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The Role of Media Pluralism in the Enforcement of EU Competition Law

Konstantina Bania

Foreword by Giorgio Monti

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FOREWORD

Konstantina Bania's book makes the case for optimizing and sharpening the application of EU competition law to address the risk of reduced media pluralism. It offers a searching, multi-disciplinary reflection on a topic which has held the attention of policymakers for many years but which has gained increased prominence in spite of the emergence of the internet as a platform that, one might have thought, would create more open communication channels.

The book starts by exploring how far concerns about media pluralism remain in spite of the emergence of a wide variety of opportunities offered by the internet. Finding that risks to pluralism remain notwithstanding (and also because of) new technologies, she moves to explain that in the absence of either sufficiently powerful national rules or clear EU legislative competence, competition law may well offer options to protect EU media markets indirectly.

Her diagnosis is that the enforcement of competition law can do better by safeguarding both competition and pluralism more effectively. The analysis is retrospective (how well has the European Commission handled media markets?) and prospective (can we develop a pluralism friendly antitrust policy?). The assessment covers the range of anticompetitive conduct but at its heart is the notion of market foreclosure, and the risk of foreclosure that results when one entity controls an asset or factor of production. Whether control is over premium content, of retail prices, or a popular information gateway, the risk that control creates foreclosure up or downstream animates the analysis in this book. Unusually perhaps, the author does not just call for a recalibration of competition law to serve the interests of media pluralism. In other words, she does not advocate a weakened antitrust assessment to favour pluralism. Rather, the call here is for an integrated antitrust assessment of the impact of business practices on both competition and pluralism.

The scope of the project is ambitious: covering old and new media, from books to digital platforms. It considers the interdependence of various media and how regulatory responses in one media market might affect another. For example, one should study the impact that regulating an online platform's display of news may have on the market for newspapers: do platforms just steal content or do they enhance the visibility of newspapers and thus stimulate greater consumption of newspapers? The book digs into the economics of the relevant sectors, seeking to provide pathways for

the adoption of more relevant economic models into the decision-making practice of the Commission.

The book contributes to scholarly discussions by the way it asks us to consider critically the contribution of EU competition law in media markets and by examining the synergies between competition and non-competition objectives. It asks enforcers to raise their game: exposing lessons to be learned about the past and considering how to shape enforcement in a fast-moving, uncertain future.

Giorgio Monti
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The Role of Media Pluralism in the Enforcement of EU Competition Law

PhD Award

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In an era of communicative abundance, consumers can access content anytime, anywhere and on any digital device. Safeguarding media pluralism has never before been as essential to our democracies as it is today. What role, if any, should EU competition law then play in protecting it? In delving into this question, Konstantina Bania conducts an in-depth analysis of the economics of the sector as well as the European Commission's decision-making practice regarding mergers, abuses of dominance as well as anti-competitive agreements. Combining unique theoretical and practical insights, this book showcases novel tools for competition law enforcement to protect quality dimensions of competition and consumer welfare in media markets where consumers increasingly pay with their attention or data rather than money. This book is a must-read study for all scholars, competition authorities and policymakers interested in the question of how competition law can apply in such a manner that antitrust and merger assessments do not disregard non-price concerns such as privacy or diversity.

Konstantina Bania *is Senior Legal Counsel - Competition Law and Policy, at the European Broadcasting Union and an Extramural Fellow at the Tilburg Law and Economics Centre.*

This thesis received the Concurrences PhD Award. The jury was composed of Professors Laurence Idot (University Paris II Panthéon-Assas), Ioannis Lianos (University College London), Francesco Martucci (University Paris II Panthéon-Assas) and Etienne Pfister (French Competition Authority).

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