

Media Antitrust Exemption Faces Headwinds in Hearing

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Sentiment to Strengthen Antitrust Law Gains Strength

The Journalism Competition & Preservation Act, or the JCPA, faced resistance from Committee members and some witnesses, who favored antitrust rules for the tech sector over weaker rules for news media. The bill, cosponsored by Judiciary Antitrust Subcommittee Chair, David Cicilline, and Ranking Member, Ken Buck, a version of which has also been introduced in the Senate, would give media companies a four-year exemption from antitrust laws for collective bargaining with distributors of their content. At a hearing of the Subcommittee today, “Reviving Competition, Part 2: Saving the Free and Diverse Press,” several witnesses and members questioned the wisdom of letting big media combine to work out deals with big tech.

There was no dissent from the concern about the apparent imbalance between big tech and the companies that depend on it. If anything, the plight of media intensified the urgency to legislate. The decline of print and broadcast news, especially at the local level, provided vivid examples of the plight of media. Newspapers are consolidating or disappearing, and local newsrooms are shrinking. Witnesses blamed declining advertising revenues despite growing news audiences. Ad revenues that publishers used to receive were increasingly shifting to the social media. Both Republicans and Democrats fretted over the future of journalism, the ability of private companies to restrict information, and the vitality of the First Amendment. More than once, the discussion turned to the recent standoff in Australia between the government and tech platforms over negotiating rules introduced in that country.

As the hearing progressed, members started discussing potential changes to the bill. Possible revisions include more conditions on the negotiations and limiting the exemption to smaller media companies.

Doubts about the JCPA did not extend to second thoughts about more fundamental antitrust reform. If anything, reluctance to pass a temporary antitrust reprieve for media could bolster support for a more comprehensive solution to concerns about market power that Congress is contemplating. Some form of the JCPA could be the tool Congress tries first, but the reservations about enhancing competition by relaxing antitrust rules could actually accelerate broader proposals.

The Subcommittee will reconvene next Thursday to explore market power more generally and consider measures to combat it. <https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=4453>

A video and witness statements from today’s hearing video are available here:

<https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=4440>