

CURBING PLATFORM POWER IN THE MEDIA SECTOR

An analysis of EU merger regulation and national media ownership rules

ABSTRACT

By expanding into the media industry, online platforms have challenged the industries reigned by traditional media companies, and the cultural and societal implications therein. This expansion has triggered complaints and warnings from various stakeholders which pointed out the powerful positions occupied by online platforms, their anti-competitive practices and the imbalanced level playing field. These concerns were coupled with the seemingly inability of existing policies to deal with the complexity of platform economics. Gradually, scientific research has started to draw parallels between legacy media and the role of telecommunications infrastructure, and online platforms' power structures and behaviours. Shortly, it became clear that the effects of online platforms' power consolidation strategies on competition and the public interest mirrored that of legacy media. This parallel has led to some researchers suggesting that online platform regulation inspired by the telecom regulation might be a solution. The regulatory patchwork done by the European Commission attempted to tackle online platforms power, but it did so not by addressing the cause of the power that often leads to abuse, but by setting behavioural ordinances, some rooted in the telecom regulation (e.g., rules related to fairness, non-discrimination, and access). Solutions did not stop with the proposal and adoption of regulations at the EU level but continued among some of the Member States who have been campaigning for the relaxation of media ownership rules and revising their national competition laws to foster increased concentration among the legacy media players and telecom companies as a solution to compete with online platforms. However, without close monitoring and curtailment, these solutions to combat platform power are not without consequences for competition and the public interest.

By combining economic platform theories with media policy research, this PhD raises a pertinent normative question: *Which regulatory framework can best address the implications of platform power and Platformization on competition and consequently on the public interest?* To answer this question, the thesis adopts a holistic critical political economy perspective of examining online platform power and makes use of a variety of research methods, including policy document analysis, legal analysis, content analysis, comparative case studies and quantitative correlation tests.

This thesis adopts Evens and Donders' '4Cs' platform power theory framework – in which the control over the consumer, connectivity, content, and capital is the source of power – and finds that despite the regulatory progress, the ex-ante EU Merger Regulation established three-decades ago, is the fittest instrument capable to fully address online platforms' structural

power. At the national level, some Member States implement decentralized regulatory cooperation systems, involving various authorities in the procedural application of the EU Merger Regulation, thus addressing matters beyond economic considerations, including pluralism and various other public interest concerns. Additionally, to various degrees, most Member States make use of media ownership rules to protect their respective media markets. The correlation test between the media ownership rules and the concentration levels shows the ability of such rules to keep power in check and safeguard the public interest.

Thus, the EU Merger Regulation and the media ownership rules are established instruments fit to deliver ownership structures to ensure a redistribution of power and safeguards to public interests, including pluralism and diversity. Yet, because the media landscape has undergone considerable changes, some former national media ownership rules must be revisited and be brought in line with the new media landscape, thus giving legacy media a better competitive chance. However, this PhD does not support an outright deregulation. Considering media's dual economic and cultural role, Member States ought to proceed in this matter with cautiousness. First, because relying solely on competition law disregards some of the protections put in place by media ownership rules – both for discouraging the formation of monopolies and for protecting various public interests –, and second, because the aftermath of such choices will have different and likely detrimental effects on each Member State.

Whereas the EU Merger Regulation was shown to be able to directly address the online platform structural power through various structural and behavioural remedies, media ownership rules are not quite there yet. However, if the European Media Freedom Act is approved, video-sharing platforms and very large online platforms may fall under the definition of media service provider having to comply to existing standards, regulations, and responsibilities, including the possibility to be brought under the media ownership rules. In this case, regulators and policy makers must rethink the definition of ownership and establish which ownership control is relevant in a platform context (e.g., data, algorithms, infrastructures).

This research identifies the continuous battle for a utopian equilibrium in the European media markets in an online platform context, which is unfolding in three distinct but intertwined debates: (i) the public interest vs. economic interest; (ii) liberal vs. protectionist policies; and (iii) national vs. supranational jurisdictions. This PhD points towards not a sole regulatory framework that can address the online platform power and the Platformization in the media sector but to the need for a collaborative and integrative effort that combines a variety of regulatory frameworks and authorities to be able to tackle the adverse effects of platform power in their entirety, without disregarding the public interest.