

STOP THE PRESSES: POST-SUN MERGER APPROVED

Posted on April 2, 2015

Categories: [Insights](#), [Publications](#)

On March 25, 2015, after a five month review, the Competition Bureau cleared the purchase by Postmedia of Sun Media's English language assets. Postmedia publishes the National Post as well as local daily papers in towns and cities across Canada, including Vancouver, Calgary, Edmonton, Ottawa, and Montreal. Sun Media's principal English language assets are its online Canoe network as well paid circulation daily newspapers in towns and cities in Canada including Ottawa, Winnipeg, Calgary, Toronto, Edmonton and London. As a result of the merger, there will be only one owner of daily paid circulation newspapers in a number of Canadian cities including Calgary, Edmonton, and Ottawa.

Historically the Competition Bureau has been quite concerned about mergers in the newspaper business – taking the *Southam* case to the Supreme Court of Canada in 1997.^[1] It has also historically taken the view that different types of media (print, online, broadcast, etc.) are not particularly close substitutes for one another. However, times change. In its background release with respect to the merger the Bureau noted a number of factors which lead to its decision not to challenge the transaction, including:

1. A lack of close rivalry between Postmedia's broadsheet newspaper and Sun Media's tabloid newspapers, including their different editorial focus.
2. Competition from free local daily newspapers.
3. The increasing competitive pressures from digital alternatives in an evolving media marketplace.
4. The ongoing incentive for the merged company to obtain readership and maintain editorial quality in order to continue to attract advertisers to its newspapers.

The Bureau's review of the merger considered the expected impact both on advertisers in newspapers and readers of newspapers. This is an interesting aspect of the review. Historically, the Bureau's focus in media mergers has concentrated very heavily on advertisers and the effect on advertising – much less so on readers. In this case the Bureau noted that the merged company would have an incentive to maintain editorial quality to retain readers, and that in turn would lead to retaining advertisers.

The Bureau's focus on the merger's impact on both advertisers and readers, and its focus on the impact of editorial quality changes on advertising, is an explicit recognition by the Bureau of the two sided nature of newspaper marketplace. Newspapers are a classic two sided platform. They must appeal to both advertisers

and readers to be successful. With no readers, they will have no advertisements. With no advertisements, they will go out of business. This has always been true for newspapers but had not been as expressly recognized by the Bureau in its previous media reviews. It is likely to be a constant and explicit aspect of future media merger reviews – and likely a feature of all mergers in industries involving two sided platforms.

Another interesting development is the Bureau's recognition that, while newspapers are not in the same market as other media, they face competitive pressure from other media. This is a shift for the Bureau – one hinted at in its Transcontinental decision of last year^[2] – and may have implications for mergers in other types of media settings.

While the Bureau did not rely specifically on the "failing firm" defence in its review of this transaction, it was also clear that the financial state of newspapers, and the fact that they operate in declining markets, was relevant to the Bureau's decision to clear the transaction. It took note of the significant efficiency savings which Postmedia expected to achieve.

The decision likely has implications for media mergers – and analysis of other sorts of conduct under the *Competition Act* for media companies. More broadly, as noted, it reflects the increasing mainstream understanding of the prevalence of two sided platforms. While the fact of two sided markets is now well accepted, there remains an open question as to whether the Bureau – and other enforcement agencies and courts – as yet fully appreciate the implications of mergers or other conduct involving two sided platforms. This decision is at least a step along the route.

by James Musgrove and Joshua Chad

[1][ps2id id='1' target=''] *Canada (Director of Investigation and Research v Southam Inc*, [1997] 1 SCR 748.

[2][ps2id id='2' target=''] Competition Bureau, Position Statement, "Competition Bureau Statement Regarding the Acquisition by Transcontinental of Quebecor Media's Community Newspapers in Quebec" (28 May 2014), online: [Competition Bureau](#).

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2015