

**News as Hazardous Waste:  
Postmedia, the Competition Bureau,  
and the Supreme Court of Canada**

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## ABSTRACT

A few months after Postmedia Network, Canada's largest newspaper company, purchased 175 Sun Media titles from Quebecor Inc., the Supreme Court of Canada rendered a landmark decision in early 2015. It allowed the purchase of one hazardous waste company in northern British Columbia by another because the Competition Bureau, which had blocked the deal, failed to quantify the deleterious effects of the monopoly it created. The acquiring company, on the other hand, had quantified minimal "efficiencies" to be achieved by taking over its competition. The ruling set a precedent for the Postmedia case, which the company had estimated would result in \$6-10 million in cost cutting efficiencies. Two months later, the Bureau allowed the Postmedia purchase. This points up the problematic nature of competition cases involving news media companies, which provide a public service vital to democracy. The policy of treating them the same as other companies has contributed to the high level of media ownership concentration in Canada. This was sharply criticized by a 2006 Senate Committee report on news media which urged a review mechanism to consider the public interest in news media transactions and for the appointment of an expert panel to review media mergers. The recommendations fell on deaf ears, however, as a deregulationist Conservative government had recently been elected and would govern for almost a decade. The need for reform of the Competition Act has thus increased in order to prevent cases involving news media companies from being decided solely on economic grounds as now mandated by the Supreme Court.

Keywords: newspapers, Postmedia, Competition Bureau, press ownership concentration

When the Competition Bureau approved in early 2015 the purchase by Postmedia Network of 175 Sun Media newspapers from Quebecor Media, it effectively allowed a merger of the country's two largest newspaper chains. It also gave Postmedia ownership of both dailies in Calgary, Edmonton, and Ottawa. It already published both English-language dailies in Vancouver, as its corporate ancestors had since 1980. The announcement in early 2016 that Postmedia was merging the newsrooms of its dailies in those four cities prompted Parliamentary hearings into the declining level of local news provision. Some blamed the Competition Bureau, but it disavowed responsibility for the development (Edge, 2016a). Examination of an unconnected court case, however, reveals that the Competition Bureau's hands had likely been tied by a legal precedent delivered by the Supreme Court of Canada (SCC) even while the federal regulator was considering the Postmedia purchase. Timing of the ruling in the case of a hazardous waste landfill monopoly in northern British Columbia could not have been worse for press ownership concentration in Canada. By interpreting the Competition Act in a way that put the Competition Bureau at a disadvantage in preventing monopolies, it may have contributed to a further increase in the country's level of media ownership concentration, which was already among the world's highest. It was not the first time that bad timing, and even rulings by the country's highest court, had negatively impacted press ownership in Canada.

### **Failed reform efforts**

Press ownership concentration has been a major focus of intermittent inquiries into Canada's news media. Warnings against allowing concentration to grow higher have mostly been ignored, however, and ownership reform efforts have always failed. The

1970 report of a Special Senate Committee on Mass Media issued the first official warning, noting that there were then only five Canadian cities where “genuine competition” between newspapers existed.

Of Canada’s eleven largest cities, chains enjoy monopolies in seven. The three biggest newspaper chains – Thomson, Southam, and F.P. – today control 44.7 per cent of the circulation of all Canadian daily newspapers; a dozen years ago, the total was only 25 per cent” (Canada, 1970: 4).

The report recommended establishment of a Press Ownership Review Board to approve or reject mergers and acquisitions of newspapers and periodicals. The board’s guiding principle would have been that “*all* transactions that increase concentration of ownership in the mass media are undesirable and contrary to the public interest – unless shown to be otherwise” (Canada, 1970: 71). After considerable national debate, the recommendation was not adopted, nor were several others made in the report. A decade later, a Royal Commission on Newspapers was called to investigate the simultaneous closure by the Southam chain of its *Winnipeg Tribune* and by the Thomson chain of its *Ottawa Journal*. The closures gave each chain another local monopoly. Thomson also sold its *Vancouver Sun* to Southam, which already owned the jointly-published *Province*, for a third new local monopoly. The Royal Commission held hearings across the country and issued a report in 1981. “Newspaper competition, of the kind that used to be, is virtually dead in Canada,” it noted. “This ought not to have been allowed to happen” (Canada, 1981: 215, 218).

Calculating that the Southam and Thomson chains then published 59 per cent of the nation’s English-language daily newspaper circulation, the Royal Commission recommended limiting chain ownership to five dailies each. Because of the country’s regional nature, it went so far as to call for divestiture of some dailies to enforce proposed

limits on the percentage of any region's press that one chain could publish. "No company . . . should continue to own or control two or more papers . . . which are the sole or predominant (that is, having 75 per cent or more of the circulation) newspapers in one language published in a province or in a distinct region" (Canada, 1981: 241). A proposed Canada Newspaper Act would have imposed less strict limits, but it was never tabled in Parliament as the government changed from Liberal to Progressive Conservative. Criminal charges of conspiracy and monopoly were laid against the chains by the Restrictive Trade Practices Commission (RTPC), but a 1983 trial resulted in their acquittal. The criminal test of proof beyond a reasonable doubt for obtaining a conviction in antitrust cases was reduced to the lower civil test of proof on a balance of probabilities three years later when the Restrictive Trade Practices Act was replaced by the Competition Act.

### **The Competition Bureau**

Its 2015 hazardous waste ruling was not the first instance of the SCC influencing press ownership concentration. The RTPC charged the Irving family of New Brunswick with monopoly in 1972 after it acquired all of the daily newspapers in that province. It obtained a conviction at trial, along with an order that the Irvings divest one of the newspapers, and each newspaper was fined \$150,000. The conviction was overturned on appeal, however, and the SCC upheld that decision (Couture, 2013). The lower burden of proof on the Competition Bureau was hoped to make it more effective against monopolies. It soon got its first chance to prevent press ownership concentration when Southam made a series of purchases in the late 1980s that gave it control of most of the Vancouver area's community newspapers, along with both dailies. The Competition

Bureau ordered Southam to divest several titles it found competed directly, but the company refused and a Competition Tribunal held hearings in Vancouver. It reduced to one the number of titles Southam was ordered to divest, and company appeals to Federal Court and the SCC resulted in the order being upheld (Competition Bureau, 2004).

By the late 1990s, a series of transactions brought Canadian press concentration to its highest level yet. Conrad Black took over the Southam chain in 1996 through his company Hollinger Inc., and Quebecor – until then a provincial newspaper chain attached to a worldwide printing empire – acquired the Sun Media chain in 1998. That raised concentration of newspaper ownership by the five largest chains from 73 percent in 1996 to 93 percent in 1999, with Hollinger alone accounting for 42 percent of newspaper circulation nationally by 1999 (Canada, 2004). The following year, Canadian news media underwent their most radical ownership change. The AOL-Time Warner merger in the U.S. earlier in 2000 popularized cross-media ownership or “convergence.” Black sold the Southam dailies to Canwest Global Communications, which owned the Global Television network, while the CTV network partnered with the *Globe and Mail* national newspaper and Quebecor acquired the French-language TVA network. A Senate inquiry into Canadian news media was convened in 2003. Its 2006 final report recommended automatic review of any merger of news gathering organizations that gave an owner an audience share of 35 percent or higher in any market. Press freedom provisions in the Charter of Rights and Freedoms, the senators reasoned, should only go so far. “The media’s right to be free from government interference does not extend . . . to a conclusion that proprietors should be allowed to own an excessive proportion of media holdings in a particular market, let alone the national market” (Canada, 2006a: 24). By then, however,

momentum for media ownership reform in Canada had once again stalled with the election earlier that year of a deregulationist Conservative government. The federal Department of Canadian Heritage issued a policy response to the Senate report before 2006 ended which officially blessed convergence as a business model for media, stating: “The government recognizes that convergence has become an essential business strategy for media organizations to stay competitive in a highly competitive and diverse marketplace” (Canada, 2006b: 13).

### **Regulatory “neglect”**

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

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

Even if it found that a merger would substantially lessen or prevent competition for advertising, the Competition Bureau pointed out that the Competition Act “specifically directs that the merger be allowed to proceed if it would also likely result in gains in efficiency that are greater than and offset the effects of the lessening or preventing of

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

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

While it is true that some readers buy a newspaper for the advertising, most are interested in the news, information and other non-advertising features. . . . Clearly, a principal public interest about the news media should be the diversity of news and opinion. For this reason, advertising costs are not always the best indicator of market conditions for the news media given that rates can stay the same (or even decline) in the wake of increased concentration of ownership (Canada, 2006a: 16).



The narrow way in which the Competition Bureau defined markets as local, rather than regional or national, may also have hindered it from preventing anti-competitive practices in the news media, according to the Senate report. “This definition of the news market, combined with the potentially misleading analysis of prices in the advertising market, has led to significant concentration of ownership of various media in Canada, notably community newspapers, in several regions” (Canada, 2006a: 17). What may have worked in an economic sense in most industries, it warned, was not appropriate to such a politically important – and constitutionally protected – institution as the nation’s press. “The Competition Bureau’s operating procedures may be well suited to analysing [sic.] most markets for goods and services in Canada, but not the news media market” (Canada, 2006a: 17). The Bureau’s “silo” approach also missed a critical dimension of news and information, added the senators. “Namely, the importance of the plurality of owners and the diversity of voices, not just in a given community but in the wider regional and national landscape. This is in sharp contrast to the regulatory regimes in [other] countries” (Canada, 2006a: 17).

The Senate report recommended that a new section dealing with mergers of news gathering organizations be added to the Competition Act requiring automatic review of media mergers to prevent dominance by one owner in any market, be it local, regional, or national. As the Competition Bureau was unlikely to have the expertise to deal with the public interest in such mergers, it also recommended that the new section provide for the appointment of an expert panel to conduct the review. None of these measures was enacted, however, with the government having changed earlier in 2006 from Liberal to Conservative.

## **Postmedia purchase**

The recession of 2008-09 led to steep revenue losses that left Canwest, which was heavily indebted from its acquisition of the Southam newspapers and other media properties, unable to make its loan payments. It declared bankruptcy in 2009 and its newspaper division was sold separately from its Global Television network the following year. Postmedia Network, a consortium of Canwest creditors with the financial backing of several U.S. hedge funds which also held much of Canwest's debt, purchased its newspaper division. The resulting shareholdings by U.S. hedge funds well exceeded federal limits on foreign ownership of news media companies, but their ownership was structured in such a way that it was held mostly in limited-voting shares and Canadian shareholders technically controlled the company. Postmedia bought most of the Sun Media newspaper chain from Quebecor in 2014, excepting only the French-language tabloids *Le Journal de Montreal*, *Le Journal de Quebec*, and the free-distribution *Montreal 24 Heures*. Its purchase of the Sun Media newspapers made Postmedia by far the largest publisher of dailies in Canada, with almost three times the paid daily circulation of second-place Torstar. It gave Postmedia an estimated 37.6 percent of Canadian paid daily newspaper circulation, and 75.4 percent in the three westernmost provinces, where it owned eight of the nine largest dailies (Edge, 2016b).

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

a Canadian option for their marketing programs” (Sparks and Flavelle, 2014). Godfrey said the dailies Postmedia acquired in Calgary, Edmonton, and Ottawa would continue to operate independently with their own newsrooms (Artuso, 2014). He added that by combining non-editorial operations of the two chains, Postmedia expected to save an estimated \$6-10 million in cost cutting efficiencies. The *Toronto Star* remarked in an editorial that Postmedia’s sudden newspaper dominance wasn’t raising much concern.

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

A columnist in the *Globe and Mail* observed that Postmedia had “thrown down the gauntlet to Canadian regulators, and forced the country to have a conversation that it has long avoided: How much are we willing to compromise the principles of a diverse and competitive press in the name of keeping it alive? . . . This doesn’t just alter Canada’s print-media landscape, it takes a bulldozer to it” (Parkinson, 2014). *National Post* columnist John Ivison (2014) argued that his employer should be allowed to take over its largest competitor without regulatory interference due to the dire economic situation facing the industry. “Newspaper owners aren’t bluffing this time,” he wrote. “They are fighting to survive. Everyone knows this – they see it before their eyes as their papers shrink in size, personnel and ambition. Against this gloomy backdrop, it seems unlikely that the regulator or the federal government will be motivated to intervene and block a deal that offers ballast to an industry buffeted by choppy waters.” In an interview with *Media*, the magazine of the Canadian Association of Journalists, Ivison downplayed fears over increased consolidation of Canada’s newspaper industry. “At ground level, there’s

no trepidation that we're going to see merged newsrooms or anything like that," he said. "The people who are running this company know newspapers. I would not have said that in every iteration of this company . . . and they know that any attempt to integrate the editorial products would be self-defeating" (Quoted in Burgess, 2015: 13).

### **The Tervita case**

The requirement in the Competition Act that called for the Competition Bureau to take into account any efficiencies gained in a merger or takeover took on a new significance with a judgment rendered by Canada's highest court in March 2015. It was the SCC's first merger decision under the Competition Act since the Southam case in 1997 and the first time it had ruled on the efficiencies defence allowed in the Act (Assaf and Chernenko, 2015; Grant and Andrei, 2015). The case involved Tervita Industries Ltd., a Calgary-based company that specialized in hazardous waste removal for oil and gas companies. After Tervita took over its only regional competitor in northeastern British Columbia in 2011, the Competition Bureau ordered it to either unwind the transaction or divest its newly-acquired landfill operations. Tervita appealed to a Competition Tribunal and then to the Federal Court of Appeal, both of which upheld the order. It then appealed to the SCC, which agreed that the Tervita deal would prevent competition. Evidence produced before the Competition Tribunal had shown that an expected 10-percent drop in hazardous waste remediation costs in the region would be prevented by the merger. "The Tribunal's conclusion that the merger is likely to substantially prevent competition is correct," noted the SCC before allowing Tervita's appeal on what amounted to a technicality. "While the Tribunal's treatment of the asserted 10 percent reduction in prices that would allegedly have been realized in absence of the merger was flawed, there

was sufficient other evidence upon which it could find a substantial prevention of competition as a result of the merger” (Tervita Corp., 2015: 6-7).

In a 6-1 decision, however, it ruled that the Competition Bureau had failed to quantify the merger’s “anti-competitive effects” in order to show they would outweigh the minimal gains in efficiency demonstrated by Tervita. The efficiencies defence required the Competition Bureau to put a number on the lessening of competition, the court ruled, just as Tervita had done in quantifying the savings expected to be realized by the merger. “The defence requires an analysis of whether the efficiency gains of the merger, which result from the integration of resources, outweigh the anti-competitive effects, which result from the decrease in or absence of competition in the relevant geographic and product market” (Tervita Corp., 2015: 7).

Effects that can be quantified should be quantified, even as estimates, provided such estimates are grounded in evidence that can be challenged and weighed. If effects are realistically measurable, failure to at least estimate the quantification of those effects will not result in the effects being assessed on a qualitative basis (Tervita Corp., 2015: 58).

The Competition Tribunal, it noted, had accepted that small efficiency gains in overhead expenses would result from the acquired company having access to Tervita’s administrative and operating functions. The Competition Tribunal rejected almost all of the efficiencies claimed by Tervita because it ruled they would likely have been achieved in any event, but it did accept overhead efficiencies directly attributable to the merger which were equivalent to one-half the salary of one full-time junior back office employee. The Federal Court of Appeal ruled these efficiencies insignificant and did not count them, but the SCC ruled them admissible. “The Federal Court of Appeal erred in holding that an anti-competitive merger cannot be approved . . . if only marginal or insignificant gains

in efficiency result from that merger,” it ruled. “In this case, the Commissioner did not meet her burden to prove the anti-competitive effects, and as such, the weight given to the quantifiable effects is zero” (Tervita Corp., 2015: 10).

### **Reaction to Tervita**

Legal reaction to the ruling was mixed between noting the ironic result of the case and the precedent it set for competition cases. “This is a strange result, given that the Commissioner’s expert found that the merger would prevent a price decrease of at least 10%,” noted the business law magazine *The Litigator*. “The anti-competitive effects from such a prevention of competition must surely be more than one-half of one person’s salary” (Osborne, 2015). The legal consensus was that the onus the ruling put on the Competition Bureau to quantify the anti-competitive effects of a merger or takeover was bound to put it at a disadvantage. “The SCC’s decision will increase the burden on the Competition Bureau to challenge efficiency claims, as it now must spend significant time and effort to quantify the anti-competitive effects of such transactions,” noted one analysis. “This will likely result in an approach that reinforces the role of efficiencies in merger reviews, which will benefit merger parties” (Bryan and MacDonald, 2015).

The Competition Bureau reacted to the SCC decision by issuing a press release which quoted Commissioner of Competition John Pecman saying he “embrace[d] the clarity” it provided on issues related to the merger review process, including the efficiencies defence. “The Bureau will consider the guidance provided on efficiencies and any changes to our analysis and information gathering that may be required during merger review” (Competition Bureau, 2015a). It had been almost three months since the

Postmedia purchase of Sun Media had been announced, and it would be just over two months before the Competition Bureau would release its ruling in that case.

### **Postmedia ruling**

After reviewing its acquisition of the Sun Media newspapers for five months, the Competition Bureau issued Postmedia a “no action” letter stating it would not challenge the purchase. Its investigation oddly concluded that the sale was “unlikely to substantially lessen or prevent competition” in the markets where Postmedia now owned both daily newspapers (Competition Bureau, 2015b). A combination of factors played into its decision, according to a press release issued by the Competition Bureau, including:

- the lack of close rivalry between Postmedia and Sun Media newspapers;
- competition from free local daily newspapers;
- the incentive for Postmedia to maintain editorial quality in order to continue to attract readers and advertisers to its newspapers; and
- the increasing competitive pressures from digital alternatives in an evolving media marketplace (Competition Bureau, 2015b).

In assessing the degree of competition for advertising between the newspapers involved, the Bureau said in a longer statement that it “reached out to a broad set of market contacts, reviewed thousands of documents from industry participants, and carried out extensive econometric analyses.” It found “very little evidence of direct rivalry between the parties’ newspapers with respect to advertising. Rather, in this particular matter, the evidence demonstrated that the parties are not close rivals” (Competition Bureau, 2015c). Market contacts indicated that prices for advertisements varied “significantly” between the newspapers, which delivered “largely distinct audiences.” Accordingly, the company’s tabloid and broadsheet newspapers “tend to serve as complements rather than substitutes”

(Competition Bureau, 2015c). Econometric analyses using data provided by the parties and other market participants, it added, also “failed to support a finding of strong rivalry between the parties to the proposed transaction” (Competition Bureau, 2015c).

Extensive documentary and empirical evidence, according to the Competition Bureau statement, demonstrated that the parties were also “not close rivals from the perspective of readers, a finding that was supported by the views of market participants and by an analysis of the demographic characteristics of the parties’ respective audiences.”

In short, the parties’ newspapers appeal to different types of readers and those readers do not tend to substitute between the parties. Furthermore, the evidence showed the presence of free local daily newspapers in the relevant markets to be an important competitive constraint (Competition Bureau, 2015c).

Another factor considered by the Competition Bureau was that newspaper competition took place in “two-sided” markets, a subject on which it said it was “guided by a recent and expanding economic literature.” Because they took in revenue from both readers and advertisers, newspapers actually competed in two markets instead of the usual one. “The parties are keenly focused on their circulation and readership figures, and rely on them heavily in marketing to potential advertisers,” noted the Competition Bureau. “The parties focus their subscription efforts on gaining readers of a particular demographic, which they can, in turn, market to advertisers” (Competition Bureau, 2015c). The markets for readers and advertising that newspapers competed in were both declining, however, which limited the dominance they could exercise. “Key metrics for the newspaper markets demonstrate that the print newspapers in these markets are facing a steady and continuing decline in readership and advertising. As a result, market conditions exert downward pressure on the parties’ ability to exercise market power” (Competition Bureau,



2015c). Downward pricing pressure was also exerted on them to compete with free newspapers and to generate additional advertising revenues through improved circulation. It was therefore in the newspapers' best interests, the Competition Bureau noted, to provide compelling content in order to attract readers they could in turn market to advertisers. "Editorial investments and engaging content are important to gain and retain readership," it found. "Econometric evidence supports the existence of a strong interaction between the advertising and readership sides of the newspaper markets" (Competition Bureau, 2015c).

Finally, in explaining why it decided not to block Postmedia's purchase, the Competition Bureau mentioned that it "also weighed substantive efficiencies submissions by Postmedia suggesting that the proposed transaction is likely to bring about meaningful cognizable efficiencies" (Competition Bureau, 2015c). Estimates provided publicly at the time the Sun Media acquisition was announced were that by combining non-editorial operations of the two chains, Postmedia expected to save an estimated \$6-10 million in cost cutting efficiencies. Godfrey reiterated that Postmedia planned to follow in Calgary, Edmonton, and Ottawa the model that had been used for decades in Vancouver, seeking efficiencies by combining administrative and production departments, but keeping separate newsrooms (Dobby and Bradshaw, 2015).

### **Escalating efficiencies**

A continued downturn in print advertising revenues throughout 2015, however, forced Postmedia to increase its cost cutting. Following a 20-percent plunge in advertising revenue in the company's fiscal third quarter, Postmedia announced a further round of cost cutting in mid-2015 that was aimed at achieving an additional \$50 million in

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

As Postmedia revenues continued to fall, the company announced in January 2016 that it would lay off 90 employees and merge the newsrooms of its duplicate dailies in Vancouver, Calgary, Edmonton, and Ottawa. The announcement was likened by the *Ottawa Business Journal* to a "miniature Black Tuesday for Canadian journalists," referring to the newspaper closures and consolidation that promoted the Royal Commission on Newspapers (Feibel, 2016: 12). The Competition Bureau disavowed

responsibility for the move and said it would not re-examine its approval of the Sun Media takeover despite Postmedia breaking its promises to keep separate newsrooms. “While we expect the parties to honour their public commitment,” a spokesperson for the Competition Bureau told the *Globe and Mail*, the bureau’s decision not to contest the deal “was not directly dependent on this commitment” (Bradshaw, 2016).

In mid-February, Vancouver MP Hedy Fry announced that the Canadian Heritage ministry committee she chaired would examine the country’s growing crisis in news provision. “I know that our government has a strong will to deal with this now,” she said. “The thing about politics is that the time comes one day when stuff is facing you so hard that you have to do something about it. That time has come” (Ditchburn, 2016). The committee was tasked to study “how Canadians, and especially local communities, are informed about local and regional experiences through news, broadcasting, digital and print media.” It also planned to examine media concentration and its impact on local news reporting, and how digital media had altered local news provision (Ditchburn, 2016). The committee quickly began holding regular hearings in Ottawa, and planned to convene cross-Canada meetings in the fall of 2016 (Canada, 2016).

## **Conclusions**

The SCC decision in *Tervita* was more than just bad timing for press ownership concentration in Canada. It pointed up the policy weakness identified by the 2006 Senate report on news media that had been ignored for a decade. By failing to distinguish news media, which play an important societal and political role, from other industries, the Competition Act essentially enables increased press concentration. The news media upon which Canadians depend to inform themselves are considered the same as companies

which deal in such endeavours as hazardous waste removal, which while necessary are hardly a bastion of democracy. The efficiencies defence in the Competition Act is the weak link in whatever regulatory protection exists against increased press ownership concentration in Canada. By considering only advertising revenues and not the information needs of Canadians, efficiencies gained in news gathering may be used to advocate for mergers and acquisitions of news media companies. This ironically may lead to news media companies becoming increasingly efficient by providing Canadians with fewer and fewer sources of news.

The 2006 Senate report on news media recommended changes to the Competition Act to treat news media companies differently than other industries and to have news media mergers reviewed by experts. These recommendations should be renewed by the Heritage Ministry committee, but even if they are enacted by the current Liberal government, it may be too late to ameliorate Canada's world-leading level of press ownership concentration.

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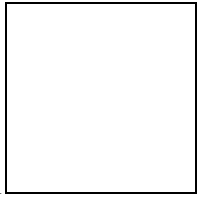
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