

Rapporteur’s Report: AAI 27th Annual Policy Conference¹

On June 4, 2026, the American Antitrust Institute (AAI) held its 27th Annual Policy Conference, entitled *Competition Policy, Journalism, and “the Promotion of Truth Regarding Public Matters.”*² The full-day program brought together more than 100 diverse experts from business, government, academia, private practice, journalism, and public interest backgrounds. Guest speakers, panelists, and audience members discussed important legal, economic, and political developments affecting journalism and local news broadcasting. Key topics included (1) the challenges that journalism faces in today’s media markets, (2) the potential impacts of proposed mergers between Nexstar and Tegna and between Paramount and Warner Bros. Discovery, and (3) the use of antitrust enforcement and competition policy to protect journalism’s role in our democracy.

Introduction

AAI President Randy Stutz began the day by defining a key theme of the conference: how antitrust law and competition policy can protect journalism’s unique role in our democratic society. He quoted Supreme Court Justice Frankfurter’s concurrence in *Associated Press v. United States*, stating that, because “[a] free press is indispensable to the workings of our democratic society,” anticompetitive restraints on a free press “call[] into play considerations very different from comparable restraints” in other sectors.³

An Insider’s Perspective on the Competitive Forces Shaping Journalism

The first panel of the day set the stage by providing insiders’ views on the state of the journalism industry. Panelists included author and journalist Franklin Foer, empirical applied economist Lisa George, who studies the economics of media markets, antitrust reporter Leah Nylen, and local news policy expert Matt Pearce. The panel was moderated by AAI Senior Counsel David O. Fisher, who began by discussing some of the changes journalism is facing: the old media no longer have a monopoly on the spread of information, and journalists have to compete with a flood of content, much of which is AI-generated and often false. This laid the foundation for a discussion among the panelists about the state of journalism today.

¹ This report was prepared by AAI summer intern Addison Wagner, who is a rising 3L at William & Mary Law School. Assistance was provided by Sam Bromer and former AAI intern Steven Lim.

² *Associated Press v. United States*, 326 U.S. 1, 28 (1945) (Frankfurter, J., concurring).

³ *Id.*

Panelists addressed the legal and regulatory challenges journalists face, including the erosion of protections traditionally provided under *New York Times Co. v. Sullivan*, which has offered a heightened level of protection for journalists in defamation suits, and concerns that the Federal Communications Commission is attempting to create a press that is more favorable to the President through merger controls and regulatory pressure.

Franklin Foer argued that we are living in an ill-informed and “post-literate” society that has been cultivated by the rise of social media and poses a threat to our democracy. This led to a discussion about the market forces which have led to the new status quo. Matt Pearce explained what he has described as an economic paradox in journalism: accurate information is more expensive to produce than inaccurate information, but there are few market-imposed penalties for producing and proliferating inaccurate information. Leah Nysten framed the issue as a disconnect between the production of news that is true and news that is able to be monetized. On the issue of monetization, the panelists discussed the industry’s switch from an ad-based model to a subscription model in the context of Google’s monopoly on advertising technology, and how the most successful publishers also rely on billionaire owners to support their work.

On the issue of consumer preference, the panelists recognized that many consumers are willing to pay for quality information from trusted, expert sources, particularly those that are narrow and in-depth as opposed to broad and general. Lisa George presented [data](#) showing how trust in mass media has decreased over time alongside trust in the federal government and Congress, while trust in local government remains relatively high; she finds that this contrast is likely connected to lower demand for local news. The panelists generally agreed that local news sources are vital and require continued support.

The panelists’ discussion also set the stage for the following panels by providing a journalistic perspective on the Nexstar/Tegna merger and the issue of viewpoint diversity in the news. With respect to Nexstar/Tegna, Leah Nysten argued that the merger is likely to reduce quality and choice in local news markets, and that a judge reviewing the merger should consider local news as a public good. With respect to viewpoint diversity, Lisa George pointed out that one of journalism’s roles is to provide a check on corruption, which, unlike other topics, is about investigating the truth rather than reflecting differing views.

Although panelists agreed that competition policy provides only one subset of the solutions needed to address the problems facing journalism, they proposed a few solutions that may support positive change. Matt Pearce argued for supporting local news through tax subsidies, which have gained traction in some jurisdictions. In response to an audience question on this issue, the panelists agreed that subsidies do not address reduced demand for local news, but they may be necessary to prevent the creation of news deserts

that leave no checks on corruption. Pearce also proposed collective bargaining agreements between the news sector and Big Tech, which he argues has exploited journalists by refusing to pay for the use of their work and creating AI-generated content that serves as a free alternative to quality news.

In response to an audience question, the panelists also examined the Federal Journalism Competition and Preservation Act, which would create an antitrust exemption allowing news organizations to collectively bargain and withhold their content. Matt Pearce generally supported the idea that news organizations should be able to collectively bargain against companies like Google. Leah Nylen noted that in Australia and Canada, where similar policies have been adopted, exempted news organizations are subject to registration and verification requirements.

Legacy Media, Consolidation, and the News

The second panel of the day focused on topics related to legacy media, including increased concentration in the market, the proposed merger of Nexstar and Tegna, and whether social media serves as a substitute for legacy news. Panelists included state enforcer Emily Curran, attorney and public advocate Gene Kimmelman, attorney Amanda Lewis, and media policy expert Phil Napoli. The panel was moderated by AAI Vice President & Director of Legal Advocacy Kathleen W. Bradish.

The discussion opened with the Nexstar/Tegna merger litigation, in which thirteen states and DirecTV sued in the Eastern District of California to block the merger under Section 7 of the Clayton Act. Emily Curran explained that the merger would create overlapping markets across thirty-one designated market areas. It would also give Nexstar ownership of local affiliates for several of the “Big Four” broadcast networks, conferring significant bargaining leverage over cable and satellite distributors, including the ability to black out entire channels during retransmission negotiations. The panelists criticized the FCC and DOJ for granting early termination of the statutory waiting period, which Gene Kimmelman described as a “complete abandonment” of their duty. The panelists agreed that the states were filling an important enforcement gap.

The panel then discussed two principal challenges confronting the plaintiff states. First, the defendants’ decision to consummate the merger before the conclusion of litigation created tactical asymmetries, including an aggressive public relations campaign designed to characterize the states’ challenge as a disruptive interference with a settled transaction. Amanda Lewis characterized this as a manufactured problem, noting that the parties chose to consummate even though they had advance notice that a state challenge was forthcoming. Second, market definition poses additional difficulties. The panelists acknowledged that market definition is demanding in virtually every antitrust case, but is especially complex in legacy media and social media cases, as illustrated in *FTC v. Meta*, where the nature and magnitude of consumer substitution is a key contested question at

trial and on appeal. The question whether digital platforms and social media should be treated as substitutes for local broadcast television poses similar challenges.

This led into a broader discussion about whether social media and other platforms truly provide a substitute for news. Philip Napoli presented data from the Pew Research Center indicating that approximately 65% of American adults rely on local broadcast television for local news, a figure that has declined by only five percentage points over the past eight years. However, panelists noted a significant generational divide, with consumers under thirty far more likely to turn to online and social media sources. Gene Kimmelman argued that this generational split does not undermine the distinctiveness of local broadcast as a relevant market; rather, the FCC and the courts have historically recognized that the unique bundle of local programming, community information, and emergency alerts offered by local affiliates cannot be replicated by internet sources that provide only fragments of what broadcasters offer. He criticized as empirically unfounded prior FCC decisions conflating legacy and social media markets, pointing to the Time Warner/Turner merger, in which regulators found that preserving diverse ownership of different news sources was uniquely important and prohibited the merging parties from self-preferencing and blocking other news channels.

Panelists also observed that the states' Nexstar/Tegna complaint advances a theory centered not on the total volume of news output but on the reduction of unique, locally produced news. Nexstar has argued that increased post-merger programming outputs measured in raw minutes would constitute a cognizable efficiency. Panelists countered that it is a long established principle that a merger cannot be justified by efficiencies that are themselves anticompetitive, and that minutes of duplicated or nationally-sourced content are not the same product as unique local journalism. Amanda Lewis noted that hospital merger litigation has developed analogous methods for assessing non-price quality harms—including, for example, hospitals competing on quality by introducing new robotic surgical procedures—and that similar methods are available to courts adjudicating news market cases. She also pointed to the Penguin Random House/Simon & Schuster merger challenge as an example of courts' focus on non-price harms. At the same time, panelists acknowledged the potential subjectivity of quality assessments and the difficulty of translating qualitative harm into the kind of concrete, quantifiable terms that antitrust analysis often demands.

The panel also briefly addressed Paramount's proposed acquisition of Warner Bros. Discovery, including the question of whether antitrust law should treat news content differently from entertainment content. Panelists generally agreed that mergers in news markets warrant heightened scrutiny given the implications for democratic discourse, while cautioning against discounting the broader cultural significance of entertainment media. The proposed merger's combination of CBS News and CNN under

a single corporate parent was identified as a particular area of concern warranting careful competitive analysis.

In response to questions from audience members, the panel further discussed the efficacy of antitrust enforcement in preserving local journalism, conceding that it has not been as effective as it needs to be. Agreeing with several of the policy solutions discussed in the first panel, Gene Kimmelman suggested that a durable solution would require some form of compulsory licensing or a public funding mechanism, and suggested a revitalized FCC mandate, including a media power index to allow the FCC to systematically assess whether community information needs are being met. Emily Curran emphasized that, while some laws need updating, the existing laws have proved to be adaptable over time in response to new technology and will continue to be equipped to handle upcoming challenges, including the growing role of AI-generated content. Amanda Lewis suggested the laws could still benefit from some improvements, and identified California's COMPETE Act as one example of an update that would enable simpler methods of proving facts related to market definition and market power during litigation.

Luncheon and Award Presentations

During the lunch hour, AAI had the honor of presenting several awards. Each year AAI and Cohen Milstein recognize authors for their outstanding contribution to antitrust scholarship with the Jerry S. Cohen Award. Dan Silverman, Partner at Cohen Milstein, presented the award to this year's winners: Mark A. Lemley, Rory Van Loo, and Lane Mile, authors of "Anticompetitive Directors," 125 COLUM. L. REV. 1939 (2025), in which they demonstrate that a large number of companies are directly violating the Clayton Act's prohibition on competing corporations sharing board members. They provide analysis of boards of both public and private companies, find over 2,000 instances of individuals sitting on the boards of two companies that are direct competitors, and explain how the practice creates incentives to promote anticompetitive conduct.

The Cohen Award selection committee also conferred nine category awards recognizing other outstanding contributions to antitrust scholarship in 2025:

- Best Antitrust Publication of 2025 on the Clayton Act: Robert H. Lande, John M. Newman, Rebecca Kelly Slaughter, "The Forgotten Anti-Monopoly Law: The Second Half of Clayton Act Section 7," 103 TEX. L. REV. 785 (2025)
- Best Publication of 2025 on Antitrust and Contract Law: William Friedman, "Are Anticompetitive Contracts Enforceable? The Illegality Defense and Modern Anticompetitive Contracts," 110 CORNELL L. REV. 335 (2025)
- Best Publication of 2025 on Antitrust and Patent Law: Talha Syed, "Does Pharma Need Patents?," 134 YALE L.J. 2038 (2025)

- Best Antitrust Publication of 2025 on Collusion: Amanda Starc, Thomas G. Wollmann, “Does Entry Remedy Collusion?,” 115 AM. ECON. REV. 1400 (2025)
- Best Publication of 2025 on Antitrust in Regulated Industries: Erika M. Douglas, “Antitrust Abandonment,” 42 YALE J. ON REG. 1 (2025)
- Best Publication of 2025 on Merger Retrospectives: Germain Gaudin, Niklas Nagel, “Merger of Complements: Empirical Evidence from the Eyewear Industry,” 103 INT’L J. INDUS. ORG. 103114 (2025)
- Best Publication of 2025 on Unilateral Effects in Merger Analysis: Peter Caradonna, Nathan H. Miller, Gloria Sheu, “Mergers, Entry, and Consumer Welfare,” 17 AM. ECON. J.: MICROECONOMICS 103 (2025)
- Best Antitrust Publication of 2025 on Remedies: Francesco Decarolis, Muxin Li, Filippo Paternollo, “Competition and Defaults in Online Search,” 17 AM. ECON. J.: MICROECONOMICS 369 (2025)
- Best Antitrust Student Publication of 2025: Joshua L. Rojas, “Forcing Divestiture Dynamics: Solving the Cartel Conundrum by Structural Remedy,” 92 TENN. L. REV. 933 (2025)

AAI was also honored to present Professor Robert H. Lande with the Alfred E. Kahn Award for Antitrust Achievement. AAI founder and former president Albert A. Foer presented the award, sharing the story of how he and Lande founded AAI together and praising Lande’s many contributions to the antitrust community. Lande served for many years in the FTC’s Bureau of Competition and was AAI’s co-founding Director and first Senior Fellow, and has served AAI through its entire history. He is the author of numerous law review articles relating to antitrust and competition, a frequent speaker at antitrust events, and is often quoted in the trade press. He currently serves as the Secretary of the AAI Board of Directors and is an Emeritus Professor at the University of Baltimore School of Law.

Antitrust, Regulation, and Viewpoint Diversity in the News

After lunch, the final panel of the day focused on the marketplace of ideas and the various legal and regulatory tools for ensuring its continued function. Panelists included former DOJ Antitrust Division official David Lawrence, attorney and researcher Madhavi Singh, attorney and FCC expert Gigi Sohn, and antitrust law professor Maurice Stucke. AAI General Counsel Mark S. Hegedus served as moderator, and opened with a discussion of the Supreme Court’s recognition in *Moody v. NetChoice* of antitrust law’s role in protecting the marketplace of ideas.

Panelists described the marketplace of ideas as a social space where ideas can interact freely and that is open to anyone with access to a microphone or an internet connection. They noted that, while individual participants do not compete directly with

one another in the marketplace of ideas, a number of dominant companies exercise influence over the entire ecosystem.

This led to a broader discussion of the appropriate role of antitrust law in preserving the marketplace of ideas. Some argued that antitrust enforcement must be focused on structural remedies that change the composition of the marketplace itself rather than promoting or suppressing particular ideas. There was agreement that intervention must be content-neutral, but issues arise from the lack of a workable standard and the multiple layers of competition within the marketplace of ideas. David Lawrence specifically cautioned against the FCC or another government agency acting as a “ministry of truth,” and stressed the importance of content neutrality.

The FCC’s role in promoting viewpoint diversity was a central focus of the panel. The panelists discussed the procedural irregularities of the agency’s review of the Nexstar/Tegna merger. The FCC’s Media Bureau approved the transaction in a remarkably compressed timeframe of 108 days. The Bureau waived the statutory limit on a single broadcaster’s national audience reach, granting Nexstar coverage of more than thirty-nine percent of the national audience without a full Commission vote. Gigi Sohn argued that the Bureau’s action, which was not subject to direct appeal, exceeded the Bureau’s authority and effectively made new law. The merger closed within twenty minutes of the Bureau’s ruling, and a coalition of public interest groups subsequently challenged both the Bureau’s decision and the merger itself. The court denied the coalition’s request for an emergency stay, and the coalition is awaiting the D.C. Circuit’s decision on its petition for a writ of mandamus. Meanwhile, a district court in California has issued a preliminary injunction pausing the merger as it considers a separate challenge filed by various states and DirecTV. Panelists then discussed Gigi Sohn’s argument that the FCC is failing to meet its responsibility to mandate that broadcasters meet the information needs of their communities. This included discussion of the importance of localism as a regulatory value and evidence suggesting that the decline of local news has contributed to increased political polarization.

The panel also examined panelist Madhavi Singh’s research on group boycotts as a tool for addressing anticompetitive conduct in the marketplace of ideas. Singh distinguished between economic boycotts, which are organized by commercial actors for commercial reasons, and political boycotts, which are organized to pressure entities into changing their conduct on non-economic grounds. Singh noted that the boundary between these categories is frequently blurry, and that antitrust law does not provide a clean analytical framework for adjudicating either type. Panelists also addressed the FTC’s investigation in the Omnicom/Interpublic proceeding, which involved allegations that advertising agencies had coordinated to avoid placing advertisements on platforms based on their content. Drawing upon AAI’s work on the issue, Maurice Stucke argued that the appropriate use of antitrust in the marketplace of ideas is to pursue structural remedies

rather than behavioral interventions. David Lawrence added that structural remedies are better suited in the area of speech specifically because of First Amendment restrictions on behavioral regulation of speech.

In closing, some of the panelists argued that antitrust law alone is not equal to the challenge posed by the concentration of AI and search in the hands of a small number of dominant companies. They focused in particular on AI companies' replication of journalists' work without paying for it, and Google's leveraging of its monopoly power in advertising technology to force companies to provide it with inputs for its AI business. They reasoned that even vigorous antitrust enforcement, including structural remedies, might produce additional competitors that engage in the same problematic behaviors, and that toxic forms of competition driven by the aggregation of data across sectors may only be addressed through complementary data privacy and consumer protection regimes.

American Antitrust Institute
June 4, 2026