ICLE International Center for Law & Economics

Department of Justice Workshop on Competition in Television and Digital Advertising

Comments of the International Center for Law & Economics

June 15, 2019

Authored by:

Geoffrey A. Manne (President & Founder, International Center for Law & Economics)

Introduction

The Department should be commended for undertaking this workshop "to explore industry dynamics in media advertising and the implications for antitrust enforcement and policy.... and the competitive dynamics of media advertising in general."[1] The competitive dynamics of advertising markets—and digital advertising markets, in particular—are complicated and not well-understood. As more and more attention is paid to online markets and the welfare implications of various practices, it is crucial that enforcers make measured and informed decisions. As these are rapidly changing markets characterized by novel business models and nonstandard contracts, it is important not to fall prey to the concern that Ronald Coase pointed out half a century ago:

> [I]f an economist finds something—a business practice of one sort or another—that he does not understand, he looks for a monopoly explanation. And as in this field we are very ignorant, the number of ununderstandable practices tends to be very large, and the reliance on a monopoly explanation, frequent.[2]

Economic learning has come a long way since then, but markets have also been transformed. This workshop is a valuable step toward updating the economic learning relevant to these novel and

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[1] Competition in Television and Digital Advertising Workshop Information, DEPARTMENT OF JUSTICE (last visited Jun. 14, 2019), https://www.justice.gov/atr/public-workshop-competition-television-and-digital-advertising.

[2] Ronald Coase, *Industrial Organization: A Proposal for Research*, in POLICY ISSUES AND RESEARCH OPPORTUNITIES IN INDUSTRIAL ORGANIZATION 59, 67 (Victor R. Fuchs ed., 1972).

economically important markets, and toward ensuring that antitrust enforcement follows suit. As Robert Bork said (and AAG Delrahim quoted in his introductory remarks):

> Though the goals of the antitrust statutes as they now stand should be constant, the economic rules that implement that goal should not. It has been understood from the beginning that the rules will and should alter as economic understanding progresses.[3]

We hope that this workshop will be the beginning, not the end, of this discussion undertaken by the US antitrust agencies.

Market Definition

At the heart of this workshop is the question of market definition. And as AAG Delrahim said in his introduction to the workshop:

> Different media channels may serve different roles in the eyes of advertisers, from brand awareness to sale. This is not to say the different channels do not compete. They certainly do on some level. The question for us is, how do they compete?
>
> While we are confident in how we have defined markets in our past cases, we recognize that industries change. In order to ensure that we continue to update our analysis of media markets, we need to take into account the latest industry trends, the latest technological evidence and the latest economics—reason enough to hold this workshop today and tomorrow.[4]

Antitrust analysis of fast-evolving and technologically innovative markets is potentially prone to error because of the inherently backward-looking and overly static nature of market definition.

> Economics provides no reason to believe innovation ordinarily will come from within a "market" as defined for the purpose of static antitrust analysis; hence, there is little reason to believe proxies for dynamic competition will be positively correlated with innovative activity observed in such a market.[5]

The concern is that retrospective market definition analysis may minimize where competition really lies today and where it is going, potentially leading to enforcement that restrains its evolution and locks otherwise innovative competitors into the past.

Traditional market definition analysis that infers future substitution possibilities from existing or past market conditions may lead to overly narrow markets and an increased likelihood of erroneous market power determinations. This is the problem of viewing, say, Google as a "search engine" and Amazon as an "online retailer," and excluding each from the other's market. In reality, of course,

[3] ROBERT BORK, THE ANTITRUST PARADOX 430 (1993) (orig. pub. 1978).

[4] Assistant Attorney General Makan Delrahim, *Remarks at the Antitrust Division's Public Workshop on Competition in Television and Digital Advertising* (May 2, 2019), *available at* https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-antitrust-divisions-public.

[5] Douglas H. Ginsburg & Joshua D. Wright, *Dynamic Analysis and the Limits of Antitrust Institutions*, 78 ANTITRUST L. J. 1, 4 (2012).

both are competing for scarce user attention and advertising dollars in digital environments. *The specific functionality they employ in order to do so is a red herring*.

As markets and firms respond to (and anticipate) shifting technology, changing consumer demand, new business models, and the like, the superficial differences between them often become less significant to defining the scope and nature of competition. As Jorde & Teece note, true competition in innovative markets tends to come from the future:

> It is especially in assessing potential competition that a departure must be made from orthodox approaches when new technologies and new products are at issue. The reason is that potential competition from new technologies can destroy a firm's position in a particular market and its underlying competences. Price competition, on the other hand, may erode profit margins but is less likely to completely destroy the value of a firm's underlying technological, physical, and human assets. Accordingly, potential competition from new products and processes is the more powerful form of competition.[6]

That television broadcasters and cable networks compete with digital services is by now broadly well-understood. And they do so on virtually all dimensions: for user attention, for labor, for content and other inputs—and for advertising. The same is true for competition among both television/cable and digital platforms and newspapers, radio, magazines, video games, etc. This competition was not always apparent, of course.

And yet, in the course of antitrust analysis and enforcement, these markets are regularly separated based on their superficial differences: television vs. online search; online vs. offline; search vs. social media; newspapers vs. blogs, etc. The reality is that competition—especially in innovative or disrupted markets—is not confined by these superficial distinctions:

> [M]arket definition is an entirely artificial construct that has been called an incoherent process as a matter of basic economic principles. Real markets do not come defined. Market definition is an exercise that serves to establish the group of products that are sufficiently substitutable with one another.[7]

Superficial differences between products and services can be misleading. While such differences are not always irrelevant, of course, the economic question is whether one set of products or services acts as a competitive constraint on another; not whether they appear to be descriptively similar. "Alleging the relevant market in an antitrust case does not merely identify the portion of the economy most directly affected by the challenged conduct; *it identifies the competitive process alleged to be harmed*."[8] An accurate market definition that reflects competitive reality is necessary to determine "what the nature of [the relevant] products is, how they are priced and on what terms they are sold,

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[6] Thomas M. Jorde & David J. Teece, *Innovation, Dynamic Competition, and Antitrust Policy*, 13 REGULATION 35, 37-38 (1990).

[7] Pinar Akman, *The Theory of Abuse in Google Search: A Positive and Normative Assessment Under EU Competition Law*, 2017 J. L. TECH. & POL'Y 301, 369 (2017) (citing Louis Kaplow, *Why (Ever) Define Markets*, 124 HARV. L. REV. 437 (2010)).

[8] Greg Werden, *Why (Ever) Define Markets? An Answer to Professor Kaplow*, 78 ANTITRUST L.J. 729, 741 (2013) (emphasis added).

what levers [a firm] can use to increase its profits, and what competitive constraints affect its ability to do so."[9]

Crucial to properly defining the scope of the advertising market is an understanding that substitutable products or services provided through different channels of distribution are not necessarily in different markets simply because they are offered through those different channels of distribution. Oranges are sold in grocery stores as well as at produce stands. But this distinction does not mean that one set of oranges may be priced without regard to pricing of the other.

Antitrust advocates have a long and inglorious history of defining markets by channels of distribution or other convenient, yet often economically inappropriate, combinations of firms or products. Perhaps the most infamous is the effort to conjure up a "premium natural and organic supermarkets" market for the Whole Foods/Wild Oats merger.[10] But the problem is really rather endemic. Thus, for example, even though the vast majority of online search advertising keywords are not remotely in the same "market" as most other keywords, it's *de rigeur* to assume an "online search" market; even though Lady Gaga albums impose virtually no competitive constraint on Grateful Dead albums, they are lumped together in a "recorded popular music" market. And so on.

Of course it's more complicated than that. Some consumers may not have access to all distribution channels. And the distinction between a distribution channel and a product's characteristics is not always a bright line: for some, the experience of shopping at a fruit stand may be so meaningfully different than that of shopping at a grocery store that otherwise identical products are less substitutable because of the way they are sold. Further, some products that are imperfect substitutes may be distributed in different ways that correspond to those differences, such that the channel of distribution is at least a proxy for relevant qualitative differences.

But while the matter is complicated, a few things are fairly certain:

1. The primary (though not sole) concern of advertisers is reaching the right audience. There are myriad mechanisms for accomplishing this, and to varying degrees all are substitutes for the others. All target audiences "multi-home" across distribution channels to an often-considerable extent. While it likely makes little sense to advertise to elderly women by placing ads in a computer game played almost exclusively by teenage boys, it would surely make sense to try to reach them either (or both) by advertising on, say, broadcast television and social media.
2. Thus, for the vast majority of advertisers and types of advertising, the right audience can be—and even must be—reached through multiple means. On the one hand, this is because targeting remains imperfect (to say the least), and wide distribution will often be required. On the other hand, it is because consumers have heterogenous and multifaceted preferences, and regularly divide their attention across multiple forms of media.
3. For these and other reasons *television* writ large is surely in competition with *the Internet* writ large (as well as print media, radio, and others) to sell advertising space, intermediary ad services,

[9] Geoffrey A. Manne, *In defence of the Supreme Court's 'single market' definition in* Ohio v. American Express, 7 J. ANTITRUST ENFORCEMENT 104, 106 (2019). *See also* Ohio v. Am. Express Co., 138 S. Ct. 2274, 2287 (2018) ("Evaluating both sides of a two-sided transaction platform is also necessary to accurately assess competition.").

[10] *See* Geoffrey A. Manne, *Premium natural and organic bulls**t*, TRUTH ON THE MARKET (Jun. 6, 2007), https://truthonthemarket.com/2007/06/06/premium-natural-and-organic-bullst/.

targeting, and the like, even though a particular website and a particular television program may not be.

4. To be sure, different types of advertising (and marketing more broadly) may be better suited for different types of distribution, but even where those channels of distribution may not be direct substitutes, they are likely to be complements. Understanding the competitive process entails taking account of that interrelatedness.[11]

As noted, it is certainly true that different types of advertising may be more suited for different purposes (say, brand recognition for display ads; efforts to sell for search ads). Advertising aimed at making a direct sale (as opposed to generally providing information) may be more effective online than on television, if the advertised product may be purchased by simply clicking on an ad. Similarly, broadcasting product information via billboard may be more effective than search advertising if the relevant information is visual and would require a click-through to see it.

But this does not mean that the various forms of advertising don't compete with each other.

> The relevant question is: Would enough [] advertisers shift advertising volume from [one channel to another] to defeat the profitability of an across-the-board price increase…? We argue that, because advertisers ultimately are purchasing sales, many types of advertising with varied characteristics can nevertheless compete with each other on price.[12]

It's a valid (and still poorly understood) question. As Joel Waldfogel notes in a study prepared for the FCC in 2002:

> Researchers and policy makers have devoted significant attention to whether advertising in one medium is a substitute for advertising in another, but there [is] little research (to my knowledge) on whether information provided through one medium serves as a substitute for information provided through another. The question is important. If consumers substitute information across media, then the market for information may extend across media, raising questions about regulation of outlets within media.[13]

But in the broad category of advertising and marketing, there can be no doubt that multiple broadcast channels compete for relatively scarce advertising dollars, and that marketers combine different forms of advertising in different amounts across channels in part based on price differences. And a focus on branding and a focus on sales conversion differ only as a matter of degree. *Both* are forms of reducing the costs of search, identified by George Stigler in the 1960s as one of advertising's defining functions.[14]

As Waldfogel's study concludes:

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[11] *See* James D. Ratliff & Daniel L. Rubinfeld, *Online Advertising: Defining Relevant Markets*, 6 J. COMPETITION L. & ECON. 653 (2010), manuscript at 9, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1734015) ("In defining advertising markets, it is essential to account for the prospect that two or more media may offer complementary benefits, whether or not they are economic substitutes.").

[12] *Id.* at 21.

[13] Joel Waldfogel, *Consumer Substitution among Media*, Federal Communications Commission Media Ownership Working Group (2002) at 7.

[14] *See* George J. Stigler, *The Economics of Information*, 69 J. Pol. Econ. 213, 220 (1961) ("Advertising is, among other things, an immensely powerful… instrument for the elimination of ignorance.").

> Standing back, there is clearest evidence of substitution between Internet and broadcast TV, both overall and for news; between daily and weekly newspapers; and between daily newspapers and TV news. There is also evidence of substitution between cable and daily newspapers, both overall and for news consumption; between radio and broadcast TV for news consumption; and between the Internet and daily newspapers for news consumption. There is little or no evidence of substitution between weekly newspapers and TV, or between radio and either Internet or cable. There is also some indirect evidence of substitution in the greater use of national media by groups less targeted by local media.[15]

That consumers seem to treat these mediums of information and entertainment as at least partial substitutes for one another does not necessarily mean that advertisers see them the same way. But the inverse trend lines of advertising spending between internet and television, say, suggests that they do. And if the same or similar consumers are variously to be found in each channel, all else equal there is every reason to expect advertisers to substitute between them, as well. As one study concludes:

> The results show substitution and complementary patterns across certain media outlets. An increase in price for advertising in radio, for instance, leads to higher demand for newspapers and outdoors. Similarly, complementarity relationships between media outlets are observed, suggesting that advertising across the various media platforms is, overall, interwoven.[16]

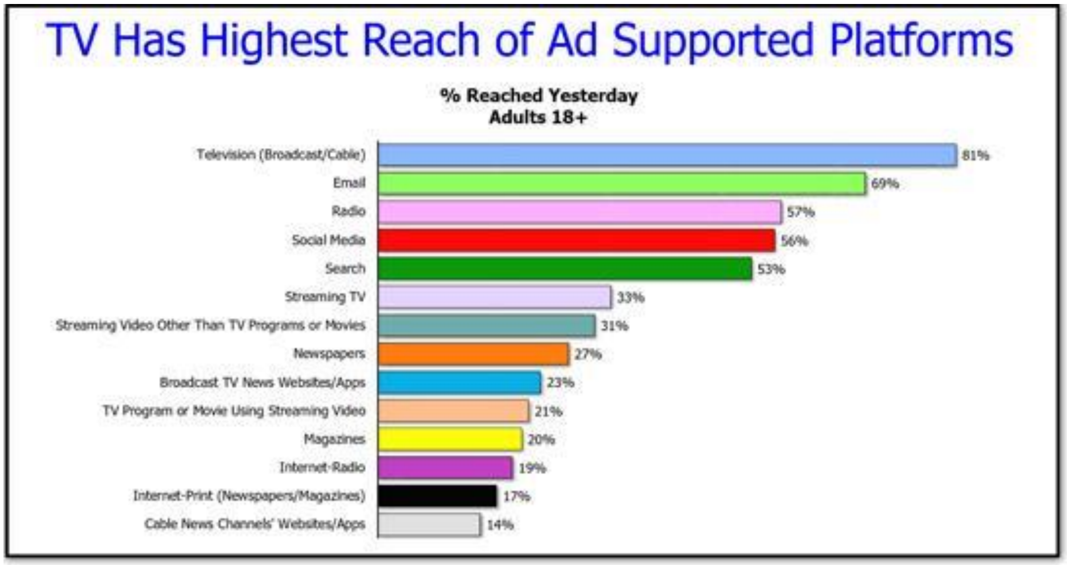
Online vs. offline markets

Of course, all else is not equal. The evidence seems to suggest that for all the media, political, and scholarly attention focused on digital advertising platforms, in virtually every way broadcast television remains (at least for now) significantly more important to consumers' consumption of information and advertising than does the Internet.

[15] Waldfogel, *Consumer Substitution among Media*, *supra* note 13, at 39.

[16] David Bardey, Jorge Tovar & Nicolas Santos, *Characterization of the relevant market in the media industry: some new evidence!*, Toulouse School of Economics Working Paper 16-719 (2016), *available at* https://www.tse-fr.eu/publications/characterization-relevant-market-media-industry-some-new-evidence.

Figure 1: Ad-supported platform reach[17]

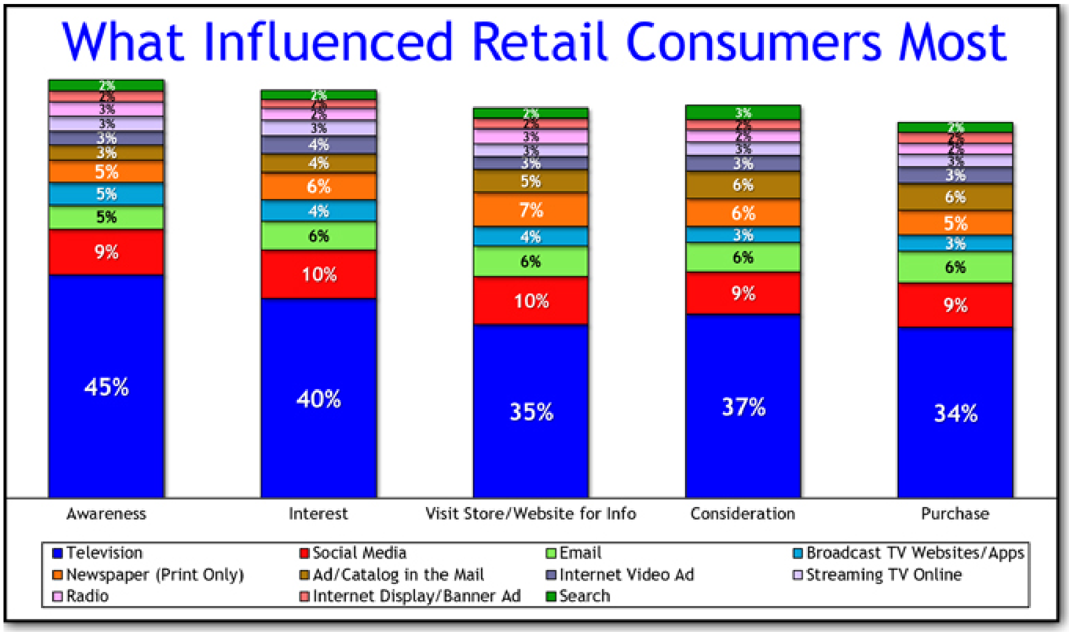


Indeed,

> [n]ot only is Television where most consumers are exposed to retail ads, consumers are most influenced in their purchasing decisions by TV. 34%-45% of those who saw/heard retail ads in at least 1 media source cited Television as the most influential throughout the purchasing process. Social Media ranked a very distant 2nd place followed by the other traditional and non-traditional media.

[17] Television Bureau of Advertising (TVB), *2018 Media Comparisons Study (Overview)* (2018), *available at* https://www.tvb.org/Portals/0/media/file/TVB_Media_Comparisons_2018_Whitepaper.pdf (Source: GfK TVB Media Comparisons Study 2018. M-S 6A-12M. Persons 18+. Online/internet platforms such as e-mail, social media, internet radio and websites, are totaled for any online device-PC, Smartphone and Tablets. Broadcast TV News Websites/Apps includes local TV station & network websites/apps for news/weather/sports.).

Figure 2: Platform influence over consumer purchasing[18]



Meanwhile:

> A third of the ($500bn) global ad business has now moved to the internet, and Google and Facebook are more than half of that, but TV advertising has hardly changed at all, yet. The internet has offered neither the inventory nor the experience to draw TV ad budgets. Indeed, since neither Netflix nor Amazon run advertising in their TV products today, ad budgets so far have stayed with legacy players even as viewing has shifted. This will probably change, and the more that viewing shifts, the more that ad budgets will be reconsidered.[19]

Eventually, of course, things are likely to change. But even then the implications for conduct today (and our ability to understand it in the proper context) and the competitive realities of the advertising market are uncertain:

> More deeply, though, the more that buying shifts, the more that ad budgets might change. Will all of that $500bn be spent in the same ways by the same brands on the same formats to drive the same sales—if both physical retail and TV start tipping over? Google and Facebook, as we know and hear all the time, dominate internet traffic and internet ad revenue, and that dominance only seems to get stronger, first from mobile and now machine learning. How much do they capture of this, how much ad spending does Amazon take, and how far can Amazon apply its maxim 'your margin is my

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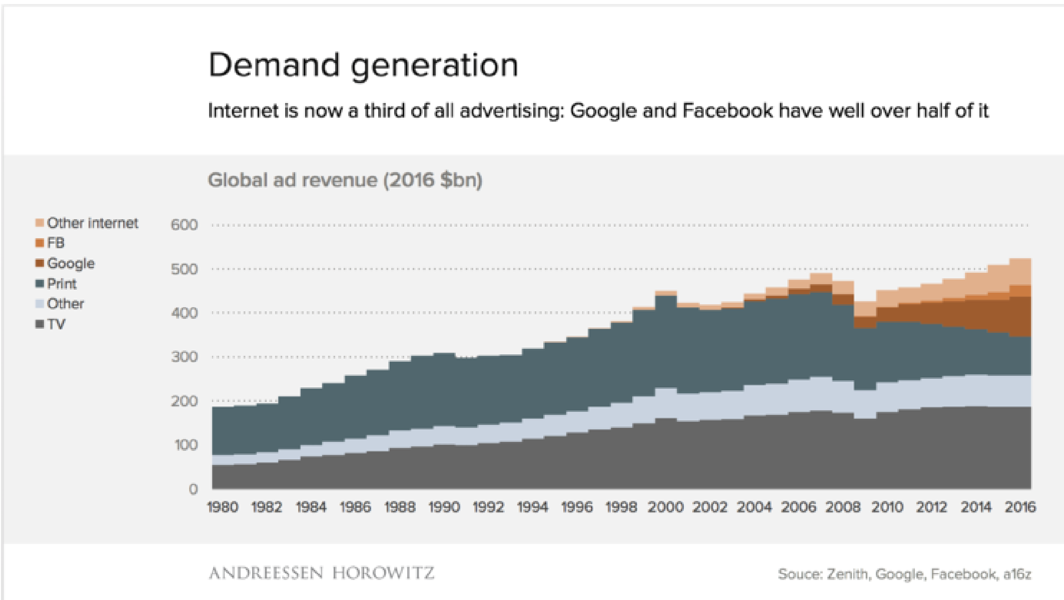
[18] Television Bureau of Advertising (TVB), *2018 Retail Purchase Funnel (Overview)* (2018), available at https://www.tvb.org/Portals/0/media/file/2018_Retail_Purchase_Funnel_whitepaper.pdf (Source: GfK TVB Purchase Funnel 2018 Retail Category (% Most important media type among those who saw/heard ads in at least 1 media source).

[19] Benedict Evans, *Ten Year Futures* (Apr. 25, 2017), https://www.ben-evans.com/benedictevans/2017/4/24/ten-year-futures.

opportunity' to advertising itself and remove that cost? And what about the $500bn that's spent on marketing, in addition to that $500bn of advertising?[20]

To be sure, digital platforms like Facebook and Google are capturing a large share of current advertising revenues. But the market in which they operate is far more complex. TV advertising remains significant. But the composition of those ads has surely shifted. And there is reason to believe that TV advertising budgets are, at least in part, complementary to Internet ad budgets, so that part of the increase in TV advertising is actually drive by Internet advertising, while the increase is less than it might have been because, at the same time, some ad spending is surely shifting from TV to Internet.

Figure 3: Global advertising revenue 1980-2016[21]



What is fairly certain, however, is that offline and online advertising are both constituent parts of the same strategic approach to marketing:

> [T]he trend in the business world is to view these different channels as part of what is referred to as integrated marketing. In such an approach, the advertisers use multiple advertising channels, public relations, promotions, and sponsorship tools to reach deeply fragmented audiences with different demographics multiple times for any campaign. For example, JennAir, a manufacturer of high-end cooking appliances, is using a broad array of magazine ads, online advertising, public relations, social media, apps for Apple phones and tablets, and experiential marketing to reach out to different parts of its targeted demographics in an integrated marketing campaign.[22]

Indeed, it must be noted, as Ben Evans points out, that advertising itself is part of a larger marketing market of which non-advertising marketing communication is as big a part as is advertising (each is

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[20] *Id.*

[21] *Id.*

[22] Spencer Weber Waller, *Antitrust and Social Networking*, 90 N.C. L. Rev. 1771, 1782 (2012).

roughly $500bn globally)—it just hasn't been as thoroughly disrupted by the Internet yet. But it is a mistake to assume that digital advertising is not a part of this broader market. And of that $1tr global market, Internet advertising occupies only about 18%.

Figure 4: US Advertising and marketing[23]

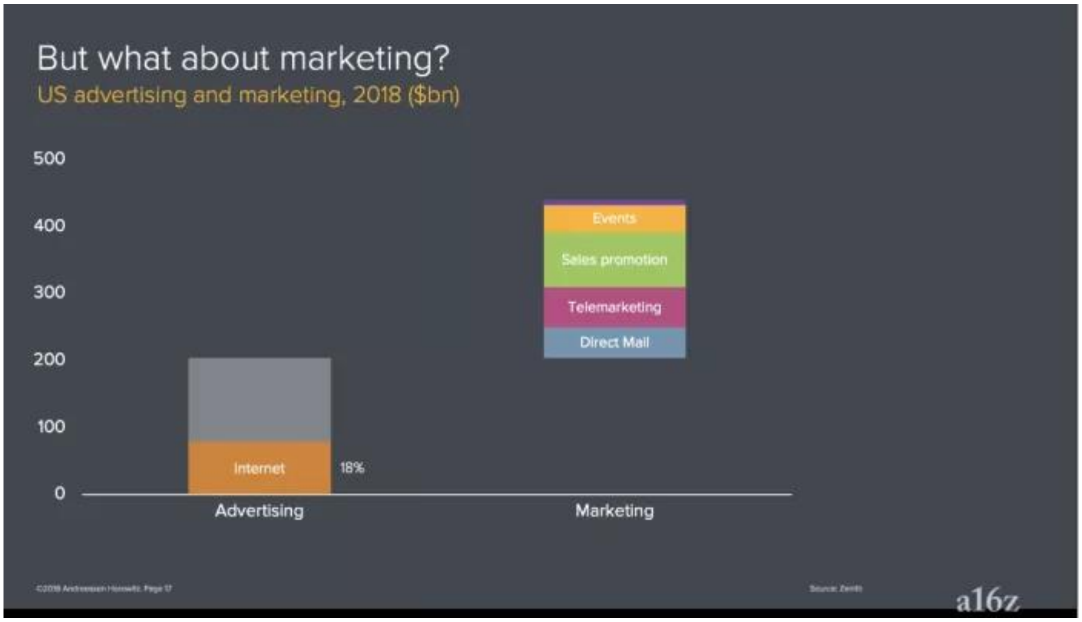
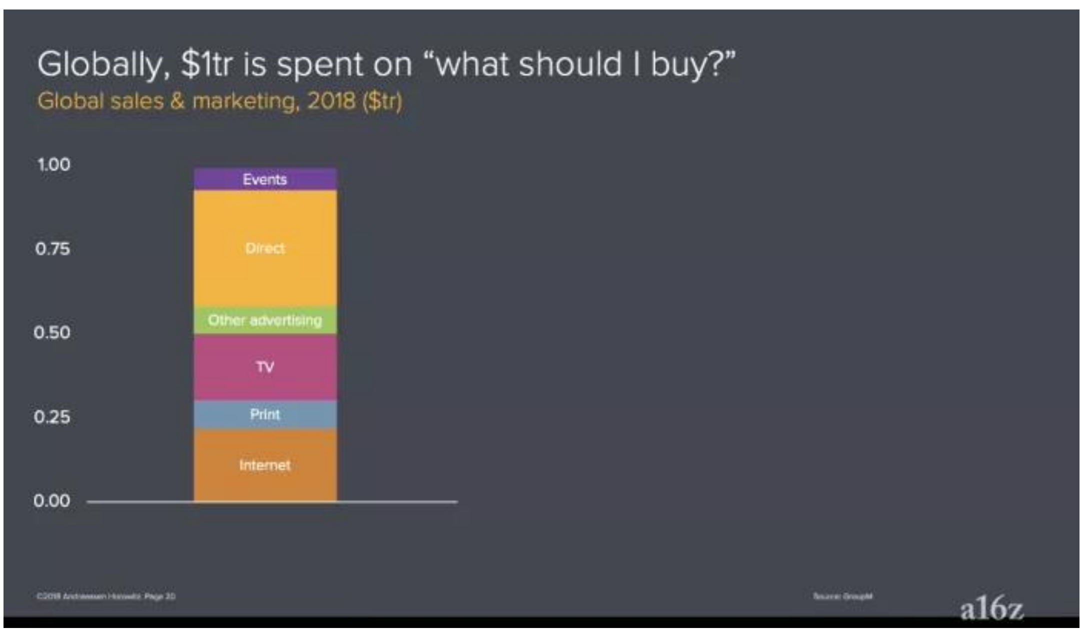


Figure 5: Global advertising and marketing[24]



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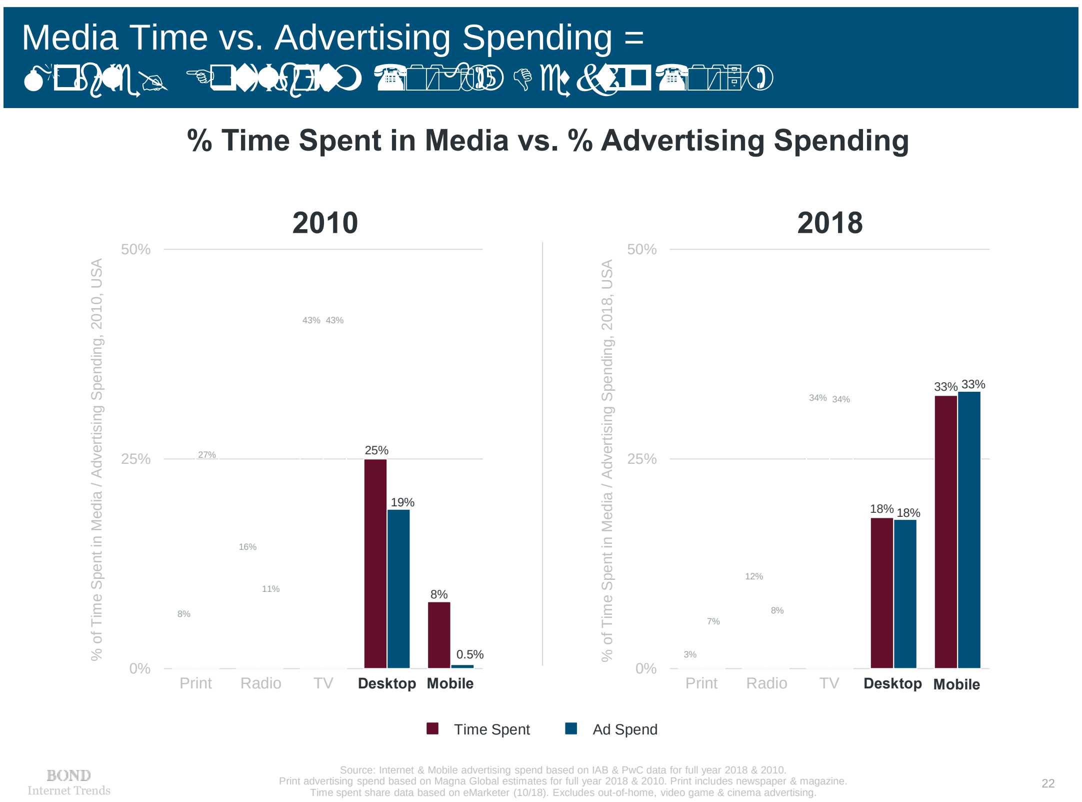
[23] Benedict Evans, *Ten Year Futures Presentation* (Dec. 6, 2017), https://www.ben-evans.com/benedictevans/2017/11/29/presentation-ten-year-futures.

[24] *Id.*

The key is that this is a two-sided market, in which advertising intermediaries attempt to attract advertisements and consumers and to match the two together. It is inaccurate to think of advertising as a traditional, linear market in which a set of buyers (advertisers) purchase a product (advertising space) from a set of sellers (advertising platforms). Instead, advertisers seek to influence *consumers*, and platforms enable and intermediate the interaction between them. That interaction, of course, typically requires that consumers pay attention to the intermediary's platform.[25] Much of what advertising intermediaries sell to advertisers is the promise of access to consumers' attention. And while there is no dearth of advertising space, consumers' attention is finite and limited. Television, of course, has historically been enormously successful at attracting a large share of consumers' time away from other, competing sources of entertainment or information. And today the Internet is just as successful at attracting consumers' attention, including some of it from traditional television. Both channels remain significant for advertising, and current advertising spending appears to reflect the relative success of each at attracting user attention.

Figure 6: Media time vs. advertising spending 2010 vs. 2018[26]



[25] This is a simplification that applies fairly straightforwardly to some intermediaries (e.g., Facebook) that directly attract consumers as well as manage the distribution of ads. But many intermediaries (e.g., Facebook Exchange) handle the matching of consumers and advertisers but do not directly control the mechanism (often, valuable content published at a reduced price) by which consumers' attention is attracted to the ads they serve. But for purposes of the discussion here the matching and publishing functions may be treated as unified.

[26] Mary Meeker, *Internet Trends 2019* (Jun. 11, 2019) at 23, *available at* https://www.bondcap.com/report/itr19/.

The fact that consumers multi-home (that is, divide their attention and thus their ad consumption time between multiple outlets) makes marketing strategy more complicated:

> [S]witching makes advertising a relatively more daunting task. By placing ads on additional outlets, the advertisers take the risk of reaching same consumers multiple times. Switching thus degrades the market value of an outlet's advertising inventory. As we shall see, this has important welfare implications as, in equilibrium, it leads to inefficient depletion (duplication) and use (mismatches) of a scarce resource: the consumers' attention.[27]

There is little research showing conclusively the extent of advertiser substitution between alternative channels of distribution. But

> [e]xisting work together with anecdotal information suggest that advertisers—and their agents—determine an overall advertising budget, allocate that budget among different methods (such as brand advertising on national television) for achieving the objectives of an advertising campaign, and then select advertising outlets for spending their dollars…. Advertisers base decisions about the level and allocation of their budgets on formal or informal analyses of the rate of return on investment. For these ad campaigns, the different advertising methods can be substitutes to the extent they provide alternative ways of delivering messages to an audience, and complements to the extent they can reinforce each other. Berndt, Arzaghi, Davis, and Silk find that 57 percent of the 28 pairs of the cross-elasticities they estimated indicated the advertising methods were, on net, substitutes and the remainder were complements—although typically weak ones.[28]

While there is considerable evidence to suggest that consumers are not, for the most part, substituting Internet time for television time (but rather are maintaining or even increasing television consumption and making time for the Internet by diverting their scarce attention from elsewhere),[29] the same cannot be said for advertisers, who appear to view television and Internet advertising as close substitutes, and have firmly embraced the latter at the increasing expense of the former.

One prominent example is Pepsi's decision not to buy television advertising during the Super Bowl in 2010 in order to use those resources instead on an online social media campaign. "This year for the first time in 23 years, Pepsi will not have ads in the Super Bowl telecast…. Instead it is redirecting

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[27] Susan Athey, Emilio Calvano & Joshua Gans, *The Impact of the Internet on Advertising Markets for News Media*, NBER Working Paper 19419 (2013) at 3-4, *available at* http://www.nber.org/papers/w19419.

[28] David S. Evans, *The Online Advertising Industry: Economics, Evolution, and Privacy*, 23 J. Econ. Persp. 37, 49 (2009).

[29] *See id.* at 53:

> Third, the potential returns from online advertising encourage entities such as Yahoo! and MSN, as well as traditional media, to present various kinds of content online that consumers used to consume mainly offline. In addition, of course, viewers are moving from offline to online media because, as with the move from radio to television, they simply like the content better along certain dimension, which can include the ease, flexibility, and interactive dimensions of access. Thus far, consumers appear to have substituted away from radio and newspaper content, but not television content. Persons above 12 years of age spend 32 percent more time watching cable and satellite television than they did in 2001. The usage of radio and traditional newspapers has declined by 3 and 15 percent, respectively (U.S. Census Bureau, 2009, table 1089).

the millions it has spent annually to the Internet."[30] Pepsi returned to Super Bowl advertising the following year when its social media campaign proved a bust.[31] Thus the substitution appears to work in both directions.

Meanwhile, Avi Goldfarb and Catherine Tucker demonstrate that display advertising pricing is sensitive to the availability of offline alternatives.[32] Firms have limited advertising budgets, and they distribute them across a broad range of media and promotional efforts, seeking the highest ROI. Given historical trends and rates of advertising spending across channels, both online and off, it would be extremely surprising if, like Pepsi, companies did not adjust their marginal spending among channels in response to price (and quality) changes.

Although technology and supplier and consumption preferences continue to evolve, the weight of evidence seems to suggest a far more unified, integrated *economically relevant* market between offline and online advertising than their common *semantic* separation would suggest:

> We believe our studies refute the hypothesis that online and offline advertising markets operate independently and suggest a default position of substitution. Online and offline advertising markets appear to be closely related. That said, it is important not to draw any firm conclusions based on historical behavior.[33]

Online advertising market definition

There is perhaps even more reason to doubt that either online *search* advertising or online *display* advertising constitutes an economically relevant, distinct market.

The sort of analysis that has thus far supported such claims is unconvincing and anecdotal. In its review of the Google/DoubleClick merger, for example, the FTC asserted that search and non-search advertising were in different markets: "Thus, search engines provide a unique opportunity for advertisers to reach potential customers. Advertisers view online content providers differently."[34] But the FTC's argument in support of this claim rests on the existence of the sort of superficial product differences that neglect the competitive dynamics of markets in exchange for semantic familiarity and ready observability.

> Based on the publicly available evidence cited by the FTC, their conclusion that search and non-search do not compete is not compelling. In its essence, the FTC is suggesting

[30]Larry D. Woodard, *Pepsi's Big Gamble: Ditching Super Bowl for Social Media,* ABC NEWS (Dec. 23, 2009), http://abcnews.go.com/print?id=9402514. Although it does not claim to be substituting for online advertising, Coca-Cola didn't buy ad time during the Super Bowl this year. *See* Brian Steinberg, *Coca-Cola Pulls Out of Super Bowl*, VARIETY (Jan. 24, 2019), https://variety.com/2019/tv/news/coca-cola-pulls-super-bowl-commercials-2019-1203116744/.

[31] *See* Wesley R. Hartmann & Daniel Klapper, *Super Bowl Ads*, 37 MARKETING SCI. 78, (2018), manuscript at 38-39, *available at* https://www.gsb.stanford.edu/sites/gsb/files/publication-pdf/ssrn-id2385058_0.pdf.

[32] Avi Goldfarb & Catherine Tucker, *Search Engine Advertising: Channel Substitution When Pricing Ads to Context*, 57 MANAGEMENT SCI. 458 (2011) (determining the price of "ambulance chaser" lawyer ads was significantly more expensive in states prohibiting direct mail solicitation by attorneys and concluding that "online advertising substitutes for online advertising").

[33] Avi Goldfarb & Catherine Tucker, *Substitution Between Offline and Online Advertising Markets*, 7 J. COMPETITION L. & ECON. 37, 43 (2011).

[34] Fed. Trade Comm'n, Statement Concerning Google/DoubleClick, FTC File No. 071-0170, at 3 (Dec. 20, 2007), *available at* https://www.ftc.gov/system/files/documents/public_statements/418081/071220googledc-commstmt.pdf.

> that the two classes of ads do not compete because they have different characteristics and in particular are differentially targeted. However, the ultimate market definition question depends on whether the two products are sufficiently close economic substitutes so that each constrains the pricing of the other. This central question remains unanswered.[35]

The EU's decision in Google/DoubleClick claimed that online and offline advertising markets were not in the same market, "primarily because the market investigation revealed that offline and online advertising *are perceived as separate markets* by the majority of respondents."[36] Again, this is a terrible basis on which to base such a determination. It then argued that it is indeterminate whether search and non-search advertising are in the same market, noting that "[i]t can, therefore, be inferred that, from an advertiser's point of view search and non-search ads can be considered substitutable to a certain extent."[37] In neither case were such market definitions the product of an economic analysis of the substitutability of the products.

Meanwhile, other anecdotal evidence cuts the other direction:

> One survey of 200 online retailers found that "online advertisers do in fact perceive the three channels of online advertising [search, display and contextual] as substitutes." Among other things, the survey found that "[i]n weighted terms, respondents representing 83 percent of all ad spending view graphic ads and search ads as substitutes." At least one court has likewise determined that all forms of at least online advertising are in the same relevant market for antitrust analysis.[38]

Although casual and ill-informed claims are often to the contrary, targeted online advertising of various forms—search advertising and social media advertising, for example—are significant competitors of each other. So, too (also against conventional assumptions) does organic search marketing compete with paid search. Firms spread their marketing budgets across these different sources of online marketing, and "search engine optimizers"—firms that help websites to maximize the likelihood of a valuable "top-of-list" organic search placement—attract significant revenue.[39] At root, all of these different channels vie against each other for consumer attention and offer advertisers the ability to target their advertising based on data gleaned from consumers' interactions with their platforms.

Meanwhile, new mechanisms for attracting consumers' attention and for matching advertisers with consumers have the ability to siphon off the most valuable advertising from existing sources. Most obviously, Facebook rocketed to prominence on par with Google in online advertising by taking advantage of users' far more extended engagement with the platform to assess relevance, and by enabling richer, more-engaged advertising than previously appeared on Google Search. It's an

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[35] Ratliff & Rubinfeld, *Online Advertising: Defining Relevant Markets*, *supra* note 11, at 17.

[36] Case COMP/M.4731 Google/DoubleClick, 11 March 2008, ¶ 45 (emphasis added).

[37] *Id.* at ¶ 53.

[38] Geoffrey A. Manne & Joshua D. Wright, *Google and the Limits of Antitrust: The Case Against the Case Against Google*, 34 HARV. J. L. & PUB. POL'Y. 1, 26-27 (2011) (*citing, inter alia*, KinderStart.com LLC v. Google, Inc., No. C06-2057JF(RS), 2007 WL 831806 at *6 (N.D. Cal. Mar. 16, 2007) (noting that "there is no logical basis for distinguishing the Search Ad Market from the larger market for Internet advertising").

[39] *See, e.g.*, Bo Xing & Zhanghi Lin, *The Impact of Search Optimization on Online Advertising Market*, *in* ICEC 2006 PROCEEDINGS OF 8TH INTERNATIONAL CONFERENCE ON ELECTRONIC COMMERCE 519 (2006).

entirely different model than Google's, but one that has, of course, turned Facebook into a comparable ad platform.[40] Twitter, Snapchat, Pinterest, Yelp, and Amazon (among many others) also compete for the same eyeballs and advertising revenue, all of them employing different models to connect users with the most relevant—and the most valuable—advertising.

Indeed, for all the claims that Google and Facebook constitute an unassailable online advertising "duopoly," no such position has ever actually been truly "unassailable," least of all in online and high-tech markets. Not only is there intense competition between the two, but "smaller" players are increasingly drawing advertising dollars away:

> There's no one competitor snapping up the spending. Smaller players like Amazon and Snapchat are growing faster than expected, with Amazon singled out by industry leaders as the next big force in advertising.... Snapchat, which is expected to capture 82% more in ad spending than it did last year, is also projected to cross the $1 billion mark in 2018.[41]

Not surprisingly, given its strong ability to match consumers with advertisements, and to do so when and where consumers are surely more likely to make a purchase, more than half of product searches now start on Amazon[42]—and advertisers have noticed.[43]

Functional distinctions between search and non-search advertising are collapsing, as well. Today search results are often "rich" results, displaying images, maps, interactive functions, and multi-faceted answers to search queries. Ubiquitous data, artificial intelligence, cross-site tracking, and integrated firms similarly remove many of the qualitative differences between search and non-search ads. And the market seems only to be increasing the extent of convergence, as disparate platforms from Google to Apple to Amazon to Samsung all vie to develop and monetize voice-driven and all-encompassing digital assistant/smart home devices that increasingly command consumers' attention.[44]

Conclusion

The extent to which advertising in various channels—both online and offline—are substitutes and/or complements (and thus the precise contours of the competitive dynamics) presumably varies considerably depending on what is being marketed and at what stage of the marketing funnel. But the nature of advertising competition today suggests that, in general, relevant markets are likely considerably broader than presumed, and market power more tenuous. Reliable evidence of the

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[40] *See* Haley Tsukayama, *Why Facebook is delivering great earnings when other big tech companies are not*, THE WASHINGTON POST (Apr. 27, 2016), https://www.washingtonpost.com/news/the-switch/wp/2016/04/27/facebook-is-delivering-great-earnings-when-other-big-tech-companies-are-not/?utm_term=.c0774236cee5.

[41] Ashley Rodriguez, *Google and Facebook are losing their locks on digital advertising*, QUARTZ (Mar. 19, 2018), https://qz.com/1232444/google-and-facebooks-digital-ad-lock-is-in-jeopardy/.

[42] Jason Del Ray, *55 percent of online shoppers start their product searches on Amazon*, RECODE (Sep. 27, 2016), https://www.recode.net/2016/9/27/13078526/amazon-online-shopping-product-search-engine.

[43] Jeanine Poggi, *Google-Facebook Duopoly Set to Lose Some of Its Share of Ad Spend*, ADAGE (Feb. 20, 2019), https://adage.com/article/digital/duopoly-loses-share-ad-spend/316692 (noting that Amazon will more than double its share).

[44] *See* Sarah Perez, *47.3 million U.S. adults have access to a smart speaker, report says*, TECHCRUNCH (Feb. 2018), https://techcrunch.com/2018/03/07/47-3-million-u-s-adults-have-access-to-a-smart-speaker-report-says/.

extent and implications of the complicated market dynamics that characterize advertising markets may never be available, however, as ever-evolving technology and consumer preferences ensure that even high-quality retrospective evidence may be quickly inaccurate. Enforcers and courts may end up forced to make market definition determinations based on incomplete evidence and unsupported theories that fail accurately to capture the complicated economics of consumer, advertiser, and supplier conduct. And efforts to gloss over these complications by relying on documentary proxies for economic relevance are another significant source of error in antitrust case law.[45]

Workshops like this one are a helpful start, however, and the only rigorous response to the complexity and lack of constancy that characterize these markets is continued investigation and analysis, along with a healthy dose of restraint to avoid wrongfully condemning the myriad "ununderstandable practices"[46] endemic to such markets.

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[45] *See* Geoffrey A. Manne & E. Marcellus Williamson, *Hot Docs vs. Cold Economics: The Use and Misuse of Business Documents in Antitrust Enforcement and Adjudication*, 47 ARIZ. L. REV. 609, 610 (2005).

[46] Ronald Coase, *Industrial Organization: A Proposal for Research*, *supra* note 2.