Why the Future of News Won’t Be Fixed Through Antitrust Exemptions

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Proposals for news cartels are rooted in companies championing regulation of their rivals, rather than sound public policy

When a Congressional committee meets tomorrow to hear about news publishers’ difficulties in adapting to the digital era, the efforts of foreign governments to compel U.S. digital services to subsidize their local media conglomerates will be a focal point. The strategy of seeking to redistribute from the U.S. tech sector to foreign news conglomerates has proven popular, albeit unworkable, in the European Union, and more recently in Australia. Despite reeking of anti-American protectionism, these proposals have received some support from U.S.-based companies, namely News Corp and Microsoft, that stand to benefit from regulations that would raise rivals’ costs.

Tomorrow's hearing will also feature a different proposal to reach a similar result: an antitrust exemption. News publishers have urged Congress to grant them a carve-out from antitrust law for several years, which I testified against in 2019. There, News Corp argued that by sending billions of users to news publisher websites every month, Internet services were free-riding (a claim which echoes newspapers' earlier charge against television). That 2019 proposal did not advance, but a similar measure has recently been reintroduced in Congress. Under this new version of the "Journalism Competition and Preservation Act," 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.

A news cartel doubles down of failed policies

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. When newspapers sought what became the Newspaper Preservation Act of 1970, proponents pointed to the fact that the number of daily newspapers had declined substantially since 1910. The Internet wasn't to blame for that; the specter at the time was radio and television. Fifty years later, the alleged cause is different, but the approach is the same.

It shouldn't be surprising that each successive new media — radio, television, the Internet — has compounded the challenges for traditional news publishers that had grown accustomed to near-monopoly rates on local advertising and classifieds. Each new entrant increases the competitive pressure for these revenues. The introduction of new forms of media worked out well for advertisers, who now have many more options to reach consumers in a global advertising market, but it also increased the competitive pressure on traditional publishers that have seen lucrative businesses like classifieds peeled off.

Unfortunately, a Federal blessing on competitor collusion in 1970 did little good for newspapers, and the legislation has been criticized for decades ([1], [2]). Generally speaking, most antitrust exemptions are disfavored by experts, who regard permission to cartelize as "a product of special interest pressure within the legislature."

News Corp, Microsoft, and broadcasters champion regulation for rivals

Such pressure has certainly helped to advance the idea of creating news publisher cartels. 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, and later received Microsoft's endorsement.

Cheerleading regulations that would hamstring rivals, seeking to beat the competition not in the marketplace but rather the regulatory 'swamp' — what I've called "swampetition" — is a strategy to which politically sophisticated companies sometimes turn. The tactic of championing increased regulations of adversaries is not without risk, however, and political skullduggery against rivals can escalate, backfire, and elicit charges of hypocrisy. News Corp's own conduct has prompted calls for investigation in Australia, and it slung 'fake news' charges at social media only to find its corporate sibling charged with spreading disinformation by insiders and members of Congress. Microsoft's support for redistributing revenues from its rivals to Australian publishers squeezed by digital disruption comes even as it is accused of squeezing Slack ([1], [2]), amid concerns that its licensing of the market-leading Office suite will squeeze clouds that rival its own. Arguments that the free market should be permitted to resolve such frictions will ring hollow if companies are consistently championing regulation for rivals.

Policymakers should protect competition, not competitors

As the head of an association that has defended free competition in the marketplace and fought media consolidation, I am well aware of the role that governments should play in safeguarding consumers' welfare. But regulators should protect the competitive process, not competitors. Consumers win when competitors have to slug it out in the marketplace for their dollars or attention. Prices fall, quality rises, innovation increases.

This isn't to say policymakers should not seek solutions for news publishers whose business models have been disrupted by successive waves of new media. They should. But fixing prices in one channel of the advertising market is not a solution. Incumbents evangelizing news cartels should focus on competing in the market, instead of in the regulatory swamp. And policymakers interested in supporting news publishers should seek solutions that don't hinge on subsidies from a handful of digital services.