



February 1, 2022

The Honorable Amy Klobuchar
Chair
Senate Committee on the Judiciary
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
Washington, DC 20510

The Honorable Mike Lee
Ranking Member
Senate Committee on the Judiciary
Subcommittee on Competition Policy,
Antitrust, and Consumer Rights
Washington, DC 20510

Re: February 2, 2022 Subcommittee Hearing on “Breaking the News – Journalism, Competition, and the Effects of Market Power on a Free Press”

Dear Chair Klobuchar and Ranking Member Lee:

On behalf of the Computer & Communications Industry Association (“CCIA”),¹ I write to express concerns with S. 673, the Journalism Competition and Preservation Act (“JCPA”), and request that this statement be included in the record of the hearing scheduled for Wednesday, February 2, 2022.

In the yet to be released Manager’s Amendment, we understand there may be provisions on forced arbitration and collective bargaining. These are generally bad for competition. Any forced arbitration or collective bargaining provisions should be substituted by good faith negotiation. In contrast, increased competition and choice in news media has benefited consumers. Efforts of foreign governments to compel U.S. digital services to subsidize their local media conglomerates may be a focal point of the hearing. U.S. legislators should not adopt controversial laws from Australia and France. The strategy of seeking to redistribute funds from the U.S. tech sector to foreign news conglomerates has proven popular, albeit unworkable, in the European Union, and more recently in Australia. In Australia, where News Corp dominates one of the most concentrated news markets in the world, the government’s proposal largely followed the company’s suggestions. The U.S. should not do the same.

News publishers have urged Congress to grant them a carve-out from antitrust law for several years, which CCIA President Matt Schruers testified against before the House Judiciary Committee in 2019. Under the new version of the JCPA this Congress, news publishers and now broadcasters would receive a “get out of antitrust jail free” card to collude against digital advertising services, likely ensuring that advertisers would pay higher prices. As discussed below, generally speaking, most antitrust exemptions are disfavored by experts, who regard permission to cartelize as “a product of special interest pressure within the legislature.” There’s no question that objective journalism is critical to informing voters, and an informed electorate is a public good. But giving news publishers an antitrust exemption is doubling down on failed policies. Newspapers *already* have had a partial antitrust exemption for 50 years. The U.S. experience with preserving newspaper diversity through antitrust exemptions is not encouraging. Unfortunately, the Newspaper Preservation Act of 1970 (“NPA”) failed to achieve the stated goal of Congress to maintain independent competing voices. In fact, historians and journalists have argued the NPA

¹ CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms. For 50 years, CCIA has promoted open markets, open systems, and open networks. CCIA members employ more than 1.6 million workers, invest more than \$100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more, visit www.cciagnet.org.

fostered monopolies and chains instead of producing independent voices. Given the cautionary history of the previous exemption for local newspapers, another would be ill-advised. Due to experiences with the NPA and other antitrust exemptions, the 2007 report of the Congressionally-chartered Antitrust Modernization Commission criticized existing exemptions and cautioned against new ones.

Leading antitrust experts from the Executive Branch over many administrations of both parties consistently have opposed antitrust exemptions, including the JCPA.² Like many others, we question the wisdom of creating an industry-wide JCPA cartel—the “antithesis of competition,”³ with severe negative consequences—as an answer to an alleged cartel’s market power.⁴ If Congress were to adopt the JCPA, small publishers and consumers would be likely to suffer. Larger publishers would likely dominate the negotiations, leaving little room for the smaller publishers; accordingly, the larger publishers would be likely to benefit most from a JCPA cartel. The bill provides no mechanism to ensure, assuming the JCPA cartel successfully negotiates licenses with news aggregators for use of its content, that funds for those licenses will be used to address publishers’ key economic problems like relieving news deserts, eliminating debts, and hiring journalists. Consumers are likely to suffer—it is more likely that the JCPA cartel leads to further consolidation of news publishers, not less, so the diversity of publishers will decline.

Respectfully submitted,

Arthur D. Sidney
VP, Public Policy, CCIA

² See, e.g., OECD, News Media and Digital Platforms – Note by the U.S., Antitrust Division of the Dep’t of Justice and the U.S. Fed. Trade Comm’n (Dec. 3, 2021), [https://one.oecd.org/document/DAF/COMP/WD\(2021\)72/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2021)72/en/pdf) (“For example, in May 2009, . . . DOJ’s Deputy Assistant Attorney General Carl Shapiro testified that current antitrust laws were flexible enough to meet the needs of the dynamic news media marketplace, and that vigorous antitrust enforcement remained critical. Likewise, in March, 2011, DOJ’s Assistant Attorney General Christine Varney noted that the recent attempts to expand antitrust immunity for the newspaper industry were ‘well-intentioned, but ultimately misguided.’ She repeated the DOJ’s longstanding opposition to such proposals, adding that recent changes in the industry were “not caused by antitrust enforcement, and limiting antitrust enforcement will not reverse those changes,” and that many newspapers face difficulties in spite of having an exemption.”); Makan Delrahim, Assistant Att’y Gen., U.S. Dep’t of Justice Antitrust Division, Remarks at the Antitrust Division’s First Competition and Deregulation Roundtable (Mar. 14, 2018),

<https://justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-antitrust-division-s-first> (“When I served on the Antitrust Modernization Commission back in 2007, we concluded that ‘[a]s a practical matter, an exemption from all or part of the antitrust laws means firms can avoid the tough discipline of competition. When the beneficiaries of an exemption likely appreciate reduced market pressures, consumers . . . and the U.S. economy generally bear the harm.”); Christine Varney, Assistant Att’y Gen., U.S. Dep’t of Justice Antitrust Division, Remarks for the Newspaper Association of America on Dynamic Competition in the Newspaper Industry (Mar. 21, 2011), <https://justice.gov/atr/speech/dynamic-competition-newspaper-industry> (“[T]he [newspaper] industry currently enjoys an exemption from the antitrust laws through the NPA, yet many newspaper owners still face significant difficulties. In fact, that exemption may well have contributed to industry sluggishness in making difficult but necessary choices forced by changing market dynamics.”).

³ John M. Yun, *News Media Cartels are Bad News for Consumers*, Competition Pol’y Int’l (Apr. 25, 2019), <https://www.competitionpolicyinternational.com/news-media-cartels-are-bad-news-for-consumers/> (“[C]artels are condemned under a per se standard is because there is little to no redeeming social value from allowing competitors to jointly set the terms of trade in a market.”).

⁴ John M. Yun, *Static v. Dynamic Antitrust: A Reply*, Competition Pol’y Int’l (June 16, 2019), <https://www.competitionpolicyinternational.com/static-vs-dynamic-antitrust-a-reply/> (“[T]he impact of the [JCPA] is to legalize an industry-wide media cartel, which can collectively fix prices and can exclude organizations that are not deemed ‘news content creators.’ The likely result is higher content costs for these platforms, as well as provisions that will stifle the ability and freedom to innovate. In turn, this could negatively impact quality for the users of these platforms.”).