



DEPARTMENT OF JUSTICE

Remarks at the Public Workshop on Competition in Television and Digital Advertising

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Anne K. Bingaman Auditorium and Lecture Hall
U.S. Department of Justice
Washington, DC

May 2, 2019

Good afternoon and welcome to the Anne K. Bingaman Auditorium at the Antitrust Division. I am pleased to open today's workshop on competition in television and digital advertising.

I would like to thank our panelists and their organizations for their participation in this workshop. It is an honor to see such an esteemed group of industry experts, including academics and high-level executives from all facets of the media advertising industry, who have taken time out of their busy schedules to participate in this important discussion.

I also would like to thank several of my colleagues from the Antitrust Division who were instrumental in organizing this workshop: attorneys Daniel Haar, Erica Mintzer, and Karina Lubell, along with Lee Berger and Carl Willner. Thanks to economist Matt Magura and our chief economist Jeff Wilder, and to paralegals Daniel Stone and Danielle Norgren-Markley. And of course, my colleague from the Division's leadership, Rene Augustine.

Today's workshop will explore industry dynamics in media advertising and the implications for antitrust enforcement and policy. Workshops like these give us the opportunity to have a candid dialogue with relevant stakeholders and thought leaders to ensure that we stay current with emerging industry trends, new business models, and the latest economics. They help us to better understand where to focus our enforcement and advocacy efforts and how best to think about competitive dynamics in the markets those efforts address.

As Judge Robert Bork wrote in the epilogue to "The Antitrust Paradox" fifteen years after it was originally published, "[t]hrough 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."¹

¹ Robert H. Bork, THE ANTITRUST PARADOX 430 (1993 ed., orig. 1978).

Importance of Advertising

When we think about the importance of advertising, I'm also reminded of a saying that sometimes has been attributed to Henry Ford that "stopping advertising to save money is like stopping your watch to save time." Advertising, of course, is an important way through which many of us learn about new or improved products and services. Even more important to many of us, advertising revenue supports countless non-advertising institutions we value, from news media, to television to search engines and social media, and what appears to be nearly every new business in the digital economy.

Ad-supported business models bring goods and services to customers who would otherwise be priced out. Thanks to revenue from advertising, consumers often pay lower prices, and sometimes even enjoy goods or services free of charge. Studies demonstrate that many consumers prefer ads to paying for certain services. For example, nearly 80 percent of respondents in one study reported in Recode represented that they would choose an ad-supported Facebook over paying \$1/month.² Some consumers may even prefer receiving targeted advertisements that are more likely to be relevant to their needs than ads that reach broad audiences, but whose products and services may be inapplicable to many viewers.

Ad-supported business models are a form of a multi-sided platform. They serve consumers who wish to digest content and advertisers who hope to influence those consumers with the ads that accompany the content. In a speech I gave earlier this year,³ I noted that industries with zero-price strategies and multi-sided platforms have market complexities that

² Rani Molla, *How much would you pay for Facebook without ads?*, RECODE (Apr. 11, 2018), <https://www.recode.net/2018/4/11/17225328/facebook-ads-free-paid-service-mark-zuckerberg>.

³ Makan Delrahim, Assistant Att'y Gen., Antitrust Div., U.S. Dep't of Justice, "I'm Free": Platforms and Antitrust Enforcement in the Zero-Price Economy, Remarks as Prepared for Delivery at Silicon Flatirons, University of Colorado Law School (Feb. 11, 2019), <https://www.justice.gov/opa/speech/file/1131006/download>.

antitrust enforcement must grapple with. That is why our job as an antitrust enforcer in this industry requires rigorous dynamic analysis.

Technological Change in Media Advertising

A mere twenty years ago, Mark Zuckerberg was in middle school, we were snapping pictures on rolls of film in cameras, and we were renting our movies in VHS format from Blockbuster. “Google” and “friend” were not verbs. Progress and innovation have changed our lives dramatically in the digital age, and digital advertising has evolved, and continues to evolve, just as quickly as it has grown. Yahoo! first introduced search ads in 1995. Several years later, Google developed AdWords and it wasn’t long before digital advertising was ubiquitous. What began with basic search and display advertising, grew to include online video advertising, dynamic advertising and localized digital advertising. Mobile devices such as smart phones and tablets have provided additional channels to influence consumers through advertising. Bill Gates famously predicted in 2005 that “[t]he future of advertising is the Internet” and that more than half of all ads would be personalized.⁴

It is no surprise that connected TVs, which are at the intersection of linear television and digital advertising, exist in nearly 40% of homes across America.⁵ Looking at a visual of the players operating in this segment of the industry alone is enough to make your head spin,⁶ and it keeps changing.

⁴ Jennifer Whitehead, *Gates says future of advertising lies on the internet*, CAMPAIGN (Oct. 27, 2005), <https://www.campaignlive.co.uk/article/gates-says-future-advertising-lies-internet/524897>.

⁵ Rimma Kats, *How Many Households Own a Smart TV?*, EMARKETER (Nov. 15, 2018) <https://www.emarketer.com/content/how-many-households-own-a-smart-tv>.

⁶ Telaria, *The Connected TV Telascope* (Mar. 1, 2019), https://storage.pardot.com/650363/55778/Telascope_March13.pdf.

Of the top 10 companies that contributed to digital advertising's revenue growth 10 years ago, only three remain on the top 10 list today.⁷

The digital advertising that emerged in the late 1990s was primarily contextual, delivering advertising messages without personal data about their audiences. Today, because of the wealth of data that ad networks and publishers are able to collect about a website's audience, behavioral targeting now accounts for a large percentage of digital advertising. Moreover, because ad networks represent multiple publishers at once, they are often able to offer publishers access to much greater quantities of such data they would not be able to access individually. At the same time, this data increasingly enables ad networks to adopt a new model that circumvents content providers and targets individuals directly for advertisements.

The collection of data and the ability to carefully target audiences is a distinguishing feature of digital advertising, but also one that has attracted significant scrutiny in recent years. No discussion about media advertising would be complete without hearing industry perspectives on the role of customer data.

Division Experience

Fortunately, the Division has significant experience with varied advertising markets, including newspapers, radio, billboards, movie theaters, television and Internet. Our investigations into Google's 2011 acquisition of Admeld focused on the potential effect of the merger on competition in the display advertising industry. Through our investigation, we came to appreciate the role of intermediaries, including ad networks, ad exchanges and ad servers in facilitating transactions between advertisers and web publishers.

⁷ Sarah Sluis, *Digital Ad Market Soars to \$88 Billion, Facebook and Google Contribute to 90% of Growth*, AD EXCHANGER (May 10, 2018), <https://adexchanger.com/online-advertising/digital-ad-market-soars-to-88-billion-facebook-and-google-contribute-90-of-growth/>.

Our in-depth reviews of Google's proposed advertising agreement with Yahoo! in 2008 and then Microsoft's search agreement with Yahoo! the following year gave us opportunities to learn about the importance of scale and the nature of competition for advertisers between search engines. The parties abandoned the Yahoo!/Google advertising agreement after the Antitrust Division informed them it would file a lawsuit to block implementation of the agreement on the grounds that it would harm competition in search advertising and search syndication, in which the companies accounted for at least 90 percent of the combined market share. By contrast, the Division closed its investigation of the Microsoft/Yahoo! Agreement on the grounds that it was not likely to reduce competition and could enable the companies to compete more effectively with Google in the market.

We recently looked at several broadcast mergers. In late 2016, the Antitrust Division required Nexstar to divest seven broadcast television stations in order to complete its proposed acquisition of Media General. More recently, we reviewed Sinclair Broadcast Group's proposed acquisition of Tribune Media, which the parties abandoned last summer after lengthy investigations by both the Antitrust Division and the FCC. Based on the parties' documents and the other evidence available at the time we alleged that the relevant market was limited to broadcast spot advertising within a given Designated Market Area (DMA).

Advertising was also an important issue in the recent AT&T/Time Warner merger investigation. Dr. Susan Athey, a highly respected professor of technology economics at Stanford, testified for the government regarding AT&T's claimed advertising efficiencies. We will hear from Professor Athey again today when she gives the opening lecture at our workshop this afternoon, and from AT&T's advertising unit tomorrow regarding the status of its new platform initiative.

In addition to our merger work, our investigations into anticompetitive conduct have provided a wealth of information about media advertising markets. Since last November, we have reached settlements with seven broadcast television companies, who we alleged had colluded with their competitors to reduce competition in the market for broadcast advertising.

From our earliest enforcement action against newspapers that colluded to pressure their advertisers into exclusive contracts – the 1940 case *U.S. v. Chattanooga News-Free Press Co.*, in which each defendant was required to pay a fine of 1 cent – to our decision in late 2017 requiring Entercom Communications Corp. to divest 13 broadcast radio stations in select DMAs to complete its acquisition of broadcast radio stations from CBS Corporation, we understand that advertisers often purchase advertising on a mix of media platforms, with each medium tending to serve a different function in meeting the advertiser’s needs.

Market Definition

Advertising legend David Ogilvy once commented that “[w]hat really decides consumers to buy or not to buy is the content of your advertising, not its form.”⁸ Yet for antitrust enforcers, defining the relevant market requires consideration of forms of advertising, which continue to evolve.

Our experience with advertising markets has taught us that there are varying levels of substitution for ad placement across media. For example, through our investigations, we have found that even if it means absorbing a price increase, some of the evidence we have seen suggests that advertisers are unlikely to look beyond broadcast spots within a given DMA. Price is not the only factor: we have heard advertisers express concerns about brand safety and ad

⁸ SAP, Sponsored Post, *22 Best Marketing Quotes To Drive Your Marketing Strategy*, FORBES (Jan. 13, 2013), <https://www.forbes.com/sites/sap/2013/01/16/22-best-marketing-quotes-to-drive-your-marketing-strategy/#111176c77e06>.

fraud on digital platforms. In addition, our investigations involving Google have shown that search advertising is used by advertisers very differently than other forms of online or offline advertising.

Digital advertising offers an opportunity to target customers in a way that was unimaginable in traditional media advertising. Understanding the extent to which that distinction is significant from an advertiser's perspective is important to our analysis of these markets, as is the increasing ability of other media to target consumers. Although they may have embraced digital advertising, we must understand if advertisers view advertising on digital media as a substitute to television advertising or as a useful complement.

Evidence uncovered during our investigations has shown that many advertisers indeed have embraced digital advertising. We also recognize that the media industry and the advertising landscape continues to evolve. That is why, as part of our antitrust analysis, we spend so much effort investigating the product market.

For more than a half century, television was the biggest advertising medium in the United States. Today, as I understand it, more than half of advertising occurs online.⁹ Digital ad spending is expected to reach nearly \$130 billion this year and exceed television ad spending by \$20 billion.¹⁰

Disruption to traditional advertising markets by new media is far from unprecedented. The newspaper industry was subject to disruption when radio developed into a national medium in the 1920s and 1930s. Newspapers were required to differentiate themselves from radio's news

⁹ *US Digital Ad Spending Will Surpass Traditional in 2019*, EMARKETER (Feb. 19, 2019), <https://www.emarketer.com/content/us-digital-ad-spending-will-surpass-traditional-in-2019>.

¹⁰ *Id.*

product. When television broadcast networks entered the American market in the 1950s, both newspapers and radio stations were forced to adapt in response to industry disruption.

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.

Moreover, as we consider the changing marketplace, it is important to keep in mind former Assistant Attorney General of Antitrust, Anne Bingaman’s comments in a speech on *Competition and Innovation: The Bedrock of The American Economy*, where she noted that – and I quote – “we’re not the first generation to be confronted with increasingly rapid change. It’s probably true that every generation since the beginning of the Industrial Revolution has worried about the impact of the changes that they were experiencing.”

Workshop Format

Today and tomorrow, we will hear from academics and executives from leading companies, including buyers and sellers of advertising inventory. Professor Susan Athey will begin the workshop with a discussion about why companies advertise, the history and economics of advertising, through the introduction of digital advertising. She will also talk about the role of data, measurement and attribution in advertising.

Following Professor Athey’s lecture, we will hear from two panels this afternoon examining (1) television advertising; and (2) internet and mobile advertising. Tomorrow

morning, our workshop will resume with panels discussing (3) competitive dynamics in media advertising; and (4) trends and predictions for advertising generally.

Conclusion

I want to thank each of our panelists for your willingness to participate in this workshop and for the perspectives you bring. I look forward to the discussion this afternoon. I fear I would somehow be remiss if I give remarks on advertising and fail to reference Mad Men's character Don Draper. His wisdom will serve our panelists well throughout this workshop. He said, "If you don't like what's being said, change the conversation."¹¹ Of course, I always try to follow former House Speaker Tip O'Neil's advice, "Speak only when you can improve the silence."

To get started, let me now introduce Professor Susan Athey, who will deliver our opening lecture. She is one of the leading experts on the economics of digitization, marketplace design and online advertising. As one of the first "tech economists" she served as consulting chief economist for Microsoft for six years and currently is on the boards of Expedia, Rover and Ripple. We could not have asked for a better presenter to kick off our event. Thank you Susan.

¹¹ *Mad Men: Love Among the Ruins* (AMC television broadcast Aug. 23, 2009).