

Centre for Infocommunication
Law Conference

Media pluralism and competition law?

András Tóth PhD
24-11-2009

Question

- **How the competition law may achieve the goals of the media law?**

Goals of the media law re pluralism

- **The modern state theory accepts media as the fourth political power**
- **The pluralistic media can only fulfil its controlling role**
- **The media pluralism means the wide diversity of the opinions, which has two dimensions:**
 - **Internal:**
 - At the specific medium level: equal and objective information
 - **External**
 - At the whole market level: competitive market structure i.e. low market concentration

Market failures jeopardize the goals of media law re pluralism

- **Internal**

- **Content homogeneity: mainly focusing on the age 25-59**
- **Merits good: not popular but public interest to broadcast**
- **Media law: quota rules, public information requirements (e.g. equal, objective news), must-carry**

- **External**

- **Multi channel paradox: competitive market structure may not result in diversity of opinions (see: content homogeneity)**
- **Two-sided market: the broadcaster platform has two different user groups (advertisers audience) which provide each others with network effect. This may result in economies of scale and high market concentration**
- **Media law: specific concentration rules re opinions diversity (e.g no more national TV/radio licence)**

Competition law and the media market failures

- **Internal**
 - **Competition law cannot ensure the diversity on the specific medium level because it is not an economic category**
 - **Specific media rules needed**
- **External**
 - **Competition law may have several challenges to ensure the competitive media market structure:**
 - Concentrations below the sector independent thresholds
 - Intra-group developments e.g. new channel deployment
 - Lack of recognition of the opinions market: decrease of the number of independent opinion sources e.g. loss of opinion maverick

Main steps towards the media specific competition law

- **Recognition of the opinions market**
 - **Article 151 (4) of the EC Treaty**
 - *The Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures*
 - **Dutch book resale price maintenance case:**
 - *The Commission recognizes the important role which books play as a cultural medium. It agrees with the parties that a situation must not be allowed to develop in which works of cultural value can no longer be published*
- **Tailoring the merger thresholds to the media sector**
 - **E.g. approx. HUF 7-8 billion the two combined commercial radios turnover but the Hungarian merger thresholds:**
 - HUF 15 billion combined and
 - HUF 500 million each of at least two

Conclusions

- **Is it the right way if the authorities are responsible for the economic competition apply the media specific concentration rules?**
- **Media law and competition law are two different concept with different approaches**
 - **Media law: focuses on the opinion diversity (content-related)**
 - **Competition law: maintenance of the competitive market structure and behavior**
- **EC law also accepts if the national media pluralism may override the EC merger approval**
 - **Article 21 (4) of the EC Merger Regulation**
 - *Members states may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provision of Community law. Media pluralism shall be regarded as legitimate interest.*

Worldwide. For Our Clients.

www.whitecase.com