

Comment: Antitrust, Concentration, and Competition

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This review of the articles by Lawrence White, Kenneth Thorpe, and Stanley Besen and Leland Johnson, will focus on three issues: the definition of the relevant market, program diversity, and the data.

I. DEFINITION OF THE RELEVANT MARKET

Market boundaries, Lawrence White explains, must encompass both a product dimension and a geographic dimension. A market is defined by the 1982 Justice Department Guidelines as “the smallest group of present or potential sellers (sellers which encompass the smallest group of products in the smallest geographic area) that, if they chose to act in a collective fashion. . . . could succeed in exercising significant market power.” “‘Significant’ is defined as the ability of this collective entity to be able profitably to raise selling prices by at least five percent (from where they . . . are or could. . . be expected to be in the future), and maintain them at that level for at least a year.” “The practical question,” he tells us, is: “Would the demanders (of a group of products sold by a specific group of sellers located in a specified geographic area), in response to a significant price rise, switch away (to sellers of other products and/or sellers located in other geographic areas)? . . . If the answer . . . is ‘no,’ then the products sold by those sellers, at those locations, constitute a market; if the answer is ‘yes,’ the price rise would be thwarted, and the tentative group is too narrow.” A wider group of sellers (in product space and/or geographic space) must then be included, and the question posed again.

How would Kenneth Thorpe’s analysis and tests have looked if he had undertaken as refined an analysis of cable TV’s relevant market as White did on the Movie Channel–Show Time merger proposal? The closest Thorpe comes to defining the relevant geographic market in his

study is the simple statement that such markets are “the market area where cable TV is available.”

Thorpe distinguishes between metro area markets (like Baltimore and Washington) and smaller autonomous cities within those metro areas; he uses the Area of Dominant Influence (ADI) in his table 5.2. But which is the best measure of the cable operator’s relevant market: the ADI, the SMSA, Dominant Market Area (DMA), or the city, county, or franchise area? He also criticizes seller concentration ratios which are admittedly no adequate measure of market power without information on exit and entry barriers. Nevertheless, seller concentration is a good starting point—a presumption of market power—yet one on which market power cannot really be grounded without reference to the factors mentioned by White, or better still, the thirteen factors identified by William G. Shepherd.¹ Concerning the product market, Thorpe notes that “the ability to raise prices above costs is constrained if substitute products are available. [And that] no one would deny that STV and other video technologies are to some degree substitutes for cable TV.” But are they good substitutes? Also, at what point do close substitutes become part of the relevant market and included when markets are calculated?

In their article, Besen and Johnson write: “If groups expand in size, the number of separate station owners could fall substantially below the number of stations within relevant markets for advertising and programming, thereby facilitating collusive agreements.” But actually, *three* relevant markets are pertinent to their study—one for advertising or time sales, another for programming, and a third for a composite of these, viz., audience circulation. The authors in fact make these markets explicit in an earlier report (Besen and Johnson 1984a).

Besen and Johnson’s best discussion of the relevant market is when they note that group ownership is most likely to result in collusion where a) the geographic areas in question are in a single market in which prices for advertising or programming are related; where b) the number of station owners is significantly smaller than the number of stations in that market; and where c) overlapping group ownership reduces the number of station owners sufficiently below the number of stations to make the above-mentioned collusion feasible. “A likely candidate (for a relevant market),” Besen and Johnson helpfully conclude, “would be a collection of cities in relatively close geographic proximity

to one another, where several owners operate in more than one city and where the total number of stations (and other media outlets) is small. Of particular relevance, therefore (they note), is the Commission's regional concentration rule."

The authors' treatment of group acquisitions is deficient in one other possibly serious regard. There is virtually *no* discussion *anywhere* of group acquisitions of TV stations as market-extension conglomerate mergers, where the stations are located in two geographically separate cities. There should at least be references to the need to analyze mergers in terms of their effects on *potential* entry. Even if stations are located in separate geographic regions, preventing a merger might induce a group owner in one market to build a *new* station in the second market, or, at least, to hover at the market's threshold, posing a potential threat of entry (that may or may not materialize). When I examined this issue in 1970 (Levin 1970), I found few if any VHF outlets available in the top fifty markets, or elsewhere. Hence the likelihood then that preclusion of a group acquisition would generate net *new* entry depended largely on the potential viability of unused UHF channels in the second market. I did find numerous unoccupied UHFs at that time, but deficient viability to support the potential entry hypothesis. Today, thirteen years later, the situation could well be decisively different. The authors do in any case owe us at least some scrutiny of that issue, and a direct review of group acquisitions as a form of market-extension conglomerate mergers in geographically separate areas.

II. DIVERSITY

Besen and Johnson refer to diversity at several points, but do not make any effort to explore it at the length it deserves in either theoretical or empirical measurement terms (Besen and Mitchell 1975; Levin 1980). Nor do they take even a passing look at most of the empirical evidence in the literature that they do in fact peruse. Two even more limited references to diversity are made by White and Thorpe. White's point is that the industrial organization literature (Chamberlin, Fellner, Bain, Stigler) argues that, under certain structural conditions, "sellers in the market are more likely to behave in a noncompetitive fashion (viz., . . . coordinating their actions so as to raise their prices above,

or modify the *quality or variety* of offerings from, the levels that would prevail in a more competitive industry).”

The question is how to relate such structural conditions to program diversity in TV broadcasting and cable TV. This is discussed by Wildman and Owen. But, is there any place in antitrust review to analyze the likely impact on program diversity as well as on market power and economic efficiency, of changes in relative market shares and the number and size of sellers in the market due to mergers like that between The Movie Channel and Showtime? If so, how can we measure the program diversity in question? Or is it enough that the FCC has authority to weigh program diversity as well as the anti-competitive effects of TV group acquisitions of other TV or radio stations?

Thorpe notes that “cable firms could deter entry through program decisions which offer more programming than other cable firms, thereby precluding any product differentiation advantages of potential competitors.” Thus, Thorpe sees increased diversity as a strategy to maximize profits, or preclude entry.

Thorpe explains that cable TV firms will add additional program sources “if marginal program revenues exceed the marginal programming costs,” marginal revenues being derived from a) new, first-time cable subscribers, b) existing cable subscribers who produce more (or fewer) services, and from c) new subscribers switching from STV—or other competing technologies—to cable TV. He concludes that “the difference in perceived marginal revenues across different markets (implies that) both the number and diversity of programs would be greater in monopolistically competitive markets than in the isolated monopoly market.” But again, we need a far more refined comment on the theories of diversity and viewer behavior, and still more important, explicit consideration of the empirical constructs by which competitive and noncompetitive effects on program diversity can be assessed.

III. THE DATA

Besen and Johnson alert us to the “poor quality of the evidence which they review,” but literally never mention the poor quality of the data all investigators under their scrutiny had to work with. We should have had some speculation on the latter’s implications for research strategy and

policy results. The individual company data cited by Besen and Johnson in this literature are generally worthless as, also, the profit margins (i.e., income to revenue or to time sales ratios) analyzed in Cherington et al. (1971:8). So much so that FCC has sometimes contracted to have such data assessed by outside contractors. Even estimating the rate of return on total assets is a demanding task, though by no means impossible. (Levin 1980:4).

For those reasons alone, my colleagues and I felt compelled to diversify our dependent economic variables in *Fact and Fancy*, using discounted 20- or 30-second time rates, estimated station audiences and revenues, as well as market averages of income, revenues, and time sales, and sales prices of TV stations. That indeed is a major reason for the plethora of equations in *Fact and Fancy* which Besen and Johnson mention, though many of the results they see as "mixed" (p. 6) in fact reveal a more distinctive pattern than they recognize.

Thus, evidence in my table 6.8 (Levin 1980) clearly shows that group impact (when interacted with TV homes) significantly raises rates in the large markets (when interacted with TV homes), even though not in small markets (250,000 homes). The same is true for estimated station revenue and, for audience, group impact is significant in both small and large markets. Therefore, when considered with its positive impact on advertising rates, group ownership does act to raise station income significantly. In fact, I found a significant positive impact when group ownership was interacted with TV homes (Levin 1980: tables 6.4, 6.5), even though my simpler additive model revealed no impact at all (table 5.3). Actually, then, the more refined my statistical model (Levin 1980: table 6.5) or my data (table 5.4), the clearer the evidence that group ownership significantly raises advertising rates.

In sum, total income to all stations appears to remain *constant* even though group owners enjoy *higher income* than nongroup stations. And all of this seemingly points to a significant redistribution of income from nongroup to group owned stations.

In Besen and Johnson's discussion of advertising rates, finally, they should at least have taken note of the relation between transactions prices and published card rates, with and without discounts. Transactions prices are mentioned here only once, and nowhere in their earlier report; nor are discounts mentioned virtually anywhere in the present paper, and only once (without comments) in the longer report. Nor in

either paper do the authors consider whether the discounted published card rates (which Peterman and I both use) may better reflect transactions prices than undiscounted card rates do.

In contrast with Besen and Johnson's data, Thorpe's data are in some ways more refined. At least, P-MC/P as an index of market power and economic efficiency, is far more explicit than any comparable data on group economic efficiency assessed in Besen and Johnson. Furthermore, Thorpe looks directly at subscriber rates and hence avoids any transactions price problem or the discounted rate issue. Indeed, P-MPC/P is a more direct measure of market power and economic efficiency than inferences drawn from advertising rates alone.

True, Thorpe limits his estimates of marginal cost to marginal programming cost and deliberately omits any consideration of marginal labor costs, converter prices, installation charges, etc., or of other factors he cites. However, he notes that, for cable TV, the most important marginal cost incurred is the marginal license fees TV stations pay to programmers. Nonetheless, it would have helped clarify the proper weight to place on marginal *programming* cost as a proxy for marginal cost, if Thorpe had provided some illustrative breakdown of his *other* components of marginal cost.

IV. POLICY IMPLICATIONS

Thorpe draws no explicit policy conclusions from his interesting analysis. But suppose his cable TV "natural monopoly" does indeed lack the market power to exact supernormal profits due to competition from near substitutes. There would then seem to be far less possibility of dedicating or earmarking special channels for exclusive use by governmental, educational, or cultural organizations, or by public access groups without external subsidies from governments, foundations, or industry public service grants. At present, such channels and services are supported by internal cross-subsidy from a cable company's more lucrative operations.

Besen and Johnson mainly find that the group ownership literature reveals no statistically significant impact on the economic efficiency, competitive behavior, and program diversity of TV broadcast operations. Therefore, they conclude that, with few exceptions, the rules which limit multiple station ownership in different markets, could as

well be removed as retained. But the reverse is equally true. By Besen and Johnson's own assessment, retention of the rules would have no anti-competitive, anti-efficiency, or anti-diversity effects. One unstated premise, however, does in that instance argue strongly for retention in some form. Until we have far more systematic and definitive content analysis of group and nongroup impact on diversity, there lurks at least the *possibility* of adverse group impact on diversity, fairness, and balance. Therefore, the able Besen and Johnson review clearly reveals that *retention* of at least some of the rules would best enable us to be "safe rather than sorry." This is especially true until group owner acquisitions of TV stations in other markets are systematically analyzed as market-extending conglomerate mergers the disallowance of which could conceivably strengthen the chances for net entry in the market the acquiring group owner was trying to enter.

Note

1. In his appendix table 8, Shepherd (1970) adjusts four-firm concentration ratios for markets that are mainly regional and local in scope; for census definitions that are too broad or too narrow; and for imports that are a significant fraction of total sales. In his appendix table 13, in addition to adjusted concentration ratios, Shepherd (1970) includes five other internal structural elements—assymetry of firm size, divergence between 8-firm and 8-plant concentration, stability of market shares of leading firms, entry barriers and tariff rate. His external structural elements further include: size of industry, diversification by leading firms, and buyer type or structure.