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This paper sets out to describe how, in practice, the U.K. competition authorities analyze competition in those markets in the media sector, which may have the characteristics of two-sided markets. The typical characteristics of media markets are described and several decisions in the media sector, taken over a period of a number of years, are analyzed. Conclusions are then drawn on the extent to which the two-sided characteristics of the relevant markets have been taken into account.

The cases that are analyzed have been chosen because they are considered to be of some importance in the context of the subject under consideration and do not represent a comprehensive list of media cases decided by the U.K. competition authorities over any particular period. The author advised principal parties in a number of these cases. The information contained in this paper is, however, taken from public sources and the views expressed are those of the author alone.

I. The Typical Characteristics of Media Markets

A very straightforward terminology is used in this paper to identify the various actors concerned in media markets. The term “owner” is used to mean the owner or operator of the media asset under consideration, for example a print title, radio station or television channel. The term “consumer” is the reader or viewer who uses the medium as a source of information or entertainment. The term “advertiser” is the individual or business that pays the owner for the inclusion of advertising or promotional material in the medium. The focus is on the economic relationships between advertisers and owners and between owners and consumers. Relationships between owners in different capacities, for example content

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providers and platform operators, as important as they are in competition terms, are not addressed in this paper.

A number of the typical characteristics of media markets are mentioned below. The reason for drawing attention to these features of media markets is that they are among the factors that work by other authors suggests may be of relevance to the economic analysis of two-sided markets.¹

A. OWNERSHIP

Media assets are most frequently under single ownership, with occasional joint ventures and minority investments. As a result of this, the competition authorities' analysis of media markets has differed from that of the multi-bank owned payment systems, which are considered in detail elsewhere in this issue. In particular, the exhaustive analysis of payment systems under Article 81 of the EC Treaty and Chapter I of the U.K. Competition Act 1998 finds no close parallel in the media sector. Recent U.K. media cases under Chapter I² are not very relevant to a discussion concerned with two-sided markets and issues raised by the joint selling of broadcasting rights³ are not the subject matter of this paper. The cases discussed are a mixture of merger reviews, market investigations, and behavioral inquiries.

B. FUNDING

The owner's funding model may vary from 100 percent advertiser funding to 100 percent consumer funding. The broadcasting media have tended to polarize towards predominantly advertiser or consumer funding, whereas the print media display a wide range of funding mixes.

C. MULTI-HOMING

Multi-homing by advertisers and consumers is prevalent in the media sector. Advertisers may use a variety of different media for an advertising campaign in order to achieve the required impact and over time may switch their expenditure significantly from one set of media to another. The extent to which advertisers regard different media as substitutes for one another has been the subject of considerable analysis by the U.K. Office of Fair Trading (OFT) and the U.K. Competition Commission in both merger and behavioral cases. Consumers also

1 See, e.g., J.-C. Rochet & J. Tirole, *Platform Competition in Two-Sided Markets*, 1 J. EUR. ECON. ASS'N 990 (2003) and M. Armstrong, *Competition in Two-Sided Markets* (2005) (mimeo, University College London) (on file with author).

2 See, e.g., OFT Decision of May 24, 2005, No. CA98/03/2005, TV Eye Limited.

3 The joint selling of U.K. football rights was recently investigated by the European Commission under Article 81 of the EC Treaty. See Commission Decision of Mar. 22, 2006, Case COMP/C-2/38.173, Joint selling of the media rights to the FA Premier League.

use a wide variety of different media, in which they may be exposed to advertising, but the extent to which consumers regard the media they use as complements, or as substitutes, has been less fully investigated in published decisions of the U.K. authorities.

D. THE RELATIONSHIP BETWEEN USE AND VALUE

The relationship between consumer use of a media property and the value to the advertiser of such use, in terms of impacts made or sales leads generated is an intrinsically complex one and may be hard to measure accurately. Viewing and readership data is prone to errors and omissions in consumers' reporting of their media use. Consumers may not always give accurate information to advertisers who seek to monitor the media source which gives rise to each sales lead, although advertisers endeavor to devise systems to overcome this. By contrast with the cardholder who uses a payment system solely for the purpose of making transactions with merchants, a consumer may not use a media product mainly (or at all) in order to gain information about, still less to make transactions with, advertisers. Whereas a product containing only directional, classified advertising may generally only be used by consumers to find potential suppliers of goods or services, the consumer of a product containing a mixture of advertising and editorial matter may have no prior interest in and may neither see nor absorb the advertising it contains.

E. CONSUMERS DO NOT PAY FOR TRANSACTIONS WITH ADVERTISERS

The consumer may or may not pay the owner for the use of the medium, but any such payments (e.g., subscription or cover price) will not be related to the consumer's transactions (if any) with advertisers in the medium. Advertisers generally do not pay the owner directly for sales or sales leads generated by their advertising, although the price agreed for an advertisement may be dependent on the circulation, readership, or audience of the publication or program in which it is inserted. The owner does not regulate, or generally become concerned with, any transactions between advertisers and consumers that are generated by advertising.

F. PRICE DISCRIMINATION

In principle the owner can discriminate between advertisers when setting prices for advertising. The owner may not always, however, have the information necessary to do so in a profit-maximizing way. Discrimination in pricing to consumers is also possible, within limits of practicality, although most consumer sales are no doubt at published cover or subscription prices.

G. NETWORK EFFECTS FAVOR INCUMBENTS

It is generally observed that it is not easy for a new entrant to switch established consumer use of an incumbent media property to the new entrant's own publica-

tion. Nevertheless, new entrants may over time gain a substantial share of consumer use from a long-established incumbent (as is illustrated, for example, by the shift in television viewing which has taken place in the United Kingdom from ITV to more recent entrants) and product innovation (for example web-based advertising) can create more rapid shifts in use and, thus, in revenue.

II. Some Decisions by U.K. Authorities in Media Cases

In this section a number of OFT and Competition Commission decisions and opinions concerning media markets are discussed, noting whether or not the two-sided nature of the market concerned has been considered and whether the authority's treatment of apparently comparable cases has been consistent in this respect. It is notable that, at the date of the University College London's "Competition Policy for Two-Sided Markets Colloquium," a search of the Competition Commission's website for the phrase two-sided markets produced a reference to only two media cases, namely *Archant/Independent News and Media*⁴ and *Classified Directory Services*⁵: A search for the same phrase on the websites of the OFT and the U.K. Office of Communications produced no references to media cases.

A. NEWSPAPERS, MAGAZINES, AND JOURNALS

The U.K. competition authorities have had occasion to consider competition in markets for newspapers, magazines, and journals in a number of different contexts over recent years, as merger activity has proliferated and complaints of ineffective competition and anticompetitive behavior have abounded. An early acknowledgement of the two-sided nature of a publishing market is to be found in 2001 in *Reed Elsevier/Harcourt*.⁶ The Competition Commission investigated a proposed merger between two major publishers of scientific, technical, and medical (STM) journals and concluded (by a majority of the group of members conducting the inquiry) that the merger would not operate against the public interest, notwithstanding that it raised concerns about access and pricing. The Commission noted that the market for STM journals is largely circular, with the same members of the academic community writing the articles, peer-reviewing

4 U.K. COMPETITION COMMISSION, *ARCHANT LIMITED AND THE LONDON NEWSPAPERS OF INDEPENDENT NEWS AND MEDIA LIMITED: A REPORT ON THE ACQUISITION BY ARCHANT LIMITED OF THE LONDON NEWSPAPERS OF INDEPENDENT NEWS AND MEDIA LIMITED* (2004).

5 Press Release, U.K. Competition Commission, *OFT Refers Classified Directory Advertising Services to Competition Commission* (Apr. 5, 2005).

6 U.K. COMPETITION COMMISSION, *REED ELSEVIER PLC AND HARCOURT GENERAL INC: A REPORT ON THE PROPOSED MERGER*, Cm 5186 (2001).

them and (through their institutions' libraries) purchasing the journals.⁷ In considering barriers to entry, the Commission observed that it is difficult for a journal to become established and secure a strong reputation. Researchers greatly prefer to publish in established journals, where their article will be peer-reviewed and edited by leading figures in the discipline. Publication in a leading journal

A CAREFUL REVIEW OF THE TWO OR MORE DEMANDS FOR EACH PRINT MEDIA PRODUCT HAS NOT FEATURED CONSISTENTLY IN SUBSEQUENT DECISIONS OF THE U.K. AUTHORITIES.

confers status on the author, ensures wide readership and thus the prospect of wide citation, and is also influential in funding allocation. All this creates an environment in which leading journals in a field enjoy a prestige that it is difficult for others to challenge.⁸ This effect is more succinctly described by the OFT, in a report⁹ of an investigation of the STM market, undertaken as a result of the Competition

Commission's inquiry, as a "virtuous circle".¹⁰ Such a careful review of the two or more demands for each print media product has not, however, featured consistently in subsequent decisions of the U.K. authorities.

An example of a case in which only one side of the market was considered is *Aberdeen Journals*.¹¹ The case concerned a complaint of predatory pricing against Aberdeen Journals, the incumbent in a local newspaper market which was found, by both the OFT and U.K. Competition Appeal Tribunal (CAT), to include both paid-for and free titles. The OFT and CAT both considered in great detail the attributable variable costs and revenues of Aberdeen Journals' *Herald & Post* title, in respect of which the predatory pricing allegation was made. This free title had cut its advertising rates and improved its quality in response to new market entry by a free title. All the *Herald & Post's* costs were treated as attributable to advertising when considering the test of predation, even though some costs related to editorial material. Neither the OFT nor the CAT considered in their analysis the question of competition for consumers, notwithstanding that the single revenue streams of the two free titles most closely concerned could be sustained only through evidence of their readership and that they competed in the same market with at least one paid-for title.

Although it might be argued that the nature of the issue in *Aberdeen Journals*, predatory pricing, justified the OFT and CAT in confining their attention to

7 *Id.* at para. 2.63.

8 *Id.* at paras. 2.43-45.

9 U.K. OFFICE OF FAIR TRADING, THE MARKET FOR SCIENTIFIC, TECHNICAL AND MEDICAL JOURNALS, OFT 396 (2002).

10 *Id.* at para. 6.6.

11 OFT Decision of Sept. 16, 2002, No. CA98/14/2002, Predation by Aberdeen Journals Limited (*aff'd* CAT Judgment of Jun. 23, 2003, No. 1009/11/02, *Aberdeen Journals v. Director General of Fair Trading*).

costs and advertising revenues, the same point cannot be made in respect of a merger review. It is therefore striking that in *Archant/Independent News and Media* neither the OFT nor the Competition Commission considered explicitly the question of competition for consumers. This case concerned a completed merger between two local newspaper publishers in the London area and was the first newspaper merger to be considered by the U.K. authorities under the substantial lessening of competition (SLC) test.¹² The Commission identified two overlapping areas in which potential competition concerns arose, due to the combined share of circulation (aggregating both paid-for and free titles) that was held by the merging parties. The Commission applied the SLC test in these two areas by reference to advertising alone and decided to clear the merger, despite the parties' high local market shares, and notwithstanding the Commission's assessment of incumbency advantages and barriers to entry in these markets. They did so for a number of reasons, including: residual competition from both local newspapers and certain other local print media; survey evidence of advertiser behavior; lack of concern about the merger on the part of advertisers; and the inability of the merged group to practice systematic advertising price discrimination. The Commission did not expressly consider the effect of the merger on consumers and it must be inferred that they presumed that there was no likelihood of harm in this case.¹³ The approach taken by the OFT in their merger reference decision¹⁴ did not expressly limit the SLC concerns to advertising markets, although the potential adverse effects identified all related to advertising.

The Competition Commission's conclusions in *Archant/Independent News and Media* followed a long series of investigations of newspaper mergers in which competition between local newspapers had been analyzed in detail, but essentially in terms of competition for advertising and effects on advertisers.¹⁵ Harm to consumers as a result of reduced competition was not generally identified in these investigations. This may go some way to explain the Commission's appar-

12 Newspaper mergers in the United Kingdom had previously been considered by reference to a public interest test under which not only competition, but also matters such as the accurate presentation of news and free expression of opinion were taken into account.

13 It is instructive to compare the Competition Commission's report in *Archant/Independent News and Media to Newsquest plc and Independent News and Media* (see *supra* note 4 and U.K. COMPETITION COMMISSION, *NEWSQUEST (LONDON) LIMITED AND INDEPENDENT NEWS & MEDIA PLC: A REPORT ON THE PROPOSED TRANSFERS*, Cm 5951 (2003)). This inquiry, concerning an alternative merger proposal for the same target and published only a few months earlier, was conducted under the public interest test, not the SLC test. The Commission necessarily considered effects on the accuracy of news and free expression of opinion, finding no harm in either case. In considering competition, the Commission considered only the effect on advertisers, not consumers, and cleared the merger subject to certain divestments.

14 OFT Decision of Apr. 29, 2004, Completed acquisition by Archant Ltd of the London Regionals Decision of Independent News & Media.

15 See, e.g., U.K. COMPETITION COMMISSION, *NEWSQUEST (LONDON) LIMITED AND INDEPENDENT NEWS & MEDIA PLC: A REPORT ON THE PROPOSED TRANSFERS*, Cm 5951 (2003) and U.K. COMPETITION COMMISSION, *JOHNSTON PRESS PLC AND TRINITY MIRROR PLC: A REPORT ON THE PROPOSED MERGER*, Cm 5495 (2002).

ent presumption that the only issues in the case concerned competition for advertisers. It appears, however, that in considering competition cases involving national newspapers, the OFT and Commission have taken greater cognizance of the dual demand from consumers and advertisers and the interaction between the dual revenue streams on which the publisher's business depends. There is recognition of this at the descriptive, if not the analytical level in *National Newspapers*¹⁶, although that inquiry chiefly concerned distribution and therefore paid little regard to advertising. It would appear also to have been recognized by the OFT in its consideration of a series of complaints concerning the cover pricing and subscription pricing of certain newspapers over a period of several years, starting in 1994. Analysis of the OFT's approach in these cases is hampered by the lack of any reasoned decision published by the OFT. However, from the slight information which has been published,¹⁷ it may be inferred that the OFT has recognized the publisher's dual revenue streams from advertising and cover/subscription price and has considered the relationships between circulation and cover price, between circulation/readership and advertising revenue, and between cover price and multi-homing (in the sense of multiple purchases) by consumers.

More recently the OFT has published a draft advisory opinion on national newspaper and magazine distribution,¹⁸ in order to provide guidance to the industry on the assessment of whether current exclusive distribution agreements between publishers or distributors and wholesalers, which typically confer absolute territorial protection on the wholesaler, infringe Chapter I of the Competition Act 1998. A detailed description of the OFT's reasoning would go beyond the scope of this paper and it is sufficient to observe that the OFT state that newspapers and magazines operate in two-sided markets in which each title competes to attract readers, on the one hand, and advertisers, on the other; and publishers take account of the interaction between these two customer groups when determining their pricing strategy. The example instanced is that, when determining the retailer's margin, the publisher will take into account the impact of additional retail sales on its advertising income.¹⁹

It would therefore seem that the principle of two-sided market analysis is now established for this sector, so far as the OFT is concerned. This is to some extent confirmed by the OFT's reference decision on a proposed merger between two

16 U.K. COMPETITION COMMISSION, *THE SUPPLY OF NATIONAL NEWSPAPERS: A REPORT ON THE SUPPLY OF NATIONAL NEWSPAPERS IN ENGLAND AND WALES*, Cm 2422 (1993). See, *in particular*, ch. 3.

17 See, e.g., Press Release, U.K. Office of Fair Trading, *Newspaper Pricing: News International gives assurances* (May 21, 1999).

18 U.K. OFFICE OF FAIR TRADING, *NEWSPAPER AND MAGAZINE DISTRIBUTION; PUBLIC CONSULTATION ON THE DRAFT OPINION OF THE OFFICE OF FAIR TRADING*, OFT 851 (2006).

19 *Id.* at para. 1.36.

consumer magazine publishers, *Future/Highbury House I*²⁰, which would have given the merged group a very high share of one type of special interest consumer magazine, namely computer games magazines. The OFT considered separately the relevant advertising and readership markets, concluding that there would be no SLC in advertising, due to the market power of media buyers and the inability of the owner to price discriminate systematically against captive advertisers, but that there would be an SLC in the readership market, as the owner would be able to raise prices or reduce quality.²¹ Although the OFT noted the existence of incumbency advantages and barriers to entry, in this as in other media markets, it made no specific connection between the two sides of the market and in this respect cannot be said to have recognized fully the principles of two-sided market analysis. The OFT did not, for example, consider the effect which raising cover price or reducing quality would have on advertising revenue and, therefore, whether such conduct would overall be profit-enhancing to the owner.

B. TELEVISION AND RADIO

The pattern that may be discerned from the above summary of print media cases, namely a recognition of the two-sided nature of media markets in some cases, but not others, is also to be found in broadcast media cases. It is instructive to contrast in this respect *Carlton Communications/Granada*²² with *Capital Radio/GWR Group*²³, that both concern mergers in free-to-air media. *Carlton Communications/Granada* represented a merger between the two largest free-to-air television broadcasters in the United Kingdom (representing between them almost the whole of the ITV channel) and was cleared by the Secretary of State, on the recommendation of the Competition Commission, subject to complex behavioral remedies concerning advertising sales.²⁴ The Commission recognized the two-sided nature of the market, in terms of the need for the owner to attract large numbers of consumers in order to sell airtime to advertisers, the competition between broadcasters for audience, and the need to maximize the attractiveness of the audience to advertisers. The Commission identified incumbency advantages and network advantages on the part of ITV and considered programming benefits to be delivered by the merger, finding that they did not outweigh the

20 OFT Decision of Apr. 14, 2005, Anticipated acquisition by Future plc of Highbury House plc.

21 The OFT also identified a third aspect of the market, namely the demand from computer games manufacturers for owners to publish official magazines, under license.

22 U.K. COMPETITION COMMISSION, *CARLTON COMMUNICATIONS PLC / GRANADA PLC: A REPORT ON THE PROPOSED MERGER*, Cm 5952 (2003).

23 OFT Decision of Dec. 22, 2004, Anticipated acquisition by Capital Radio Plc of GWR Group plc.

24 This case was dealt with under the general public interest test, in practice confined largely to competition matters, that applied to all non-newspaper mergers until it was replaced by the SLC test on Jun. 20, 2003.

competitive detriments to advertisers. The Commission did not, however, use two-sided market terminology in its analysis and appears to have considered separately the various relevant markets that it identified.²⁵

A year after *Carlton Communications/Granada*, the OFT reviewed *Capital Radio/GWR Group*, a proposed merger to create the largest commercial radio broadcaster in the United Kingdom, whose analogue and digital stations were all

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free-to-air and (with one exception) local. The OFT cleared the merger under the SLC test on the basis of: a lack of significant local overlap (except in one area in which an appropriate divestment remedy was offered); the ability of advertisers to “buy-around” the merged group by choosing alternative stations; the lack of ability or incentive on the part of the merged group to bundle or tie its stations; and a recognition of the buyer power of the major media buying agencies. The OFT applied the SLC test in relation to competition for advertising, but not for audience, and gave no explicit consideration to the interdependence of advertising revenue and audience, or the effect of the merger

on consumers.²⁶ Just as with *Archant/Independent News and Media*, therefore, two-sided market considerations were wholly absent from this merger review.²⁷

C. CLASSIFIED DIRECTORIES

Since April 2005 the Competition Commission has been conducting a market investigation into the supply of classified directory advertising services (CDAS), following an earlier inquiry completed in 1996.²⁸ The Commission’s provisional findings²⁹ were published in June 2006 and expressly adopt two-sided market ter-

25 These were, in addition to advertising, programming, and bidding for broadcasting licenses.

26 In addition to the OFT’s review, a very limited review of public interest issues was undertaken by the Department for Trade & Industry, under media-specific powers. The sector regulator, the U.K. Office of Communications, conducted a station-by-station review of the effect of the merger on the group’s broadcasting services. Neither of these reviews concerned competition.

27 The same may be said of *Scottish Radio Holdings / GWR Group / Galaxy Radio*. See U.K. COMPETITION COMMISSION, SCOTTISH RADIO HOLDINGS PLC AND GWR GROUP PLC AND GALAXY RADIO WALES AND THE WEST LIMITED: A REPORT ON THE MERGER SITUATION, Cm 5811 (2003).

28 U.K. COMPETITION COMMISSION, CLASSIFIED DIRECTORY ADVERTISING SERVICES, Cm 3171 (1996).

29 U.K. COMPETITION COMMISSION, CLASSIFIED DIRECTORY ADVERTISING SERVICES: PROVISIONAL FINDINGS REPORT, ISBN 0117025119 (2006) [hereinafter Provisional Findings] and U.K. COMPETITION COMMISSION, CLASSIFIED DIRECTORY ADVERTISING SERVICES: FINAL REPORT, ISBN: 0117037373 (2006) [hereinafter Final Report].

minology in analyzing competition in the market and barriers to entry. The Commission found that CDAS providers operate in a two-sided market, in which success depends on their ability to attract both users and advertisers. The interdependence of advertiser and user demand gives rise to a network effect or virtuous circle, as a directory with high usage and advertising is more attractive to new advertisers and users.³⁰ The Commission noted that this network effect appears to give Yell (the largest and longest-established CDAS operator) a significant advantage over smaller providers and any new entrant, making it difficult for a new provider to compete³¹ and provisionally concluded that Yell has market power. In these findings the Commission adopted two-sided market analysis more fully than in previous media cases which they have investigated.

III. Provisional Conclusions

The survey of cases in the previous section is necessarily superficial, but allows certain provisional conclusions to be drawn. First, it is only very recently that the OFT and Competition Commission have expressly adopted two-sided market analysis in their published decisions. It is noteworthy that the Commission has done this for the first time in relation to classified directories that contain only directional classified advertising and in which, therefore, use of the directory and value to advertisers is very closely linked. It might be expected that two-sided market effects are particularly relevant to this example.

Second, it may be said that the potential use of two-sided market analysis in media cases has now been established by both the OFT (in national newspaper and magazine distribution) and the Commission (in classified directories), although neither of these cases has reached its final conclusion, at the time of writing.

Third, setting aside these current cases, the U.K. authorities' analysis has tended to focus separately on the one or more sides of the relevant market for which advertisers or consumers make payments to the owner, without looking at competition issues in the context of the media product or platform as a whole.

Fourth, in certain recent cases, including *Aberdeen Journals*, *Archant/Independent News and Media*, and *Capital Radio/GWR Group*, the authority's competitive analysis has been confined to the effect on advertisers, even though, in the first two of these cases, the relevant markets included paid-for as well as free media. In other, apparently comparable and no less recent cases (e.g., *Future/Highbury House* and *Carlton Communications/Granada*), however, effects on both advertisers and consumers have been considered.

30 Provisional Findings, *id.* at para. 18; Final Report, *id.* at paras. 5.9, 6.2, and 6.122.

31 Provisional Findings, *id.* at paras. 36 and 44; Final Report, *id.* at paras. 6.112 and 6.123.

Fifth, though very tentatively, in behavioral cases where the owner enjoys two revenue streams from the media property, the U.K. authorities appear to have accepted that the competitive effect of a pricing decision is properly to be judged by taking into account the costs and revenues of the media property as a whole, without separating editorial from advertising costs, or consumer revenue from advertising revenue.

Finally, it seems clear that two-sided market analysis needs to be applied more systematically and consistently by the U.K. authorities, than has been the case until now, in both behavioral and merger cases involving the media.

It would go beyond the scope of this short paper to attempt to analyze whether the use of such analysis in any particular cases would have produced a different result, and more detailed work would need to be undertaken in order to draw any such conclusion. The author therefore does not suggest that any case mentioned in this paper has been wrongly decided, for want of two-sided market analysis, merely that the absence of consideration of one side of the market, or of the interdependence of two sides of the market, may have led to competitive factors relevant to the authorities' analysis having been left out of consideration. It would also be instructive to undertake a similar analysis of recent decisions of the European Commission on media cases. ▼