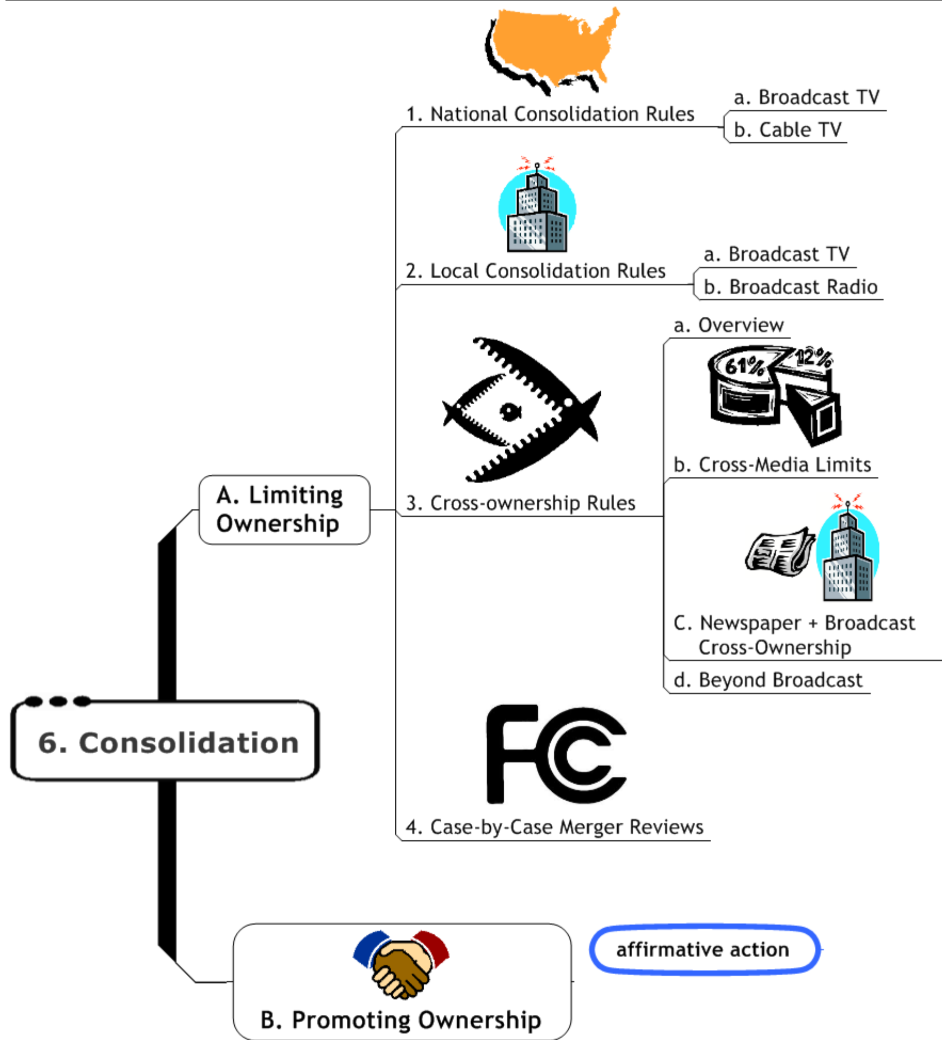
CHAPTER 6

Consolidation



Media firms are getting bigger and bigger. Firms are buying up their competitors in the same city and across the nation. Indeed, they are *consolidating* across industry lines, with cable companies buying Internet companies buying broadcast companies, and so on. Such consolidation must make business sense;

otherwise, why would the firms merge in the first place? But is self-interested business sense what's best for society?

In a market economy, the answer is presumably yes: it's the self-interested (i.e. economically rational) behavior of suppliers and consumers acting in a free market that leads to efficient distribution of products and services. And we always have antitrust law as a backstop to prevent abuses of monopoly power.

But we aren't talking about just any old product—some fungible widget like a toaster. Instead, we are talking about media and communications, which produce and distribute the content that "programs" our polity, configures our culture, and provides the information necessary for democratic self-governance. Should this alter the way we think about consolidation? Or is this just an intellectual veneer for an irrational aversion to "bigness"?

In the first part of this chapter, we examine how the FCC limits ownership to constrain horizontal consolidation and cross-ownership. In the second part, we briefly examine affirmative action taken to promote ownership by particular categories of persons, to counter the homogeneity of owners. Our emphasis is on broadcast, especially television.

A. Limiting Ownership

NOTE: CONSOLIDATION "DIRECTIONS"

In studying consolidation, make sure to distinguish three different "directions" in which firms might get bigger: vertical integration, horizontal consolidation, and cross-ownership. Let's run through some examples in broadcast TV. The life cycle of producing, distributing (nationally), and broadcasting (locally) modern broadcast TV is enormously complicated. Not surprisingly, this life cycle requires the coordination of many players acting in many stages of a production-distribution-exhibition process.

First, the video programming must be produced—for example, by a Hollywood studio, such as Disney. Next, it must be distributed nationally—for example, by a major television network, such as ABC. Finally, it must be broadcast locally for viewer consumption by a local television station, such as the ABC-owned-and-operated station in Los Angeles, KABC-TV. In this description, the life cycle of the broadcast TV service is broken down into three stages: (1) program production, (2) national distribution, and (3) local exhibition to an audience through local broadcast.

Consolidation between these stages is called "vertical." Notice how the output of stage 1 is an input in stage 2, and so on. If a firm that has historically engaged only in national distribution (stage 2) suddenly enters the market of video pro-

gramming production (stage 1), then that firm has changed its structure by vertically integrating.

By contrast, consolidation entirely within the same stage is called "horizontal." For example, a firm that owns one local television broadcast outlet (stage 3) in Los Angeles may seek to buy another television station (also stage 3) in Los Angeles, which is a direct competitor. This involves *horizontal* consolidation in the same stage of production-distribution-consumption.

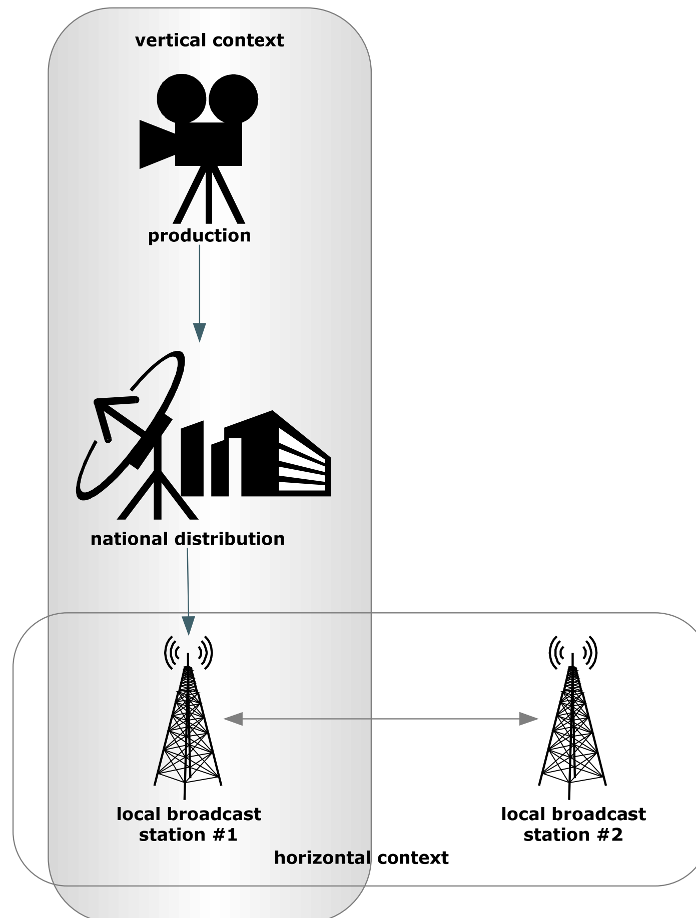


Figure 6.1: Vertical & Horizontal Contexts

Finally, sometimes firms merge across industry lines. For example, consider a television station deciding to buy the local daily newspaper. In these transactions, there is no obvious vertical or horizontal relationship. This sort of consolidation is called "cross-ownership". In this chapter, we focus on the problems of horizontal consolidation and cross-ownership. Vertical integration is discussed later in CHAPTER 7: ACCESS.

So, what's wrong with more horizontal consolidation and cross-ownership? Is it just the fear of monopolies, studied back in CHAPTER 1: POWER—higher prices and lower innovation? Or is there something more to worry about? According to the FCC, there is definitely something more—a trinity of values that travel under the names of diversity, competition, and localism.

POLICY GOALS

Media Ownership Order, R&O and NPRM, 18 FCC Rcd 13620 (2003)

A. DIVERSITY

18. There are five types of diversity pertinent to media ownership policy: viewpoint, outlet, program, source, and minority and female ownership diversity.

1. Viewpoint Diversity

19. *Background*. Viewpoint diversity refers to the availability of media content reflecting a variety of perspectives. A diverse and robust marketplace of ideas is the foundation of our democracy. Consequently, "it has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[32]

20. Because outlet owners select the content to be disseminated, the Commission has traditionally assumed that there is a positive correlation between viewpoints expressed and ownership of an outlet. The Commission has sought, therefore, to diffuse ownership of media outlets among multiple firms in order to diversify the viewpoints available to the public.

26. *Discussion*. We adhere to our longstanding determination that the policy of limiting common ownership of multiple media outlets is the most reliable means of promoting viewpoint diversity.

30. [W]e do not pass judgment on the desirability of owners using their outlets for the expression of particular viewpoints. Indeed, we have always proceeded from the assumption that they do so and that our rules should encourage diverse ownership precisely because it is likely to result in the expression of a wide range of diverse and antagonistic viewpoints.

32. *Measuring Viewpoint Diversity.* Although all content in visual and aural media have the potential to express viewpoints, we find that viewpoint diversity is most easily measured through news and public affairs programming. Not only is news programming more easily measured than other types of content containing viewpoints, but it relates most directly to the Commission's core policy objective of facilitating robust democratic discourse in the media. Accordingly, we have

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[32] *Turner I*, 512 U.S. at 663-64 (internal quotation marks omitted) (quoting *United States v. Midwest Video Corp.*, 406 U.S. 649, 668 n.27 (1972) (plurality opinion) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945)).