

October 25, 2019

Congressman David Cicilline
Chairman
Subcommittee on Antitrust, Commercial,
and Administrative Law

Congressman Jim Sensenbrenner
Ranking Member
Subcommittee on Antitrust, Commercial,
and Administrative Law

Chairman Cicilline and Ranking Member Sensenbrenner,

We are antitrust attorneys, competition economists, and public interest advocates. We write to share our concerns about proposals to counter the market power of large online platforms in the distribution of news by creating an antitrust exemption for news content creators. While these proposals, such as discussed at the Subcommittee's hearing in June, seek to address a serious problem in the news industry, we believe that they are not the appropriate path to a solution.

We recognize that the news industry is facing serious economic challenges in the Internet Age that threaten to impair the quality and variety of news available to consumers. It is particularly troubling that so many communities are losing their local daily newspapers. A number of economic factors are responsible for the sea-change in the news industry. Many of them stem from consumers' transition to viewing more of their news online, and the changes this shift has caused in the markets for advertising.

Public policy intervention may be warranted to help protect and promote the viability of a competitive free press, which plays a critical role in our democracy and in holding both our government and powerful private interests accountable.

The antitrust laws should play an important role in helping preserve a free press in the Internet Age. If large online platforms engage in antitrust violations that harm competition in the creation and distribution of news, it is imperative that the enforcement agencies expose the unlawful anticompetitive behavior, take forceful action to stop it, and remedy the harms that result.

Congressional action, along with more vigorous enforcement of existing law, to help promote more vibrant competition in the changing markets for news may well be warranted. However, creating a new statutory antitrust exemption for news content creators is not the way to cure market problems or to improve market conditions. Creating a new antitrust exemption will only hurt consumers, citizens, and businesses that are not invited to the negotiations that this exemption is supposed to facilitate.

To be sure, the large digital platforms or online content distributors that news companies currently must rely on to reach many of their customers are powerful. But allowing news content

creators to form their own cartel to collectively negotiate with, and serve as a counterweight to, powerful distributors simply creates another powerful entity in the market.

Exempting news content creators from the antitrust laws would not diminish the market power of the platforms. It would just lead to self-interested bargaining between two powerful parties, the news content cartel and the digital platform. This bargaining is not a replacement for competition. Rather, it will act to mutually benefit the two powerful parties, at the expense of consumers, workers, and others who are impacted.

Specifying that negotiations with online content distributors must be nondiscriminatory as to similarly situated news content creators would not change the fact that the larger news outlets stand to grab the lion's share of any benefits, as they would dominate their side of the negotiations. And there is no guarantee that their executives would invest their gains in improving news coverage, instead of increasing their salaries or launching stock buybacks for their shareholders.

Moreover, a new antitrust exemption is unlikely to actually work to promote a more viable press or bring small newspapers back to profitability. For example, powerful online platforms also distribute user-generated content they generally obtain for free. Even negotiating with a large group of news companies, a platform may still reject the group's offer. This would be a terrible outcome, leaving citizens with less access to high-quality news than they have today.

The internet has changed advertising, as it has changed so much else. Digital advertising is much less expensive to purchase, and the possibilities for targeting consumers on the basis of demographics, behavior, or buying history are vast. And the internet has largely taken over classified advertising, previously a major source of revenue for newspapers, with a variety of popular offerings. It is unrealistic to expect, under any scenario, these fundamental technological changes to reverse.

We stand ready to work with Congress as it explores constructive ways to help promote a robust, competitive free press, and help promote competition across news distribution channels that advances vital diversity in the media. A new antitrust exemption should not be one of them.

Thank you for your consideration,

Public Knowledge
The American Antitrust Institute
Consumer Reports
Consumer Federation of America