United States Senate
WASHINGTON, DC 20510

April 24, 2020

The Honorable Makan Delrahim
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Delrahim:

We write to share with the Antitrust Division our serious concerns regarding the proposed merger between Cengage and McGraw-Hill Education, two of the largest textbook producers in the country. Approval of this merger risks further consolidation of an already concentrated market at the expense of students' pocketbooks, personal data, and educational outcomes.

Over the past fifty years, textbook prices have skyrocketed. Today, students can expect to pay prices on textbooks that sometimes eclipse even tuition at some community colleges. According to data from the Bureau of Labor Statistics, textbook prices have risen 82% from 2002 to 2012 while overall consumer prices rose only 28% during that same time period.[1] Some estimates indicate that four-year public college students spend as much as $1,200 on textbooks and supplies per year.[2]

These trends are due in no small part to the highly consolidated nature of the textbook industry. The textbook market is overwhelmingly dominated by a small number of companies—Pearson owns approximately 41% of the market while Cengage and McGraw-Hill own 24 and 21%, respectively.[3] If Cengage and McGraw-Hill were to merge, the textbook market would turn into a duopoly, leaving the two remaining firms with enhanced market power and strong

[1] U.S. Gov't Accountability Off., GAO-13-368, College Textbooks: Students Have Greater Access to Textbook Information 6 (2013), https://www.gao.gov/assets/660/655066.pdf
[2] College Board, Trends in College Pricing 2019 10 (2019), https://research.collegeboard.org/pdf/trends-college-pricing-2019-full-report.pdf
[3] Scholarly Publishing and Academic Resources Coalition, Opposing the Merger Between Cengage and McGraw-Hill Education 2 (2019), https://sparcopen.org/wp-content/uploads/2019/08/DOJ_Filing_08142019830.pdf.

incentives to collude rather than compete.[4] Such consolidation in the textbook market would presumptively violate the Sherman Act.

Moreover, the textbook industry is a perfect example of a captive market – students often have no choice but to purchase the textbook assigned for a particular course by a particular professor. Secondary markets for used books, rentable books, and open education resources have provided students with only limited relief—finding it difficult to compete, without additional support, due to the chokehold the major publishers have on the market. Textbook publishers' practice of frequently releasing new textbook editions even when updates are either minor or merely cosmetic forces students to purchase the cost-prohibitive, newest version of a textbook, and depresses the value of older editions for purposes of resale.

Moreover, textbook publishers are pushing more students into digital subscriptions and bundling textbooks with digital access codes, threatening the viability of the market for used or rentable textbooks and further harming competition. While students may in some instances choose between used and new textbooks now, digitized textbooks—which are increasingly automatically billed to students through "inclusive access" programs[5]—would eliminate that choice, further straining the competiveness of the textbook market.

The combination of high concentration, a history of skyrocketing textbook prices that far outpace inflation, and a captive market makes this anti-competitive merger one that risks further aggravating the affordability of education.

The Division must also closely scrutinize potential data vulnerabilities that could result in this proposed merger. Textbook producers have made clear that the future of education lies in molding curriculum around individualized student data.[6] The collection and concentration of student data by a handful of textbook producers is of concern as its exposure risks harming student privacy.[7] Companies using education technology tools often engage in the collection of sensitive student information, such as "student contact information, education plans, homework assignments, medical records, and counselor reports."[8] The collection of this data poses serious risks. As the FBI has warned, "[m]alicious use of this sensitive data could result in social engineering, bullying, tracking, identity theft, or other means for targeting [students]."[9] Allowing two of the three largest companies to merge will create larger pools of data, increasing the potential consequences of a breach.

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[4] *Id.* (observing that Pearson holds 41% market share, Cengage holds 24%, and McGraw-Hill 21%, and should the DOJ approve the merger, the newly formed McGraw-Hill would hold roughly 45% market share).
[5] Kaitlyn Vitez, *Automatic Textbook Billing: An Offer Students Can't Refuse?* US PIRG Education Fund, https://uspirg.org/feature/usp/automatic-textbook-billing
[6] *See, e.g.*, Terrace F. Ross, *The Death of Textbooks?*, The Atlantic (Mar. 6 2015), https://www.theatlantic.com/education/archive/2015/03/the-death-of-textbooks/387055/; PEARSON, ABOUT US, https://www.pearson.com/about-us.html (last visited Jan. 22, 2020).
[7] FBI, EDUCATIONAL TECHNOLOGIES: DATA COLLECTION AND UNSECURED SYSTEMS COULD POSE RISKS TO STUDENTS (2018), https://www.ic3.gov/media/2018/180913.aspx.
[8] *Id.*
[9] *Id.*

An anticompetitive merger in the textbook market, and its resulting effects on data security and access to education, will impact not only the economy of today, but also of tomorrow. We urge the Division to carefully review this problematic merger in light of these concerns. Thank you for your prompt attention to this matter.

Sincerely,

RICHARD BLUMENTHAL
United States Senate

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United States Senate

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