, declined to invest another $2 million needed to make the assets operational.)

Less than a month after the transaction, representatives from Toronto Sun Publishing Corporation and MacLean Hunter, Ltd.

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[33]Benjamin Compaine, The Newspaper Industry in the 1980's: An Assessment of Economics and Technology (White Plains, NY: Knowledge Industry Publications, 980) p. 18-20. Total expenses includes direct expenses such as editorial, advertising, production, newsprint and ink, and indirect expenses such as building, circulation, administration, and supplements including depreciation and bad debts and other.

[34]Globe and Mail, (Aug. 28, 1980) p. 14.

announced they were dropping their plans to jointly found a new daily newspaper in Winnipeg. Sun general manager, Donald Hunt said, the main reason for not proceeding at the time was due "to the lack of an adequate printing press. When Thomson bought the Trib's presses after the newspaper folded, the only other presses available in the city were inadequate for publishing a daily newspaper."[35]

However, with changes in technology capitalization requirements become somewhat less of a problem. In October 1980, Winnipeg did, in fact, get a new daily newspaper. Published by Tom Denton, a Toronto businessman, the Winnipeg Sun set off as a thrice-weekly tabloid of between 44 and 68 pages with 40,000 copies printed per edition. Partly because of its size, Denton was able to get the paper printed by Canadian Publishers Company, Ltd., a medium-sized plant owned by Southam. Other special printing work is done on contract with several smaller printing houses.

Denton's successful entry into the Winnipeg market may in part, be attributed to the new turnover of computer technology, including visual display terminals and off-set web presses,and the resulting general cost reductions. In recent years, a second-hand market for press equipment has evolved, enabling many more small to medium-sized publishing houses and non-daily newspapers to start up at a reduced cost from a decade before. In addition, the success of tabloids reflects the growing

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[35] Toronto Star,(Sept. 22, 1980), p. F9.

diversity of consumer tastes and interests. These factors combined have made it easier and less expensive to launch new newspaper ventures that are appealing to small segments of the market.

Thus, technology and the cost of producing a newspaper limit the number of possible entrants to metropolitan or large daily newspaper markets. However, at the same time, there is some indication that low-cost technology on the used market may stimulate the growth of small daily and non-daily newspapers. Furthermore, it suggests that changes to product quality and the creation of new services for advertisers and readers, alike, through presentation among other things does have a bearing on the successful start of a newspaper.

To conclude, in an economic sense, an argument can be made that barriers to entry are stimuated by both the intrinsic character of the newspaper business and enchanced by the very existence of concentration ownership within a given market. In other words, scale economies and costs are intrinsic to the newspaper business; they are standard concerns that all potential entrants must overcome.

However, as it has been argued, the ability of an existing competitor to differentiate its product(s) can in itself add to the degree of concentration. The purchase by Torstar of the non-daily newspapers located in the same market as its Toronto Star, a form of product differentiation, theoretically gives the corporation a considerable advantage in the market. The non-dailies are able to use Torstar's managerial and marketing expertise, as well as its distribution system, among others. Concentration, again in the smaller or local market, potentially limits the number of outlets for diverse ideas and information, hence limiting competition within the 'marketplace of ideas.'

Social Implications of Concentration

The social significance of this ostensibly economic condition of concentration is quite significant. It hardly needs to be restated that in a democracy, the public must be well-informed about the political and social issues of the day, the performance of politicians, and the direction of political and economic policy. Madison has warned that: "People who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce, or a tragedy, or perhaps both."[36]

The newspaper and other mass media are, of course, a primary source of information and news for most people. Anthony Smith defines a newspaper as "an institution for the collection, storage, and dissemination of all kinds of information from hundreds of different microsystems that exist within its

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[36] James Madison quoted in William T. Gormley, Jr., The Effects of Newspaper-Television Cross Ownership on News Homogeneity (Chapel Hill: University of North Carolina, Institute for Research in Social Science, 1976) p. 1.

sphere...It acts as an information broker to its society, the additional role arising from its ability to sell its primary public to others with commercial messages to send out."[37]

Furthermore, in their role as primary communicator of ideas and information, the mass media can influence the public's perception of the relative importance of different issues confronting the society. McCombs and Shaw demonstrated that the mass media can "set the agenda" for the public by influencing the salience of attitudes toward public issues. In their study, the authors attempted to match what Chapel Hill (North Carolina) voters said were key issues in the 1968 presidential election with the actual content the mass media used in the election. Their findings suggest a very strong relationship between the emphasis placed on different campaign issues by the media and the judgements of the voters as to the salience and importance of various campaign topics.[38]

The problem, as Gromely points out, is when two news organizations emphasize the same issues, "citizens may be adversely affected by overexposure to one set of priorities." He compares the fate of media consumers to that of voters in an election where there are no apparent issue differences between the candidates: "Unable to choose on the basis of issue

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[37]Anthony Smith, Goodbye Gutenberg: The Newspaper Revolution of the 1980's(Oxford: Oxford University Press, 1980) p. 11.

[38]Maxwell E. McCombs and Donald L. Shaw, "The Agenda Setting Function of Mass Media" in Reader in Public Opinion and Mass Communication, 3rd. Ed., ed. by Morris Janowitz and Paul M. Hirsch (New York: The Free Press, 1981), pp. 131-137.

differences, voters have little reason to think about the issues. Unable to choose on the basis of differences in issue emphasis, media consumers have little reason to wonder whether the issues being emphasized by a particular news organization deserve that amount of emphasis."[39] In this sense, the overlapping coverage impedes message pluralism or the diversity of messages to which a person is able to expose him or herself.

Message pluralism is to some extent a function of the news gathering process. The concern is over journalists and their capacity to cover stories free of constraining forces such as overly involved publishers and advertisers, laws that inhibit certain kinds of coverage,[40] or the government's manner of leaking or feeding select information to the media.[41] Another impediment to message pluralism is found in the practice of "pack journalism" where journalists engage in a sort of "herd instinct." This is when news organizations emphasize the same issues because journalists have come to some consensus among

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[39]Gormley, op. cit., pp. 5-6.

[40]In Canada, the libel laws, the existence of parliamentary privilege, the absence of shield laws, among other legal constraints have been known to have a selfcensoring effect on journalists and editors. For this kind of discussion, see Ronald G. Atkey, "The Law of the Press in Canada" in G. Stuart Adam (ed.) Journalism, Communication and the Law (Scarborough: Prentice-Hall, 1976), Dave Crowe, "Free Parliament versus Free Press," Carleton Journalism Review (Vol. 1(1) Spring 1977) or Siegel, op. cit.

[41]See William Dorman, "The Image of the Soviet Union in the American News Media: Coverage of Brezhnez, Andropov, & MX." A paper presented at the War, Peace, and the News Media Conference held March 18-19, 1983 at New York University.

themselves over the relative importance of issues, or they fear their editors will accuse them of neglect for not producing stories to which other media have given attention. In his study of reporters from the New York Times and the Washington Post, Sigal found that: "On the beat, as in the newsroom, reporters do not work alone, but in groups; and in the course of events, the group subtly molds individual values into group judgements."[42] All of these factors tend to contribute to news homogeneity. These considerations suggest that competition does not necessarily foster message pluralism. The journalism community must work toward greater ethics and standards. Nor do these conditions appear as a consequence of the nature of ownership. All types of newspapers, whether they are owned by a chain or independent, are susceptible to these manifestations of news homogeneity. However, it is being argued that competition or the availability of a greater number of separately-owned news outlets within a given market, provides a better opportunity for the existence of news heterogeneity. This structure thus serves as a necessary foundation for better journalism.

The effects of chain-ownership on the quality of journalism is still somewhat contentious. Compaine argues, "whether or not group ownership improves or downgrades a newspaper depends on the criteria that are established for making such judgements, the state of the newspaper when the new owners arrive, and more

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[42]Leon Sigal, Reporters and Officials: The Organization and Politics of Newsmaking (Lexington, Mass.: D. C. Heath & Company, 1973), p. 39.

important, which chain is doing the buying." Some chains have better reputations for improving editorial quality than others. He adds, however, that "single newspaper ownership is no guarantee of integrity or quality." [43]

Although, there is relatively little empirical research on the effects of chain ownership,[44] Compaine cites one study which found that non-chain papers were less likely to endorse any presidential candidate and that the "vast majority of chains exhibited homogeneous endorsement patterns," i. e., 85 percent or more of the papers endorsed the same candidate. The study did add, however, that chains spread out over several regions were "consistently less homogeneous in each of the elections, indicating that the small, personal regional chains tend toward tighter editorial control than the more publicized national groups."[45]

Some would suggest that without the resources of chains, numerous papers are not able to survive and improve. This is an important argument for common ownership of newspapers in the same city; otherwise, the endangered newspaper is essentially saved by merging with the stronger newspaper firm. In the U. S., under the Newspaper Preservation Act, joint agreements with two separately-owned companies in the same city are formed to handle

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[43]Compaine, The Newspaper Industry in the 1980's, op. cit., p. 90.

[44]See Editor and Publisher, (June 9, 1984) p. 36.

[45]Compaine, Ibid., p. 91.

advertising, business, and production matters, leaving editorial staffs and policy in the hands of the separate owners of the two daily newspapers. Those opposed to the NPA contend that prosperous suburban dailies and weeklies were replacing the failing metropolitan newspapers and such agreements could, therefore, lessen competition within the city and promote an unfair advantage over existing or potential rivals.[46]

In conclusion, it has been argued that the concern of Canada, among other nations, over concentration of the control of newspapers relates to its economic and social consequences. In an economic sense, concentration impedes opportunities for entry into a media market due to barriers including product differentiation and scale economies. Because these barriers are to some degree intrinsic characteristics of the newspaper business, a kind of circular pressure is created toward greater levels of concentration which, in turn, heighten existing barriers that again, affects concentration of control. The extension of this problem is that the unavailability of media outlets due to existing barriers to entry impedes competition within the marketplace of ideas. Furthermore, it has been established that these anti-competitive effects are particularly pronounced at the local level. Thus the condition of concentration within a single market warrants particular attention. The following discussion takes a closer look at these

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[46]Robert Knox, "Antitrust Exemptions for Newspapers: An Economic Analysis," Law and Social Order, (Vol. 3, 1971) pp. 3-21.

contentions and presents working definitions of newspaper competition--the product and its relevant market and its relation to concentration of control.

CHAPTER 3

NEWSPAPER ECONOMICS: COMPETITION AND CONCENTRATION

This chapter examines more closely the economics of the newspaper industry. It explores the implications of media competition with respect to different types of newspapers, broadcast media and with other media including direct mail and advertiser newspapers. The intention here is to further substantiate the argument that newspaper competition cannot be viewed as simply occurring between like styles of newspapers in the same city. Newspapers compete within a series of sub-markets including non-dailies and television within its relevant market. Furthermore, the discussion attempts to highlight the conditions in which non-competitive behavior would likely exist, especially in light of concentration of the control of newspapers.

Before proceeding, a couple ~~a~~ of points should be noted. First, the theoretical arguments to follow are largely based on only a few sources. James Rosse, James Destouzos and other Stanford University scholars have made the most substantial contributions to a relatively small pool of empirical research from an economic viewpoint. Unfortunately, other writers have merely built upon this basic empirical work or approach.

Secondly, as it follows, much of the evidence is based on the American experience. The reason for this lies simply in the lack of relevant research in Canada on these issues. However, this should not be considered problematic since the economics of the newspaper industries are very much the same in the two nations. In other words, newspapers in Canada and the U. S. are subject to the same economic forces of competition including scale economies, high capital costs or product differentiation.

Furthermore, unlike the regional and national orientations of Britain or other European newspaper industries, in North America newspapers operate primarily within local markets. One major difference between the two industries is that in the United States, foreign ownership of newspapers is allowed. But, this too does not present an obstacle to the common theoretical understanding of newspaper economics in both countries. Neither country has engaged in any strong interventionist policy such as direct grants or subsidies to newspapers. The most important difference between Canada and the U. S. is, of course, found in the law and the treatment of newspaper businesses by the courts. This differences between the countries becomes central to the arguments presented in this thesis. In general, however, the differences are more likely seen as a matter of degree, rather than substance.

Newspaper Competition: Major Assumptions

Newspaper competition is subject to strong economic forces which to some extent make the industry distinctive and separate from other non-media industry. The following includes several of the important economic concepts intended to provide a framework for understanding the dynamics of newspaper competition: 1) The newspaper product serves two interdependent markets: readers and advertisers, 2) newspapers operate within local markets and 3) newspaper competition can be roughly characterized as ranging between oligopoly and monopolistic competition.

Newspaper Product Services Two Markets

Newspapers have a dual nature. They not only serve as a primary source of information, news, entertainment and consumer services, such as the classified ads, but they also provide advertisers access to the newspapers' general readership (or segments of that market.) Thus, although newspapers are in the information business, information, per se, does not fully define a newspaper's function or subjective business self-interest. Jurgensmeyer characterizes the newspaper as being in the "influence business." By making itself interesting, credible, or a respected voice in the community, the newspaper "enhances the value of its advertising space because it can then deliver influence along with the information." It is then both information and the context of information which the editorial side shapes into an appealing and influential package. Furthermore, the editorial costs, among other costs, are borne by advertisers (usually 80 percent of total cost) which helps to make the editorial package affordable to the readership. In this sense, those who benefit from the editorial package become products themselves, which are sold to advertisers in turn.[47]

It is this relationship between the advertiser and the newspaper which forces the newspaper firm to work within two separate markets.

Local Market Orientation

While the newspapers of Britain or France tend to appeal to national and regional audiences and espouse obvious political and/or social class affiliation[48], the North American press draws its strength from its ability to identify with local communities, citizen interests and local diversity. That which binds the interests of members of a community is also crucial to merchants who are a newspaper's main source of advertising.

In 1979, local advertising[49] constituted the largest portion of advertising revenues for Canadian newspapers with

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[47]Dallas Smythe in Dependency Road: Communications, Capitalism, Consciousness, and Canada, (Norwood, NJ: Ablex Publishing, Corp. 1981) presents a comprehensive argument from a Marxist perspective on the notion of audiences as commodities of the media. He claims that the capitalistic system "invented" the communications media as a means of "managing" consumer demands. (p. xvi)

[48]See W. B. Reddaway, "The Economics of Newspapers,"Economic Journal, (June 1963); Anthony Smith, Newspapers and Democracy Op. cit. Press, 1980.)

[49]Local advertising is sold primarily to retail stores and service establishments. Discounts on ad rates are frequently given users, based on their monthly or annual advertising linage.

53.4 percent of the total net advertising revenue. Classified advertising, which is sold to local businesses and individuals, accounted for 26.9 percent. National advertising, which is sold to national brand manufacturers or religious or political organizations, constituted 18.8 percent of total net advertising revenue.[50]

Siegel argues that in Canada, localism is reinforced by the political system. Federalism, he states:

> makes each provincial capital an important centre for decision making for many of the matters that vitally affect people at the local or most immediate level...At the community level, where there is considerable interaction between the population and the provincial authorities, there may well be much interest in localized or regional news coverage which has little appeal beyond the provincial or regional boundaries.[51]

However, recalling the earlier discussion, what is "local" and what is "regional" are no longer clearly defined. In terms of issues of competition, the question arises whether newspapers from neighboring communities and from the metropolitan center compete in the same market?

The Interdependence of Circulation and Advertising

The complexity of the newspaper industry stems for the most part from the multi-dimensional nature of newspaper markets. There exists an interactive relationship between the readership

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[50] Royal Commission on Newspapers. op. cit., p. 67.

[51] Siegel, op. cit., p. 128.

and advertiser markets where competitive outcomes are simultaneously determined. Thus, these two markets cannot be studied in isolation.

In an empirical test conducted by J. N. Rosse, it was determined that a degree of cross-elasticity of demand existed between advertising and circulation markets. He based his finding on a "structural form" model of demand, which tested the demand for newspaper subscriptions and the demand for newspaper advertising space.[52]

Rosse discovered two important things. The quantity of advertising space is a factor in a person's decision to subscribe to a newspaper. The elasticity of demand with respect to advertising space was-.468. Thus, an increase in advertising space of 1 percent, could yield about a .486 percent increase in circulation. This figure, of course, does not appear to be particularly significant. However, circulation proves to be quite significant to advertisers. Elasticity of demand of advertisers with respect to circulation was -1.6.

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[52]J. N. Rosse, "Estimating cost function parameters using cost data: Illustrated Methodology," <u>Econometrica</u> (March, 1970) pp. 266-268.

Subscriber demand was defined in terms of the quantity of certain variables such as price for a subscription, published news and feature space, the quality of the newspaper product, the extent of media competition, and a number of other variables. Among the variables used in determining advertiser demand of space were prices of advertising per column inch, the number of subscribers or circulation, quality of the newspaper product, or the level of retail sales in the community. It was not clear how Rosse defined "quality of the newspaper product."

The implications of these data became more apparent when Rosse conducted a controlled experiment by introducing an increase in the subscription price by 10 percent, with all other things held constant (which ultimately was not possible to do.) According to the demand elasticity of subscription price, a 10 percent increase meant a drop in circulation by 6.5 percent. However, since the elasticity of demand by advertisers for circulation is -1.6, a 6.5 percent decline in circulation meant a loss in advertising sales of 10.4 percent. This in turn, affected circulation since the elasticity for demand by subscribers of advertising space is -.486. The result was an additional loss of circulation by 4.88 percent.[53]

Certainly the parameters of an actual case, as opposed to Rosse's modelling, would be quite different, but evidenced by the reduced form demand equations, Rosse clearly demonstrates that subscriber and advertiser markets are interdependent. In other words, he goes beyond the obvious statement that advertisers advertise in a paper because of its circulation to embrace a more subtle notion that readers buy newspapers to some extent because of the advertising.

Although this relationship is germane to most discussion of newspaper economics, it is particularly important in considering the unstable nature of direct newspaper competition. A downward shift of the advertising demand curve prompted by a strike or the entrance of a new television station, can spur a "downward

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[53]Ibid.

spiral" that could result in the death of a newspaper of any size.

Rosse calculated that if there was a 10 percent decline in ad space due to a reduction in advertising demand, it would generate a 4.68 percent decline in circulation, which given successive rounds, would become worse. What compounds the problem is the parallel loss of scale economies. In other words, the loss of advertising space would force the newspaper to either raise its prices or lower the quality of the paper, which in either case would affect circulation, which in turn, affects advertising space, and so on.[54]

Rosse concludes that,

> The existence of scale economies and of interdependent demand means that an autonomous shift of one of the demand functions can have a multiplier effect on both demand quantities and profitability...An upward shift can also take hold. But this is limited by the size of the market and by the entry of competitive media. If its profitable for the daily newspaper, it will also be profitable for weekly newspapers, television, radio.[55]

Thus, this interdependence between advertising and circulation forces newspapers into a highly unstable or precarious position, especially if they are located in larger media markets. Since newspapers are interested in profit-making, it is logical that they will attempt to gain more stability by securing a dominant position in the market. The technique or stategy for securing

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[54]J. N. Rosse, "The Evolution of One Newspaper Cities," Studies in Industry Economics. No. 95. (Palo Alto: Stanford University, 1978) p. 45.

[55]Ibid.

dominance will be discussed later. It is not clear how this phenomenon operates at the national level, especially since there are relatively few national newspapers in North America.

Definitions of Newspaper Competition

Defining newspaper competition is a difficult task. Compared with products of most industries, the newspaper product is primarily local and it services two separate, but interdependent markets--readers and advertisers. It delivers a package of information, news and entertainment, and services to a paying or non-paying readership (controlled circulation) by way of home delivery, direct mail, or newsstands. Access to the newspaper's readership are sold, in turn, to advertisers. For this reason, the price of ad display space is determined by the number and demographic characteristics of the newspaper's circulation and its relation to rival products.

In Canada, it has not been traditional to have regional or national newspapers. The only national newspaper, The Globe and Mail, entered the national market in 1982. In Quebec, Le Devoir may be considered a regional newspaper, in that its editorial concerns are primarily directed at provincial and cultural concerns. However, for the most part, newspapers and newspaper advertisers concentrate their editorial and ~~and~~ advertising dollars on the local market. This is not to say that the Vancouver Sun, for instance, is not read by the residents of the northerly city of Prince George. It is read, but primarily as a supplement to their existing daily and non-daily newspapers.

Furthermore, within a given market, one newspaper firm's product (package and access to readership) is in most cases, differentiated from all others in the market. Actual duplication of content may only occur if more than one newspaper subscribes to the same wire service or features syndicate.

Lastly, as it will be demonstrated later, newspapers not only compete with other types of newspapers but also, to a large extent, with other media. That is, national TV news may be in competition for advertising dollars and an audience's time, with a national or large metropolitan daily. Or a large or medium-sized daily would compete against a local news television, radio station, a local shopper or direct mail firm. It can also be said that these media complement each other for each has some distinctive qualities that advertisers and readers draw upon for their total news or advertising needs.

Thus, because of the different levels of market activity the economic model that might best characterize newspaper competition would likely fall between differentiated oligopoly and monopolistic competition. In part, the strength of either competitive disposition is a function of how the "relevant" market is defined.

Taken from a national perspective, it is already clear that there are few sellers in a large market and the products of these firms are differentiated by appearance and geographic location, among other things. Although oligopolistic behavior is indeterminant,[56] Canada recently witnessed a paramount example of the large newspaper firms acting to maximize collective industry profits. In 1980, the Thomson and Southam organizations engaged in what they admitted to be a "rationalization" of their properties. Scherer considers rationalization to be the "ultimate in overt agreements, short of merging all producers into a monopoly." He notes that rationalization, or "integrated planning of production," is profitable when "cost functions differ from firm to firm, or when not all plants in the industry can operate at minimum average cost in producing the output that maximizes joint profits. In the former case, profits can be increased by assigning to low-cost firms. In the latter case it is profitable in the long run to shut down some plants completely."[57]

Although profit-pooling, per se, may not have been involved in the Thomson-Southam transaction it substantially enhanced their individual profits. The "rationalization," which will be discussed more fully in chapter four, affected four separate markets and demonstrates that at the national level newspapers compete as oligopolists.

However, as this thesis has tried to emphasize, newspapers are generally local in orientation and hence, competition is more usefully perceived at this level.

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[56] See discussion in Scherer, op. cit., Chapter 5.

[57] Scherer, op. cit., p. 174.

Given this vantage, the argument can also be made that newspapers engage in monopolistic competition. If neo-classical theory were applied to the fact that there is usually only one daily in a given city, the conclusion would be that these newspapers constituted monopolies. However, this contention neglects the fact that newspapers compete with a whole range of media products for the readers' attention and advertising dollars.

With perfect competition, there are many small producers relative to the product market size in which a firm sells. The products are undifferentiated and the producer takes the market price as given. Competition, therefore, occurs at the industry level rather than between firms. The contention that one daily newspaper in a community constitutes a monopoly basically ignores the availability of substitute products. In this case, the firm can presumably set the price constrained only by what buyers are willing to pay.

By contrast, in monopolistic competition, the firm is large relative to the market size for its products. The products are differentiated, providing consumers with a greater variety of goods. In other words, markets are coextensive with other markets in that each firm forces a downward sloping demand curve since products seem different in the buyer's mind.

Competition occurs at the level of the firm since the seller's control over price is a function of the availability of substitute products. Thus, monopolistic competition focuses on product character and the mode of marketing may affect the marketplace more than the number of sellers in some cases.[58]

Scherer points to a basic dilemma. Consumers in some cases desire variety in their products, such as they would in newspapers, or mass media, per se, yet this demand for heterogeneity of products contributes to misallocation of resources. For the answer, Scherer looked to Chamberlain, who argues that:

> The explicit recognition that a product is differentiated brings into the open the problem of variety and makes it clear that pure competition may no longer be regarded as in any sense 'ideal' for purposes of welfare economics...even if possible, it would not be desirable to standardize products beyond a certain point. Differences in taste desires, incomes, and locations of buyers and differences in the uses which they make of commodities, all indicate the need for variety and the necessity of substitution of the concept of a 'competitions ideal' for an ideal involving both monopoly and competition. How much of what kinds of monopoly and what measure of social control, become the questions.[59]

Rosse and Dertouzos argue that to achieve market equilibrium firms enter and exit the market on the basis of profit. If firms behave independently, the inducements of entry or exit is the competitive rate of return and with the condition that no individual firm can improve its profitability by changing price or product character, given choices of all firms.

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[58] J. N. Rosse and J. N. Destouzos, "Economic Issues of Mass Communications Industries," (FTC Hearings, Dec. 14-15, 1978 in Washington, D. C.) p. 53.

[59] H. A. Chamberlin, The Theory of Monopolistic Competition, 6th ed. (1948) p. 214-215 in F. M. Scherer, Industrial Market Structure and Economic Performance, 2nd Ed. (Boston: Houghton Mifflin, 1980) p. 24.

However, in the case of monopolistic competition, even if the firms collude, the authors contend that,

> Entry of firms producing substitute products may well take place, anyhow. In fact, it may be accelerated by the higher than competitive prices so that the so-called "differentiated oligopoly" equilibrium occurs...Only if all substitutes for a given product are absolutely banned from the marketplace by technology, or if producers succeed in preventing entry while successfully coordinating their actions, can the theory of monopolistic competition be replaced by the theory of monopoly."[60]

Again, the theoretical definitions offered here are unavoidably vague and serve only to offer some postulates on the competitive behavior of newspapers. The following discussion attempts to show that there exists substantial inter-product (different types of newspapers, tv, and radio) competition and that even with this interproduct competition concentration within the relevant market sets up barriers to entry that would be difficult to overcome.

The Dynamics of Competition

Direct Newspaper Competition

Direct newspaper competition, also known as head-to-head competition, always involves more than one daily newspaper published in the same location. Competing newspapers are oriented for general circulation and published in the same

[60]Rosse and Dertouzos, op. cit., p. 52.

language. The format of the papers, i. e., whether one newspaper is morning or evening or a tabloid or broadsheet, does not matter as long as the contents are similar in nature.[61]

In 1981, only 16 cities in Canada had more than one competing daily and six cities supported at least two dailies owned by the same company (e.g. in Vancouver where the Province and the Sun are both owned by the Southam organization). Montreal and Toronto are the only cities to support at least three competing dailies. Montreal has a fourth daily, but it is English-speaking. The cities which have two or more daily newspapers in the same language and under different ownership are Toronto, Montreal, Calgary, Edmonton, Winnipeg, Quebec City, and St. John's. These are meager numbers when compared to the situation in 1929 when more than half of the cities in Canada had competing dailies.

The existence of competition has been thought to be a function of market segmentation which is defined as the ability of a newspaper firm to isolate a population group by offering a differentiated news format or style in its editorial package appealing primarily to a particular market segment. Furthermore, competitive situations are usually found in larger urban centers or geographic locations which can support this diversity.[62]

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[61] Queen v. Thomson, et. al. 1984, p. 3097.

[62] James Dertouzos, "Media Conglomerates: Chains, Groups, and Cross-Ownership," (FTC, Dec. 14-15, 1978) p. 11.

In each of the cities with competing dailies mentioned above, no two newspapers in the same city used exactly the same style. In each city, there is either a morning and evening paper or both papers are morning delivery, but one is a tabloid and the other broadsheet. There are also more subtle differences in newspapers catering to a general audience versus a more select audience. An example is Le Devoir which competes with the Montreal Gazette but is targeted towards the more intellectual reader.

David Jolley, president of Toronto Star Newspapers, Ltd. and publisher of the largest circulation Canadian daily, said the three Toronto papers--The Star, The Globe and Mail, and, The Toronto Sun--have been "able to co-exist profitably because a part of each paper's readership and advertisers is unique to that paper." However, he added that the Toronto papers have been attempting to extend their markets with "even more frequency." The Star is emphasizing its business section, moving into what has traditionally been Globe territory, and The Globe is trying to broaden its audience by adding leisure and consumer sections in areas that have been more common to The Star.[63]

It is the newspaper's ability to segment the potential advertising audience which gives newspapers the edge over other media, says Donald Gibson, Canadian Newspaper Marketing Bureau president. Newspapers have a lead on other media because they can deliver advertising to more people, more quickly and more

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[63] Globe and Mail, (Feb. 17, 1984) p. R3.

accurately than television or radio: "On the day of insertion, studies show that newspapers reach 70 to 80 percent of all homes within a target."[64]

However, as Rosse argues, the powers of market segmentation may be deteriorating, thus leaving the existing competition threatened. He attributes this phenomenon to a number of factors.[65] First, he suggests there has been a general downward shift of advertising demand due to the introduction of television. Hypothetically, if a television station comes into a city with two competing daily newspapers, both papers will experience a reduction in advertising demand. This will cause them to raise their prices because of inefficiencies due to scale economy costs. The advertiser then decides to forgo benefits provided by the two segmented newspaper markets, for the sake of reducing costs, and advertise with only one newspaper.

Secondly, there is a general weakening of advertiser preference for differentiated audiences. This, in part, is due to the development of chain stores and group advertising, and to the increased opportunities of consumers to shop on regional as well as local levels. This relates back to Bogart's argument regarding the murky boundaries of the local concept.

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[64] Globe and Mail, (Sept. 12, 1983), p. R4.

[65] Rosse, "Evolution of One Newspaper Cities," op. cit., p. 53-60.

Still another reason for the diminishing impact of market segmentation is that subscriber demand has declined. Readership of newspapers per household was reduced substantially in the last three decades. Here, again, Rosse cites the increase in possible alternative sources for news, and entertainment such as television, radio or even recreational functions which draw from potential reader attention spans.

Fourthly, the population migration from the city center to the suburbs has created a more homogeneous audience who have split loyalties between the metropolitan area and their own community.

The last two points are that there have been upward shifts in general costs, especially in the area of newsprint and distribution and that the introduction of high level technology has made the scale economies less stable.[66]

All of these factors combine to contribute to general disequilibrium within a given market. This disequilibrium could set into motion a downward spiral action for the more adversely affected newspaper. [67]

In the aftermath of the Winnipeg and Ottawa newspaper closures, it was generally agreed that the Winnipeg Tribune and Ottawa Journal failed because they were competing for the same general audience circulation as their rivals. In all other cities where there are competing dailies, there is greater

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[66]Ibid.

[67]Supra, footnote 16.

product differentiation and market segmentation, as noted earlier.

In 1980, when Southam gained full control over the Vancouver Province and Sun, the company announced that it was considering introducing a third paper into the "lucrative" Vancouver market. The newspaper would follow the style of the Toronto Sun, a tabloid, with bold typography and color usage, and a somewhat sensationalist editorial style. Gordon Fisher, Southam president, said the newspaper would be "directed to a market segment not now reached by existing products...it would be for those who want something light and frothy."[68]

However, this attempt to capture the Vancouver daily newspaper market was never realized. Instead, an idea that may have started as an attempt to block new entry, was used later as a means of survival. In 1983, the Province was converted from a broadsheet with a general and business audience orientation, to what Fisher envisaged as something "light and frothy." At the time of this writing the Province was gaining circulation, but advertisers have been slow to respond to the new circulation figures. In addition, the Vancouver newspapers are just recovering from a labor dispute, which may have a very serious impact on this newspaper.

In addition to the economic causes for the demise of intracity competition among daily newspapers as detailed earlier, there are years of legal cases, especially in the

[68]Globe and Mail, (Aug. 28, 1980), p. 15.

United States, that clearly point to the attempted use of anti-competitive practices that have also contributed, if not simply accelerated, the demise of direct newspaper competition.

In his review of U. S. anti-trust law relevant to newspapers, Steven Robinson cites a case involving the Kansas City Star. An all-day newspaper, the Star, in 1957 circulated to 95 percent of the households and retained 94 percent of total advertising revenue. Five smaller newspapers accounted for the remaining circulation and revenue figures. Once The Star was charged with monopoly and attempting to monopolize the dissemination of news and advertising in the market, it was ascertained that the paper had threatened advertisers who placed ads in competing publications with refusal to take their advertisements. In addition, the newspaper refused to accept advertising on its television station unless ads were also run in the newspaper. [69]

In this case, the dominant market position of the newspaper was enough to suggest an "imminent threat of monopolization" even when the newspaper contended that other media, such as television and magazines, constituted "market alternatives" for consumers and no monopoly power or dominant market position existed. But the court did not recognize the other media as effective substitutes for or alternatives to a daily

[69] Kansas City Star Co. v. U. S. 354 U. S. 923 (1957) in Steven Robinson, "Individual and Chain Newspaper Conduct versus the Antitrust laws: What Boundaries do the Traditional Means of Checking Economic Concentration Establish for the Newspaper Industry," Gonzaga Law Review Vol. 14, (1978/79) p. 829-830.

metropolitan newspapers.

Rabeau points to another potentially anti-competitive practice where newspaper group uses its ability to subsidize financially troubled member newspapers by the profit makers in the organization. If a newspaper has a crisis, the corporation has the option of selling or letting the firm close, or as Rabeau suggests, it can use the "losses" as an "offensive weapon" to eliminate a competitor and increase the paper's long-term profits. [70] The possible strategies such a group could exercise would be to lower advertising rates or consumer prices and undercut the competition. The newspaper group could also allow the newspaper to lose money knowing the competition is also in financial difficulty. A newspaper group could afford to wait long enough for the competition to close down. This tactic is known as cut-throat competition.

Rabeau cites an example of a Southam newspaper which subsidized four years out of seven the losses incurred by the Montreal Gazette. The stategy proved successful, since its competitor, the Montreal Star, was unable to recover from a journalists' strike. However, in this case, it has not been legally proven that Southam indeed held a strategy to lessen competition.[71]

In the U. S., however, a Federal District Court in Ohio ordered Freedom Newspapers, Inc. to divest itself of the Lima

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[70]Rabeau, op. cit., p. 54.

[71]Ibid.

News, a monopoly newspaper, alleging the chain conspired to restrain interstate trade by intentionally operating the paper at losses subsidized by the chain. Freedom Newspapers clearly put its competitor out of business by the use of a loss-subsidy policy.[72] However, the District Court decided rather than divestiture, it would simply enjoin the corporation from operating at a loss with the purpose of eliminating a competitor in the event that a competing newspaper started publication. Other examples of anticompetive practices of individual newspapers summarized by Robinson included requiring a subscriber to take both morning and evening editions, excessive blanketing of a community by a dominant newspaper, and deliberate below-cost predatory pricing.[73]

Other conditions which would seem to mitigate against the existence of direct newspaper competition are access limitations to syndicate features and wire service restrictions. Most syndicated features including comics, political and feature columns, and other materials, known in the newspaper trade as "canned copy," are sold to large circulation newspapers with so-called "territorial exclusivity" rights attached. A syndicate service such as the U. S. -based United Features Syndicate or the Los Angeles Times or Washington Post syndicate services, will sell a package of features, to a newspaper and will not

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[72] United States v. The Lima News 1965 Trade Case 71,609 at 81,746 (N.D. Ohio, 1965) in Gregory Jones, op. cit., p. 168.

[73] Ibid., p. 51. Also, see Chapter Four for additional discussion.

sell a similar package to any other papers in the same geographic location.

In a study done through the University of Illinois, 61 suburban or outer-metro newspapers were surveyed on the issue of territorial exclusivity. Of the 66 percent who returned on the questionnaires, 23 percent considered the availability of syndicate features to be extremely important, while 63 percent deemed such features as important, "but not as important as other factors." Twelve percent said they were not very important and another 2 percent considered this copy as not important at all.[74]

The editor of the Quincy Patriot Ledger, a paper located in the Boston metropolitan area commented in the study:

> We've been fighting a mostly losing battle over the years. Even when it appeared that the Boston Herald American might close, the syndicates wouldn't talk to us about picking up that paper's comics. They didn't want to harm their chances to get into the (Boston) Globe.[75]

Currently, the Oakland Tribune has filed a suit against the San Francisco Chronicle and the San Francisco Examiner, charging them with violation of the Sherman Antitrust Act for illegally holding exclusive rights to 115 syndicated features in the Bay area. The suit states that "the defendents have deprived the Tribune of its ability to present fully balanced editorial views by monopolizing some of the most persuasive and popular conservative political commentators through exclusive

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[74] Editor and Publisher, (July 23, 1983) p. 56.

[75] Ibid.

contracts."[76]

Lawyer Michael Hennigan, who is attempting an unprecedented application of antitrust law, says "the Chronicle has greater than 95 percent share of San Francisco's daily morning newspaper market, and that the business share has not been the result of business acumen or superior product, but rather there has been at least in significant part, a pattern of exclusionary practices that has precluded competitors from obtaining the most significant syndicated features in the country."[77]

According to the syndicate features buyer for the Vancouver Sun, their features packages are also guaranteed for territorial exclusivity. However, she added that the Sun does not rely as heavily on syndicates due to the high costs of the various services.[78]

Another problematic area concerns the wire services. According to James MacElroy, former assistant managing editor of the New York Times news service, a metropolitan newspaper desiring complete news coverage must, at the minimum receive the international and national wires of both services, plus stock market, regional, state and sports wire. In addition, the paper would have to subscribe to other services, including

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[76]Editor and Publisher, (Dec. 31, 1983) p. 25.

[77]Ibid.

[78]Interview with Marilyn Reneli, March 7, 1984.

supplemental news services which furnish articles and features[79]

Failure to obtain these wires can be devastating. One publisher described an experience when his newspaper was on strike. They did not receive the wire service for the duration of the seven-month strike. He said, "It means inadequate news coverage. It means operating under nightmarish conditions. It means losing readers and advertisers. It means not being able to compete..."[80]

In Canada, the dominant wire service is Canadian Press. It "functions as a news exchange system built on the premise that news collected by one paper could be passed on to others, without being detracted from its value to the paper that originally collected it."[81]

CP members pay for the services through a special assessment using a complex formula based on circulation. Of particular interest is that papers already established in competitive situations pay less, since the fee is calculated in terms of the total circulation for all newspapers in the city, with 60 percent of the overall cost shared equally and 40 percent divided on the basis of individual circulation.

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[79]As quoted in Keith Roberts, "Antitrust Problems in the Newspaper Industry," <u>Harvard Law Review</u>, Vol. 83, (December 1968) p. 331.

[80]Roberts. Ibid.

[81]Carman Cumming, et. al., "Canadian News Services" A research study for the Kent Commission, Vol. 6, (Ottawa: 1981) p. 11.

The 40-60 split has been criticized for discouraging new entrants to a newspaper market. Donald Hunt, general manager of the Toronto Sun, claims that part of the cost of CP to a new paper in effect goes to the existing paper or papers in the city: "It is for this reason that the new Winnipeg Sun--no relation to the Toronto Sun--went to United Press Canada, a subsidiary of the U.S.-based United Press International, when it started on a tri-weekly basis in 1980." If UPC had not existed the Sun would have had to pay CP rates of $85,000 a year, instead of the $45,000 charged by UPC. When asked if the CP price was an obstacle in starting a newspaper, Tom Denton, the Sun publisher commented: "It was certainly an awfully big nut, and the price was certainly a factor." [82]

A third measure of anti-competitive behavior may be found in the existence of exclusive distributorships. Requiring a new paper to build its own distribution system may seriously impede new entry. Simply in terms of scale economies, it is highly inefficient to have separate distributors for each newspaper.

In the United States, attempts are being made to use Section 3 of the Clayton Act to prohibit agreements preventing private or newspaper-employing carriers from distributing competing newspapers. Section 3 forbids sales made on the condition that the purchaser shall not deal in the commodities of a competitor where "the effect...may be to substantially

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[82]Ibid. p. 14.

lessen competition or tend to create monopoly."[83]

In summary, it has been argued that newspapers are subject to a variety of "destabilizing" forces which, in theory, could seriously threaten a newspaper's livelihood, i.e., its ability to attract readers and advertisers. The ability of a newspaper to segment its market is considered an essential tool of survival. However, as Rosse argues, the powers of market segmentation are diminishing. The competitive position of an existing newspaper or a potential entrant is further threatened when its competitor engages in anti-competitive practices, such as price undercutting or by arranging special deals with advertisers. In addition, the existence of "territorial exclusive" syndicates contracts, differential pricing by the wire services, and exclusive distributorships tends to give an unfair advantage to some newspapers in a given market.

The potentially anti-competitive forces mentioned are particularly threatening to newspapers that are not necessarily in "direct competition" with the major metropolitan daily newspaper, but instead, make up the numerous sub-market groups of the small suburban daily or weeklies. This point will be expanded in the following discussion.

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[83]Clayton Act, 3, 15 U.S.C.; 14 (1964). See Keith Roberts, op. cit., pp. 326-328.

Umbrella Hypothesis

An important argument can be made that the primary competition of newspapers actually occurs at different levels of the same market. In his "umbrella hypothesis" Rosse suggests that newspapers maintain "spheres of influence." Although these spheres are, in some respects, overlapping within a local market, they provide another kind of "direct" competition.

Rosse observed that in the 1960's populations in most major cities began to disperse into residential or suburban areas which forced the metropolitan newspaper to expand into these new areas. Fortunately, for the metro papers, computer technology was available to allow them to produce "zoned editions" with specialized information, supplements and services to entice suburban retailers, along with other local retailers to advertise in their paper. In addition, the metropolitan papers attracted national advertising simply because of the extensive coverage they could achieve.

The "umbrella" concept attempts to explain what effect these social and demographic changes had on newspaper competition. Essentially, it argues that as the larger metropolitan newspapers moved towards greater regional coverage, a new kind of competitive interaction with the suburban and provincial newspapers emerged.

To illustrate this argument, it must first be restated that competition, in Rosse's model, is perceived as happening between various levels or types of newspapers that are circulated in the same general geographic area. The actual "umbrella" itself, is created by the central metropolitan newspaper. A metro paper characteristically will have a lower cost per copy, although the number of readers per household or household penetration is sacrificed by the growth of suburban papers. Yves Rabeau has observed that penetration tends to diminish "unevenly" the farther away the population is from the newspaper's point of origin.[84] In other words, the newspaper cannot have a zoned edition for every small city or hamlet in the same geographic radius and thus cannot target its audiences as well. This is particularly true for a paper like the Globe and Mail that is circulated nationwide. However, in this case, the uncertain level of household penetration is offset, in the eyes of the advertiser, by the extensive nature of the newspaper's coverage.

An example can be provided of the umbrella hypothesis from a Canadian case. The primary umbrella or first level newspaper is the Globe and Mail, a Toronto-based newspaper that provides good coverage of business, economic and political events and is read by Canadians across the country. National advertising accounts for approximately 40 percent of G&M's total advertising revenue. This proportion far exceeds most other large dailies such as La Presse, whose readership is located in most of Quebec and parts of Eastern Canada, but still receives only 20 percent of its advertising revenues from national advertisers.

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[84]Rabeau, op. cit.

Keeping the example to the Toronto region, the second level of newspapers might be represented by the Toronto Star and the Toronto Sun. At this second level, the intensity of household penetration is higher and therefore, more attractive to local advertisers and to citizens placing classified ads. Both papers receive approximately 8 percent of their advertising revenue from national sources. Again, these newspapers are sufficiently differentiated from each other with the Toronto Sun's "popularized" tabloid format and the Star's business orientation. The avoid or at least, diminish the possiblities of full direct competition between themselves.

Under the second level umbrella, there are still other levels of small dailies and weeklies common to suburban areas and neighborhoods, which are competing for some of the same local and classified advertising dollars.

The alternative for advertisers interested in Toronto's sub-markets consists, among others, of 22 mid-week and weekend suburban papers which are published by Metroland Printing and Publishing Ltd., which also publishes the Toronto Star.

Thus, because newspapers operating at similar levels will in most cases attempt to differentiate their formats enough to develop a segmented market, competition may be just as intense between levels or intraumbrella, than within a particular level of the umbrella. Thus, even if a newspaper in a medium to small-sized city holds a monopoly position and benefits from scale economies, especially in terms of distribution, it must still meet the competition for advertisers at both the higher and lower levels of the umbrella structure.

Paul Audley argues that in Canada the "umbrella hypothesis" is not as relevant because "the extent of circulation overlap for daily papers is usually limited, and only rarely is home delivery of non-resident daily newspapers available."[85] Thus, he suggests, there may be a larger degree of vertical market segmentation, and hence, less direct competition for advertisers.

However, a Kent Commission study reports the majority of cities in Canada are served by more than one newspaper, and especially by non-resident daily newspapers. In 1980, 47 cities were served by two English-speaking daily newspapers, 26 cities carried three papers, while 16 cities supported four dailies, and at least 6 cities could choose from five papers, including non-resident papers. Among French-speaking cities, 15 cities had three papers, while five cities reported at least four newspapers.[86] Thus, the degree of common ownership of newspaper properties within the same geographic umbrella is quite significant in Canada.[87] Witness the previous example of the Torstar organization.

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[85] Paul Audley, Canada's Cultural Industries: Broadcasting, Publishing, Records, Films, (Ottawa: Canadian Institute for Economic Policy, 1983) p. 25.

[86] Eugene Hallman, et. al.,"The Newspaper as a Business" Research Study, Vol. 4, RCN, (Ottawa: 1981), p. 24.

[87] Audley, op. cit., p. 25.

The residents of Lethbridge, Alberta are currently engaged in a battle with the Thomson Newspaper corporation over a change in the news format of the Lethbridge Herald. Reports suggest the Herald has been downplaying its national and international news in favor of local news, just when the Thomson organization is promoting its national paper, the Globe and Mail.[88]

Objections have been directed especially to front-page pictures of children and animals, and the elimination of foreign coverage by such syndicates as The New York Times and The Christian Science Monitor news services.[89] Lethbridge provides an example of the deleterious effect of umbrella organization in local markets.

According to the Kent Commission, daily newspapers are responding to the challenge of the community newspapers, which have been "attracting more pinpointed local advertising" by "gobbling them up." The Davey Committee's researchers noted the beginnings of the trend and cited five dailies that had acquired weeklies within their market areas. The Kent Commission found 30 such arrangements spread across the country. The Commission reported that the "Hamilton Spectator digested the weekly Burlington Gazette so thoroughly that it now appears as a weekly supplement to the Spectator in the appropriate area of distribution. There is always the possiblity that other weeklies owned by dailies will suffer a similar fate, perhaps even being

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[88]Editor and Publisher(Feb.12, 1983) p. 12.

[89]Ibid.

absorbed into zoned editions of the daily, as has occurred in the United States."[90]

In the United States, major publishing groups have avoided buying newspapers in the same relevant markets as their other newspaper holdings because of possible action by the Justice Department for "excessive control" in a particular geographic area.[91] In the U. S. v. Times Mirror (1969), the U.S. Justice Department, in fact broadened the relevant market area for newspapers. Defining the market is an essential first step in determining the competitive effect on any given action. In 1964, the parent company of the Los Angeles Times purchased the largest independent newspaper in southern California which happened to publish in the next county. As a result of the acquisition, the Times' share of circulation in the geographic market increased enormously. Because of this acquisition Times-Mirror was found to have "substantially lessened competition" and was ordered to divest itself of that property. The newspaper property was later sold to the Gannett Company, one of the largest U.S. chains. Thus, the U.S. law dealt only with the immediate concern over concentration of newspaper ownership within a local market and not with the broader question of national chain control of newspapers. (This subject will be given greater attention later in the thesis.) Joint

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[90]Kent Commission, op. cit., p. 72-73.

[91]See United States v. Times Mirror Co. 274 F. Supp 606 (C. D. Cal 1967), aff'd without opinion, 390 U. S. 712(1968).

ownership of daily newspapers within a market is allowed in special cases under the Newspaper Preservation Act.[92]

Thus, Rosse suggests that although newspapers are for the most part monopolistic competitors there is some degree of overlapping competition for readers and advertisers with other types of newspapers and, as it will be argued, with other media. This proposition serves as the theoretical underpinning for much of the argument in this thesis. The fact that newspapers compete to some degree with other types of newspapers in the same market has significant implications. When a large metropolitan newspaper is awarded exclusive contracts with a popular syndicated column or cartoon, it places its competitors and potential entrants at a considerable disadvantage for attracting a readership, as demonstrated earlier. If individual papers cannot obtain "exclusive" services, they may turn to other methods of securing a dominant position. For example, by purchasing a newspaper in the same market, a newspaper group may gain an advantage derived from certain economies in distribution, from superior marketing and management, and from the ability to offer advertising specials for ad placement.

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[92] 15 U. S. C. 1804 (1976). For a judicial interpretation of the Newspaper Preservation Act, see Bay Guardian Co. v. Chronicle Publishing Co., 344 F. Supp 111 (n. D. Cal. 1972).

Newspapers in Competition with Broadcast

There is little question that newspapers compete with television and other broadcast and cable media for the attention of their readers. Rosse proved by calculating the reduced form revenue functions for newspapers that for each 1 percent increase in television's share of aggregate advertising expenditure, it shifts the equilibrium advertising revenues of a typical newspaper firm downward by nearly 1 percent.[93]

Rosse suggests that the rapid and continuing development of television and now, cable television, have been central factors in the demise of large metropolitan newspapers. "The comparative advantage of the television markets lies in low cost (per audience) mass appeal national and regional advertising, a fact that Life, Look, and Saturday Evening Post and other general appeal mass circulation magazines quickly discovered."[94]

According to a Kent Commission study, daily newspaper industry's share of national advertising revenue dropped from 31.6 percent in 1975 to 23.3 percent in 1980. Television's share showed a corresponding increase, rising to 58.4 percent in 1980 from 48.8 percent in 1975. The percentage share of retail advertising for newspapers also dropped between 1975 and 1980

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[93]J. N. Rosse, "The Daily Newspaper Firm: A Twenty-Four Equation Reduced Form Model" Studies in Industry Economics. Stanford University. (1979).

[94]J. N. Rosse, "Economic Limits of Press Responsiblity," Studies in Industry Economics. Stanford University. (January, 1975) p.16.

from 51.1 percent to 46.6 percent, respectively. Correspondingly, television's share increased its share from 11.8 percent in 1975 to 13.5 percent in 1980.[95]

Distribution of net advertising revenues by medium

Year	Total Revenue	Daily Newspapers	Radio	TV	Weekly Newspapers	Other
1972	$1,302.9	30.7%	11.1%	12.7%	4.9%	40.5%
1973	1,479.4	30.5	10.8	13.4	5.1	40.1
1974	1,720.7	30.3	10.6	13.1	4.9	41.1
1975	1,938.5	30.3	10.7	13.7	4.7	40.6
1976	2,243.8	30.6	10.8	14.4	4.9	39.4
1977	2,458.0	29.5	10.9	15.3	5.0	39.3
1978	2,790.8	27.8	10.9	15.8	5.3	40.1
1979	3,184.5	27.3	11.1	16.5	5.3	39.8
1980	3,528.0	26.5	11.0	17.0	5.4	40.1

Source: Hallman, et. al. (1981) pp. 39-40.

However, Audley has pointed to a possible slowing of this trend. Estimates by the Maclean Hunter Research Bureau suggest that revenue from national advertising accounted for 19.9 percent of daily newspaper revenue in 1981, up from 18.8 percent in 1979.[96]

Jeremy Sprague, director of research for a newspaper advertiser representative firm, reported that this upswing in newspaper advertising has occurred because of increased fragmentation of the television market. Additional cable channels have eroded network and local broadcast viewing. "An advertiser buying 100 gross points in prime time would expect a net reach in the area of 54 percent. In the near future, this

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[95]Hallman, et. al., op. cit., p. 42.

[96] Audley, op. cit., p. 16.

will drop to mid to high 40's...Television's traditional skewed frequency distribution pattern will become even more distorted." Sprague adds that "a small portion of those reached will receive a lot of impressions, while a much larger portion will receive fewer impressions."[97]

When comparing newspapers and television, one can detect the unique features of newspapers. Where newspapers have great flexibility in ad placement, (e. g., if a snowstorm hits, a snow tire firm can place an ad for the next deadline, television ad placement is booked weeks in advance.) Newspapers as a print medium, offer hard copy, so the advertiser can furnish full pages of information, such as food prices and even include savings coupons, while television is limited in the amount and kind of detail it can present. Furthermore, newspapers can provide a more coherent display coordination with editorial content; an ad for a clothing shop can be placed in the style section of the paper. Television has less opportunity, especially with general audience programming, to offer such targeting.

However, newspapers lack the impact of sound and movement, vivid color and the level of entertainment that television can provide. Television sets the impression for new products, candidates, or other messages that the advertiser wants to get across to the viewers.

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[97] Editor and Publisher (June 18,1983) p. 30.

The Kent Commission conducted a National Readership Survey [98] of 3,511 adults, which examined how people receive and use newspapers. The survey inquired about newspapers, radio, and television. It did not include magazines or weekly newspapers, which may have biased the results since these are also competitive media.

When asked to choose one of three information media as being "best" for keeping informed about world and international news, 55 percent of the respondents said TV, while 30 percent chose newspapers. For national news, 53 percent prefer television, while 32 think newspaper coverage is best. However, on provincial news coverage, newspaper and television were considered even with 40 and 42 percent, respectively. For local coverage, respondents chose newspapers by 59 percent over television at 18 percent. And again, newspapers were best at covering those "things of personal interest" with 49 percent, while TV was close behind with 36 percent. Furthermore, when the participants were asked which medium presented the widest range of opinions, the responses were split evenly with 44 percent saying newspapers and 43 percent television. Thus, in terms of preferences, those who were questioned suggested they would need to look at both newspapers and television to fulfil their total news and entertainment needs.

The notion that television is losing some of its competitive grip over given markets, lends great support to the

[98] Kent Report, op. cit., p. 264.

idea that direct or intraumbrella newspaper competition may have greater opportunity to revive and grow, assuming the absence of non-competitive forces as discussed earlier.

Radio

In 1981, radio captured 11 percent of total advertising revenues in Canada and a large portion of that share was derived from local advertising. Seventy-five percent of advertising revenues are local sales. Furthermore, in 1982, nearly 90 percent of the adult population listened to the radio an average of three hours a day. Although programming is primarily local in orientation, the major exception is the Canadian Broadcasting Corporation-Radio Canada which provides network programming.[99]

This obviously makes radio an important competitor to newspapers. Radio offers a high degree of audience segmentation due to numerous types of formats, especially in the larger cities. It caters to personal taste in terms of music and mobility. Only 10 percent of radios sold in Canada are ordinary home radios. Furthermore, radio is frequently used as a secondary activity, e.g., background music.

Nonetheless, the problem with radio is that its instantaneous and sound-only qualities require advertisers to pay a higher cost due to necessary repetition of ads. It is also

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[99] Siegel, op. cit., p. 173.

interesting to note that the total national expenditure on advertising for radio has stayed at about 11 percent since 1972. Thus, radio does not constitute a particularly significant competitive threat to newspapers.

Newspapers in Competition with Other Media

As it has been argued in this thesis, the growth and influence of weekly newspapers with controlled or non-controlled circulations, as well as advertising shoppers and direct mail, is presenting daily newspapers with an important new competitive challenge. In 1970, there were 890 weeklies with a total of 3,800,000 circulation. By 1980, the number of weeklies had increased to 1,090 with a total circulation of 10 million. While the number of daily newspapers had increased by only three between 1970 and 1980.[100] In 1971, Canada had 808 weeklies of which 352 were located in cities with a daily newspaper. In 1980, the total number rose to 917 with 498 located in cities with dailies. In 1972, weekly newspapers received 4.9 percent of national net advertising revenues. This figure increased to 5.4 percent in 1980.[101]

There is a high turn-over rate of community papers. Usually they will cease publication and either take on a new format or

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[100] Donald Thompson, "Reshaping Canadian Newspaper Markets," Business Quarterly, Vol. 45, (Winter 1980) pp. 48-56.

[101] Hallman, et. al., op. cit., p. 32.

merge with another community paper. According to a Kent Commission study, of the 352 weeklies in communities also served by dailies in 1971, only 152 had the same title in 1980.[102] Nevertheless, community paper circulation has shown substantial growth between 1971 and 1980.

Aggregate weekly circulation for community newspapers paid and controlled (freely distributed) increased by 9.9 percent between those years, with controlled distribution weeklies advancing at a faster pace than paid weeklies. The growth rate in circulation for paid weeklies sold is 3.8 percent, whereas for those that are free, it is 13.6 percent.[103] Advertising in free papers or "shoppers" varies between 10 percent and 100 percent of total space. In the U. S., the average is 74 percent.[104]

As argued earlier, this growth in the number of weeklies or non-daily newspapers can, to a large extent, be attributed to the introduction of new and low cost technology. According to Bob Graham, associate editor of a small Vancouver controlled circulation weekly, the introduction of a fully integrated computer system has reduced their total costs by more than 50 percent.[105]

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[102]Ibid.

[103]Ibid., p. 36.

[104]Leo Bogart, Press and Public, (Hillsdale, NJ: Lawrence Erlbaum Associates, 1981) p. 36.

[105]Interview with Bob Graham, associate editor of the North Shore News, July 16, 1984.

Direct mail, which is 100 percent advertising, also poses problems for newspapers since such mail services offer advertisers a segmented audience against well-defined prime customer groups. Direct mail garners the second largest portion of national advertising expenditure. In 1980, it accounted for 19.4 percent of advertising, while newspapers received 26.5 percent of the total. Although advertising expenditures for direct mail have decreased since 1972 when the percentage was 20.8 percent of the total, it still decreased at a lesser rate than the advertising share for newspapers which was 30.7 percent in 1972.[106]

One of the defense tactics that daily newspapers are using, especially in the U. S., is to publish their own shopper and/or insert into the paper preprinted advertising which can be distributed on a zoned basis in particular neigborhoods or districts. In fact, some observers contend that in the next two years Southam-owned Pacific Press will be introducing its own distribution service for advertising flyers, thus gaining economies of scale from its current distribution of the Vancouver Sun and Province. [107]

However, in the U.S. the tides my be turning on this approach since a recent anti-trust case found a Virginia daily newspaper guilty of attempting to monopolize the market by offering their advertisers "below-cost" pricing and "tie-in or

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[106] Hallman, op. cit., p. 41.

[107] Graham interview, op. cit.

pick-up rates with bonuses" in their weekly shopper.

The damages awarded to the Advantage Publications, which publishes several shoppers, amounted to $1 (due to confusion over assessing "proper damages"). The U. S. District Court, however, not only told the newspaper it must obtain prior permission before offering bonuses or advertising incentives. It said that the newspaper was prohibited from selling ad space on a target market basis in a shopper that it delivers to non-subscribers who live in an area where the competing controlled circulation shopper is distributed. In addition, another shopper published by the Daily Press would have to raise its ad rates by about 33 percent per column inch.

The case was basically determined by the fact that the newspaper went below their "average variable costs" by dropping their ad rates for the shoppers, which in U.S. law constituted predatory pricing competition. [108]

Conclusion

outline

This chapter has attempted to delineate the nature and dynamics of newspaper competition. It has been postulated that the economic character of newspaper competition falls under both the oligopolist and monopolistic competitive models. At one level, the highly concentrated state of the newspaper industry,

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[108] Editor and Publisher, (Dec. 17, 1983) p. 14.

has provided the few controlling newspaper organizations, certain competitive advantages by way of its scale economies in management and marketing, and in its ability to attract capital. These advantages can also be used for profit maximization among the large sellers, as in the Thomson-Southam case, or as an offensive tactic by garnering exclusive syndication rights or by letting marginal revenue slip below marginal cost to deter potential entrants or weaken existing competition.

At still another level, it has also been shown that there is an active interproduct and intraumbrella dynamic of competition within a relevant market. As long as the newspaper products are diffentiated, as they by definition must be, competition, although imperfect, does occur. The danger, as some of the legal cases cited suggest, is when a single newspaper organization dominates the market. The joint-ownership of various types of newspapers and, for that matter, broadcast outlets within a relevant market should theoretically discourage even the healthiest of newspaper organizations from risking the capital essential for breaking into a market.

Furthermore, the evidence would also suggest that more non-daily newspapers and small suburban dailies have added a new dimension to the newspaper industry. According to the Kent Commission, the large daily newspapers have perceived this new competition as its newest and most immediate threat, hence the Torstar's purchase of the weekly newspapers within the relevant market of the Toronto Star.

In the U. S., after the *Times Mirror* case, the boundaries of a relevant market were redefined and the illegality of market domination by a single firm was reconfirmed in this *prima facie* case. In Canada, there is no such protection. In both countries, there is still no provision to curtail concentration of control in the newspaper industry on a national scale. The next chapter addresses the legal and policy environment in which the newspaper industry operates, how it relates to the problem areas cited in this chapter and to what extent the U. S. has been able to successfully redress these problems.

CHAPTER 4

CANADA'S POLICY ENVIRONMENT RELATING TO NEWSPAPERS

It has been argued thus far that concentration of newspaper ownership in local markets is potentially harmful to the public interest since it deprives the public of opportunities for greater diversity of information, news and ideas, services which are vital to democratic society. Concentration of ownership creates barriers to entry (beyond start-up costs and other natural barriers) which discourage potential firms from entering a newspaper market. It could also threaten the survival of existing news outlets not owned by a dominating newspaper group. Thus, concentration of newspaper ownership not only impedes economic competition among newspapers, but also competition within the marketplace of ideas.

This impediment to the public interest may be demonstrated by the Lethbridge case presented in Chapter 3. In this case, the residents of Lethbridge, a small college town in Alberta, formed picket lines in front of the *Lethbridge Herald* building and mounted boycotts against advertising clients of the newspaper. The residents charged that the Thomson-owned *Herald* began to downplay its national and international news coverage just as Thomson's *Globe and Mail* introduced home delivery service to the town. The residents realized that they were being forced to subscribe to both newspapers in order to fulfill their total news needs. Since the population of Lethbridge is too small to support two city dailies, entry of any competitors was economically not feasible.

What is most disturbing is that ownership of more than one type of newspaper in the same market is becoming more common. As the Kent Report states, concentration in local markets ownership has increased five-fold since 1971 to the extent that in 1981, there were 30 such arrangements. The Torstar takeover of the non-dailies in the same market as the Toronto Star has been another important example.

Government's involvement with newspapers is somewhat mixed. Currently, the state recognizes the importance of supporting the newspaper industry, first because it is a multibillion dollar industry and secondly, because of the special significance of newspapers in a democratic society. This support is typically represented by indirect subsidies and tax concessions. At the same time, however, the government has no effective provision for discouraging joint control of different types of newspapers in the same market. Canada's anti-combines law has failed in the areas of mergers, takeovers and market domination. By contrast, the U. S. anti-trust laws have virtually eliminated the problem of local market concentration. It is posited in later discussion that the existing inadequate competition law remains "on the books," since Canadians have traditionally preferred to keep policies affecting industry withing closer reach of policy makers than that of courts. The Kent Commission serves as a striking example of how government chose to address the issues of growing concentration and declining competition in the newspaper industry. Although the Kent Commission defined the public interest in much the same way as the author of this thesis, it chose a different approach than the one recommended here and advocated greater state intervention as a means of insuring the public opportunities for diverse information, news and ideas.

An alternative approach that was virtually ignored by the Kent Commission would have been to lobby for a revised Competitions Policy to replace the existing anti-combines law. The Commission abstained from this long-standing battle for two reasons: 1)it was not convinced that competition was the crucial concern, and 2) it did not want to make proposals that would affect all industry. This thesis, like the Kent Commission, will not attempt to argue for a revised competitions policy. Instead, the focus of the recommendations in this thesis is placed exclusively on newspapers in the form of an amendment to existing anti-combines law. Changes to certain tax provisions will also be recommended. All of the recommendations are intended to require minimal state intervention.

Again, in Canada the newspaper industry currently operates with virtually no legal constraint. In fact, it can be argued that state policies towards newspapers, especially certain tax laws have stimulated the consolidation of newspaper properties. This chapter reviews the policy environment within which the newspaper industry operates. It examines the nature of state interventions into newspaper economics and the problems with existing anti-combines legislation in dealing with newspaper conduct. Discussion on the U. S. legal framework for newspaper operations is included for its comparative value.

State Interventions into Press Economics

State "interventions" into newspaper economics is fairly common in Canada. For the most part, the industry is given various forms of assistance through such indirect mechanisms as postal rate concessions or certain tax exemptions, and without explicit discretion to any particular newspaper's situation.

Unlike Sweden or other European governments, Canada has not provided subsidies where an outright cash transfer is made through a loan or grant to newspapers. However, grants were proposed by the Kent Commission to help stimulate better international and national reporting.

State intervention in press economics is based essentially on two premises: first, it is intended to promote efficient and healthy conditions of all entities in the newspaper industry; and secondly, it helps to reduce operating costs ~~for the~~ newspapers. This rationale is based largely on the state's concern with overall industrial growth since, in Canada, Archer suggests, "apart from political independence, nothing is more vital to a country's well-being than economic growth."[109]

Picard argues this philosophy manifests itself through policies that "emphasize support for the monopoly sector of print media, i. e, owners of newspaper chains." He states:

> The state has intervened in economics with tax breaks, regulatory relief and other fiscal advantages and subsidies, and tacitly accepted the social costs of growth in the newspaper industry by making no efforts to support diversity, expressions of different political ideologies or controversy in the industry's products. These general policies reflect the major macro-economic policies of the government toward other industries.[110]

Examples in Canada of what Picard calls "advantage interventions"[111] in the press, include a 9 percent federal sales tax exemption which, in 1980, had an estimated value to the newspaper industry of $70 million.[112] Through Section 19 of the Income Tax Act, income tax deductions for advertising in a newspaper are denied to non-Canadian owned newspapers, thus eliminating the possibility of foreign competition. Also, newspapers are given concessionary postal rates for distribution which amount to $27.5 million each year.[113] Other indirect benefits to newspapers are seen in the state's support of university programs that train journalists or the exemptions of

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[109]Maurice Archer, Canada's Economic Problems and Policies (Toronto: Macmillian, 1975) p. 32.

[110]Robert Picard, "State Interventions in U. S. Press Economics," Gazette (Vol. 30, 1982) p. 6.

[111]Ibid.

[112]Kent Report, op. cit, p. 55.

[113]Ibid.

small papers from certain minimum wage and overtime requirements.

Newspapers also enjoy certain general business advantages mostly in the realm of taxation. According to the Income Tax Act, undistributed earnings are not taxed as personal income if used in the acquisition of additional newspaper properties and/or other kinds of investment. In addition, since 1971, the revised capital gains taxes have made family-owned enterprises a prime target of merger activity when there's a need to expedite estate settlements. An inheritor of a family newspaper is subject to a capital gains tax based on the current "fair market value" of the property. More importantly the company acquiring another firm is allowed to offer shareholders of the acquired firm an option of its own stock instead of cash. Shareholders of the acquired firm, thus do not have to pay capital gains tax, making them more likely to sell their stock at a low price to a newspaper chain or conglomerate.

Furthermore, losses can be carried forward several years. This regulation permits acquisition of new properties at costs higher than would usually be justifable. Dertouzos contends that of all the economic and political forces which have "probably promoted the evolving structure of chain ownership, first and foremost might well be the tax laws which encourage the investment of accumulated wealth."[114] This aspect of Canada's

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[114] J. N. Dertouzos, "Scale Economies, Newspaper Chains, and Government Policy," American Economist Vol. 26(1) (Spring 1982) p. 14.

taxation policy is particularly interesting and is given greater attention later in the thesis.

Legal Parameters for the Newspaper Industry

Jurisprudence relating to the newspaper industry in Canada has been extremely limited. Between 1960 and 1970 the Restrictive Trade Practices Commission issued three reports that involved newspapers accused of either monopoly or merger. But the first case to go to court occurred in 1974 when the K. C. Irving, Ltd. corporation was charged with two counts of forming a merger and two of forming a monopoly. Ten years later, the Thomson and Southam organizations stood trial charged with eight counts of conspiracy to lessen competition, forming a merger and forming a monopoly. In both of these cases, the Crown lost its case.

It is the intention here to review briefly these cases and their policy implications. It will be argued that existing law is entirely inappropriate for dealing with the competition and concentration in the newspaper industry whether it was intended for such a cause or not.

Combines Investigation Act

The legislation relevant to this discussion is the Combines Investigation Act, as amended in 1976, and sections 32 and 33 which include offences for collusive agreement and mergers. An important facet of the legislation is that in 1892, it was consolidated with the Criminal Code, a move which has been criticized as the bane of the federal prosecutors. Because of the criminal statute, the word "unduly" and the clause "to the detriment or against the interest of the public" occupy strategic points in the law, which as it will be shown, still remain ambiguous in meaning. Also, the requirement of the criminal statute to prove a case "beyond a reasonable doubt" has been deemed a major obstacle in the effectiveness of the legislation in dealing with mergers and monopoly.[115]

Collusive Agreements: Section 32

Under the law on agreements and conspiracies to fix prices and/or restrict output or entry,

> 32 (1)Every one who conspires, combines, agrees or arranges with another person
> (a)to limit unduly the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any product,
> (b)to prevent, limit or lessen, unduly, the manufacture

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[115]See C. W. Borgsdorf, "The Virtually Unconstrained Legal Environment for Mergers in Canada" Antitrust Bulletin Vol.18 (1973) p. 809.

or production of a product, or to enhance unreasonably the price thereof,
(c)to prevent, or lessen, unduly competition in the production, manufacture, purchase, barter, sale, storage, rental, transportation or supply of a product, or in the price of insurance upon persons or property, or
(d)to otherwise restrain or injure competition unduly,

is guilty of an indictable offence and is liable to imprisonment for five years or a fine of one million dollars or to both.

Monopoly and Merger: Section 33

Every person who is party or privy to or knowingly assists in, or in the formation of, a merger or monopoly is guilty of an indictable offence and is liable to imprisonment for two years.

Restrictive Trade Practices Commission Reports

The Restrictive Trade Practices Commission serves as the investigatory unit which works in tandem with the Director of Investigation and Research. The RTPC is responsible for undertaking formal investigations and making reports. In 1976, it was given the additional power under the Combines Investigation Act to issue prohibition orders where certain restrictive practices (exclusive dealing, tied selling), if adopted by "major suppliers," have the effect of substantially lessening competition.

The first case relating to newspapers occurred in 1960. The RTPC was able to secure an agreement with Southam, the Sun

Publishing Company, and Pacific Press Ltd, which jointly published the Vancouver Sun and The Province, to rescind its rule requiring national advertisers to buy advertising in both papers. The newspapers also agreed to inform the Director of Investigation if they intended to make any material changes which might "increase the disadvantage to the public which resulted from the common ownership of The Province and The Sun.

The Commission decided that it would be in the public's interest not to bring about an injunction or other legal proceedings because "it might cause one of these newspapers to cease publication" and instead to simply keep the matter under surveillance.[116]

In its second case, the RTCP cleared the Thomson organization of allegations of monopoly formation and a merger. Initially, Thomson was accused of driving a weekly newspaper out of business through the use of monopolistic practices. Publishers of the weekly Sudbury Sun, accused the Thomson-owned weekly, Sudbury Scene of undercutting its advertising prices. (Thomson also owned the daily Sudbury Star.) Where the Sun sold its advertising for a maximum 17 cents per line, the Scene would charge between 9 and 12 cents per line.

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[116]RTPC. Report Concerning the Production and Supply of Newspapers in the City of Vancouver and Elsewhere in the Province of British Columbia. Aug. 16, 1960 as quoted from Consumer and Corporate Affairs, Combines Investigation Act Amendments: Proposals for a New Competition Policy for Canada, First Stage, Bill C-227, (Nov. 1973) Appendix B, p. 10B-11B.

The RTPC determined that the launching of the Scene shortly after the Sun initiated publishing was not intended to cause the downfall of its competitor since there was no evidence to suggest the Scene was operating at a loss for the purpose of eliminating a rival. One other important point the Commission made was that the competition between the two weeklies was in advertising and not in news. And advertising was a service, and not a commodity. For this reason, the Commission had doubts whether the Combines Investigation Act would apply in such a case because the Act defines monopoly in terms only of an article or commodity. [117] Today, "services" are included in the definition of monopoly.

A year later in 1965, the Thomson organization was investigated for alleged merger and monopoly for having acquired, in 1962, the Times-Journal, a newspaper published in Fort William, Ontario. This was initially viewed as a problem since Thomson also owned another daily in the same area, the Port Arthur News-Chronicle.

The Commission decided that the two newspapers were not in search of the same readers in Fort Willam and Port Arthur and while they were rivals for circulation in the rest of the Lakehead market area, they had to meet the competition from Toronto and Winnipeg newspapers. Thus, the acquisition was

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[117] RTPC. Report on the Production, Distribution and Supply of Newspapers in Sudbury-Copper Cliff Area. (Feb. 26, 1964), Ibid. p. 24B.

deemed not to be a "detriment to the public interest."[118]

Although, none of these investigations resulted in hearings, a number of observations can be made about the RTCP approach to newspaper issues. In all cases, allegations of non-competitive activities were made against a single firm controlling more than one newspaper in a market where the firm used its dominant position against its competitors. However, in at least one case, the agency did not recognize advertising as an important part of the newspaper product, and thus, not a concern with respect to non-competitive behavior. Finally, there is obvious an lack of definition over what constitutes a relevant market.

In the last case, the commission not only considered the Lakehead area as the relevant market, but indeed, extended the boundaries to include Toronto and Winnipeg. Yet, in the K. C. Irving case, which will be dicussed shortly, relevant markets were given a much more narrow interpretation. The RTCP may have brought the latter case to trial because the Davey Committee had previously targetted as a problem the Irving's near monopoly control (at that time) of daily newspapers in New Brunswick. In any event, by looking at these three cases it is apparent that the commission has demonstrated inconsistencies in its definition of relevant markets and some misunderstanding of the role of newspaper advertising.

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[118]RTPC. Report Relating to the Acquisition in 1962 of the Times-Journal Newspaper, Published in Fort William Ontario. (March 20, 1965). Ibid. p. 29B.

The K. C. Irving Case

K. C. Irving, an industrialist based in New Brunswick, began to acquire newspapers in the 1950's. By 1960 he had acquired control over four of the five English-speaking dailies--two in Moncton and two in St. John. In 1968, he completed the acquisition of the fifth located in Fredericton. This gave Irving a monopoly via merger in the ownership of daily newspapers in New Brunswick. The Crown took Irving to court in 1972 on charges of the formation of a monopoly and the formation or operation of a combine in the form of a "merger, trust or monopoly." [119]

In January 1974, Mr. Justice Robichaud of the New Brunswick Supreme Court convicted the corporation on all counts. Robichaud conceded that the Irving Corporation maintained an "hands-off" policy toward editorial autonomy, that it did make important capital improvements to the newspaper operations, that no attempt was made to block new entry into the newspaper field, and that newspaper circulation was not restricted to specific areas. The defence also argued that because the circulation of four of five newspapers[120] was "local" the province of New Brunswick was not the relevant geographic market as the trial judge had accepted.

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[119] R v. K. C. Irving Ltd. (1976) 25 CPR (2d) 233.

[120] The St. John <u>Telegraph</u> was a province-wide newspaper.

But Robichaud declared that "complete monopoly" had been established. He stated: "In my view, once a complete monopoly is established, such as the evidence clearly discloses...detriment, in Law, resulted." He added, "Hence, any agreement or arrangement designed to prevent or lessen competition, to restrain trade, or even tending to take it out of the realm of competition, must be considered to be against public policy and consequently, illegal, even though it may not appear to have actually produced any result detrimental to the public interest."[121] The Irving corporation was fined a total of $150,000 and an Order of Prohibition was granted requiring the divestiture of the two Moncton newspapers.

However, in June 1974, the case was overturned by the Appeals Court on the grounds that the Crown had failed to prove any detriment to the public interest. Mr. Justice Limerick argued that the lower court was inferring that detriment or a lessening of competition occurred by reason of the consolidation of ownership, yet it could not present any substantive supporting evidence. He stated that "it would be difficult, if not impossible, for a new newspaper to commence a successful operation in the province with five newspapers already established, whether owned by one or several owners." But the issue, he stated, was not whether entry was prevented by Irving's acquisition of the Fredericton paper, but whether it "resulted in an operation detrimental or against the public

[121] R v. K.C. Irving (1974) 16 CCC (2d) 49 at p. 452-453 NBR.

interest."[122]

The Crown finally appealed to the Supreme Court of Canada which, in 1976, rendered a unanimous decision supporting the Appeals Court decision. The Supreme Court upheld Limerick's position that acquisition of complete control of business in a market area does not necessarily presume detriment. Chief Justice Laskin wrote:

> In light of the definition of "merger" in the present Combines Investigation Act it is impossible to say that acquistion of entire control over a business in a market area (as contrasted with acquisition of some control) must mean without more not only [sic] that competition therein was or was likely to be lessened but that by reason of such control the lessening or likely lessening is to the detriment or against the interest of the public. Even if the acquisition of entire control would be enough to support an inference of lessening or likely lessening of competition, that inference cannot be drawn here, in the face of evidence and the findings therein by the trial judge and by the Court of Appeal that the pre-exisiting competition where it existed remained and was to some degree intensified by the takeover of the newspapers.[123]

Reschenthaler and Stanbury call the Irving case decision by the Supreme Court "a triumph of business power." They argue that as the law is couched in criminal statute, the evaluation of fact necessarily focusses on economic behavior, to the complete neglect of structural issues:

> In demanding that specific instances of public detriment be proved beyond a reasonable doubt (the standard for criminal offences) the court has refused to see beyond

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[122]Ibid. p 492. CCC p. 201-202 NBR as quoted by G. B. Reschenthaler and W. T. Stanbury, "Benign Monopoly: Canadian Merger Policy and the K. C. Irving Case," Canadian Business Law Journal (August 1977) p. 157.

[123]Ibid., (1976) at pp. 12-13 CCC, p. 475 NBR.

> the small (price, advertising rates, and infusions of capital equipment) in a case in which detriment takes the form of the potential to undermine one of the requisites of democracy--a free and independent press.[124]

The authors further complain that the Supreme Court was remiss in not exploring different meanings of the words "to the detriment or against the interest of the public" that would incorporate broader economic and social implications of market power. Pointing out the dilemma, the authors speculate that:

> If one were to adopt the logic of the Supreme Court, one firm could acquire all the daily newspapers in Canada, and, provided the papers were not in direct competition with each other, that the editors were "independent" of the owner and that the papers appeared to give wide coverage of the local and national news, the acquiring firm could not be convicted of merger or monopoly offence under the Combines Investigation Act. In other words, "benign" monopoly is not illegal. One must ask--at what point would the Supreme Court gag?[125]

The Thomson-Southam Case

On December 9, 1983, Ontario Supreme Court Justice Anderson, acquitted the Thomson and Southam corporations of charges of conspiracy and a merger which stemmed from a series of business transactions in 1979 and 1980 that saw the closings of *The Ottawa Journal*, *The Winnipeg Tribune*, and *The Montreal Star*.

As related earlier, on August 27, 1980, Southam closed its *Winnipeg Tribune* leaving Thomson's *Winnipeg Free Press* in a

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[124]G. B. Reschenthaler and W. T. Stanbury, op. cit., p.164.

[125]Ibid., p. 165

monopoly position and the Thomson-owned Ottawa Journal was also closed providing Southam control of Ottawa's English-speaking market. In addition, Thomson transferred its 50 percent shares in Pacific Press Ltd, giving Southam complete control of the two Vancouver papers. A year earlier, Thomson closed the Montreal Star leaving Southam a monopoly with its English-speaking paper, The Gazette.

Again, for a conviction on a conspiracy case, the Crown is responsible for proving an agreement lessened competition "unduly." The defense argued the Crown could only prove its case by demonstrating that obvious barriers to entry had been erected and that competition had been lessened despite the multitude of other media sources, and that there did not exist natural causes for the decline of direct competition. The Crown contended that natural barriers, such as capitalization costs, and the fact that "there is no substitute for a newspaper" was sufficient evidence for its case. Unfortunately the Crown was not willing to expand its choice of evidence, since it is most likely that stronger agruments could have been developed. For instance, it could have attempted to prove the existence of excess profits or anti-competitive barriers to entry (e.g. cutthroat competition or inter-industry conspiratorial agreements).

The Crown advised the judge that what "must be shown is some mutuality of interests, some communication, some thinking and acting involving Thomson and Southam in communication...although, it is not necessary to have a firm basic agreement."[126] Crown Counsel Claude Thomson, placed particular emphasis on an exhibit entitled, "The Deal--4 Parts," which was written July 30, 1980 by Southam vice-president, William Caradine. The document that was found by investigators shredded into 16 pieces, contained projections of profits that Southam could earn from the transactions in Montreal, Ottawa, Vancouver and Winnipeg. According to his calculations, Southam would stand to gain $20.3 million. However, the Crown did not interpret this figure or attempt to prove that Southam would be reaping excess profits (profit which is beyond that which is necessary to keep an investor in the firm). Excess profits are characteristic of a monopoly situation.

However, Mr. Justice Anderson found the document "neutral and innocuous." He rejected the idea that the document had been destroyed to hide a criminal act. In fact, he refused to draw the inferences suggested by the Crown from the other 229 documents that had been seized from the offices of both chains.

The federal prosecutors alleged the deals constituted a scheme by the chains to divide up newspaper markets and create profitable monopolies:

> ...Look at the reality of the situation, four markets being discussed in terms of rationalization, meaning the absence of head-to-head competition carried all the way forward until the decision is finally reached, all four things together. Bang! It's done. People conscious of the law, recognizing that they have to find a way to do it by way of independent action...But, when all the analysis is through, you recognize, while it may have been their objective to do it by way of independent

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[126] Q v. Thomson, et al. (1983) p. 3455.

action, they certainly attempted to find a way to do it within the framework of the law...their communication was frequent, their contact was intimate, the exchange of information so confidential that they failed. And what they thought in their minds was not independent arrangement, it was, in fact, conspiracy.[127]

But this did not persuade Anderson who argued that there was "overwhelming evidence that neither (paper) was economically viable years before the closing." The judge pointed out that as soon as Thomson purchased the various properties in the four markets from FP Publications in January 1980, "the handwriting was on the wall for the Ottawa Journal, for the equal partnership in Vancouver and the minority interest in Montreal." He noted that it is "no part of the Thomson philosophy to subsidize losers...and partnership is not in the Thomson way." Furthermore, he recognized that the Southam company had made "substantial effort" in Winnipeg to revive the Tribune.

Although, Anderson was concerned by the coincidence of timing, he accepted the explanation brought forward by Gordon Fisher, president of Southam, that "when it was determined that if we are going to have a mess, let's have one mess and deal with it at once,...and not have things unfolding separately."[128]

The judge added that what militates against the Crown's case is "the entirely open fashion in which the events of August 26 and 27th occurred and the prompt and full disclosure to anyone who might be interested."

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[127]Ibid.

[128]Ibid. p. 3265-3266.

On that issue of prior knowledge of the rationalization of properties, Anderson stated:

> They must have known and understood the full nature and extent of their respective problems and the way in which those problems were related. The evidence discloses that they appreciated...that the solution of these problems would confer substantial financial benefits on the corporations...They must have realized that the events concerned were politically and legally sensitive...It is these elements of knowledge which are fundamental to the Crown's case....But, try as I may, those do not sound to me like the constituent elements of a criminal offence." [129]

Finally, Anderson made a point of noting that he would not be prepared to find the agreement alleged "even if the onus of proof were only the onus in a civil case" where it is based on the balance of probability.

For the merger charge related to Thomson's purchase of the _Winnipeg Tribune's_ assets and name, Anderson said the transaction did not constitute the "acquisition of a business," which is required for a conviction. Since the _Tribune_ had stopped publishing several hours before Thomson bought its assets, the deal was the purchase of assets of a defunct business and not a going concern." The judge based his definition on J. N. Rosse's testimony that "acceptance by its audience is the principal asset of a newspaper business, followed by its employees and organizational structure, and that the physical assets associated with the newspaper business are

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[129] Ibid. p. 3390.

the least important components." [130]

On Feb. 29, the federal Government announced that it would not appeal the case, because they were convinced the Court of Appeal would not change the verdict.[131]

In reviewing the case, it becomes clear that the Court was predisposed in the direction of business. Not only did Anderson characterize John Tory, director and deputy chair of Thomson, and Gordon Fisher as witnesses whose "credibility is unimpeached and unimpaired," he used these impressions or "reasonable explanations for the impugned events" as the basis of his decision.

Further, although the decline of intercity competition is accepted as inevitable for the most part, the aftermath of the Winnipeg closure, (Thomson buying the Tribune's assets and name) was not really explored due to a technicality of the merger law. No questions were asked about why the corporation made no attempt to offer the assets to other bidders before or after the closure.

Fortunately, this transaction did not deter the subsequent start-up of the Winnipeg Sun, a daily tabloid.

Finally, although the judge emphasized that his decision would have been the same if the the onus of proof were based on probability and not "beyond a reasonable doubt," he clearly rejected any notion of intent or inference that might have been

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[130]Ibid. p. 3397.

[131]Globe and Mail, Feb. 29, 1984, p. 10.

drawn from the documents presented by the Crown. In other words, it was necessary for the prosecution to present tangible, rather than circumstantial evidence, in this case. And yet, the word of the company executives was acceptable.

The implications of the existing legal structure in relation to newspaper competition is clear. As it has been shown in the earlier discussion, the nature of newspaper competition demands attention to both behavioral and structural considerations. And as the Anti-combines Act is written, issues of mergers or other formations that have structural implications, are beyond enforcement due to the rigour of proof required.

In addition, the court is always looking for obvious economic abuse or wrong doing, which does not seem to confront or evaluate social and economic impact of the merger or monopoly. As Christopher Green points out, "What is overlooked entirely is the role a merger law should play: to prevent leading firms from further enhancing their market shares (and presumably their market power) the easy way--by acquiring competitors, suppliers, or distributors."[132] Thus, it can treat the case of monopoly power only after it has attained a mature form and adequately demonstrated (beyond a reasonable doubt) the objectionable effects which are associated with the legal

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[132]Christopher Green, Canadian Industrial Organization and Policy, (Toronto: McGraw-Hill Ryerson, 1980) p. 189.

concept of monopolization.[133]

But as it was pointed out earlier, the reality of Canada's economic situation, in general, has inhibited a more strenuous effort directed at bringing down market power-increasing mergers. Market concentration and the smaller-scale incidence of market domination has been considered necessary part of economic survival in Canada.

U. S. Legal Experience

By contrast to Canada's relatively constraint-free environment for newspapers, the U. S. has been able to redress the problems of concentration and anti-competitive behavior in the newspaper industry. Of course, it is always risky to draw upon U.S. legal precedents to make a point about a Canadian problem. But, given Canada's lack of legal history in the area of newspaper economics, such a comparison may serve as a useful reference. Again, the comparison is made under the assumption that the economic operations within the newspaper industries and the social concern over the livelihood of newspapers in Canada and the U. S. are fundamentally the same.

Legislation most commonly used in newspaper-related issues is the Sherman Anti-Trust Act, Sections 1 and 2[134]

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[133]Reschenthaler and Stanbury, Ibid., p. 166.

[134]15 USC * 1 (1976).Sherman Anti-Trust Act, Sect. 1 stipulates that "every contract, combination...or conspiracy, in restraint of trade or commerce is illegal" and Section 2 states that it is unlawful "to monopolize, or attempt to monopolize or combine or

and the Clayton Act, Section 7.[135] The cases which have been subject to these laws have, in all instances, been local in nature. Mahaffie argues that it is infinitely easier to identify and prove a monopoly situation at the local level than to identify and prove with reasonable probability that as a result of ownership concentration by a national firm, competition has been substantially reduced.[136] The success of anti-trust policy in the U.S., has been found primarily in its ability to assure that a newspaper does not gain monopoly status by acquisition of its competitors or by engaging in other forms of anti-competitive behavior.

A classic case involving the Sherman Act is Lorain Journal Co. v. United States[137]. The Lorain Journal, the only daily newspaper in Lorain, Ohio, was charged with having violated Section 2 (engaged in conspiracy to monopolize and attempting to monopolize) because of a policy it developed that advertising from merchants who either advertised on the nearby local radio station, WEOL, or proposed to do so, would be rejected by the

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[134](cont'd) conspire with any person or persons, to monopolize any part of that trade or commerce among states."

[135]15 USC *18 (1970). The section provides that no corporation shall acquire or merge with another "where in any line of commerce in any section of the contry, the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly."

[136]Charles Mahaffie, "Mergers and Diversification in the Newspaper, Broadcasting and Information Industries," Antitrust Bulletin (Vol. 13, 1968) pp. 927, 930-932.

[137]342 US 143 (1951)

Journal. The Journal argued that this "circumscribed the freedom to publish news...as desired." However, Supreme Court Justice Burton rejected this position when he explained that the publisher's "right" to refuse advertising was neither absolute nor exempt from regulation...in the absence of any purpose to create or maintain a monopoly, a publisher is free to exercise his independent discretion to deal with whom he will.[138]

Lee argues that in this case the Court was concerned primarily with the effect the Journal's policy on the public and WEOL, not on advertisers. He states: "The publisher's conduct was aimed directly at eliminating WEOL and any diversity the station brought to the marketplace. The Court believed that unless protected by law, the "consuming public" would be at the mercy of restraints and monopolizations of interstate commerce." [139]

Although the Clayton Act provides courts considerable flexibility in determining whether the result of a merger may be anticompetitive,[140] enforcement against newspaper chains still takes place at the local level. Absence of an apparent national market of readers and advertisers makes it difficult to define

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[138]As noted by William Lee "Antitrust Enforcement, Freedom of the Press, and the "Open Market": The Supreme Court on the Structure and Conduct of Mass Media" Vanderbilt Law Review (Vol. 32(6) Nov. 1979) p. 1264.

[139]Ibid.

[140]Gregory Jones, "Antitrust Malaise in the Newspaper Industry: The Chains Continue to Grow" St. Mary's Law Journal (Vol. 8(160) 1976) pp. 170-171.

the geographic dimension necessary to bring action against chains. Charles Mahaffie, former litigation section chief of the U.S. Antitrust Division, explains that where an acquisition or merger of newspaper chains results in a substantial lessening of competition in any section of the country, the remedy invariably has been to force the chain to divest itself of one of the newspaper properties in the locality in which the monopoly exists rather than to invalidate the merger. He cites as an example the merger of Thomson and Brush-Moore newspaper chains:

> In terms of the number of newspapers involved, this was the largest newspaper merger in history. But it had to be analyzed in a series of distinct local markets. This was the task that we performed in the Thomson-Brush-Moore merger and our analysis resulted in a suit, but a suit limited to an allegation of illegal effects in only one local market...the merger...might substantially lessen competition between two of the 35 newspapers involved, those in Canton and Alliance, Ohio. [141]

The Justice Department attempted to broaden the relevant market area for newspapers in United States v. Times Mirror Co. [142] As it was related earlier, in 1964, the Times Mirror Company acquired the Sun Company, which published morning, afternoon and Sunday papers in San Bernadino County, the easterly neighbor to Los Angeles County. The Times Mirror share of circulation in San Bernadino County rose from 10.6 percent to 54.8 percent of total weekday circulation, from 23.9 percent to 99.5 percent of total morning circulation, and from 20.3 percent to 64.3 percent of

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[141] Mahaffie, op. cit., p. 932.

[142] Ibid.

total Sunday circulation. The Supreme Court upheld the District Court's order to Times Mirror for divesture of the newly-acquired property solely on the basis of violation of Section 7 of the Clayton Act. It was argued that the size of the merger was "inherently suspect" and thus constituted a prima facie violation of the Clayton Act.

The attitude of the Court, as Lee explains, is that "where the market is already greatly concentrated, the importance of preventing even slight increases in concentration and thus preserving the possibility of eventual deconcentration is great." However, Lee adds that the case was still analyzed on the basis of "probable economic harm--a standard that ignores the social harm of diminished diversity in the marketplace of ideas."[143]

The contrast between Canadian and American law becomes quite stark since the word "probable" is not within the existing legal vocabulary of anticombines in Canada. Concern for non-economic factors such as the need for a diversity of news sources and ideas is also not evident in the law or its application.

Thus, as it has been demonstrated, in Canada, newspapers operate virtually without legal constraint due to the nature of the existing anti-combines law. This is reflected in the confusion evidenced by the Restrictive Trade Practices investigations. There seemed to be an inability to set

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[143]Lee, op. cit., p. 1272.

consistent parameters on what was to be considered anticompetitive behavior or economic structures in relation to the law. This vagueness has essentially given to Canadian newspaper corporations a licence to secure a highly defensive if not, offensive position in individual markets, unless, of course, there exists very obvious signs of creating a detriment to the public interest.

This is not to say that the American law is without flaws. As it has been argued, this is simply not the case. However, the U. S. has at least been able to curtail the problem identified in this thesis, joint control of different types of newspapers in the same market.

It might be argued that such comparisons are unfair since the role of the courts in Canada are somewhat less important than in the U. S. However, since the entrenchment of the Charter of Rights in the Canadian Constitution, there has been great discussion on "new" role of the courts in Canada as an active and significant institution.

What is needed therefore, is some kind of framework within which the benefits and the costs of mergers can be weighed with both economic and social consideration. Without this adjustment, the alternative is to open the door to avenues of policy making that introduce a potentially unwanted political dimension to news dissemination that transcends the economic or public interest rationale.

CHAPTER 5

CANADA'S INQUIRY INTO NEWSPAPER CONCENTRATION

This chapter examines how the Canadian government has addressed the issue of concentration of control in the newspaper industry and its effect upon competition in the economic and social sense. The central focus is on the Royal Commission on Newspapers, the only formal inquiry devoted expressly to newspapers. Included in the discussion is the so-called Davey Committee legacy, which in 1970 first brought national attention to the issue. Also included is discussion on the events which preceded or led to the formation of the Kent Commission, the August 27th Thomson-Southam "Rationalization," and an analysis of the Kent Commission--its report and recommendations.

The Setting: Events Preceding the Kent Commission

The Davey Committee

The Special Senate Committee on the Mass Media brought national attention to the question of concentration in the newspaper industry. Headed by Sen. Keith Davey, the Committee sought to find some compromise between "what the society needs and what the society can afford." It asked the question: "How is the media's tendency towards monopoly reconciled with society's need for diversity?" From the start, the Committee stated that government could play a very "limited" role in amending some of the "ground rules under which the mass media game is played...It is only the players themselves--the public, the owners of the media, and most crucially of all the journalists--who can improve the quality and relevance of the product."[144]

Davey's concern was not as much over the existence of chain ownership, as it was over the the fact that control of the media was passing into "fewer and fewer hands." While the report stressed "there is simply no correlation between chain ownership and editorial performance," it feared the trend toward greater concentration was extremely troublesome:

> We're not suggesting that the present degree of concentration of media ownership has produced uniformly undesirable effects; indeed, it may be that the country would now have fewer 'diverse and antagonistic' voices if all these media mergers of the 1950's and 1960's had not occurred. But the prudent state must recognize that at some point, enough becomes enough. If the trend towards ownership concentration is allowed to continue unabated, sooner or later it must reach the point where it collides with the public interest. The Committee believes it to be in the national interest to ensure that that point is not reached.[145]

The report argued that media monopolies operate within the public interest only when the owner has a "genuine commitment to public service...[and the] country should no longer tolerate a situation where the public interest in as vital a field as information is dependent on the greed or goodwill of an

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[144]Canada. Special Senate Committee on Mass Media, Report. Ottawa: 1970. (Chairman: Hon. Keith Davey.) 3 vols..

[145]Davey, ibid., p. 6

extremely privileged group of businessmen."[146] Thus it proposed the establishment of a Press Ownership Review Board "with powers to approve or disapprove mergers between, or acquisitions of, newspapers and periodicals." The Board's basic guideline was that..."all transactions that increase ownership in the mass media are undesirable and contrary to the public interest--unless shown to be otherwise."[147]

The Board was to function like the Canadian Radio-Television & Telecommunications Commission--a tribunal generally empowered to issue binding decisions, not merely recommendations to Cabinet. However, the Board was denied any authority to intervene retroactively. Furthermore, the tribunal would not operate within the constitutional framework on which existing anti-combines legislation is based since its "sole concern" would be the "investigation and regulation of ownership concentration in the printed media, an area that at present appears to be outside the competence of existing anti-combines laws, and which cannot be effectively regulated by purely provincial enactments."[148]

The Davey Committee recognized that competition for audiences and advertising occurs on an inter-media basis and for this reason, emphasized the issues relating cross-media ownership. However, the committee deferred authority on

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[146]Davey, ibid., p. 67.

[147]Ibid, p. 71.

[148]Ibid., pp. 73-75.

cross-media ownership to the CRTC since it had "exercised [its] power in a series of licensing decisions which add up to an evolving policy on ownership concentration."[149] The CRTC has yet to deny a license where a cross-media arrangement would result. In addition, the Committee placed faith in proposals by the Consumer and Corporate Affairs Department to bring about new anti-combines legislation to attend to the problems of restrictive practices. The Ownership Board was intended to fall under the umbrella of this broadened authority. Again, this assumption proved false.

Although, the recommendation was never enacted, Sen. Davey has since commented that the report's value was not in the recommendations but in "alerting Canadians to problems posed by concentration of press ownership."[150] .

Other Events

As it was discussed earlier, following the Davey Report, Canada witnessed its first merger and monopoly case under the Combines Investigation Act which involved the newspaper industry. In 1976, when the Supreme Court of Canada ruled that the Irving family's monopoly on English-speaking dailies in New

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[149] Ibid. p. 71.

[150] Sen. Keith Davey as quoted in I. A. Litvak and C. J. Maule, "Competition policy and newspapers in Canada" (The Antitrust Bulletin Vol. 28(2), (Summer 1983) p. 464.

Brunswick was not a detriment to the public interest, Canada's merger policy was considered "formally interred." Stanbury and Reschenthaler argue that, "If one were to adopt the logic of the Supreme Court, one firm could acquire all the daily newspapers in Canada and, provided the papers were not in direct competition with each other, that the editors were 'independent' of the owner and that the papers appeared to give wide coverage of the local and national news, the acquiring firm could not be convicted of a merger or monopoly offence under the Combines Investigation Act."[151]

It can be argued that the court's proclamation on merger law smoothed the way for a series of stunning transactions undertaken between 1979 and 1980 by the Thomson organization. First, in April 1979, the Thomson family paid $641 million for 75 percent of the Hudson's Bay Company, Canada's oldest and largest retail merchandiser, which in turn controls Simpsons and Zellers. And 13 months later, it won a fierce bidding battle to take control of the Toronto Globe and Mail and seven other newspapers owned by the FP Publications Ltd. newspaper group for $164.7 million. Although the federal government conducted a preliminary inquiry on the takeover, it concluded that there was no point in wasting "a lot of time and taxpayers' money."[152]

Thomson lawyer John Tory said in an interview that they were confident they would not "run afoul" of anti-combines

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[151] Stanbury and Reschenthaler, op. cit., p. 165.

[152] Toronto Star, (Feb. 4, 1980,) p. B8.

because the FP papers in no case compete directly with an established Thomson paper: "They are not markets in which we have other interests--we simply see it as a good long-term investment for Thomson newspapers."[153]

Financial analysts raved that the deal was a 'tour de force,' and would bring Thomson Newspaper Ltd. stock prices to a new high.[154] Other observers speculated that under Thomson management, the papers would have a "better future." Peter Legault, media analyst for MacDougall, MacDougall and MacTier Ltd. stockbrokers, said the Thomson takeover would "not only be good for FP papers, but also the advertiser and the consumer."[155]

However, other observers saw the takeover as ample reason for giving the government "sufficient authority to monitor, review and restrain takeovers which could be potentially harmful to the public interest." Herb Gray, MP for Windsor West and federal Liberal finance critic in 1980, warned that "Thomson is not under any obligation by law to live up to anything...we have to judge the potential effects of society. He shouldn't be allowed to go ahead without some kind of review."[156] Finally, editorial commentator Jack McArthur was critical of the fact that there wasn't enough reaction to the takeover: "...no one in

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153 Vancouver Sun (Jan. 4, 1980,) p. 13.

154 Globe and Mail (May 27,1980), p. B11.

155 Ottawa Citizen (Jan. 17, 1980), p. 37.

156 Ottawa Journal (Jan. 8, 1981), p. 9.

government or the media seems to worry too much. That's disturbing in itself. It may be a sign of the rot setting in."[157] Although, the next transaction or "rationalization" of newspaper properties in which both Thomson and Southam were involved brought the issue of concentration of the media once again to forefront of public attention, it was still met with this sort of mixed reaction.

The August 27th Rationalization

The last decade of events concerning the newspaper industry finally came to a climax August 27, 1980. On this day, better known as Black Wednesday, the 90-year old Ottawa Journal, owned by Thomson, and the 94-year old Winnipeg Tribune, owned by Southam were closed within hours of each other. In its front page story, the Toronto Star declared, "Two more great newspapers died, the worst day in the worst year that Canadian journalism has ever suffered."[158]

The transaction which left 800 employees out of work, provided Southam a monopoly in English-speaking dailies in Ottawa and Thomson, conversely, gained dominance in the Winnipeg market. The next day, Thomson sold to Southam its 50 percent share in Pacific Press, which represented the Vancouver Sun, and

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[157] Ottawa Journal (Dec. 11, 1979), p. 20.

[158] As quoted in Siegel, op. cit., p. 135.

its 30 percent interest in the Montreal Gazette for $57, 250, 000, giving Southam two other monopoly markets.

The political response to the closures was swift and clear cut. The most important idea expressed by political representatives was that the closures were bad for democracy. It was argued some action should be taken. New Democratic Party communications critic Ray Skelly said the consolidation of interests "threatened the diverse, free and varied flow of information and opinions to Canadians," and called for a royal commission to "see what the devil can be done about the situation."[159] Multiculturalism Minister Fleming concurred that it was shocking to see two major corporations "apparently working in concert to shut down two major newspapers...Public attention must be drawn to this kind of behavior."[160] The leader of the Opposition party, Joe Clark also labelled the event as "alarming" and called for a special inquiry by the government.

Robert Lewis, a MacLean's Magazine columnist noted an interesting political aspect to the affair when he reported that before FP Publications was sold to Thomson, George Currie, former FP president was advised to pump more money into the Ottawa Journal. According to a confidential memo from the Canada Consulting Group of Toronto, this strategy involved "keeping a trader for the future--especially until [the poor financial situation in] Winnipeg resolves itself." Ironically, says Lewis,

[159] Globe and Mail, (August 28, 1980), p. N5.

[160] Montreal Gazette, (August 28, 1980.) p. 7.

Jim Coutts was a partner in this consulting group before the newspaper deals, and before he became principal secretary to Pierre Trudeau in 1975. "In the tight little world of Canada's ruling elite, it was gloriously coincidental that the day the papers folded, Coutts was on the line to an out-of-work reporter and declared, 'the only thing we can do now is give you a royal commission.'"[161]

The Kent Commission

Before the week was through, Trudeau appointed a Royal Commission into newspaper ownership and control. Within its terms of reference, the Commission was to examine "the consequences of the present situation in the newspaper industry for the political, economic, social and intellectual vitality and cohesion of the nation as a whole [and to report on] such measures as might be warranted to remedy any matter that the Commission considers should be remedied as a result of the concentration of ownership and control of the industry and the recent closing of newspapers."[162]

The three-person commission was headed by Tom Kent, dean of administrative studies at Dalhousie University. British-born, Kent had a prominent career in journalism as editor of the

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[161]Robert Lewis, McLeans, (April 27, 1981). p. 32-33.

[162]Kent Report. Terms of Reference of the Royal Commission on Newspapers. op. cit., p. 259.

British newsmagazine, The Economist, and in 1954-59, as editor of the well-respected Winnipeg Free Press. He later became a close advisor for Lester B. Pearson and was a primary architect for such social programs as the national pension plan, medicare and welfare. He also ran two Crown corporations: Sydney Steel Corporation and Cape Breton Development Corporation. Other members of the Commission included Borden Spears and Laurent Picard. Spears is a former editorial ombudsman with the Toronto Star, a consultant to the Davey Committee, and a former member of the Ontario Press Council. Picard came to the Commission as a former president of the Canadian Broadcasting Corporation.

The prospects of a Royal Commission were met with an interesting mix of reactions. A Vancouver Sun editorial writer said, "the news media and their owners should welcome a royal commission...media should always be open to criticism and scrutiny."[163] The Province publisher Paddy Sherman added that "it might well help increase public understanding."[164] Advertisers, on the other hand, were not so enthusiastic. One advertising representative commented that without effective anti-combines legislation, there was nothing that could be done: "The Commission's main purpose...would seem to be to have Southam and Thomson before a court of public opinion with the

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[163] Vancouver Sun, (Sept. 4, 1980), p. A3.

[164] Ibid., p. A19.

power to do nothing more than embarrass them."[165] Labor representatives saw the Commission as an opportunity for strengthening monopoly and anti-trust laws and breaking up the larger chains. And well-known columnist Allan Fotheringham chided the effort when he said, "we won't even comment on the supreme hypocrisy of the Liberal government appointing this after the fact, face-saving commission...the fact that these same Liberals did nothing with the Davey Report which warned exactly of these happenings is typical of the smarmy attitude of the government now pretending to investigate its own erroneous policies."[166]

Over the next eight months, an extensive research program was undertaken which included 30 commissioned studies. The subject matter ranged from readership surveys, the news services, journalism education to the financial and economic concerns of the industry, the press and the law, and the technological revolution in Canadian newspapers. Interestingly enough, there were only five studies that in some way related to issues of competition and competitions policy. According to the Kent Report, this omission was intended since it was "not the Commission's business to make recommendations about competition legislation in general. We do not see how it could now be more

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[165]Marketing, (Sept. 8, 1980), p. 2.

[166]Montreal Gazette, (Dec. 16, 1980), p. 32.

than marginally relevant to newspapers."[167] This attitude was retained despite the fact that of the 246 briefs and 270 letters from representatives of the industry and public, 131 submissions called for enhanced competitions law.

The public hearings were held over 19 weeks in 12 cities in seven provinces. Suggestions made to the Commission for remedial action by the government can be grouped into seven categories: 1)strengthen competitions law, 2)break up the chains, 3)prevent cross-media ownership, 4)subsidize newspapers that would otherwise go out of business and new newspapers, 5)create a publicly-owned newspaper or chain of newspapers, somewhat on the model of the CBC, 6)create a regulatory agency, like the CRTC, whose powers might run all the way from ownership review, allowing or disallowing the growth of chains, to compulsory press councils, licensing the regulation of content and even censorship, and 7)require private printing plants, or create government plants, to print papers on contract for a variety of newspaper publishers.[168]

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[167]Kent Report, op. cit., p. 228.

[168]Ibid.

Kent Recommendations

Recommendations proposed by the Kent Commission were contained in a proposed Canada Newspaper Act, "designed to secure for the press of Canada the freedom that is essential to a democratic society from coast to coast." Under this broad-ranging proposed legislation, the government was expected to impose ownership limitations to deal with concentration of control and cross-media ownership and to establish a Press Rights Panel to monitor and rule upon industry transactions and press performance.

The ownership rules were primarily directed at curtailing acquisitions of newspapers by conglomerates or by newspaper groups with existing newspaper properties in the same area of the proposed acquisition. The Report stipulated that there could be no purchase of a newspaper by a person or company whose net assets outside the newspaper industry were greater than the assets of the newspaper being sought. The Press Rights Panel was authorized to guard against the ownership of a daily newspaper and broadcast outlet in the same community. Among other cases, Southam would be required to sell its 30 percent interest in Selkirk Communications Inc. Selkirk broadcasting stations are currently located along side Southam newspapers in several cities in British Columbia and Alberta. The Panel would also be empowered to adjudicate proposed purchases by proprietors of daily newspapers of non-daily newspapers located in the circulation area of the daily.

In an attempt to deal with national and regional dominance by newspaper chains or conglomerates, the Newspaper Act would require the Thomson organization to divest itself of either the Globe and Mail or its other daily newspapers. In other cases of "extreme geographic concentration" such as the Irving family's monopoly hold in New Brunswick, some of the newspapers would have to be sold.

To encourage the resale of these papers and for starting new papers, Kent proposed tax inducements for one company or person to buy up to five percent of the shares of a company acquiring or starting a new newspaper. However, the Commission suggested that limitations on the future growth of group ownership be instituted on the basis of the number of newspapers, circulation and geographic proximity. Siegel summarized these restraints as the "rule of five" to be imposed where "the maximum size of an evolving chain would be five newspapers, provided their combined circulation does not exceed five percent of the total Canadian newspaper circulation and the newspapers in the chain are five hundred kilometres apart (or at least not in the same geographic region.)"[169]

Other financial arrangements recommended include tax credits and surtax charges that would apply to newspapers as a function of the paper's expenditures on editorial content (as a percentage of total newspaper revenues). Tax credits would go to

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[169]Siegel, op. cit., p. 142.

newspapers which spent more than the industry average of editorial expenses and, conversely, a tax surcharge would be required for those papers spending less.

In addition, the Canadian Press and other non-chain wire services would be given financial incentives to "expand and improve" national and international news coverage through a system of matching grants. These grants, which had been discontinued more than 60 years ago for fear of government interference, would be revived as a way of "helping cover increased expenditures."

Finally, a particularly controversial recommendation brought by the Commission was intended to protect editorial independence from the other business interests of the proprietor. A basic assertion in the Kent study is that "freedom of the press should continue to mean the freedom of the proprietor to do what he likes with his newspaper, provided that newspaper is his principal property." Proprietors who have extensive financial operations not directly related to newspapers tend to "fall short of their social responsibility...[and thus,] freedom of the press cannot be their freedom." It has to be "the freedom of the editor" from the potential influence of the owners and their other vested interests.[170]

The proposal, according to the Report, "does not involve any government interference in the conduct of the newspaper. It

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[170]Ibid., p. 246.

is merely to elevate the status of the people responsible for editorial conduct."[171] The proprietor of the newspaper provides an appointed editor-in-chief a contract which must clearly define his responsiblities and state the principals for the conduct of the newspaper. The editor is responsible for newshole or editorial expenditures, staff, and conditions for freedom of expression by the staff. At the end of the year, the editor would be required to report to an advisory committee made up of two members appointed by the proprietor and another two appointed by the journalistic staff. This mechanism for accountability would extend to a national Press Rights Panel, which would, in turn, report to Parliament.

The Report: An Analysis

Contrary to the line of analysis in this thesis, Kent's recommendations are primarily based upon a political rather than economic rationale. Discussion of competition among newspapers and other media is essentially dismissed by the Report as being "virtually dead." The Report concludes that concentration is "accordingly blamed as the killer of competition," and, without much explanation, the focus is then trained on the nature of ownership, how chain or conglomerate-owned newspapers impede the quality of newspapers, and to what extent newspaper proprietors are 'socially responsible.'

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[171] Ibid., p. 247.

In fact, throughout the Report, there seems to be considerable vacillation over what constitutes newspaper competition. At one point, the Report says newspapers are paying "more attention to the competition for the advertising dollar from other segments of the information industry: community newspapers, television, radio, magazines and so on...with the principal challenge... from broadcasting."[172] However, it later states that daily newspaper competition is "operative" with national and weekly newspapers, as per the umbrella concept, but that it represents only "marginal qualifications to a primarily monopolistic position" of newspapers.[173] In still another turnabout, the Report attributes newspaper deaths to their heavy reliance on advertising and competition with broadcast and other media: "Advertising economies of newspaper monopoly are overwhelming."[174]

Newspaper competition is also given a more narrow definition. It is suggested that daily newspapers only compete with other dailies. The Report states:

> Spokesmen for newspapers argued to us that...competing voices are provided through other media. The argument is unduly modest. While people now get much of their news and views from the broadcasting media, there are two significant ways in which print retains its primacy.
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> First, it is the medium of record, which generally gives more detail than the others, which explores issues in more depth, and which stands as the source to which people refer back. Second, the daily newspapers are

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[172]Ibid., p. 72.

[173]Ibid., p. 87.

[174]Ibid. p. 216.

still the main originators, gatherers and summarizers of news.[175]

Such a proposition not only discounts the reputed archival value of videotape and magazines, but it fails to recognize, just as the Report states, that: "Much of what Canadians read in their daily newspapers, hear on radio and see on television newscasts comes from the humming wires of the news agencies--The Canadian Press, United Press Canada, and their affiliates abroad."[176]

Of even greater importance is the Commission's assertion, as noted, that the cause for the disappearance of newspaper competition is due to certain market conditions affecting circulation and advertising revenues. The Report neither clarifies just how the market may have failed nor what could be done at that level. Instead, it tends to defer these questions to other authorities. For instance, although the Commission recognized that the capital gains tax or inheritance tax is a primary factor in the sale of family-owned newspapers, they could not see "adequate reason to treat newspapers as a special case. If the impact of taxation at death were to be lightened, it would have to be...by general policy change applicable to all business."[177]

Furthermore, despite the omission of any discussion on anti-competitive behavior as it relates to product differentiation, absolute costs, and so on, the Commission also

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[175] Ibid., p. 216.

[176] Ibid., p. 119.

[177] Ibid., p. 220.

rejected recommendations about competitions legislation: "Legislation to prevent firms from lessening competition among them cannot, however thorough the legislation, recreate competition among businesses that no longer exist."[178]

On the question of concentration of newspaper ownership within the same market, the Report merely mentions that the number of dailies which have acquired weeklies in their circulation area rose from five in 1970 to 30 in 1980. It does not indicate that the Commission had any understanding of the "umbrella hypothesis" or other empirical and theoretical research which might explain why chain ownership of newspapers in different markets would have different competitive consequences than joint control of different types of newspapers in the same market. Nevertheless, the Commission did accurately conclude, albeit without clear explanation, that there exist "strong forces toward concentration of ownership."[179]

With that, the Report posits that the libertarian idea of competition in the marketplace of ideas is simply irrelevant:

> In a country that has allowed so many newspapers to be owned by a few conglomerates, freedom of the press means, in itself, only that enormous influence without responsibility is conferred on a handful of people...There simply needs to be a different institutional framework...Freedom is not the right of the press. Rights belong to people generally.[180]

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[178]Ibid., p. 228.

[179]Ibid., p. 219.

[180]Ibid., p. 216.

The Commission, instead, heartily embraced the theory of social responsibility. It reasoned that: "Just as it was necessary at first to keep the press out of the clutches of the State so was it necessary in the age of mass communications to protect it from the abuses of the industrial plutocracy. The Hutchins Commission on the Freedom of the Press laid down in the United States in 1947 the concept of the social responsibility of the media and its corollary, the public's right to information. This new notion militates against the shortcomings in the libertarian model. It assigns to the media a social obligation, all the greater if they enjoy a monopoly and the public is thus at the mercy of the information they provide."[181]

Although the discussion in the Report is somewhat perfunctory, this notion of social responsibility remains as a central linkage for the Commission's deliberations, findings and recommendations. For this reason, it is important to consider social responsibility in more detail.

The self-appointed Hutchins Commission asserted that Government must be "the residuary legatee of responsibility for an adequate press performance." The Commission wrote: "If they [the agencies of mass communications] are irresponsible, not even the First Amendment will protect their freedom from governmental control. The amendment will be amended." It further stated that "to the extent that the press does not assume its responsibility some other agency must see that the essential

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[181]Ibid., p. 22.

functions of mass communication are carried out." In no part of the Hutchins Report was there a clear delineation of what was socially responsible newspapering. [182]

Kesterton points out the Kent proposals ignore a dilemma inherent in the social responsibility media system:

> That dilemma may be described in vicious circle terms...The libertarian system developed in revolt against state authoritarianism which denied freedom of expression; but because the libertarian system failed to provide the multiplicity of voices envisioned by John Stuart Mill, theorists invoked the social responsibility theory; they visualized a benevolent government encouraging the free marketplace which technology and other forces have helped to stifle; but such an intervention brings back the very factor which caused the authoritarian danger in the first place-the state. [183]

In considering the implications of the social responsibility theory, Merrill regards the term as being "quite relative and nebulous:"

> ...the only way a 'theory' of social responsibility could have any significance in any country is for the governmental power elite to be definer and enforcer of this type of press...Assuming that a nation's socio-political philosophy determines its press system, and undoubtedly it does, then it follows that every nation's press system is in one sense socially responsible. For example, the Marxist or Communist press system considers itself socially responsible...The Communist press is government, is reflective of the society, is an instrument for social harmony, conformity and support. As such it is 'socially responsible.' [184]

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[182] Commission on Freedom of the Press as quoted in John C. Merrill, The Imperative of Freedom: The Philosophy of Journalistic Freedom (New York: Hastings House Publishers, 1974) p. 89.

[183] Wilfred Kesterton, "Kent Commission Report unconvincing," CAUT Bulletin ACPU(Dec. 1981) pp. 13-14.

[184] Kent Report, ibid., p. 92.

Thus, the term is meaningless.

Although the Kent Commission admitted that to define what is 'socially responsible' would entail "a degree of subjectivity," it saw as a primary indicator, the trade-off newspaper proprietors make between their service responsibility, expressed in editorial costs, and the profitability of the business. "The operative question," the Commission said in the Report, "is what compromises can be tolerated between the ideal and the possible--how well can newspapers afford, from their operation as a business, to fulfill their stated purpose of service to the public?"[185]

Kent quickly points out that newspapers can afford it. Between 1974 and 1980, 103 newspapers reported returns on net assets employed ranging from 27.4 percent to 39.7 percent. The average was 33.4 percent. Thomson Newspapers was berated in the Report as being "the most conspicuously profitable newspaper enterprise in Canada, but in 1980, its rate of spending on the news and editorial content of its Canadian papers as proportionate of its total revenue was 24 percent."[186]

The Commission goes on to suggest that size of a newspaper organization, alone, impedes quality. Referring to the theory of McGill professor Henry Mintzberg, the Report states that "a divisional organization, of which Thomson is the primary, but not the only example in the Canadian newspaper field, has

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[185]Ibid., p. 164.

[186]Ibid.

inherent pressures that make it difficult for the organization to behave in a socially responsible way."[187]

However, of the 82 newspapers ranked in a table based on the ratio of editorial expense to revenues averaged over the three financial years between 1978 and 1980, there were chain or conglomerate-owned newspapers on either end of the scale. In fact, the newspaper ranked second was a Thomson-owned daily located in Kamloops, British Columbia, while one of the lowest ranked papers was an independent. This kind of indicator hardly takes into account the "editorial expenditure" for syndicated services such as horoscopes and cartoons, nor the fact that those who expend less on editorial content may not have access to certain syndicated services, as discussed earlier. It also neglects the fact that the larger organizations can acheive economies of scale through their news bureaus, thus keeping expenditures down.

The Report rhetorically asks, "If financial independence helps bring a newspaper closer to the ideal of social responsibility, can it be said that the opposite, concentration, causes the paper to move away from its ideal?"[188] Yet, as Laws points out, "one might have expected the report to follow up..with an impressive string of shocking examples of editorial irresponsibility from the pages of Canada's chain newspapers...But the Commission offered no such practical

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[187]Ibid., p. 165.

[188]Ibid. p. 46.

critique."[189]

No reference is made in the Report to the efficiency of chains, as discussed earlier, and that they are the very organizations that can facilitate additional growth in the newspaper market. For example, as Laws observes, when the Sterling Newspaper Company converted four of its community newspapers into dailies and launched another new daily, "it increased competition as well as concentration in the industry." She also recalls the case of the Toronto Sun Publishing Corporation which "began life in 1971 as a shoestring operation run by out-of-work journalists shipwrecked by the closing of the Toronto Telegram. It did so well that it was able to float a public stock issue, rescue a Calgary paper from the brink of bankruptcy and open a third paper in Edmonton. The three papers accounted for 8.3 percent of national daily circulation in 1980."[190]

The Kent Commission produced volumes of updated information on the newspaper industry and raised numerous social and economic questions associated with concentration of ownership. Its argument that chains and conglomerates, in particular, are necessarily bad and thus need directed supervision by a national Press Review Panel and Parliament is presented, however, without much supporting evidence and upon a questionable philosophic

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[189]Margaret Laws, "Unesco of the North: The Coming Press Regulation in Canada," Regulation (Sept/Oct., 1983) p. 40.

[190]Ibid., p. 41.

base.

The Kent recommendations were broad-reaching; there was scarcely an item in the Report that was not criticized by some faction in society. This criticism may be one of the reasons why the government's altered version of the Kent recommendations as proposed legislation was considerably narrower in scope than the Report advocated. Developed under the Ministry of Multiculturalism, the Canada Newspaper Act included the following provisions: 1)No one company or person could legally control more than 20 percent of Canada's daily circulation, 2) a Canadian Daily Newspaper Advisory Council would be established to process public complaints and to conduct industry-related research, and 3)the government would dedicate $1 million annually over five years to assist in setting up foreign or out-of-province news bureaus.[191]

The proposed bill stipulates that Thomson (with 21 percent of national national circulation) and Southam (with 27.6 percent), will not be allowed to acquire new newspaper properties. Although, these companies would not be required to divest themselves of their excess properties, if either should sell any of their papers, the property would be broken up to appropriate sizes. Recall that Kent recommended that any one company or person could not own more than five newspapers and that the circulation of those newspapers can not exceed 5 percent of the circulation of all Canadian daily newspapers.

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[191]Proposed Daily Newspaper Act, #258111, June 6, 1983.

Companies in excess of this limitation would be asked to divest themselves of those additional properties.

If all other things stay equal, a 20 percent ownership limitation would result in five large newspaper organizations. Without any provision to stop concentration ownership in a local markets, the limitation would do nothing to redress local market concentration, let alone national concentration. Control of national circulation by five corporations is truly problematic.

The Kent Commission is in some ways an enigma for, at one level, the Commissioners would appear to have been genuinely concerned about the issues of concentration of control in the newspaper industry. They took the approach they thought best suited the problem. But, it is also apparent that the government was not ready to take any steps in acting upon even the more modest proposals presented by Kent in the proposed legislation. Curiously enough, the proposed Canada Newspaper Act, looked like a bill, but in fact was never even assigned a number, and hence, had been shelved, if not tabled in Cabinet. The Minister of Multiculturalism was subsequently replaced by David Collenette, who was quick to report that the "Newspaper Act was not mentioned in the description of his responsibilities."

The Act was later exhumed by Judy Erola, federal Minister of Consumer and Corporate Affairs, who encouraged the establishment of voluntary press councils in each province. In an interview Jan. 10, 1984, Erola said the government would deal with the question of newspaper ownership concentration and diminished competiton through provisions of a revised competition act.

However, since the idea of revising Canada's anticombines laws has been more rhetoric than action for more than two decades, Erola's words could hardly evoke optimism for significant change in the structure and conduct of the newspaper industry. One cannot speculate what will happen when the Conservative government assumes power. The Kent Commission discounted making amendments to the existing anticombines law, since there was "no competition left" that would be affected by such change. However, it is also likely the Commission recognized the difficulty in proposing changes that would apply to all industry. The Kent Commission recommended only industry-specific changes.

Traditionally, instead of reform, Canada has accepted concentration within industry. It was thought that the benefits from economies of scale or a less competitive domestic environment, give industry a better chance at competing in the greater North American and international markets.[192] The Royal Commission on Corporate Concentration (RCC), in 1978, essentially reaffirmed that mergers were "...an integral and normal part of commercial life" and that they were intended "to

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[192] C. W. Borgsdorf, "The Virtually Unconstrained Legal Environment for Mergers in Canada," Antitrust Bulletin, (Vol. 18 1973) p. 809.

harvest economies of scale."[193] Further, the RCC stated that "competition law should deal in a prohibitory way with proven anti-competitive conduct and, correspondingly, that corporate mergers should not be subject to a review process or require official approval or consent before they are completed."[194]

McQueen suggests the RCC was reluctant to endorse anti-merger policy because mergers have not historically been associated with concentration and to block mergers, according to the Commission, it would require a certain degree of "forecasting" to speculate on the outcome of any policy action. He notes that this reluctance disregards the fact that by not going ahead with an anti-merger policy, it could mean allowing "a very large and market-power-increasing" action to go ahead. Furthermore, the RCC condoned, under certain circumstances, the divestiture or dissolution of merger actions at a later date, which, in McQueen's view, would be far more costly than by simply going to court with the merger question in the first place.[195]

In all, the government's position as illustrated by the Corporate Concentration Commission, suggests a kind of benign

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[193] Canada. Report of the Royal Commission on Corporate Concentration (Ottawa: 1978) p. 145-6 as quoted by R. E. Olley, "Concentration of Corporate Power In Canada: A Reaction to the Report on Corporate Concentration" Canadian Business Law Journal Vol.3 (1978-79).

[194] RCC, Ibid. at p. 160 as quoted by David McQueen, Competition Policy in the Corporate Concentration Report," Canadian Business Law Journal Vol. 3 (1978-79).

[195] McQueen, Ibid. p. 270.

neglect of things to do with monopoly or anti-competitive behavior. The continuing existence of ineffectual merger law[196] as no major case has been won by the Crown, is testimony to the government's apparent policy to look the other way on details of competition.[197]

To some extent, McQueen's analysis of the RCC speaks to questions surrounding the disparity between the government's seeming concern over the newspaper industry and its failure to institute any legislation. McQueen suggests the "real action" of large mergers or other "spectacular" corporate events, (McQueen was making reference to the possible merger of huge Argus and Powers corporations), would be handled at the "political level." The government would override existing competitions policy for "unspecified reasons of public policy."[198]

He cites a quote from the Commission's conclusions that states:

> The attempted Power-Argus merger was important, not because of its potential effect on competition within industries (which we think would have been minor) but because the prominence of the parties in the economy made their actions significant to the public.

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[196]Christopher Green, an economics professor at McGill University, says that after the Irving case on newspaper concentration, that "short of having a monopoly and exploiting it for all its worth, Canadian firms will not be convicted of monopoly or monopolies under Canadian anti-combines law," in "Canadian Competition Policy Past and Present," as quoted in the Royal Commission on Newspapers Report, (Ottawa: 1981),p.57.

[197]See G. B. Reschenthaler and W. T. Stanbury, Benign Monopoly: Canadian Merger Policy and the K. C. Irving Case, Canadian Business Law Journal, Vol. 2(2), Aug. 1977.

[198]McQueen, op. cit., p. 276-77.

> Transactions this spectacular will always demand inquiry. We think that conglomerate mergers of this kind should first be analyzed under the competition law, but if (as in Power-Argus) there are no significant competitive implications, or none that could not be dealt with under the competition law, there may still be overriding reasons of public policy that will compel intervention by the state. We do not think it is possible to establish in advance legislative criteria by which unique cases like Power- Argus merger can be assessed. If the state intervenes to prevent or dissolve a merger like Power-Argus, the decision to do so must be a political one, to be taken by government and Parliament in the light of the circumstances as they see them at the time. [199]

McQueen comments that what constituted "spectacular" was not clearly defined and therefore, subject to variable criteria of assessment. He further questions the government's intention to analyze possible mergers under competitions law, when the RCC report had earlier stated that competition law contains no power to prevent mergers. McQueen goes on to cite the attempted merger of The Bay and Simpsons-Sears where, according to his reports, the transactions had considerable direct and indirect political involvement, where "certain lobbying techniques vis-a-vis Cabinet were employed by both the chief private principals in the matter, on the obvious, experience based presumption that sometimes such techniques can be effective." He adds that it "exemplifies the insufficiently disclosed and insufficiently challengeable mode of major decision-making that is such a widespread vice within and between many sectors of Canadian society."[200]

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[199]RCC Report, p. 407, as quoted in McQueen, Ibid.

[200]Ibid., p. 279.

Although anti-combines action was initiated against the Southam and Thomson organizations on charges of conspiracy and attempting to lessen competition, the government obviously found this issue "spectacular" enough to warrant a public inquiry. But, just as McQueen had observed from the conclusions of the Corporate Concentration Commission, the Kent Commission would appear to have embarked on its task with a priori decisions regarding what to do with the industry. As it was argued, the evidence presented in the Kent Report did not necessarily support its central arguments.

Another reason for the government's reluctance to institute changes in the laws affecting newspaper economics can be seen in the unusual relationship between politicians and the press. Although, the argument put forth by Peter Desbarats seems somewhat exaggerated, it strikes at one level of this relationship. Desbarats, a university journalism professor and former senior consultant to the Kent Commission, suggests the only way to make sense of the Kent Commission is in terms of "an ongoing struggle between Big Business and Big Government, with journalism [freedom of the press] in the middle. He contends that:

> The underlying reason for the Commission's existence, and the only rationale that explained the Liberal Government's apparent determination to proceed in this area, is the power over public opinion latent within the Thomson organization's control of Canada's only national daily newspaper, 37 smaller dailies, retail stores, and many other business enterprises...No previous government in Ottawa has faced that combination and concentration of power; any government would be worried about the mere possiblity of confronting it at some point in the

future. The instinct for self-preservation on the part of the Government is at the root of Ottawa's desire to curb Thomson, and not a high-minded concern for freedom of the press or the values of journalism.[201]

Thus, making changes that might remedy the problems identified in this thesis would seem to involve serious obstacles. The fact that the government took no action as a result of the Kent Commission study, that there is no tradition of "competitions policy" despite proposals for revised legislation, and in light of the delicate symbiosis of the press and the livelihoods of politicians all would seem to indicate the government's predilection toward a policy of "non-decision." In other words, as Dye defines it, "a decision by government to ignore a problem ...is a policy decision to favor perpetuation of the status quo." The newspaper issue would seem not to warrant the "active, serious attention of policy-makers."[202] It might be noted that just as the Kent Report was being published, the Liberal Government was facing an election, and may not have wanted to become embroiled in debates over freedom of the press at that time.

Now the Canadian government has several policy options. It can do nothing and retain the status quo. It can wait for another dramatic incident to occur, an incident that may stimulate the government into taking measures that could

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[201]Peter Desbarats, "Power is the real Kent issue,"Globe and Mail(Feb. 15, 1982) p. 7.

[202]Thomas Dye in Robert F. Adie and Paul G. Thomas, Canadian Public Administration: Problematical Perspectives(Scarborough: Prentice-Hall, 1982) p. 89.

endanger freedom of the press. Another option is to gain a more thorough understanding of the problem of concentration of newspaper ownership. Further the government could institute legislation or policy changes that are recommended in this thesis to bring some control to the situation before the incidence of concentration of newspaper ownership in local markets becomes too entrenched to change. Newspapers still play an important role in this society and they must be nurtured and protected from abuses of corporate power as well as other forces which effectively compromise their essential social function.

CHAPTER 6

SUMMARY AND CONCLUSIONS

As it has been identified in this thesis, the problem to be studied and addressed is the apparent trend towards greater concentration of newspaper ownership in local markets. The consequence of this form of concentration of ownership is that potentially it inhibits the growth of small or suburban daily newspapers and weeklies. The loss of existing or potential news outlets is not in the public interest, since the dissemination of diverse ideas and information is essential to the decision-making process in democratic society. More news outlets or newspapers does not necessarily guarantee news diversity, If a potential news competitor is discouraged from entering a market, however, an opportunity for news diversity is lost.

The need for concern is signalled by the most recent statistics on concentration of newspaper ownership. According to the Kent Report, in 1980, 30 markets had more than one newspaper controlled by the same company. This represents a five-fold increase since 1971. Since Canada has relatively few urban centers, this growth in local market ownership concentration is quite significant. Local market concentration may be increasing due to the sizable increase in the number of weekly newspapers. The aggregate weekly circulation of community papers increased from 3.8 million in 1970 to 10 million ten years later. The Kent

Report concluded that the rise of local market concentration is a response from daily newspapers to meet the "challenge" of community newspapers which have been attracting more targeted local advertising.

The Torstar purchase and Lethbridge case illustrate how local market concentration of newspaper ownership is perceived as a problem. During the Kent Commission hearings, the Torstar corporation purchased a number of non-daily newspapers located in the relevant market of Torstar's major daily newspaper, the Toronto Star. Torstar executives admitted the purchase was transacted with the view that the Kent Commission would recommend legislation to prohibit a newspaper company from having multiple-holdings in a single market. The importance of the Torstar case is that it demonstrates the existing legal and economic capability of newspaper firms to secure a dominant economic positions in local markets.

Social ramifications of concentration of newspaper ownership in local markets are most clearly illustrated by the Lethbridge case. Recall that the small Albertan community publicly denounced the Thomson's policies. The company had introduced to the home readership its national newspaper at the apparent expense of national and international news coverage that was carried earlier in the Thomson-owned Lethbridge Herald. The Lethbridge case provide insights into how easily news manipulation can occur when a single owner has multiple newspaper holdings in the same market.

Even if there is only one daily in a city, the newspaper may not be in a monopoly position since the daily still competes with a whole range of other non-daily newspapers and electronic media. In small markets, concentration of ownership inhibits competition and allows for greater latitude in pricing and opportunities for tacit collusion among existing firms.

Concentration of ownership of newspapers is the result of three important economic factors: product differentiation, scale economies and capital requirements. To survive its competitive pressures, newspapers are forced to reach an audience that is different from its nearest competitor. A newspaper attempts to attract particular market segments or readers by differentiating itself through format and design, location and time of publication, and by its content. For instance, although the Globe and Mail competes with two other dailies in the Toronto market, it has been able to attract business-oriented readers by its rigorous business coverage. In essence, because of product differentiation in newspapers, there may be only marginal overlapping of readers. Advertisers, on the other hand, will typically have accounts in various media to reach their intended or broadest audiences.

The existence of scale economies in newspapers presents an important barrier to entry, in that, one newspaper operation is more efficient than two, especially in production and distribution. It has been shown that chain newspapers gain important scale economies in marketing and management. Another important point is that scale economies are greater is small circulation newspapers (20-30,000 readers) than in newspapers with 100,000 circulations. Scale economies are thus most intense when a single owner controls more than one newspaper in a market, thus making it more difficult for the new entrant to "catch up" to such a formidable competitor.

Lastly, large capitalization requirements may also limit the field of potential entrants. Although, cost requirements may not, in themselves, be a barrier to entry, even the richest corporations may not want to enter such a specialized business as newspapers. However, capital costs have been significantly reduced for the smaller newspaper due to technological advances. This development, among other factors, has allowed for greater growth of non-dailies or small suburban newspapers.

Product differentiation, scale economies, and cost requirements take on additional importance in light of the fact that there are limits to how many newspapers can exist in a single market. Thus, when a chain organization controls both the metropolitan daily and a number of surrounding weeklies or suburban dailies, as the Torstar corporation does, it gains immense power over what newspaper products are in the market.

Gaining a dominant market position helps a newspaper to diminish the inherently high risk factors peculiar to the newspaper business. This risk factor is largely explained by the fact that newspapers service two interdependent markets--advertisers and readers. If a newspaper suffers a labor strike or some other financial crisis, it becomes acutely susceptible to the oft-fatal spiral of losses in advertising and circulation. Once circulation drops off, advertising will follow, which in turn, leads to additional losses in circulation.

Thus, when considering the dynamics of newspaper competition it should not be difficult to understand why so-called "direct" competition is somewhat rare. The nature of competition in the newspaper industry must be understood, however, if the problems of concentration of ownership are to be identified correctly and solutions found to the problems. First, although competition may exist, some newspapers have been able to gain market advantages by gaining exclusive rights to certain wire services and syndicated features. Some newspapers have used anti-competitive tactics such as predatory pricing or tied advertising agreements. One can see newspaper competition as occuring at different levels. That is, a metropolitan daily competes with small dailies, weekly newspapers and with other media. According to the "umbrella" hypothesis, since the 1960's, the large metro papers have been expanding their spheres of influence into suburban areas in pursuit of the commuter populations. Hence, the relevent market of these large newspaper has extended like an umbrella over existing suburban dailies and weeklies and created new competitive interaction. When several units under the umbrella are owned by the same company, barriers to entry for new newspapers are created.

Television has emerged as a formidable competitive foe to newspapers. For every advertising dollar television captures, newspapers lose a dollar. Radio has had a far less dramatic impact on newspaper, although it still garners at least 11 percent of total advertising revenues in Canada. A particularly important challenge to daily newspapers, however, is the growth of paid and free-distribution community newspapers and direct mail. In Canada, large newspaper firms are attempting to combat these new competitive advances by either buying the community papers in their markets or by publishing their own community papers or advertising shoppers, thus establishing the "umbrella" and joint control of different types of newspapers under it that creates barriers to entry.

For example, Southam has proposed the introduction of its owned distribution service for advertising flyers in Vancouver, thus capitalizing on its existing distribution system for the Vancouver Sun and the Province. Although, U. S. law allows newspapers to publish their own advertising supplements, newspaper firms cannot own another newspaper in the same market, with some exceptions. In Canada, on the other hand, there is no law to prevent concentration of ownership in a single market.

The Canadian government is generous with the newspaper industry. Newspapers, as it was reported, currently enjoy postal rate concessions and federal tax exemptions, among other indirect susidies. In addition, Canadian income tax laws reward newspaper firms which invest in additional newspaper properties, while it penalizes the independent newspaper owner with capital gains tax. Also, certain tax laws have eliminated foreign ownership of newspapers. This policy protects existing newspaper owners, but at the same time, limits available capital that could be used for newspaper starts.

Canadian newspapers also operate with few legal constraints. The Combines Investigation Act is impotent in preventing mergers and some monopoly formation. As it has been argued, the language of the anti-combines law is cumbersome in that it requires federal prosecutors to prove a merger or monopoly actually limits or lessens competition unduly and/or to the detriment or against the public interest. The central problem is there is no clear definition of "the public interest," and what constitutes detriment.

Of the two anti-combines cases involving newspapers, the government lost both times. In both the Irving and Thomson-Southam cases, the courts ruled that the state had failed to prove that the alleged monopoly formation, merger, or "rationalization" was a detriment to the public interest. Although the Irving family gained, through acquisition, control over all five English-speaking dailies in New Brunswick, there apparently was no evidence of "detriment." Similarly, the court was not persuaded that the "4-part Deal" instigated by the Southam and Thomson newspaper corporations was intended to lessen competition.

In both cases, the federal prosecutors had argued that the market structure created barriers to entry which lessened competition, but the courts were only willing to recognize obvious economic abuse. In other words, given the wording of the law, the courts will only treat a case of monopoly power when it is mature and clearly manifests objectionable effects which are associated with the legal concept of monopolization. In the kind of concentration of ownership discussed in this thesis, which seldom involves monopoly, the courts are unlikely to act. Thus newspaper mergers are, in some senses, protected transactions.

In contrast to Canada, the U. S. courts acknowledge that certain economic structures, such as concentration, lead to "probable economic harm." The Sherman Antitrust Act and the Clayton Act have been used effectively in assuring that a newspaper does not gain a monopoly or dominant position by acquiring its competitors or by using anti-competitive practices to gain this position.

The U. S. legal cases involving newspapers, were included in the thesis to illustrate how newspapers go about securing a dominant market position. For instance, the Kansas City Star case demonstrated how a newspaper could threaten advertisers who place ads in competing publications with refusal to accept their advertising. The newspaper also refused to accept advertising for its television station unless ads were also run in the Star. The court found that this arrange constituted an "imminent threat of monopolization." In another case, Lima News was found guilty of putting its competitors out of business by intentionally operating at losses and being subsidized by its chain owner.

It is important to remember the Times Mirror decision which recognized that the relevant market of a newspaper like the <u>Los Angeles Times</u> extends well beyond the Los Angeles city limits. Times Mirror was ordered to divest itself of a newspaper publishing firm located in a neighboring county to Los Angeles in order to "prevent even the slightest increase in the concentration of newspaper ownership."

Not only does the American experience lend insight into newspaper behavior and the use of anti-competitive practices, it is also instructive to see how the American courts are oriented to taking preventative measures when it comes to concentration of ownership. In Canada, concentration is allowed to grow worse and unfortunately, there is little precedence for "undoing" particular economic structures through divestiture.

There have been attempts to deal with the problem of concentration of ownership in local newspaper markets from the political arena. In 1970, the Davey Committee sought to understand how the media's tendency toward monopoly reconciled with society's need for diversity. Although, the committee's work on newspapers produced inconclusive results, it did help to launch a program of press councils. The Kent Commission, which was convened 10 years later, also studied the issue of concentration in the newspaper industry. Again, there is little evidence of improvement in the problem of concentration as a result of the Commission.

The Kent Commission had hoped to resolve problems associated with concentration of owership through its proposed Canada Newspaper Act. Again, the Act would have imposed ownership limitations to deal with concentration of newspaper ownership and cross-media ownership. It would have established a Press Rights Panel to moniter and rule upon newspaper industry transactions and the press. Tax credits and surtaxes were to be used as enforcement for decisions taken by the Press Rights Panel. Also, the wire services were to receive grants for the purpose of expanding national and international coverage. A revised version of the Kent recommendations was eventually drafted as a bill, but never got further than Cabinet.

The Kent Report, as it has been argued, is based on political rather than economic reasoning. The economics of the newspaper business seem superfluous in the Kent Report. There is little consensus in the report of what constituted newspaper competition, nor is there any attempt to explore how chain ownership of newspapers in national and regional markets have different competitive consequences than joint control of different types of newspapers in the same relevant market. The report states that competition has declined due to "certain economic market conditions," but fails to elaborate or explain how the market failed or what could be done with respect to the market. Instead, the Commission simply dismisses the economics of newspaper markets by claiming that there is no competition anyway. The Report further suggests that the issue should actually be viewed with a different institutional framework.

The Commission essentially rejects the libertarian view of the press as irrelevant in favor of a questionable theory of social responsibility. The theory of social responsibility posits that if the press does not assume its responsibility, "some other agency" (government) must take charge. There is an assumption that the definition of what is socially responsible should be left to the government to determine. To allocate supervisory responsibility to government power elite as definer and enforcer of press responsibility makes the whole exercise meaningless.

An argument was advanced by the Kent Commission to the effect that newspaper chains and conglomerates owning newspapers, such as Thomson, could not be socially responsible due to "inherent" pressures of the firms' organizational structures. There was no further explanation of the point.

The Commission devised a test for social responsibility based on a measurement of a newspaper's editorial expenditures in relation to its total revenues. Ironically, the results suggested that chains and conglomerates were equal to or more socially responsible than some independent newspaper firms. Their measurement fails to discern that editorial expenditures can be as easily dedicated to horoscopes and syndicated recipe ideas as to news coverage. No discussion was offered in the Kent

Report about the efficiencies of chains or the ability of chains to facilitate additional growth in the newspaper market.

Interestingly enough, the Commission did acknowledge that certain tax laws including the capital gains tax and the investment tax exemptions, directly fueled the growth of chains. It also submitted that there are problems with the anti-combines law, but in both instances, it would not recommend amendments because of their possible industry-wide implications. Such changes were deemed outside the purview of the Commission's work.

The Canada Newspaper Act recommended by Kent but introduced in a weaker version by government, has not been implemented, nor is there currently any discussion in government to reopen the question of concentration of newspaper ownership. The government's apparent inaction is due, in part, to tradition of non-intervention in mergers and to the unique relationship between the press and politicians. In the first place, as it was confirmed by the Royal Commission on Corporate Concentration, the government has historically been reluctant to block mergers. Mergers have always been considered an integral and normal part of commercial life in Canada. Instead, the government prefers to intervene when the more "spectacular" mergers or business transactions occur. Essentially, there is no policy, per se, on mergers and lack of policy allows for considerable political discretion for any business merger.

In the second place, this pattern of direct or indirect political intervention in business regulation, explains, to some extent, why politicians have not dealt effectively with newspaper-related issues. Politicians need the press as much as the press needs access to politicians. It is indeed a precarious symbiotic relationship between the two institutions.

Although, the Canadian government has yet to exercise political discretion with direct intervention into newspaper economics, the existing political structure easily allows for such an action. That is, if there is another "spectacular" business transaction, a la Thomson-Southam, the government may conclude more rapidly that direct intervention is the only option for obtaining what they consider to be an operative free press. The trade-off between potential government manipulation or corporate power attainment would simply have to be reconsidered.

The question must then be asked: Is there anything that can be done to stem the possibility of such an ultimatum and to curb the trend toward greater concentration of newspaper ownership before it becomes to entrenched?

There are a number of possible policy approaches that the government could consider. These approaches include (1) industry self-regulation, direct and indirect intervention, or (2) making changes or amendments to existing policy. For example, the government could allow the industry to regulate itself through press councils. Currently, most provinces have press councils which serve as a forum for discussion between the public and the press on editorial issues. The problem with relying strictly upon press councils is that they can do nothing to ensure diversity of information. They are unable to prevent a large chain newspaper organization from dominating a single market and thereby from discouraging potential entrants to the market that might have provided the public with another viewpoint.

Subsidies, loans or grants would be another option for government. Subsidies would help newspapers that might otherwise fail due to intense competitive pressures. Such intervention could be beneficial since it could help to maintain and support the development of new newspapers. However, it may be financially infeasible for the government to provide such aid to the potentially large number of firms interested in applying.

Furthermore, subsidies may have an adverse effect on markets. Experience has shown that subsidies have invariably interferred in the efficient performance of market functions and have frequently led to counterproductive and inequitable outcomes. In addition, direct intervention through subsidies, grants or loans creates a risk of potential conflict of interest between newspapers and government. Relying upon direct intervention rather indirect methods, invites political discretion that may be as easily opportunistic as it is altruistic.

Still another approach to the problem of concentration of newspaper ownership in local markets would be to support a new

Competitions Policy. Such a policy would indeed address the issues of mergers and takeovers, albeit, in a broad-based fashion. The problem is that the proposal for new competitions legislation has been in existence for more than 20 years and has yet to gain full acceptance by the business community or government. Furthermore, it has not been the intention of this thesis, to argue that competition, in and of itself, is necessarily good for all business. Thus, proposing a Competitions policy may be a satisfactory resolution to the specific problems of the newspaper industry.

Recommendations

The previous policy options are interesting but they have problems and may not have the appropriate impact on the problem of concentration identified in the thesis. Although the proposals included in the following section may also be countered with discusssion of their problems, they are worth considering.

Since this thesis is by no means an exhaustive study of matters concerning newspaper competition and concentration of ownership, it is important that the issue of concentration of newspaper ownership in local markets receive more rigorous and thorough examination. It is apparent that public commisssions such as the Kent and Davey inquiries have not done the job. Instead, it is proposed that the Justice and Commerce departments create a cooperative agency task force that would investigate the specific questions of newspaper competition and concentration of newspapers in local markets. The task force should include representatives from the newspaper industry relying on their information and cooperation. If such a task force were created, research and hearings should be conducted to address the specific concerns of newspaper competition from a structural and behavioral point of view.

Although the Kent Commission accepted testimony from newspaper industry representatives, the industry representatives were not asked to participate in decisions on policy direction. The proposed interagency task force would involve the industry in issues of policy direction. Furthermore, as noted, the agency's mandate would be limited to discussion of the problem of newspaper concentration in local markets. It is hoped that research at this level, rather than dealing with questions of trans-national concentration, would be less threatening to the large newspaper firms so they will be more likely to participate and cooperate.

As well, several other proposals are made here. These proposals are tentative. They are suggestions to the proposed interagency task force. The secondary proposals involve (1)making revisions to the income tax laws and (2)an amendment to the Combines Investigation Act.

Provisions in the Income Tax Act relating to investments and capital gains should be revised. Since 1972, firms have been allowed to deduct for tax purposes the interest expenses on funds borrowed to finance takeovers. Also a company acquiring another firm is allowed to offer shareholders of the acquired firm an option of its own stock instead of cash. Shareholds of the acquired firm, thus do not pay capital gains tax, making them more likely to sell their stock at a low price. According to some American economists, these types of tax laws (which also exist in the U. S.) have played a central role in encouraging newspaper to expand their organizations through takeover.[203]

Gordon Bale, a Queens University law professor, argues that current tax provisions are wrong because the Canadian economy "already suffers from a high degree of both specific market and aggregate corporate concentration. A tax subsidy that has the effect of increasing this concentration is an absurd prescription for Canada."[204]

Although there is little doubt that a proposal for changing the tax structure affecting newspapers might be met with trepidation by the business community, there is a growing awareness that the rising number of corporate takeovers in Canada is cause for concern by all parties. Lawson Hunter, director of investigation and research in the combines branch, said that the increase in the number of mergers is "significant

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[203]James Dertouzos, "Scale Economies, Newspaper Chains, and Government Policy," op. cit., and Robert Bishop, "The Rush to Chain Ownership," Columbia Journalism Review (December 1972).

[204]As quoted in Globe and Mail, (May 5, 1984) p. 14.

and will have an important effect on competition."[205]

If the investment exemption were to be eliminated or revised, it would be important to have additional sources of capital. Currently, Section 19 of the Income Tax Act denies income tax deductions on advertising in newspapers that are not fully Canadian-owned which eliminates foreign ownership. A proposal that might be considered is to amend Section 19 so as to deny income tax deductions on advertising in newspapers that are owned by less than 51 percent Canadian interest and which employ more than 5 percent foreign personnel. Furthermore, all foreign capital would have to be dedicated to starting new newspaper firms, rather than allowing the capital to be reinvested into existing newspapers. Of course the disadvantage of allowing partial foreign control is that the Canadian entrepreneur would lose some degree of control over the Canadian newspaper industry. But its advantage is that Canada would gain new sources of capital investment in newspapers which could lead to additional newspaper starts without endangering Canadian jobs or editorial control over the dissemination of news. In addition, because the foreign capital could only be applied to new newspaper starts, there will be less chance for an increase in the price of existing newspapers.

Finally, although a new Competitions Policy would help to prevent monopolization of markets through merger, such a broad-based proposal has not gained the necessary support.

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[205]Ibid.

However, some kind of legislation that, in effect, "depoliticizes" business transactions by placing onus on the courts is still possible. Perhaps a more feasible approach would be the promulgation of an amendment to the Combines Investigation Act, restraining a single newspaper organization from owning more than one type of newspaper within a relevant or local market.

The rather specific amendment would ensure that a newspaper firm could own a chain of community papers within the relevant market, but it could not convert any one of these papers into a daily. Conversely, a daily newspaper firm would be restrained from purchasing or starting-up a community paper. Also, a firm owning a national paper, such as Thomson's Globe and Mail would not be able to distribute "zoned" editions in markets where it also owns a daily newspaper.

Because there is usually only one major daily newspaper in a given market, the amendment to the Combines Investigation Act proposed here would tend to be most protective of the smaller dailies and metro and suburban weeklies. In one sense, adoption of the amendment proposed here might actually prevent competition since a newspaper firm owning a daily might be capable of starting different types of newspapers in the same market. Yet, the proposed amendment is an attempt to help prevent additional concentration of ownership in local markets and to provide a real opportunity for deconcentration. By separating dailies and weekly community papers, the proposed amendment would deal with the umbrella effect.

Thus, the Canadian government has several policy options. It can do nothing and retain the status quo. It can wait for another dramatic incident to occur which might force the government into taking measures that could actually endanger freedom of the press. The concern about local market concentration would again be subsumed under issues of a national scope as it has been in the past and nothing will be gained. Or it can look at the issue of concentration of ownership more rigorously to gain a better understanding of both the economic and social implications of local market concentration and perhaps entertain some of the proposals suggested here. In any event, something should be done immediately before the structure of newspaper markets become too entrenched and the problem of concentration of ownership in local newspaper markets becomes irreversible. Newspapers still play an important role in this society and they must be nurtured and protected for abuses of corporate power that effectively compromise a newspaper's reason for existence.

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