CURRICULUM VITÆ

Kent W Mikkelsen

Office

Economists Incorporated
1200 New Hampshire Ave., NW, Suite 400
Washington, DC 20036
(202) 833-5240
mikkelsen.k@ei.com

Home

3012 Fayette Road
Kensington, MD 20895
(301) 946-8901

Background

Born: September 20, 1954
Married, 3 children

Education

Ph.D., Economics, Yale University, 1984

M.Phil., Economics, Yale University, 1981

M.A., Economics, Yale University, 1980

B.A., Economics, Brigham Young University, 1978, *summa cum laude*

Fellowships, Honors, and Awards

College Valedictorian, Brigham Young University, 1978

H. B. Earhart Fellow, 1978-1979

University Fellow, Yale University, 1978-1980

Richard Bernhard Fellow, 1980-1981

Research Scholar, International Rice Research Institute, 1981

Fields of Concentration

Industrial Organization, Economic Development

Professional Experience

Present Position: Vice President, Economists Incorporated

Professional Experience (cont.)

1984-1986: Economist, Economic Analysis Group, Antitrust Division, U.S. Department of Justice

1983-1984: Visiting Assistant Professor, University of Michigan

1982: Acting Instructor, Yale University

1981-1982: Teaching Fellow, Yale University

1979-1983: Research Fellow, Yale University

Testimony

Expert witness for Government in *United States* v. *Calmar Inc. and Realex Corp.*, United States District Court, District of New Jersey, Civil Action No. 84-5271.

Expert affidavit filed for Plaintiff in *Product Movers, Inc.* v. *Valassis Inserts, Inc.*, United States District Court, Southern District of New York, 88 Civ. 5214 (MGC).

Expert witness for Defendant in *Sunbelt Television, Inc.* v. *Jones Intercable, Inc.*, United States District Court, Central District of California, Case No. CV-91-3506 WDK (Kx).

Expert witness for Defendant in *Stag-Parkway, Inc.* v. *The Dometic Corporation*, United States District Court, Northern District of Georgia, Case No. 1-91-CV-2579-JOF.

Expert witness for Plaintiff in *Thomas L. Hopkins (State of Virginia) v. Smithfield Foods, Inc.*, Virginia Circuit Court, Isle of Wight County, No. 96-125.

Expert witness for Defendant in *Elpizo Limited Partnership* v. *Marriott International, Inc. and Host Marriott Corporation* v. *Maryland Hospitality, Inc.*, Court of Common Pleas for Philadelphia County, Pennsylvania, October Term, 1994, No. 607.

Selected Television-Related Matters

An Economic Analysis of the Prime Time Access Rule, March 1995. Submitted by ABC, CBS and NBC in Federal Communications Commission MM Docket No. 94-123. *(Co-author)*

An Economic Analysis of the Broadcast Television National Ownership, Local Ownership and Radio Cross-Ownership Rules, May 1995. Submitted by ABC, CBS, NBC and Westinghouse in Federal Communications Commission MM Docket No. 91-221. *(Co-author)*

An Empirical Investigation of the Scope of Competition Among Newspaper, Radio, Television and Other Advertising Media, February 1997. Submitted by ABC in Federal Communications Commission MM Docket No. 96-197. *(Co-author)*

Television-Radio Cross Ownership, Concentration and Voices in the Top 50 DMAs, February 1997. Submitted by CBS in Federal Communications Commission MM Docket No. 91-221. *(Co-author)*

Structural and Behavioral Analysis of the Newspaper-Broadcast Cross-Ownership Rules, July 1998. Submitted by Newspaper Association of America in Federal Communications Commission MM Docket No. 98-35. *(Co-author)*

Panel Member, Panel Discussion on the FCC Ownership Rules, The Media Institute, December 9, 1998.

Remarks for FCC En Banc Hearing on Local Television Ownership Rules

Kent W Mikkelsen

February 12, 1999

I am pleased to have an opportunity to present an economist's perspective on the station ownership issues before the Commission.

Among economists, there is a general presumption that in a free market, the self-interested actions of individuals and firms will lead to socially desirable amounts and types of goods and services being produced as efficiently as possible.

Exceptions to this general presumption can occur due to what economists call "market failure." Market failure can occur, for instance, when too much or too little of some product is produced because economic actors do not fully internalize the costs or the benefits of their actions. Of particular interest today is another type of market failure referred to as problems of monopoly or market power. In many cases, firms could increase their profits by combining to reduce or eliminate competition among themselves. The participating firms get higher profits, but society suffers through higher prices and inferior products and services. For this reason, the antitrust laws were designed to discourage or prevent firms from significantly reducing competition. These laws are justified by this potential market failure.

Economic theory teaches that competition can be threatened if economic activity in a market is concentrated into the hands of a small number of firms. Generally speaking, the larger the number of firms in the market, and the more similar the firms are in size, the greater is the likelihood that competition will prevail (other things being constant). Thus, there is a clear theoretical link between the structure of ownership in the market and the presence of competition.

The U.S. Department of Justice and the Federal Trade Commission, the two main federal antitrust agencies, have developed a standard methodology they use to identify changes in ownership structure that can potentially reduce competition. Their "Horizontal Merger Guidelines" are also widely used elsewhere in analyzing competition issues. At the risk of oversimplification, I would like to very briefly describe the analytical process.

> The first step is to determine all the products and services in which the merging parties compete.

Next, one determines who else competes. That is, one determines what other products and services are close substitutes in use and are available in the relevant geographic area.

Having identified the relevant products and competing providers, the next step is to assesses the concentration of ownership among the providers. Concentration is usually measured using an index based on the market shares attributable to each separate owner in the market, using actual sales shares or shares based on potential sales.

The measured concentration level is then compared with external standards. While there are other factors that are also considered, the federal agencies that routinely analyze mergers have identified as a minimum threshold the concentration level that would exist in a market with 5-6 equal sized firms, or some larger number of unequal sized firms, depending on the degree of inequality.

Based on the results of this analysis, an antitrust agency would decide whether a proposed merger was likely to result in a significant decrease in competition. If so, the agency would likely oppose or seek modification of the proposed merger

Please note that the antitrust agencies do not attempt to "maximize" the number of competitors. Against the possibility that competition would not be preserved if two firms merged, competition policy recognizes that mergers and joint ownership can yield benefits to consumers in the form of improved product offerings and lower costs. It is also recognized that economic freedom should not be curtailed unless there are clear, compelling benefits to be gained. For these reasons, only mergers that are judged likely to have a significant impact on competition would be opposed.

Competition analysis is best done on a case-by-case basis. Relaxing that rule for a few minutes, I would like to state some general conclusions that I believe would be verified in case-by-case analyses of individual markets where mergers (joint-ownership) might be proposed if the Commission were to relax certain of its ownership rules.

1. Suppose that the "TV duopoly" rule were relaxed. Assuming that TV stations do not compete significantly with other media and so form a separate market, there are many areas of the country in which little or no joint ownership of TV stations could be permitted without significantly reducing competition. For instance, there are about 90 DMAs in which there are 4 or fewer commercial TV stations. Assuming that the DMA is the relevant geographic area in which to analyze competition, moving

from 4 to 3 or from 3 to 2 independent owners of healthy competitive stations may well be likely to reduce competition.

By the same token, there are many DMAs in which joint ownership of TV stations would presumably have no significant effect on competition. In markets with 8 or more commercial stations, of which there are over 40, some joint ownership could probably be permitted without raising competitive concerns.

2. To take another case, suppose that TV stations and radio stations are considered to be in the same market, a proposition for which there is considerable evidence. In this case, there could be some competitive rationale for limiting cross-ownership of TV stations and radio stations, but there is no justification for an arbitrary cap on the number of cross-owned stations. In an analysis I and colleagues submitted to the Commission about 2 years ago, for instance, we found that permitting TV stations to be jointly owned with radio station groups as large as are permitted by the 1996 Act would result in few if any markets with high levels of concentration in the largest 50 DMAs, even after we constructed the mergers to maximize concentration.[1]

In individual cases, joint ownership could be beneficial despite producing concentration levels that would appear troubling. If joint ownership or operation is necessary to bring stations on the air that would otherwise not be broadcasting or would be insignificant as a competitive force, joint ownership is probably not anticompetitive. Joint ownership or operation can also enable stations to offer superior services that would not be economical for either station to offer by itself. Such gains may outweigh competitive concerns.

I think it is safe to say that the TV duopoly and radio-TV cross-ownership restrictions now in place are not needed to preserve competition. One must also say that competition could be harmed if there were no limit on joint ownership of stations. Antitrust analysis is designed to provide such a limit. I believe the Commission should relax these restrictions and substitute an antitrust analysis in cooperation with the Department of Justice.

Competition and diversity are offered as the two bases for the Commission's ownership rules. I find it instructive to contrast the two.

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[1] Economists Incorporated, "Television-Radio Cross Ownership, Concentration and Voices in the Top 50 DMAs," February 7, 1997.

First, the justification for a competition policy is "market failure." I do not know of a corresponding rationale that demonstrates that the amount of diversity produced by economic agents in the market is too small.

Second, unlike with competition, there is no sound theoretical basis for linking deconcentrated station ownership to the types of diversity the Commission is concerned about. It is presumed that, with a given number of stations, content diversity will be greatest if all stations are separately owned. It is equally plausible to believe that, if one party owned several stations, it would purposely diversify the offerings on its stations so as to increase the overall audience it would attract.

The link between ownership diversity and viewpoint diversity is equally tenuous. Station owners don't typically enforce their viewpoint on their stations. If we assume profit-maximizing behavior, diversity in the audience seems to dictate that there is diversity of viewpoints expressed on each station, as well as diversity across stations. Furthermore, station managers and news directors also affect what is aired, not just owners.

Counting "voices" seems to imply that persons or groups without a broadcast station don't have a voice. Looking around Washington D.C. or most any other community, one sees commercial and non-commercial groups with viewpoints they want to express. These groups find many ways of persuasively expressing their views without owning a broadcast station.

Suppose it could be demonstrated that deconcentrated ownership resulted in increased diversity. There is a temptation to take what I will call an "absolutist" approach to diversity. That is, if diversity is good, then a policy that leads to more diversity must be preferred to a policy that yields less diversity. Such an absolutist approach is not the basis for sound decision-making. To illustrate with an example, most people would agree that safety is a desirable goal. Nevertheless, we do not adopt policies that "maximize" the amount of safety. Mandating speed limits of 25 mph everywhere, or imposing restrictive licensing that would sharply reduce the number of cars on the road, would both likely increase traffic safety. We choose not to adopt these policies, however, because the cost in inefficiency and loss of personal freedom is judged to be too high. Similar balancing is needed in the pursuit of diversity or any other social goal.

In conclusion, competition in broadcasting can be preserved using antitrust standards without the need for one-size-fits-all restrictions like the duopoly and one-to-a-market rules. If, in selected markets, ownership concentration were allowed to rise to somewhat higher levels consistent with competition standards, I see no reason to think that the associated amount of diversity provided by broadcast stations and other sources would be insufficient. No separate ownership standard based on diversity is warranted.