Application No. 322/22

PI1 Name: Adi Libson

**Scientific Abstract – Ownership of Media Outlets as an Antitrust Concern**

Big business’s influence over the political arena is a major contemporary concern. However, the issue is normally deliberated as a constitutional or administrative law problem, not as a commercial law problem. Taking a different perspective, this e proposed research tackles the problem through the lens of antitrust law.

The proposed research focuses on a specific channel of big business’s influence over the political domain, through the control of media outlets. In our proposal, we explain how big businesses, especially today’s “super-sized” businesses, such as Google, Facebook, Amazon, and others, may obtain power over politicians by acquiring control of media outlets. We provide several examples of purchases of media outlets by big businesses that demonstrate that the phenomenon is real. We aim to expand our dataset of examples, so as to facilitate a systematic analysis of the phenomenon.

The proposal explains why influencing the political sphere via the control of media outlets is more troubling than influencing politicians through alternative channels, such as lobbying, political contributions, bribery, and prohibited gifts. Media coverage is at least, if not more effective than other channels of influence, given its wide power over public opinion. But it is much more difficult to regulate, for both practical reasons, such as the difficulty in identifying quid pro quo arrangements of political favors in return for coverage, which are often implicit, and ideological reasons, the most important of which is the reluctance to encroach on the freedom of press. Finally, we explain why the influence of media outlets on the political process raises more concern when it serves the interests of a business entity controlling the outlet than when it serves the ideological inclination or interests of the publisher.

We suggest a novel approach to the phenomenon of big business’s acquisition of control over media outlets, adapting a tool taken from the antitrust-law arsenal, in order to avert the problem in its incipiency. Our solution preempts the problem by disallowing the acquisition of control ex-ante or by ordering divestiture ex-post whenever the probability of undesired influence is high enough to justify this structural remedy. At the same time, our approach does not unduly infringe on the freedom of press. Specifically, we develop an index that is inspired by the famous Herfindahl-Hirschman Index (HHI). Our index, tentatively dubbed BMII (Business-Media Influence Index) requires no interference with specific publications or detection of implicit deals with politicians, both of which are extremely problematic for numerous reasons. Our proposed solution, inspired by antitrust law’s merger control, provides a structural remedy that strikes at the heart of the problem. It curbs the abuse of media outlets for the furtherance of interests that should remain foreign to such outlets in a democracy.