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President Trump's Supreme Court nominee Brett Kavanaugh may be a bit ambiguous in where he stands on some highly divisive issues, but he made it very clear last year how he feels about the government's net neutrality rules. He's not only certain that the FCC lacks authority to impose the regulations, but that such rules violate the First Amendment.

In a dissent last year, he wrote that "**Supreme Court** precedent establishes that Internet service providers have a First Amendment right to exercise editorial discretion over whether and how to carry Internet content." He added that the government "may interfere with that right only if it shows that an Internet service provider has market power in a relevant geographic market." That was something the FCC did not do, he noted.

At the time, the D.C. Circuit Court of Appeals upheld the FCC's 2015 net neutrality rules, in which internet service providers were reclassified as common carriers. That was the regulatory foundation that the agency established to impose a robust set of net neutrality rules, including those banning ISPs from blocking or throttling traffic, or from selling off "fast lanes" for speedier access to consumers.

Kavanaugh **found fault with the FCC's rationale**, and based it on the Supreme Court's analysis in a previous challenge to agency regulation. That was a protracted legal battle over the FCC's "must carry" rules that led to two Supreme Court decisions, in 1994 and 1997, referred to as Turner Broadcasting vs. FCC I and II. The rules at issue mandated that cable operators carry certain local and public television stations.

In those decisions, Kavanaugh pointed out, the high court determined that "the First Amendment does not allow the FCC to treat Internet service providers as mere pipeline operators rather than as First Amendment-protected editors and speakers." The justices ultimately upheld the must-carry regulation, but only after determining that "cable operators' market-distorting monopoly power justified government intervention," Kavanaugh noted. In other words, short of some sort of showing that an ISP had undue dominance in a market, net neutrality rules fail to withstand First Amendment scrutiny.

Last year, US Telecom and AT&T, among the industry plaintiffs, asked the Supreme Court to review the case. But it may be moot given that the FCC, under a new Republican majority, in December repealed most of the 2015 rules. Kavanaugh's position, however, will be highly relevant as state attorneys general and public interest groups challenge that repeal. That newer litigation could ultimately end up at the Supreme Court.

In the nearer term, Democrats see net neutrality as a potent issue for the midterms, and they started highlighting Kavanaugh's views last week. Last week, Senate Minority Leader Chuck Schumer wrote that Kavanaugh "frequently sides with powerful interests rather than defending the rights of all Americans like when he argued that the

FCC's #NetNeutrality rule benefiting millions of consumers was unconstitutional." – ***Variety***

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Rupert Murdoch's 21st Century Fox Inc. significantly lifted its offer price to consolidate ownership of Sky, **heating up a bidding war** with Comcast Corp. for the British broadcaster. Fox raised its bid for the roughly 61% of Sky it doesn't already own by more than 30%, to £14 a share, in a deal that values all of Sky at £24.5 billion ($32.5 billion). Fox said Sky's independent directors have agreed to the new offer.

The bid tops a rival offer from Comcast, which is competing with Fox for Sky and could come back with a higher offer, still. Comcast is also competing with Walt Disney Co. in a **bidding war for a big chunk of Fox assets**, including the 39% stake in Sky. Fox's higher bid for Sky, disclosed early Wednesday, essentially bolsters Fox's agreement to sell those assets to Disney. Mr. Murdoch's Fox launched its bid for all of Sky more than 18 months ago. Since then, the deal has been embroiled in a U.K. government review, which was expected to draw to a close later this week. More recently, the pursuit morphed into one of the main flashpoints in a much larger corporate battle, pitting Disney against Comcast.

Both media giants have lobbed competing bids for many of the assets that now comprise Mr. Murdoch's Fox. That includes the 39% stake in Sky. Both Disney and Comcast view Sky as a route to expand their media and distribution channels overseas. Comcast has made its own, separate bid for all of Sky, offering £12.50 a share, a steep premium to Fox's original bid of £10.75. A Comcast representative declined to comment Wednesday. Sky shares were up 0.8% Wednesday afternoon at £15.14 after falling earlier in the day.

That is well above the new Fox offer, suggesting investors are betting on a fresh bid from Comcast, or an even-higher eventual offer from Fox. Under the terms of the new pact Fox said it reached with Sky's independent directors, Fox requires support from 75% of Sky's non-Fox shareholders. The deal, though, continues to keep the door open for a more streamlined approach—should the two sides decide to change the structure of the deal under U.K. law. Such a change would allow a simple majority of all shareholders to wave the deal through. Given the big difference in Fox's offer and the current share price, however, it may be a struggle to get even this level of support.

A number of hedge funds, including American activist investor Elliott Management Corp., **have bought into Sky**, and would likely oppose any bid they felt undervalued Sky. Sky's current stock-market value reflects, in part, an implied premium from Disney's latest, higher offer for Fox assets. The U.K. Takeover Panel, a regulatory body that polices corporate deal making, could force Fox to raise its bid further, based on a calculation of Sky shares derived from the Disney offer. The panel has said it would make a ruling on the matter, but didn't say when.

In some ways, the battle for Sky has become a proxy for the bigger media war between Disney and Comcast for the wider portfolio of Fox assets. Fox first agreed to sell those assets to Disney for $52.4 billion in cash and stock. **Comcast swooped in offering $65 billion in cash**, prompting Disney's latest cash-and-stock offer of $71.3 billion. The Wall Street Journal reported late last month that Comcast was

considering a range of options, including dropping its pursuit of Fox, **offering a higher bid on its own or tapping partners** to join the fray should bidding approach the $90 billion range.

Sky is one of the crown jewels of Mr. Murdoch's media empire. It could help both Disney and Comcast—even without the other Fox assets—compete with new entrants like Netflix Inc. Sky produces its own content while its satellite and broadband offerings reach millions of European households. That combination—content and distribution—has driven years of consolidation in the U.S. Sky offers both Disney and Comcast a rare vehicle to boost that outside the country. Fox is still awaiting final approval from London to pursue the deal—a green light many expect this week.

The government had been weighing for months whether Fox's consolidation of Sky—which operates a popular news channel in the U.K.—would constitute an overconcentration of ownership among British news media. Mr. Murdoch and his family are major shareholders in 21st Century Fox as well as News Corp, which owns several large U.K. newspapers. News Corp also owns The Wall Street Journal. The U.K. culture minister has indicated a separate deal by Fox to sell Sky News to Disney would be sufficient in preventing any overconcentration of ownership.

Fox said it had obtained previous consent from Disney for the higher offer. Fox will take on larger debt to fund the deal. That liability will ultimately fall to Disney, assuming it completes its deal for Fox. Mr. Murdoch also hedged his bets to some extent. Fox said that in the event the Disney and Fox deal falls apart because of regulatory issues, Disney will pay Fox £1 for every share of Sky that Fox buys as part of Wednesday's higher offer. That caps Fox's real exposure to £13 a share, should it not end up being acquired by Disney. – ***Wall Street Journal***

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Senior lawmakers requested answers from Alphabet Inc. on Tuesday about privacy questions surrounding Gmail, the company's popular email service. **In a letter** from Senate Commerce Committee Chairman John Thune (R., S.D.) and two subcommittee chairmen, the lawmakers asked Larry Page, Alphabet Inc.'s chief executive, to explain the company's practice of allowing third-party app developers to scan email contents for commercial purposes. **That practice was revealed last week in *The Wall Street Journal***.

The **lawmakers expressed concern** that most consumers don't understand how app developers may be using data from emails including, the letter said, "giving access to personal emails to their employees." The senators said that Google may not be doing enough to safeguard Gmail data and asked the company to detail all the instances in which app developers have shared Gmail data with third parties.

While Google, a unit of Alphabet, a year ago abandoned the practice of scanning email contents for serving ads, the company continues to let hundreds of outside developers scan the inboxes of Gmail users who signed up for email-based services. Those services commonly use free apps and offers to hook users into giving up access to their inboxes without clearly stating what data they collect and what they are doing with it, current and former employees of these companies told the Journal. "Ensuring the privacy and security of our users' data is of the

utmost importance," a Google spokeswoman said. "We look forward to answering the committee's questions."

The senators' letter provides further evidence that congressional leaders are considering legislation in response to a spreading controversy over privacy. The concerns include recent revelations that Facebook Inc. user information was shared with Cambridge Analytica, a data-analytics firm that had ties to Donald Trump's presidential campaign. On Tuesday, the U.K. privacy watchdog, the Information Commissioner's Office, said it intends to levy a £500,000 ($663,000) fine on Facebook for its handling of the matter. The fine, the maximum allowable by the British agency, would mark Facebook's first financial penalty from an episode that has now buffeted the company for months. "As we have said before, we should have done more to investigate claims about Cambridge Analytica," said Facebook Chief Privacy Officer Erin Egan, adding that the company is reviewing the report and will respond soon.

A Cambridge Analytica spokesman has said the company didn't use Facebook data collected by a psychology professor at the University of Cambridge during the 2016 U.S. presidential election. The firm added that it deleted all data it received from the professor's company after it became clear there had been violations of Facebook's policies. The controversy is now spreading beyond Facebook. A House committee separately on Monday sent letters to Alphabet as well as Apple Inc., asking about a range of privacy practices, including the Gmail issue.

The House lawmakers' letter to Mr. Page also said recent reports indicate that its Android smartphone operating system collects extensive user-location data and reports it back to Google even when location services are disabled. One of the signers of Tuesday's letter, subcommittee Chairman Jerry Moran (R., Kan.), already has said he is considering joining an effort by Sen. Richard Blumenthal (D., Conn.) to draft bipartisan online-privacy legislation. Tuesday's letter also says that the Senate committee is considering potential legislation. – ***Wall Street Journal***

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