



March 6, 2019

Makan Delrahim  
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Antitrust Division  
Department of Justice  
950 Pennsylvania Ave NW  
Ste. 3109  
Washington, DC 20530

Dear Assistant Attorney General Delrahim:

The Open Markets Institute writes to encourage the Department of Justice’s Antitrust Division, in its review of printer Quad/Graphics (Quad) acquisition of its competitor LSC Communications (LSC) for \$1.4 billion, to block the merger between the two sole competitors in the long-run magazine and book printing markets.

The combination of Quad and LSC is a straightforward merger to monopoly in the long-run magazine printing market and the trade book printing market. Long-run magazines are generally considered to be magazines that have circulations numbering in the hundreds of thousands to millions. According to interviews with publishers, other printers, and industry analysts, Quad and LSC are the only printers that can realistically handle printing of long-run magazines, and they are also the main suppliers of printing services to publishers of mass market books.<sup>1</sup>

In the long-run magazine printing market, Quad and LSC are also the only two distribution and logistics companies that printers can rely on to send their printed publications through in the mail. Even before the merger, magazine and book printing was already an industry with very high barriers to entry, thanks to printing industry contracting conventions, pre-existing concentration, and the cost of purchasing and operating printing presses.

Though the printers will claim that the merger is necessary to weather a long-term decline in the printing industry, the merger to monopoly fails to satisfy a “failing firm defense,” as laid out in the Department’s Horizontal Merger Guidelines and should not factor into the Antitrust Division’s review. On the contrary, the Antitrust Division should treat the merger as a direct and immediate threat to two vital first-amendment activities that are already artificially stressed by extreme consolidation over advertising and book selling markets.

Antitrust law has long played a vital and fundamental role in preventing concentrations power that threaten freedom of the press and freedom of speech. As former Federal Trade Commission Chairman Robert Pitofsky said, “[I]f [somebody] monopolize[s] books, you’re talking about

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<sup>1</sup> Publishers in both the magazine and book business were afraid to talk on the record for fear of reprisals from Quad or LSC. They asked to remain anonymous and are identified as executives at either a magazine or book house.



implications that go way beyond what the wholesale price of the books might be.”<sup>2</sup> The same should hold for the *printing* of books and magazines, because they facilitate the free exchange of ideas that are fundamentally important to a democratic society.

From the postal system, the telegraph, to the radio, and the television, the United States has long recognized that dispersing control over the creation and distribution of news and information avoids privileging the speech, views, and power of a few citizens over the many. A free press that does this can hold corruption and wrongdoing by the powerful to public scrutiny as well as help people govern themselves and their communities.<sup>3</sup> Legislation, administration action, and judicial decisions have sought to protect the news media system from concentrated private or public control.<sup>4</sup> The federal judge who oversaw the breakup of AT&T in the early 1980s, Judge Harold Greene, wrote that the Supreme Court “has recognized, in promoting diversity in sources of information, the values underlying the First Amendment coincide with the policy of the antitrust laws.”<sup>5</sup>

In multiple cases throughout the twentieth century, the Supreme Court has articulated the importance of promoting diversity of thought.<sup>6</sup> Justice Hugo Black articulated that value particularly forcefully in *Associated Press v. United States*, writing that the First Amendment

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<sup>2</sup> Emily Langer, “Robert Pitofsky, Activist Federal Trade Commission Chairman, Dies at 88,” *The Washington Post*, October 9, 2018, [https://www.washingtonpost.com/local/obituaries/robert-pitofsky-activist-federal-trade-commission-chairman-dies-at-88/2018/10/09/28bac896-ca9a-11e8-a3e6-44daa3d35ede\\_story.html?utm\\_term=.219ff9f366d9](https://www.washingtonpost.com/local/obituaries/robert-pitofsky-activist-federal-trade-commission-chairman-dies-at-88/2018/10/09/28bac896-ca9a-11e8-a3e6-44daa3d35ede_story.html?utm_term=.219ff9f366d9). Note that *The Washington Post*’s own motto, “Democracy Dies in Darkness,” acknowledges the deep importance of the free press to a free society (Paul Farhi, “The Washington Post’s New Slogan Turns Out to Be an Old Saying,” *The Washington Post*, February 24, 2017, [https://www.washingtonpost.com/lifestyle/style/the-washington-posts-new-slogan-turns-out-to-be-an-old-saying/2017/02/23/cb199cda-fa02-11e6-be05-1a3817ac21a5\\_story.html?utm\\_term=.e5523e8d6045](https://www.washingtonpost.com/lifestyle/style/the-washington-posts-new-slogan-turns-out-to-be-an-old-saying/2017/02/23/cb199cda-fa02-11e6-be05-1a3817ac21a5_story.html?utm_term=.e5523e8d6045)).

<sup>3</sup> President George Washington argued in a 1791 address to Congress that the distribution of accurate news “contributes to the security of the people, [and] serves also to guard them against the effects of misrepresentation and misconception (George Washington, “Third Annual Address to Congress,” The American Presidency Project, October 25, 1791, <http://www.presidency.ucsb.edu/ws/index.php?pid=29433>).

<sup>4</sup> Open Markets Institute, “America’s Free Press and Monopoly,” discussion paper for “Breaking the News: Free Speech & Democracy in the Age of Platform Monopoly,” June 12, 2018, <https://openmarketsinstitute.org/academic-articles-papers/americas-free-press-monopoly/>.

<sup>5</sup> *United States v. AT&T*, 552 F. Supp. 131, 184 (D.D.C. 1982), aff’d sub nom. *Maryland v. United States*, 460 U.S. 1001 (1983).

<sup>6</sup> *Abrams v. United States*, 250 U.S. 616, 630 (1919) argues that “the best test of truth is the power of the thought to get itself accepted in the competition of the market;” *NBC v. United States*, 319 U.S. 190 (1943) regulating the associational rights of broadcasters; *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192 (1956) upholding the Federal Communications Commission’s broadcast ownership rules limiting the number of TV stations that any one entity could own. In his majority opinion, Justice Stanley Reed wrote, “Congress sought to create regulation for public protection with careful provision to assure fair opportunity for open competition in the use of broadcasting facilities,” (351 U.S. 203); *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969) explaining that “It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee.”



“rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society ... Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests.”<sup>7</sup>

Though 93 percent of Americans say that they get news online, some print magazines have demonstrably re-committed to the form.<sup>8</sup> Last year, *Rolling Stone*, *National Geographic*, and *Fast Company* all announced redesigns to their print magazines.<sup>9</sup> In each of their announcements, the publications announced deeper investments into their print product, with more pages, sections, or illustrations, to maintain a distinct product that is still highly popular, with millions of Americans continuing to subscribe to printed publications.

Similarly, the print book industry has experienced a relative resurgence in the last few years. The print book industry has somewhat rebounded from Amazon’s push to move reading to its Kindle e-reader in November 2007.<sup>10</sup> Sales of print books have consistently increased since 2013 while the number of independent bookstores has risen 50 percent from 2009 to 2018.<sup>11</sup> Millions of readers of print magazines and books have exhibited an appreciation for a distinct, physical product.

Despite that relative recovery, concentration among book printers has *already* resulted in harms. A report by *The New York Times* last December found that in the 2018 holiday season, the consolidation of nearly all book printing jobs in Quad and LSC resulted in “a backlog that has led to stock shortages of popular titles.”<sup>12</sup> While observers point to factors such as increased paper costs, retailers ordering fewer first prints, and a lower unemployment rate as contributing

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<sup>7</sup> *Associated Press v. United States*, 326 U.S. 1, 20 (1945).

<sup>8</sup> “Digital News Fact Sheet,” Pew Research Center, June 6, 2018, <http://www.journalism.org/fact-sheet/digital-news/>. Ninety-three percent of Americans, according to the Pew Research Center, “get at least some news online (either via mobile or desktop).”

<sup>9</sup> “Welcome to the New Rolling Stone,” *Rolling Stone*, July 2, 2018, <https://www.rollingstone.com/music/music-news/rolling-stone-magazine-website-redesign-relaunch-666820/>; Susan Goldberg, “Take a Look at the Redesigned National Geographic Magazine,” *National Geographic*, May 2018, <https://www.nationalgeographic.com/magazine/2018/05/editor-letter-magazine-redesign-typography/>; Sara Guaglione, “‘Fast Company’ Redesigns Print Magazine, Expands Illustrations, Infographics,” *MediaPost*, October 15, 2018, <https://www.mediapost.com/publications/article/326540/fast-company-redesigns-print-magazine-expands-i.html>.

<sup>10</sup> Craig Mod, “The ‘Future Book’ is Here, But It’s Not What We Expected,” *Wired*, December 20, 2018, <https://www.wired.com/story/future-book-is-here-but-not-what-we-expected/>.

<sup>11</sup> Jim Milliot, “Sale of Print Books Increased, Slightly, in 2017,” *Publishers Weekly*, January 4, 2018, <https://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/75735-sales-of-print-books-increased-slightly-in-2017.html>; “Number of Independent Bookstores in the United States from 2009 to 2018,” Statista, <https://www.statista.com/statistics/282808/number-of-independent-bookstores-in-the-us/>.

<sup>12</sup> Alexandra Alter, “Bottleneck at Printers Has Derailed Some Book Sales,” *The New York Times*, December 23, 2018, <https://www.nytimes.com/2018/12/23/books/paper-printers-holiday-sales-books-publishers.html>.



to the shortage, “[t]he biggest cause of the bottleneck, publishers and agents say, is consolidation and collapse among printing companies.”<sup>13</sup>

### I. *Quad and LSC are Duopolists and Face Few Other Competitors*

When Quad announced on October 31 last year that it had reached a deal to acquire LSC in a \$1.4 billion all-stock deal, it capped a wave of consolidation in the printing industry with the top two magazine printers in the country planning to become one.<sup>14</sup> The combined corporation, which brought in approximately \$8 billion in 2018, would combine the second and third biggest printers in the country, according to print industry journal *Printing Impressions*.<sup>15</sup> But it would also combine the top two long-run magazine publication and book printers, together with approximately \$2.3 billion and \$1.3 billion in sales in those two markets, respectively.<sup>16</sup> The next closest competitors in the magazine and book printing markets pulled in \$150 million and \$125 million in 2018 sales, or 7 percent and 10 percent of Quad and LSC’s combined 2018 sales in each respective market.<sup>17</sup>

Quad has grown from a family company in rural Wisconsin into a worldwide conglomerate today. Founded in 1971 by Henry Quadracci, Quad has acquired corporations since 2009 that together had net sales of \$40 billion.<sup>18</sup> Two notable printing acquisitions include Quad’s \$100 million purchase of Brown Printing in 2014 and \$1.3 billion acquisition of World Color Press in 2010.<sup>19</sup>

LSC emerged from the October 2016 split of the conglomerate RR Donnelley & Sons (Donnelley). That month, Donnelley, then a \$12 billion corporation, split into three independent parts: a primarily business marketing firm that kept the name RR Donnelley, a financial communications and data services firm named Donnelley Financial Solutions, and the printing and office products business now known as LSC Communications.<sup>20</sup> Since then, LSC has been

<sup>13</sup> Alter, “Bottleneck at Printers.”

<sup>14</sup> “Quad/Graphics to Acquire LSC Communications in All-Stock Transaction,” Business Wire, October 31, 2018, <https://www.businesswire.com/news/home/20181031005291/en/QuadGraphics-Acquire-LSC-Communications-All-Stock-Transaction>.

<sup>15</sup> “2018 Printing Impressions 400 & Who’s Who in Printing,” *Printing Impressions*, 3, <https://www.piworld.com/resource/2018-printing-impressions-400/thank-you/>.

<sup>16</sup> *Ibid.*, 14.

<sup>17</sup> *Ibid.*

<sup>18</sup> “Our Story,” Quad/Graphics website, <https://www.quad.com/company/history/>; Quad/Graphics, “Call to Review Definitive Agreement to Acquire LSC Communications, Inc. and 3<sup>rd</sup> Quarter 2018 Results,” October 31, 2018, 17, <https://lsc-quad.com/wp-content/uploads/2018/10/QuadGraphics-LSC-Communications-Investor-Presentation.pdf>.

<sup>19</sup> “Quad/Graphics to Acquire Brown Printing Company,” Business Wire, April 7, 2014, <https://www.businesswire.com/news/home/20140407005482/en/QuadGraphics-Acquire-Brown-Printing-Company>; Euan Rocha, “Quad/Graphics to Pay \$1.3 Billion for World Color,” *Reuters*, January 26, 2010, <https://www.reuters.com/article/us-worldcolor-quadgraphics/quad-graphics-to-pay-1-3-billion-for-world-color-idUSTRE60P42N20100126>.

<sup>20</sup> “R.R. Donnelley & Sons Company Completes Separation Plan,” Business Wire, October 3, 2016, <https://www.businesswire.com/news/home/20161003005455/en/>; Mark Michelson, “Analysis: Why RR Donnelley Just Split Up Into Three Separate Companies,” *Printing Impressions*, October 3, 2016, <https://www.piworld.com/article/rr-donnelley-split-occurs-three-companies-now-better-off-one/>.



on an acquisition spree of its own, buying up competitors throughout the industry. Over a two-month period in 2017, LSC bought up notable rivals Creel Printing and Publishers Press.<sup>21</sup> At the time that LSC bought Publishers Press, *Printing Impressions* noted that Publishers Press was “the self-proclaimed fourth-largest publication printer in North America.”<sup>22</sup> In total, LSC has spent \$313 million on acquisitions since the start of 2017.<sup>23</sup>

## II. *Quad and LSC are the Only Printers of Long-Run Magazines*

Royle Printing account executive Dan Weber, who’s worked in the printing industry for over 30 years, including three at Quad, told Open Markets, “You go back ten years, there was probably half a dozen printers out there that could print what we call long-run, ... we’re talking about a million copies of something.”<sup>24</sup> But “with various consolidations and acquisition over the last decade,” Weber says, “[the Quad-LSC merger] really consolidates all those handfuls into one.”

The result, as publishers, industry insiders, and printing executives have all confirmed to Open Markets, is that a long-run magazine or book in the United States today really has only two options to print their magazine: Quad or LSC. A merger between the two would thus place power over printing in the control of only one corporation.

No major magazine or book publishers were willing to talk on the record about Quad and LSC for fear of harming ongoing relationships with the only two corporations they can work with. One commentator who was willing to talk works in the magazine publishing industry and writes for the publishing trade journal *Publishing Executive* under the pseudonym D. Eadward Tree so as to protect his employer.<sup>25</sup> He says, “the concentration of printers reduces competition, which drives up printing prices and can stifle innovation.”<sup>26</sup>

That assessment was widely shared in the printing industry. John Conley, who has previously worked at pre-split Donnelley and is now CEO of Borderland Advisors, a printing strategy firm, said that publishers have always relied on competition among printers to obtain lower prices.

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<sup>21</sup> Mark Michelson, “LSC Communications Buys Privately-Held Creel in Blockbuster Publication, Commercial Printing Transaction,” *Printing Impressions*, July 17, 2017, <https://www.piworld.com/article/lsc-communications-buys-privately-held-creel-blockbuster-publication-commercial-printing-transaction/>; Mark Michelson, “LSC Communications Further Consolidates Magazine Printing Market with Publishers Press Acquisition,” *Printing Impressions*, September 7, 2017, <https://www.piworld.com/article/lsc-communications-further-consolidates-magazine-printing-market-with-publishers-press-acquisition/>, Michelson notes that in 2016, Publishers Press was ranked as the 26<sup>th</sup> largest printer in the country and brought in \$191 million in sales.

<sup>22</sup> Michelson, “LSC Communications Further Consolidate Magazine Printing Market with Publishers Press Acquisition.”

<sup>23</sup> “Form 10-K,” LSC Communications, February 19, 2019, 6, [http://otp.investis.com/clients/us/lsc\\_communication/SEC/sec-outline.aspx?FilingId=13237650&Cik=0001669812&PaperOnly=0&HasOriginal=1](http://otp.investis.com/clients/us/lsc_communication/SEC/sec-outline.aspx?FilingId=13237650&Cik=0001669812&PaperOnly=0&HasOriginal=1).

<sup>24</sup> Interview with Dan Weber, January 2, 2019. Others in the industry call a magazine “long-run” if it puts out more than 500,000 or one million copies per issue. Some define a “long-run” publication as a publication with a circulation as low as 200,000.

<sup>25</sup> “D. Eadward Tree,” *Publishing Executive*, <https://www.pubexec.com/author/deadwardtree/>.

<sup>26</sup> Email with D. Eadward Tree, December 19, 2018.



Due to this competition, printers “would just drop prices,” Conley says.<sup>27</sup> Royle executive Weber adds, “[One] kept the other honest.”

One major magazine publisher was “very nervous” about this merger, while another said they were “very disturbed.”<sup>28</sup> Importantly, the merger will not only affect long-run magazines. A small magazine publisher told Open Markets that they don’t have the resources to quickly change their choice of printer should cost, quality, or customer service suffer.<sup>29</sup>

Quad and LSC will argue that they have at least two or three other competitors in the long-run magazine printing market. These companies, Trend Offset, Fry Printing, and Transcontinental, do indeed print long-run magazine jobs. But their relatively limited production and geographic capabilities makes them unlikely to be able to discipline a combined Quad and LSC.

Start by comparing each printers’ magazine revenues. Quad and LSC together brought in \$2.3 billion in their magazine printing business in 2018. In comparison, Trend and Transcontinental, who rank third and fourth after Quad and LSC in *Printing Impressions*’ 2018 list of “Top 5 Publication [Magazine] Printers,” brought in \$150 million and \$122 million, respectively. In other words, for every magazine printing dollar that Transcontinental brought in, Quad and LSC brought in 19. Those revenues are also rough proxies for other scale advantages that Quad and LSC possess like number of plants and customers.

A combined Quad-LSC would also have a wider geographical reach than any other of its competitors. Quad and LSC have plants across the country allowing it to save on printing and shipping costs and to serve every region.<sup>30</sup> A *Capitol Forum* investigation into the merger estimated that Quad and LSC have 85 printing plants throughout the country.<sup>31</sup> In comparison, Trend has three plants, one in each of California, Texas, and Florida.<sup>32</sup> Transcontinental is a Canadian company, and has only four plants, all north of the US-Canada border.<sup>33</sup> And Fry operates out of Mechanicsburg, Pennsylvania.<sup>34</sup>

Publishers could, in theory, divide their printing among Trend and Fry so as to divide their printing needs geographically, but this is unlikely in practice because they don’t have the capacity to take on much more long-run magazine printing work. Hypothetically, Trend might serve a publication’s West Coast and Southeast business through its California and Florida plants, and Fry’s Pennsylvania plant could serve the Northeast while a new Quad-LSC

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<sup>27</sup> Interview with John Conley, January 7, 2019.

<sup>28</sup> Interview with Dan Weber; interview with major magazine publisher.

<sup>29</sup> Interview with small magazine publisher.

<sup>30</sup> “Worldwide Locations,” Quad/Graphics website, <https://www.qg.com/about/worldwide-locations>; “Locations,” LSC Communications website, <http://www.lsc.com/about/corporate-social/locations>; Interview with Dan Weber.

<sup>31</sup> “Quad/Graphics-LSC Communications: Printing Tie-Up Could Raise Prices, Cut Capacity, Publishers Fear,” *The Capitol Forum*, January 30, 2019, 2.

<sup>32</sup> “Contact Us,” Trend Offset website, <https://www.trendoffset.com/contact-us/>; Interview with Dan Weber.

<sup>33</sup> “Printing Network,” Transcontinental website, <https://tetranscontinental.com/printing/publishing/magazines>.

<sup>34</sup> “Contact,” Fry Communications website, <https://www.frycomm.com/about-us/contact>; interview with Dan Weber; “Quad/Graphics-LSC Communications,” *The Capitol Forum*.



combination picks up the rest. But industry observers doubt that Trend and Fry have the productive capacity to take on many more customers, especially given Quad and LSC's enormous advantage in scale and distribution.<sup>35</sup> Weber said, "It wouldn't take much business before [smaller printers] start choking on some of that long-run work."<sup>36</sup> The columnist Tree, commenting on the merger for *Publishing Executive* said that the types of printing presses Quad and LSC own are a factor: "When print orders are in the millions, U.S. publishers currently have only two viable printing options, Quad and LSC, because those are the only two companies that operate rotogravure presses."<sup>37</sup> Further, no printer of long-run magazines can match Quad and LSC's economies of scale in co-mailing, which raises vertical competition concerns.

### III. *Quad and LSC's Integration into Magazine Distribution Raises Vertical Competition Concerns*

A merger between Quad and LSC also threatens to combine the only two major distributors of print magazines in the country. If a printer in this country wants to ship a magazine from its plant to newsstands, it can only choose between two companies: Quad or LSC. This is because both have vertically integrated into print distribution and logistics provision. Before 2017, a printer looking to distribute a magazine could go to four companies: Quad, the print-logistics subsidiary of R.R. Donnelley, Fairrington Transportation, or the Clark Group.<sup>38</sup> Since then, LSC has bought them all, except for Quad.<sup>39</sup> Thus, a publisher currently looking to get their magazine into newsstands across the country after Quad and LSC merger will have to confront *two* monopolies along their supply chain: Quad-LSC as printer and Quad-LSC as distributor.

Distribution rewards scale. Publishers and printers want distributors that can adequately co-mail, or bundle deliveries of printing jobs together to receive discounts from the Postal Service. The US Postal Service offers discounts to printers who can pre-sort different publications into bundles before putting them in the mail, because this saves USPS time and resources that would otherwise be spent handling more mail. As CEO Quadracci explained on Quad's 2018 third quarter earnings call, "We are basically doing most of the work for the Post Office on behalf of our clients."<sup>40</sup> According to Quad's latest 10-K filing, "its co-mail program is the latest in the

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<sup>35</sup> Interview with Dan Weber.

<sup>36</sup> Ibid.

<sup>37</sup> D. Eadward Tree, "How the Quad-LSC Megadeal Will Impact Publishers," *Publishing Executive*, November 5, 2018, <https://www.pubexec.com/post/how-the-quad-lsc-megadeal-will-impact-publishers/>.

<sup>38</sup> Ibid.

<sup>39</sup> "LSC Communications Acquires Fairrington," Fairrington website, August 1, 2017, <http://www.fairrington.com/lsc-communications-acquires-fairrington/>; "LSC Communications Acquires the Clark Group," Business Wire, November 29, 2017, <https://www.businesswire.com/news/home/20171129005355/en/LSC-Communications-Acquires-Clark-Group>; "Wired News – LSC Communications to Buy Print Logistics Component of R.R. Donnelley & Son's Logistics Business," Market Watch, May 4, 2018, <https://www.marketwatch.com/press-release/wired-news---lsc-communications-to-buy-print-logistics-component-of-rr-donnelley-sons-logistics-business-2018-05-04>.

<sup>40</sup> "Quad/Graphics, Inc. (QUAD) CEO Joel Quadracci on Q3 2018 Results – Earnings Call Transcript," *Seeking Alpha*, October 31, 2018, 10, <https://seekingalpha.com/article/4216687-quad-graphics-inc-quad-ceo-joel-quadracci-q3-2018-results-earnings-call-transcript?page=10>.



print industry ... Quad co-mailed approximately 3.7 billion publications, catalogs, and direct marketing pieces in 2018.”<sup>41</sup>

For example, one way to deliver 30 copies of *National Geographic*, 20 copies of *Sports Illustrated*, and 25 copies of *Good Housekeeping* to a certain newsstand would be to mail three separate packages with each publication. That can be wasteful and onerous for the Post Office. LSC CEO Thomas Quinlan III, on the same third quarter call as Quadracci, said, “Literally our industry helps the USPS take the content and have it form in a tray so that they can just put it on their truck and head out and deliver it.”<sup>42</sup>

Those co-mailing capabilities are essential to competition in the print magazine industry. An executive at a major magazine said that Quad’s and LSC’s separate “comparable economies of scale” meant that “there is another option by having these two, despite the fact that they’ve eaten up most of the market between the two of them. There was at least another place to go.”<sup>43</sup>

This power already gives Quad and LSC enormous distribution power now, especially over other printers. Weber called this vertical integration his “biggest concern,” because printers, including smaller ones who serve medium-run and short-run magazines, looking to enter or grow their share of the magazine printing business will have to rely on a combined Quad and LSC to deliver their print jobs. A printer might be able physically to print, say, one of Condé Nast’s publications. But in order to deliver those publications into newsstands and stores, smaller competitors depend on Quad or LSC.<sup>44</sup> In addition to raising competitors’ distribution costs so as to make distribution infeasible, Quad and LSC also could gain an unfair advantage by wielding valuable access to potentially sensitive competitive information. Along with driving up competitors’ cost of distribution, access to this information could facilitate illegal collusion.<sup>45</sup>

#### *IV. Competitors Are Unlikely to Enter the Magazine or Book Printing Markets to Challenge Quad or LSC*

In addition to Quad and LSC using their dominant position in distribution to exclude current and future rivals printing, the printing industry has high capital and operational costs and contractual hurdles that make competitors’ entry or expansion into magazine or book publishing difficult. Printing presses are expensive to buy and to operate. A single press can cost millions, even tens of millions, of dollars and tens of thousands of dollars to operate per hour.<sup>46</sup> The result, Conley explained, is that “these expensive presses are not profitable unless they’re full.”<sup>47</sup> That

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<sup>41</sup> “Form 10-K,” Quad/Graphics, February 20, 2019, 10, <http://investors.qg.com/phoenix.zhtml?c=231687&p=irol-SECText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9maWxpbnmcueG1sP2lwYWdlPTEyNzIzNjU4JkRTRVE9MCZTRVE9MCZTUURFU0M9U0VDVEIPTI9FTIRJUKUmc3Vic2lkPTU3#sEE15A5E63D9350328ACE1BF0DFD8D165>.

<sup>42</sup> “Quad/Graphics CEO Joel Quadracci on Q3 2018 Results,” *Seeking Alpha*, 11.

<sup>43</sup> Interview with magazine publisher.

<sup>44</sup> Tree, “How the Quad-LSC Megadeal Will Impact Publishers.”

<sup>45</sup> Michael H. Riordan and Steven C. Salop, “Evaluating Vertical Mergers: A Post-Chicago Approach,” *Antitrust Law Journal* 63, (1995): 520.

<sup>46</sup> Interview with John Conley; interview with Dan Weber.

<sup>47</sup> Interview with John Conley.





understanding, that printers need their presses to run as many jobs as possible or else lose money, was repeated by all printing industry participants the Open Markets Institute spoke to.

Quad and LSC also have an enormous advantage in binding magazines and books. While a competing printer could print the pages of a magazine or a book, they still need a separate machine to bind the magazine or book together. “Nobody else,” Conley explains, “has the binding equipment” requisite to compete with Quad or LSC.

A final factor that makes new entry difficult is the practice of publishers and printers entering into contracts spanning multiple years. By convention, magazine printing contracts usually bring together publishers and printers for one to three years.<sup>48</sup> Thus, even if a new printer had the capacity, the necessary capital to take on more business, and even adequate co-mailing capabilities, they would not necessarily find customers immediately ready to be won. New entrants would have to wait until contracts expire. Given the need to run presses full, this can compound the costs a potential competitor would have to take on in order to enter this market.

#### V. *Quad and LSC are the Only Realistic Printers of Major Trade Books*

A combined Quad and LSC could hurt book publishers in a similar way as magazine publishers. Observers and participants at various levels of the book industry note that Quad and LSC are the only two printers of many different kinds of books in the country, but most notably trade books, which are books published for a general audience, and educational textbooks. One former industry executive said that in the college textbook market, Quad and LSC are the only printers that publishers can turn to.<sup>49</sup> According to *Printing Impressions*’ 2018 Top 400 Ranking, LSC and Quad are the two biggest printers of books, bringing in \$1.26 billion in sales that year.<sup>50</sup> Their next biggest competitor, The Command Web Group, had only \$126 million in sales or 10 percent of Quad and LSC’s sales.<sup>51</sup> In fact, Quad and LSC together brought in nearly four times as much book printing revenue as their next three biggest competitors combined.<sup>52</sup> The shuttering of major book printer Edwards Brothers Malloy last June also contributed to this concentration.<sup>53</sup>

If Quad and LSC combine operations, one book publishing executive said, “competition will be gone.”<sup>54</sup> That publishing executive noted that they currently can only choose between Quad and LSC for their printing jobs. If the merger goes through, the executive explains, Quad and LSC will no longer have to compete against one another and “we’ll lose the normal check[s] and balances that come on price, quality, and performance.”<sup>55</sup> For the executive’s publishing house’s next printing contract, “I’m only going to be able to send it to [Quad] because it’s the only company that really has the capacity and wherewithal to do a company the size of [executive’s

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<sup>48</sup> “Quad/Graphics-LSC Communications,” *The Capitol Forum*, 2.

<sup>49</sup> Interview with book publishing executive.

<sup>50</sup> “2018 Printing Impressions 400,” 14.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> Alter, “Bottleneck at Printers;” Jim Milliot, “Edwards Brothers Malloy Will Close,” June 1, 2018, <https://www.publishersweekly.com/pw/by-topic/industry-news/manufacturing/article/77059-edwards-brothers-malloy-will-close.html>.

<sup>54</sup> Interview with book publishing executive.

<sup>55</sup> *Ibid.*



publishing house].”<sup>56</sup> The executive added that Quad’s and LSC’s advantage comes not only from being an enormous printer, but in binding hardcover and paperback books, which uses different equipment. Since many printers do not have this equipment, the executive explained, “We don’t have small regional book manufacturers that we can turn to.”<sup>57</sup>

Other book industry executives and participants confirmed that Quad and LSC are the only two printers that book publishers use to print their books. That’s because Quad and LSC are the only two printers in the country who can adequately serve national publishers’ needs with respect to volume, scheduling, binding, and even distribution and logistics in some cases.<sup>58</sup> One of the few exceptions is Penguin Random House. The German conglomerate Bertelsmann owns Penguin Random House as well as the Bertelsmann Printing Group, so Penguin prints a significant number of its books with Bertelsmann and neither Quad nor LSC.<sup>59</sup> However, a different publishing executive said that while Bertelsmann Printing has the physical ability to print and bind books, its scale does not approach that of Quad’s or LSC’s and “a lot of [its] capacity, as you would expect, is owned or reserved for Penguin Random House.”<sup>60</sup> The executive continued, “There’s probably five or six other domestic or Canadian companies that can print and bind books but they are of hardly any scale by comparison to the merged entity of Quad and LSC.”<sup>61</sup>

Quad and LSC, as the *Times*’ investigation shows, need not actively exploit their power in their relations with publishers. The mere fact of their bottleneck makes the industry less resilient and responsive to demand shocks and publishers point directly to the consolidation of the printing market as the “biggest cause of this bottleneck.”<sup>62</sup> *The New York Times* notes that publishers currently print fewer copies on a book’s first printing than they did in previous years, because retailers want to avoid excessive inventory.<sup>63</sup> Thus, when unexpected demand for a book depletes a publishers’ inventory, it disrupts the printing presses’ schedules and makes quickly printing more copies of a particular title difficult. This results in harms to publishers and authors, especially during the holiday surge in demand, where a lack of sales in December may never be made up in January or February. This ultimately hurts the end consumers, readers, who cannot, and could not, this past holiday season, buy the books that they wanted to, or had to buy them for higher prices. One publishing executive said that this concentration becomes “an industry problem” because Quad and LSC were both already “underserving the market, based on the increases in demand. So, of course, your concern is that if they both come together, these two companies that are underserving become one big company that is underserving the market and the whole industry will be competing for press time at a single company.”<sup>64</sup>

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<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Bertelsmann, “Interim Report 2018,” 7, <https://www.bertelsmann.com/media/investor-relations/interim-reports/interim-report-2018.pdf>.

<sup>60</sup> Interview with book publishing executive.

<sup>61</sup> Ibid. The executive pointed to Bertelsmann and Transcontinental Printing as two examples.

Transcontinental, as mentioned in the magazine printing context, is a Canadian company and did not make *Printing Impressions*’ list of the “Top 5 Book Printers” for 2018, suggesting that Transcontinental would not be able to match Quad and LSC’s scale (“2018 Printing Impression 400,” 14).

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> Interview with book publishing executive.



The merger between Quad and LSC would also risk setting back the book publishing industry’s recovery from a shift to digital media over the past decade. Observers and participants in the book industry that the Open Markets Institute talked to unanimously agreed that a combined Quad and LSC would give it enormous market power in the trade book printing market, or the market for most books written for a general audience. Just as unfortunately, they note, is that the book industry more or less survived the shift to digital media and e-books. According to IBISWorld reports, revenues in the book publishing market are projected to have grown 1.7 percent in 2018 while revenues in the magazine publishing market are projected to have fallen 4.6 percent in 2018.<sup>65</sup> As the *Times*’ report noted, in 2018, “Hardcover sales are up, and unit sales at independent bookstores have risen 5 percent. Multiples titles . . . have passed the million-copy mark, while there is also a surprisingly strong appetite for literary fiction.”<sup>66</sup> Book publishers have even been making capital investments in “print infrastructure and inventory management” but, again, have to confront diminished capacity among printers.<sup>67</sup>

Like publishers in the magazine industry, book publishers enter into multiyear contracts with printers, who still have to purchase expensive presses. Thus, new entrants into the book printing market could not easily challenge Quad and LSC’s dominance. Even if publishers become unhappy with the new combination’s post-merger actions, like price increases or worsened customer service, they would be stuck with Quad for an extended period of time.<sup>68</sup>

## VI. *The Justice Department Should Block This Merger*

The Antitrust Division should block this merger and require Quad and LSC to divest their magazine distribution and logistics businesses. The Antitrust Division has already requested additional documents in its review of this deal.<sup>69</sup> However, industry observers say that enforcers’ approach to the printing industry appears to erroneously combine the printing markets not only

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<sup>65</sup> “Book Publishing,” IBISWorld; “Magazine & Periodical Publishing,” IBISWorld.

<sup>66</sup> Alter, “Bottleneck at Printers.”

<sup>67</sup> *Ibid.*

<sup>68</sup> One major distinction here between the long-run magazine and book printing industries is distribution. Book publishers, in contrast to magazine publishers, generally take their printed and bound books *back* from their printer and handle delivery on their own from their own facilities. Some publishers do outsource their distribution to Quad or LSC (“R.R. Donnelley Awarded a Multi-Year Agreement to Provide Print, Fulfillment and Distribution Services to HarperCollins Publishers,” *GlobeNewswire*, June 29, 2016, <https://globenewswire.com/news-release/2016/06/29/852226/0/en/RR-Donnelley-Awarded-a-Multi-Year-Agreement-to-provide-Print-Fulfillment-and-Distribution-Services-to-HarperCollins-Publishers.html>). LSC currently, since April 2018, provides distribution or fulfillment services for the Harvard University Press, the MIT Press, and the Yale University Press (“LSC Communications Acquires TriLiteral LLC,” *Business Wire*, April 3, 2018, <https://www.businesswire.com/news/home/20180403005181/en/LSC-Communications-Acquires-TriLiteral-LLC>). Because book publishers supplement book supply to regional distributors or vendors on an ongoing basis, books publishers are more likely to manage their own inventory than magazine publishers are. Magazine publishers tend not to manage their own inventory because magazines are much less valuable a month or two after their issuance, and so magazine publishers see less value in restocking resellers.

<sup>69</sup> Matt Bernardini, “DOJ Asks For Info On Quad/Graphics’ \$1.4B Deal For LSC,” *Law360*, December 17, 2018, <https://www.law360.com/articles/1112119/doj-asks-for-info-on-quad-graphics-1-4b-deal-for-lsc>.



for magazines, but for catalogs, directories, business forms, labels, and legal documents too. This approach greatly understates concentration in the section of the printing industry that serves magazine and book publishers. Another publishing executive said that pointing to thousands of other printers in the country would simply be “pure window dressing” because those printers do not compete with Quad or LSC in the book printing business.<sup>70</sup> The pseudonymous *Publishing Executive* columnist Tree says considering all printers as being part of the same antitrust market is “like saying that Ford, Southwest Airlines, Uber, and Canadian Pacific are all in the transportation industry; it’s true, but irrelevant to competition.”<sup>71</sup>

Another defense raised by Quad and LSC is that the printing industry is “dealing with a decline,” and that consolidation is thus the proper way to manage that downturn.<sup>72</sup> There are two reasons to reject this argument and, as a result, the proposed merger.

First, when reviewing a merger, enforcers look to see if the combination will lead to an excessive concentration of market power in *any* relevant market. Section 7 of the Clayton Act forbids any merger or acquisition “where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.”<sup>73</sup> Supreme Court precedents have made clear that the government has to show only a reasonable probability, not certainty, that competitive harm will arise as a result of a combination.<sup>74</sup> The Department of Justice and Federal Trade Commission’s own joint 2010 “Horizontal Merger Guidelines” state, “The Agencies normally assess competition in each relevant market affected by a merger independently and normally will challenge the merger if it is likely to be anticompetitive in any relevant market.”<sup>75</sup>

Quad’s acquisition of LSC would make it the monopoly provider of printing services in the long-run magazine and book printing businesses, as well as the monopoly provider of magazine distribution. Under controlling Supreme Court precedent and the agencies’ Horizontal Merger Guidelines, this merger is presumptively illegal.<sup>76</sup> Indeed, the presumption of illegality is especially strong for a merger to monopoly.<sup>77</sup>

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<sup>70</sup> Interview with book publishing executive.

<sup>71</sup> Email between Open Markets and D. Eadward Tree, December 19, 2018.

<sup>72</sup> Arthur Thomas, “Quad/Graphics, LSC Face \$1.5 Billion Sales Decline by 2022 Without Merger, Additional Actions,” *BizTimes*, December 18, 2018, <https://www.biztimes.com/2018/industries/advertising-marketing-media/quad-graphics-lsc-face-1-5-billion-sales-decline-by-2022-without-merger/>.

<sup>73</sup> 15 U.S.C. § 18.

<sup>74</sup> *Brown Shoe Co. v. United States*, 370 U.S. 294, 317 (1962); *United States v. Penn-Olin Chemical. Co.*, 378 U.S. 158, 171 (1964); *United States v. Von’s Grocery Co.*, 384 U.S. 270, 285 (1966); *United States v. Dairy Farmers of America, Inc.*, 426 F.3d 850, 858 (6<sup>th</sup> Cir. 2005); *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 713 (D.C. Cir. 2011).

<sup>75</sup> Department of Justice and Federal Trade Commission, “Horizontal Merger Guidelines,” 2010, 30n14.

<sup>76</sup> *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963); *Polypore International Inc. v. FTC*, 686 F.3d 1208 (11<sup>th</sup> Cir. 2012) shows that enforcers and courts continue to recognize the *Philadelphia National Bank* structural presumption for horizontal mergers; Peter C. Carstensen, “The *Philadelphia National Bank* Presumption: Merger Analysis in an Unpredictable World,” 80 *Antitrust Law Journal* 80, (2015): 251.

<sup>77</sup> Department of Justice and Federal Trade Commission, “Horizontal Merger Guidelines,” 31. In addition to *Philadelphia National Bank* expressly rejecting an efficiencies defense to a merger, the Justice



Second, the corporations may invoke what’s commonly known as the “Failing Firm Defense.” In its Form S-4 filing with the Securities and Exchange Commission, Quad projects that from 2018 to 2022, if its acquisition of LSC does not succeed, its net sales will drop 18 percent, while LSC’s net sales will drop 21 percent.<sup>78</sup> According to the *BizTimes*, Quad CEO Quadracci said that the projected declines “underscore the reasoning for two of the printing industry’s largest companies to combine their operations.”<sup>79</sup> Quadracci said, “Everyone knows that print is dealing with a decline...”<sup>80</sup>

The requirements of the failing firm justification are specific and not applicable in Quad and LSC’s case. The failing firm defense is narrow and not a general “Declining Industry” defense. As the antitrust agencies laid out in 2010, this defense is satisfied only if “(1) the allegedly failing firm would be unable to meet its financial obligations in the near future; (2) it would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act; and (3) it has made unsuccessful good-faith efforts to elicit reasonable alternative offers that would keep its tangible and intangible assets in the relevant market and pose a less severe danger to competition than does the proposed merger.”<sup>81</sup> Neither Quad nor LSC appear to have met a single one of these requirements.

Given that Quad and LSC are proposing a merger to monopoly in two markets, the Antitrust Division should block this merger, and further, require Quad and LSC to sell off their magazine distribution subdivisions. The merger is subject to a very strong presumption of illegality. And the merging parties cannot claim the failing firm defense because neither firm is facing insolvency in the near future. The fact that both markets are fundamental to the ability of citizens to freely express and share their thoughts, ideas, opinions, and works of art with one another only increases the pressure on the DOJ to move swiftly to this end.

Sincerely,

Open Markets Institute  
The Authors Guild  
PEN America

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Department’s own guidelines explain that in their consideration, “Efficiencies almost never justify a merger to monopoly or near-monopoly.”

<sup>78</sup> “Form S-4,” Quad/Graphics, December 12, 2018, 99, 100,

[http://investors.qg.com/phoenix.zhtml?c=231687&p=irol-SECText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9maWxpbnmcueG1sP2lwYWdlPTeyNkYkMTQxJkRTRVE9MCZTRVE9MCZTUURFU0M9U0VDVEIPTI9FTIRJUKUmc3Vic2lkPTU3#tx663993\\_13](http://investors.qg.com/phoenix.zhtml?c=231687&p=irol-SECText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9maWxpbnmcueG1sP2lwYWdlPTeyNkYkMTQxJkRTRVE9MCZTRVE9MCZTUURFU0M9U0VDVEIPTI9FTIRJUKUmc3Vic2lkPTU3#tx663993_13).

<sup>79</sup> Thomas, “Quad/Graphics, LSC face \$1.5 billion sales decline by 2022 without merger.”

<sup>80</sup> Ibid.

<sup>81</sup> “Horizontal Merger Guidelines,” 32.