

**Discussion Paper  
No 1/17**

**Competition and the Public Interest in the  
Digital Market for Information**

Claudio Lombardi

December, 2017

**Europa-Kolleg Hamburg  
Institute for European Integration**

The *Europa-Kolleg Hamburg* is a private law foundation. The foundation has the objective of furthering research and academic teachings in the area of European integration and international cooperation.

The *Institute for European Integration*, an academic institution at the University of Hamburg, constitutes the organisational framework for the academic activities of the *Europa-Kolleg*.

The *Discussion Papers* are designed to make results of research activities pursued at the Institute for European Integration accessible for the public. The views expressed in these papers are those of the authors only and do not necessarily reflect positions shared by the Institute for European Integration. Please address any comments that you may want to make directly to the author.

**Editors:**

Europa-Kolleg Hamburg  
Institute for European Integration  
Prof. Dr. Markus Kotzur, LL.M. (Duke), Managing Director  
Dr. Konrad Lammers Research Director  
Windmühlenweg 27  
22607 Hamburg, Germany  
<http://www.europa-kolleg-hamburg.de>

**Please quote as follows:**

Europa-Kolleg Hamburg, Institute for European Integration, Discussion Paper No 1/17,  
<http://www.europa-kolleg-hamburg.de>

# Competition and the Public Interest in the Digital Market for Information

Claudio Lombardi\*

## Abstract

Our behaviour on the internet is continuously monitored and processed through the elaboration of big data. Complex algorithms categorize our choices and personalise our online environment, which is used to propose, inter alia, bespoke news and information. It is in this context, that the competition between sources of information in the 'market for ideas', takes place. While these mechanisms bring efficiency benefits, they also have severe downsides that only very recently we have begun to uncover. These drawbacks regard not only deadweight losses caused by market distortions, but also public policy issues, in particular in case of politically relevant news. What are the public and private interest concerns impacted by this practice? Can this algorithm-driven selection of news be captured by competition laws? The digital news market, as constructed around online advertising, presents peculiarities which necessitate a reframing of standard approaches to traditional information markets, and of the creation and distribution of ideas.

## Keywords:

Competition law; antitrust; marketplace of ideas; online behavioural targeting; public interest; post-truth society; fake news; online environment.

\*Claudio Lombardi is an Assistant Professor at KIMEP School of Law. The author gratefully acknowledges use of the services and facilities of the Europa-Kolleg Hamburg, Institute for European Integration, funded by the German Academic Exchange Service (DAAD).

## Contact information:

Claudio Lombardi  
clombardi27@gmail.com

## **Introduction**

Our behaviour on the internet is continuously monitored and processed through the elaboration of big data. Complex algorithms categorize our choices and personalise our online environment, which is used to propose, inter alia, bespoke news and information. News providers often shape their content for online consumption, mobile formats (e.g. Instant Articles) and sometimes around “clickbait” headlines, in their quest for gaining more traffic and advertising dollars. On the other hand, investigative journalism and local newspapers are in the midst of a transformation due to the limited profitability of existing, traditional models. It is in this context that the competition between sources of information in the ‘market for ideas’ takes place.

While new mechanisms introduced by the internet medium bring efficiency benefits, they also have severe downsides that only very recently we have begun to uncover. These drawbacks regard not only deadweight losses caused by market distortions, but also public policy issues, in particular in case of politically relevant news.

This paper examines the relationship between the regulation of market competition and the conception of a marketplace for ideas in the online world. The first part discusses the internet information environment in particular, with reference to algorithmic curation of news feeds and the creation of echo-chambers. The selection of news is directly connected to the generation and the reading of the same, which are not always in a linear relation as in a vertical value chain. Online publishing platforms (such as Medium, et al.) and social networks, such as Facebook and Twitter, permit the creation of information and its immediate dissemination within specific social environments. The internet medium offers a platform where ideas can compete and be subject to an immediate comparison. However exogenous (users’ manipulation) and endogenous (algorithmic and platform distortions) conditions may hinder this process. Moreover, the creation of echo-chambers exacerbated the polarisation of communities of interests, which consequently reduced the amount of information each user has in order to make an educated choice about reliable sources of information. The second part of this paper discusses the conception of a competition for the truth that, assumedly, should take place in the marketplace for ideas. The traditional approaches generally assume the power of a diverse information environment to establish “the truth” in society. In other words, the market of ideas is thought of as a self-

regulating institution, which only needs the presence of diverse opinion matters to function. Journalism, being at the core of it, is the main focus of this paper. The conclusion offers an alternative approach to the conception of a market for ideas where market forces and principles of democracy and public interest need to be reconciled.

### 1. The market for news

In *Nineteen Eighty-Four*, George Orwell tells of a dystopian future in which The Party encourages the acceptance of a single and powerful concept: doublethink. In Orwell's words, doublethink is "[t]he power of holding two contradictory beliefs in one's mind simultaneously, and accepting both of them... To tell deliberate lies while genuinely believing in them, to forget any fact that has become inconvenient, and then, when it becomes necessary again, to draw it back from oblivion for just as long as it is needed, to deny the existence of objective reality and all the while to take account of the reality which one denies—all this is indispensably necessary. Even in using the word doublethink it is necessary to exercise doublethink. For by using the word one admits that one is tampering with reality; by a fresh act of doublethink one erases this knowledge; and so on indefinitely, with the lie always one leap ahead of the truth."<sup>1</sup> Fiction could not get closer to reality, for the conscious acceptance of lies and the simultaneous acknowledgment of contradictory statements has become one of the most debated problems affecting society and politics.

Behavioural scientists have long since demonstrated that marketing techniques aim exactly at familiarising consumers with ideas that contradict the known factual truth, nonetheless behaving as if only their claims were true<sup>2</sup>. In most cases, this separation between ideas and arguments is more complex. When news and information come as products attached to 'sponsoring goods', the creation of consumer segments to propel the commercial efficiency of the advertisement and the related goods may have important social and democratic effects.

Online behavioural advertising has soon given rise to criticism aimed at the possible violation of privacy of internet users and for abuses of consumer information<sup>3</sup>. But only recently

---

<sup>1</sup> George Orwell, *1984* (Martin Secker & Warburg Ltd 1949) 220.

<sup>2</sup> For instance, that Coke is for athletic, happy, successful people; this message overwhelms and coexists with the knowledge of sugar content and composition of the beverage.

<sup>3</sup> See Federal Trade Commission Staff Report: Self-Regulatory Principles For Online Behavioral Advertising: Tracking, Targeting, and Technology at <https://www.ftc.gov/reports/federal-trade-commission-staff-report-self-regulatory-principles->

has the phenomenon of using these techniques for delivering news, come under the spotlight. For instance, Drexl effectively points out that “the way Facebook’s algorithm filters news is only one part of the news flow. First, users select information on the Internet to share with friends. Then, Facebook’s algorithm filters the information that will finally appear in the news feed of the individual user based mostly on two criteria: the user’s degree of affinity to the friend who posted the news and the interest in the kind of content the user has shown in the past. Finally, this user still has to click on the news.” Here, Drexl refers to a study<sup>4</sup> ultimately showing that “Facebook users are exposed to cross-cutting news—defined as news that does not align with the political views of the individual user—on their news feeds. (...) Yet the study also shows that the percentage of cross-cutting news being conveyed continuously goes down at every point along the sharing chain as compared to a random selection of news shared on Facebook”<sup>5</sup>. The news feed algorithm utilises hundreds of variables to predict what is relevant for each user<sup>6</sup>. This algorithmic curation is based on ‘relevance scores’ which are able to predict what a user will ‘like’, comment, share, hide, click or mark as spam<sup>7</sup>. Just like the news, ads receive relevance scores. A 2015 study ranked the feed input factors by importance, coding in particular Newsroom posts, Notes blogs, and patent filings<sup>8</sup>. According to this study the most important factors are the friend relationships, followed by status updates and the age of posts<sup>9</sup>.

---

[online-behavioral](https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/dae-library/iab_europe_eu_framework_for_online_behavioural_advertising.pdf) and IAB Europe EU Framework for Online Behavioural Advertising, at [https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/dae-library/iab\\_europe\\_eu\\_framework\\_for\\_online\\_behavioural\\_advertising.pdf](https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/dae-library/iab_europe_eu_framework_for_online_behavioural_advertising.pdf).

<sup>4</sup> See Federal Trade Commission Staff Report: Self-Regulatory Principles For Online Behavioral Advertising: Tracking, Targeting, and Technology at <https://www.ftc.gov/reports/federal-trade-commission-staff-report-self-regulatory-principles-online-behavioral> and IAB Europe EU Framework for Online Behavioural Advertising, at [https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/dae-library/iab\\_europe\\_eu\\_framework\\_for\\_online\\_behavioural\\_advertising.pdf](https://ec.europa.eu/digital-single-market/sites/digital-agenda/files/dae-library/iab_europe_eu_framework_for_online_behavioural_advertising.pdf).

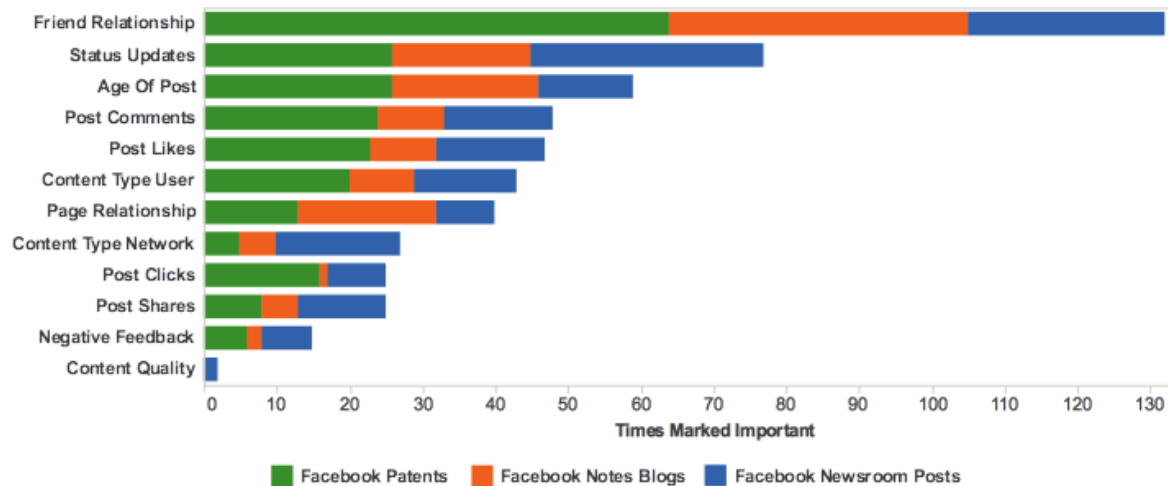
<sup>5</sup> Josef Drexl, ‘Economic Efficiency Versus Democracy: On the Potential Role of Competition Policy in Regulating Digital Markets in Times of Post-Truth Politics’ <sup>8</sup> <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2881191](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2881191)> accessed 8 March 2017.

<sup>6</sup> Will Oremus, ‘How Facebook’s News Feed Algorithm Works.’ *Slate* (3 January 2016) <[http://www.slate.com/articles/technology/cover\\_story/2016/01/how\\_facebook\\_s\\_news\\_feed\\_algorithm\\_works.single.html](http://www.slate.com/articles/technology/cover_story/2016/01/how_facebook_s_news_feed_algorithm_works.single.html)> accessed 3 July 2017.

<sup>7</sup> See Facebook’s guidelines on relevance scores: <https://www.facebook.com/business/news/relevance-score>.

<sup>8</sup> Michael A DeVito, ‘From Editors to Algorithms: A Values-Based Approach to Understanding Story Selection in the Facebook News Feed’ [2016] *Digital Journalism* 1.

<sup>9</sup> *ibid* 10.



Source: M. DeVito, 2016

Other investigations on the functioning of the News Feed’s algorithm have also found that while the page relationship criterion (the correlation between the user and the website’s page showing the post) still remains important for attributing relevance, technological evolution and bandwidth expansion are changing the landscape<sup>10</sup>. So, for instance, Facebook is progressively giving more importance to video to the detriment of traditional news feeds<sup>11</sup>.

This dynamic has the effect of creating a specific online environment where the user has her page sorted with the news that, according to her profile (consisting of online behaviour and networks), will generate more traffic. While this gives visibility to what we are (assumedly) more interested in reading or watching, this system has the effect of segmenting readers as consumers, and news as products used to convey the advertising, ultimately putting on the same level highly reliable sources and fake news websites. In a New Yorker interview, Barack Obama observed that: “An explanation of climate change from a Nobel prize-winning physicist looks exactly the same on your Facebook page as the denial of climate change by somebody on the Koch brothers’ payroll.”<sup>12</sup>. In other words, he complained, in the new media environment “everything is true and nothing is true”<sup>13</sup>.

<sup>10</sup> Ravi Somaiya, Mike Isaac and Vindu Goel, ‘Facebook May Host News Sites’ Content’ (2015) 23 The New York Times.

<sup>11</sup> *ibid.*

<sup>12</sup> ‘Obama Reckons with a Trump Presidency’ (*The New Yorker*) <<http://www.newyorker.com/magazine/2016/11/28/obama-reckons-with-a-trump-presidency>> accessed 10 March 2017.

<sup>13</sup> *Ibid.*

Following the Trump election and the Brexit vote, these complaints have been exacerbated. The Facebook algorithm is indeed crafted in order to show online content without making a selection on the credibility of the source, but rather on the effectiveness of that post in generating traffic, and populist movements have used this loophole most expertly. But beyond false statements, social platforms have been shown to be very effective in creating consensus and moulding political values. Social media are companies but also tools that can be used for better or worse. Recent research has shown how political parties have used Facebook to “target specific voters in marginal constituencies with tailored messages”<sup>14</sup>. For instance, the British Conservative party spent £1.2 million on Facebook during the UK 2015 general election campaign, bypassing constituency spending limits<sup>15</sup>. Moore also documents that “the Labour party spent £16,455 on Facebook for the UK 2015 election, the Liberal Democrats £22,245, UKIP £91,322 and the Green party £21,295 (Electoral Commission)”<sup>16</sup>.

The creation of a tailored online environment has to be indeed coupled with the network effect of the polarization of ‘communities of interest’ which amplifies the segregation of users’ environment. The result is that, the users’ environment will be mainly populated with the news that is created within the same community or a community which may easily join according to his/her online profile, with few chances of being exposed to cross-cutting news<sup>17</sup>. Paradoxically, therefore, the vast amount of information generated by the internet has met the limitations of the humans’ mind, who rely on filters for the search and selection of information, which may end up being even more restricted, depending on the type of filter used. The internet medium offers a platform where ideas can compete, however both exogenous (users’ manipulation) and endogenous (algorithmic and platform distortions) conditions may hinder this process.

## 2. Freedom of speech in the ‘marketplace of ideas’

In his passionate dissenting opinion in *Abrams v. United States*<sup>18</sup>, Justice Oliver Wendell Holmes argued that “*The best test of truth is the power of the thought to get itself accepted in the*

---

<sup>14</sup> Martin Moore, ‘Facebook, the Conservatives and the Risk to Fair and Open Elections in the UK’ (2016) 87 *The Political Quarterly* 424, 424.

<sup>15</sup> Because counted as national expenditure, see Moore, *Ibid*, 427.

<sup>16</sup> Moore (n 15) 425.

<sup>17</sup> In this sense, a study ... has found that while conservatives are more exposed to false information, liberals are considerably less exposed to cross-cutting news.

<sup>18</sup> 250 U.S. 616 (1919).



competition of the market, and that truth is the only ground upon which their wishes safely can be carried out". Holmes stood up for the right to express political opinions without fearing prosecution. For doing so, he used a potent metaphor, the one of competition in the market for ideas, appealing to the libertarian heart of a capitalist country. But just like any other market, trade in ideas may be subject to distortion, due to a number of conditions, not least bounded rationality and cognitive limitations. But when are these market distortions impacting the freedom of speech and the freedom of the press<sup>19</sup>?

The metaphor of the 'marketplace of ideas' is usually traced back to John Milton's *Areopagitica*<sup>20</sup>, although he never used the term 'marketplace' and some researchers contend that his words have been misinterpreted<sup>21</sup>. Based on Milton's work, neoclassical researchers contend that only the diversity of sources competing on a level playing field can ensure an open information market<sup>22</sup>. Protecting the market for ideas means ensuring plurality of information, so that consumers can freely choose and select the truth: "[l]et [truth] and falsehood grapple; who ever knew Truth put to the worse in a free and open encounter"<sup>23</sup> Milton admonished. But this proposition assumes that the public has access to the whole information output and that there is a rational and informed selection process of the truth. While this may be virtually possible in a digital society, where information is constantly available, cultural biases, the creation of echo-chambers and cognitive limitations have demonstrated that this is not always the case<sup>24</sup>. The sources of information may have an innate bias justified by an intellectual, political, or otherwise marketwise affiliation, which may benefit the news organisation both in its relationships upstream (e.g. party affiliation) and on the demand side. In this vein, many outlets are blamed or simply recognised for pursuing ideological agendas<sup>25</sup>. Instead of diminishing the significance of

---

<sup>19</sup> Both, for instance, included in the First Amendment of the US Constitution and Article 10 ECHR, as well as in the majority of the Constitutions worldwide.

<sup>20</sup> John Milton, *Areopagitica: A Speech of Mr. John Milton for the Liberty of Unlicenced Printing to the Parliament of England* (Cambridge University Press 1644).

<sup>21</sup> Jill Gordon, 'John Stuart Mill and the "Marketplace of Ideas"' (1997) 23 *Social Theory and Practice* 235.

<sup>22</sup> FA Hayek, 'The Use of Knowledge in Society' (1945) 35 *The American Economic Review* 519; James Surowiecki, 'The Wisdom of Crowds: Why the Many Are Smarter than the Few and How Collective Wisdom Shapes Business' (2004) 296 *Economies, Societies and Nations*.

<sup>23</sup> Milton (n 21) 45.

<sup>24</sup> Cass R Sunstein, *#Republic: Divided Democracy in the Age of Social Media* (2017)

<<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=1431815>> accessed 22 June 2017; Cass R Sunstein, *Republic.Com* (Princeton University Press 2007).

<sup>25</sup> Bernard Goldberg, *Bias: A Cbs Insider Exposes How the Media Distort the News*. (Regnery Publishing 2014); Eric Alterman, *What Liberal Media?: The Truth about Bias and the News*. (Basic Books 2008)

<<http://www.SLQ.eblib.com.au/patron/FullRecord.aspx?p=679755>> accessed 3 July 2017.

Mill's preposition, this ended up reinforcing it. The presence of antagonistic sources<sup>26</sup> recreates indeed an adversarial system, where the jury (the readers, and the society as a whole) ultimately decides the truth of the case. Frederick Schauer explained this theory observing that "[j]ust as Adam Smith's "invisible hand" will ensure that the best products emerge from free competition, so too will an invisible hand ensure that the best ideas emerge when all opinions are permitted freely to compete"<sup>27</sup>.

But, what if the jury (consumers) has a severe cognitive limitation or ideological bias, facilitated by the same societal structure (the market) that it is called to judge?

The promotion of truth through unrestrained freedom of speech is based on an epistemic argument. The study of knowledge and the search for truth may be individualised or, as social epistemology tries to do, can be seen as a collective achievement.

Moreover, the diversity of sources alone do not necessarily ensure a free and diverse information environment. Gentzkow and Shapiro point out that "*there is no compelling reason to equate the number of independent sources with the number of firms. Adding competitors will have little value if they all have access to the same sources or reprint the same wire stories.*"<sup>28</sup>.

In well-functioning markets choice gives active consumers more opportunities to switch and, therefore, more bargaining power to put pressure on firms to improve their products. The role of newspapers, though, is not just to offer a product which may compete with others on an equal footing, but at the same time to perform a public service, informing the local and the international community and keeping under scrutiny the exercise of power relations.

### **3. Journalism in the market for ideas**

Journalism has a number of functions in modern societies: to inform, educate, interpret events, mold opinion, enable decision-making, and also to be an independent monitor of power. The traditional press is generally described as striving to serve the interest of widest community possible, while the specialised press and the local news outlet focus on the interests of the niche they address. According to the theory of 'interlocking public' there are at least three different audiences: interested, not interested and involved. The mission of journalism being to persuade

---

<sup>26</sup> *Associated Press v. United States*, 326 U.S. 1 [1945].

<sup>27</sup> Frederick F Schauer, *Free Speech: A Philosophical Enquiry*. (Cambridge University Press 1982) 161.

<sup>28</sup> Matthew Gentzkow and Jesse M Shapiro, 'Competition and Truth in the Market for News' (2008) 22 *The Journal of Economic Perspectives* 133, 135.

the uninvolved public to take part in the conversation<sup>29</sup>, delivering both profitable and less profitable news. Some forms of journalism involving time consuming and resource intensive investigations or elaboration of information, may be less lucrative than other types of publishing<sup>30</sup>. However, traditional newspapers and specialised organisations (such as the International Consortium of Investigative Journalists) deliver most of the investigative journalism today<sup>31</sup>. While large-scale organisations generally operate at international or even global level, it has usually been the role of local newspapers to investigate and inform the local community. Local newspapers serve a fundamental social function, which is to inform people about facts that rarely occupy the pages of international outlets. Moreover, through their investigations, they play a fundamental role in ensuring transparency and accountability of local authorities. But local newspapers have been the first to suffer the competition on the digital markets; partly because of a failure to keep up with the fast-paced development of the ‘digital revolution’, but in substantial part also because of the lack of profitability of a business model which does not ‘sell’ enough online advertisement. In this regard, the John S. and James L. Knight Foundation warned “*the local journalistic institutions that have traditionally served democracy by promoting values of openness, accountability, and public engagement are themselves in crisis from financial, technological, and behavioral changes taking place in our society.*”<sup>32</sup>. Confirming these findings, several other researches have reckoned the dramatic and steady decline of local newspapers all over the world<sup>34</sup>. As a result, the current trends suggest that the digitalisation of news and the opening of the information environment to the active participation of the general community, has opened the door to an unprecedented number of sources but, at the same time, has had the effect of diminishing the average quality of the ones available, making it also more difficult to choose among them.

News as a product and journalism as an industry therefore entail characteristics which set them apart from other markets. Vincent Blasi has observed that “markets for goods and services

<sup>29</sup> Bill Kovach and Tom Rosenstiel, *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect* (Three Rivers Press 2014) 29.

<sup>30</sup> James T Hamilton, *Democracy’s Detectives: The Economics of Investigative Journalism* (Harvard University Press 2016).

<sup>31</sup> Mark Jurkowitz, ‘What the Digital News Boom Means for Consumers’ <<http://www.journalism.org/2014/03/26/what-the-digital-news-boom-means-for-consumers/>> accessed 22 June 2017.

<sup>32</sup> Knight Commission and others, ‘Informing Communities: Sustaining Democracy in the Digital Age’ [2009] The report of the Knight Commission on the information needs of communities in a democracy.

<sup>33</sup> Rasmus Kleis Nielsen and Reuters Institute for the Study of Journalism, *Local Journalism: The Decline of Newspapers and the Rise of Digital Media* (2015)

<<http://search.ebscohost.com/login.aspx?direct=true&scope=site&db=nlebk&db=nlabk&AN=1000796>> accessed 22 June 2017.

<sup>34</sup> *ibid.*

generate prices and levels of output. A market for ideas generates a collection of individual beliefs and, in some sense, the production of observations and arguments”<sup>35</sup>. Hence, the sources of social value in the market for ideas differ from the ones concerned by ‘conventional economic markets’ as they depart from the simple interaction of supply and demand.

#### 4. The concept of a marketplace for ideas revised

In a critical reading of Holmes’ statement about the freedom of speech in the market for ideas, Blasi has offered a new interpretation of his thought, maintaining that “As Holmes understood the notion, the marketplace of ideas does not offer the prospect of a just distribution of the opportunity to persuade. It does not offer the prospect of wisdom through mass deliberation, nor that of meaningful political participation for all interested citizens. What the marketplace of ideas does offer is a much needed counterweight, both conceptual and rhetorical, to illiberal attitudes about authority and change on which the censorial mentality thrives. It honors certain character traits inquisitiveness, capacity to admit error and to learn from experience, ingenuity, willingness to experiment, resilience that matter in civic adaptation no less than economic. It devalues deference and discredits certitude, and in the process holds various forms of incumbent authority accountable to standards of performance. It offers a reason to interpret the First Amendment to protect some gestures of opposition and resistance that have nothing to do with dialogue or dialectic”<sup>36</sup>. While correcting the consolidated interpretation of Holmes’ statement, also this version does not include a fundamental observation about modern digital ‘markets for ideas’ re the interaction and the tying of ideas to other markets, in particular to the advertising and data markets. When indeed an idea is tied to an advertisement (and where the product advertised is envisioned as belonging to an aftermarket), it becomes more difficult to discern between the world of pure ideas and the one of products.

However we conceive the role of the sources, the generation of news alone does not ensure a diverse information environment, if it fails to reach the public<sup>37</sup>. As observed by the US Supreme Court in *Associated Press v. United States*, the First Amendment “*rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is*

---

<sup>35</sup> Vincent Blasi, ‘Holmes and the Marketplace of Ideas’ (2004) 2004 The Supreme Court Review 1, 8.

<sup>36</sup> *ibid* 46.

<sup>37</sup> As observed before, the value chain for the dissemination of news, despite being highly competitive at the level of ad networks, publishers and advertisers, shows a bottleneck at the level of dissemination of the news. The same players also own the greatest part of the market data used to target the audience, which is used to gain and maintain the market share.

*essential to the welfare of the public, that a free press is a condition of a free society*”<sup>38</sup>. Rightly so, the Supreme Court stressed the importance of the dissemination of news. The sources of knowledge being otherwise only a privilege for the few when they are unreachable to the many. Focusing only on the generation of news and their diversity, diverts the attention from the dissemination of the information output, which is equally important to ensure diversity and also in influencing the offer upstream. The disseminators of online news, such as social networks and news aggregators, have indeed the power to select the information to display and, more recently, they have been shown to exert important ‘buyer power’ vis-à-vis the newspapers. For instance, distributed content services in the mobile sector are now becoming more demanding with regard to the structure and content of the articles that they deliver<sup>39</sup>. But, does the current situation of the newspaper industry justify the intervention of the regulator and if so, to what extent?

### 5. The regulation of a ‘marketplace for ideas’

In 1974, Ronald Coase, wrote a nimble piece positing that the different treatment of markets for goods and markets for ideas is the result of a misconception regarding the functioning of the latter<sup>40</sup>. The article, which received relatively scarce attention at the time, observes that we welcome regulation in the market for goods and services, under the assumption that consumers “*lack the ability to make appropriate choices*” under certain conditions<sup>41</sup>, while we exclude a priori regulation in the market for ideas, under the opposite assumption. Coase concluded that the distinction between the two markets is a fictitious one and that it is not justified on the basis of public policy considerations<sup>42</sup>. He also observed that the special characteristics of certain markets for ideas justifies a different ‘public policy’ approach, which has to consider the

---

<sup>38</sup> 326 U.S. 1, 20 (1945).

<sup>39</sup> Also raising problems related to the ownership of the news, as Google shows the content framed with its url, see Nic Newman, ‘Journalism, Media and Technology Predictions 2016’ [2016] Reuters Institute for the Study of Journalism <<https://ora.ox.ac.uk/objects/uuid:f15fac34-bafb-4883-898c-a53ade027e32>> accessed 1 July 2017.

<sup>40</sup> Ronald Harry Coase, ‘The Market for Goods and the Market for Ideas’ (1974) 64 *The American Economic Review* 384.

<sup>41</sup> *ibid* 384.

<sup>42</sup> He indeed stated: “*I do not believe that this distinction between the market for goods and the market for ideas is valid. There is no fundamental difference between these two markets and, in deciding on public policy with regard to them, we need to take into account the same considerations. In all markets, producers have some reasons for being honest and some for being dishonest; consumers have some information but are not fully informed or even able to digest the information they have; regulators commonly wish to do a good job, and though often incompetent and subject to the influence of special interests, they act like this because, like all of us, they are human beings whose strongest motives are not the highest*”. *ibid* 389.

“appropriate social arrangements”<sup>43</sup>. However, he encouraged government intervention to remedy market failures, just like it exists in any other market. In his analysis of the regulatory policy in the marketplace for ideas, Coase however did not consider the multitude of interests and legal rights related to the ‘information goods’. They are simultaneously tradable goods and object of the exercise of the freedom of speech<sup>44</sup>, which are two faces of the same coin, for - as Antonio Nicita observes - regulation on one of the two sides inevitably produces effects on the other<sup>45</sup>. The development of digital markets for ideas requires one to rethink such dyadic vision of the status quo. The medium for the dissemination of news is now disentangled both from the generation and the commercialisation of information, while capitalising on the related advertising market. Despite this, most news are now created for the internet, according to the standards dictated by the specific medium, and paid for by the online advertising industry.

If the aim of the market for ideas is to exhibit a sufficient level of competition and, at the same time, to deliver the truth, this is an obligation to achieve a result which does not generally encumber other markets. But, is ‘the truth’ really the result of a process, which is triggered by the diversity of opinion matters?<sup>46</sup> Greek philosophy before and Foucault after, noted that ‘parrhesia’ (freedom and courage to speak), is a fundamental feature of every democracy, but is at the same time a danger undermining its fundamentals. The flipside of it being a ‘bad parrhesia’, in which people can say anything, without control<sup>47</sup>, giving rise to what today we call populism, hate speech and fake news. Thus, Foucault noticed “a necessary antinomy between parrhesia — freedom of speech — and democracy, [which] inaugurated a long impassioned debate concerning the precise nature of the dangerous relations which seemed to exist between

---

<sup>43</sup> *ibid.*

<sup>44</sup> Antonio Nicita, ‘Mercato Dei Beni e Mercato Delle Idee: Oltre Il Paradosso Di Coase?’ (*DIMT.IT*) <<https://www.dimt.it/index.php/it/notizie/14464-26mercato-dei-beni-e-mercato-delle-idee-oltre-il-paradosso-di-coase>> accessed 20 October 2017.

<sup>45</sup> *ibid.*

<sup>46</sup> The correspondence theory postulates that something is true if it corresponds to the facts, to the way things actually are, see Marian David, ‘The Correspondence Theory of Truth’ [2010] Stanford encyclopedia of philosophy.

<sup>47</sup> Nicita (n 45).

democracy, logos, freedom, and truth”<sup>48</sup> in Greek society. The competition between a number of formally independent sources of information, does not ensure that the truth is unveiled.

Freedom of speech is generally deemed to be, in democratic societies, a personal right to express ideas and beliefs. It however fulfils, at the same time, a broader function as a right benefitting society as a whole, forming the basis of a right to information. The freedom of speech, in other words, is not confined to a personal right to express ones thoughts and opinions but it also promotes an informed citizenry. It therefore serves, to rebind with Coase, a public interest function which transcends the nature of private rights.

## Conclusion

In homogenous product markets it is - in theory - possible to achieve perfect competition, even in a situation of duopoly. The internet medium has created a competitive ground which propelled the homogenisation of news toward the economic model which meets its specific needs. This is leading, according to the market data available, to the disruption of ‘fringes’ of the market which are not as efficient, for instance local news and investigative journalism. The discussion around the preservation of a diverse information environment and about its importance of journalism for society and democracy as a whole is crucial, but it does not square the circle in the quest for understanding the market for ideas.

Competition does not take place between ideas but between diverse products and homogenous ideas. The competition takes place between the advertised goods and for the attention and retention of consumer data, with news being only a vehicle, which, if controlled and cogently boxed in, can yield optimal economic outcomes.

The metaphor of a marketplace where ideas can compete in an unconstrained way is therefore a misleading one. For, it directs the attention to the free expression of thought, assuming equal impact in the dissemination and rationality of who receives the information.

Considering that the objective truth is not the result of a natural selection if bounded rationality and echo-chambers are in play, the generation of information and the potential availability of vast sources of knowledge are not enough, when internet platforms and advertising businesses are able to determine and control the spreading of this information. Hence, regulation of the ‘information markets’ is needed in order to aid better dissemination of news and sustain those

---

<sup>48</sup> Michel Foucault and Joseph Pearson, *Fearless Speech* (Semiotext (e) Los Angeles 2001).

‘less efficient’ sources (such as local news and investigative journalism), which – yet – have a special role in our democracies. But to do so, one has to consider the public interest of a right to information and not solely the diversity of potential sources.