

Antitrust Law and The Media Monopoly

How useful are the current United States Antitrust Laws when applied to ownership, production and distribution of mass media corporations?

CEM called on a group of scholars and activists to investigate.

On January 23 and 24, 1997, CEM brought together 22 people at Temple University's Sugarloaf Conference Center in Philadelphia, PA to examine whether antitrust legislation against the media monopoly is feasible at this time, and what other legal challenges, if any, exist.

The idea for the conference originated at the CEM Founding Convention, and was approved as a priority by the CEM Board of Directors in May of 1997.

Conference participants included antitrust and first amendment attorneys; academics, students and researchers; economists; labor representatives; and democratic-media advocates. The proceedings were moderated by Mark Crispin Miller, Director of the Project on Media Ownership.

Laying the groundwork

Two introductory speakers opened the conference, laying the groundwork for discussing antitrust law and tradition as it relates to media deconcentration.

Antitrust attorney Carl E. Person gave examples of the profound length and cost of an antitrust lawsuit, in the event that such a case would be heard by the court.

He offered that government

involvement in antitrust laws is in fact a deterrent to their enforcement, as it leads people to believe that antitrust law is in effect, when in fact it has fallen by the wayside in recent years. This is partially due to antitrust regulations being under the jurisdiction of the Federal Trade Commission, Person said.

Robert McChesney of the University of Wisconsin painted an equally dismal picture of current media concentration trends, using Ben Bagdikian's *The Media Monopoly* as a standard. In the book's 1984 edition, Bagdikian counted 50 dominating companies in the industry; by 1997 the number was 15. This makes the industry uncompetitive by even oligopolistic standards, said McChesney. But it is good business. Owning multiple media outlets and other businesses allows for product branding and increased loyalty; for example, ESPN now prints "ESPN Magazine" and serves food and cable at "ESPN Grill."

Since the 1996 Telecommunications Act, 4,000 of 11,000 existing radio stations have changed hands. Since the mid-1980's, there has been a 50 percent increase in television advertising, and a sharp decline in public service in broadcast media. McChesney disagreed with those who thought the

Internet is the solution, saying that we need to think of it as part of the corporate media.

Potential Solutions

Subsequent conversation among the group concluded that when discussing antitrust law in relation to media, we must think of it not only as the restraint of trade, but restraint of content and ideas. Even monopolies (or perhaps especially monopolies) have public service obligations to diversify programming.

The two antitrust laws that might apply to media (Section 2 of the Sherman Act and Section 7 of the Clayton Act) have not been enforced.

Three possibilities for solutions were discussed: (1) Observing the regulations of other countries, where in some cases the concentration is even worse; (2) designing new and creative legislation in lieu of attempting to fit into old antitrust laws; and (3) fostering a popular movement to support the democratization of media.

Proposed Actions

On the second day of the conference, people split into three groups to consider the question: What might adequate legislation look like? The groups reported as follows:

◆ Group A agreed on two main goals of legislation or regulation: To reduce the amount of corporate power and to reduce the amount of non-corporate special-interest power in mass media.

The group decided not to rule out antitrust legislation as a means, and said it should still be considered with three questions: (1) Can something viable be drafted? (2) Could it be passed? and (3) Would the benefits be worth the cost carrying out the first two questions? The group concluded such legislation should stress not economic efficiency, but information efficiency, and that diversity and democracy should be the principles of media antitrust judgment. They also said the legislation should be written to prohibit media entities to merge with or be sold to non-media entities.

The group also suggested organizing to maintain pressure on broadcast media and government regulators to improve the public interest standards of commercial broadcast media.

◆ Group B likewise proposed a law requiring simplification of media ownership, suggesting that the Robinson-Patman Act, which addresses price-fixing in book selling, might apply to the specific problem of media antitrust.

In addition, Group B discussed digital technology and the broadcast spectrum giveaway. They said that leasing the spectrum would net funding for diverse local programming, and suggested using the argument that the broadcast spectrum is no longer a scarce resource with the advent of high-density television, or HDTV, which has the capability of splitting one frequen-

cy into six. However, they pointed out that the same argument was used about cable, but diversity of ownership or channels does not ensure diversity of content.

Group B thus recommends using rule making to promote diversity in content. Group B also suggested the use of the Freedom of Information Act to get information on the results of past policy decisions, such as media deregulation in 1991, and the cancellation of the Fairness Doctrine in 1996.

◆ Group C decided that the immediate goal of legislation should be maximum feasible limitation of further concentration, with the ideal goal being deconcentration. They stressed an emphasis on radio, since it has recently been the area of most prominent concentration.

The group also urged the divestment of news divisions by media companies, to allow news and information to be not-for-profit. To fund such endeavors, the group recommended a five percent tax on advertising; decreasing the amount of tax-deduction for advertising; and fining media companies for failing to satisfy the public interest. The fund would support local, independent, non-profit, non-commercial media production, especially news and children's programs. It would also subsidize community monitoring of local broadcast media to ascertain if media are serving their public's interest. Community monitoring groups would report to the FCC. Shortening the term for which licenses are issued would empower the communities to have more weight in licensing decisions. **cem**

CI aging curve on this page
OR
on page 15