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Brief of Amici Curiae Scholars of Economics and Antitrust in Support of Petitioners in COMCAST CORPORATION, ET AL. v. VIAMEDIA, INC.
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INTRODUCTION AND SUMMARY OF ARGUMENT

Amici, scholars of economics and antitrust, submit this brief to address the broad consensus in the academic literature disfavoring the theory underlying plaintiff's case—so-called "unilateral refusal to deal" doctrine. In antitrust parlance, a unilateral refusal to deal describes an allegation that a monopolist refuses to enter into a business relationship with a rival. Plaintiff Viamedia alleges that Comcast refused to allow it to access, on reasonable terms, an important input (Comcast's Interconnect) for competition in advertising representation services.

Mainstream economists and competition law scholars are skeptical of imposing liability on a monopolist based solely on its choice of business partners. Because the free choice of business dealings is both a fundamental tenet of a free market economy and the mechanism by which markets produce the greatest welfare gains, cases compelling business dealings—even if one of the parties to the deal is a monopolist—should be confined to particularly delineated circumstances. The Seventh Circuit's analysis, which embraces Viamedia's theory of liability at face value, is thus out of step with the generally accepted academic view of efficient antitrust enforcement.

In Part A below, amici describe why it is generally inefficient for courts to compel economic actors to deal with one another against their will. Such "solutions" are generally unsound in theory and unworkable in practice, in that they ask judges to operate as public utility regulators over the defendant's business. Courts should be guarded about taking on such a role.

In Part B, amici describe how scholars have roundly criticized Aspen Skiing, this Court's most prominent precedent permitting liability for a monopolist's unilateral refusal to deal. This Court has backed away from Aspen Skiing's core theory, calling it "at or near the outer boundary of § 2 liability." The Seventh Circuit erred in failing to take this Court's cues and confine Aspen Skiing to its unusual facts.

In Part C, amici make clear that, even if delimited situations might warrant antitrust scrutiny of a monopolist's refusal to deal with a competitor, this case is not one of them. A unilateral refusal to deal should trigger antitrust liability only where a monopolist turns

down more profitable dealings with a competitor in an effort to drive a competitor's exit or to disable its ability to compete, thereby allowing the monopolist to recoup its losses by increasing prices. But Viamedia's allegations come nowhere near that scenario.

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