How Bigger Media Will Hurt Maine: A Report on Maine Media Markets and the Impact of Newspaper/TV Cross-Ownership Mergers

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OVERVIEW

How big the media gets matters to our democracy at all levels of government, including the local level. The Supreme Court has long held that **"**the widest possible dissemination of information from diverse and antagonistic sources is essential to the public welfare."

Broadcast licenses give their holders powerful public voices that are not available to every citizen. They pose a challenge in a society whose democracy relies on vigorous debate over public policy and social issues. The Courts have long accepted limitation on ownership of media outlets by those who hold broadcast licenses as "a reasonable means of promoting the public interest in diversified mass communications."

Further, localism is important because of our federal system of government that elects representatives on a local basis and places a great deal of emphasis on local policy for critically important issues – like public safety and education. Localism remains vital in media policy because citizens rely overwhelmingly on traditional outlets for information – local television stations and daily newspapers.

This study examines what would happen if the largest newspapers and television stations in several Maine cities got even bigger by merging. These situations could become a reality if the Federal Communications Commission relaxes a cross-ownership prohibition currently under consideration. The study uses a methodology that reflects the recent court ruling that overturned the FCC the last time the agency attempted to relax media ownership limits.

This study analyzes each market to answer three key questions. First, we measure how concentrated the ownership of media channels is today across each of the major media (newspapers, radio, and TV) and across the overall market of all media channels. Second, we measure how concentrated the market would become if cross-media mergers were permitted, i.e. the newspaper owner bought the largest TV station. Finally, we compare the levels of concentration today and the levels of concentration after a merger to standard measures of competition. The standards in the Department of Justice *Merger Guidelines* are used to determine the effects of possible mergers on the market for news and information in those cities. We also examine the percentage of the audience (market share) controlled by the largest company in a given city, as well as the market share controlled by the top four firms in a single media form (e.g. the top four radio stations). This measure shows us whether or not a market is an oligopoly, i.e. a small number of firms control most of the market share.

The results are stark. We find that Maine citizens already face highly concentrated markets with few choices of news and views. Possible mergers would only make matters worse, risking both localism and democracy. Even in Portland, the largest market in the state, any cross media merger involving the top two newspaper and television firms would increase concentration in excess of the Department of Justice and Federal Trade Commission *Merger Guidelines*. In the smaller markets, the outlook is even worse.

BACKGROUND ON THE STUDY

HOW DO WE DETERMINE WHETHER A LOCAL MEDIA MARKET IS "CONCENTRATED"? WHEN DOES A MERGER INCREASE CONCENTRATION "TOO MUCH"?

GOALS

We start from the goals of antitrust merger policy and media policy to answer these questions. Specifying goals is essential to evaluate the impact of any changes in policy. Antitrust merger policy is a useful starting point because it is the pre-eminent area of public policy analysis of market structure and merger impacts. However, while antitrust merger policy provides the analytic tool, the Communications Act and First Amendment jurisprudence set the ultimate goals for policy to set ownership limits on media because the media involves much more than merely commercial activities; they deeply affect the nature and quality of democratic discourse in our society.

What are the goals of antitrust analysis? The goal of the antitrust laws is to protect competition. In a merger review, the Department of Justice and Federal Trade Commission (DOJ/FTC) try to prevent the creation or exercise of **market power**, which "is the ability profitably to maintain prices above competitive levels for a significant period of time… Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service or innovation market power,"[1]

What are the goals of media policy? The goal of the Communications Act is much broader in both what it seeks to promote and prevent. The Supreme Court has repeatedly ruled that the Communications Act "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[2] In *Red Lion*, the seminal television case, the Court ruled that "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount…the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences…[T]he 'public interest' in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public."[3]

Limits on media ownership are based on the premise that "diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints as well as by preventing undue concentration of economic power."[4] Moreover, "the greater the diversity of ownership in a particular area, the less chance there is that a

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[1] Department of Justice/Federal Trade Commission, *Merger Guidelines* (1997).
[2] *Associated Press v. United States*, 326 U.S. 1, 20 (1945).
[3] *Red Lion Broadcasting v. FCC*, 395 US 367, 390 (1969) (hereinafter *Red Lion*).
[4] *FCC v. Nat'l Citizens Committee for Broadcasting*, 436 U.S. 775, 780 (1978); Prometheus *Radio Project, et al. v. FCC,* 373 F.3d 372, 383 (3rd Cir. 2004) (citing *Nat'l Citizens Committee for Broadcasting*, 436 U.S. at 780).

single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."[5]

Thus, media ownership limits are concerned about promoting diversity of viewpoint, and preventing undue concentration of economic power and inordinate influence over public opinion. There are other goals of the media policy, as well, such as localism and racial or gender diversity, but this analysis focuses on the concentration issue.

STANDARDS

What is a concentrated market? The Department of Justice and Federal Trade Commission analyze markets on the basis of the market share of the firms that sell products in the market. They use the Herfindahl-Hirschmann Index (HHI) to analyze markets on the basis of the market shares of firms.[6] When there are fewer than the equivalent of 10 equal sized competitors (an HHI of 1000), the market is considered concentrated. For the DOJ, mergers that increase concentration in these markets by as little as little as 10 percent (for example, 100 points on 1,000) "raise significant competitive concerns." At this level of concentration, markets are considered oligopolies. Markets with the equivalent of 5.5-equal sized firms (HHI of 1800) are considered highly concentrated and mergers that increase concentration by as little as 3 percent (50 points on 1,800) are deemed to be "likely to create or enhance market power."

Market structure is also frequently described in terms of the combined market share of the top four firms in the market.[7] When the top four firms have more than 40 percent of the

[5] *Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 160 (D.C. Cir. 2002) (quoting FCC's 1999 Local Ownership Order, *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, FCC 99-209 (rel. Aug. 6, 1999)).

[6] In plain English, the HHI is calculated by taking the percentage of the market that each firm has, squaring it and summing for all firms. William G. Shepherd, *The Economics of Industrial Organization* (Englewood Cliffs, NJ: Prentice Hall, 1985), p. 389, gives the following formula for the Herfindahl-Hirschman Index (HHI):

$$H = \sum_{i=1}^{n} S_i^2 \times 10{,}000$$

where
n = the number of firms
S_i = the share of the ith firm.

[7] Technically, the four firm concentration ratio can be written as follows William G. Shepherd, *The Economics of Industrial Organization* (Englewood Cliffs, NJ: Prentice Hall, 1985), p. 389:

$$\text{CR4} = \sum_{i=1}^{n} S_i$$

where
n = 4

market, the market is considered to be an oligopoly.[8] When the top four firms have more than 60 percent of the market, it is considered a tight oligopoly.

For the purpose of this analysis, we focus on market structure.[9] We describe media markets in terms of the basic antitrust thresholds – whether they are concentrated or oligopolies and whether mergers would increase concentration in excess of the *Merger Guideline* standard. Of course, many believe that because media ownership affects democratic discourse so profoundly, the standard should be even higher. Moreover, there is no guarantee that competitive markets achieve the other goals of the Communications Act, such as localism, or ensuring minority ownership.

METHOD

To analyze whether local news and information sources are concentrated, we first calculate the market share of the firms in a particular market. **For daily newspapers, we count the circulation** of all the daily newspapers sold in the area and calculate what percentage of the total each paper gets. **We do the same for weeklies and calculate an average daily circulation.** For TV, things are slightly more complicated, since news is only a small part of what they do. Here **we look at the ratings of each TV station during the news day parts.** For **radio, we count only those stations that list news, information, public affairs or talk as one of their top three formats** and count their market share**.**

What is the market we are talking about? TV broadcast signals can cover a large area, especially when they are distributed over cable systems. Radios cover a much smaller area. Newspapers tend to have circulation concentrated within a small area, which is why they have the name of a city or county in their title. Weeklies generally serve even smaller areas. Economists refer to this as defining the geographic market. **This analysis uses the radio market (Arbitron), which is generally associated with cities**, as the basic market. **It includes the daily and weekly newspapers that are based in that market** and **all the TV stations available in the area** (Designated Market Area). **Other types of media such as the Internet and magazines are included as well, but the merger analysis focuses on newspapers and TV.**

How do we compare and combine different media in a market to determine market concentration? How does the daily circulation of the newspaper compare to the average daily viewership of news shows? Do people substitute one for the other? Even if they do, does a short spot on the TV morning news have the same impact as a long piece in the morning paper? **Weights in this study are based on survey evidence about which media influence public opinion**. The evidence shows that the most important sources for local news and information are local TV stations and local daily newspapers, followed by

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S_i = the share of the ith firm.

[8] William G. Shepherd, *The Economics of Industrial Organization* (Englewood Cliffs, NJ: Prentice Hall, 1985), p. 4.

[9] See Mark Cooper, *Building a Reasonable Measure of Media Market Structure* (McGannon Communications Research Center, Fordham University, 2006).

radio and weeklies. The survey reveals the relative importance,[10] or "weight," that the public places on these local news sources, as follows: **Television = .33, Newspapers = .32, Radio = .11, Weeklies = .10.**

Market shares for the purpose of estimating market concentration are then measured as follows:

WITHIN MEDIA = AUDIENCE
ACROSS MEDIA = AUDIENCE X WEIGHT.

Which Cities are analyzed? To assess the current status of local media markets and the potential impact of lifting the cross media ban, we have analyzed three cities in the state to cover the range of possibilities: **the largest city in the state; the smallest city in the state in which cross-ownership would be allowed under the FCC rules, and the state capitol, which plays a special roll in policymaking in the state.**

What potential mergers were analyzed? We focus on **newspaper-TV mergers.** The FCC's rules that were remanded gave "no questions asked" approval to all mergers in all markets where minimal safe harbor conditions held. Under these circumstances and given market pressures, we would expect each of the major firms to try to build the biggest conglomerate possible.

To model the potential impact of the green-lighted merger, we consider two scenarios**.** In the **1st + 1st scenario, the largest firm merges with the largest available cross-media firm**. The **2nd largest unmerged firm does the same**. In the **1st + 2nd scenario the mergers are flipped.** The largest firm is assumed to merge with the second largest cross media firm available, while the second largest firm mergers with the largest cross media firm available. In both cases, where the largest firm already owns a newspaper and a TV station, we assume it buys a second or third TV station. We assume mergers take place until all significant daily newspapers have merged with TV stations (papers with more than 5 percent of the total market).[11] Under a "no questions asked" approach, there is nothing the agency could do to stop the merger wave. **We do not consider additional TV-TV mergers**, which also would have been allowed by the FCC's remanded rules and would concentrate markets even more.

Why do you analyze mergers that could happen? There are several reasons. First, **when a major change in ownership rules is proposed that could fundamentally alter market structure, it is irresponsible to not examine what could happen.**

Second, the experience over the last decade with similar changes in ownership rules suggests substantial merger activity will take place.[12] In less than a decade after the

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[10] See Mark Cooper, *Media Usage: Traditional Outlets Still Dominate Local News and Information* (Washington, D.C.: Media and Democracy Coalition, 2006).

[11] We assume that the largest merger in each scenario takes place first and only the top two mergers are flipped in the second scenario.

[12] These trends are analyzed in Mark Cooper, *Media Ownership and Democracy in the Digital Information Age* (Palo Alto, Stanford Law School Center for Internet and Society, 2003) Chapter VI.

repeal of the Financial and Syndication Rules, the broadcasters went from owning about one-fifth of the shows in prime time to four-fifths. In less than a decade after the lifting of the national cap on radio, the top four firms went form owning less than 200 stations to owning almost 2,000. In less than a decade after the relaxation of the duopoly rule, over 75 duopolies were created.

Third, in looking at media outlets, **it is clear that many properties would be in play.** The TV stations that are not owned and operated by the major networks would certainly be targets. Properties owned by Tribune, Belo, Hearst, Media General and Fox would be in play, since all of the parent corporations are already in both the TV and the newspaper business. Only the network-owned and operated stations (O&O's) in the largest markets might be more difficult acquisition targets. However, with increased pressure from a wave of combinations, these stations too might find it hard to resist assimilation into a cross-owned enterprise.

Fourth, **many of the mergers could take place by swapping properties,** rather than with buyouts. This would diminish the amount of cash that would be needed to make the deals.

Finally, the issue of mergers and major structural changes in media markets that they could cause is a long-term concern. **The question is not which mergers will take place the week, month or year after the policy change, but how it will evolve over a period of years.**

In summary, **the possibility that a substantial amount of merger activity would take place is high. It is incumbent upon policymakers and the public to understand what could happen in these very important markets.**

RESULTS OF THE ANALYSIS

Exhibit 1 shows a bar graph of the current state of all the media markets in terms of DOJ/FTC HHIs for all the cities analyzed in the state. Exhibit 2 shows the four Firm Concentration Ratio for all the cities in the state. Exhibit 3 summarizes several aspects of the analysis for the state. Exhibits 4, 6, and 8 show the before and after impact of the two merger scenarios in each city in terms of DOJ/FTC *Merger Guidelines*. Exhibit 5, 7 and 9 show a set of bar graphs that presents the pre- and post-merger market shares of the top ten firms in the market for the $1^{st} + 1^{st}$ scenario. The market shares of the leading firms are shown in rank order. The traditional mass media – television and newspapers – are the highest ranked outlets by far, and the ones that would be affected by the ownership rules. The market shares of other types of media, the Internet, magazines and others, are also shown, and factored into the calculations, although they are not part of the merger scenarios.

We find that every individual medium in every city is a highly concentrated, tight oligopoly. Even when we combine all the media into an overall media market, we find that the media markets are highly concentrated, tight oligopolies in all three cities. We find that any cross-media mergers would cause a major increase in market concentration that violates the DOJ/FTC *Merger Guidelines*. If these mergers were allowed, most markets would be dominated by one or two large players.

Portland

Current Status: As shown in Exhibit 1, the HHI for each individual media outlet indicates a highly concentrated market. The combined media market is highly concentrated as well. Exhibit 2 shows the largest four firms have a combined market share of 80 percent to 100 percent, making them all tight oligopolies. When we combine all of the media outlets into a combined media market, we find that the overall market is highly concentrated and a tight oligopoly.

The dominant paper is the *Portland Press Herald.* In TV, the major outlets are WCHS, WMTW and WGME.

Impact of Mergers: As shown in Exhibits 3 and 4, under both of the scenarios considered, allowing cross-ownership in this market would have a large impact, with the HHI rising from about 2700 to around 4000, an increase of over 1000 points.

As shown in Exhibits 2 and 5, the leading firm's market share would rise from just under 50 percent to over 60 percent if cross-ownership were allowed. The second ranked firm in the market would be much smaller, one-quarter the size, with a market share of about 15 percent. Together, the top two firms would have almost three quarters of the market. If the dominant firms added more TV stations to their holdings, which would be allowed under the FCC approach, the situation would become even more dangerous.

Augusta

Current Status: As shown in Exhibit 1, the HHI for each individual medium indicates a highly concentrated market. The combined media market is highly concentrated. Exhibit 2 shows the largest four firms have a combined market share of 80 percent to 100 percent for the individual medias well as the combined media, making them all tight oligopolies.

The leading papers are *The Sun Journal, The Morning Sentinel* and *The Kennebec Journal.* In TV, the major outlets are WCHS, WMTW and WGME.

Impact of Mergers: As shown in Exhibits 3 and 6, under both of the scenarios considered, allowing cross-ownership in this market would have a large impact, with the HHI rising from about 2400 to well over 3500, an increase of over 1000 points.

As shown in Exhibit 7, the leading firm's market share would rise from just under 45 percent to almost 60 percent if cross-ownership were allowed. The second ranked firm in the market would be much smaller, one-quarter the size, with a market share of just over 15 percent. Together, the top two firms would have almost three quarters of the market. If the dominant firms added more TV stations to their holdings, which would be allowed under the FCC approach, the situation would become even more dangerous.

Bangor

Current Status: As shown in Exhibit 1, the HHI for each individual medium indicates a highly concentrated market, as is the combined market. Exhibit 2 shows the largest four firms have a market share of 90 percent to 100 percent for the individual media, as well as the combined media, making them all tight oligopolies.

The *Bangor Daily News* is the dominant paper. In TV, the major outlets are WLBZ and WABI.

Impact of Mergers: Any single merger violates the *Guidelines* by a wide margin. As shown in Exhibits 3 and 8, both merger scenarios yield a substantial increase in the HHI, from about 2500 to a range of 3500 to 4500.

As shown in Exhibit 9, mergers would result in a market with a large firm that overshadows others in the market. The largest firm market share would rise from just over 40 percent to over 65 percent. By comparison, the second firm would be much smaller, with a share of 15 percent. Together, the top two firms would have four-fifths of the market.

CONCLUSION

Mergers between newspapers and TV stations in the same market are front and center in the ongoing media ownership proceeding at the Federal Communications Commission for several reasons.

- Television and newspapers are the two most important sources of local news and information by far.
- The ban on such mergers was the longest standing of the rules that the Commission is considering.
- The Commission proposed the most radical change in this rule – allowing newspaper-TV combinations in virtually every city in America.
- In rejecting the Commission's cross-media limits, the Court devoted a great deal of attention to the Commission's faulty reasoning and flawed analysis of media markets.

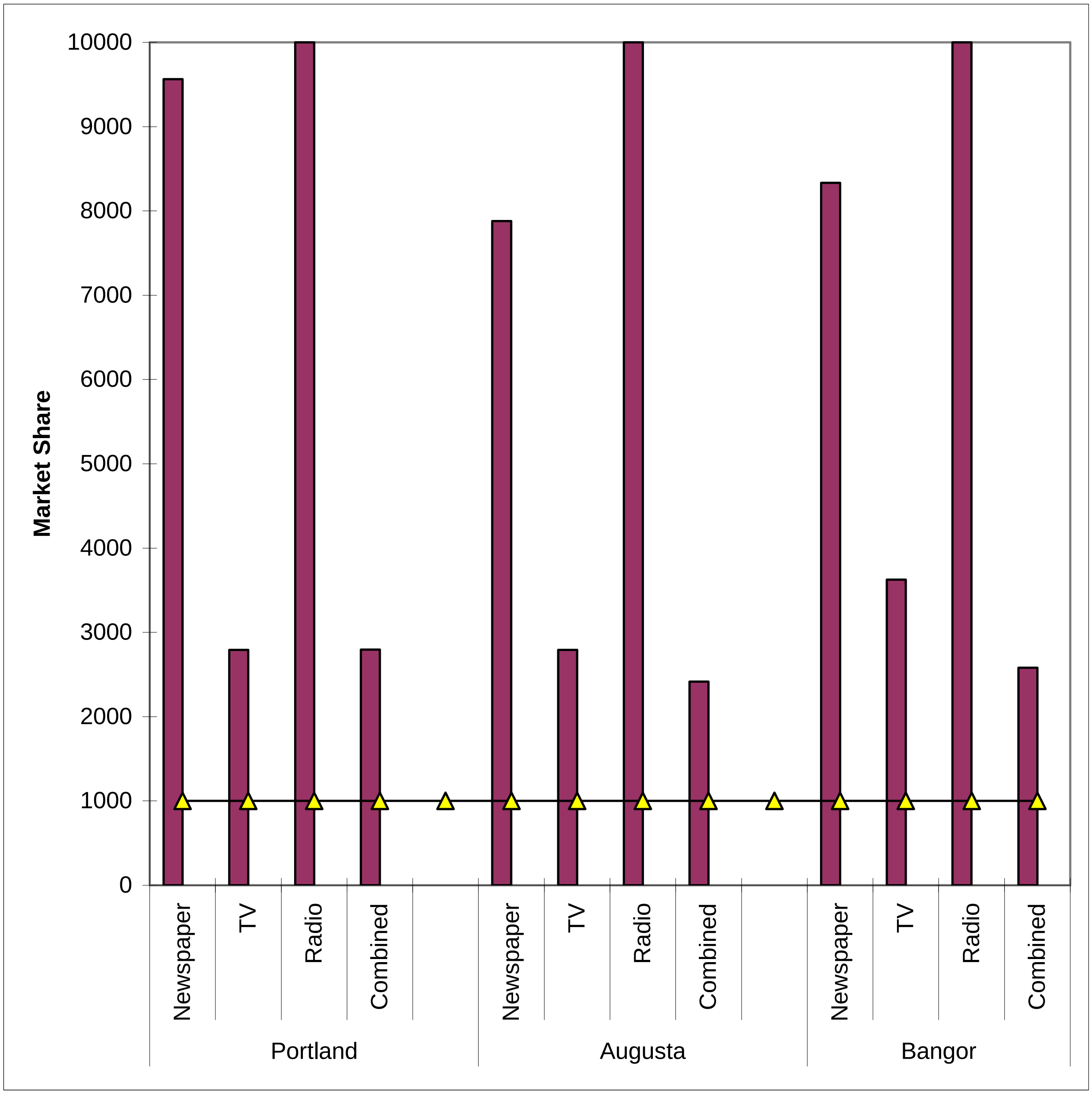
This paper has shown that mergers between newspapers and TV stations in the same market pose a grave threat to democratic discourse.

- In antitrust terms, these mergers result in increases in market concentration that raise significant competitive concerns and are likely to create or enhance market power.

- In terms of the Communications Act and First Amendment jurisprudence, the newspaper-TV combinations that result dominate the local market raising concerns about undue economic concentration and inordinate influence over public opinion.

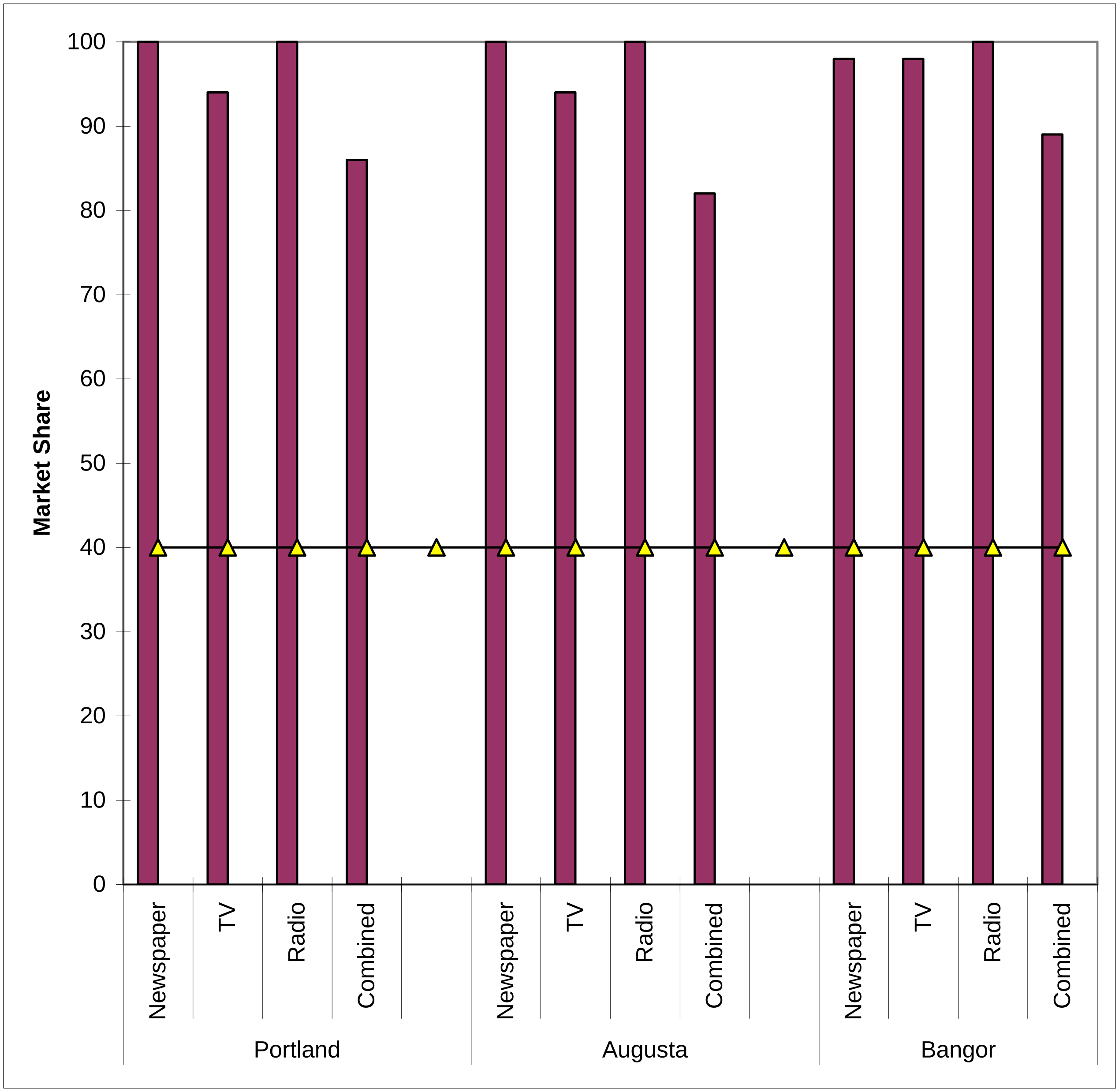
Historical evidence and logic suggest that many of the mergers analyzed in scenarios considered would take place. Policymakers and the public need to be aware of these dire consequences should the ban on newspaper-TV combinations be lifted.

EXHIBIT 1:
MAINE: CURRENT MEDIA MARKET STRUCTURE
DOJ/FTC MERGER GUIDELINES HHI



△ **= Concentrated above 1,000**

EXHIBIT 2:
MAINE: CURRENT MEDIA MARKET STRUCTURE
FOUR FIRM CONCENTRATION RATIO



△ = **Oligopoly, above 40**

EXHIBIT 3:
MAINE: SUMMARY OF IMPACT OF NEWSPAPER/TV MERGERS

City	Market HHI Before	Market HHI After	Final Post-Merger Market Status	Merger Guidelines Threshold 1st Merger	Merger Guidelines Threshold 2nd Merger	Change in Leading Shares Four Firm Before	Four Firm After	Top Firm Before	Top Firm After
1 + 1 Scenario: Largest Newspaper Merges with Largest TV Station, etc.									
Portland	2796	4292	Highly Concentrated	Violated	NA (one daily)	86%	88%	47%	63%
Augusta	2416	3885	Highly concentrated	Violated	Violated	82%	88%	43%	59%
Bangor	2580	4546	Highly concentrated	Violated	NA (one daily)	88%	89%	42%	65%
1 + 2 Scenario: Largest Newspaper Merges with Second Largest TV Station, etc.									
Portland	2796	4039	Highly Concentrated	Violated	NA (one daily)	86%	88%	47%	61%
Augusta	2416	3674	Highly concentrated	Violated	Violated	82%	89%	43%	56%
Bangor	2580	3778	Highly concentrated	Violated	NA (one daily)	88%	89%	42%	56%

EXHIBIT 4:
PORTLAND: IMPACT OF NEWSPAPER/TV MERGERS:
CHANGE IN HHI

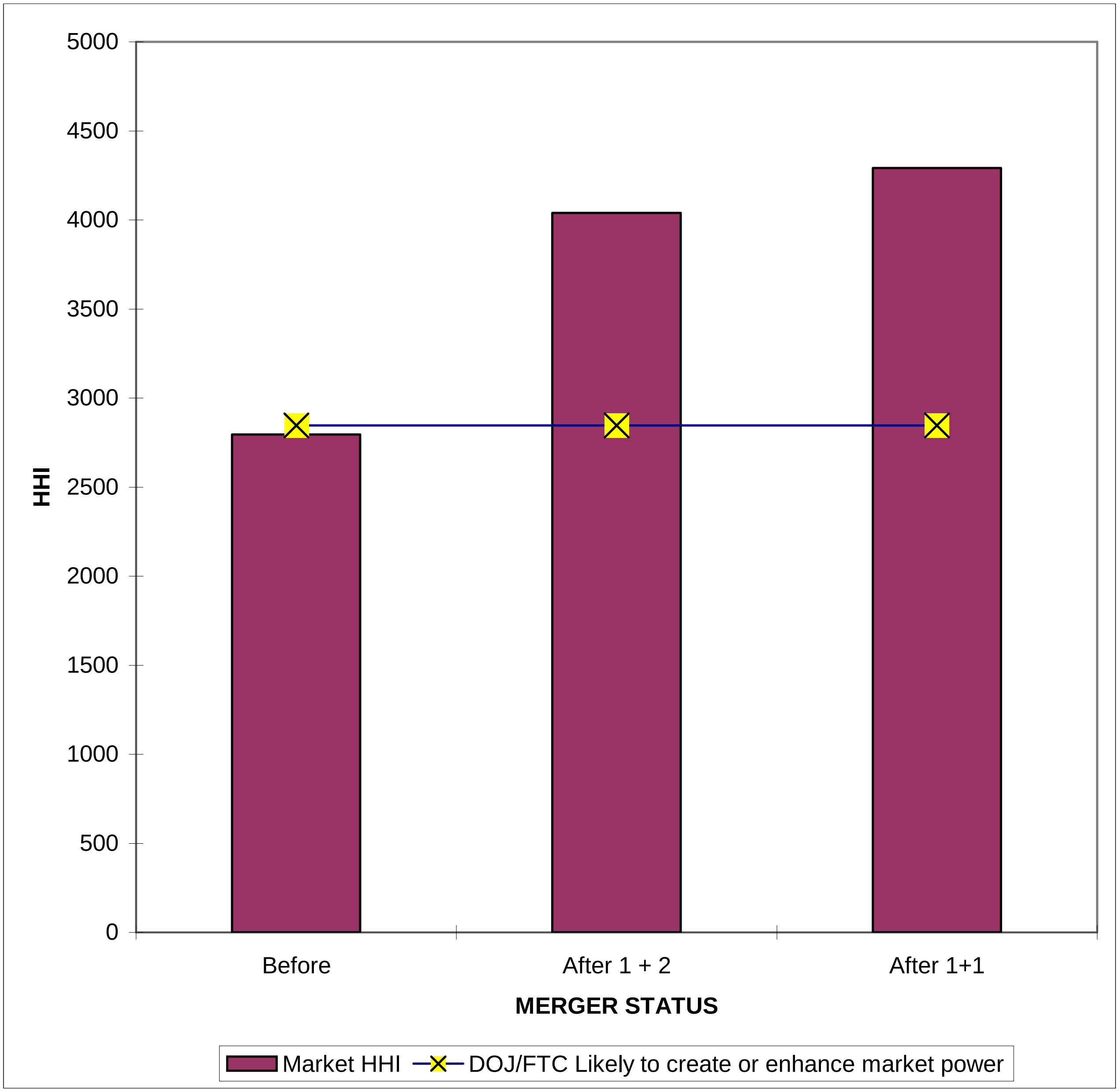
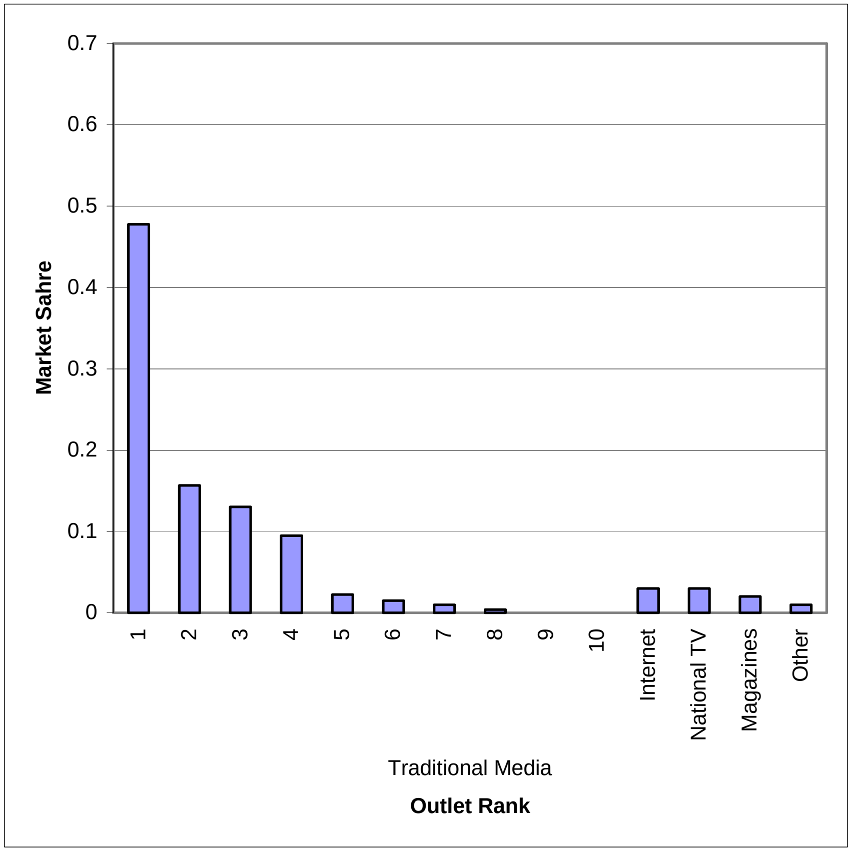


EXHIBIT 5:
PORTLAND:
IMPACT OF NEWSPAPER/TV MERGERS, MARKET SHARE OF LEADING FIRMS
(Traditional and Other)

CURRENT



AFTER MERGERS (1st +1st Scenario)

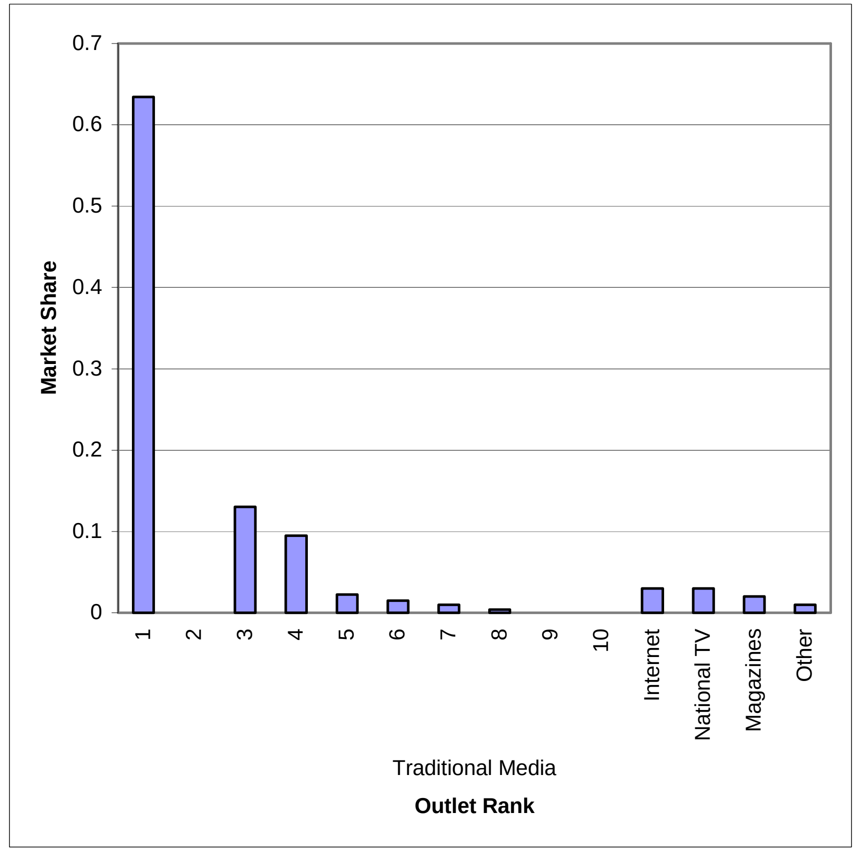


EXHIBIT 6:
AUGSUTA: IMPACT OF NEWSPAPER/TV MERGERS
CHANGE IN HHI

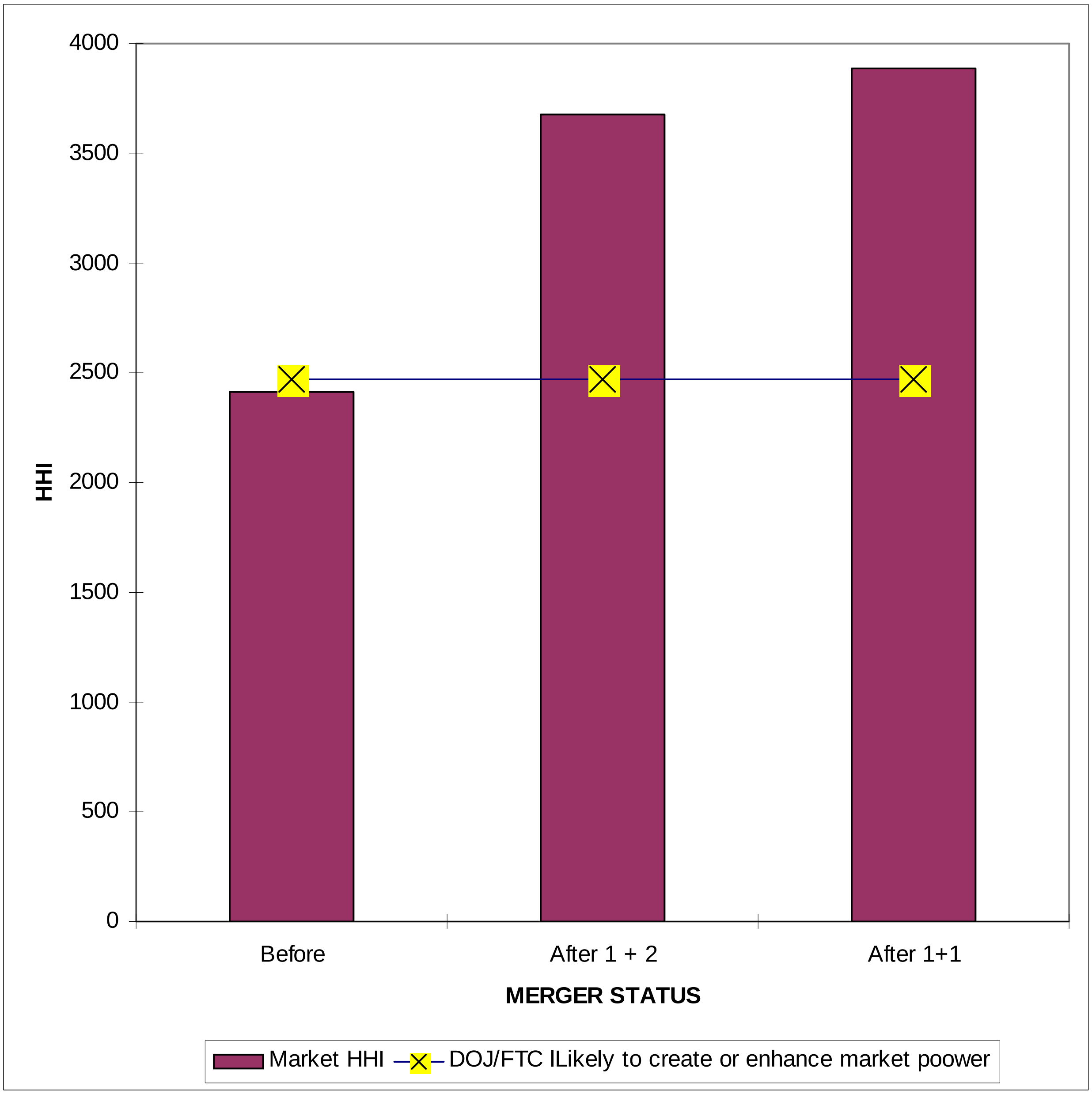
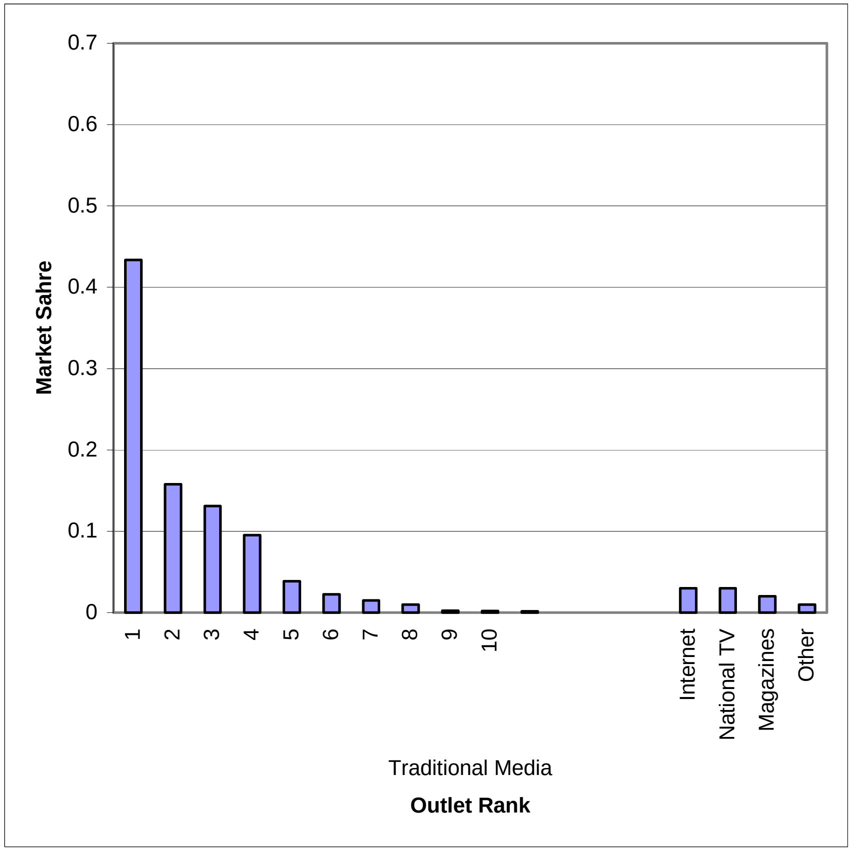


EXHIBIT 7:
AUGUSTA: IMPACT OF NEWSPAPER/TV MERGERS, MARKET SHARE OF LEADING FIRMS (Traditional and Other)

CURRENT **AFTER MERGERS (1st +1st Scenario)**



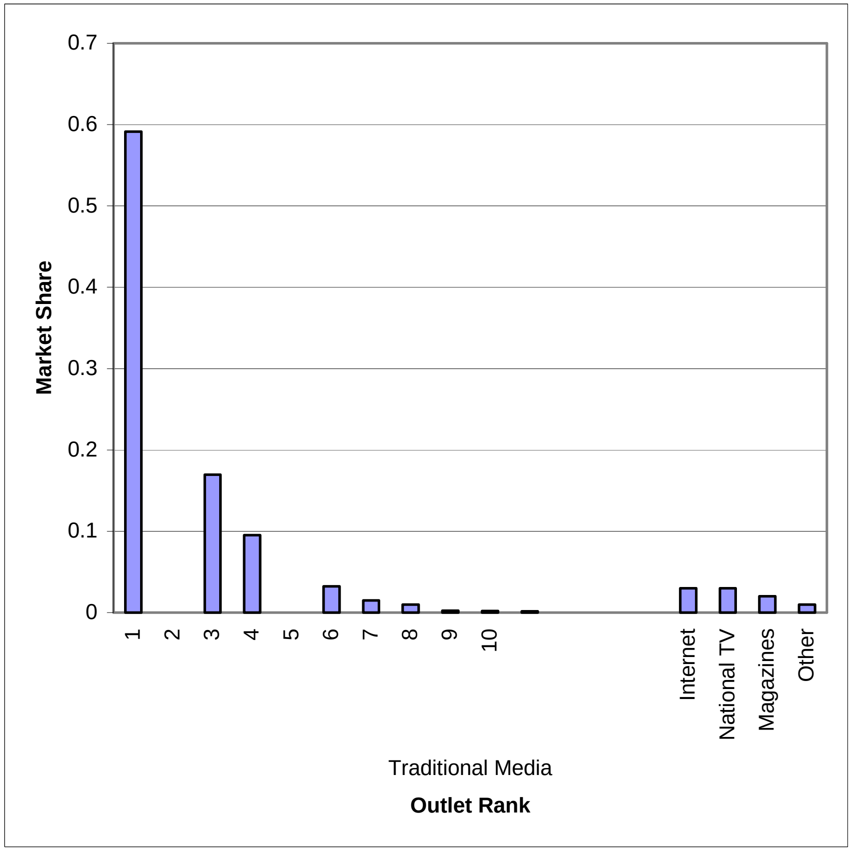


EXHIBIT 8:
BANGOR: IMPACT OF NEWSPAPER/TV MERGERS
CHANGE IN HHI

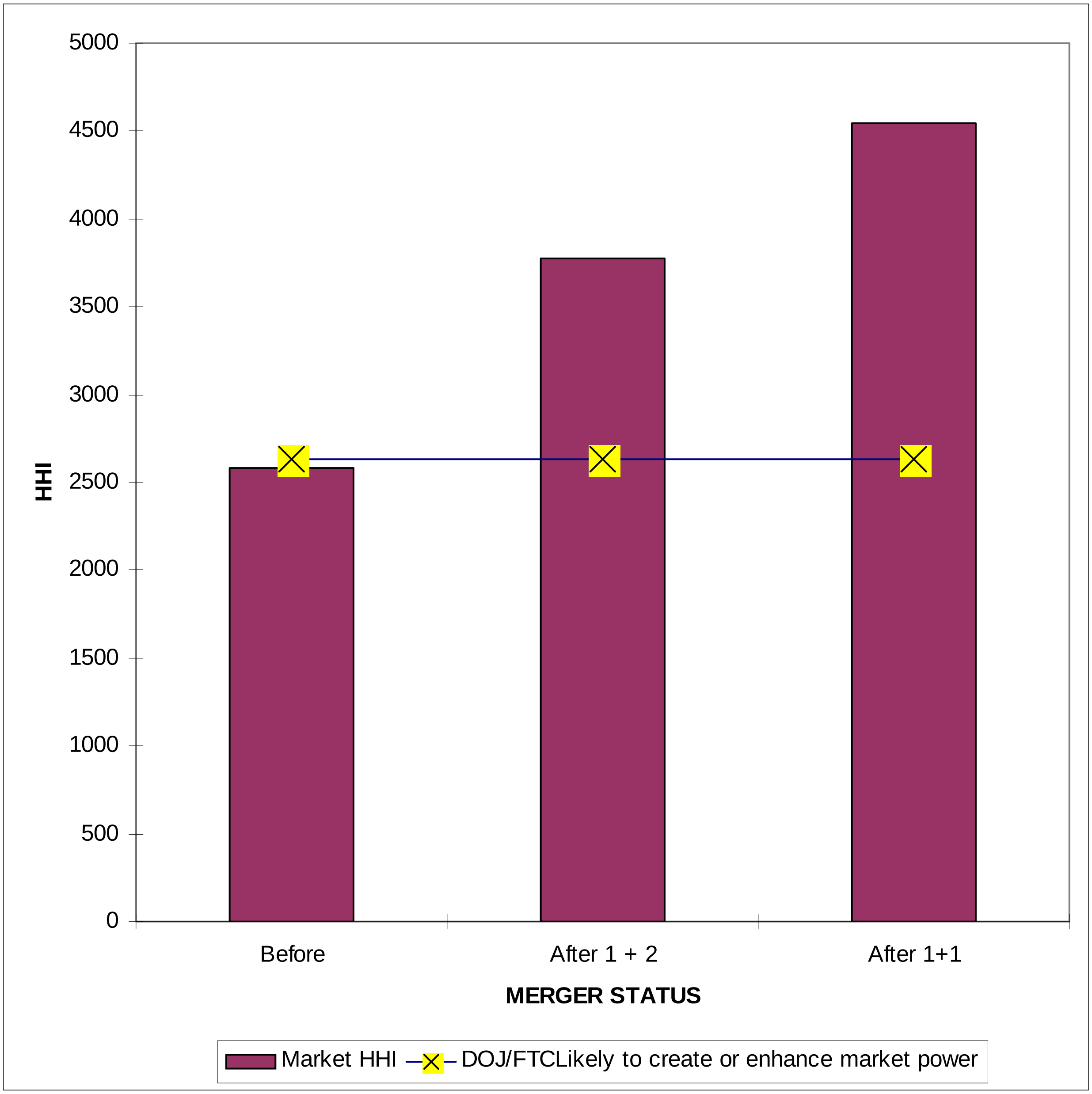
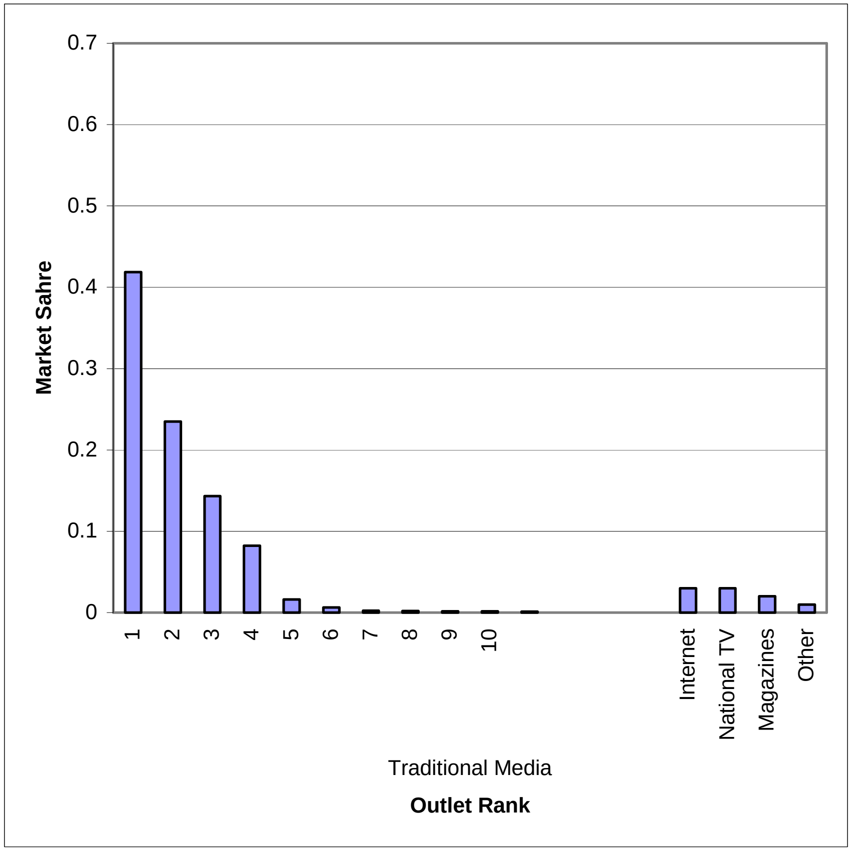


EXHIBIT 9:
BANGOR: IMPACT OF NEWSPAPER/TV MERGERS, MARKET SHARE OF LEADING FIRMS
(Traditional and Other)

CURRENT



AFTER MERGERS (1^{st} +1^{st} Scenario)