

FAKE NEWS IS NOT AN ANTITRUST PROBLEM



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I. INTRODUCTION

The current, well-grounded objective of U.S. antitrust laws is to protect the competitive process as measured through its impact on consumer welfare.² In doing so, antitrust excludes other objectives such as protecting small businesses, protecting competitors generally, or redistributing income. It also rejects naive rules of thumb such as “big is bad.” Recently, there have been prominent calls to use antitrust enforcement to achieve objectives beyond that of protecting the competitive process.³ Adding to this increasing litany is an appeal to use antitrust to regulate the distribution of “fake news.” Specifically, Sally Hubbard has proposed that fake news is an antitrust problem.⁴ Her primary target is Facebook; although, her push to reorient antitrust has implications beyond Facebook. Hubbard asserts that Facebook competes with and is responsible for speeding the demise of “legitimate” news sites by offering a favorable platform for “fake news.”

In this article, we argue that notwithstanding the lack of clarity regarding the actual definition of fake news, there is a real question of whether antitrust laws are capable or well-suited to combat the production and dissemination of fake news, presuming this is even accepted as a policy goal. The article is organized as follows. First, we delineate the key elements of Hubbard’s thesis. We then consider the foundational question of how to classify news as “fake” versus “legitimate.” Next, we assess Facebook’s putative role in enabling and contributing to the success of fake news sites to the detriment of mainstream news organizations. Finally, through a standard

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² See Bork, *The Antitrust Paradox: A Policy at War with Itself*, (1978) at 244 (“[c]onsumer welfare is the only legitimate goal of antitrust, not because antitrust is economics, but because it is law”); Hovenkamp, *The Antitrust Enterprise: Principle and Execution*, (2005) at 2 (“only articulated goal of the antitrust laws is to benefit consumers”). See also *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979) (“Congress designed the Sherman Act as a ‘consumer welfare prescription’”); *Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of Univ. of Okla.*, 468 U.S. 85, 107 (1984) (“A restraint that has the effect of reducing the importance of consumer preference in setting price and output is not consistent with this fundamental goal of antitrust law”).

³ For instance, a Congressional proposal to create a “better deal” in antitrust seeks to introduce, *inter alia*, provisions to protect competitors (see: <http://www.democraticleader.gov/wp-content/uploads/2017/07/A-Better-Deal-on-Competition-and-Costs.pdf>). Some academics have suggested the need for a policy debate on issues such as incorporating income inequality with antitrust (see, e.g., Baker & Salop, 2015, “Antitrust, Competition Policy, and Inequality,” *Georgetown Law Journal* 104, pp. 1-28).

⁴ See Hubbard (January 10, 2017), “Why Fake News is an Antitrust Problem,” Forbes.com (<https://www.forbes.com/sites/washingtonbytes/2017/01/10/why-fake-news-is-an-antitrust-problem>) and Forbes (January 16, 2017), “Is Fake News an Antitrust Problem?,” Forbes.com (<https://www.forbes.com/sites/washingtonbytes/2017/01/16/is-fake-news-an-antitrust-problem>).

monopolization and dominance framework, we address the allegation that Facebook, is promoting its own features and properties at the expense of rivals — in this case mainstream news organizations, which leads to anticompetitive outcomes. We find that fake news is not an antitrust problem and question whether fake news can or should be regulated — whether in the form of antitrust or otherwise.

II. HUBBARD’S CRITIQUE

At the heart of Hubbard’s critique of Facebook is “Facebook’s design features that deter users from clicking to legitimate news publishers’ sites,” since, from “an antitrust lens, news publishers are Facebook’s competitors.” Hubbard asserts that Facebook discourages users from “clicking away” from its platform by defaulting them to an “in app” browser when they attempt to click through to other websites. This “in app” browser is allegedly “slow” in connecting to outside sites, which discourages users from leaving Facebook.⁵ This theory is similar to the allegation investigated by the U.S. Federal Trade Commission and the European Commission that Google Search prioritized, without merit, its own search results over more relevant third-party links in an effort to keep users on Google and starve competitors of user traffic.⁶ Acknowledging this, Hubbard states, “Prioritizing content that is either native to Facebook’s platform or that does not require clicks to competitors’ sites looks a lot like what led to antitrust charges against Google.”

It is the advent of fake news that Hubbard claims makes this strategy successful by creating content that has “high engagement” within the Facebook platform.⁷ This strategy is allegedly a low-cost way to foreclose purported Facebook competitors — in this case traditional media organizations. Thus, she states that, “While traditional media organizations need to recoup their investment in quality news by capturing web traffic, fake news organizations have no such overhead. Their minimal costs of production mean they need only coax a small percentage of those who interact with their articles on Facebook to click outside of the platform.”

III. WHAT IS “FAKE NEWS?”

Before evaluating Hubbard’s hypothesis, it is necessary to define “fake news” and to consider whether it is possible to distinguish it from “legitimate news.” According to a Merriam-Webster article, “Fake news is, quite simply, news (‘material reported in a newspaper or news periodical or on a newscast’) that is fake (‘false, counterfeit’).”⁸ More pointedly, fake news is a story that is *intentionally* false. Why generate fake news? Motivations could range from generating “info-tainment” in order to increase web traffic to a manipulation of public thought on political issues. Fake news, however, is not news that is, in and of itself, inconvenient or biased. Fake news is not an editorial, satire or propaganda. Arguably, fake news is not even speculative news, i.e., rumors — although this is open to some legitimate debate.⁹

According to Google Trends, the use of the search term “fake news” has spiked since the election of President Donald Trump in November 2016; although, its use appears to be waning after peaking in February 2017.

5 If Facebook is forcing its users to access those sites through a slower web browser, it would affect all links equally including fake news and legitimate news — unless Facebook is purposely and discriminately slowing links to different sites at different rates.

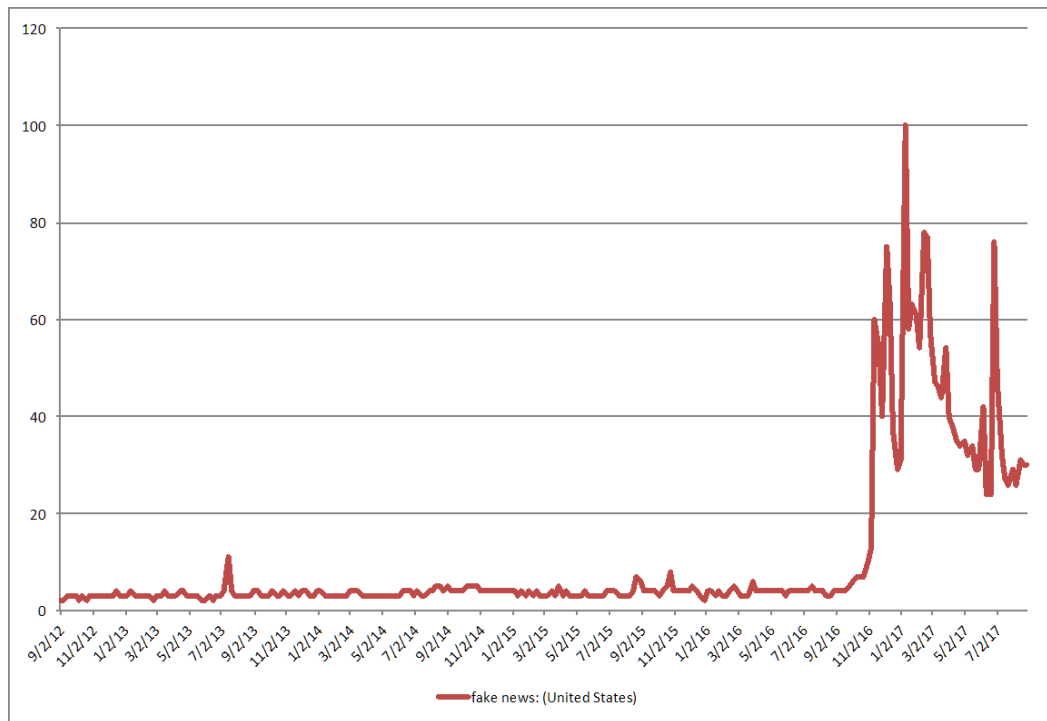
6 See Statement of the Federal Trade Commission Regarding Google’s Search Practices, In the Matter of Google Inc., FTC File Number 111-0163 (January 3, 2013); http://europa.eu/rapid/press-release_IP-15-4780_en.htm.

7 It is not entirely clear what Hubbard means by “high engagement.” We presume it is capturing the idea of keeping users on Facebook’s site or app longer, which increases the probability the user will be monetized at some point during the visit.

8 See: <https://www.merriam-webster.com/words-at-play/the-real-story-of-fake-news>.

9 Simple factual errors would not meet this definition of fake news, although this too is debatable to the extent the errors reflect a bias on the part of the reporter to be more lax in checking certain aspects of a story that comports with his or her world view as opposed to those that might conflict with it. Some would argue that the increased use of so-called “anonymous sources” is blurring the distinction between fake and legitimate news.

Figure 1: Google Trends for the search term “fake news” over the past 5-years in the U.S.



While use of the term “fake news” has spiked, it is not a new phenomenon. Figure 2 indicates that the frequency of the term “fake news” in books written in English and scanned by Google spiked in 1940 and also more markedly in 2008 (which is the end of the sample).¹⁰

Figure 2: Google Books Ngram Viewer for the term “fake news” from 1800-2008



Corroborating Figure 2, according to a Merriam-Webster article, the term fake news began to enjoy “general use at the end of the 19th century.”¹¹ The generation and distribution of intentionally false stories is not a new phenomenon even if it went under different names such as “false news” or even outright “lies.” For instance, in Figure 3, we compare the frequency of the phrase “fake news” and “false news” in English books.

¹⁰ Figure 2 is only broadly informative since it is an aggregation of all types of books including fiction and non-fiction. Google Books Ngram Viewer normalizes the data by the total number of books published in a year. See: <https://books.google.com/ngrams/info>.

¹¹ <https://www.merriam-webster.com/words-at-play/the-real-story-of-fake-news>.

Figure 3: Google Books Ngram Viewer for the term “fake news” and “false news” from 1800-2008



Thus, Figure 3 suggests the problem of “fake news” and “false news” is not a new one. Before the rise of the Internet, tabloids publishing outlandish claims have fueled conspiracy theories for decades (e.g., assertions the Apollo moon landings were fake; Elvis sightings). Importantly, it is not clear that fake news is having any greater or more harmful impact today than in previous times.

Who generates fake news and is it identifiable? Certainly, there are publishers whose primary purpose is to disseminate intentionally false news stories. On the other hand, there are publishers that engage in thorough vetting and fact checking of stories. One problem with classifying publishers or articles as fake or legitimate is that authenticity exists in a continuous spectrum. In addition to publishers that solely disseminate fake or actual news, there may be publishers that circulate a mixture of fake and actual news. Similarly, while some content is undeniably fake, in many instances the distinction between fake and legitimate news is likely to be in the eye of the beholder rather than objectively identifiable, such as news that, while not intentionally false, through speculation and bias is intended to sway public opinion. Therefore, while it may be possible to define fake news, actually identifying it and its purveyors is likely to be fraught with difficulties and perhaps subject to abuse in its own right, with possibly chilling effects on free speech.

IV. FACEBOOK AND THE DISTRIBUTION OF FAKE NEWS

We start from the premise that intentionally false news that is not satirical or speculative provides no positive social value in terms of net total welfare.¹² Additionally, to the extent that fake news makes it more difficult to identify legitimate news, then fake news could lower overall welfare by increasing search costs.¹³ This seems to be the crux of Hubbard's argument regarding the role of Facebook — i.e., that Facebook enables the distribution of fake news which increases the noise surrounding all news and lowers total welfare.

One incentive that Facebook faces, which Hubbard rightly points out, is to promote content that has high engagement value. Hubbard argues that this is a characteristic of some or most fake news. Consequently, Facebook has an incentive to disseminate and enable fake news. Hubbard asserts, "A lot of the fake news sites were custom built for Facebook, taking into account the biases of its newsfeed algorithm." The importance of Facebook's role in distributing fake news is that, according to Hubbard, "In news distribution, Facebook's share is big indeed. 66% of Facebook's 1.71 billion (sic) US users receive news from the platform, according to Pew Research. Since Facebook reaches 67% of US adults, 44% of the US population gets news from Facebook."

It is important to clarify what these Pew statistics do and do not tell us. First, according to the cited Pew Research study, Facebook is not unique in the percentage of users who consume news while on the given social media platform.¹⁴ For instance, both Twitter (59 percent) and Reddit (70 percent) have similar levels of news readership among their users.

Importantly, the statistic that 44 percent of the U.S. population gets news from Facebook is not a market share in any sense. For example, it ignores "multi-homing," that is the patronizing of more than one platform. Specifically, the Pew Research study finds that 39 percent of Facebook users also get news from local television, 25 percent from cable television, 23 percent from network nightly television, 33 percent from news websites and apps, 23 percent from radio and 15 percent from print newspapers. Thus, the 44 percent statistic tells us very little about Facebook's market power in terms of news distribution — let alone its ability to foreclose mainstream news organizations. Allcott & Gentzkow (2017) report that "only 14 percent of American adults viewed social media as their 'most important' source of [2016] election news."¹⁵

Moreover it is unclear how "engaged" Facebook users are with news delivered by social media as opposed to other forms of news delivery. Thus, the Pew Research study also notes that the majority of Facebook readers happen upon the news "when they're doing other things online" (62 percent) rather than "because they're looking for it." This would appear to be a key metric before assessing the impact of fake news.

Hubbard also highlights that Facebook wants to increase the number of users on its platform and the amount of time they spend there. Presumably, this is what most multisided platforms want. The problem, according to Hubbard, is that Facebook discourages users from "clicking away" from its platform by defaulting them to an "in app" browser when they attempt to click through to other websites. This "in app" browser is allegedly "slow" in connecting to outside sites, which discourages users from leaving Facebook. However, the impact of "slowing" links to other websites in terms of increasing user-time is ambiguous. On the one hand, it may make users that are

12 This may be a strong assumption since consumers may view so-called fake news similarly to the way they view tabloid "journalism." That is, basically as a source of "info-tainment" that nobody in their right mind takes too seriously. Further, this assertion may be a departure from mainstream economic and antitrust thinking. In general, economists and antitrust practitioners only rank "states of the world" in terms of consumer welfare. To the extent a good or service increases consumer welfare, economists and antitrust practitioners usually refrain from making value judgments regarding the nature of that welfare increase. A possible example of this overriding philosophy has been the government's recurring role in preventing combinations in the tobacco industry (See Federal Trade Commission Complaint and Statement in the Matter of Reynolds American Inc., and Lorillard, Inc., July 31, 2015; Federal Trade Commission B.A.T. Industries P.L.C., *et al.*, Proposed Consent Agreement with Analysis to Aid Public Comment, January 11, 1995). This is not to say that there are no reasons to believe that the quality of the experience of consuming legitimate news is in some sense "better" than that of consuming fake news, only that economists and antitrust practitioners in general do not have particular expertise in making such distinctions. Decisions on such issues are best left to other professionals if they are to be adjudicated at all.

13 It is possible, however, to conceive of scenarios where the opposite is true. Suppose that some purported mainstream publishers propagate news stories that exhibit extreme bias or are poorly fact-checked. If so, then the increase in "noise" engendered by fake news could actually result in less biased consumption of news since the public will increasingly distrust all news and hence view the biased or poorly fact checked articles of mainstream news organization with a more critical eye. According to Gallup, the question of whether Americans trust the media "to report the news fully, accurately and fairly" has reached new lows (see: <http://www.gallup.com/poll/195542/americans-trust-mass-media-sinks-new-low.aspx>).

14 See: <http://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016/>.

15 Allcott & Gentzkow (2017), "Social Media and Fake News in the 2016 Election," *Journal of Economic Perspectives* 31, pp. 221-236 at 212.

currently using a platform more reluctant to click away. On the other hand, it may reduce the desirability of using the platform or specific features of the platform by reducing the quality of the user experience.

Similarly, Hubbard argues that Facebook's Instant Articles hurts publishers since Facebook keeps the data collection associated with users of this app. Instant Articles is a feature that allows publishers to tailor articles to the Facebook platform.¹⁶ In developing this feature, Facebook appears to have received feedback from publishers.¹⁷ Consequently, the concern would appear to be that Facebook is reneging on contractual commitments made with publishers (either explicit or implicit) regarding information sharing, revenue sharing, or load times. Such an allegation, however, would appear to be a matter for contract or consumer protection laws rather than antitrust. Extending antitrust enforcement into areas beyond the purview of competition can be problematic.¹⁸

Moreover, there are a number of indications that Facebook is not withholding information or engaging in other deleterious practices with publishers that use Instant Articles. For example, Instant Articles appears to be compatible with a number of tracking tools, including publishers' own tools.¹⁹ Also, Facebook does not appear to be engaging in any actions to withhold advertising revenue from publishers obtained through Instant Articles. Specifically, publishers can keep 100 percent of the ad revenue if they sell the ads, and Facebook gets its standard 30 percent cut if it sells the ads.²⁰ Other sources report that publishers are monetizing Instant Articles at similar rates to clicks on their own sites.²¹

In addition to the contention that Facebook is not sharing information obtained from Instant Articles with publishers, Hubbard also appears to be concerned that because of Instant Articles' fast load times, publishers will become more dependent on it, allowing Facebook to change the rules of the game. This assertion would appear to be a throwback to efficiency "offense" arguments (i.e., the idea that a particular practice or transaction, while lowering costs or increasing customer satisfaction, should be viewed anticompetitively since it would create or strengthen a dominant position).²² Therefore, Facebook cannot win — first it is criticized for having load times that are too slow (for its in-app browser), and then it is being criticized for load times that are too fast. Finally, it is not clear that publishers are becoming dependent on Instant Articles as there are reports that some publishers are abandoning the feature.²³ Those that remain may simply do so because they profit from the application.

V. IS FACEBOOK FORECLOSING MAINSTREAM NEWS ORGANIZATIONS?

There are two key components for a charge of "monopolization" or "abuse of dominance." First, a firm must possess monopoly power in a relevant market. Second, the firm's monopoly power must be gained or maintained through improper conduct rather than merely having a better product, superior management or historic accident.²⁴

The first issue is the relevant product market. In which market are Facebook and mainstream news sites competing? Even if such a market could be properly identified, what is Facebook's market share in this market? As noted in the previous section, there are issues of multi-homing and distinguishing mere "page views" from actual engagement. Hubbard appears to rely upon outdated arguments that

16 For more on Instant Articles, see: <https://contently.com/strategist/2015/05/13/7-things-you-need-to-know-about-facebook-instant-articles>.

17 See: <https://techcrunch.com/2015/05/12/facebook-instant-articles>.

18 See: Abbott & Sacher (2013), "Avoiding the 'Robin Hood Syndrome' in Developing Antitrust Jurisdictions," in *William E Kovacic: An Antitrust Tribute Liber Amicorum*.

19 Marshall (April 5, 2016), "Facebook Instant Articles Now Working With Medium, Other Publishing Tools. Publishing software Medium will soon allow publications to post directly to Facebook," *The Wall Street Journal*.

20 See: <https://developers.facebook.com/docs/instant-articles/monetization>; <https://www.wsj.com/articles/facebooks-instant-articles-advertising-fixes-win-over-publishers-1455218551>.

21 See: <https://www.wsj.com/articles/facebooks-instant-articles-advertising-fixes-win-over-publishers-1455218551>.

22 See Kolasky & Dick (2003), "The Merger of Guidelines and the Integration of Efficiencies into Antitrust Review of Horizontal Mergers," *Antitrust Law Journal*, pp. 207-251, at 211-212.

23 See: <https://digiday.com/media/facebook-faces-increased-publisher-resistance-instant-articles/>.

24 *United States v. Grinnell Corp.*, 384 U.S. 563 (1966).

Facebook's mere size is problematic.²⁵ Antitrust distinguishes between mere size and market power.²⁶ Basing antitrust violations on size is a regression to a much earlier and largely discredited period of antitrust.²⁷

Even if a properly defined antitrust market could be identified, has Facebook engaged in anticompetitive actions that would disadvantage rivals? The key "bad act" of which Hubbard accuses Facebook appears to be its practice of filtering clicks through an in-app browser that slows click-through speeds. It is the advent of fake news that Hubbard claims makes this strategy successful. As a factual matter, there does not appear to be any evidence that users are less likely to click through regarding fake news than other types of content. However, even taking this contention as given, and also taking as given Hubbard's contention that users of Facebook must connect to legitimate outside sites through an in-app browser that has slower connection speeds, her thesis is still problematic. Clearly antitrust could only deal with this issue if there were an antitrust violation. Such a violation would likely require that Facebook anticipated that it could rely on fake news to bolster its anticompetitive in-app connection strategy. To the extent the putative growth of fake news was incidental to their use of an in-app browser, this breaks the causal link between Facebook's in-app browser and its alleged anticompetitive scheme to foreclose traditional news sites.²⁸ Indeed, it seems that Facebook would want to avoid having a reputation as a purveyor of fake news, which further calls into question the hypothesis that it anticipated the growth of fake news in its product design. Finally, it is not clear why Facebook even has an incentive to foreclose legitimate news sites since it is not a generator of news content. This makes it unlike the Google matter, where Google arguably had an incentive to prioritize its search results because doing so encouraged consumers to click toward Google-provisioned products which would have the effect of increasing Google's revenues.

While harm to customers is the standard for evaluating whether there is an antitrust violation, a monopolization strategy would not be successful unless it results in the elimination or restriction of actual or potential competition. Hubbard points to the considerable evidence that news organizations of all forms are declining. There is no denying the news industry is in decline. These trends began long ago, however.²⁹ Connecting this decline to fake news on Facebook is dubious at best. In evaluating whether fake news makes this strategy successful, one question is whether fake news makes up a large percentage of Facebook's user's engagement with the site and whether that has grown over time.³⁰ In other words, fake news could not be a means for keeping users on the site if only a small percentage of users' time on the site is spent engaging with fake news.³¹ Further, there is no evidence that consumers are consuming fake news in lieu of legitimate news.

25 For example, Hubbard states, "When a digital platform with huge market share competes against companies that depend on the platform for distribution, the fight is hardly a fair one."

26 That being said, the broad presumption for finding substantial market power is shares above 50 percent and likely higher. See Areeda & Hovenkamp (2002), *Antitrust Law*, 2nd edition, ¶ 801a, at 319 ("Although one cannot be too categorical, we believe it reasonable to presume the existence of substantial single-firm market power from a showing that the defendant's share of a well-defined market protected by sufficient entry barriers has exceeded 70 or 75 percent for the five years preceding the complaint. Most recent cases dismiss claims as a matter of law where the defendant's market share is less than 50 percent").

27 See Sokol & Comerford (2016), "Antitrust and Regulating Big Data," *George Mason Law Review* 23, pp. 1129-1161 at 1130 ("'Big is bad' has been a bogeyman of antitrust since the time of *Standard Oil*. However, bigness is not an antitrust offense. Rather, antitrust focuses on consumer welfare loss and there has not been a decided merger or litigated conduct case that has said otherwise for at least a generation.").

28 To the extent Facebook did not anticipate the growth of fake news, this suggests there may be other explanations for the use of an in-app browser. Indeed, the causality may run in reverse. The growth of fake news and possibly harmful websites (e.g., sources of viruses and malware) may make Facebook cautious about linking to other sites. The in-app browser may also reflect a desire to create a *smoother* online experience that would allow users to quickly go back to their Facebook feed, a feature that Facebook must have assumed consumers value at least enough to compensate for any reduction in the speed of the browser.

29 See Sacher (2011), "Antitrust Issues in Defining Markets in the Newspaper Industry," available at SSRN: <http://ssrn.com/abstract=1967667>.

30 For instance, according to the Pew study, while 62 percent get news (of all types) on social media, only 18 percent "do so often" (<http://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016/>), which is not consistent with a high level of engagement.

31 A BuzzFeed article quotes a Facebook spokesman who tells them that the top stories do not reflect overall engagement on the platform: "'There is a long tail of stories on Facebook,' the spokesman said. 'It may seem like the top stories get a lot of traction, but they represent a tiny fraction of the total.' He also said that native video, live content, and image posts from major news outlets saw significant engagement on Facebook" (<https://www.buzzfeed.com/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook>).

Does Facebook even have the *ability* to foreclose mainstream news organizations? The mere fact that Facebook users read news stories, whether fake or legitimate, while on Facebook does not establish the ability to foreclose. First, as noted above, Facebook users multi-home and do not rely solely on Facebook for news.³² Second, what percentage of traffic is Facebook actually responsible for to mainstream news organizations as a whole — and not just to a specific news site (since foreclosure requires *market* control not the elimination of specific competitors *per se*)? For instance, according to one source, Facebook accounts for 20 percent of traffic to the New York Times' website,³³ which is likely insufficient to cause foreclosure — even if Facebook foreclosed the *entire* 20 percent of traffic.³⁴ Allcott & Gentzkow find top U.S. news sites received only 10.1 percent of their traffic from social media.³⁵ Moreover, these percentages do not indicate what percentage of this traffic is for news articles as opposed to other traffic such as for society pages, crosswords, opinion pieces and other such content. Even if Facebook accounts for a higher percentage of traffic to other mainstream news sites, Facebook users could switch to other methods to reach these news sites including via other social networks, horizontal and vertical search engines and direct bookmarks. Finally, it is unclear why legitimate news sites could not take advantage of Facebook's newsfeed algorithm in the same manner which Hubbard accuses fake news sites of doing.

Relevantly, Hubbard concedes that Facebook has *increased* traffic to news sites “in spades, with its referral traffic exceeding that of Google in 2015.” Along the same line, BuzzFeed acknowledges that:

It's important to note that Facebook engagement does not necessarily translate into traffic [for fake news sites]. This analysis was focused on how the best-performing fake news about the election compared with real news from major outlets on Facebook. It's entirely possible—and likely—that the mainstream sites received more traffic to their top-performing Facebook content than the fake news sites did.³⁶

In other words, even if Facebook does favor fake news, it has likely increased the distribution of all news including actual news — but perhaps disrupting market shares. The problem would then appear to be that, while Facebook has increased traffic to publishers of actual news, these publishers would have an even higher level of traffic *but for* Facebook's design choices. Of course, there is no evidence for this.

VI. CONCLUSION

In sum, we find that fake news is not an antitrust problem. First, the evidentiary bases for many of Hubbard's allegations are thin at best. For example, it is not clear that fake news has had a negative impact on actual news publishers, either in terms of traffic or the ability of publishers to monetize that traffic. To the extent Facebook is reneging on contractual obligations or engaging in misrepresentations to publishers, these are matters for contract or consumer protection law, not antitrust.

Second, viewing the allegations in a standard monopolization and dominance framework raises questions regarding whether Facebook has a dominant position in a well-defined antitrust market; whether it has the ability — or incentive — to actually foreclose mainstream news sites; and whether there is any causal link between Facebook's in-app browser and the decline of traditional news. Finally, identifying fake news is extremely difficult and potentially subject to abuse, with a possibly chilling effect on free speech. This not only calls into question whether antitrust has a role to play in attenuating the dissemination of fake news, but whether the regulation of fake news should be a policy objective at all.

Hubbard's arguments are only the latest in a long line of efforts to turn antitrust away from its well-grounded objective of protecting the competitive process. Hubbard's calls to involve antitrust in what appear to be matters of speech and expression would appear to be pushing competition enforcement in particularly questionable directions.

32 See: <http://www.journalism.org/2016/05/26/news-use-across-social-media-platforms-2016>. Similarly, in an earlier Pew study, only 4 percent of Facebook users “say it is the most important way they get news” (<http://www.journalism.org/2013/10/24/the-role-of-news-on-facebook>).

33 See: <http://www.poynter.org/2016/facebook-referrals-are-crucial-for-traffic-to-hyperpartisan-and-fake-news-sites/440132>.

34 In terms of the current legal standard to find foreclosure, while there is no definitive percentage, it seems foreclosure rates of at least 30 percent are needed. See Jacobson (2009), “Towards a Consistent Antitrust Policy for Unilateral Conduct,” *The Antitrust Source*, pp. 1-7 at 6 (“No case has been decided in a plaintiff's favor in over twenty years involving foreclosure of less than 30 percent”).

35 Allcott & Gentzkow (2017), “Social Media and Fake News in the 2016 Election,” *Journal of Economic Perspectives* 31, pp. 221-236 at 222.

36 <https://www.buzzfeed.com/craigsilverman/viral-fake-election-news-outperformed-real-news-on-facebook>.