

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

ROUNDTABLE ON MARKET DEFINITION

-- Note by the Delegation of Norway --

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ROUNDTABLE ON MARKET DEFINITION

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1. Introduction

1. Market definition is central to most antitrust cases, as determining market power typically requires the definition of a relevant market. However, market definition is often problematic, particularly when products are differentiated or/and in two sided-markets. As a consequence, alternative approaches measuring unilateral effects directly have been developed, making the need to define a relevant market less important. This has internationally caused a discussion concerning to what extent these alternative approaches can supplement or replace market definition.

2. The Norwegian Competition Authority (NCA) has recently started to implement these alternative approaches, including critical-loss, UPP etc. in antitrust cases. As these methods are founded on diversion ratios and gross profit margins, the NCA have focused on developing expertise in estimating diversion ratios through the use of customer surveys. An important part of this work has revolved around making valid questionnaires, as well as obtaining an overview of circumstances when these methods are useful and not. Furthermore, the NCA has, in cooperation with the Norwegian School of Economics, an ongoing research program on the issue of market definition. The program includes methodological discussions and empirical studies related to market definition. This program is part of a larger project on competition policy, administered by the Ministry of Government Administration, Reform and Church Affairs.

3. The NCA shall intervene against a concentration if it finds that the concentration will create or strengthen a significant restriction of competition. This submission includes an example of a merger case in a two-sided market, briefly demonstrating the use of customer surveys and diversion ratios. The example is from the media market, and involves a proposal from A-pressen AS to purchase Edda Media AS (owned by Mecom Europe AS).¹ Both firms have activities within newspapers, printing, radio, digital media, magazine, advertisement and distribution. This submission examines issues related to the market definition and the competition analysis in the market for supply of advertisement and the supply of content to the readers of newspapers. As the case is still pending at the time of the writing, all views presented the NCA in this submission must be considered as preliminary.

4. The NCA's experience so far is that customer surveys and diversion ratios gives useful information relating to the market definition and to assess competitive pressure, especially cases involving differentiated products and two sided-markets. The economic analysis becomes more empirically based, rather than resting on qualitative arguments alone. However, the NCA is of the opinion that these approaches should be used to improve rather than to abandon market definition.

5. As an introduction, some key features regarding market definition and competition analysis in two-sided markets are briefly explained. Section 3 describes the proposed merger in the Norwegian newspaper market and details the assessments regarding market definition and competition analysis made by the NCA in the case. Section 4 concludes the submission.

¹ Case 2011/0925 – A-pressen AS/Mecom Europe AS (Edda Media AS).

2. Market definition and competition analysis in two-sided markets

6. In cases involving two-sided markets, the market definition and competition analysis must take into account several economic issues that do not arise in a one-sided market.²

7. A key feature in two-sided markets is the presence of indirect networks effects. These exist e.g. when the value of a customer on one side of the platform increases with the number of customers on the other side. Newspapers are an often-cited example, where the value of the newspaper to advertisers depends on the number and type of readers the newspaper attracts. In antitrust cases, it is often the strength of the indirect networks effects that determines whether the markets "two-sidedness" matters enough to have substantial effect on the results of an economic analysis.

8. A related issue is when determining an optimal price structure a two-sided platform must consider among other factors the relative size of networks effects. In setting prices, a newspaper need to consider that charging too high prices to readers could result in fewer readers which in turn will result in fewer advertisers willing to buy advertising space in the newspaper. Hence the pricing incentive and structure differ in two-sided markets compared to "traditional" one-sided markets.

9. Another important differentiation to consider is between single and multi-homing markets. Most two-sided markets are characterised by one-sided multi homing, i.e. customers on one side of the market join a single platform while customers on the other side join several platforms. Market power is more likely to arise in markets characterised by one-sided multi homing.

10. Most standard approaches to market definition, such as the SSNIP test, diversion ratios, critical loss, and other economic models, do not directly apply to the concept of two-sided markets without some form of modification.³ This also applies to newer methodologies, such as UPP and GUPPI, which focus directly on unilateral effects. All these methodologies are developed based on the economics of one-sided markets. Given the nature of the "two-sidedness", this may mean that critical-loss analysis could lead to a market being defined to widely or to narrowly.

11. In practice, the majority of the competition authorities define separate markets on each side of a two-sided market, while taking the impact of indirect networks effects into consideration as part of the competition analysis. By being aware of the inaccuracies, errors can be reduced in practice. Furthermore, there is a tendency to reduce the importance of market definition and increase the importance of the competition analysis, especially in two-sided market cases.⁴

12. Ultimately, choice of approach depends on the strength of the networks effects (and the degree of differentiation). The greater the "two-sidedness", the more appropriate the above-mentioned approach may be. However, an assessment of what would be the "right approach" must be done on a case-to-case-basis.

² We do not intend to explore the two-sided market literature in detail but mainly highlight some key points. For a more detailed overview of the literature see e.g. [DAF/COMP\(2009\)20](#).

³ For details on these issues, see e.g. chapter 12 "Two-sided market definition" by David S. Evans in "Market definition in antitrust: theory and case studies", ABA Section of Antitrust Law, 2012.

⁴ See e.g., "Anticipated acquisition by LOVEFiLM International Limited of the online DVD rental subscription business of Amazon Inc", OFT decision ME/3534/08, 15 April 2008.

3. Proposed merger in the Norwegian newspaper market

13. The merger regulations in the Norwegian Competition Act of 2004 are in many material aspects harmonized with the EC competition rules. Section 16 of the Competition Act of 2004 corresponds, with minor exceptions, to the EC merger regulation and the EEA Agreement Article 57.

14. The NCA has reviewed a merger in the Norwegian newspaper market under section 16 of the competition act. As described below, the NCA reached the preliminary conclusion that the proposed merger is likely to raise significant competition concerns in several geographical markets for the supply of contents to consumers and the supply of advertising. This section details the NCA's approach concerning market definition and competition analysis, briefly demonstrating the use of customer surveys and diversion ratios in the specific merger case.

3.1 Short outline of the merger case

15. In late 2011, the NCA started to consider a proposal by A-pressen AS to acquire Edda Media AS. As described introductorily, both companies have business activities within several media-related areas and are regarded as the second and third largest "media houses" in Norway.⁵

16. The main areas of overlap between A-pressen and Edda Media are local and regional newspapers with circulation in the urban and rural areas in the South and South-West parts of Norway.⁶ The NCA are currently examining whether the proposed acquisition will lessen the competition in the supply of content to consumers (reader market) and the supply of advertising (advertising market), the latter dealing only with advertising, excluding classified ad.⁷

17. Other markets, such as print, distribution and classified ads were assessed by the NCA and found to raise no competition concerns. Thus, they are not discussed in this submission.

3.2 Customer survey – subscribers and advertisers

18. As already mentioned, the market definition and competition analysis may be a challenge in two-sided markets. To get more knowledge about the customers in the two-sided market, the NCA carried through a customer survey of subscribers and local advertiser in six of the merging parties' newspapers which had substantial geographical overlap.

19. The NCA identified newspapers which had substantial geographical overlap using information on circulation from the parties, the Norwegian Media Businesses' Association (MBA) and the Local Newspapers' Association (LNA). The following newspapers were chosen for survey:

- County of Østfold: "Fredrikstad Blad" and "Demokraten"
- County of Telemark: "Telemarksavisa" and "Varden"⁸
- County of Buskerud: "Drammens Tidende" and "Bygdeposten".

⁵ The largest "media house" in Norway is Schibsted AS.

⁶ The transaction includes 80 titles, where 48 is owned by A-pressen and 32 is own by Edda Media. This includes mainly paid for titles, and a few free titles.

⁷ At the time of the writing, the merger case is still pending. The NCA has presented a reasoned preliminary decision on intervention to the notifying party. The notifying party then have 15 days to reply before the NCA presents a formal decision. Hence, all views presented in this submission are considered preliminary.

⁸ To limit the scope of this contribution, the NCA has chosen to focus only on these two newspapers.

20. A customer database consisting of subscribers and advertisers was supplied by the parties for each newspaper. The customer databases consisting of advertisers were restricted to those who in 2011 advertised directly through the newspaper, leaving out advertisers who had purchased space in a package of local titles across the regional area.⁹ The customer lists were randomised, and a telephone survey was conducted until 25 % of the advertisers per newspaper had answered the questionnaire. The subscribers were correspondingly randomised, and a telephone survey was conducted until a sample of 200 subscribers per newspaper was reached.

21. The questionnaires in the survey were formulated by the NCA, and the merging parties got the opportunity to comment on them before the survey was carried through. The questionnaires were fully piloted in two of the newspapers prior to finalisation. The fieldwork was conducted during late March/early April, 2012.

3.3. *Market definition and competition analysis*

22. The NCA approached the market definition in the merger case by defining separate markets for subscribers and for advertisers. The impact of indirect network effects was taken into consideration as part of the competition analysis. This section details the NCA's approach.

3.3.1 *Market definition*

23. In the context of market definition, the NCA made use of information supplied by the merging parties, answers from third parties and findings from the customer survey. Based on the customer's stated second choice of newspaper in the survey, the NCA estimated diversion ratios for subscribers¹⁰ and advertisers¹¹ in the aforementioned newspapers. These results were then interpreted and discussed in the context of critical loss analysis to identify the relevant markets.¹²

24. Furthermore, given the degree of differentiation between the newspapers and the number of alternatives in the form of other print and non-print media for both readers and advertisers, the NCA first approached the market definition by considering competitive constraints placed on the merging parties by other forms of print and non-print media. Secondly, the NCA considered the competitive constraint the merging parties newspapers placed on each other.

25. The NCA started the market definition work by assessing the parties' newspapers as a broadly defined relevant market. Given the highly differentiated nature of other print and non-print media, the constraint that each exerts on the parties newspapers is independent of the product scope. Answers from advertisers who responded to NCA's market investigation and findings from the survey showed the constraints from other print and non-print media to be limited. Hence, indicating that the relevant markets were no broader than supply of advertising and supply of content to consumers in newspapers.

⁹ Reasons for this approach were that the NCA observed that roughly 2/3 of the income were from local advertisers and that the competition concerns were less for large customers as they have more alternatives.

¹⁰ Survey question: "You answered in the previous question that you would have chosen to subscribe to a different newspaper if Varden was not available. Which newspaper would you subscribe to?"

¹¹ Survey question: "You answered in the previous question that your firm would have chosen another newspaper if Varden was not available. Which newspaper would you advertise in?"

¹² Critical loss analysis measures the minimum sales volumes that a hypothetical monopolist would need to lose to make a 5-10 % price increase unprofitable. The critical loss is compared to the actual loss the hypothetical monopolist would incur in response to the 5-10 % price increase to determine whether such a price increase would be profitable. If the actual loss is smaller than the critical loss, the price increase would be profitable for the hypothetical monopolist, which would be indicative of a relevant product market.

26. In the reader market, the NCA found high diversion ratios between the parties' two regional newspapers "Telemarksavisa" (TA) and "Varden" (VA). Among the subscribers of TA, about 6 out of 10 stated VA as their second choice. Analogous, among VA's subscribers 5 out of 10 stated TA as their second choice. The NCA regarded the diversion rates to be relatively high. Furthermore, almost 9 out of 10 subscribers in both newspapers stated the other newspaper as a good or very good alternative to their current newspaper. In the context of critical loss analysis, and a gross profit margin larger than 10 %, the above results are indicative of a relevant product market.

27. In the market for advertising, the NCA found moderate to high diversion ratios between the parties' newspapers in all regions. Especially high diversion ratios were found in the county of Telemark between the newspapers TA and VA. About 8 out of 10 customers in TA stated VA as their second choice. Analogous, 5 out of 10 customers in VA stated TA as their second choice. The above indicate that customers do view the merging parties' products as close substitutes. Furthermore, about 9 out of 10 customers in both newspapers stated the other newspaper as a good or very good alternative to advertise in.¹³ In the context of critical loss analysis, and a gross profit margin larger than 10 %, the above results are indicative of a relevant product market.

28. To summarize; in the reader market the NCA found that TA and VA represented a relevant product market. In the advertising market, the NCA found that all the investigated newspapers with geographical overlap represented relevant product markets.

3.3.2 *Competition analysis*

29. As explained, the NCA examined the effect of the proposed acquisition on competition in each of the markets separately, recognising the close relationship (i.e. networks effects) between the reader and the advertising markets.

30. When assessing the reader market in isolation, the NCA found that there was sufficiently strong competition between TA and VA that the merger was likely to give rise to unilateral effects. After the merger the parties would control the only two regional newspapers TA and VA, as well as the majority of other local newspapers in the county of Telemark. Both survey results and information put forward by the parties and third parties, did point out that the subscribers consider the two regional newspapers as very close substitutes, and that other newspapers do not exert strong competitive constraints on the two newspapers. In the context of network effects, the availability of substitutes for advertisers is normally recognized as constraining the potential for the merging parties to raise prices for readers. This constraining effect from the advertising market was not found in this case, and the NCA concluded that the indirect networks effects were not particularly strong in that direction, thus of no consequence for the initial assessment.

31. When the NCA assessed the advertising market in isolation, it found sufficiently strong competition between the parties' newspaper titles so that the merger was likely to give rise to unilateral effects. As explained above, the parties would after the merger control the only two regional newspapers TA and VA. Survey results did point out that the advertisers view the two regional newspapers as very close substitutes. When taking the two-sidedness of the market into consideration, the NCA did not find any constraining effect stemming from the readers in relation to the potential to exercise market power over advertisers. Hence, the NCA concluded that the indirect networks effects were of no consequence for the initial assessment.

¹³ Survey question: "On a scale of 1-5 where 1 is very poor alternative and 5 is a very good alternative, how do you regard the following newspapers as a good alternative to Varden?"

32. As a result of the above, the NCA concluded that the proposed merger was likely to raise significant competition concerns in the supply of reader content and the supply of advertising in the county of Telemark. In addition, the NCA also concluded that there were reasons for competition concerns in the supply of advertising for the identified newspapers in the counties of Buskerud and Østfold. As already mentioned, these are preliminary conclusions.

4. Conclusion

33. The matters discussed above illustrate how the NCA, using customer surveys and diversion ratios, has defined and analysed competition issues in a setting involving two-sided markets with differentiated products. The experience suggests that surveys and diversion ratios give very useful information to define the market and assess competitive pressure in these types of antitrust cases, although the NCA did not implement a formal critical-loss or UPP analysis in the economic analysis.

34. In the context of market definition, the NCA decided to define separate markets for subscribers and advertisers, taking the networks effect into consideration in the competition analysis. This can be seen as a practical, but also as a transparent procedure in a complicated market.

35. Given the diversion ratios, the NCA could in principle have avoided market definition and focussed on the direct competitive constraint being removed by the merger. However, the need for a controlled and transparent economic analysis was seen as important. Market definition serves to frame the subsequent analysis made by the authorities. This approach also makes the assessment more transparent for the merging parties. Lastly, as there are some methodological limitations associated with methods such as critical-loss/UPP, the NCA believe that these economic tools should be used as supplements to other relevant economic evidence. Therefore, the NCA is of the opinion that these new approaches should be used to improve rather than abandon market definition.