



Benjamin Sirota Analyzes “Striking” U.S. Antitrust Ruling Against Publishers in Global Competition Review

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A U.S. federal judge has blocked the proposed merger between publishers Penguin Random House and Simon & Schuster in “fairly striking” rulings, Kobre & Kim’s Benjamin Sirota – a former U.S. federal antitrust prosecutor – told *Global Competition Review* in his analysis of the case.

Mr. Sirota said the “battlefield” in the case was market definition, with the U.S. Department of Justice (DOJ) and the two publishers contesting whether the relevant market for U.S. publishing rights to anticipated top-selling books should be defined as those earning over US \$250,000 in advances, as the DOJ contends.

Ultimately, the judge accepted the DOJ’s definition and therefore found excessive concentration levels. The judge’s apparent “default to distrust” the publishers’ witnesses and the industry’s past antitrust run-ins was not “a recipe for success,” Mr. Sirota explained. He also said the decision may play into the government’s future antitrust agendas. “The government was able to show that the market, even if it wasn’t big in terms of the number of books, was big in terms of dollar value of advances,” he explained. “I think it does beg the question of going forward, is the government going to use this opinion to say there’s precedent for defining the market more and more narrowly?”

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