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July 14, 2015

The Hon. William J. Baer  
Assistant Attorney General for the Antitrust Division  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Dear Assistant Attorney General Baer,

From the beginning of our nation, Americans have understood the central role that open and competitive markets play in promoting freedom of expression and protecting our democracy. The country's founders, Congress and the Supreme Court have repeatedly made it clear that a concentration of private power over any marketplace of information is incompatible with American ideals of liberty, free speech, and the unfettered flow of ideas.

Today a single company, Amazon, has gained unprecedented power over America's market for books. We are not experts in antitrust law, and this letter is not a legal brief. But we are authors with a deep, collective experience in this field, and we agree with the authorities in economics and law who have asserted that Amazon's dominant position makes it a monopoly as a seller of books and a monopsony as a buyer of books. According to published figures, this one corporation now controls the sale of:

- More than 75 percent of online sales of physical books.
- More than 65 percent of e-book sales.
- More than 40 percent of sales of new books.
- About 85 percent of ebook sales of self-published authors.

With its own traditional imprints and its near-total control of self-publishing, Amazon has also become the largest publisher and distributor of new books in the world.

In recent years, Amazon has used its dominance in ways that we believe harm the interests of America's readers, impoverish the book industry as a whole, damage the careers of (and generate fear among) many authors, and impede the free flow of ideas in our society.

- Amazon, to pressure publishers over the past eleven years, has blocked and curtailed the sale of millions of books by thousands of authors;
- Amazon, during its dispute with Hachette in 2014, appears to have engaged in content control, selling some books but not others based on the author's prominence or the book's political leanings;

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- Amazon has used its monopsony power, and its ability to threaten punishment, to extract an ever greater share of the total price of a book from publishers; this has resulted in publishers dropping some midlist authors and not publishing certain riskier books, effectively silencing many voices;
  - Amazon routinely sells many types of books below cost in order to acquire customers for unrelated lines of business and to drive less well capitalized retailers – like Borders – out of business. This practice, extending over many years, has caused price deflation across the industry and reduced the amount of revenue available for publishers to invest in new books, thus depriving readers of wider choice;
  - Amazon routinely uses its market power to steer readers toward its own books and away from books published by other companies;
  - Amazon dictates pricing to self-published authors, requiring them to price their books within a specific range or be subjected to a 50 percent cut in royalties.

The present inaction by regulators is not in keeping with the history of government response when a single company has come to dominate a venue for communication. In the 20<sup>th</sup> century, Congress repeatedly passed laws that prevented a concentration of ownership in vital informational markets, including newspapers, radio and television. But the precedent for this thinking extends back to the First Amendment and in 19<sup>th</sup> Century law. In 1866, long before the creation of antitrust law, Congress passed the Telegraph Act, which blocked a private company from gaining monopoly control of this very first electronic medium of communication.

The courts have regularly found that existing antitrust laws can and should be used to protect information markets from private monopoly. Justice Anthony Kennedy, in the 1994 *Turner Broadcasting v. FCC* case, articulated the reasoning. He wrote: “Assuring that the public has access to a multiplicity of information sources is a governmental purpose of the highest order, for it promotes values central to the First Amendment... The First Amendment’s command that government not impede the freedom of speech does not disable the government from taking steps to ensure that private interests not restrict, through physical control of a critical pathway of communication, the free flow of information and ideas.”

Americans are just as opposed as ever to seeing private interests gain control of any marketplace of information. In February this year, the FCC, responding to the strong consensus view of the American people, ruled that no private interest should be allowed to manipulate the flow of information across the Internet, and established rules for “net neutrality.” Only a few months ago, your Division was reportedly among the regulators who opposed excessive consolidation of ownership in broadband Internet, which halted the merger of Comcast and Time Warner Cable. As recently as 1999, the FTC made clear that such principles also apply specifically to the book business, and blocked the purchase of Ingram Book Group, the country’s largest wholesale book distributor, by Barnes & Noble, the country’s largest retail bookstore.

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For two centuries, America's book business was the freest, fairest, and most competitive in the world. More than a business, it was a marketplace of ideas, with publishers acting as venture capitalists, advancing funds to give authors the freedom to write books, and thereby hoping to make a profit. In this way the profit motive was put in service of a vital national interest and our fundamental rights. "The best test of truth," Oliver Wendell Holmes wrote in 1919, "is the power of the thought to get itself accepted in the competition of the market." What Americans seek, Holmes said, is "free trade in ideas."

Over the years, Amazon has benefitted readers and authors in many ways. But no temporary price cut can compensate for the costs to free expression and the health of America's book industry that have resulted from Amazon's abuse of its dominance in the world of books. Accordingly, we respectfully request that the Antitrust Division investigate Amazon's power over the book market, and the ways in which that corporation exercises its power, bearing in mind the very special constitutional sensitivities that have historically been applied to any business that has established effective control of a medium of communication.

Sincerely,

The undersigned authors: