

Chapter 3

Economic Issues in Media Regulation: An EU and US Perspective

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ABSTRACT

Changes in technology bring new challenges and opportunities for every industry, and the media industry is no different. Today people use mass media, and in particular the Internet, to participate in discussions and debate, to advertise and sell their products, to collect and store knowledge and to interact with the global community on the information super-highway. Given both the fast pace of innovation in the media industry and consumer demands for ever greater media content regulatory authorities are faced with challenging times. In this chapter, the authors examine how vertical mergers, vertical restraints, regulations, and competition policy are impacting on the European and American media industries. The authors examine how the internationalisation of the industry, increased merger activity, and the move towards cross media ownership are impacting on market concentration and diversity. The authors conclude that a balance must be struck between encouraging greater capital flows into the industry to help develop innovation, and the need to protect the public's long term interest through ensuring competitive markets.

INTRODUCTION

Up to 120 years ago, the only means of communicating with large numbers of people was through the spoken word and the printed page. The development of radio in 1896 and television in 1928¹ changed the way people communicate. Today, mass media is used to debate political and

social issues on a world scale. Nowadays, most people can use mass media, and in particular the Internet, to participate in discussions and debate, to advertise and sell their products, to collect and store knowledge and to interact with the global community on the information super-highway. The emerging online players are not subject to substantive limitations on content, ownership, or geography; they can pick and choose the audiences they target, the content they buy, and the way

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they provide it (Samuel, 2005). The combination of digital convergence, personal computing, and global networking has ratcheted up the pace of development and is giving rise to radical shifts in the media industry.

The internet, and more recently broadband internet, has had a major impact on the way people communicate. The most recent OCED data shows that over 247 million OECD consumers have internet access (OECD, 2008), while data from Internet World Statistics shows that over 1,463,632,361 currently use the internet (Internet World Statistics, 2008). As the speed at which information gets sent to us increases, and the capacity of telecommunication networks to deliver greater volumes of information grows, so too does the range of uses to which these technologies can be applied. Consumers' demand for speed, convenience, and quality will continue to rise as each new development raises their level of expectation. Tomorrow's media providers will help drive technological progress across a range of fronts. Consumer choice will be facilitated through advances in packet-switching technology, higher bandwidths, greater digital storage capacity and enhanced buffering and compression technologies (Samuel, 2005).

The internet changes the cost structure, scope of products and services, and geographic shape of media, creating an entirely different set of regulatory challenges. It caters to individualised rather than local, state or country institutions. It is pretty clear that it will be a key driver of the next wave of competition and the markets we have traditionally defined as 'media' will change. This development is likely to put greater demands on the regulatory regime as it tries to keep abreast of such developments. The legal and administrative regulation of media structure, delivery, and content, though still largely a matter of national law, is increasingly becoming an international one. For example, European institutions, such as the Council of Europe and the European Union are progressively playing crucial roles in the de-

termination of media law, policy and regulation, often seeking diversity both in content and in economic ownership. However the convergence of various electronic methods of content delivery across borders threatens to undercut any attempts at regulation.

In this chapter, we examine the economic regulation of the media industry both in the EU and the US and demonstrate the importance of this issue in fully understanding the industry. We also examine how the internet continues to change the media industry and the way it is regulated. Our focus is on the economic regulation of this industry and the economic theory that underpins much of this regulation. We also look at how the EU and US have attempted to apply regulation in this fast changing industry. An outline of the regulatory environment in both jurisdictions is provided and cases are analysed to illustrate the different approaches taken by the EU and US authorities. A full understanding of media industry regulation is crucial for both policy makers and industry players as advances in the economic theory of vertical integration and vertical restraints point to potential unforeseen benefits of such arrangements. A brief outline of the economic costs and benefits of vertical arrangements will therefore be outlined.

The remainder of this chapter is structured as follows. Section 2 describes the challenges facing the media industry and this is followed in Section 3 by a brief introduction to the economic theory of vertical integration along with a description of the role of regulation and competition policy. Section 4 outlines the regulation of the media industry in the EU and Section 5 does the equivalent for the US. Section 6 concludes by describing the challenges facing the media industry and its regulation.

THE CHANGING FACE OF MEDIA

When we think of media, we generally tend to think of it in its traditional forms—radio, television,

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