Application No. 322/22

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**Scientific Abstract – Ownership of Media Outlets as an Antitrust Concern**

Big business’s influence over the political arena is a major contemporary concern. While on the legal level, the problem involves chiefly constitutional law, neither constitutional law or even administrative law doctrines can adequately address it. Consequently, a key aspect of the phenomenon, the interconnection between big business, media outlets, and politicians, is currently beyond the reach of the law. We tackle the issue from a new perspective, through the lens of antitrust law, proposing a novel theoretical framework for analyzing the nexus of business, politics, and media. Equally importantly, we suggest a remedy that can effectively manage this growing problem.

Our proposed research focuses on a specific channel of big business’s influence over the political arena by explaining how big businesses may obtain “soft power” over politicians through acquisitions of controlling interests in media outlets. Providing several examples, we illustrate the realities of this problematic process. We aim to expand our dataset of examples to facilitate a systematic analysis of the full extent of the phenomenon.

The proposal explains why big businesses’ influence on the political sphere is most troubling when it is achieved through media outlets and not through alternative channels, such as lobbying, political contributions, bribery, or prohibited gifts. Media coverage is at least as, if not more, effective than other channels of influence, given its strong impact on public opinion and its resultant importance for politicians. At the same time, media coverage is much more difficult to regulate than other channels of influence for two sets of reasons. The first involves ideological considerations, the most important of which is the reluctance to impinge on the freedom of the press. The second revolves around practical considerations, such as the difficulty in detecting implicit and unspoken quid pro quo arrangements for receipt of political favors in return for favorable coverage. Finally, we explain why the influence of media outlets on political processes is even more problematic when it serves the external commercial interests of a business entity than when it serves the ideological inclination or interests of the publisher.

We suggest an innovative approach to these dilemmas. Rather than addressing the troubling symptom of skewed coverage only after it surfaces, our proposal, inspired by antitrust law’s merger control, will avert the problem before it materializes. This will be accomplished by limiting businesses’ control over media outlets in cases when the likelihood of abuse of the outlet by its owner is high. To support this approach, we will develop an index that objectively assesses the likelihood of “contamination” of a media outlet by external commercial interests. Our index, tentatively termed the Business-Media Influence Index (BMII), is modelled after the well-known Herfindahl-Hirschman Index (HHI) used by antitrust authorities. Limitations on control of media outlets by businesses when BMII thresholds are high may take the form of an ex-ante prohibition on specific acquisitions or an ex-post divestiture order.Regardless of the specifics of the appropriate regulatory regime, which we intend to explore and expand upon in the course of the research, the proposed approach is structural. It will require no interference with specific publications or the detection of implicit deals between politicians and media outlets. Rather, without unduly infringing on freedom of the press, our proposal will shield media outlets from interests that should remain foreign to them in a democracy.