Competition Issues concerning News Media and Digital Platforms

OECD

Please cite this paper as:

OECD (2021), *Competition issues concerning news media and digital platforms, OECD Competition Committee Discussion Paper,*

https://www.oecd.org/daf/competition/competition-issues-in-news-media-and-digital-platforms.htm

Foreword

This paper describes how digital platforms have transformed the distribution and consumption of news content and the complex competitive dynamics between news publishers and digital platforms. It sets out the key considerations to assess whether a digital platform holds market power and considers various theories of harm.

Arguments supporting the view that some digital platforms' practices are overall harmful to news publishers focus on the impact on incentives to invest in content quality, which in turn harms consumers. By reducing incentives to produce quality content and by affecting distribution and curation of news, digital platforms may also be amplifying mis-information and dis-information. How positive (e.g. more variety of news sources at lower prices) and negative (e.g. lower quality and less coverage) effects affect consumer welfare – as well as the broader society – is an empirical question. Further research may be needed in this regard.

There are significant differences across jurisdictions as to how these issues are being addressed. Digital platforms' practices, in some instances, could qualify as a broad strategy against news publishers. While regulation may be a better tool to address these strategies, targeted competition enforcement actions may be effective in some instances. Finally, several market studies are contributing to better understand the functioning of these markets and broader initiatives on digital markets – even beyond competition policy – may address some of the issues affecting news publishers and consumers.

This paper was prepared by Matteo Giangaspero of the OECD Competition Division, with comments and inputs from Antonio Capobianco and Richard May of the OECD Competition Division; and Carissa Murno of the OECD Public Sector Integrity Division. Lukas Cavada, Takuya Ohno and Julieth Sanclemente of the OECD Competition Division provided research assistance. It was prepared as a background note to discussions on Competition issues in News Media and Digital Platforms at the December 2021 session of the OECD Competition Committee, https://www.oecd.org/daf/competition/competition-issues-in-news-media-and-digital-platforms.htm.

Table of contents

Figures

Boxes

1 Introduction

The internet fundamentally changed distribution and consumption of news content (OECD, 2010[1]). Moreover, digital platforms transformed the entire news ecosystem by performing several functions from online distribution to hosting, aggregation and curation of news content. With the shift towards digital distribution, advertising revenue for news publishers has deeply declined in most developed countries, particularly affecting local news outlets.

Across jurisdictions, governments have been urged to intervene. Some are concerned that the competitive dynamics of online markets and, more specifically, the commercial relationships between news publishers and large digital platforms heavily affect the sustainability of public interest journalism. More specifically, digital platforms' market power and the imbalance of bargaining power between news publishers and digital platforms seem to heavily affect the online monetisation of news content and threaten the viability of news businesses. This may have consequences reducing quality and coverage of news as well as exacerbating social harms caused by mis-information (i.e. false or inaccurate information not disseminated with the intention of deceiving the public) and dis-information (i.e. false, inaccurate, or misleading information deliberately created, presented and disseminated to deceive the public). In addition, concerns have been raised on the indirect impact on pluralism and increasing concentration in news media.

Jurisdictions are considering a wide range of potential solutions to address these issues, with several competition authorities playing an active role. Solutions – often complementary – include both strong competition enforcement against digital platforms and regulatory reforms. Reforms range from a comprehensive framework tackling the market power of large digital platforms to regulatory initiatives (for instance, reforms of copyright laws) specifically targeted at rebalancing the bargaining position between news publishers and digital platforms. Finally, there are also initiatives to introduce or increase funding for public interest journalism.

This background note builds on work already undertaken by the OECD Competition Committee. A number of Competition Committee roundtables have touched on issues relevant for this topic. Most recently, the OECD held roundtables on *Data portability, interoperability and digital platforms competition* (OECD, 2021[2]) in June 2021, and on *Competition in digital advertising markets* (OECD, 2020[3]) and *Abuse of dominance in digital markets* (OECD, 2020[4]) in December 2020. The OECD has also undertaken work relevant to the topic of mis-information and dis-information. The OECD Public Governance Committee identified *Information in the Digital Age* as the first pillar of its *Reinforcing Democracy Initiative*.[1] Under this initiative, two Expert Group Meetings have been held (in July and September 2021), convening experts from different policy communities to identify targeted measures that governments can implement to prevent and mitigate risks of mis-information and dis-information. A first discussion on the role of competition policy took place in the second Expert Group Meeting in September.

The background note focusses on the complex commercial relationships between news publishers and digital platforms, considering whether and how competition enforcement and policy can contribute to address issues seriously affecting the viability of news media businesses, in particular with regard to the production and distribution of public interest news content. It does not address in detail the structure of digital advertising markets, nor aspects of data portability and interoperability. Moreover, it does not focus on digital platforms' market power vis-à-vis advertisers and other advertising intermediaries, although these aspects remain relevant for competition authorities, especially in the context of enforcement cases.[2] This background note is organised as follows:

Section 2 explains how the internet changed the news industry and the complex competitive dynamics between news publishers and digital platforms.

Section 3 considers concerns related to digital platforms' market power and conduct that may affect news publishers and consumers, looking at potential theories of harm and at the effects of such conduct.

Section 4 briefly covers the main enforcement and regulatory initiatives as well as the remedies adopted (or proposed) to mitigate competition issues.

Section 5 concludes.

2 Competitive dynamics between news publishers and digital platforms

This Section defines the scope of the note and it briefly explains how the internet and digital platforms changed the news media industry, putting at risk its sustainability. It also provides an overview of the competitive dynamics and complex commercial relationships between news publishers and digital platforms.

2.1. Public interest news and its crisis

For the purposes of this note, news is considered information and commentary on contemporary matters, while it does not encompass other forms of media content such as entertainment. Journalism provides benefits to readers and viewers increasing their knowledge and understanding of news, but it also provides broader benefits to society. These public benefits include, for instance, offering *fora* for exchange of ideas and opinions as well as holding power and political leaders accountable. Journalism that ultimately ensures the effective functioning of democracies is identified as public interest journalism.[3] Such a definition is not limited to investigative journalism; it also includes detailed analyses of facts (e.g. editorials) and it puts an emphasis on the importance of local news.[4]

By many commentators, public interest journalism has some aspects of a public good (e.g. it is under-supplied) (Stigler Media Subcommittee, 2019[5]) or at least it generates positive externalities in terms of social democratic benefits.[5] The under-supply is not limited to the volume of public interest content produced, but it also encompasses plurality considerations. The production of public interest content is typically costly, requiring dedicated reporters working on a story and large teams to uncover facts. From a demand side, while there is a limit to the time that consumers are willing to spend on news content, its social consumption increases the value of news. However, it is still difficult to capture its full value because – in most cases – not-paying consumers have still access to news content (in other words, news are non-excludable goods) and its benefits extend even to consumers not accessing such content. In addition to these considerations, as further explained in Section 3, there are increasing concerns that digital platforms' market power further affects the supply of news content, reducing publishers' ability and incentive to invest in public interest journalism.

Before the internet and digital platforms, public interest journalism was largely funded in two ways: (1) by exploiting economies of scope through bundling with other content (e.g. comics and sport); and (2) by exploiting a two-sided business model through advertising revenue.[6] News publishers had control over their sources of revenue and there were natural barriers, such as the time needed to generate and distribute content, to the ability to free ride on/reproduce original content (Geradin, 2019, p. 4[6]). On the contrary, in the online world, content can be updated instantaneously and others can immediately reutilise original content, making difficult for news publishers to reap the benefits of (costly) content they produce (Cagé, Hervé and Viaud, 2020[7]).

With the shift towards digital distribution, advertising revenue for news publishers deeply declined. First, news publishers experienced an abrupt drop of classified advertising.[7] Then, they gradually lost a large percentage of their display advertising,[8] which shifted to digital platforms not producing news content (Comision Nacional de los Mercados y la Competencia, 2021[8]). So it can be argued that the loss of revenue mainly resulted from increased competition on the advertising side of the market as well as from the limited ability of offline news outlets to effectively transition advertising space from print to digital publishing. This loss occurred despite an increasing (online) readership and audience.

In the United States, newspaper advertising revenue fell by over 50% between 2006 and 2018 (U.S. House of Representatives, 2020, p. 57[9]). Pew Research Center estimated that U.S. newspapers advertising revenue dropped from approximately USD 48.7 billion in 2000 to USD 8.8 billion in 2020, with the percentage of advertising revenue coming from digital advertising increasing form 17% in 2011 to 39% in 2020.[9] This has caused layoffs of journalists and less press coverage, affecting both large publishers and local news outlets (U.S. House of Representatives, 2020, p. 58[9]) (Stigler Media Subcommittee, 2019, p. 55[5]).[10] As the Australian Competition & Consumer Commission (ACCC) (2019, pp. 309-312[10]) noted with regard to Australia, "declining advertising revenue earned by media businesses have been a major cause of cuts to both operational expenditure and employment of editorial staff" ultimately resulting in a decline of the coverage of certain areas or the closure of entire publications.[11]

Finally, this crisis may have contributed to a wave of consolidation in the industry. In the United States, for instance, it has been observed that many local news outlets have been acquired by private equity and hedge funds (U.S. House of Representatives, 2020, p. 59[9]).

2.2. How the internet changed monetisation and consumption of news

From the outset, the internet represented an enormous potential for news outlets. It substantially reduced costs of publishing and distributing news content, allowing more frequent updates (Peitz and Reisinger, 2015, p. 451[11]) and increasing the (potential) geographic reach.[12] It also lowered consumers' costs of searching and accessing news content (Martens et al., 2018, p. 40[12]). In addition to pre-existing news publishers transitioning from print-based distribution of content to a mix of print and online (or sole online) distribution, the internet allowed new entrants to establish as digital-first publishers and to develop new publication formats (e.g. blogs or short news videos[13]). Digitalisation ultimately increased competition among news publishers as result of both the broader reach of professional news content (well beyond their domestic/local markets) and the increasing number of non-professional sources such as bloggers and citizen journalists. Moreover, there has been a convergence of different publication formats, for instance diluting the boundaries between printed press and television such as in the case of traditional newspapers producing video content for their digital distribution channels (Peitz and Reisinger, 2015[11]; OECD, 2012[13]).

Digital distribution essentially relies on one of the following revenue models (or on a mix of these models): (1) a subscription-based model; (2) a digital advertising model by placing advertising on their own websites and applications; or (3) a digital advertising model by posting news content on third-party platforms and indirectly monetising through advertising revenue generated on these platforms (Competition & Markets Authority, 2020, p. S2[14]; Japan Fair Trade Commission, 2021, p. 124[15]; OECD, 2010[1]).[14] Moreover, there are major differences between large and small news outlets in the distribution and monetisation of online content. Subscription-based business models are allowing a few news publishers, mainly those with a global reach and a customer base able and willing to pay for content, to successfully transition away from traditional advertising-based business models.[15] However, subscription-based models are not always viable to deliver information to, for instance, local communities and to citizens that are not willing to pay for such content (Stigler Media Subcommittee, 2019, p. 55[5]).[16] For instance, Chiou and Tucker (2013[16]) studied the implementation of paywalls at three local media sites, finding that imposing paywalls led to a large decline of traffic (approximately 51%, and even greater from young users). Therefore, such news content continues to significantly rely on (digital) advertising. Moreover, in the online world, incentives to produce local news content are rather limited as the interested audience remains small irrespectively of broader distribution channels (Australian Competition & Consumer Commission, 2019, p. 306[10]).

The internet has also changed user consumption of news content (Peitz and Reisinger, 2015, pp. 447-448[11]). Multi-homing (using multiple providers of the same type of product or service at once) is an essential feature of competition in these markets. In this context, it translates in an increasing tendency to consume news content from multiple sources. News consumption is, however, not uniform across countries and consumers with more educated and wealthier consumers following on average a larger number of sources (Kennedy and Prat, 2019[17]).[17]

Finally, at least *prima facie*, consumers have been playing a more active role in the distribution of news content, for instance through online comments and recommendations.

2.3. The complex relationship between news publishers and digital platforms

Digital platforms typically operate based on multi-sided business models, creating value by allowing various type of users (both businesses and individuals) to engage through their ecosystems. The nature of the news publishers-digital platforms relationship is very complex. From the news publishers' perspective, this relationship is characterised by a tension between the short-term operational opportunities of using digital platforms as effective channels of distribution of news content and the long-term concern to become "too dependent" on these platforms (Nielsen and Ganter, 2017[18]). From the digital platforms' perspective, there are conflicting views as to the value of news content (also compared to other type of third-party content) for their businesses and overall revenue.[18] Moreover, as already mentioned, digital platforms changed the entire news ecosystem by performing several functions from online distribution to hosting, aggregation and curation of news content. While performing all these functions, digital platforms make it easier for consumers to search and consume content, increasing competition across publishers – including for small players – for consumer attention (Athey, Mobius and Pal, 2021[19]). They also facilitate multi-homing and competition on a story-by-story basis.

2.3.1. Vertical relationships between news publishers and digital platforms

To ensure that content is widely distributed, news publishers engage with several digital platforms providing a broad range of services (Competition & Markets Authority, 2020, pp. 303-304[14]).[19] News content serves as an input to the service side of these platforms, and – at least for some platforms such as those providing general search and social networks services – distribution of news content may not qualify as a core part of their offering to attract users. Within these vertical relationships, digital platforms may be seen acting as both "sellers" of referral services (paid by publishers through sharing their news content) and "buyers" of news content (in exchange of increased visibility/traffic for publishers and a remuneration). Geradin (2019, p. 7[6]) noted that, in most instances, news content is provided "free of charge" to platforms.

As the concerns described in Section 3 show, the value of news content to digital platforms is two-fold: (1) direct value, contributing to generate revenue through advertising displayed within or adjacent to news content on digital platforms; and (2) indirect value, deriving from the collection of user data to improve digital platforms' targeted advertising services. In exchange, digital platforms offer publishers a broader reach for the distribution of news content[20] and provide referral services. In turn, traffic allows publishers to monetise their own content mainly through display advertising revenue, but also through attracting more subscriptions and donations.

The most important digital platforms for news publishers are those offering online search services, social network services and media aggregation services.

- **General search services** are primarily a source for searching content and, therefore, an important entry point for readers/viewers of news content. In some cases, digital platforms providing general search services also offer vertically integrated news aggregation services (see below), so the difference between these two can be blurred (Peitz and Reisinger, 2015, pp. 448, 467[11]).
- **Social networks** evolved from tools for individual users to share personal content to aggregators (Peitz and Reisinger, 2015, p. 447[11]) with a large portion of content produced by third-party publishers, who use these platforms as alternative or complementary means to reach consumers (de Cornière and Sarvary, 2020, p. 2[20]). As Peitz and Reisinger (2015, pp. 453-454[11]) noted, social network platforms have become a "personalised magazine" for some users and therefore play an increasingly important role for news distribution and consumption. Moreover, news publishers often incentivise users to join their own pages and to engage with their content over social networks. Direct traffic referrals may not fully reveal the complex relationship between consumption of news content and social networks. Studying the influence of large social networks on traffic and news consumption, Mahmood and Sismeiro (2017[21]) found that the type of information individuals are exposed to within their networks may also have an effect on the information they search outside the social network.
- **News aggregators** (or portal sites) and news publishers are clearly vertically related. On portal sites and news aggregators, news content from various publishers is displayed partially or in full, aggregated and curated through a combination of editorial work and algorithms. Pure news aggregators do not generate original content. Contrary to often the case for general search services and social networks, in several cases, there is a contractual relationship between news publishers and these platforms with publishers receiving a remuneration for their news content. Remuneration schemes vary, including fixed fees, unit price per page view combined with a minimum remuneration or a portion of the digital advertising revenue generate on such platforms (Japan Fair Trade Commission, 2021, p. 133[15]). News publishers can also charge for subscriptions through news aggregators, who retain a fee. With regard to digital advertising, news publishers can monetise content distributed on a news aggregator by directly selling display advertising or by sharing advertising revenue with the aggregator (so called "advertising on a backfill basis" and "pooled advertising basis") (Australian Competition & Consumer Commission, 2019, p. 221[10]), which may retain a percentage between 30% and 50%.

Finally, another (and separate) aspect of these vertical relationships is that certain digital platforms are also key providers in the advertising supply chain operating as intermediaries of display advertising services sourced by news publishers to include ads on their websites and applications.

2.3.2. Horizontal relationships between news publishers and digital platforms

A number of commentators recognise that there are attention markets in the digital economy, involving "competition in which platforms acquire time from consumers, with bundles of content and ads, and sell ads to marketers to deliver messages during that time" (Evans, 2020[22]). Acting as "attention brokers" (Wu, 2017[23]), digital platforms have become important competitors of news publishers (in particular of those with a digital advertising revenue model) for user attention and in the market for the supply of display advertising space.

On one side of the market, users may decide whether to spend their limited time, in particular their attention dedicated to news content, on news outlets websites and applications or on digital platforms. On the other side of the market, advertisers that want to reach a particular audience have the choice to purchase advertising space on publishers' websites (through open display advertising) or on "owned-and-operated" digital platforms, selling through their own ad tech interface (Jeon, 2021, p. 3[24]). Moreover, the increasing multi-homing allows advertisers to reach consumers on multiple platforms (Peitz and Reisinger, 2015, p. 471[11]). In this regard, de Cornière and Sarvary (2018[25]) developed a model of competition for attention between a social platform and newspapers.

While on offline channels news content and advertising tended to be unrelated (with the exemption of specialised press targeting a niche group of readers/viewers), the internet technically allows having content-specific ads associated to specific content (Peitz and Reisinger, 2015, pp. 448-449[11]). However, it has been observed that in digital advertising:

> *"there has been a shift from the context (i.e. the content of the website) to the user (i.e. the likelihood that a given Internet user will be interested in the ad displayed). So advertisers place less emphasis on where their advertisement will be shown, and instead base their decision according to the specific user that will be exposed to the ad" (Geradin, 2019, p. 16[6]).*

Another area in which digital platforms and news publishers overlap is the curation of news content (Australian Competition & Consumer Commission, 2019, p. 170[10]). While prior to the internet publishers had full control over the curation of their content, in the digital world news publishers lost this control (Geradin, 2019, p. 5[6]). Digital platforms increasingly act as news curators, filtering and bundling content through algorithms as well as selecting and ranking in which order users see news content.[21] Ultimately, digital platforms disintermediated producers of news from readers/viewers. In addition to traditional editions (or bundles), news outlets are more and more selling story-by-story (so-called "atomisation" of news content), with content detached from its source.

A third area in which digital platforms and news publishers seem to overlap or to give rise to a diagonal relationship is production of content. In some instances, digital platforms are not just distributing third-party content, but becoming content generators (also through acquisitions of traditional media businesses) and competing with traditional media for content rights. Even when such content does not exclusively concern news, it may be complementary to the consumption of news content. While not further discussed in the note, this is an increasingly important aspect.

3 Market power of digital platforms and potential harm

This Section outlines the main considerations when assessing digital platforms' market power and practices that are raising concerns with regard to news content. It then analyses potential theories of harm that may result from digital platforms with market power engaging in these practices, focussing on the effects on news publishers and consumers. Finally, it looks at the broader social harm that these practices may cause.

3.1. Do digital platforms hold market power?

Market power can be defined as the ability of firms to unilaterally raise prices above, or quality below, the competitive level and to maintain these conditions. The concept of market power is enshrined in abuse of dominance (or monopolisation) provisions in competition laws. Dominance can generally be considered a form of market power that is substantial (i.e. relatively unrestrained by competitors, both actual and potential, as well as by consumers) and lasting (rather than transitory). In other words, a firm with substantial market power may have the ability to exclude competitors, or impose exploitative terms on consumers or businesses.[22] Digital platforms' market power derives essentially by: (1) lack of alternatives for businesses and consumers utilising these platforms; and (2) entry barriers resulting from network effects and data that can insulate dominant firms from competitive pressure. Market shares could represent an indication of market power, but may be less meaningful in digital markets.

In addition to considerations on digital platforms' substantial market power in their core business (e.g. general search services or social networks), commentators and a few competition authorities have considered whether digital platforms also have substantial market power in services specifically tailored to news publishers (e.g. news referral services) or in segments where digital platforms and news publishers compete; and how the exercise of such market power may affect news publishers and consumers.

It should be preliminary observed that digital platforms monetise third-party news content both directly and indirectly. Direct monetisation is mainly achieved through selling advertising space on their own platforms. In addition, by keeping users within their ecosystems, digital platforms indirectly monetise third-party news content by collecting user data, which in turn increases their ability to provide targeted advertising services and future advertising revenue. Finally, where digital platforms also offer intermediation services in display advertising, they are also able to monetise news content on publishers' own websites and applications through intermediation fees applied on advertising revenue (Comision Nacional de los Mercados y la Competencia, 2021, pp. 53-54[8]).

Within the complex relationship between news publishers and digital platforms set out in Section 2, the main concern is that – as consequence of digital platforms' market power – publishers are not getting enough value back from digital distribution to cover the high costs of producing news content. In other words, the main concern is that the value of third-party content for the digital platforms is not shared with news publishers. Such concerns seem to go beyond the consideration of whether news publishers receive a "fair" remuneration from digital platforms for the use of their content. In fact, they extend to the overall digital unbalanced relationship between digital platforms and news publishers, which results in the first taking unilateral decisions with a significant impact on news publishers and their ability to develop successful strategies for their online businesses (Cairncross, 2019, p. 72[26]). Against these unilateral decisions, news publishers seem to lack viable alternatives as result of such digital platforms' alleged market power.

3.1.1. A market for news referral services

A key factor for effective competition among news publishers is content exposure to the public. Traffic generated by users accessing to news websites and applications is an essential part of digital distribution (Geradin, 2019, p. 8.[6]). There are two main sources of traffic for news websites: (1) direct traffic, generated by a user typing the URL into the address bar; and (2) referral traffic, where users arrive on a news website through another source (e.g. a link on another domain).

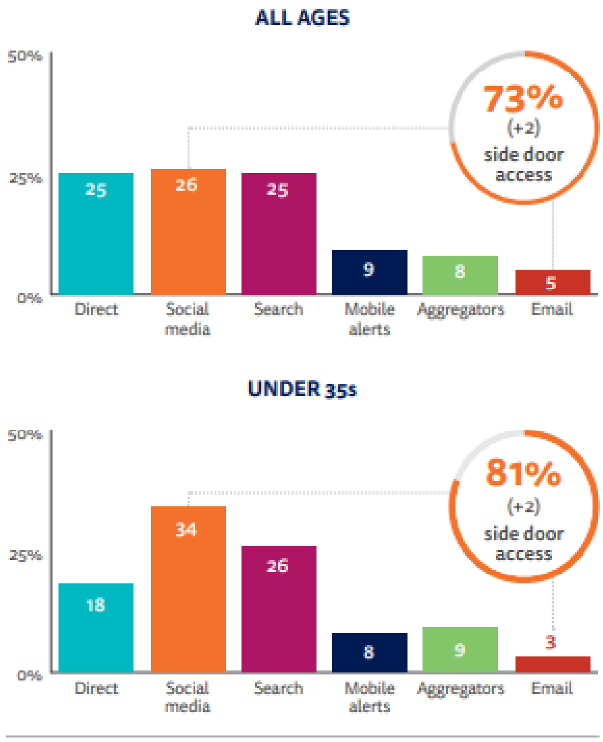
A preliminary question is whether there is indeed a market for news referral services. This would require an in-depth analysis with respect to both demand and supply sides. Nevertheless, it is worth noting that, without reaching a firm conclusion, the ACCC view is that:

> *"There is probably a market for news referral services",* involving *"a mutually beneficial exchange of services, which either party could cease to supply" (Australian Competition & Consumer Commission, 2019, p. 103[10]).*

In most instances (exceptions can be found, for instance, in news aggregators' business models), there is no monetary exchange for the provision of news referral services. Digital platforms monetise third-party content through digital advertising, while delivering additional traffic to news publishers without charging for this service (Peitz and Reisinger, 2015, p. 467[11]).

Recent studies conducted by competition authorities pointed out that the online distribution of news content heavily relies on a few digital platforms, resulting in many news businesses becoming dependent on such platforms as key sources of referral traffic, while lacking alternative suppliers also as result of substantial entry barriers. For instance, the Competition and Markets Authority (CMA) (2020, pp. S6-7[14]) analysed traffic data from several UK large news publishers in 2018 and 2019, finding that they relied on two main digital platforms (Google and Facebook) for approximately 40% of total traffic to their websites. Similarly, the Japan Fair Trade Commission (JFTC) (2021, p. 125[15]) observed that access through links to news content made available on general search services is the most important source of inflow traffic for news media and that links to news content available on portal sites or news applications is also an important source of traffic. A 2021 study conducted by YouGov and commissioned by the Reuters Institute for the Study of Journalism (University of Oxford) confirmed this tendency. The study covering 46 countries clearly showed the importance of referral traffic for news outlets (see Figure 3.1. Main way in which users come across news below).

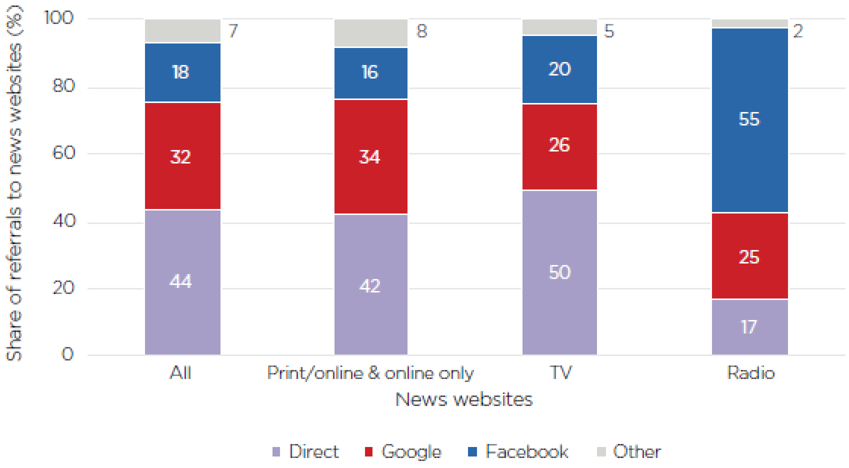
Figure 3.1. Main way in which users come across news



Note: In response to the question "Which of these was the **MAIN** way in which you came across news in the last week?"
Source: https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf

The importance of referral traffic from digital platforms may be even greater for news content providers without established brands. Moreover, specialised and local news outlets seeking to reach a more targeted audience may rely even more heavily on social network platforms. With consumers increasingly accessing news content through these platforms, in practice large digital platforms are seen as "gatekeepers" or "gateways" to online news both in terms of traffic and content selection (Colangelo, 2021[27]).[23] In other words, these two platforms have become "must have" partners (Competition & Markets Authority, 2020, p. 305[14]) or "unavoidable trading partners" (Australian Competition & Consumer Commission, 2019, p. 217[10]) for a significant number of news publishers. In particular, the ACCC (2019, p. 102[10]) noted that referral services supplied by general search providers are "a must have product for news media businesses". Depending on consumers' use of these platforms in various jurisdictions, such "must have" condition may extend to large news aggregators and social networks.[24]

Figure 3.2. Means of accessing news media websites in Australia (2017-2018)



Source: www.accc.gov.au/publications/digital-platforms-inquiry-final-report

As result of the alleged market power in acquiring third-party news content, news publishers may face an imbalance of bargaining power when dealing with these platforms. This imbalance could also be seen exacerbating market failure issues already affecting public interest journalism. Ultimately, the imbalance of bargaining power causes multiple disadvantages for news publishers and it results in publishers having "little choice but to accept the terms offered by these platforms" (Competition & Markets Authority, 2020, p. 306[14]).

Despite this unbalanced commercial relationship, a finding of substantial market power by a digital platform in the supply of news referral services is not obvious. For instance, the ACCC (2019, p. 103[10]) did not conclude that Google and Facebook have substantial market power in the supply of news referral services, rather finding that they have a "substantial bargaining power" in their dealings with news media businesses. Even this conclusion may not be equally evident across jurisdictions as consumer habits differ. For instance, the JFTC (2021, p. 141[15]) observed that influence of general search services on referral traffic is attenuated by the widespread use of portal sites and news applications among Japanese consumers.[25]

3.1.2. Attention markets and digital advertising markets

An alternative or complementary angle of analysis could focus on the horizontal relationship between news publishers and digital platforms.

First, competition authorities could consider whether digital platforms enjoy substantial market power in "attention markets". Some commentators suggest that such markets do exist, with attention brokers sitting at the intersection between a "money market" on the side of advertisers and an "attention market" on the side of users; and that weighing time spent (as a proxy for attention) are the appropriate means of measuring market power in such cases (Wu, 2017[23]).[26] Interestingly, de Cornière and Sarvary (2018[25]) found that (in particular personalised) content bundling allows social network platforms to increase the share of attention they capture against news outlets, "allowing a sort of endogenous gatekeeping phenomenon, whereby consumers read news content through the platform even though they could bypass it". In fact, many users use these platforms for non-news purposes, so they are exposed to (and consume) news content only incidentally. Therefore, at least within these platforms, news publishers may compete for consumers who are not necessarily looking for their content (Australian Competition & Consumer Commission, 2019, p. 343[10]).

Second, competition authorities could consider whether digital platforms enjoy substantial market power in digital advertising (and any segmentation of such markets). Several studies on digital advertising (Autorité de la concurrence, 2018[28]; Bundeskartellamt, 2018[29]; Australian Competition & Consumer Commission, 2019[10]; Competition & Markets Authority, 2020[14]) have already raised concerns about the increasing market power in digital advertising markets by two large digital platforms having a strong impact on news businesses: Google and Facebook.[27] In particular, in these reports competition agencies have found that Google is dominant or has a significant market power at various levels of the advertising supply chain. They also found that Facebook has considerable market power in relation to digital advertising services (and social networking services).[28]

Digital platforms are taking more and more advertising revenue, competing with publishers and using news content to profit through advertising. Access to user data is a very important barrier to entry in these markets[29] and important for any business involved in selling (as well as buying) targeted advertising. As further explained below, through algorithms, digital platforms collect and control data on news audience,[30] while publishers are not able to compete on parameters such as data and targeted advertising.

To conclude, as also observed by Geradin (2019, p. 27[6]), while in attention markets it would be challenging to find that a digital platform holds any market power, on online advertising markets – often the core business of digital platforms – these may be found to exercise market power, lacking effective competition. That said, these platforms operate on two-sided markets, so both sides of the market should be considered. In fact, the economics of platforms suggests that a firm either has market power over the entirety of a multi-sided market or it does not. In other words, it is unlikely to be dominant in one side of the market but face competitive pressure on the other side (OECD, 2018[30]).

3.2. Digital platforms' practices that may affect news publishers

Competition authorities and commentators identified various digital platforms' practices that may be raising competition concerns. It is important to note that such concerns and their effects on news publishers would only arise where a digital platform enjoys substantial market power. Absent market power, a digital platform would unlikely engage in these practices and, if it did so, it would lose valuable news content to rivals, reducing its profitability. The main practices and related concerns are briefly described below.

3.2.1. Snippets

Links to news displayed on general search services are often supplemented by excerpts or summaries of content (so-called "snippets"). In several cases (especially where there is no specific regulation in this regard), there is no contractual relationship between news publishers and general search service providers defining a remuneration and other terms for these services (Japan Fair Trade Commission, 2021, p. 134[15]). As explained by the ACCC (2019, p. 228[10]), if a news publisher does not want a search engine to produce snippets it can do so by adjusting its website's coding settings.

There are two main concerns with regard to snippets. First, while snippets may be beneficial to users of general search services – depending on their length and detail (as further explained in Section 3.4) – they may reduce the incentives for users to access news content on publishers' websites and applications (Japan Fair Trade Commission, 2021, p. 125[15]). Second, there is no negotiation as to the terms of these snippets, leaving news publishers just to opt in or out. The ACCC (2019, p. 232[10]) noted that this does not seem a "real choice" given how traffic to news websites is affected should they opt out. It seems indeed that publishers opting out would result in their news content being (at least indirectly) demoted (reduced the ranking of their webpages in Google's general search results) because less users would click on content without snippets. Therefore, opting out would result in less traffic on the publisher's website and application.

3.2.2. Publication formats

Digital platforms implemented optimising formats for the loading and display of webpages on mobile devices.[31] According to news publishers, although not mandatory, these formats are a *de facto* requirement because essential to obtain more prominence and visibility on digital platforms.[32]

While such formats may be seen as beneficial to users as they allow content to load faster, the main concern is that – through these tools – consumers remain within the digital platform's ecosystem (so-called "walled garden") while browsing news content. It has been observed (Australian Competition & Consumer Commission, 2019, pp. 235-250[10]) (Scott Morton and Dinielli, 2020, p. 33[31]) (Jeon, 2021, p. 24[24]) that this conduct has two main consequences on news businesses: (1) diversion of traffic from news websites and applications towards digital platforms; and (2) digital platforms' collection of user browsing activity and other data generated while consuming news content, which allows to better target advertising to those users. A third potential consequence is the dilution of news brands caused by users remaining within digital platforms' ecosystems.

3.2.3. Access to user data and monetisation

Through tags,[33] login tools,[34] plug-in and interaction buttons,[35] digital platforms collect valuable data from users consuming content and interacting on news publishers' websites and applications. Digital platforms have also access to user data through ad tech products provided to news publishers (Competition & Markets Authority, 2020, pp. 17-18[14]).

Jeon (2021, p. 13[24]) identified this conduct as "data leakage", meaning that "a publisher's unique audience may be 'commoditised' and used to target ads on other sites, which undermines the value of advertising inventory on the publisher's own website". Quite intuitively, digital platforms have indeed an incentive to display valuable advertising on their own services rather than on publishers' websites, where – acting as ad tech intermediaries – they would have to share advertising revenue.[36] In essence, the concern is that, while free riding and monetising on the value of publishers' content, these tracking tools contribute to place digital platforms in a competitive advantage against publishers by profiling users and being able to better target further ads (Scott Morton and Dinielli, 2020, pp. 26-27[31]). Importantly, news publishers seem not to have a real choice on whether to use these tools as they effectively contribute to further distribution of content. Additional concerns may be related to the fact that news publishers do not have full information on the commercial terms and they may not fully understand what they are really "paying" for these services.

Moreover, there are concerns with regard to publishers' limited access to user-level data for their own news content hosted within digital platforms. It seems that digital platforms only provide access to data in aggregated and anonymised form to news publishers, making difficult for publishers to build their strategy for selling advertising inventory using their own content (Japan Fair Trade Commission, 2021, pp. 130-131[15]). According to digital platforms, this is justifiable based on privacy considerations. Indeed, there may be an intrinsic conflict between preserving user privacy and the ability of news publishers to better target display advertising.

3.2.4. Digital platforms' algorithms for distribution of news content

As already explained, news content is often aggregated and curated by digital platforms through algorithms. News publishers raised concerns with regard to changes in digital platforms' algorithms occurring without prior notice or sufficient explanation, and with "insufficient" post-event explanations. (Japan Fair Trade Commission, 2021, p. 132[15]). Digital platforms opposed this view noting that disclosing too much information on changes of algorithms "might allow publishers to game the system" and might be used by competitors to free ride on investments (Competition & Markets Authority, 2020, pp. S8-9[14]).

While in some instance these changes can be driven by the will to improve user experience, according to news publishers, they have substantial impact and unintended consequences on their traffic, and in turn on monetisation of news content (U.S. House of Representatives, 2020, p. 63[9]). In addition, such changes may also raise broader policy issues regarding unclear displaying and ranking criteria, affecting both consumer access to news and the type of news content produced (i.e. to satisfy demands of algorithms) (Australian Competition & Consumer Commission, 2019, pp. 250-251[10]).

Finally, news publishers have argued that, in some cases, algorithms (and changes to algorithms) "may be commercially motivated to favour the platforms or affiliated parties at the expense of other publishers" (Competition & Markets Authority, 2020, pp. S8-9[14]).

3.2.5. Criteria for selection and curation of news content

As noted in Section 2, digital platforms have arguably commoditised news content as any other content which supplies attention to their users (Stigler Committee on Digital Platforms, 2019[32]). Their criteria for selecting and ranking news vary.[37] This may include the likelihood of user engagement and, in the case of social networks, interaction.

The main concern, as observed by the ACCC (2019, pp. 249-250[10]), is that when selecting and ranking content, digital platforms (in particular search services) do not reward in terms of better visibility or ranking publishers producing original content compared to news outlets just reproducing others' content. In this regard, however, digital platforms have argued that – by displaying tailored information – they provide not only sensational information, but also "niche information and specialized information to a variety of consumers" (Japan Fair Trade Commission, 2021, p. 142[15]). Moreover, news selection and curation could be seen as a quality dimension of competition among digital platforms to differentiate their products and to attract users.

A related concern is that content produced by news publishers is often distributed next to non-professional and/or "viral" content (e.g. in the context of social networks) and that such distribution may affect news publishers' reputation in the long run.

3.2.6. Intermediation in display advertising

News publishers sell their display inventory (i.e. the amount of ad space (or the number of advertisements) available) to a range of advertisers, largely using "programmatic technology". This technology allows selling ad inventory in real time using audience data and through a chain of intermediaries (also called "ad tech stack") (Jeon, 2021, p. 6[24]).

The main concern is that market power of digital platforms in display advertising may translate in high fees for ad intermediation services. According to the CMA (2020, pp. 9, 60[14]), in the UK these intermediaries "captures at least 35% of the value of advertising bought from newspapers and other content providers" and that this essentially results in news publishers receiving a lower share of advertising revenue compared to what they would be receiving in a scenario of effective competition.[38]

Moreover, the lack of transparency (Stigler Committee on Digital Platforms, 2019[32]; Comision Nacional de los Mercados y la Competencia, 2021, pp. 156-157[8]) in the ad tech supply chain,[39] in particular in the remuneration received by publishers for the sale of their ad inventory, is causing "a sense of distrust" (Japan Fair Trade Commission, 2021, p. 127[15]).[40] The concerns are that this opacity may be a consequence of market power of digital platforms and that it exacerbates remuneration issues (Competition & Markets Authority, 2020, p. 319[14]).

3.3. Potential theories of harm

In analysing the above-described conduct, competition authorities and commentators considered various theories of potential competitive harm, including (not uncontroversial) new theories that have recently developed in relation to digital markets. These theories of harm should necessarily rely on a finding of market power, as discussed in Section 3.1 above.

Geradin (2019[6]) noted that a key distinction can be made between exploitative and exclusionary theories of harm depending on whether the focus is on the vertical relationship (on news referral services) or the horizontal relationship (on display advertising services) between news publishers and digital platforms, respectively.

As further discussed in Section 4, the theories of harm on which competition authorities have focussed so far resulted in different enforcement and regulatory approaches (as well as remedies adopted) to address the above concerns.

3.3.1. Exploitation

Exploitation refer to situations where a firm uses its market power to impose "unfair" prices or other terms.[41] While in traditional markets exploitative theories often focus on price effects, in digital markets non-price effects such as degradation of quality are increasingly scrutinised.

Digital platforms' practices in relation to news referral services may qualify as exploitation, with news publishers lacking effective means to resist and no viable alternative caused by their reliance on a digital platform as a key source of traffic (Geradin, 2019[6]). The exercise of market power by a dominant digital platform in news referral services may take the form of a reduction in quality of such services. Tools aiming at reducing referral traffic to news websites and applications such as "free" increases in snippet length or changes to algorithms causing the unpredictability of news feeds on social networks may indeed amount to lowering the quality of the service provided to news publishers (Australian Competition & Consumer Commission, 2019, p. 103[10]) and presumably increase their costs.

3.3.2. Exclusion

Exclusionary conduct are practices by firms with significant market power with the effect of weakening the ability of rival firms to compete and preventing potential rival firms from entering the market.

Digital platforms' exercise of market power could result in exclusionary conduct raising rivals' costs and foreclosing competitors, in particular by harming news publishers in markets on which they horizontally compete, diminishing their advertising opportunities. First, reflecting the complexity of the relationship between news publishers and digital platforms, exclusionary effects may also arise when focussing on news referral services (Geradin, 2019[6]) as digital platforms' conduct may result in customer or input foreclosure in a two-sided market. Second, commentators have argued that publication formats – in particular the AMP technology – weakens news publishers in the long run by "slowly gain[ing] a greater share of consumer attention", affecting news publishers' digital advertising opportunities (Scott Morton and Dinielli, 2020[33]). The collection by digital platforms of data generated by users consuming news content and interacting within their ecosystems could indeed affect news publishers' ability to effectively engage (and compete with digital platforms) in targeted advertising (Geradin, 2019, p. 28[6]) by foreclosing publishers taking important user data from them.

Moreover, digital platforms' "refusal to deal" with news publishers or commerical decisions to pay limited compensation to selected publishers as well as changes to algorithms with major impact on news distribution could amount to imposing unfair trading conditions and discrimination in certain jurisdictions, reducing the ability of some publishers to effectively compete. In addition, as further discussed in

Section 3.4, changes in algorithms would likely harm consumer welfare when reproduced content would be given preference over (or be better ranked than) original content, disincentivising publishers to invest in the production of news content (Geradin, 2019, p. 28[6]).

Finally, in the context of the ACCC *Digital Platforms Inquiry*, news publishers raised concerns about the practice of news aggregators (and. in particular, Apple News) of tying subscription and donation services for news outlets to its own payment systems, retaining a percentage of the revenue. The ACCC (2019, pp. 224-225[10]) considered this practice "of particular concern".[42] More generally, services offered on digital markets have certain characteristics (economies of scale and scope, low marginal costs, network effects and feedback loops) that could make tying and bundling strategies more common and relatively easy to implement. Thus, should a digital platform hold substantial market power, a tying theory of harm may also be of relevance with regard to the news aggregator services.

Abusive leveraging or self-preferencing

Abusive leveraging or self-preferencing are also conduct with exclusionary features. These theories of harm concern a dominant firm active in multiple (vertically related or complementary) markets, focussing on ways in which it leverage its dominant position in one market to favour its products or services in a related market.[43]

Although this may not always be the case across jurisdictions, digital platforms may 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 are "at odds with" or that could harm their own interests (Geradin, 2019, pp. 12, 22[6]). For instance, commentators (Scott Morton and Dinielli, 2020[33]) have suggested that digital platforms could be seen as steering consumers to their own specialised/vertically-integrated services – often containing content produced by third-party news publishers – ultimately to erode competition in the supply of inventory for display advertising.[44]

Digital platform's "influence" (mainly through preferential ranking) on publication formats could also qualify as a form of leveraging. In this regard, the CMA (2020, p. S11[14]) considered that "there is an analogy between how Google is able to influence publishers to use AMP – potentially to its own advantage – through preferential rankings in its search results and its ability to leverage its search results to influence users to use its own specialised search services."[45]

Finally, algorithms (and changes thereof) as well as digital platforms' collection of user data on news publishers' websites and applications could also qualify as self-preferencing conduct, should these undermine the ability of publishers to generate revenue and to compete in digital advertising, entrenching digital platforms' market power.

3.3.3. Forced free riding

Forced free riding arises "when a platform appropriates innovation by other firms that depend on the platform for access to consumers" (Shelanski, 2013, p. 1699[34]). In digital markets, this theory of harm focuses on the role of digital platforms as intermediaries for content providers to reach their customers, with the dominant platform taking advantage of its intermediary role to foreclose competition in markets associated with the platform.[46] In addition to foreclose effects, forced free riding might also give rise to exploitative effects, considering the vertical relationship between digital platforms and content providers and under what terms third-party content is distributed on these platforms.

Several of the above-described practices can 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, therefore, to extract significant value from news content, mainly by capturing a substantial share of advertising revenue. The lack of transparency as to the "true price" news publishers may be paying for such services may also be seen as both evidence of and contributing to the market power of digital platforms.

3.4. What are the effects on publishers and news content?

While some of these above-described practices may equally harm online publishers of non-news content as well as other online service providers, their effects might be particularly harmful on news publishers. In fact, business models of news publishers and ad-funded digital platforms result in them having conflicting incentives as they both rely on user traffic.[47] As already noted, the main concern is that these conflicting incentives – coupled with the market power of digital platforms – are affecting news publishers' ability to transition advertising revenue to the digital world,[48] while production costs for accurate and quality news content remain substantial (Japan Fair Trade Commission, 2021, p. 122[15]).

3.4.1. Two opposing forces and their net effect

The assessment of these practices is very complex because the impact on news publishers and consumers is "the result of the net effect of two opposing forces" (Colangelo, 2021, p. 3[27]): (1) the negative impact on publishers by displacing online traffic; and (2) the increased opportunities for consumers to search and discover news content. Therefore, determining, for instance, whether news referral traffic compensates for loss of direct traffic is an empirical question that ultimately depends – among other considerations – on the market power of digital platforms and on the existence of viable alternatives for news publishers. There have been a few attempts by academic researchers to analyse the effects of the two forces.

- Athey, Mobius and Pal (2021[19]) conducted a natural experiment assessing the impact on news consumption (in particular, on traffic to newspapers websites) of the shutdown in December 2014 of the news aggregator Google News in Spain as result of the enactment of a copyright reform that allowed newspapers to charge aggregators for snippets. Through this experiment, it was found that users "had 20% higher overall news consumption before the removal of Google News (including consumption of the Google News homepage) and visited news publisher 10% more often" (Athey, Mobius and Pal, 2021, p. 3[19]). More specifically, it is observed that Google News is a complement to news articles, while it is a substitute for landing pages (i.e. webpages that serve as landing point for a website or a particular section of a website), which are the ones that generate a large share of publishers' advertising revenue (Athey, Mobius and Pal, 2021, p. 14[19]). The same study also suggested that there are major differences between small and large news publishers. The change in news consumption caused by Google News shutdown was found to be "concentrated around small publishers", while large publishers did not experience "significant changes in their overall traffic (but see an increase in their own home page views, offset by a decrease in views of articles)". Thus, it is inferred that Google News is a strong complement to small news outlets.[49] Finally, this study also concluded that "the social welfare implications are unclear". In fact, "if small outlets produce unique content with alternative viewpoints or reporting, then Google News supports media diversity" and helps smaller publishers get viewership and thus returns on their investments in journalism. On the other hand, if smaller outlets mostly copy news from larger outlets, without investing in reporting, then "Google News might decrease the returns to investment for the primary sources of investigative journalism" (Athey, Mobius and Pal, 2021, pp. 16-17[19]). Therefore, aspects of media pluralism and diversity, which may be important dimensions of quality, seem to arise.
- George and Hogendorn (2019[35]) studied the impact of news aggregators on local news consumption based on a major redesign of Google News in 2010. It was found a limited impact of the aggregator on the overall traffic of local outlets, "with a headline on Google News increasing visits by 3.4% overall compared to days when the outlet is not listed on the aggregation page". This study also concluded that aggregators increase competition at the article level among main local outlets, while they may be less decisive for content discovery.
- Chiou and Tucker (2017[36]) conducted another natural experiment with regard to the 2010 dispute between Google News and the Associated Press that resulted in Google News not showing

Associated Press content for several weeks. This research found little evidence of a “scanning effect” (i.e. where users scan news extracts on the aggregator without clicking through) and, therefore, of the use of aggregators as substitutes for news websites. Instead, evidence was found of a “traffic effect”, i.e. where news aggregators complement the consumption of content on news websites.

3.4.2. The potential impact on news quality

How positive (e.g. more variety of news sources at lower prices) and negative (e.g. lower quality and less coverage) effects affect consumer welfare – as well as the broader society – is an empirical question (Martens et al., 2018, p. 42[12]). Moreover, considering and measuring quality parameters on which news publishers compete – as well as the effects on quality of digital platforms’ practices – 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 that take into account consumers’ value and their preferences. The key question from an antitrust perspective remains to what extent quality is undersupplied due to the market power of digital platforms, rather than as result of (pre-existing) market failures.

Commentators’ arguments supporting the view that digital platforms’ conduct are overall harmful focus on the impact on incentives of news publishers to invest in content quality, which in turn harm consumers in terms of less content (i.e. less news coverage, particularly at local level[50]) and lower quality.[51] This consumer harm occurs in the long run, even though users can enjoy benefits in the short run by getting “free” access to news content (Cafarra and Crawford, 2020[37]). First, it is argued (Scott Morton and Dinielli, 2020, p. 35[33]) that digital platforms undermine publishers’ incentives to invest and produce quality news content by denying (competitive) remuneration to publishers who contribute with their content to generate traffic on these platforms. Second, it is argued (Scott Morton and Dinielli, 2020, p. 33[31]) (Jeon, 2021, p. 4[24]) that digital platforms’ practices – coupled with market concentration and opacity in digital advertising intermediation services – affect publishers’ advertising revenue, which largely support production of most news content.[52]

Another (related) aspect that emerged in competition authorities’ studies is the impact of digital platforms’ display and ranking criteria on the commercial incentives of publishers in the long term, given their importance for digital distribution of news content (Australian Competition & Consumer Commission, 2019, pp. 342-343[10]). This seems to be a matter of different incentives between news publishers and digital platforms as for the latter “whether the content displayed is of superb or moderate quality, original or borrowed does not ultimately matter as long as it attracts eyeballs” (Geradin, 2019, p. 13[6]). In this regard, the JFTC (2021, pp. 127, 144[15]) noted that “where the value of inventory tends to be evaluated based on the number of impressions and clicks”, there are concerns in ensuring a competitive environment for publishers creating quality news content. This would go to the ultimate detriment of consumers who may not receive quality news content. In addition harming consumers, these display and ranking criteria may also distort competition between news publishers (Geradin, 2019, p. 5[6]).

Finally, commentators have argued that digital platforms’ role as curators of news content, in particular their bundling of news content from various sources, contributes to the dilution of news brands by affecting the ability of news publishes to differentiate their content in the eyes of consumers (Athey, Mobius and Pal, 2021, p. 17[19]).[53] On the one hand, this may further affect publishers’ incentive to invest in quality (and costly) content by reducing advertisers’ investments. On the other hand, this brand dilution may contribute to lower barriers to entry, allowing less established news publishers as well as non-professional content to compete for consumers (Australian Competition & Consumer Commission, 2019, pp. 298-299[10]). While there are alternative ways for news publishers to sustain their brands, these may not be sufficient (or they may be too costly) to counter the brand dilution effect, which can be further amplified by the distribution of non-news content next to news content. These distribution models can affect news outlets’ reputation and, in the longer term, create distrust in reputable news sources.

These growing concerns have led researchers to develop models to assess the impact of digital platforms on quality of news content.

In a recent study, de Cornière and Sarvary (2020[20]) focussed on the effect of content bundling – in particular by social networks – on news publishers' incentive to invest in quality. They preliminary observed that it is not clear whether the personalisation trend "will lead to a softened or intensified competition between platforms and publishers (and thus to lower or higher news quality)". They found that content bundling tend to harm publishers and could reduce the incentive to produce quality content, but that ultimately such effect is not uniform across the sector. Moreover, they argued that high-quality news outlets would need to invest more (ultimately to attract consumers to their own websites), while low-quality would need to invest less. Interestingly, they also argued that – on the contrary – when content bundling follows an agreement between the platform and publishers "publishers' profits go up while quality dispersion goes down" and that, with heterogeneous consumers, a platform's ability to personalise content actually induces publishers to invest more in quality.

Researchers also attempted to shed light on the impact of news aggregators on quality of content. The impact of news aggregators is generally seen as two-fold. On the one hand, it increases user participation in the market allowing easier access to more sources. On the other hand, it "absorbs some of the rents generated in the market" (Peitz and Reisinger, 2015, pp. 463-466[11]), affecting traffic to news websites. Athey, Mobius and Pal (2021[19]) seem to draw a line between large and small news outlets when considering news aggregators' effects on publishers' investments in quality. They noted that large outlets lose some of their curation role in favour of news aggregators and, therefore,

> *"if part of the long-term incentive for news outlets to maintain their brand comes from the way they curate news, through the selection of articles they highlight prominently on their landing pages, then the fact that Google News is in effect selecting what articles from each outlet to highlight on the Google News home page may decrease the incentive of publishers to invest in the quality of their curation and thus their brand … if readers do not pay attention to the identity of the publisher when they read articles on Google News, then the large publishers may lose their incentives to maintain a reputation for quality, and consumers may be less willing to subscribe to the publisher or use the publisher's mobile application." (Athey, Mobius and Pal, 2021, pp. 15, 28[19]).*

On the contrary, Jeon and Nikrooz (2016[38]) developed a model that seem to suggest that news aggregators may positively affect content quality (as well as their degree of specialisation) due to the competition they generate among news content providers.

To summarise, these studies show that the effects of certain digital platforms' conduct may not be the same for all type of news content and publishers.

3.4.3. Broader social harm: mis-information and dis-information

A broader concern on the impact of digital platforms has to do with the fact that – by reducing incentives to produce quality content, but also by affecting the distribution and curation of news – digital platforms may be amplifying viral content and possibly mis-information and dis-information.[54] In other words, from an economic perspective, the debate on mis-information and dis-information can be seen as a debate on quality concerns in the market for the supply of news content, even though – as already observed – quality concerns on news content may extend well beyond mis-information and dis-information (Martens et al., 2018, p. 9[12]). The debated policy question is whether competition policy should deal with this issue.

There are three main arguments supporting a call to intervene through competition policy. First, digital platforms' market power is affecting the viability of news publishers and their ability to counter mis-information and dis-information. Second, digital platforms choose what news content to amplify and prioritise and they have an incentive to show viral content over quality journalism.[55] This in turn can favour mis-information and sensationalism.[56] Third, "because there is not meaningful competition", dominant digital platforms face “little financial consequence” when they promote mis-information (U.S. House of Representatives, 2020, p. 67[9]). In particular, Hubbard (2017[39]) suggested that quality news content runs against digital platforms’ incentives and their monetisation through advertising because “fake news” is more likely to gain user attention and engagement, further increasing revenue for digital platforms. At the same time, news publishers continue to rely on digital platforms to reach a large number of users and they lack alternatives. The impact on news publishers is amplified by the fact that – in contrast to “fake news” – the production of quality news is costly. Finally, the curation of content, in particular by social networks, makes mis-information and dis-information hard to identify, especially – as already observed – where news content is presented alongside non-news content.[57]

Commentators arguing against the view that mis-information and dis-information is the result of competition concerns note that consumers may actually prefer “interesting, attention-grabbing, simple to understand, entertaining fake news” and that competition “is causing the market to produce exactly the fake news that consumers do want” (Hurwitz, 2017[40]). In other words, the competitive pressure results in producing content that meets the demand of consumers who are not interested in quality news. According to Sacher and Yun (2017[41]), to the extent that digital platforms’ policies raise such “fake news” concerns, these can be addressed through contract and consumer protection laws rather than antitrust.

A few competition authorities seem to acknowledge that mis-information and dis-information are a public concern and that it may be caused or at least exacerbated by competition issues concerning the complex relationships between news publishers and digital platforms.

- The ACCC noted that “while public interest journalism contributes to a healthy democracy, disinformation and malinformation does the opposite” and “to the degree that online consumption makes it harder for public interest journalism to reach audiences, but easier for disinformation and malinformation to do so, this is clearly a significant public policy concern” (Australian Competition & Consumer Commission, 2019, p. 358[10]).
- The CMA observed that concerns in digital advertising (as well as on online search and social media) can affect the ability of publishers to invest in news and other online content, causing “a decline of authoritative and reliable news media, the resultant spread of ‘fake news’ and the decline of the local press which is often a significant force in sustaining communities” to the detriment of those who value such content, but also leading to a “wider social, political and cultural harm” to broader society (Competition & Markets Authority, 2020, p. 9; 71[14]). In other words, it recognised that competition concerns – by undermining the sustainability of authoritative journalism – may lead and exacerbate social harms caused by mis-information and dis-information.
- The JFTC focussed on digital advertising markets, noting “where the value of inventory tends to be evaluated based on the number of impressions and clicks … some publishers may have incentives to create content that can earn more accesses”, such as “stimulating headlines”, but also "fake news”, with consumers “not able to receive high-quality information such as news with guaranteed accuracy and content that is useful to society and economy” (Japan Fair Trade Commission, 2021, p. 144[15]).

Box 3.1. Competition and plurality considerations on echo chambers and filter bubbles

Filter bubbles (i.e. where digital platforms' algorithms display content to users based on their past online behaviour) and echo chambers (i.e. the exposure – mainly on social networks – to others' perspectives just re-affirming a user's own beliefs) may pose potential risks to competition and plurality.

From a competition angle, algorithms creating filter bubbles and echo chambers can be seen as means to manipulate current preferences of consumers. On the one hand, what algorithms are designed to do is to track personal preferences and respond to those more accurately. In other words, filter bubbles and echo chambers respond to how users wish to consume content online. On the other hand, this mechanism may be seen as interfering with independent consumer preferences to rather satisfy past and "artificially created" preferences with a questionable result from the consumer welfare standpoint, especially in the long term. This is particularly relevant where a lack of content diversity can be seem as a parameter of (lower) quality. Ultimately, the problem of insufficient exposure created by algorithm-based personalised news feed seems to pose an important challenge. Competition laws may not have the right tools to address these distortions, while other mechanisms such as regulation or consumer protection can be more effective.

From a plurality angle, the key issue seems to have shifted from diversity of media content and intermediary platforms to diversity of exposure to different content, in particular within digital platforms capturing a high share of attention. This may not be the case for all platforms. The effects depend on the algorithm employed. Some platforms may, on the contrary, increase the diversity of news to which users are exposed. Moreover, users may already actively seek out different sources of news to counter any impact of these algorithms.

Sources:
Fish and Gal (2021[42]), https://ssrn.com/abstract=3555124;
Prat (2020[43]), https://knightcolumbia.org/content/measuring-and-protecting-media-plurality-in-the-digital-age;
ACCC (2019[10]), www.accc.gov.au/publications/digital-platforms-inquiry-final-report;
Peitz and Reisinger (2015, p. 491[11]), https://doi.org/10.1016/B978-0-444-62721-6.00010-X;
https://about.fb.com/news/2021/01/how-does-news-feed-predict-what-you-want-to-see/.

4 Enforcement and regulatory initiatives to address competition concerns

There are significant differences across jurisdictions as to how (even similar) theories of harm are pursued, in particular whether through abuse of dominance cases or other means such as market studies and new regulation. Irrespectively of the tools employed, designing suitable and effective remedies remains a key challenge for addressing concerns with regard to digital platforms' market power vis-à-vis news publishers. Initiatives may also differ depending on whether the focus is on a specific conduct of one (or multiple) digital platform(s) or on an overall strategy that may result in both exploitative and exclusionary effects. This Section briefly covers the main enforcement and regulatory initiatives as well as the remedies adopted (or proposed) to address or mitigate potential competition issues identified in the previous Section.

4.1. Relevant abuse of dominance cases

Digital markets pose a fundamental challenge for abuse of dominance enforcement. Abuse of dominance cases typically requires a market definition exercise, as well as establishing whether a digital platform exercises substantial market power and – in most cases – a complex analysis of the effects on competition and consumers. Recent enforcement actions targeting digital platforms and their relationship with news publishers focussed on conduct undermining competition in digital advertising and affecting the ability of publishers to generate revenue through display advertising. Two cases are described below, while ongoing investigations covering similar elements are summarised in Box 4.1.

4.1.1. The French Autorité de la concurrence case on Google's practices in online advertising (2021)

Following three complaints filed by news publishers, the French Autorité de la concurrence (Autorité) found that Google abused its dominant position in the market for ad servers for publishers' websites and mobile applications. The Autorité observed that news publishers monetise content on their own websites and applications through the supply of advertising space, using two Google's advertising tools: ad server (to organise the competition between different bidding platforms) and a programmatic advertising space sales platform (as one of the auction platforms used simultaneously to sell ad space).[58] It also noted that interoperability of the ad server with bidding platforms ultimately determines publishers' advertising revenue as well as the attractiveness of the auction platforms. The Autorité found that Google engaged in two practices to promote its own advertising intermediation tools: (1) Google's ad server tools favoured its own programmatic advertising space sales platform; and (2) Google's programmatic advertising space sales platform favoured its own ad server.

During the investigation, Google proposed commitments to ensure interoperability of other auction platforms with its ad server and to allow other ad servers to access information on real time demand. In its final decision, the Autorité imposed a fine of EUR 220 million and made commitments offered by Google mandatory for a period of three years.[59]

4.1.2. The UK Competition and Markets Authority case on Google's Privacy Sandbox browser changes (2021)

Following the 2020 *Online platforms and digital advertising* market study (further discussed in Section 4.2) and complaints from newspaper publishers (and technology companies), in January 2021, the CMA opened an investigation into Google's announced changes to disable third-party cookies (i.e. bits of digital code that records certain user behaviour) on its own Chrome browser and Chromium browser engine, and replace them with new tools for targeting advertising (said to better protect consumers' privacy). The CMA observed that third-party cookies are key for digital advertising because "they help businesses target advertising effectively and fund free online content for consumers, such as newspapers". According to the CMA, Google's proposed changes would have undermined publishers' revenue and competition in digital advertising, entrenching Google's market power. [60]

Following the investigation, working closely with the Information Commissioner's Office (ICO), in June 2021, the CMA secured a wide-range of commitments from Google. These include: (1) a commitment to involve the CMA in the development of changes to avoid distortions to competition; (2) limits on how Google will use and combine individual user data for digital advertising after the removal of third-party cookies; and (3) Google's non-discrimination in favour of its own advertising and ad tech tools. The CMA is currently assessing the feedback in response to the consultation on commitments and considering possible modifications to the commitments offered by Google.

Box 4.1. Other ongoing cases concerning digital advertising and news publishers

European Union

The European Commission has opened a formal investigation to assess whether Google has infringed EU competition rules by favouring its own online display advertising technology services in the ad tech supply chain, to the detriment of competing providers of advertising technology services, advertisers and online publishers. The formal investigation will examine whether Google is distorting competition by restricting access by third parties to user data for advertising purposes on websites and applications, while reserving such data for its own use.

Germany

The Bundeskartellamt has initiated a proceeding against Google to examine under competition law Google News Showcase service. Google News Showcase is a service offering the possibility to present news content from publishers in a prominent and more detailed way. Google has made the service available to a number of German publishers. The Bundeskartellamt is now examining whether the announced integration of Google News Showcase into Google's general search service is likely to constitute self-preferencing or an impediment to the services offered by competing third parties. The authority is also examining whether the relevant contractual terms include unreasonable conditions to the detriment of the participating publishers and, in particular, make it disproportionately difficult for them to enforce copyright.

The examination is mainly based on the authority's competences under the new legal provisions applicable to large digital companies. In this respect, it follows up on the proceeding against Google, which the Bundeskartellamt initiated on 25 May 2021, to determine a "paramount significance" for competition across markets.

United States

Several states, led by Texas, have brought an action against Google claiming that it unlawfully acquired, maintained, or attempted to acquire monopoly power on various sides and segments of online advertising to the detriment of both advertisers and publishers. They also claim that Google entered into an agreement with Facebook to manipulate online advertising space.

In September 2021, it has been reported that the U.S. Department of Justice may be investigating Google's wide influence over the ad tech market and may consider pursuing a lawsuit in this regard.

Sources:
www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2021/04_06_2021_Google_Showcase.htm;
Persch (2021[44]), https://promarket.org/2021/07/13/google-search-digital-markets-germany-antitrust/;
https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3143;
www.courtlistener.com/recap/gov.uscourts.txed.202878/gov.uscourts.txed.202878.1.0.pdf;
www.competitionpolicyinternational.com/doj-said-to-be-preparing-new-google-antitrust-suit-over-ad-tech/;
www.nytimes.com/2021/09/01/technology/google-antitrust-advertising-doj.html.

4.1.3. Increased copyright protection and related competition enforcement cases

Another approach some jurisdictions are taking to address concerns on news publishers and digital platforms is through creating new or reinforcing existing copyright obligations and ancillary rights to remunerate news publishers and encourage co-operation between publishers and digital platforms. Without exploring in detail changes to copyright laws, this sub-section focuses on the implications for antitrust enforcement.

Competition authorities in the UK and Australia considered the possibility of reinforcing copyright protection for news content. In its 2020 market study, the CMA considered the option to give publishers rights to compensation for use of their content by digital platforms. However, it concluded that, based on the experience from other jurisdictions (in particular those that had enacted copyright laws that allowed to charge news aggregators for snippets), such remedies are not very effective or can reduce traffic to publishers (Competition & Markets Authority, 2020, p. S15[14]). Similarly, in its 2019 *Digital Platforms* inquiry, the ACCC (2019, pp. 253-254[10]) did not endorse a proposal by the Australian Copyright Agency to have a licensing arrangement for use of news content with payments made to a collecting society and distributed to publishers because – among under considerations – (1) it was unclear why this compensation should have been limited to news content and not compensate other content creators; and (2) it could have created a negative incentive of reducing news content on social networks.

On the contrary, copyright obligations and ancillary rights have been reinforced in other jurisdictions such as in Japan and in the European Union.

In Japan, the amendments of the Copyright Act enacted in 2009 prescribed that displaying snippets and thumbnails along with URLs in search services is legal to the extent deemed necessary for the search and the provision of the results.[61] The amendments enacted in 2018 further clarified that such displaying needs to be limited to "minor exploitation", based for example on the percentage of the overall work/content being "exploited".[62]

The EU Digital Single Market Directive introduced an additional layer of copyright by extending to news publishers established in EU Member States the so-called "neighbouring rights" on the online use of their content by "information society service providers".[63] This protection applies for a period of two years after publication and it does not extend to hyperlinks and "the use of individual words or very short extracts".[64] Without exploring the EU Directive in detail, it is worth noting that a few commentators have criticised various aspects of the reform. For instance, Colangelo (2021, p. 8[27]) noted that press publishers already had significant rights in their publications and the introduction these neighbouring rights "overlaps existing authors' rights and expands the array of tools that press publishers may exploit". Moreover, exceptions for hyperlinks and short extract may generate uncertainty (Colangelo, 2021, p. 7[27]). Similarly, Kathuria and Lai (2020, p. 12[45]) highlighted that copyright and related rights have had a minor role in journalism also in light of the speed of the news cycle; and that the new rights extends to content only requiring little investment. Moreover, they noted that similar rights had not achieved the result of incentivising a negotiation between digital platforms and news publishers when similar reforms had been introduced in Germany and Spain.

An open question relevant for this note is whether antitrust interventions can address copyright enforcement gaps over news content and fair use. Such antitrust cases would be mainly triggered by claims concerning exploitative conduct by dominant digital platforms to frustrate the objective of copyright laws. The assessment in this context focusses on a potential abuse of dominance by the "buyer" of news content, i.e. the digital platform (Kathuria and Lai, 2020, p. 15[45]). According to Colangelo (2021, pp. 10-11[27]), these cases raise questions as to whether – at least under EU competition law – imposing a duty to deal on dominant firms would require to meet the so-called essential facility criteria, "in particular the existence of an indispensable input and the elimination of competition downstream".

The French Autorité de la concurrence case on remuneration of related rights for press publishers and agencies (2021)

French Law No. 2019-775, transposing the EU Digital Single Market Directive, states that the effectiveness of news publishers' rights is particularly affected by the use of very short extracts replacing press publications or "allowing" the reader not having to refer to them. It also provided more details on the remuneration criteria for these rights.[65] In response to this legislative change, Google decided not to show preview content from EU news publishers across its services, unless the publisher granted Google the authorisation to use them free of charge.[66]

The Autorité intervened upon a complaint filed by a news agency and several associations of press publishers accusing Google of abuse of dominant position (as well as of an economic dependence[67]) by imposing unfair trading conditions under the threat of deindexing.

In April 2020, the Autorité imposed interim measures requiring Google to negotiate in good faith with publishers and news agencies the remuneration due to them under the law. In particular, in its interim measures decision, the Autorité considered that Google is likely to hold a dominant position on the French market for general search services and recognised the "irreplaceable" nature of Google's services[68], which allowed it to avoid negotiations with publishers that the law envisaged. In its interim measures decision, the Autorité also considered that Google's practices are likely to qualify as abuse of dominant position on essentially three grounds: (1) imposing unfair trading conditions; (2) circumventing (or frustrating) the scope of the domestic law; and (3) discrimination by treating in the same way economic actors with different situations outside of any objective justification, in particular by imposing a principle of zero remuneration on all news publishers without examining their respective situations and content.[69] In October 2020, the Paris Court of Appeal confirmed the interim measure decision.

In July 2021, the Autorité imposed a fine of EUR 500 million against Google for failure to comply with the interim measures. It also ordered Google to present a remuneration offer to news publishers and agencies that have referred the case to the Autorité and to provide them with the necessary information for evaluating such offer. It also prescribed a periodic penalty payment of up to EUR 900,000 per day of delay, if Google has not done so within two months.[70]

The Germann Bundeskartellamt case on neighbouring rights and snippets (2015)

In Germany, where neighbouring rights for online news content already existed before the introduction at EU level, the Bundeskartellamt seems to have taken a different approach to the antitrust claims against a decision by the dominant general search provider (Google) not to use snippets (more precisely, to only use abridged versions of snippets), unless for publishers that agreed to them free of charge.

A group of German publishers and a collecting society claimed that such conduct was discriminatory and constituted an abuse of dominant position. In September 2015, the Bundeskartellamt issued a formal decision not to initiate proceedings against Google.[71] In its decision, the Bundeskartellamt concluded that there was no infringement as the conduct was objectively justified given the legal uncertainty on the scope of the ancillary rights – in particular with regard to its non-applicability to "individual words or the smallest of text excerpts" – and the consequent need to minimise risks of infringing the law. In the press release, the Bundeskartellamt noted, however, that on the contrary "a complete delisting" of the publishers from the search results could have resulted in an infringement of competition law.[72]

4.2. Regulatory initiatives and market studies

A first type of regulatory initiatives to address concerns on the competitive dynamics between news publishers and digital platforms focusses on ensuring "fair" remuneration for news content distributed through platforms with substantial market power. These interventions appear to address digital platforms' alleged exploitative conduct, evening up bargaining imbalance through regulatory tools with the objective of getting more value to news content providers from digital distribution. It is worth noting at the outset that regulatory reforms can also affect competition enforcement (OECD, 2021[46]). An immediate example of this occurs where the introduction of regulation introduces antitrust exemptions or otherwise limits the scope for competition enforcement.

A second type of initiatives are competition authorities' recent market studies and sector inquiries, which contain several proposals to address digital platforms' market power. While not discussed in detail, this note point to a few aspects that are expect to have an impact on the commercial relationship between news publishers and digital platforms.

4.2.1. Negotiate-and-arbitrate model

In its 2019 *Digital Platforms* inquiry, the ACCC (2019, pp. 255-257[10]) recommended the adoption of a code of conduct between certain (designated) digital platforms supplying news referral services and news publishers.[73] In April 2020, the Australian Government asked the ACCC to develop a mandatory code of conduct to address bargaining power imbalances between Australian news publishers and each of Google and Facebook, and their alleged exploitative conduct. A draft mandatory code was released for public consultation in July 2020. Final legislation was passed on 25 February 2021.[74]

In February 2021, before the code adoption, Google entered into agreements with NewsCorp, other large commercial media providers as well as local publishers for the remuneration of content displayed on Google News Showcase (and YouTube, in some instances).[75] In the same week, Facebook announced first to ban news content from local or international outlets on the social network in Australia, and then – a few days later – to restore news content on it.[76]

The code enables eligible news publishers to bargain individually or collectively with digital platforms over remuneration of news content included on the platforms and their services. It sets up a bargaining process that, if unsuccessful, would trigger arbitration preceded by a mediation stage. It is also accompanied by transparency requirements and oversight mechanisms to ensure good faith negotiation of large digital platforms and avoid retaliation. Importantly, for instance, it confers to registered news publishers the right to be notified at least 14 days in advance of any changes to algorithms with significant effects on referral traffic.[77]

The new legsilation assigned to the Australian Communications and Media Authority (i.e. the independent authority regulating communications and media services) the role to: (1) assess the eligibility of news publishers who want to participate in the code; (2) appoint mediators to assist bargaining parties; and (3) register and appoint arbitrators, if parties cannot agree on the arbitration panel. The code does not automatically apply to any digital platform. Digital platforms must participate in the code if the Treasurer makes a determination specifying that the code applies to them.[78]

Another interesting feature of this scheme is the arbitration mechanism.[79] This model is largely inspired to the negotiate-and-arbitrate approach employed as an alternative to pricing regulation for determining access prices in the context of monopoly service providers in Australia.[80]

Commentators have different views on the Australian model. On the one hand, Cafarra and Crawford (2020[37]) have argued that one of the key advantages of this scheme is that addresses a key asymmetry of information problem in regulation (i.e. knowing the value and cost of news content respectively to publishers and digital platforms) and that such form of decentralised regulation can have implications beyond compensating news publishers as it may be a regulatory option to address digital platforms' market power. On the other hand, other commentators have argued that this is a measure to level the playing field in the short term, which could have broader (unintended) implications on "free" online services and that it risks of accelerating concertation in the industry disfavouring smaller players vis-à-vis large publishers.[81] It is also questioned whether the arbitration system is actually preserving as much economic value as possible, while attempting to remedy a market failure; and whether the obligation to share in advance changes to algorithms may work without digital platforms having to share fundamental details on their business (Holder, 2020[47]). Finally, Wilding (2021[48]) questioned whether the code would actually ever apply in practice, given the separate deals reached by Google and Facebook with news publishers and the requirement for digital platforms to be designated by the Treasurer first. However, he also noted that

> *"while it's possible that the platforms … may have reached agreements with publishers in the absence of the News Media Bargaining Code, those agreements are almost certainly better and more timely than they would have been in the absence of the Code—and it's quite possible than some publishers would not have seen a deal without it." (Wilding, 2021[48])*

4.2.2. Allowing collective bargaining

Another regulatory initiative being considered in a few jurisdictions to ensure "fair" remuneration for news content is allowing news publishers to collectively negotiate with digital platforms to rebalance the uneven bargaining power. The scope of these initiatives may vary.[82] Is it is debated whether it should apply, for instance, only to small news publishers with certain thresholds to be determined based on criteria beyond turnover such as users and news coverage.

In many jurisdictions, this type of intervention would be the result of an antitrust exemption granted though legislation. For instance, the Journalism Competition and Preservation Act of 2021 – a bill introduced in the U.S. Congress in March 2021 – would create a four-year safe harbour from antitrust laws for print, broadcast, or digital news companies to collectively withhold content from, or negotiate with, very large online content distributors[83] regarding the terms on which news content may be distributed.[84] There is no consensus with regard to this initiative. While the news media industry has been advocating for this solution for several years,[85] some commentators (Colangelo, 2021[27]; Stucke and Grunes, 2015[49]) have argued against this exemption, especially if the concerns with regard to the commercial relationship with digital platforms are of competition policy nature. Criticism has been also raised with regard to the scope of the envisaged exemption: it would not be limited to small publishers, as it would apply to any print, broadcast and digital news organisation including large media conglomerates (Yun, 2019[50]).[86] Moreover, at least in the U.S. debate, others have suggested that allowing this exemption would not solve what has already occurred in the market such as the shutdown of news outlets, layoffs of journalists and increased concentration.[87]

In some jurisdictions, collective bargaining shall or could (to ensure legal certainty) be subject to prior approval by competition authorities.

- In Australia, while the news bargaining code described above allows news publishers to bargain collectively with designated digital platforms, the exemption for news publishers to collectively bargain with a designated digital platform has not yet come into effect as digital platforms should be preliminary designated by the Treasurer. Therefore, in April 2021, Country Press Australia (CPA) – the industry body that represents the interests of independent regional and local newspapers – lodged an application to the ACCC to collectively bargain with each of Facebook and Google, and to engage in discussions and exchange information regarding those negotiations. In April 2021, the ACCC granted urgent interim authorisation allowing CPA to engage in collective bargaining and, in August 2021, the ACCC issued a final determination granting authorisation for ten years.[88]
- In Germany, although not strictly related to negotiation with digital platforms, the Ninth Amendment of the Act against Restraints of Competition (2017) introduced an exception from cartel prohibitions with regard to newspaper and magazine publishers, to facilitate co-operation between news publishers and to ensure their competitiveness in comparison to other forms of media (in particular, TV and online). The exception applies, for example, to co-operation on advertisements, production and distribution of newspapers and magazines, while it does not apply to content co-operation. To ensure legal certainty, news publishers can apply for prior approval with the Bundeskartellamt.[89]

4.2.3. Enforceable code of conduct

In line with the Furman Review[90] and the Cairncross Review, in its 2020 *Online platforms and digital advertising* market study, the CMA recommended the adoption of an enforceable code of conduct to govern the conduct of platforms with "strategic market status" funded by digital advertising. Such code of conduct would require these players "to act in a way that ensures that consumers and businesses dealing with them are fairly treated and vigorous competition can take place" (Competition & Markets Authority, 2020, p. 328[14]).

Of particular relevance for news publishers, the CMA noted that this enforceable code would address – among others – concerns on "transparency over fees and ranking algorithms, access to user data, restrictions on publishers' ability to monetise their content and forewarning of significant changes to algorithms" (Competition & Markets Authority, 2020, p. 347[14]).[91] Moreover, it proposed the establishment of a Digital Market Unit (DMU) with the power to suspend, block and reverse decisions of strategic market status firms and to order conduct to achieve compliance with the code.[92] Finally, the CMA report also suggested that the adoption of more targeted remedies, such as preventing Google mobile search from favouring AMP pages over other mobile-friendly pages in its news carousel, may be appropriate. (Competition & Markets Authority, 2020, p. S11[14]).

In July 2021, the UK government set out its proposals for a new pro-competition regime for digital markets and launched a public consultation. In making the case for a code of conduct (and the ability for the DMU to develop guidance), the consultation document notes that such code "will support the sustainability of the news publishing industry, helping to rebalance the relationship between publishers and the online platforms on which they increasingly rely". The UK government has asked the non-statutory DMU to work with the communications regulator, Ofcom, on this code. Interestingly, the consultation document is also asking "how far will the proposed regime address the unbalanced relationship between key platforms and news publishers" and if there are "any further remedies needed in addition to it".[93]

4.2.4. Increasing transparency

In its 2021 report *Regarding Digital Advertising*, the JFTC discussed the impact of digital platforms and the growth of digital advertising transactions on news publishers.

The JFTC preliminary noted that "if a digital platform operator in a superior bargaining position over the other party unjustly causes disadvantage in light of normal business practices by unilaterally changing a contract, etc., it could be a violation of the abuse of superior bargaining position" (Japan Fair Trade Commission, 2021, p. 148[15]). To address these concerns, it proposed transparecy-enhancing solutions such as requiring digital platforms: (1) "to disclose sufficient information for publishers to prepare for algorithm changes […] whenever possible (and) to establish an effective consultation system"; and (2) "to disclose necessary information to publishers, such as in the process of calculating the amount paid to publishers" (Japan Fair Trade Commission, 2021, pp. 151-152[15]). Interestingly, the JFTC also proposed indicating the name of the news outlets when content is displayed through digital platforms "to encourage consumers to evaluate the quality of the content" and to increase competition for quality content (Japan Fair Trade Commission, 2021, p. 152[15]).[94]

4.2.5. Extending news media sectoral regulation to digital platforms

Digital platforms operate under fewer regulatory restraints and have lower regulatory compliance costs while performing comparable functions. This asymmetry may be reinforced by the fact that some digital platforms are becoming content generators or competing with traditional media for audio and video content rights.

News outlets are often subject to detailed regulation, which can restrict their ability to generate revenue and increase their compliance costs. This type of regulation includes, for instance, requirements on minimum amount of local content, the need to classify/restrict prohibited content or limitations as to the quantity of advertising. Regulatory requirements also vary depending on how news content is delivered (e.g. print or broadcasting). Moreover, while in some jurisdictions copyright and defamation laws may apply to digital platforms, the enforcement against these platforms present challenges.[95] The ACCC observed that this regulatory disparity could distort competition by providing digital platforms with a competitive advantage and it recommended the adoption of a platform-neutral legal framework covering both online and offline distribution (Australian Competition & Consumer Commission, 2019, pp. 189, 196-199[10]).

Moreover, in the United States, there are several legislative initiatives to reform or repeal Section 230 of the Communications Decency Act,[96] which in essence exempts digital platforms from liability when they act as the publisher of material posted by their users, including when platforms edit or fail to edit this material. Commentators noted that these initiatives may be alternative ways to address dominance of digital platforms and its political and social consequences, which extend beyond direct price effects (Baer and Chin, 2021[51]).

Finally, certain digital platforms' practices might actually increase consumer welfare (at least in the short term), but not be beneficial to society as a whole. Therefore, it is argued (Stigler Media Subcommittee, 2019, pp. 43-45[5]; Prat, 2020[43]) that – with a focus on mergers between news providers – the consumer welfare standard may be insufficient and that, as a public good, the assessment should be complemented by another review based on a broader "citizen welfare" standard that prioritises media pluralism. This new plurality test should also be based on objective and quantifiable criteria (e.g. attention share) and platform neutral to reflect the blurred boundaries between traditional platform-based categories of media.

4.2.6. Other proposals and initiatives

An area that remains largely unexplored is the use of abuse of economic dependence provisions[97], in particular where a news publisher is removed from or blocked access to a digital platform. These provisions may represent effective tools to target conduct that may not be caught under traditional antitrust abuses (Colangelo, 2021, p. 13[27]; Graef, 2019[52]).[98]

Moreover, some commentators advocated for overarching regulatory reforms to remedy the asymmetry of bargaining power – caused in particular by digital platforms' tools to access user data, while providing limited data to publishers – affective competition in advertising services. These proposals aim at imposing data-related obligations on large digital platforms. For instance, Jeon (2021, p. 25[24]) argued that data interoperability would help restoring the level playing field and that "public authorities can consider data separation or data silos in order to limit Google's ability to combine publishers' data for ad arbitrage".[99] He also suggested that since single publishers may not have sufficient data for ad targeting, "policy makers can consider encouraging a collective action of publishers to form a coalition which pools their data for targeting".[100] Cafarra and Crawford (2020[37]) also addressed similar issues from a data ownership perspective arguing that data generated by users consuming news content on digital platforms should be seen as "jointly produced" and that, therefore,

> *"it would seem reasonable that it would be 'jointly owned,' and that the minimum standards be expanded to include a right for news publishers to have access to the data that currently only the digital platforms have, particularly data that links news consumption of a given publisher to a specific individual over time." (Cafarra and Crawford, 2020[37])*

Calling for more structural reforms to address digital platforms' market power Khan (2019, p. 1068[53]) argued that structural separation of digital platforms from their ad businesses "could potentially be justified on the basis of protecting the news media" and that this separation would "promote media diversity and protect journalism." Others, however, argue that more competition in digital platforms would only marginally solve the problem, without finding a viable business model for news outlets, in particular for costly public interest and investigative journalism.

Many jurisdictions have public funding schemes for news media. These measures vary, including direct public funding, indirect funding through tax subsidies granted to news publishers and incentives to philanthropism. There have been a number of proposal to increase public funding (see Box 4.2) to counter the impact of internet and digital distribution on public interest journalism. Without discussing in detail these measures, it is worth observing that alternative funding of news publishers can be complementary measures to address concerns resulting from the digital distribution. Competition authorities can play a role in designing such schemes to mitigate competition distortions as well as risks of increasing concentration.

Box 4.2. Examples of recent public funding schemes

Australia

In its 2019 *Digital Platforms* inquiry the ACCC recommended (1) to provide "stable and adequate funding" to the two publicly-funded national broadcasters to address the risk of under-provision of public interest journalism; (2) to put in place a broader and platform-neutral program of targeted grants to support the production of original local and regional journalism; and (3) to encourage philanthropic support for journalism through tax settings.

Canada

In June 2021, Canada introduced a new measure to support journalism: the digital news subscription tax credit. It is a non-refundable tax credit for amounts paid by individuals to a qualified Canadian journalism organisation for subscription expenses. To qualify for the credit, a digital news subscription must entitle an individual to access content in digital form that is primarily written news.

United States

The Stigler Center proposed a "media vouchers" system giving each adult a voucher worth a certain value from the U.S. Treasury to donate to media outlet(s) when filling tax returns. To guarantee that these public subsidies actually subsidise the production of information, in particular the production of high-quality news, researchers proposed to impose a number of conditions for media outlets to qualify for such voucher.

Netanel (2021[54]) recently proposed that the U.S. government should levy an excise tax on digital advertising revenues to help fund investigative and local journalism, supplementing other proposals for public funding of news media, ranging from direct government subsidies to citizens' vouchers.

Sources:
ACCC (2019, pp. 324-341[10]), www.accc.gov.au/publications/digital-platforms-inquiry-final-report;
www.canada.ca/en/revenue-agency/services/tax/individuals/topics/about-your-tax-return/tax-return/completing-a-tax-return/deductions-credits-expenses/deductions-credits-expenses/digital-news-subscription.html;
Stigler Media Subcommittee (2019[5]), http://www.columbia.edu/~ap3116/papers/MediaReportFinal.pdf;
Netanel (2021[54]) https://jolt.law.harvard.edu/assets/articlePDFs/v34/3.-Netanel-Mandating-Digital-Platform-Support-for-Quality-Journalism.pdf.

Finally, digital platforms have also launched their own initiatives to fund news media. Through *Google News Initiative*, Google committed USD 300 million to support news outlets globally, "including emergency funding for local publishers globally to help with the impact of COVID-19".[101] Within its broader *Facebook Journalism Project*, Facebook stated that it has invested USD 100 million to support the news industry during the COVID-19 pandemic" in addition to its "previous USD 300 million commitment to serve journalists around the world through diverse and inclusive programs and partnerships".[102] Some of these initiatives have been criticised as they may exacerbate media capture risks, while their scale remains rather limited compared to the decline of news publishers' revenue (Geradin, 2019, p. 14[6]; Fanta and Dachwitz, 2020[55]). More recently, in October 2020, Google committed to pay license content through its Google News Showcase "with an initial USD 1 billion investment in partnerships with news publishers"[103] and–as part of this program–it recently signed agreements with news publishers in several countries, including Colombia, Ireland and Japan.

5 Conclusion

Calls for strong intervention on news publishers and digital platforms essentially depart from the ideas (1) that news quality is a value that shall be preserved in democratic societies; and (2) that public interest journalism is a good that has always faced concerns of under-provision due to market failures, and this is worsened by a few digital platforms. Therefore, news publishers would deserve a special protection compared, for instance, to other producers of online content. The policy goal is to support (and urgently intervene to sustain) public interest journalism in the age of digital distribution.

The main competition-related concern is that the value of news content is undermined by the market power of a few ad-funded digital platforms in the online world, which are exacerbating under-provision and quality concerns. Two key related questions are (1) whether competition policy could pursue this objective; and (2) whether competition enforcement can address these issues or regulatory changes are more appropriate.

The nature of the commercial relationship between news publishers and digital platforms is quite complex, with both horizontal and vertical aspects.

Digital platforms and news publishers directly compete for user attention and advertising revenue. The arise of recent enforcement cases in digital advertising triggered by complaints filed by news publishers as well as news-related issues emerged in competition authorities' market studies on digital advertising are evidence of this horizontal relationship. Remedies on digital advertising mostly aim at rebalancing the ability of news publishers to monetise content at least on their own websites and applications.

With regard to the vertical relationship (and the role of digital platforms as suppliers of news referral services), antitrust intervention has been more limited so far, with competition authorities and policy makers focussing on regulatory tools to address concerns of unbalanced bargaining. While these concerns can also be of exploitative nature, the concepts of substantial market power and strong bargaining power may not always overlap, with the latter that could be subject to a lower threshold. Therefore, it is unclear whether, in practice, antitrust enforcement and regulation can be exact substitutes in this regard. Moreover, it could be questioned whether such regulatory interventions would result in a "rent sharing alliance" between large news publishers and digital platforms.

Digital platforms' practices, in some instances, could qualify as an overall exclusionary and exploitative strategy against news publishers. While regulation may be a better tool to address these strategies, at times its scope seems to be limited to tackle specific conduct. Where digital platforms affecting news publishers have different business models and do not engage in the same conduct, targeted enforcement actions or flexible regulatory tools could be considered.

Competition authorities' recent market studies – which typically have a wider scope than enforcement actions – are effectively contributing to better understand the functioning of digital markets. While the focus of these studies has been digital advertising, an in-depth and holistic analysis of the effects on news media may be appropriate. Indeed, despite the close attention these issues are having, the empirical evidence remains limited as the overall effects of digital platforms on news publishers. Further research on the effects of digital platforms' conduct on news quality (in terms of both how to measure quality and how protecting quality sustains public interest journalism) may be needed.

Furthermore, it should not be overlooked that regulatory initiatives on digital markets – while not specifically targeted to news media – may also contribute to rebalance their relationship with large digital platforms. These include, for instance, important initiatives to increasing transparency in digital advertising, algorithms and user data.

Finally, no high-level enforcement cases directly addressing mis-information and dis-information have been identified to date. Nevertheless, it is evident from recent market studies and sector inquires that there is a growing interest from competition authorities. While measures addressing these issues can also focus on helping consumers in identifying mis-information and dis-information and on increasing the efforts by digital platforms (see e.g. the EU Code of Practice on Disinformation and the Australian Code of Practice on Disinformation and Misinformation), addressing competition issues can contribute to counter the spread of mis-information and dis-information. A more effective competition can be expected to improve quality and accuracy of news content, with benefits passed through to consumers and to the broader society. Strong co-operation across government agencies covering different policy areas is key in this regard. To support these efforts, under the *Reinforcing Democracy Initiative*, the OECD will assist and guide countries in the design and implementation of policies tackling the multifaceted nature of mis-information and dis-information.

Endnotes

[1] See www.oecd.org/governance/reinforcing-democracy/.

[2] Aspects on data portability and interoperability have been recently dealt with in (OECD, 2021[2]). For considerations on digital platforms' market power vis-à-vis advertisers and advertising intermediaries, see (OECD, 2020[3]).

[3] The Cairncross Review (2019, p. 17[26]) has highlighted that there are two areas of public interest news essential in a healthy democracy: "[o]ne is investigative and campaigning journalism, and especially investigations into abuses of power in both the public and the private sphere. … The second is the humdrum task of reporting on the daily activities of public institutions, particularly those at local level, such as the discussions of local councils or the proceedings in [local courts]." See also (Australian Competition & Consumer Commission, 2019, p. 284[10]).

[4] "Public interest journalism" does not necessarily coincide with "high quality journalism", which may represent a broader (and possibly subjective) category.

[5] Ali (2016[58]) has argued that public interest journalism, and in particular local journalism, should be considered a "merit good" and that "the difference between public goods and merit goods is that public goods demand intervention only to the point that they continue to be consumed. … In contrast, merit goods are based on a normative assumption that the good should be provided regardless of consumption habits."

[6] This advertising subsidy sometimes came at the cost of risking advertisers buying in content.

[7] "Classified ads" are small advertisements grouped by subject with a descriptive text (used, for instance, to sell and buy items, or offer and find a job) and appearing in a section of a publication.

[8] "Display ads" are a form of advertising that conveys a commercial message visually using various combinations of text, photos, animations, videos or other graphics.

[9] See www.pewresearch.org/journalism/fact-sheet/newspapers/.

[10] "The American information technology sector has long been an engine of innovation and growth, but today a small number of dominant Internet platforms use their power to exclude market entrants, to extract monopoly profits, and to gather intimate personal information that they can exploit for their own advantage. […] too many local newspapers have shuttered or downsized, in part due to the Internet platforms' dominance in advertising markets" (Biden Jr., 2021[60]).

For example, the total number of newsroom employees in the United States dropped from approximately 55,260 in 2010 to 30,820 in 2020 (see www.pewresearch.org/journalism/fact-sheet/newspapers/).

[11] For further data on the United States, see (U.S. House of Representatives, 2020, pp. 58-61[9]).

[12] On the contrary, the production of original public interest news continues to have fairly high fixed costs.

[13] See e.g. NowThis News, a media outlet focussed on social-media.

[14] The first two revenue models do not differ from the two-sided market dynamics of nondigital distribution of news content.

[15] "By eliminating the costs of physical production and distribution such as the mass circulation of hard-copy newspapers, online news media businesses are better able to rely on subscriptions for a larger proportion of their revenue" (Australian Competition & Consumer Commission, 2019, p. 303[10]).

The transition from a subscription to a printed edition to an online subscription only reflects a change in technology employed to consume the same content (Peitz and Reisinger, 2015, p. 450[11]).

[16] While paywalls and subscription models may provide a strong incentive to produce high-quality news content, "this model mainly caters to high-income and high-education consumers and fails to reach a broad audience, so "it's not really a solution to the civic crisis of an uninformed, often misinformed, and distrustful citizenry" (Benson, 2018[61]).

[17] According to Kennedy and Prat (2019, p. 5[17]), data in this regard are often concentrated in a subset of platforms (e.g. television, newspapers or internet) and they "may conceal important media consumption patterns".

Despite these differences, Facebook appears to have one of the highest reach across several countries, although its users tend to consume news content from more sources than television users (Kennedy and Prat, 2019, p. 18[17]).

[18] The News Media Alliance (2019[56]) has argued that Google highly benefits from news content. They estimated that it generated revenue from news content of approximately USD 4.7 billion in 2018 – without taking into account "Google advertising revenue from publisher properties and data collected from news content". Google (and Facebook) oppose this view, arguing that news content is of minor relevance for their businesses (Australian Competition & Consumer Commission, 2019, p. 218[10]).

[19] General search services, vertical search services (i.e. services specialised in news content), social network webpages and news feed, and video hosting services.

[20] This could also be seen as a type of increased publicity.

[21] For instance, Facebook launched Facebook News to build a "news experience" for its users, mostly including content from publishers registered with Facebook and selected by a team of journalists. Facebook has stated that "the team is transparent about the guidelines [applied] and will make curatorial choices independently, not at the direction of Facebook, publishers or advertisers" (see www.facebook.com/news/howitworks).

[22] The concept of market power refers to the position a firm holds within a specific (product and geographic) market. This often requires a market definition exercise. A key challenge for market definition in digital markets is avoiding an exclusive focus on price, and considering other parameters on which firms compete, such as quality or innovation. Moreover, in case of multi-sided platforms (i.e. platforms connecting different groups of users), one of the main questions that arise is whether to define one or multiple markets. Traditional tools may also need to be adapted. For instance, the significant non-transitory increase in price (SSNIP) test may need to be complemented with other quantitative methods. An alternative for when non-price competition is important could be a small but significant non-transitory decrease in quality (SSNDQ) test (OECD, 2020, p. 16[4]).

[23] For a conflicting view, see Yun (2019[50]) arguing that, in order to be a gateway, "a platform must be responsible for the overwhelming majority of traffic to a website" and that "there are a multitude of sources that are in conflict with this assertion."

[24] "Facebook is not used as extensively for news in the same way that Google Search seems to be, and is therefore a less important distribution channel for news than Google Search" (Australian Competition & Consumer Commission, 2019, p. 247[10]).

[25] According to several Japanese publishers, "traffic from certain top portals accounted for about 8% to about 13% of the traffic to each newspaper's website in 2019" (Japan Fair Trade Commission, 2021, p. 141[15]).

[26] "The attentional version of the SSNIP test tries to determine how consumer might react to a small but significant and non-transitory increase in the advertising load for a given product. It might be conducted simply by adding advertising to a product in a non-transitory fashion, and determining whether that addition might make a significant number of consumers spend their time with a different product." (Wu, 2017, p. 31[23]).

Prat and Valletti (2021[65]) analysed the effects of digital platforms with market power acting as "attention brokers" in selling targeted advertising space to retailers, and their incentive to create "attention bottlenecks", leading to higher advertising prices, fewer ads being sold, and lower consumer welfare in the product industries.

[27] Similar concerns were also raised in (U.S. House of Representatives, 2020[9]).

[28] The U.S. Congress Subcommittee went so far as to say that "Facebook has monopoly power in online advertising in the social networking market" (U.S. House of Representatives, 2020, p. 170[9]).

[29] On the one hand, consumer data may benefit from economies of scale and scope. On the other hand, a new entrant that is able to access data may be able to enter and expand even without achieving scale or scope.

[30] This may also be the case of audience of other types of third-party content.

[31] Optimising formats include Google's Accelerated Mobile Pages (AMP) and Facebook's Instant Articles (IA).

[32] E.g. news carousel appearing on the top of news-related search queries. See also (Jeon, 2021, p. 23[24]).

Google, however, has noted that "does not privilege publishers who use AMP over publishers that adopt non-Google technical solutions that would also guarantee fast-loading pages" (U.S. House of Representatives, 2020, p. 66[9]).

[33] "Tags" are keywords used to describe an element on the webpage and all attributes.

[34] "Login tools" allow users to log into an application or website through a social network account.

[35] "Plug-in and interaction buttons" are embeddable buttons and widgets provided by social network providers that allow users to easily share content from an application or website.

[36] "If Le Monde uses Google's publisher ad server, then its data will be combined with other sources of data by Google for ad targeting at other websites. … Google has an incentive to show an ad featuring a new iPhone to the consumer who read Le Monde's review article when she/he visits a Google's website

or another third-party website since by doing so Google obtains at least the ad tech take. In fact, Google has a much stronger incentive to show highly valuable ads on Google-owned websites than on third-party websites since in the first case, Google receives 100% of what is paid by advertisers while it gets only its ad tech take in the second case." (Jeon, 2021, p. 13[24]).

[37] See, for instance, https://about.fb.com/news/2018/05/inside-feed-news-feed-ranking/.

[38] At the same time, it cannot be disregarded that the leading ad tech intermediary, Google, is also competing with news publishers for ad revenue with its own services, including general search and specialised search services.

Monetisation of Facebook is slightly different with publishers receiving "a [majority] share in advertising revenue generated by Facebook from adverts that appear alongside their IAs. They also have the option to insert their own directly sold advertising alongside their IA and, where they do this, they receive 100% of the advertising revenue" (Competition & Markets Authority, 2020, p. S6[14]). Other means of monetisation have been more recently introduced through ad breaks added to video-on-demand services offered on social networks. "[I]n terms of the revenue sharing arrangements of Ad Breaks, Facebook keeps 55 per cent of the revenue, with news media businesses entitled to the remaining 44 per cent" (Australian Competition & Consumer Commission, 2019, p. 220[10]) According to other sources, Facebook keep 27% of the ad spend for ad placed on websites when users land there through a Facebook post.

[39] In this regard, see also Proposal for a Regulation of the European Parliament and of the Council *on contestable and fair markets in the digital sector (Digital Markets Act)* COM/2020/842 final (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0842&from=en), Recital (42): "The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This opacity is partly linked to the practices of a few platforms, but is also due to the sheer complexity of modern day programmatic advertising. The sector is considered to have become more non-transparent after the introduction of new privacy legislation, and is expected to become even more opaque with the announced removal of third-party cookies [...] Furthermore, the costs of online advertising are likely to be higher than they would be in a fairer, more transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that end users pay for many daily products and services relying on the use of online advertising. Transparency obligations should therefore require gatekeepers to provide advertisers and publishers to whom they supply online advertising services, when requested and to the extent possible, with information that allows both sides to understand the price paid for each of the different advertising services provided as part of the relevant advertising value chain."

[40] In addition to transparency issues on fees, Jeon (2021, pp. 20-21[24]) identifies transparency issues with regard to auction rules and algorithms and to ad verification and attribution.

[41] A key challenge in such cases is how to determine whether a conduct is "unfair".

[42] These concerns are similar to the ones raised by Epic Games in its lawsuit against Apple related to practices in the iOS App Store. The United States District Court for the Northern District of California partially granted Epic Games's claims in September 2021. The judgement is currently under appeal (https://cand.uscourts.gov/wp-content/uploads/cases-of-interest/epic-games-v-apple/Epic-v.-Apple-20-cv-05640-YGR-Dkt-814-Judgment.pdf).

Following a complaint by music streaming provider Spotify, in April 2021, the European Commission sent a Statement of Objections to Apple raising concerns with regard to (1) its proprietary in-app purchase system for the distribution of paid digital content, and (2) anti-steering provisions limiting the ability of app developers to inform users of alternative purchasing possibilities (https://ec.europa.eu/commission/presscorner/detail/en/IP_21_2061).

43 For a more developed analysis of abusive leveraging or self-preferencing theories in digital markets, see (OECD, 2020, pp. 54-55[4]).

44 Scott Morton and Dinielli (2020[33]) have argued that "[b]y steering consumers through Google Search to specialized Google pages—containing content over which copyright is often disputed—Google creates an artificially cheap and artificially popular alternative to publisher content. Some of the publisher's investment in quality that would otherwise attract users, contributing to ad revenue in the short run and brand value in the long run, are wasted because those users are directed by Google to its own properties. When users visit Google's own properties, Google need not pay any publisher, so Google obtains the benefit from the publishers' investments. Google's lowers its Traffic Acquisition Costs to zero in these cases so that the full price of the ad can be kept as profit for Google."

45 Another illustration could be Google self-preferencing its own video portal (YouTube) over other portals in the search results.

46 One example is "content scraping." In 2013, the U.S. Federal Trade Commission (FTC) considered whether alleged content scraping from certain downstream rivals (e.g. restaurant review platforms) by Google constituted an "unfair method of competition". Google agreed to discontinue the practice and the FTC did not pursue it further (OECD, 2020, p. 53[4]).

47 The use of snippets or Google's "first click free" policy (discontinued in 2017) are clear evidence of the diverging incentives. The "first click free" policy allowed users to access a limited number of subscription-only articles without having to log-in news publishers' websites. Publishers objected to the "first click fee" policy and they observed that they were subject to demotion on Google Search, if they opted out (Wilding et al., 2018[63]). See also www.ft.com/content/9dee50c8-9946-11e7-a652-cde3f882dd7b.

48 "It is clear that the incentives Google faces on one side of the market (attracting users) influences its conduct in its supply of news referral services. These incentives have flow-on effects to media businesses in Google's supply of referral services. In this sense, Google is able to appropriate the value of content produced by media businesses, which it then uses to enhance its offering to advertisers" (Australian Competition & Consumer Commission, 2019, p. 235[10]).

49 More precisely, "for smaller outlets, the landing page traffic is unaffected by Google News but article page views increase by 44.6%. … On the other hand, our evidence supports the hypothesis that Google News is a strong complement to small outlets. This implies that bigger outlets gained compared to smaller ones due to the shutdown of Google News and users visited a less diverse set of outlets." (Athey, Mobius and Pal, 2021, pp. 15-17[19]).

Calzada and Gil (2018[59]) reached a similar conclusion by studying the same event in Spain, but using a different data source. They highlighted that news aggregators benefit news outlets, in particular those with a small brand power, in terms of both traffic and advertising revenue.

50 In the United States, "[t]he effects of this revenue decline are most severe at the local level, where the decimation of local news sources is giving rise to local news deserts" (U.S. House of Representatives, 2020, p. 70[9]).

51 Another negative effect on consumers, looking in particular at digital advertising aspects, is that advertisers pass-through to consumers high advertising prices (Jeon, 2021, p. 4[24]).

[52] Ultimately, this conduct seem “to reduce the publisher revenue below competitive level, reducing their incentive to invest and create news content because they adjust to the price signal they receive and part of the surplus they create is retained by digital platforms” (Scott Morton and Dinielli, 2020, p. 33[31]).

[53] See also (Martens et al., 2018, p. 6[12]).

[54] “Indirectly, the atomization of news may increase the likelihood that people are exposed to disinformation or untrustworthy sources of news online. When online news is disintermediated from its source, people generally have more difficulty discerning the credibility of reporting online.” (U.S. House of Representatives, 2020, p. 66[9]).

[55] The current technology allows (and increases the incentives) to constantly tweak and target news content to get more attention. This is not only true for digital platforms, but also for news publishers.

[56] In this regard, however, as digital platforms submitted to the JFTC, the display of customised information does not result in providing “only popular information (sensational information, gossip articles, etc.) but also niche information and specialized information to a variety of consumers” (Japan Fair Trade Commission, 2021, p. 142[15]).

[57] In October 2019, Facebook launched Facebook News. With this service, Facebook stated that it aims at selecting, curating and delivering “informative, relevant and reliable” news content. It seems that this tool operates in parallel with (and does not replace) display of news content alongside non-news content in the main “news feed” (see www.facebook.com/news/howitworks and https://about.fb.com/news/2019/10/introducing-facebook-news/).

[58] “The ad server is a tool that allows the serving of ads on the website or mobile app of the publisher. It also makes it possible to manage the sale of advertising space in a unified manner, in particular by giving the publisher the ability to choose, for the same advertising space, between transactions concluded directly with advertisers (known as "guaranteed campaign elements") and the programmatic sale on multiple platforms which organise auctions (i.e. according to an automated mechanism).”

“The supply side platforms for the programmatic sale of advertising space ("SSP") are "marketplaces" where buyers of advertising space and publishers wishing to sell advertising space (or "impressions") come together. They typically solicit bids from advertisers for a given impression, then conduct an auction between the different prices offered by the advertisers, and finally transmit the winning bid to the ad server.”

(Décision n° 21-D-11 du 7 juin 2021, English version, p. 3, available at www.autoritedelaconcurrence.fr/sites/default/files/attachments/2021-07/21-d-11_ven.pdf).

[59] Décision n° 21-D-11 *du 7 juin 2021 relative à des pratiques mises en oeuvre dans le secteur de la publicité sur Internet* (available at www.autoritedelaconcurrence.fr/en/decision/regarding-practices-implemented-online-advertising-sector).

[60] “But there have also been concerns about their legality and use from a privacy perspective, as they allow consumers’ behaviour to be tracked across the web” (see www.gov.uk/government/news/cma-to-investigate-google-s-privacy-sandbox-browser-changes).

[61] Article 47-6 of the Japanese Copyright Act, integrated into Article 47-5(1) of the revised Copyright Act which came into force on 1 January 2019.

[62] Article 47-5 of the Japanese Copyright Act.

[63] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, Recitals (54-55) and Article 15 (https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0790&from=EN). In particular, Recital (54) states that "[p]ublishers of press publications are facing problems in licensing the online use of their publications to the providers of those kinds of services, making it more difficult for them to recoup their investments. In the absence of recognition of publishers of press publications as rightholders, the licensing and enforcement of rights in press publications regarding online uses by information society service providers in the digital environment are often complex and inefficient".

[64] National transposition measures by EU Member States are available at https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32019L0790.

[65] French Law No. 2019-775 of 24 July 2019, on the Creation of Neighboring Rights for the Benefit of Press Agencies and Publishers, Articles 2 and 4.

[66] In Google's words "[u]nless the publisher has taken steps to tell us that's what they want" https://france.googleblog.com/2019/09/comment-nous-respectons-le-droit-dauteur.html. According to Colangelo (2021, p. 9[27]), this would have likely resulted in a "quasi-replica" of what occurred in Spain in 2014.

[67] Article L. 420-2, paragraph 2 of the French Commercial Code. In the case at stake, publishers had claimed that Google's practices also constitute an abuse of economic dependency. However, the Autorité decided to not rule on this point in its decision imposing interim measures.

[68] "According to the data provided by the complainants relating to 32 press titles, and not disputed by Google, the search engines - and therefore Google for a large part - represent, according to the sites, between 26% and 90% of the redirected traffic to their pages. This traffic is also very important and crucial for publishers and news agencies who cannot afford to lose any share of their digital readership due to their economic difficulties." (See Autorité Press Release available at www.autoritedelaconcurrence.fr/en/press-release/related-rights-autorite-has-granted-requests-urgent-interim-measures-presented-press).

[69] See Décision n° 20-MC-01 *du 9 avril 2020 relative à des demandes de mesures conservatoires présentées par le Syndicat des éditeurs de la presse magazine, l'Alliance de la presse d'information générale e.a. et l'Agence France-Presse*, paragraphs 234-237, 240-241 and 242-254 (available at www.autoritedelaconcurrence.fr/en/decision/requests-interim-measures-syndicat-des-editeurs-de-la-presse-magazine-alliance-de-la).

[70] See Autorité Press Release available at www.autoritedelaconcurrence.fr/en/press-release/remuneration-related-rights-press-publishers-and-agencies-autorite-fines-google-500.

[71] Decision *according to Section 32c German Competition Act (Gesetz gegen Wettbewerbsbeschränkungen, GWB) in the dispute Google versus various press publishers and VG Media about the use of the ancillary copyright of press publishers* (Case Summary in English available at www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2016/B6-126-14.pdf?__blob=publicationFile&v=2).

[72] See Bundeskartellamt Press Release available at www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2015/09_09_2015_VG_Media_Google.html.

[73] This form of intervention is not unique to digital platforms and news publishers. In fact, the ACCC regulates mandatory industry codes that are prescribed under the Australian Competition and Consumer Act 2010. The ACCC can also provide guidance to industries looking to develop their own voluntary industry code. For various industry codes, see www.accc.gov.au/business/industry-codes.

[74] 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). This initiative has triggered calls to implement similar mechanisms in other jurisdictions such as Europe (https://blogs.microsoft.com/eupolicy/2021/02/22/europe-press-publishers-microsoft-call-for-australian-style-arbitration-mechanism-in-europe/) and Canada (www.levellingthedigitalplayingfield.ca/).

[75] See www.theguardian.com/media/2021/feb/17/news-corp-agrees-deal-with-google-over-payments-for-journalism and https://blog.google/products/news/google-news-showcase-launches-australia/.

[76] See https://edition.cnn.com/2021/02/17/media/facebook-australia-news-ban/index.html and www.facebook.com/journalismproject/news-australia-decision. The agreements between news publishers and Facebook seems to relate to the appearance of news content in Facebook News tab.

[77] Section 52S of Treasury Laws Amendment (News Media and Digital Platforms Mandatory Bargaining Code) Bill 2021.

[78] There has been no "designated digital platform" to date.

[79] This feature, known as (American) "baseball-style arbitration", has been previously advanced as a way of addressing disputes over FRAND value in litigation around Standard Essential Patents (Cafarra and Crawford, 2020[37]).

[80] Part IIIA of the Australian Competition and Consumer Act 2010 establishes a legal regime to facilitate third party access to services provided by significant infrastructure facilities (so-called National Access Regime). The ACCC has a role to assess access undertakings and to arbitrate access disputes. In recent years, the ACCC has accepted access undertakings in relation to rail and wheat export (see www.accc.gov.au/regulated-infrastructure/about-regulated-infrastructure/acccs-role-in-regulated-infrastructure/national-access-regime-under-part-iiia).

[81] See, e.g. www.crikey.com.au/2021/02/24/media-diversity-hit-old-media-big-tech-cash/.

[82] See e.g. recent initiative by media companies in Denmark (www.ft.com/content/c83d6b7f-ed19-4a90-a719-3bf4aedccdff).

[83] It would apply vis-à-vis online content distributors having "not fewer than 1,000,000,000 monthly active users, in the aggregate, of all of its websites or online services worldwide".

[84] See www.congress.gov/bill/117th-congress/senate-bill/673/text. See also

U.S. House of Representatives Judiciary Committee hearing "Reviving Competition, Part 2: Saving the Free and Diverse Press" (12 March 2021) (video recording available at https://judiciary.house.gov/calendar/eventsingle.aspx?EventID=4440) and (U.S. House of Representatives, 2020, p. 388[9]).

[85] See e.g. www.wsj.com/articles/how-antitrust-undermines-press-freedom-1499638532.

[86] Under Section 2(2) of the Journalism Competition and Preservation Act, the term "news content creator" means: "(A) any print, broadcast, or digital news organization that (i) has a dedicated professional editorial

staff that creates and distributes original news and related content concerning local, national, or international matters of public interest on at least a weekly basis; and (ii) is marketed through subscriptions, advertising, or sponsorship; and (B) (i) provides original news and related content with the editorial content consisting of not less than 25 percent current news and related content; or (ii) broadcasts original news and related content pursuant to a license granted by the Federal Communications Commission".

87 See (Trendacosta and O'Brien, 2021[64]).

88 See www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/country-press-australia-cpa.

89 Section 30(2) of the German Competition Law. See also www.lexology.com/library/detail.aspx?g=eb1e1bf1-594a-4ee0-804f-e77200f8f9b3.

90 See www.gov.uk/government/publications/unlocking-digital-competition-report-of-the-digital-competition-expert-panel.

91 With regard to data sharing, the CMA observed that "would … consider it appropriate that the code of conduct would, again within the limits of data protection and privacy laws, facilitate platforms sharing data with publishers about user interactions with their own content at a user level and in a format that would allow them to match it to user data generated from the publishers' own sites" (Competition & Markets Authority, 2020, p. S17[14]).

92 Powers for the DMU and for the new regulatory regime will require legislation. The UK Government has committed to consulting on proposals for the new pro-competition regime in 2021. In the interim, the DMU has been established within the CMA, on a non-statutory basis to focus on operationalising and preparing for the new regime.

93 See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003913/Digital_Competition_Consultation_v2.pdf, pp. 27-35.

94 The JFTC (2021, p. 152[15]) also noted that it is desirable for digital platforms to "make continuous efforts to ensure that decisions on what content will be posted on the top pages of leading portal sites operated by digital platform operators are based on indicators that include the accuracy and reliability of the content and its social significance."

For an alternative proposal to strengthen brands for quality journalism and ensure public recognition, see (Netanel, 2021[54]).

95 See, for instance, (Australian Competition & Consumer Commission, 2019, p. 174[10]).

96 "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" (47 U.S.C. § 230).

97 Several EU Member States have similar provisions.

98 According to Graef (2019, p. 499[52]), the EU Platform to Business Regulation (Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 *on promoting fairness and transparency for business users of online intermediation services*, OJ L 186, 11.7.2019, pp. 57–79) provides "a starting point for a platform-specific intervention to target unfair practices resulting from the dependence of businesses on platforms."

Risks of media capture have also been associated with the dependence of news publishers on digital platforms' infrastructure, which "could pose serious challenges to the ability of news organizations to scrutinize the corporations that direct most of the traffic to their sites." (Nechushtai, 2018[67]).

[99] More broadly on interoperability as a remedy to restore competition in digital markets, see (OECD, 2021[2]; Hovenkamp, 2021[62]).

[100] As to privacy considerations, Jeon (2021[24]) argued that these measures would actually limit "data leakage" towards digital platforms and ultimately "better preserve consumer privacy".

[101] See https://newsinitiative.withgoogle.com/.

[102] See www.facebook.com/journalismproject.

[103] See https://blog.google/outreach-initiatives/google-news-initiative/google-news-showcase/. See also https://blog.google/supportingnews/#news.

6 References

Ali, C. (2016), "The Merits of Merit Goods: Local Journalism and Public Policy in a Time of Austerity", *Journal of Information Policy*, Vol. 6, pp. 105-128, http://www.jstor.org/stable/10.5325/jinfopoli.6.2016.0105. [58]

Anderson, S., J. Waldfogel and D. Stromberg (eds.) (2015), *The Economics of Internet Media*, https://doi.org/10.1016/B978-0-444-62721-6.00010-X. [11]

Athey, S., M. Mobius and J. Pal (2021), "The Impact of Aggregators on Internet News Consumption", *NBER Working Paper Series* No. 28746, http://dx.doi.org/10.3386/w28746. [19]

Australian Competition & Consumer Commission (2019), *Digital Platforms Inquiry – Final Report*, http://www.accc.gov.au/publications/digital-platforms-inquiry-final-report. [10]

Autorité de la concurrence (2018), *Sector-specific investigation into online advertising*, http://www.autoritedelaconcurrence.fr/en/press-release/6-march-2018-sectorspecific-investigation-online-advertising. [28]

Baer, B. and C. Chin (2021), *Addressing Big Tech's power over speech*, http://www.brookings.edu/blog/techtank/2021/06/01/addressing-big-techs-power-over-speech/. [51]

Benson, R. (2018), "Paywalls and public knowledge: How can journalism provide quality news for everyone?", *Journalism*, Vol. 20/1, pp. 146-149, https://doi.org/10.1177/1464884918806733. [61]

Biden Jr., J. (2021), *Executive Order on Promoting Competition in the American Economy*, http://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/. [60]

Bundeskartellamt (2018), *Online advertising*, http://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Schriftenreihe_Digitales_III.pdf?__blob=publicationFile&v=5. [29]

Cafarra, C. and G. Crawford (2020), *The ACCC's 'bargaining code': A path towards 'decentralised regulation' of dominant digital platforms?*, https://voxeu.org/article/accc-s-bargaining-code-path-towards-decentralised-regulation-dominant-digital-platforms. [37]

Cagé, J., N. Hervé and M. Viaud (2020), "The Production of Information in an Online World", *The Review of Economic Studies*, Vol. 87/5, pp. 2126-2164, https://doi.org/10.1093/restud/rdz061. [7]

Cairncross, F. (2019), *The Cairncross Review: a sustainable future for journalism*, https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism. [26]

Calzada, J. and R. Gil (2018), "What Do News Aggregators Do? Evidence from Google News in Spain and Germany", http://dx.doi.org/dx.doi.org/10.2139/ssrn.2837553. [59]

Charbit N, M. (ed.) (2021), *Echo Chambers and Competition Law: Should Algorithmic Choices be Respected?*, Concurrences, https://ssrn.com/abstract=3555124. [42]

Chiou, L. and C. Tucker (2017), "Content aggregation by platforms: The case of the news media", *Journal of Economics & Management Strategy* 26, pp. 782–805, http://dx.doi.org/10.1111/jems.12207. [36]

Choiu, L. and C. Tucker (2013), "Paywalls and the demand for news", *Information Economics and Policy*, Vol. 25, pp. 61-69, http://dx.doi.org/10.1016/j.infoecopol.2013.03.001. [16]

Colangelo, G. (2021), "Enforcing copyright through antitrust? The strange case of news publishers against digital platforms", *Journal of Antitrust Enforcement*, https://doi.org/10.1093/jaenfo/jnab009. [27]

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. [8]

Competition & Markets Authority (2020), *Online platforms and digital advertising – Market study final report*, http://www.gov.uk/cma-cases/online-platforms-and-digital-advertising-market-study. [14]

de Cornière, A. and M. Sarvary (2020), "Social Media and News: Content Bundling and News Quality", *TSE Working Paper* n° 20-1152, http://www.tse-fr.eu/sites/default/files/TSE/documents/doc/wp/2020/wp_tse_1152.pdf. [20]

de Cornière, A. and M. Sarvary (2018), *Social Media and News: Attention Capture via Content Bundling*, https://www.tse-fr.eu/sites/default/files/TSE/documents/sem2018/InternalSeminars/alex_de_corniere-social_media_and_competition-17.pdf. [25]

Evans, D. (2020), *The Economics of Attention Markets*, http://dx.doi.org/10.2139/ssrn.3044858. [22]

Fanta, A. and I. Dachwitz (2020), *Google, the media patron - How the digital giant ensnares journalism*, http://www.otto-brenner-stiftung.de/fileadmin/user_data/stiftung/02_Wissenschaftsportal/03_Publikationen/AH103_Google_EN.pdf. [55]

George, L. and C. Hogendorn (2019), "Local News Online: Aggregators, Geo-Targeting and the Market for Local News", http://dx.doi.org/10.2139/ssrn.2357586. [35]

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. [6]

Graef, I. (2019), "Differentiated Treatment in Platform-to-Business Relations: EU Competition Law and Economic Dependence", *Yearbook of European Law*, Vol. 38/1, pp. 448-499, http://dx.doi.org/10.1093/yel/yez008. [52]

Holder, R. (2020), *Australia's News Media and Digital Platforms Bargaining Code is Great Politics But Questionable Economics*, https://promarket.org/2020/09/21/australias-news-media-digital-platforms-bargaining-code-great-politics-questionable-economics/. [47]

Hovenkamp, H. (2021), "Antitrust and Platform Monopoly", *The Yale Law Journal*, Vol. 130/8, pp. 1952-2273, http://www.yalelawjournal.org/article/antitrust-and-platform-monopoly. [62]

Hubbard, S. (2017), *Fake news is a real antitrust problem*, http://www.competitionpolicyinternational.com/fake-news-is-a-real-antitrust-problem/. [39]

Hurwitz, G. (2017), *Fake News's Not-So-Real Antitrust Problem: Content Remains King*, https://www.competitionpolicyinternational.com/fake-newss-not-so-real-antitrust-problem-content-remains-king/. [40]

Japan Fair Trade Commission (2021), *Fact-finding Survey Report on Digital Platform Operators' Trade Practices – Final Report Regarding Digital Advertising*, http://www.jftc.go.jp/en/pressreleases/yearly-2021/February/210217.html. [15]

Jeon, D. (2021), *Market Power and Transparency in Open Display Advertising – A Case Study*, http://www.tse-fr.eu/fr/publications/market-power-and-transparency-open-display-advertising-case-study. [24]

Jeon, D. and N. Nikrooz (2016), "News Aggregators and Competition among Newspapers on the Internet", *American Economic Journal: Microeconomics*, Vol. 8/4, pp. 91-114, http://dx.doi.org/10.1257/mic.20140151. [38]

Kathuria, V. and J. Lai (2020), "The Case of Google 'Snippets': An IP Wrong that Competition Law Cannot Fix", *Max Planck Institute for Innovation & Competition Research Paper* No. 20-13, https://ssrn.com/abstract=3693781. [45]

Kennedy, P. and A. Prat (2019), "Where do people get their news?", *Economic Policy*, Vol. 34/97, pp. 5-47, https://doi.org/10.1093/epolic/eiy016. [17]

Khan, L. (2019), "The Separation of Platforms and Commerce", *Columbia Law Review*, Vol. 119, pp. 973-1093, https://ssrn.com/abstract=3180174. [53]

Mahmood, A. and C. Sismeiro (2017), "Will They Come and Will They Stay? Online Social Networks and News Consumption on External Websites", *Journal of Interactive Marketing*, Vol. 37, pp. 117-132, http://dx.doi.org/10.1016/j.intmar.2016.10.003. [21]

Martens, B. et al. (2018), *The digital transformation of news media and the rise of disinformation and fake news*, https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/digital-transformation-news-media-and-rise-disinformation-and-fake-news. [12]

Nechushtai, E. (2018), "Could digital platforms capture the media through infrastructure?", *Journalism*, Vol. 19/8, pp. 1043-1058, http://dx.doi.org/10.1177/1464884917725163. [67]

Netanel, N. (2021), "Mandating Digital Platform Support for Quality Journalism", *Harvard Journal of Law &Technology*, Vol. 473-545, https://jolt.law.harvard.edu/assets/articlePDFs/v34/3.-Netanel-Mandating-Digital-Platform-Support-for-Quality-Journalism.pdf. [54]

News Media Alliance (2019), *Google Benefit from News Content*, http://www.newsmediaalliance.org/wp-content/uploads/2019/06/Google-Benefit-from-News-Content.pdf. [56]

Nielsen, R. and S. Ganter (2017), “Dealing with digital intermediaries: A case study of the relations between publishers and platforms”, *News Media & Society*, Vol. 20/4, pp. 1600-1617, https://doi.org/10.1177/1461444817701318. [18]

OECD (2021), *Competition Enforcement and Regulatory Alternatives*, https://one.oecd.org/document/DAF/COMP/WP2(2021)2/en/pdf?_ga=2.266949838.1773491730.1621258609-1226245216.1612725063. [46]

OECD (2021), *Data portability, interoperability and digital platform competition*, http://oe.cd/dpic. [2]

OECD (2020), *Abuse of dominance in digital markets*, http://www.oecd.org/daf/competition/abuse-of-dominance-in-digital-markets-2020.pdf. [4]

OECD (2020), *Competition in digital advertising markets*, http://www.oecd.org/daf/competition/competition-in-digital-advertising-markets-2020.pdf. [3]

OECD (2018), *Rethinking Antitrust Tools for Multi-Sided Platforms*, http://www.oecd.org/daf/competition/Rethinking-antitrust-tools-for-multi-sided-platforms-2018.pdf. [30]

OECD (2012), “The Development and Diffusion of Digital Content”, *OECD Digital Economy Papers*, No. 213, OECD Publishing, Paris, https://dx.doi.org/10.1787/5k8x6kv51z0n-en. [13]

OECD (2010), *News in the Internet Age: New Trends in News Publishing*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264088702-en. [1]

Peitz, M. and M. Reisinger (2015), *The Economics of Internet Media*, https://doi.org/10.1016/B978-0-444-62721-6.00010-X. [66]

Persch, J. (2021), *Should Google Still Be Allowed to Crown the Kings in Digital Markets?*, https://promarket.org/2021/07/13/google-search-digital-markets-germany-antitrust/. [44]

Prat, A. (2020), *Measuring and Protecting Media Plurality in the Digital Age: A Political Economy Approach*, https://knightcolumbia.org/content/measuring-and-protecting-media-plurality-in-the-digital-age. [43]

Prat, A. and T. Valletti (2021), “Attention Oligopoly”, *American Economic Journal: Microeconomics*, Vol. Forthcoming, http://dx.doi.org/10.2139/ssrn.3197930. [65]

Reuters Institute, University of Oxford (2021), *Digital News Report 2021 - 10th EDITION*, https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2021-06/Digital_News_Report_2021_FINAL.pdf. [57]

Sacher, S. and J. Yun (2017), *Fake News Is Not An Antitrust Problem*, http://www.competitionpolicyinternational.com/fake-news-is-not-an-antitrust-problem/. [41]

Scott Morton, F. and D. Dinielli (2020), *Roadmap for a Digital Advertising Monopolization Case Against Google*, https://www.omidyar.com/wp-content/uploads/2020/09/Roadmap-for-a-Case-Against-Google.pdf. [33]

Scott Morton, F. and D. Dinielli (2020), *Roadmap for an Antitrust Case Against Facebook*, https://www.omidyar.com/wp-content/uploads/2020/06/Roadmap-for-an-Antitrust-Case-Against-Facebook.pdf. [31]

Shelanski, H. (2013), “Information, Innovation, and Competition Policy for the Internet”, *University of Pennsylvania Law Review*, Vol. 161, https://scholarship.law.upenn.edu/penn_law_review/vol161/iss6/6/. [34]

Stigler Committee on Digital Platforms (2019), *Final Report*, http://www.chicagobooth.edu/-/media/research/stigler/pdfs/digital-platforms---committee-report---stigler-center.pdf. [32]

Stigler Media Subcommittee (2019), *Protecting Journalism in the Age of Digital Platforms*, http://www.columbia.edu/~ap3116/papers/MediaReportFinal.pdf. [5]

Stucke, M. and A. Grunes (2015), “Why More Antitrust Immunity for the Media Is a Bad Idea”, *Northwestern University Law Review*, Vol. 105, pp. 1399-1416, https://scholarlycommons.law.northwestern.edu/nulr/vol105/iss3/11. [49]

Trendacosta, K. and D. O’Brien (2021), *An Antitrust Exemption for News Media Won’t Take Us Back to the Time Before Big Tech*, http://www.eff.org/deeplinks/2021/03/antitrust-exemption-news-media-wont-take-us-back-time-big-tech. [64]

U.S. House of Representatives (2020), “Investigation of Competition in Digital Markets - Majority Staff Report and Recommendations”, https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519. [9]

Wilding, D. (2021), *Why Are Google and Facebook Now Okay with Australia’s News Media Bargaining Code?*, https://promarket.org/2021/02/25/google-facebook-australia-news-bargaining-antitrust-accc-small-publishers/. [48]

Wilding, D. et al. (2018), *The Impact of Digital Platforms on News and Journalistic Content*, https://www.accc.gov.au/system/files/ACCC%20commissioned%20report%20-%20The%20impact%20of%20digital%20platforms%20on%20news%20and%20journalistic%20content%2C%20Centre%20for%20Media%20Transition%20%282%29.pdf. [63]

Wu, T. (2017), “Blind Spot: The Attention Economy and the Law”, *Antitrust Law Journal*, https://ssrn.com/abstract=2941094. [23]

Yun, J. (2019), “News Media Cartels are Bad News for Consumers”, *Competition Policy International*, https://www.competitionpolicyinternational.com/news-media-cartels-are-bad-news-for-consumers/. [50]

www.oecd.org/competition