No. 20-319

IN THE

Supreme Court of the United States

COMCAST CORPORATION, et al.,

Petitioners,

v.

VIAMEDIA, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

CORY L. ANDREWS
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Mass. Ave., NW
Washington, DC 20036
(202) 588-0302
candrews@wlf.org

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QUESTION PRESENTED

Whether a refusal-to-deal claim under § 2 of the Sherman Act may proceed despite a valid business justification for the refusal.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Page(s)

Statutes:

Page(s)

Miscellaneous:

Page(s)

INTEREST OF *AMICUS CURIAE**

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as *amicus curiae* in important antitrust cases. *See, e.g.*, *Apple v. Pepper*, 139 S. Ct. 1514 (2019); *FTC v. Actavis*, 570 U.S. 136 (2013); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

The central aim of antitrust law is to ensure free-market competition, providing consumers with better goods and services at lower prices. The Seventh Circuit's decision below undermines that laudable goal. By allowing an antitrust plaintiff's refusal-to-deal claim to advance on the merits despite the defendant's sound business justification for the refusal, the panel's holding—if left to stand—would erode the procompetitive aims of antitrust law and invite rent-seeking lawsuits by rivals.

STATEMENT OF THE CASE

Television networks broadcast their content mainly through distributers. (Pet. App. 288a.) For simplicity's sake we will call these distributers "cable

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, helped pay for the brief's preparation or submission. At least ten days before the brief's due date, WLF notified each party's counsel of record of WLF's intent to file an *amicus* brief. Each party's counsel of record has consented to the filing.

companies," although distribution often occurs by other means. Most television advertising time belongs to the networks, but cable companies receive two or three minutes an hour. (*Id.* at 289a.) The cable companies' ad time is called "spot-cable advertising." (*Ibid.*)

In each of the country's major media regions, the cable companies sell much of their spot-cable advertising through an "interconnect." (Pet. App. 291a.) The interconnect is operated by the region's largest cable company. (*Id.* at 294a.) The other cable companies pay a fee to participate in the interconnect. (*Ibid.*) The interconnect enables local and regional advertisers more easily to purchase spot-cable advertising that will appear on all the region's televisions.

Some cable companies sell their spot-cable advertising themselves. Others hire a broker—an "advertising representative" or "ad rep"—to do it for them. (Pet. App. 286a-287a.) Respondent Viamedia, Inc. is an ad rep. (*Id.* 21a-22a.) Petitioner Comcast Corporation is both a cable company and (through a subsidiary) an ad rep. (*Id.* at 23a-24a.)

Comcast operates the interconnects in Chicago and Detroit. For about ten years, Comcast agreed to let Viamedia participate in these interconnects on behalf of two cable companies that had hired Viamedia as their ad rep. (Pet. App. 307a.) In 2012, the contract authorizing this participation expired, and Comcast and Viamedia failed to agree on new terms. (*Id.* at 110a, 119a.) Viamedia thus lost access to the Chicago and Detroit interconnects. (*Ibid.*)

Comcast believed it could provide more efficient and more valuable ad-rep service than Viamedia. (Pet. App. 188a-189a.) So around ten years ago, it began expanding its ad-rep business. Cutting ties with Viamedia was part of this effort—a successful effort. Throughout the country—both in regions where Comcast does, and in regions where it does not, control the interconnect—Comcast beat Viamedia in head-to-head bidding contests for ad-rep contracts. (*Id.* at 219a-224a.)

In 2016 Viamedia sued Comcast under § 2 of the Sherman Act. 15 U.S.C. § 2. The § 2 claim comprised, in effect, a refusal-to-deal claim, a tying claim, and an exclusive-dealing claim.

The district court granted Comcast's motion to dismiss the refusal-to-deal claim. A monopolist's refusal to deal violates § 2, the court observed, only when it is "irrational but for its anticompetitive effects." (Pet. App. 188a.) Comcast, however, acted rationally. Its aim of eliminating a middleman was, the court wrote, "a prototypical valid business purpose." (*Id.* at 189a.) Viamedia's refusal-to-deal claim thus failed. (*Ibid.*)

The tying and exclusive-dealing claims proceeded to discovery. The district court ultimately granted summary judgment for Comcast, and Viamedia appealed.

A divided Seventh Circuit panel reversed. The majority held that Viamedia stated a claim under § 2 for refusal to deal because Comcast's dealings with Viamedia evoked, in the majority's mind, some of the "factors" of *Aspen Skiing Co. v. Aspen Highlands*

Skiing Corp., 472 U.S. 585 (1985): "a prior course of voluntary conduct, sacrifice of short-term profits, and refusal to sell to rivals on the same terms as other potential buyers." (Pet. App. 53a, 62a-63a.) As for Comcast's stated business reason for refusing to deal with Viamedia, it was "not amenable to resolution on the pleadings"; a jury would need to "balance" that reason against any "anticompetitive effects" of Comcast's refusal to deal with Viamedia. (*Id*. at 57a.)

Although he concurred on the refusal-to-deal claim, Judge Brennan conceded that this case is "[d]ifferent" from *Aspen Skiing*. (Pet. App. 116a.) After all, Viamedia "admitted" in its complaint that Comcast had a "rational business purpose" of "vertical integration and disintermediation." (*Id*. at 119a.) Even so, he explained, Comcast would now have to show "procompetitive benefits net of anticompetitive harms," which "does not easily lend itself to a *pleading* standard." (*Id*. at 115a.) As for the tying claim, Judge Brennan dissented, finding "no evidence of tying conduct separate from Viamedia's refusal-to-deal claim." (*Id*. at 142a.)

SUMMARY OF ARGUMENT

In our free-market system, a business—even an alleged monopolist—may choose with whom it will transact. Antitrust law places only one limit on this discretion: a monopolist that ends an established and profitable course of dealing must have a rational business reason for doing so. This is not a high bar. The monopolist need not maximize competition—and it certainly need not go out of its way to assist competitors. It must merely act sensibly from a competitive business vantage.

Applying this straightforward rule, the district court correctly dismissed Viamedia's refusal-to-deal claim. In reversing that decision, the court of appeals cited only implausible potential harms. But these speculative fears cannot overcome Comcast's valid competitive justification, bolstered by record evidence, for its conduct. WLF urges the Court to grant review, clarify the refusal-to-deal standard, and prevent further misapplication of *Aspen Skiing*.

If anything, *Aspen Skiing* should be overruled. A 35-year-old stumbling block to sound antitrust jurisprudence, *Aspen Skiing* remains an evergreen source of mischief for the lower courts. Despite this Court's more recent (and commendable) attempts at cabining its untethered theory of refusal-to-deal liability, *Aspen Skiing* retains the force of law. As this case attests, the mischief has not only persisted—it has reached a fever pitch.

Without this Court's intervention, an antitrust plaintiff who can convince a court that its case is loosely analogous to *Aspen Skiing* can survive a motion to dismiss, forcing a defendant with a valid business justification into costly and protracted discovery and trial on the merits simply to challenge the plaintiff's flawed theory of § 2 liability. And given the jarringly asymmetrical risks and rewards of antitrust litigation, most antitrust defendants will have little choice but to settle rather than appeal. This case, therefore, offers the Court a rare chance to overturn *Aspen Skiing*'s anachronistic framework, and to bring refusal-to-deal liability into step with modern antitrust jurisprudence.

The reality is that this type of case—one that involves no *ongoing* anticompetitive effects—should be dismissed out of hand. A refusal to deal becomes harmful only when a monopolist starts trying to recoup, through inflated prices, the losses it incurred predatorily driving out a competitor. The judiciary is ill-equipped to determine whether inflated prices *are coming*. A plaintiff should therefore have to plead that inflated prices *are here*—something Viamedia cannot do, because Comcast's ad-rep service is more, not less, efficient than Viamedia's.

REASONS FOR GRANTING THE PETITION

I. REVIEW IS WARRANTED TO PREVENT FURTHER MISAPPLICATION OF *ASPEN SKIING*.

In an opinion taking a skeptical view of refusal-to-deal liability, then-Judge Gorsuch wrote that it might be "better" to "err on the side of firm independence—given its demonstrated value to the competitive process and consumer welfare—than on the other side where we face the risk of inducing collusion and inviting judicial central planning." *Novell, Inc. v. Microsoft Corp.*, 731 F.3d 1064, 1076 (10th Cir. 2013). Judge Gorsuch was applying *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004), in which this Court declared that its most notable venture in allowing refusal-to-deal liability, *Aspen Skiing*, is a "limited exception" that lies "at or near the outer boundary of [Sherman Act] § 2 liability," 540 U.S. at 409.

Contrary to now-Justice Gorsuch's advice and, what's worse, contrary to the guidance the Court supplied in *Trinko*, the panel below greatly expanded the scope of the duty to deal under *Aspen Skiing*. In *Aspen Skiing*, the defendant "fail[ed] to offer any efficiency justification whatever" for its conduct. 472 U.S. at 608. Here the plaintiff itself *pleaded* a procompetitive justification—the benefit of combining complementary services in a single firm. (Pet. App. 309a.)

That benefit is legitimate: vertical integration is generally a "means of creating efficiency." Robert H. Bork, *The Antitrust Paradox*, 226-27 (2d ed. 1993). According to economic theory, an expansion of Comcast's ad-rep business, and the resulting integration of its ad-rep business and its interconnect business, would save costs. Comcast could expect, for example, to eliminate:

The Cost of Double Marginalization. When two companies each collect a profit margin selling one ultimate product, the problem of double marginalization arises. Both firms in the supply chain charge more than their marginal cost, creating a deadweight loss to the end customer. *See United States v. AT&T Inc.*, 310 F. Supp. 3d 161, 198 (D.D.C. 2018), *aff'd*, 916 F.3d 1029 (D.C. Cir. 2019). If just one firm occupies the supply chain's upstream and downstream positions, however, that firm can "shrink th[e] total margin so there's one instead of two, leading to lower prices for consumers." *Ibid.* That is exactly what Comcast could expect to achieve by expanding its ad-rep business. By providing a customer both ad-rep service and interconnect service—and imposing just one profit margin on both services—Comcast could provide ad-rep service as good as, but cheaper than, the service provided by an unintegrated firm like Viamedia.

The Cost of Bargaining. A firm will generally seek to expand until coordinating new production internally costs more than coordinating it externally through market purchases. *See* Ronald Coase, *The Nature of the Firm*, 4 Economica 386 (1937). Some things are harder to purchase on the market than others. A key factor is bargaining cost, which rises as a transaction becomes more complex. *See id.* at 390-91. The multi-million-dollar sale of several years of interconnect service is a complex transaction. By integrating ad-rep service and interconnect service—by cutting out the middleman—Comcast could spare itself the cost of negotiating interconnect deals with ad reps. It could then pass some of that cost savings on in the form of lower ad-rep prices.

These are not the only efficiencies Comcast could expect to secure by vertically integrating ad-rep service and interconnect service. Vertical integration can, among other things, "cut sales and distribution costs," "facilitate the flow of information between levels of the industry," and "create economies of scale in management." Bork, supra, at 226-27; Michael H. Riordan & Steven C. Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 Antitrust L.J. 513, 519 (1995) ("Potential efficiency benefits" of vertical integration include "more efficient input usage" and "improved coordination in pricing, production, and design that can reduce costs and improve product quality").

Comcast "was already vertically integrated," the panel claimed, so the issue here is simply whether it "exploit[ed] its control" over interconnects. (Pet. App. 66a.) We see it differently. The issue is whether Comcast was free not only to vertically integrate, but also to *compete* as a vertically integrated firm. If it was free to compete, it was free to pursue Viamedia's clients. And if it was free to pursue those clients, it was free to decline to renew its contract with Viamedia. Viamedia's argument is, at bottom, that Comcast should have competed a little less vigorously. Viamedia contends, in other words, that Comcast should have been careful to realize just *some*, not all, of the procompetitive benefit of vertical integration. An argument like that turns antitrust law on its head.

The panel emphasized that *Aspen Skiing* reviewed a jury verdict, while the district court here dismissed the refusal-to-deal claim on the pleadings. (Pet. App. 57a.) But a court must assess an antitrust complaint "in light of common economic experience." *Twombly*, 550 U.S. at 565. That is why *Twombly* instructs a district court to decide if the facts alleged tend "to rule out the possibility" that the defendant was acting pro-competitively, 550 U.S. at 554, or if instead those facts are "just as much in line with a wide swath of rational competitive business strategy," *ibid.*

A defendant may win dismissal, therefore, by answering unsound economic theory with sound economic theory. That is what happened in *Trinko*, which, after discussing economic theory at length, affirmed the dismissal of the plaintiff's refusal-to-deal claim. 540 U.S. at 407-08, 414. And that's what happened here, too, when the district court, citing Comcast's "prototypical valid business purpose," correctly dismissed Viamedia's refusal-to-deal claim. (Pet. App. 189a.)

Allowed to stand, the Seventh Circuit's new rule threatens to transform *Apsen Skiing*'s duty to deal into a tool for strategic antitrust-litigation abuse. It would permit rent-seeking rivals to subject pro-competitive firms to the formidable threat of antitrust discovery, "chill[ing] the very conduct the antitrust laws are designed to protect." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 594 (1986). And it would create "irrational dislocations in the market." *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984).

This threat of over-deterrence is not merely ironic; it is corrosive to the vital workings of our economy. It risks returning antitrust law to a time when leading business-school textbooks promoted antitrust litigation as a strategic device to halt competitors' growth and chill pro-competitive behavior. *See, e.g.*, Michael Porter, *Competitive Strategy* 85-86 (1980). The Court should grant review.

II. THE PETITION OFFERS THE COURT A RARE CHANCE TO OVERRULE *ASPEN SKIING*.

Hard cases make bad law. Perhaps no case epitomizes the truth of this maxim better than *Aspen Skiing*.

As the Tenth Circuit noted at the time, "the instances in which a monopolist has a duty to cooperate or deal is one of the most 'unsettled and vexatious' issues in antitrust law." *Aspen Highlands Skiing Corp. v. Aspen Skiing Co.*, 738 F.2d 1509, 1519 (10th Cir. 1984) (quoting *Byars v. Bluff City News Co.*, 609 F.2d 843, 846 (6th Cir. 1980)). Thirty-six years later, however, very little has changed: "One of the most unsettled areas of antitrust law has to do with the duty of a monopolist to deal with its competitors." FTC, *Guide to Antitrust Laws, Single Firm Conduct: Refusal to Deal* (2020), <https://tinyurl.com/y2k6246x>.

Most everyone agrees that *Aspen Skiing* was "wrongly decided." Wesley J. Liebeler, *What Are the Alternatives to Chicago?*, 1987 Duke L.J. 879, 887 (1987). The Court's failure to "meaningfully differentiate between exclusion and competition," coupled with its inability to explain when "a refusal to cooperate constitutes monopolization," sent an "uncertain signal" to the lower courts. Alon Y. Kapen, *Duty to Cooperate Under Section 2 of the Sherman Act:* Aspen Skiing*'s Slippery Slope*, 72 Cornell L. Rev. 1047, 1062 (1987). *Aspen Skiing* "did little to clarify the meaning of Section 2, and much to obscure it." Michael Jacobs, *Introduction: Hail or Farewell? The Aspen Case 20 Years Later*, 73 Antitrust L.J. 59, 68 (2005). "[T]he case is an anomaly, strange on its facts and open on the law to a slew of serious problems." *Ibid.*

No surprise, then, that *Aspen Skiing* is widely regarded as "an unwelcome relic." Susan A. Creighton & Jonathan M. Jacobson, *Twenty-Five years of Access Denials*, 27 Antitrust Mag. 50, 50 (Fall 2012). In short, *Aspen Skiing*'s rationale created "a trap" that "poses big risks" to competitive firms. Frank H. Easterbrook, *On Identifying Exclusionary Conduct*, 61 Notre Dame L. Rev. 972, 973 (1986). Those risks have not abated.

True enough, *Trinko* recast *Aspen Skiing* as a "limited exception." 540 U.S. at 409. But *Trinko*'s "at or near the outer boundary" language, *ibid*, has not succeeded in cabining the rise of refusal-to-deal claims. *See, e.g.*, *FTC v. Qualcomm Inc.*, 411 F. Supp. 3d 658, 758-62 (N.D. Cal. 2019) (holding that a patentee's refusal to license its patents to rival chip manufacturers violated § 2), *rev'd*, 969 F.3d 974 (9th Cir. 2020); *Trendsettah USA, Inc. v. Swisher Int'l, Inc.*, 761 Fed. App'x 714 (9th Cir. 2019) (reinstating refusal-to-deal claim against cigarillo supplier), *cert. denied*, 140 S. Ct. 443 (2019); Steven Cernak, *Antitrust Refusal-to-Deal Cases: At or Near, but Still Not Beyond, the Outer Boundary of Section 2*, WLF Legal Back-grounder (Mar. 20, 2020), <https://tinyurl.com/y2ks5jbj>. A sharper, more definitive correction is needed.

As this case confirms, in practice *Aspen Skiing* still "sets the parameters for finding an antitrust duty to deal." Ellen Meriwether, *Putting the "Squeeze" on Refusal to Deal Cases: Lessons from* Trinko *and* linkLine, 24 Antitrust Mag. 65, 69 (Spring 2010). And *Trinko* has proven "only partly successful in clearing up the confusion." John E. Lopatka & William H. Page, *Bargaining and Monopolization: In Search of the "Boundary of Section 2 Liability" Between* Aspen *and* Trinko*,* 73 Antitrust L.J. 115, 118 (2005). Despite *Trinko*, "[w]e are left with the clear rule" that monopolists have no duty to assist their competitors—"except when they do." *Id.* at 152. In other words, "what we have now is unworkable." Jacobs, supra, at 68.

Fortunately, stare decisis "is not an inexorable command." *Janus v. Am. Fed'n of State, Cty. & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2478-79 (2018). All the more so in antitrust, where Congress has authorized the federal courts to define substantive violations of the Sherman Act, and stare decisis has "less-than-usual force." *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 461 (2015).

The Court has not hesitated, therefore, "to reverse antitrust precedents that misperceived a practice's competitive consequences." *Ibid; see, e.g.*, *Leegin Creative Leather Prod., Inc. v. PSKS, Inc.*, 551 U.S. 877, 882 (2007) (overruling *Dr. Miles Med. Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911)); *Ill. Tool Works Inc. v. Indep. Ink, Inc.*, 547 U.S. 28, 31 (2006) (overruling *Int'l Salt Co. v. United States*, 332 U.S. 392 (1947)); *State Oil Co. v. Khan*, 522 U.S. 3, 7 (1997) (overruling *Albrecht v. Herald Co.*, 390 U.S. 145 (1968)).

Before this Court may set aside a bad precedent, however, it first must have a proper vehicle for doing so. Antitrust litigation is uniquely expensive and wildly unpredictable. Once it survives a motion to dismiss, a plaintiff's antitrust suit can easily amass a steep but irresistible settlement value. *Twombly*, 550 U.S. at 558 ("[I]t is one thing to be cautious before dismissing an antitrust complaint in advance of discovery, but quite another to forget that proceeding to antitrust discovery can be expensive."). As this case shows, the debate over whether a particular refusal to deal will ultimately benefit consumers can take many years and a lot of money to resolve. Rather than face the high costs and long odds of a certiorari petition, most antitrust defendants opt to settle.

This case, which has the advantages of a fully developed record and superb counsel on both sides, offers the Court a rare, once-in-a-generation opportunity to reconsider the viability of *Aspen Skiing*. Overturning that misguided precedent would be outcome-dispositive here. The panel majority took *Aspen Skiing* as imposing a "case-by-case" balancing test, "similar" to the "rule of reason," on alleged refusals to deal. (Pet. App. 53a, 64a n.14.) Left in place, *Aspen Skiing* will continue to erode competition and distort market incentives. The Court should grant review and end the failed experiment with *Aspen Skiing*—before it metastasizes any further.

"Judicial errors that tolerate baleful practices are self-correcting," Judge Easterbrook has observed, but "erroneous condemnations are not." Frank H. Easterbrook, *The Limits of Antitrust*, 63 Tex. L. Rev. 1, 3 (1984). The chief "sin of *Aspen*," therefore, is "putting on defendants a burden they often cannot carry." Easterbrook, supra, 61 Notre Dame L. Rev. at 980. That unfair burden will continue unless and until this Court intervenes.

III. THE COURT SHOULD GRANT REVIEW TO MAKE IMMINENT RECOUPMENT AN ELEMENT IN REFUSAL-TO-DEAL ANALYSIS.

With *Aspen Skiing*'s flotsam and jetsam cleared away, the Court should, at long last, right the ship of refusal-to-deal jurisprudence under § 2 of the Sherman Act.

Outside the easiest cases, a court cannot distinguish competition from exclusion. "*Every* indicator of exclusion also is present with efficient competition. Both predators and efficient producers undercut rivals and gain market share." Frank H. Easterbrook, *The Chicago School and Exclusionary Conduct*, 31 Harv. J.L. & Pub. Pol'y 439, 443 (2008).

What we need to know is whether the defendant has predatorily excluded an equally or more efficient competitor from the defendant's market. But we can figure this out only after the monopolist has started acting *in*efficiently. "What distinguishes exclusion from efficiency is what happens in the *future*: exclusion leads to monopoly overcharges later, and efficiency does not." *Id.* at 443.

Rather than try to predict whether a refusal to deal *might* lead to inflated prices, a court should simply wait for *actual* inflated prices. "Instead of making predictions that are impossible to test—and will injure consumers if wrong—wait to see what happens. If monopolistic prices happen later, prosecute then." Frank H. Easterbrook, *When is it Worthwhile to Use Courts to Search for Exclusionary Conduct?*, 2003 Colum. Bus. L. Rev. 345, 347 (2003). This is essentially the rule in predatory-pricing cases. *See Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 222-24 (1993).

Predatory pricing and refusals to deal should be treated the same. Unless an *aspiring* predator or exclusionist starts to become a *successful* predator or exclusionist by charging inflated prices or palpably reducing quality, the time for an antitrust lawsuit has not yet arrived. Without signs of recoupment, an antitrust lawsuit will be no more than an expensive investigation of ambiguous behavior.

"'Predatory' vertical integration [is] an iffy proposition." Richard A. Posner, *Antitrust Law* 226 (2d ed. 2001). The monopolist will incur higher costs to produce the complement (if its costs were equal or lower, it would enter the complement market for *pro*competitive reasons). *See Schor v. Abbott Laboratories*, 457 F.3d 608 (7th Cir. 2006). As competitors enter the complement market and soak up business, the monopolist will be stuck with the deadweight loss of excess production capacity. And here, the most viable competitors would not in fact have to enter the market at two levels. Other cable companies could open their own ad-rep shops, just as Comcast has done.

When a practice is usually procompetitive, judges and juries will be bad at rooting out the rare exception. The judiciary should never "infer monopolization from behavior that in most cases is competitive." *Olympia Equip. Leasing Co. v. W. Union Tel. Co.*, 797 F.2d 370, 378 (7th Cir. 1986). "The search for the rare situation in which that second monopoly just might allow the firm to gain a profit by injuring consumers is not worth the candle." *Schor*, 457 F.3d at 613. "The search itself (and the risk of error in the judicial process) has much more chance of condemning a beneficial practice than of catching a detrimental one." *Id*

If anyone is going to take on the difficult if not impossible task of finding the unicorn antitrust case—an elaborate exclusionary scheme that somehow harms consumers without raising prices or reducing quality—it should not be the judiciary. "Congress and regulatory agencies" are better equipped to "identify circumstances where it is economically efficient to require [an] incumbent to share its facilities under a system of price and access regulation." Brief of the United States and the FTC at 18, *Trinko* (No. 02-682).

Congress and the agencies can use their "superior fact-finding ability, greater industry expertise, [and] existing capacity for ongoing oversight and refinement" to craft and implement "industry-specific legislation and regulation." *Id.* The judiciary should stick to the comparatively manageable task of spotting exclusionary practices that protect or allow inflated prices. To do so, however, this Court must first grant review and undo the doctrinal damage the Seventh Circuit has done to antitrust law.

CONCLUSION

The petition should be granted.

Respectfully submitted,

CORY L. ANDREWS
Counsel of Record
WASHINGTON LEGAL FOUNDATION
2009 Mass. Ave., NW
Washington, DC 20036
candrews@wlf.org

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