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Citizen Kane: The Evils of Industrial Concentration

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Abstract

“Citizen Kane” explores the power of the press, manipulating public opinion, the quest for power through industry concentration, and whether money makes for happiness. This chapter explores the questions that the film poses for competition policy authorities today about the breadth with which we should interpret “abuses” of competition in the media. We first trace the evolving implementation of competition statutes in the US and Europe, noting that early judgements were written expansively, capturing more than purely economic issues. We present the landmark *Alcoa* case in more detail as an example of a decision encompassing political and even moral concerns. We then watch the pendulum swing toward narrower economic analysis before swinging back toward a wider interpretation today in the light of the role of very large enterprises in the digital economy: the GAFAM¹ firms have not only become economically important, but the role of Facebook (Meta) in public opinion and the electoral process has been hotly debated. After reviewing this spectrum of approaches, we investigate how the political aspects of the media can be incorporated into the economic analysis of competition policy on a more concrete level and within the scope of existing law. We leave the reader with some final questions on what, if anything, competition policy should do to prevent high concentration and potentially abusive conduct in media markets in the light of the recent rise of the digital giants.

Keywords: Industrial Trusts, Media Empire, Competition Policy

Introduction

Citizen Kane is a screen classic: it has consistently entered the list of the top 10 Greatest Films of All Time in the prestigious Sight and Sound poll from 1962 to the present day. The film chronicles the rise of Charles Kane as an American media tycoon. While fictional, some have suggested that the film was a thinly veiled comment on the real activities of media tycoons of the day, notably William Randolph Hearst. The film’s themes go well beyond comments on any individual media baron, however, to delve into the consequences of capricious and self-interested management in highly concentrated industry.

Kane receives wealth as a child, builds a media empire based on that wealth, and exercises that power for his own purposes, which initially include protecting the “common man” but eventually become more directed at manipulating the truth for purely self-centered reasons. Even Kane’s initial interest in the “common man” should not be mistaken for the pursuit of a “liberal” agenda, as it included whipping up popular fervor in support of the Spanish-American War. Kane uses his dominance of the news industry to manipulate public opinion toward a truth he wishes to hold for his own purposes, whatever they are. He was not much concerned with amassing wealth either. Warned that he was losing \$1 million a year, he just laughs and says that at that rate he would have to close the paper in...sixty years. Eventually, his vast wealth is spent on possessions that ultimately disappear either through auction or literally go up in smoke, without making him or anyone else happy.

The parallel with Elon Musk and Twitter is striking, including the bigger-than-life personality. Mr. Musk, owner of the Twitter (now X) platform, controls a source of news and commentary for over 350 million users worldwide². Reminiscent of Kane’s flippant approach to his bankers in the film upon purchasing his first newspaper, Mr. Musk has stated regarding his purchase of Twitter that, “[it] is just my strong, intuitive sense that having a public platform that is maximally trusted and broadly inclusive is extremely

¹ GAFAM is an acronym for Google, Apple, Facebook, Amazon, and Microsoft.

² Statista (2022). Number of Twitter Users Worldwide from 2019 to 2024. Available at: <https://www.statista.com/statistics/303681/twitter-users-worldwide/>

important to the future of civilization...I don't care about the economics at all".³ At the same time, whether Mr Musk is participating purely to improve trust and inclusion is questionable. While he has said that, "I prefer to stay out of politics"⁴, Mr. Musk's views on transgender rights, conspiracy theories, and the "woke mind virus" have been in clear view to his own approximately 150 million followers.⁵ On the other side of the political spectrum and more conventionally, Jeff Bezos, having made a fortune as founder and Chief Executive of the Amazon platform, purchased the financially struggling media outlets of The Washington Post, El Tiempo, The Washington Gazette weeklies, and a free distribution paper, Express, in 2013, with what is alleged to have been a plan to make the Post "the definitive source of news and information for the English-speaking world".⁶ At the same time, Bezos' conflict of interests have recently been noted in commentary about the Post's editorial stance.⁷

Citizen Kane tells a story that combines economic power and vast wealth accumulated through inheritance and industrial concentration, with an unflattering depiction of the irresponsible ways that power was exercised, from political interference to personal whims. It is not just a story of monopolization from an efficiency standpoint: it is a story of monopolization, wealth, and the wider implications of the accumulation of power by one, fallible, person. In an age of vast power accumulated by a new generation of entrepreneurs, some in the social network sphere that has replaced many more traditional media outlets, the question of how such accumulations of power is treated in the law is timely.

This is a question big enough to occupy an entire book. Accordingly, our goal in this brief chapter will be much more modest.

We begin by looking at the main competition policy statutes, starting in the US, where the debates leading to the foundational Sherman Act were motivated by concerns that ranged into threats to democracy, as we see in the film. To illustrate this link, we discuss a contemporaneous and landmark court case where the judge clearly enunciates the view of the larger societal threat of industrial concentration. We then note that this changed in the years after the film, moving toward a more focused analysis of the economic effects of monopoly. We contrast the US approach to the later, European, approach to competition policy, which reflects this narrower view. This does not exclude placing a priority on consumer welfare over the interests of the owners and managers of capital, but it does change the nature of what is defined as a competition offence away from monopolization and toward abuse by a firm that is already dominant. This difference can affect the approach one takes toward the digital giants. Systems on both sides of the Atlantic have, however, the potential to apply their analysis beyond the effects in goods and service markets to those in other related markets, including labour markets. For an industry such as the media with potential interaction effects with political markets, this can affect the approach one takes in competition policy judgements for media organisations. Hence, we consider what competition policy would think of Kane's media empire, whether it would find that he had committed an abuse, and whether, once we step back into the real world from the film, the media – including digital media - should attract wider scrutiny from competition authorities due to their role in political markets.

The Sherman Act, Competition, and the Whims of Self-Appointed Men

³ TED speech available at https://techcrunch.com/2022/04/14/elon-musk-buying-twitter-ted-talk/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAADVD4N_nku193iw8JiSOLg1q1oRSFtCCCoY4VxW58mY4StBXm43NJ0XdDK5V-iRKnImdm4sGtIJJYWxS0IJJoJZVIAhJLqPHnOkDeMyTxXvZKbHuuQyFDt-T95KF7oqw7OsWH7Gi-bZ09WAYUuEOV3fxq7gKnqNQqNugUxQKm-P

⁴ Dodds, Io, 24 May, 2023, "From Self-Proclaimed 'Socialist' to Team Trump and DeSantis: Elon Musk's Curious Politics Revealed", The Independent.

⁵ Number of followers drawn from Social Blade live Twitter count, see <https://socialblade.com/user/elonmusk/realtime> for updated statistics. For commentary on views, see Dodds (2023), supra.

⁶ <https://www.dailymail.co.uk/news/article-11161841/Jeff-Bezos-owned-WaPo-track-lose-money-digital-subscriptions-ad-revenue-stagnates.html>

⁷ Froomkin, Dan, 27 September, 2022, "The Washington Post has a Bezos Problem" Columbia Journalism Review. Available at: https://www.cjr.org/special_report/washington-post-jeff-bezos.php

Citizen Kane was released in October, 1941, shortly before the Pearl Harbour attack but a full two years after the start of war in Europe. The social backdrop to the film was, then, a combination of the Great Depression including the resentment felt by those who had lost their livelihoods, a sentiment stoked by politicians such as Huey Long, and the build up to the Second World War with its associated heavy use of propaganda⁸. Deep suspicion of the wealth, power, and corruption of trusts along with the nefarious use of the press to speak untruth are featured in the film. These concerns are voiced by Kane himself, who at one point characterizes himself as the defender of “decent and hardworking people” against being “robbed blind by a pack of money-mad pirates.”

The foundational Act regarding competition policy abuses was, and is, The Sherman Antitrust Act of 1890. This established competition law in the US and with it the danger of excessive concentration in the hands of a single firm. Section 1 of the Sherman Act prohibits agreements among independent entities in restraint of trade whereas, more relevant to Kane’s accumulation of a media empire, Section 2 of the Sherman Act prohibits monopolization or attempts to monopolize.

The potential economic and political threats of excessive industrial concentration that led to the passage of the Sherman Act are echoed in the film. Senator John Sherman argued that the Act was “a bill of rights, a charter of liberty,” and that,

*If we will not endure a king as a political power, we should not endure a king over the production, transportation, and sale of any of the necessities of life. If we would not submit to an emperor, we should not submit to an autocrat of trade, with power to prevent competition and to fix the price of any commodity.*⁹

While Senator Sherman appeared to limit his concerns to the economic sphere, Senator George Hoar went farther, to declare that monopolies were “a menace to republican institutions themselves.” In a more recent restatement of these sentiments, Justice William Douglas in 1948 wrote that decentralizing (economic) power would ensure that “the fortunes of the people will not be dependent on the whim or caprice, the political prejudice, the emotional stability of a few self-appointed men.”¹⁰

These concerns play out in the way that Kane’s management of his newspapers is portrayed. We see Kane’s consistent use of the press to manipulate political opinion, with uncertain benefits for the public laid out at least in one case of the Spanish-American War and on a smaller scale his baseless suggestion that a missing woman in Brooklyn was murdered by her husband. Indeed, Douglas’ statement could be drawn directly from Kane, who early in the film uses his newspapers to promote his own political ambitions, and later uses them to promote the singing career of his wife well beyond her talents or desires. Kane’s emotional state is complex, remains at best uncertain throughout the film, and his whims are key to his business decisions. His media control gives him the power for these whims to influence society.

Concerns about the behaviour of trusts were certainly part of the social landscape in the late 1930s and early 1940s, when the film was being written and produced. The landmark 1945 case **United States v. Alcoa**,¹¹ concurrent with the making of the film, enunciated particularly clearly an interpretation of the broad intent of the legislation.

⁸ Not surprisingly, maybe, Orwell’s *1984* was published just seven years later.

⁹ For a summary of the arguments leading to the passage of the Act, along with further citations and discussion including citations quoted in this paragraph, see L. Khan, 2017. A more nuanced and contrasting view of the intent of the legislation can be found in P. Dickson and P. Wells (2001) “The Dubious Origins of the Sherman Antitrust Act: The Mouse that Roared”, *Journal of Public Policy and Marketing*, 20(1), 3-14. They argue that the upshot gave considerable latitude to the courts, leading to a rule of reason adjusted for context, as enunciated by Justice White in *Standard Oil Co of N J v United States* [1910] USSC 112; 221 U.S. 1; 31 S.Ct. 502; 55 L.Ed. 619; No. 398 (11 April 1910) at 61.

¹⁰ Dissenting (with Justices Black, Murphy and Rutledge), *United States v. Columbia Steel Co* 334 US 495 (1948).

¹¹ **United States v. Alcoa**, 148 F.2d 416 (2d Cir. 1945), March 12, 1945.

The suit accused the dominant aluminium producer in the US of monopolisation of the market for primary, or “virgin”, aluminium, was progressing through the courts. The background facts of the case were not in dispute: Alcoa had enjoyed a dominant position on the back of two patents on the process of manufacturing virgin aluminium, the second of which expired in 1909. In 1945, it fell to Judge Hand to evaluate of the legality of Alcoa’s position well after this period of patent exclusivity. The case pitted the United States Justice Department, arguing in one strand of their case that the mere possession of market power in the relevant market for aluminium – the power to control prices – was illegal *per se* under the Sherman Act, against Alcoa, arguing that to the extent to which it was a monopoly, it had become so on the merits, outcompeting other companies and creating efficiencies, which would eventually benefit consumers.

The strongly worded Alcoa decision, written by Judge Learned Hand, established that actively building an empire was a violation of the Sherman Act, even though having monopoly “thrust upon” itself could allow a firm to escape prohibition. Writing for the Court, Judge Hand declared that, while no firm could be convicted for passively receiving monopoly status due to “involuntary elimination of competitors by automatically operative economic forces”, actively building a monopoly was potentially problematic. Expanding on this point further, and echoing elements of later EU law, Judge Hand paraphrased an earlier statement by Judge Cardozo in *United States v. Swift & Co.*¹² “Alcoa’s’ size was ‘magnified’ to make it a ‘monopoly’; indeed, it has never been anything else; and its size, not only offered the ‘opportunity for abuse’, but it ‘utilized’ its size for ‘abuse’, as can easily be shown.” While accepting the “skill, foresight and industry” evidenced by Alcoa in “stimulat[ing] demand and open[ing] new uses for the metal,”¹³ Judge Hand claimed that Alcoa simultaneously ensured that all the new demand it created was filled by Alcoa, and not its rivals, resulting in progressive monopolization of the industry. In this sense, the monopoly was “actively built”, not “thrust upon” Alcoa. Despite the potential competition from abroad, this monopolization was an abuse against competitors: “Although the primary evil was monopoly, the [Sherman] Act also covered preliminary steps, which, if continued, would lead to [monopoly]. These may do no harm of themselves; but, if they are initial moves in a plan or scheme which, carried out, will result in monopoly, they are dangerous and the law will nip them in the bud.”^{14, 15} In other words, monopolization or attempts to monopolize are illegal in themselves and there is no need to link either of them to actual consumer harm.

Judge Hand went further, however, to comment on the moral issues as well as the economic.

“[Congress] did not condone “good trusts” and condemn “bad” ones; it forbade all. Moreover, in so doing it was not necessarily actuated by economic motives alone. It is possible, because of its indirect social or moral effect, to prefer a system of small producers, each dependent for his success upon his own skill and character, to one in which the great mass of those engaged must accept the direction of a few. These considerations, which we have suggested only as possible purposes of the Act, we think the decisions prove to have been in fact its purposes.”¹⁶

We see the shadow of this behaviour in Kane: Kane builds his newspaper by hiring away, at potentially exorbitant cost, the entire staff of rival papers, a move that could be viewed as actively building monopoly and so caught under the Sherman Act’s section 2 prohibition. The implementation of the Act at the time of Kane clearly mixed purely economic with broader moral, social, and political concerns. This approach was soon to change, however.

A Consumer Welfare Standard

This view of monopolization has not remained as negative as it is portrayed in the film, or as it was conceived by the Courts of the time. Perhaps most notably, Judge Robert Bork’s 1978 book, *The*

¹² *United States v. Swift & Co.*, 286 US 106, p. 116, 52 S. Ct. 460, 463, 76 L. Ed. 999.

¹³ See *United States v. Alcoa* at 430.

¹⁴ *Ibid* at 431.

¹⁵ Similar arguments have recently been made by Lina Khan, current head of the US Federal Trade Commission who, in a 2017 paper on Amazon, argues that an approach that postpones antitrust enforcement until a harm to consumers is observed is insufficient in modern economies and in particular in the digital space. See Khan, L. “Amazon’s Antitrust Paradox,” *Yale Law Review* 126(3). 2017. 710-805.

¹⁶ *United States v. Alcoa* at 427.

*Antitrust Paradox*¹⁷, questioned the circumstances under which concentration should be condemned. The book argues that consumer welfare is the goal of antitrust, essentially suggesting that if consumer welfare is not harmed then industry structure, and hence monopolization, is not a concern. Backing this up, extensive scholarship has shown that concentrations can have ambiguous economic effects on consumers. For example, vertical integration¹⁸ may be good or bad for consumers as it allows the firm to internalize negative externalities across the vertical chain that could translate into inefficiencies that could be harmful for consumers. A prime example of such an efficiency is the so-called “elimination of double marginalization”. When a manufacturer sells a product to a distributor who then sells it to final consumers, a profit margin is added at each stage: by the manufacturer and then by the distributor. In particular, the final price reflects the fact that the distributor’s cost is inflated by the manufacturer’s margin. If a single firm does both manufacturing and distribution, it sets the final price based on the (lower) manufacturing cost of the product without “middlemen” margins, leading to lower prices for consumers. Vertical integration may also help ensure that sales and after-sales services are provided efficiently. A second example relates to excessively low pricing (“predatory pricing”), aimed at driving out rivals. If the threat of future re-entry by rival firms is enough to discipline prices of the remaining monopolist, then monopolization has no cost and should therefore not be illegal. Of course, these points need to be nuanced: there are circumstances where vertical integration is potentially harmful and, equally, where predation will occur and harm consumers. We need to delve deeper than mere industry structure, however, to distinguish the good from the bad and the ultimate criterion for doing so is consumer welfare. Industrial concentration on its own, through a structural analysis of the industry, was not enough to conclude harm. A conduct analysis was necessary to draw such a conclusion.

At the same time as Judge Bork was arguing concentration alone was not compelling evidence for abuse, the political argument against excessive concentration in the hands of “autocrats of trade” was being abandoned in favor of economic reasoning. The book represented a watershed, then, signaling a period of much stronger economic contribution to competition policy analysis. Morality was largely removed from the debate.

Neo-Brandeisian Concerns, Media Markets, and the European Approach

Recent changes have rowed back somewhat on this approach. The views of Judge Hand on monopolization and the broader societal dimensions of competition policy are again stressed by a group of academics and policymakers commonly identified as “New Brandeisians”. One of the leading figures in this movement is Lina Khan, who is (as of 2023) head of the US Federal Trade Commission. In particular, she has argued that, in modern industries which are often subject to dynamic effects (e.g., network effects), the threat of monopolization must be taken seriously and early in the emergence of new markets, much in the way that Judge Hand argued that they should be “nipped in the bud”. One can think of these network effects as generating “monopolization on steroids”, because a network effect creates an advantage for firms with larger market reach as consumers tend to favour products that other consumers purchase. While the network effect argument is largely based on economic modelling, Neo-Brandeisians also worry about the influence of large corporations in labour markets and in the democratic process.

This brings up several issues that are relevant to media markets and to Kane. First, the Neo-Brandeisians’ emphasis on linkage to labour markets is a more traditional concern, and indeed monopsony can be and is caught under existing law as an abuse of dominance or a distortion of competition in the same way as monopoly is caught. There is no problem, then, with considering linked markets in competition policy. Media markets, as illustrated in the film, raise a particular issue of linkage to “political markets”, however, which we deal with in more depth below is relevant to the Neo-Brandeisian concern about the democratic process. Second, the film presents the process of monopolization, not just the abuse of the dominant position once it is achieved. Here, the position of the European Union differs from that of the US, as in Europe monopolization is not an offence even though abuse of an existing dominant position is.

To consider these differences briefly, we return to the genesis of Competition Law in the European Union since 1957. While the remit of European competition policy is broad, including growth, market

¹⁷ Bork, R., *The Antitrust Paradox* (New York: Free Press, 1978).

¹⁸ A supplier acquiring a distributor or, more generally two firms at different levels of a chain of production (e.g. steel maker and car manufacturer) merging.

integration, innovation and the diffusion of knowledge, direct references to morality, democracy or the importance of competition to society at large are absent in the statutes¹⁹. This broad remit reflects the European Community's/Union's focus on the creation of a Single Market where companies face a level playing field. Despite the lack of direct references, these main objectives do not completely exclude issues of income distribution or political elements, of course. For example, focusing on consumer welfare suggests that the well-being of consumers trump that of companies and their shareholders. Also, it is well-known that the Single Market is also seen as a tool to avoid the return of military conflict in Europe. Added to this, though, is that the interpretation of these statutes has also largely missed out larger societal or democratic concerns, reflecting the time at which they were taken. The fear of corporate bigness *per se* was not a major concern in a post WW II era where Europe's industry was in ruins. Later judgements reflected the narrower focus that became prevalent in the 1960s and 1970s. The emphasis has been on market integration and the protection of consumer welfare.

Overall, the time in which the statutes were developed generated fewer concerns about monopolization, even though there was a concern about abuse of dominance once achieved. Second, the times generated less sweeping views of the benefits and concerns about large enterprises. Political considerations have been side-effects, not part of judgements themselves.

What Does Kane Show about the Special Features of Media Markets?

Would Kane's behaviour have been caught under the Alcoa standard or its more modern US or European iterations? Clearly, Kane is following an ambitious strategy of taking over the newspaper market, hiring in entire newsrooms from other rival papers with lavish salaries, and even acquiring rival newspapers. To the untrained eye, this looks suspiciously like (attempts at) monopolization, as his growing control of newspapers in key local markets did not simply stem from the delivery of a better product, but also from actions that were deliberately aimed at weakening competition. However, even at the time, the case would not have been clear-cut. For one thing, much of Kane's success stems from offering a populist version of journalism that strikes a chord with readers in a way that the staid and ossified product available from the paper he acquires could not. The film portrays his changes as merely responding to what was clearly popular with readers at the time, with circulation growing in response to these changes. There is nothing wrong with that from a competition perspective: from the consumer's standpoint, is this not a higher quality product, evidenced by its popularity? Hiring the best journalists from other newspapers would not have raised an eyebrow even at the time. Why should the best journalists not receive high wages? To object to this practice, one would have to show that Kane's salary offers were largely motivated by the desire to deprive rivals from good writing talent rather than the wish to improve the quality of his own newspapers. That would be a tall order, likely requiring a paper trail of some kind. The acquisition of a rival paper might have been blocked. However, one should note that the newspaper that Kane initially acquired and where we see his methods in some detail was completely revitalized under his leadership, suggesting that the acquisition might in fact have been beneficial for readers (and possibly necessary for the survival of the paper). Overall, then, it is far from certain that Kane's conduct would have fallen afoul of antitrust enforcement even at the time. This would also be true of Kane's behaviour in the later part of the film where, no longer aiming at "serving the common man", he attempts to use his power to turn his personal views into a run for the presidency.

Needless to say, Kane's behaviour would incur the wrath of today's Neo-Brandeisians. Newspapers would exhibit network effects, so nipping Kane's strategy in the bud would be desirable in their view even on the economic grounds for intervention. While they would judge that his strategy endangered the process of competition in newspaper markets, they might well also argue that the mere concentration of power in such markets was a direct threat to American citizens and American democracy. Such issues clearly arise in the second part of the movie when, moving away from its initial goal of "speaking truth to power", Kane decides to use the newspapers to push his own personal aims.

¹⁹ See Treaty of Rome, in either its original version, available at <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/treaty-of-rome> or in its more recent form at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12002E/TXT&from=EN>. Both versions specify a broad set of considerations that guide policy.

Economists have long considered political activity as a form of competition in a “political market” where votes are traded for policies²⁰. It might therefore seem natural for competition authorities to ensure that competition in this market not be unduly distorted by concentration of media power and/or dubious practices in the same way as they might consider labour market effects.

Keeping in mind the consumer welfare standard already enshrined in the law, however, one would need to specify the equivalent of the “consumer welfare” criterion for political markets in the same way as monopsony problems might have an equivalent in the welfare of workers. This turns out not to be straightforward. In product or service markets, the benchmark is one where firms do not make abnormal profits so that prices are close to costs, subject to additional consideration given to quality, variety and innovation. It is not clear how this would be generalised to political markets²¹. While Dasgupta and Maskin (2008) argue that well-functioning systems should satisfy five criteria, they debate both the criteria and their implications in a series of papers that followed. Indeed, even the possibility that a voting system exists that satisfies all these criteria is in doubt. Note, however, any such benchmark is not quite as compelling as the traditional “competitive benchmark” as there is no reason to believe that such a “perfectly democratic” outcome, even if it is possible to achieve, would maximise consumer welfare. For example, majority rule tends to generate relatively robust “democratic” outcomes in their framework but examples can violate this. Suppose that we vote on the size of a municipal parking and that voters can be ranked according to their preferences on this one issue. Further, the median voter prefers to have 250 places. 50 % of voters prefer larger lots, but only moderately so. By contrast, 50 % of voters are fiercely opposed to any parking lots. In this case, total citizen welfare would be maximised by having no parking lot even though majority voting will yield a parking lot with 250 places.

Because the benchmark is less obvious in political markets, then, one should proceed with care when applying competition policy in this sphere. Setting this issue aside, however, media markets can create potentially important interactions with standard competition policy concerns. We consider these briefly here.

Firstly, diversity – variety - in media markets matters to the quality of political/societal debate and hence, ultimately, to the health of democracies. Of course, variety also matters in other markets: when there are more different types of cars for sale, consumers are more likely to find a product that closely corresponds to their needs. Accordingly, competition policy does consider the effect of mergers or potentially abusive conduct on the variety of products on offer in any market. In the case of the media, however, the role of diversity is even more crucial: it is not just a matter of each reader finding the outlet which best represents his/her view, as would be the case if we carried over the argument for the value of variety in standard markets. Rather, the fact that readers are exposed to different views is itself of great importance. This is the case for several reasons. First, external views serve as inputs to the consumer’s own opinions: a greater diversity of views can lead some readers to revise previously held opinions. Second, in a market where the information provided is not necessarily truthful, comparing various sources is essential to detect potential untruths. It might therefore make sense to prohibit the acquisition of newspaper B by the owner of newspaper A if the papers initially have different points of view and there are reasons to believe that B’s editorial line would become much closer to A’s after the merger. Such mergers might be blocked even if the joint market shares of the parties are below what would be considered problematic thresholds in other markets. While one might be concerned about preserving freedom of expression where competition authorities intervene to block such a merger, Justice Hugo Black’s opinion in *Associated Press v. United States* takes the opposite view that, “[t]he widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public...The First Amendment offers not the slightest support to the contention that a combination in restraint of trade in the news and views has any constitutional immunity.”²² Furthermore, preserving variety in no way limits the free speech right to publish fake news. To the contrary, it can allow many versions of fake news to thrive. Additionally, variety, competition, and freedom of speech all pull in the same direction, minimizing the need to coordinate different areas of law.

²⁰ See for a contemporaneous reference, J. Schumpeter (1942). *Capitalism, Socialism and Democracy*. Harper and Brothers. For a more recent reference, see D.C. Mueller, 2004, “Public Choice”, Kluwer Academic Publishers.

²¹ See P. Dasgupta and E. Maskin (2004), “The Fairest”, *Scientific American*, 92-97, March and references therein to a series of their own work.

²² See Justice Hugo Black, writing for the Court in *Associated Press v. United States* 326 US 1 (1945), p. 20

Second, concentration in media markets can lead to foreclosure in political markets. In Kane's time, newspapers were an important tool for political campaigning. While placards and even radio were also useful means of reaching potential voters, local papers were crucial as a place to advertise, a place to get favourable editorials, or even a place to get a formal endorsement. In this view then, the control of a significant part of the newspaper market could be used to weaken the ability of some politicians to compete. In competition policy, this would amount to (partial) *foreclosure*. This term refers to the behaviour of a vertically integrated firm (a firm producing both an input and a product that uses that input, say milk as input and cheese as the product or in our media case the input of an endorsement for a final output of a politician's campaign) when it refuses to supply an important input (milk or endorsements) to a rival producer of the final good (cheese or campaigns). This would also be the case if the firm sells the input at an excessive price that greatly inflates the production costs of its rival. As an example of this, in Kane's time the owners of powerful newspapers could help their own political campaigns or that of their favorite politician's by denying access to the journal to political rivals and/or reporting negatively on these rivals. While the more extreme Borkian tradition tends to cast doubt on such theories of harm, foreclosure is a common concern in both European Competition Law and more "progressive" views of US Law. Indeed, nowadays, such concerns would likely be taken quite seriously on both sides of the Atlantic.

Third, we raise two links between media markets and political markets that are less direct and hence, in our opinion at least, less convincing. In the first of these, Besley and Prat²³ (2006) explain how media competition can impose significant constraints on politicians, forcing them to be more responsive to the concerns of voters. However, politicians also have the means to influence the media through various strategies. One of these strategies emerges when the owner of the media/newspaper also owns economic interests in other economic sectors. This was, indeed, the case for Kane as outlined in the initial "newsreel" about his life and the eventual sprawling business empire that he built. By offering to favour these economic interests (say through biased government procurement decisions), politicians in power can obtain better treatment from an otherwise neutral media outlet and hence gain some measure of independence with respect to voters. A policy implication would be that acquisitions of media outlets by the owners of other economic interests, or the acquisition of other economic interests by those controlling media outlets, should be scrutinized more severely, and blocked more readily than other types of mergers. While it is not unusual for competition policy to scrutinize a particular industry more narrowly, it is not clear that this is an area that needs competition policy participation. Tighter control of the relationship between corporations and governments, including rigorous supervision of government procurement, is the subject of public contracts regulation, which is a well-established field. Such regulation might be a more direct and effective policy tool to control this problem. In addition, if competition policy attempts to control everything, the limited resources of competition authorities risks being spread so thin that nothing is controlled at all.

In the second of these links, Cowgill, Prat and Valetti (2022)²⁴ worry about the possibility that higher industrial concentration (fewer, bigger firms) would lead to more significant spending on lobbying by corporations. While greater concentration can in theory either increase or decrease lobbying activities, their empirical work suggests that greater corporate market power does lead to a moderate increase in lobbying. If one believes that corporate intervention in the political process is undesirable, then one can see the authors' analysis as an argument for tougher merger control as a way of keeping concentration and hence corporate lobbying in check. Similar to the point in the previous paragraph, however, in our view this is a rather roundabout manner to deal with excessive lobbying. Surely, legislating to directly limit any corporation's ability to intervene in political markets, as is currently undertaken with limits on corporate campaign contributions, would be more effective.²⁵

One could query whether linking these two markets should be pressed to its logical conclusion of accessing general equilibrium analysis in competition policy cases. While nothing in the law prohibits such an approach, formal analysis along these lines would likely be unworkable: economic arguments

²³ Besley, T. and A. Prat, 2006, "Handcuffs for the Grabbing Hand? Media Capture and Government Accountability, *American Economic Review*, 96:3, pp. 720 – 736.

²⁴ Cowgill, B., A. Prat and T.M. Valetti, 2022, "Political Power and Market Power", *CEPR Discussion Paper*, No DP17178.

²⁵ In the US, this more direct approach might run into concerns about "freedom of expression" but no such barrier would exist in Europe.

must ultimately convince a judge, and the assumptions that would need to be made to support a general equilibrium analysis would likely (and perhaps rightly) stretch the credulity of most.

On the other hand, relatively limited linkages may be possible and, given what we have reviewed here, perhaps should be. We do not take a stand on this, rather leaving it to readers to decide, but submit that an argument for heightened attention to preserving diversity in editorial approach because of the knock-on effects in political markets, attention to foreclosure to political markets by excessive concentration in media markets, consideration of effects deriving from conglomerate businesses that include media, and consideration for excessive lobbying could – with some care - potentially be made in court and in a compelling way. In sum, even if one does not change the existing approach of competition policy in statutes or the type of economic modelling that is used to support cases, the interaction between political and media markets does raise significant competition policy issues and could be included.

Conclusions

Overall, then, Kane gives us an excellent illustration of the concerns that we see illustrated in contemporaneous applications of the Sherman Act: the danger of capricious entrepreneurs wielding power for their own purposes and without regard to the economic or social good of the market that they serve. While the film appears quite dated in some ways, elements of the story ring true today in a world of digital giants that have been built by entrepreneurs and that touch upon our economic and political lives. Even in the more traditional media sphere and accepting the proposition that William Randolph Hearst's media empire was the model for Citizen Kane, it is interesting that the maximum circulation of Hearst's papers in the US was not far off the current market share of NewsCorp, the media empire built by Rupert Murdoch. NewsCorp's circulation, while hard to define, certainly rivals the number of followers that Elon Musk has on Twitter (X).²⁶

These are far from the only cases where the film appears very current: Vivendi's potential acquisition of Lagardere in France, combining the two biggest publishing groups in the country, has been questioned by the European Commission and competitors alike as creating excessive concentration, with attendant excessive prices, lower quality and lower accessibility. In a closer parallel to Citizen Kane, the group Reporters Without Borders (RSF) alleges in their documentary, "Le Système B" that the majority shareholder of the Vivendi group, Vincent Bolloré, uses bullying tactics to control journalists within his enterprises whilst also restricting them away from investigating his own business dealings directly. In a statement released on their website²⁷, the General Secretary of RSF states that, "Such a concentration of media outlets...poses a clear threat to the democratic debate." Perhaps, then, Citizen Kane is more current than one might think. Does the concentration of the media, including the digital platforms that we use to obtain our news and form our social networks, represent a threat due to traditional competition policy concerns of variety, quality, or price or does it represent a threat that goes beyond this to political "markets"? Should competition policy regulate those other threats, or should this be left to other bodies of law or, indeed, to the free market itself? The film, however dated in some ways, raises for economists and policy-makers alike are as valid today as they were when the film was made.

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²⁶ See NewsCorp Annual Report, 2022 (2022). The subscription numbers are, however, difficult to aggregate as they come from a variety of service provision models.

²⁷ Comments by Christophe Deloire, RSF General Secretary, available at: <https://rsf.org/en/le-syst%C3%A8me-b-rsf-s-shock-documentary-about-vincent-bollor%C3%A9-s-media>, accessed 3 December, 2022.