

# Is Competition Policy the Right Response to the Crisis of Journalism?

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Concerns over how the competitive dynamics of online markets are affecting the sustainability of public interest journalism and the quality of information have arisen across many jurisdictions. Calls for intervention seem to take the view that news quality is a value that should be preserved in democratic societies; and that the under-provision of public interest content has been worsened by the practices of large digital platforms.

## I. How Do Media and Digital Platforms Interact?

The internet represented an enormous opportunity for news businesses. It reduced the costs of publishing and distributing content, increasing the potential geographic reach of news organizations. At the same time, however, the shift towards digital distribution contributed to a decline in advertising revenue for news publishers. The internet has also changed news consumption, with – for instance – an increased tendency to consume unbundled content from multiple sources.

Today, large digital platforms perform several functions from online distribution to hosting, aggregation, and curation of news (as well as other) content. Some of these services evolved around their core businesses.

### A. Vertical Relationships

To ensure that content is widely distributed, news publishers engage with general search service providers, social networks, and news aggregators. News content serves as an input to these platforms. Digital platforms can be identified as both sellers of referral services (“paid” by publishers through sharing news content) and buyers of news content (in exchange for increased visibility and traffic for publishers and – in some cases – remuneration).

Another vertical aspect to consider is that a few digital platforms are key providers in the advertising supply chain, operating as intermediaries of display advertising services used by news publishers to include ads on their websites and applications.

### B. Horizontal Relationships

Digital platforms compete with news publishers (in particular those with a digital advertising revenue model) for user attention and the supply of display advertising space. On one side of the market, users may decide whether to spend their (limited) time consuming news content on news websites and applications or digital platforms. On the other side of the market, advertisers that want to reach a particular audience may choose to purchase advertising space on news websites or on owned-and-operated digital platforms.<sup>2</sup>

A second area in which digital platforms and publishers overlap is news curation, with digital platforms filtering and bundling content.

## II. What Are the Main Antitrust Concerns?

The main antitrust concerns are that the market power of a few ad-funded digital platforms and the imbalance of bargaining power between news publishers and digital platforms affect the online monetization of news content, and ultimately threaten the viability of news businesses.

Such concerns seem to go beyond whether news publishers receive a “fair” remuneration for digital platforms’ use of their content. They extend to the overall relationship between digital platforms and news publishers, which allegedly results in the first taking unilateral decisions with a significant impact on news publishers and their ability to develop successful online strategies. For instance, it is argued that digital platforms’ bundling of news content from various sources and distribution of non-news content next to

<sup>1</sup> Matteo Giangaspero, Competition Expert, OECD, will moderate the 2022 OECD Competition Open Day’s panel “Competition, Media and Digital Platforms” on February 23, 2022. For more information and to register to the event, please follow this [link](#).

<sup>2</sup> Increasing multi-homing allows advertisers to reach consumers on multiple platforms.

professional news content contributes to the dilution of news brands by affecting publishers' ability to differentiate their products in the eyes of consumers.<sup>3</sup> Against these unilateral decisions, news publishers seem to lack viable alternatives as a result of digital platforms' alleged market power. This may be harming consumers in terms of less content (less news coverage, particularly at the local level) and lower quality.

A broader concern is that – by affecting the distribution and curation of news – digital platforms may be amplifying viral content (and possibly misinformation and disinformation)<sup>4</sup> and reducing incentives to produce quality content. A few competition authorities (e.g. Australia,<sup>5</sup> Japan,<sup>6</sup> and the United Kingdom<sup>7</sup>) acknowledge that misinformation and disinformation are a public concern and that it may be at least exacerbated by competition issues involving the complex relationships between news publishers and digital platforms. From an economic perspective, it mainly appears to be a quality concern in the supply of news content. The policy question being debated is whether and how competition policy should deal with this issue.

As the OECD's paper on *Competition issues concerning news media and digital platforms* sets out, competition authorities and commentators identified several practices raising concerns about news media. A few of these practices may affect online generators of non-news content too.

### **A. Snippets and Publication Formats**

The use of snippets (i.e. excerpts of content displayed on general search services) raises concerns about (1) reduced incentives for users to access news content on publishers' websites

and apps; and (2), the lack of negotiation on snippets' terms, giving news publishers the only option to opt-in or out.

Digital platforms' publication formats, which appear to be a *de facto* requirement on news publishers, are another practice raising concerns. Through these tools, consumers remain within a digital platform's ecosystem while browsing news content. In turn, the conduct has two consequences: (1) traffic is diverted to digital platforms; and (2) digital platforms find it easier to collect user data, which allows them to better target advertising.

It has been observed that these two practices may qualify as a form of exploitation, with news publishers lacking effective means to resist and no viable alternative due to their reliance on digital platforms as key sources of traffic.<sup>8</sup>

Tools aiming to reduce referral traffic to news websites and applications such as “free” increases in snippet length may amount to lowering the quality of the service provided by digital platforms to news publishers and presumably increasing their costs. In this context, digital platforms could also be seen as leveraging their power in their core market (e.g. general searches services or social network services) to “coerce” publishers to adhere to policies that benefit the platforms but harm their interests.<sup>9</sup>

### **B. Access to (and Monetization of) User Data**

On the one hand, digital platforms collect valuable data from users consuming content and interacting on news publishers' websites and applications through tags, login tools, plug-in, and interaction buttons. Digital platforms have also

<sup>3</sup> Athey, S., M. Mobius & J. Pal (2021), “The Impact of Aggregators on Internet News Consumption,” NBER Working Paper Series No. 28746, available at <http://dx.doi.org/10.3386/w28746>.

<sup>4</sup> Mis-information is “false or inaccurate information not disseminated with the intention of deceiving the public.” Dis-information is “false, inaccurate, or misleading information deliberately created, presented and disseminated to deceive the public” (see <https://www.oecd.org/governance/reinforcing-democracy/>).

<sup>5</sup> Australian Competition & Consumer Commission (2019), “Digital Platforms Inquiry – Final Report,” p. 358, available at <http://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>.

<sup>6</sup> Japan Fair Trade Commission (2021), “Fact-finding Survey Report on Digital Platform Operators' Trade Practices – Final Report Regarding Digital Advertising,” p. 144, available at <http://www.jftc.go.jp/en/pressreleases/yearly-2021/February/210217.html>.

<sup>7</sup> Competition & Markets Authority (2020), “Online platforms and digital advertising – Market study final report,” pp. 9 and 71, available at <http://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-marketstudy>.

<sup>8</sup> Geradin, D. (2019), “Complements and/or Substitutes? The Competitive Dynamics Between News Publishers and Digital Platforms and What It Means for Competition Policy,” TILEC Discussion Paper, Vol. 003, <https://ssrn.com/abstract=3338941>.

<sup>9</sup> Geradin, D. (2019), *id.*, pp. 11 and 22.

access to user data through ad tech products provided to news publishers. On the other hand, publishers seem to have limited access to user-level data for their news content hosted within digital platforms.

These practices could be seen as means to “free ride” on publishers’ news content – and on investments made by publishers to produce such content – to attract user attention and extract significant value from it. Digital platforms’ market power would result in exclusionary conduct by harming news publishers in markets on which they horizontally compete, diminishing their advertising opportunities.

### **C. Algorithms for Selection, Curation, and Distribution of News Content**

Digital platforms’ algorithms for the selection, curation, and distribution of news content raise two main concerns. First, changes in digital platforms’ algorithms without prior notice or sufficient explanation seem to have a substantial impact on traffic and monetization of news content. These changes could amount to imposing unfair trading conditions and discrimination in certain jurisdictions. Second, the distribution of professional news content next to non-professional content may affect news publishers’ reputation in the long term. This appears an issue of different incentives between news publishers and digital platforms.

### **D. Intermediation in Display Advertising**

Regarding digital platforms’ intermediation in display advertising, the main concern is that digital platforms’ market power in display advertising may translate into higher fees for ad intermediation services. Also, it is observed a lack of transparency in the ad tech supply chain, in particular in the publishers’ remuneration for the sale of ad inventory.<sup>10</sup> This lack of transparency could be both evidence of and contributing to the market power of digital platforms.

## **III. What Is the Role of Competition Authorities?**

Jurisdictions are assessing a wide range of potential solutions, with several competition authorities playing a key role. However, there are significant differences across jurisdictions as to how theories of harm are pursued, depending on the applicable legal frameworks and powers of competition authorities. These solutions include both competition enforcement actions against digital platforms and regulatory reforms, ranging from a comprehensive framework tackling digital platforms’ market power to a more sectoral approach. Irrespectively of the tools employed, key challenges remain in designing suitable, effective, and proportionate remedies that ultimately benefit consumers.

Two types of antitrust enforcement actions can be observed. First, cases assessing conduct undermining competition in digital advertising. Second, cases triggered by claims concerning exploitative conduct by dominant digital platforms to frustrate the objective of copyright laws.

Looking beyond enforcement cases, the first type of initiatives, such as that in Australia<sup>11</sup> focuses on ensuring “fair” remuneration for news content distributed through platforms with substantial market power. These interventions appear to address digital platforms’ exploitative conduct, evening up the bargaining imbalance through regulatory tools. The second type of initiative is competition authorities’ market studies and sector inquiries as well *ex ante* regulation with several proposals to address digital platforms’ market power.

## **IV. Conclusion**

The assessment of the practices described above is very complex. How positive (more variety of news sources at lower prices) and negative (lower quality and less coverage) effects influence consumer welfare – as well as the broader society – is an empirical question.

<sup>10</sup> Comision Nacional de los Mercados y la Competencia (2021), E/CNMC/002/2019 “Estudio sobre las condiciones de competencia en el sector de la publicidad online en España,” [http://www.cnmc.es/sites/default/files/3626347\\_10.pdf](http://www.cnmc.es/sites/default/files/3626347_10.pdf), pp. 156-157.

<sup>11</sup> Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021, available at [www.accc.gov.au/system/files/Final%20legislation%20as%20passed%20by%20both%20houses.pdf](http://www.accc.gov.au/system/files/Final%20legislation%20as%20passed%20by%20both%20houses.pdf).

Measuring quality parameters on which news publishers compete and the effects of digital platforms' practices on content quality can be challenging. Quality parameters are even more complex in this context, where considerations in a "public good" sense may not necessarily coincide with quality considerations based on consumer preferences.

Assuming that digital platforms' practices do indeed result in negative effects on news quality and coverage, a key question from an antitrust perspective remains: to what extent quality is under-supplied due to the abusive exercise of market power by digital platforms, rather than as a result of market failures? Whether antitrust interventions are going to be the solution to preserve quality news and public interest journalism remains questionable.