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COMPETITION, MARKET FAILURE, AND DOUBLETHINK IN NEWS MARKETS

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The Trump administration is persuaded that U.S. news markets currently lack an adequate diversity of political and ideological viewpoints. It has deployed the power of the federal government to prevent mainstream broadcast and digital media outlets from suppressing viewpoints that it believes they wrongly disfavor. The administration says it is protecting the public interest in an informed citizenry and promoting competition in the marketplace of ideas; critics say it is jawboning news publishers, coercing speech, and flouting the First Amendment for political gain.

Since the dawn of the deregulatory era in the telecommunications sector, and long before then in other media markets, the federal government has been loath to interfere with the editorial judgments of news publishers. Its rationale follows from the Reagan administration's 1987 decision to repeal the bulk of the fairness doctrine, which had held that broadcasters who were awarded the privilege of operating on scarce, publicly owned spectrum frequencies must afford "reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance."[1] President Reagan's Federal Communications Commission (FCC) concluded that this rule, which had sought to promote viewpoint diversity, had backfired by chilling speech: it induced broadcasters to avoid controversial issues of public importance rather than risk sanctions for a perceived imbalance in presentation.[2] The Supreme Court has since specified that "the editorial function itself is an aspect of 'speech'"[3] and explained that broadcasters, like other news publishers, "enjoy the 'widest journalistic freedom.'"[4]

Notwithstanding the strong First Amendment protection for news producers' editorial judgments, the FCC does maintain a policy of protecting against "news distortion," which involves the "deliberate staging, slanting, and falsifying of news."[5] Because, "in this democracy, no Government agency can authenticate the news, or should try to do so," the policy is rarely invoked.[6] News distortion claims are subject to an

[1] Fed. Commc'ns Comm'n, Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 Fed. Reg. 10415, 10416 (1964).

[2] *In re Syracuse Peace Council Against TV Station WTVH Syracuse*, 2 FCC Rcd 5043, 5043 (1987), *aff'd* 867 F.2d 654 (D.C. Cir. 1989).

[3] *Denver Area Educ. Telecommc'ns Consortium, Inc. v. FCC*, 518 U.S. 727, 737 (1996).

[4] *Ark. Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 673 (1998) (citation omitted); *see also FCC v. League of Women Voters of California*, 468 U.S. 364, 375–376 (1984) ("[E]xpression of editorial opinion on matters of public importance . . . is entitled to the most exacting degree of First Amendment protection.").

[5] Chad Raphael, *The FCC's Broadcast News Distortion Rules: Regulation by Drooping Eyelid*, 6 COMM. L. & POL'Y 485, 486 (2001).

[6] *In re Complaints Covering CBS Program "Hunger in Am."*, 20 F.C.C.2d 143, 151 (1969); *see Galloway v. FCC*, 778 F.2d 16, 21 (D.C. Cir. 1985) (noting that the FCC "has given its policy against news distortion an extremely limited scope"); Raphael, *supra* note 5, at 501–07.

exacting four-part test that applies only to "egregious misconduct, including the wholesale fabrication of news stories."[7]

The FCC found violations of its news distortion policy in only eight cases between 1969 and 2019—and only one case between 1985 and 2019.[8] All involved "elaborate hoaxes, internal conspiracies, and reports conjured from whole cloth."[9] Not once did the agency find news distortion based on a broadcaster's mere exercise of editorial discretion.[10] "Rigging or slanting the news is a most heinous act against the public interest," the agency has explained, but "we will eschew the censor's role" because a governmental inquiry to establish news distortion can "constitute a worse danger than the possible rigging itself."[11]

This essay takes no position on whether the Trump administration has violated anyone's First Amendment rights in any of its regulatory or enforcement activities targeting the news industry. For argument's sake, it accepts the controversial premise that editorial judgments on viewpoint diversity could ever give rise to a federally actionable news distortion claim. By taking that premise as given, the essay is able to examine the government's interventions on their own terms. It concludes that the government's efforts are destined to fail even if the government is correct in believing that a lack of adequate viewpoint diversity can give rise to a federally actionable news distortion claim. The administration cannot achieve its goals because it has failed to formulate a coherent view on the nature of consumer demand for viewpoint diversity.

I. PUBLIC GOODS VS. PRIVATE GOODS: "DON'T JUST DO SOMETHING—STAND THERE"

If the administration is correct to believe that an ongoing suppression of valuable viewpoints is harming the public, it must first answer a basic question before it can ever hope to craft an effective policy response: Will competitive markets fix the problem on their own? Or, instead, do competitive markets fail to deliver viewpoint diversity, such that regulatory intervention is required?

The answer depends heavily on the nature of consumer demand for viewpoint diversity. Clearly, news consumers want some kind and degree of viewpoint diversity. Were it otherwise, Congress would not have bestowed a public-interest mandate on the

[7] Comments of Former Commissioners Rachelle B. Chong, Ervin S. Duggan, Alfred C. Sikes, Gloria Tristani, and Tom Wheeler at 8–10, *In the Matter of News Distortion Complaint Involving CBS Broadcasting Inc., licensee of WCBS, New York, NY*, MB docket No. 25-73 (Mar. 26, 2025).
[8] *Id*. at 10.
[9] *Id*. at 11.
[10] *Id*. at 11–13 (noting that previous complaints were forcefully rejected on free speech grounds).
[11] *Hunger in Am.*, 20 F.C.C.2d at 151 (1969).

FCC that counts viewpoint diversity among its "lodestars."[12] But if there is a market failure in news markets, consumers may not be able to send a clear market signal that reveals how much and what kind of viewpoint diversity they value.

The stakes of a potential market failure are high. As the U.S. Supreme Court has explained, governmental efforts to measure demand for viewpoint diversity without the aid of market signals would require "qualitative judgments objectionable on both policy and First Amendment grounds."[13] Such judgments would defy the principle that "[t]he government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."[14] Without the aid of consumer demand signals, any governmental efforts to inject balance in news markets thus may court intolerable risks of chilling speech, much as governmental investigations into news distortion may do so.[15]

News is an information-based product, so it is reasonable to consider whether it could be susceptible to an information-based market failure. One concern is that the news may be what economists call an "experience good" or a "credence good." That is, consumers may not discover the quality of the news they consume, or their own satisfaction with it, until long after they have consumed it, or they may never fully know.[16] Empirical studies in the aftermath of the 2016 presidential election concretized this fear when numerous reports revealed a proliferation of "misinformation" or "fake news," particularly in online markets where the news is distributed digitally.[17]

Information problems of this kind theoretically could cause market failure if digital news consumers find themselves stuck in unhealthy informational feedback loops.[18] Whether because of misguided content moderation policies, filter bubbles, high search costs, or "information overload," news consumers may be unknowingly fed an impoverished information diet, which could prevent them from being exposed to alternative viewpoints that are necessary for a well-informed citizenry.[19] If consumers do not realize what they are missing when they consume news, then they may fail to signal demand for the socially optimal level of viewpoint diversity in news markets, or for a level that even comes close.

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[12] FCC 2018 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules, 89 Fed. Reg. 12,196, 12,200 (Feb. 15, 2024) (to be codified at 47 C.F.R. pt. 73).
[13] *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 797 (1978).
[14] *Rosenberger v. Rector*, 515 U.S. 819, 829 (1995).
[15] *Hunger in Am.*, 20 F.C.C.2d at 151.
[16] *See* RANDY M. STUTZ, ANTITRUST LAW AND DOMINANT-FIRM BEHAVIOR IN THE DIGITAL TECHNOLOGY SECTOR: TOWARD AN ACTIONABLE AGENDA FOR POLICYMAKERS, AM. ANTITRUST INST. 20–22 (June 28, 2021), https://tinyurl.com/22ptrpbs.
[17] *See id*.
[18] *Id*.
[19] *Id*.

If information problems do create a market failure in news markets, then viewpoint diversity can be thought of as a "public good," not unlike clean air. Markets often fail to curb air pollution on their own because the benefits of clean air are hard to monetize. When a product manufacturer that emits air pollutants invests in emission controls, the benefits spill over to the public at large, such that the manufacturer's customers are often unwilling to bear the full cost of the controls by paying the higher prices necessary for the manufacturer to recoup its investment. The market signal that would otherwise indicate consumer demand for clean air thus gets muffled.

One of the defining features of a public good is that even highly competitive markets underproduce it, prompting regulatory intervention. Competitive manufacturing markets, for example, underproduce the emission controls that generate clean air, prompting Congress to establish minimum emission-control standards through the Clean Air Act. So too here, perhaps: if the market signal indicating consumer demand for alternative viewpoints is getting muffled, then in theory news producers may undersupply viewpoint diversity. And if information problems in news markets rise to the level of a market failure, then regulation would be the only potential solution. No amount of free-market competition would generate an increase in the supply of viewpoint diversity.

Of course, not all information problems lead ineluctably to market failure. Market mechanisms sometimes can solve information problems on their own, allowing competition to flourish. News consumers, for example, may be able to send adequate demand signals by relying on news producers' brands and reputations, advertising, third-party fact-checkers, or Pulitzer Prizes and other similar indicators of quality. If consumers can safely use market devices to accurately signal their demand for viewpoint diversity, then viewpoint diversity should be thought of as a "private good," not a public good.

In that case, a regulatory intervention would be unnecessary. Competition efficiently responds to consumer demand for private goods, so the free market thus would ensure that news publishers produce the socially optimal level of viewpoint diversity. The government would only need to provide vigorous antitrust enforcement to ensure that news markets remain competitive.

A complicating wrinkle is that news markets are not static. They can change over time, particularly when innovation leads to new methods of distribution. Consequently, in any given news market, the available evidence may suggest that viewpoint diversity presents as a public good in one moment and a private good in the next. And because news is often distributed in telecommunications markets where the federal antitrust agencies and the FCC share concurrent jurisdiction, the government often has a choice whether to rely on antitrust enforcement or regulation to promote viewpoint diversity, or

to use both as complements.[20] Before the government can decide how to act, however, it must first decide what problem it is trying to solve.

II. BAD BEHAVIOR VS. MARKET FAILURE: "EITHER/OR," NOT "YES/AND"

Sound policymaking requires at least a temporary choice between the public-goods and private-goods frameworks. Before contemplating any particular enforcement or regulatory action in any given news market, the government must decide whether to treat viewpoint diversity as a private good that competitive markets efficiently produce (like manufactured goods) or as a public good that competitive markets underproduce (like clean air). It can act as though competitive markets meet consumer demand for viewpoint diversity in news markets or as though they underdeliver, but it cannot coherently act as though both are true at once.

Nevertheless, the government has done so. U.S. agencies have recently taken simultaneous enforcement and regulatory actions that alternately treat viewpoint diversity as a private good and a public good in the same digital news markets, apparently believing that competition can be both effective and ineffective in the same markets at the same time. That approach amounts to what George Orwell defined as "doublethink": "holding two contradictory beliefs in one's mind simultaneously, and accepting both of them."[21] Doublethink is a recipe for failed antitrust enforcement, failed regulation, or both.

Failure is mutually assured by the government's conflicting actions because the government cannot avoid underlying factual realities. Even if such factual realities are obscured by the dynamic nature of news markets, they will still have force. If viewpoint diversity is in fact a public good, then antitrust enforcement to promote competition will do nothing to increase its supply. If it is in fact a private good, then regulation to increase its supply will misallocate resources by distorting the market. Unless the government is deploying a multivariate, strategic policy based on complexities it has never articulated, its concurrent reliance on both market mechanisms and supply mandates thus will be self-defeating. Each approach will undermine the other.

III. DOUBLETHINK IN DIGITAL NEWS MARKETS

The government's doublethink is reflected in at least three recent actions by the Antitrust Division of the U.S. Department of Justice (DOJ), the FCC, and the Federal Trade Commission (FTC). In overlapping digital news markets within the span of one

[20] *See* Howard A. Shelanski, *The Case for Rebalancing Antitrust and Regulation*, 10 MICH. L. REV. 683, 718 (2011).
[21] GEORGE ORWELL, NINETEEN EIGHTY-FOUR, pt. 2, ch. 9 (1949).

month, the DOJ treated viewpoint diversity like a private good, the FCC treated it like a public good, and the FTC vacillated inexplicably. The result has been incomprehensible policy.

1. The DOJ's Position: Competition Sets the Level of Viewpoint Diversity in News Markets

On July 11, 2025, the DOJ filed a statement of interest in support of the plaintiffs on a motion to dismiss in *Children's Health Defense v. Washington Post Co.*,[22] a private antitrust case brought by non-mainstream content publishers alleging that mainstream news organizations illegally excluded them from "digital news markets."[23] The defendant news organizations helped form the Trusted News Initiative (TNI), which they describe as an information-sharing partnership among media organizations and social media platforms that enables members to "inform each other" when they come across "extreme disinformation."[24] The plaintiffs allege that the TNI is pretextual. They maintain that the news organizations and platforms use the TNI to blocklist and boycott non-mainstream publishers that compete by offering alternative viewpoints.[25]

The DOJ supported the plaintiffs' theory of liability without mentioning the possibility of information problems or market failure. Moreover, the agency made several economic claims that did not depend on any case-specific facts or the kinds of inferences normally drawn in the plaintiff's favor at the motion-to-dismiss stage. First, the agency claimed, "[n]ews consumers desire and demand diverse perspectives."[26] Second, "consumer welfare . . . benefit[s] greatly from viewpoint competition in [digital] news markets."[27] Third, "immunizing anticompetitive conduct that limits consumers' access to diverse viewpoints" would "cause grave harm in modern digital [news] markets."[28]

The DOJ's claims only make sense if the agency believes that market mechanisms solve information problems in digital news markets. If a market failure prevents consumers who are denied viewpoint diversity from ever realizing what they are missing, then no amount of viewpoint competition will ever benefit consumers in these markets, nor will anticompetitive conduct make them any worse off. For the DOJ to believe it has any competition interest at stake in the outcome of the case, the agency must

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[22] *Children's Health Def. v. Wash. Post Co.*, No. 1:23-cv-02735 (D.D.C. filed May 31, 2023).

[23] Compl. ¶¶ 133, 155, *Children's Health Def. v. Wash. Post Co.*, No. 1:23-cv-02735 (D.D.C. filed May 31, 2023) ("[T]here are fundamental differences between the digital news market and the print and broadcast news markets."); *see* Statement of Interest of the United States at 3, *Children's Health Def. v. Wash. Post Co.*, No. 1:23-cv-02735 (D.D.C. filed July 11, 2025) (applying its analysis to "digital news markets").

[24] Br. in Supp. of Def's Mot. to Dismiss at 5, *Children's Health Def. v. Wash. Post Co.*, No. 1:23-cv-02735 (D.D.C. filed July 11, 2023) (alteration omitted).

[25] Compl., *supra* note 23, ¶¶ 3–10, 318.

[26] Statement of Interest, *supra* note 23, at 1.

[27] *Id*.

[28] *Id*. at 7.

presuppose that competitive markets, free from monopolization, collusion or coordination, will adequately meet consumer demand for viewpoint diversity in digital news markets.

2. The FCC's Position: Individual Firms Can Set the Level of Viewpoint Diversity Unilaterally

On July 24, 2025, the FCC conditionally approved the *Paramount/Skydance* merger under the Communications Act of 1934.[29] Skydance is a leading movie and television production company.[30] Paramount is an entertainment conglomerate that owns movie and television studios, streaming services, television networks, and CBS News.[31] CBS News is a unified, multi-channel news service that delivers content in a variety of markets, including digital news markets.[32]

The FCC reviews mergers under a public interest standard that includes, but is not limited to, the merger's effect on competition. When a transaction falls within the FCC's jurisdiction, the FCC and DOJ undertake parallel, complementary competition reviews. The DOJ evaluates whether the merger may substantially lessen competition under Section 7 of the Clayton Act, and the FCC evaluates any broader effects on competitive conditions that could otherwise inform its ultimate public-interest determination under the Communications Act. The FCC then weighs competitive benefits and competitive harms alongside other public-interest benefits and harms.[33]

The DOJ completed its competition review of *Paramount/Skydance* in August 2024, and the FCC did so in July 2025. Both agencies concluded that the merger did not threaten to create or enhance market power or otherwise harm competitive conditions.[34] Having ruled out any anticompetitive effects, the FCC then weighed the merger's remaining public interest benefits and harms.[35] As relevant here, the FCC credited as a "public interest benefit" Skydance's unilateral commitment to provide

[29] Mem. Op. & Order, *In re Applications of Skydance Media, LLC & Paramount Global*, FCC 25-43, Docket No. 24-375 (July 24, 2025) (hereinafter "*FCC Paramount/Skydance* Op.").
[30] *See* Skydance Media, About, https://skydance.com/about/ (last visited Nov. 12, 2025).
[31] *See* Paramount Global, About, https://www.paramount.com/about/ (last visited Nov. 12, 2025).
[32] *See* CBS News, About CBS News and Stations, https://www.paramount.com/about/brands/cbs-news (last visited Nov. 12, 2025).
[33] *See generally* Alexander Maltas, Tony Lin & Robert F. Baldwin III, *A Comparison of the DOJ and FCC Merger Review Processes: A Practitioner's Perspective*, ABA ANTITRUST SOURCE (Aug. 2016), *available at* https://tinyurl.com/mvs8vemp.
[34] *See FCC Paramount/Skydance* Op., *supra* note 29, ¶ 49 (finding "no evidence in the record that would support a finding of a transaction-related [competition] harm"); Paramount Global, Registration Statement on Form S-4 at 48 (June 30, 2024), https://tinyurl.com/32mdhjc8 (noting that DOJ allowed the Hart-Scott-Rodino (HSR) Act waiting period to expire on August 19, 2024).
[35] *See* FCC Paramount/Skydance Op., *supra* note 29, ¶¶ 50–59.

politically and ideologically diverse viewpoints in all of "CBS's reporting," apparently including its reporting in digital news markets.[36]

The FCC's ruling does not square with the DOJ's statement of interest in *Children's Health Defense*. If a market failure causes the undersupply of viewpoint diversity in digital news markets, then the FCC's ruling is understandable because Skydance's unilateral commitment could help make up for the gap in supply. But if market mechanisms meet the demand for viewpoint diversity in digital news markets—as the DOJ must have thought in *Children's Health Defense*—then a single firm's unilateral choices are incapable of registering any effect. Any supply increase by the merged firm will be ephemeral because the other firms in the market will invariably compete away the difference, restoring the market equilibrium level of viewpoint diversity.[37]

The agencies' actions thus rest on conflicting premises. Whereas the DOJ's statement of interest only makes sense if market mechanisms solve information problems in digital news markets, the FCC's ruling only makes sense if market mechanisms fail to do so. One of two conclusions follows: Either the FCC credited a faux public interest benefit in *Paramount/Skydance*, or the DOJ asserted a competition interest without actually having one in *Children's Health Defense*. Without further explanation, something does not add up.

3. The FTC's (Impossible) Position: Coordinated Effects Can Threaten Viewpoint Diversity, But Unilateral Conduct Can Fix the Problem

On September 26, 2025, the FTC finalized a consent order settling a Section 7 challenge to the 6-5 horizontal merger of advertising conglomerates Omnicom and Interpublic Group (IPG).[38] The FTC's complaint alleged that the merger threatened coordinated anticompetitive effects in a relevant submarket for global media-buying services.[39] In this market, the "Big Six" media buyers, which would become the Big Five post-merger, represent advertisers in negotiating the purchase of ad inventory from media publishers, including digital news publishers.[40]

The FTC's complaint did not allege any unilateral anticompetitive effects. It alleged only that, by increasing concentration, the merger increased the likelihood that media buyers would collectively boycott non-mainstream publishers that compete by

[36] *Id*. ¶¶ 55, 59.

[37] The merged firm's choices might make a difference if the firm has market power, but here both the FCC and the DOJ determined that the merger did not create or enhance market power in digital news markets. *See supra* note 34.

[38] *In re Omnicom Grp. Inc. & Interpublic Grp. of Cos., Inc.*, FTC File No. 231-0052 (Sept. 26. 2025).

[39] Compl. ¶¶ 15–24, *In re Omnicom Grp. Inc. & Interpublic Grp. of Cos., Inc.*, FTC File No. 251-0049 (Sept. 26, 2025).

[40] *Id*. ¶¶ 6–7.

offering diverse viewpoints.[41] By withholding revenue from non-mainstream publishers, the FTC reasoned, collusive conduct could harm consumers by reducing viewpoint diversity, including in digital news markets.[42] The consent order requires the merged firm to make a unilateral non-discrimination commitment in all of its media buying agreements with "any Third Party," including advertisers, publishers, and other media buyers.[43]

The FTC's remedy is facially dubious because it imposes an obligation on only a single firm as a means of curing coordinated anticompetitive effects. Mergers only threaten coordinated effects when they generate an increase in concentration that affects firms' incentives to act collectively, through tacit coordination or explicit collusion. Because the FTC's unilateral non-discrimination remedy allows further concentration and binds only the merged firm, the remedy can only exacerbate—it cannot mitigate—this structural risk. And indeed, the remedy does so. The non-discrimination provision increases the risk that the remaining four firms in the market, which are not bound by the consent order, will find it easier to collusively limit viewpoint diversity, provided the FTC is correct that these firms find it profitable (or otherwise preferable) to do so.[44]

Before the *Omnicom/IPG* merger, if any of those four firms had wished to fix the level of viewpoint diversity in digital news markets, then each firm had to reach an agreement with five other firms—the two merging firms plus its three remaining counterparts. After the FTC's consent order, each of those four firms need only reach an agreement with the three remaining counterparts. The merger itself eliminates IPG from the market, and the consent order, by preventing the New Omnicom from joining "any agreement, understanding, rule or practice" concerning viewpoint diversity,[45] gives each of the remaining four firms assurance that they can safely ignore the merged firm's preferences.

Once the consent order goes into effect, the remaining four firms, if they are rational, will set a low level of viewpoint diversity on their own, since doing so, according to the FTC's complaint, is more profitable (or otherwise preferable). The New Omnicom will then face a choice: it can either (1) compete by offering more than the market level of viewpoint diversity, or (2) simply offer the market level of viewpoint diversity, without running afoul of the consent order. So long as the FTC's complaint is correct to allege that undersupplying viewpoint diversity "provides a direct economic benefit" and that supplying more than the equilibrium level of viewpoint diversity would "disadvantage[]"

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[41] *Id*. ¶¶ 21, 24.
[42] *Id*.
[43] Decision & Order at 3, *In re Omnicom Grp. Inc. & Interpublic Grp. of Cos., Inc.*, FTC File No. 251-0049 (Sept. 26, 2025).
[44] *See Hospital Corp. of America v. FTC*, 807 F.2d 1381, 1387 (7th Cir. 1986) ("The fewer competitors there are in a market, the easier it is for *them* to coordinate their pricing without committing detectable violations of section 1 of the Sherman Act.") (emphasis added).
[45] *See* Decision & Order, *supra* note 43, at 3.

one firm "relative to their rivals,"[46] then the merged firm would be irrational not to follow the market.[47] By leaving the equilibrium level of viewpoint diversity in the hands of four firms rather than five, the FTC's remedy is thus even worse for competition than unconditionally approving the merger—provided, again, that the FTC's complaint allegations are correct.

To be sure, the FTC's unilateral non-discrimination requirement can be effectual, and socially beneficial, if a market failure causes an undersupply of viewpoint diversity in digital news markets. Just as in *Paramount/Skydance*, a market failure would mean that the merged firm's unilateral commitment could help make up for the gap in supply caused by the underproduction of a public good. But in an antitrust case alleging coordinated anticompetitive effects, the belief that viewpoint diversity is a private good—and that competition would efficiently meet demand absent the antitrust violation—is fundamental to the premise of the claim. Viewed through a competition lens, the FTC's remedy is senseless because it makes the merger more like a 6-4 than a 6-5, which should alarm an agency concerned about collusive behavior in a five-firm market. The agency cannot have it both ways: either its complaint is wrong, or its remedy is.

IV. CONCLUSION: POLICY INCOHERENCE WITHOUT AN EXPLANATION

The DOJ, FCC, and FTC confronted the same challenge in the same markets at the same time. Each sought to protect and promote viewpoint diversity in markets for the digital distribution of news. Yet they reached conflicting conclusions built on irreconcilable premises.

Cynics will say this administration cares so much for politics and so little for policy that it does not even bother to hide its politicized enforcement motives under a fig leaf of basic consistency. But the more charitable interpretation is that the administration is simply hedging, taking a belt-and-suspenders approach that combines both market-based and regulatory solutions, since it is not always clear whether inadequate viewpoint diversity in news markets presents primarily as a private-goods problem or a public-goods problem. Better to make errors of commission rather than errors of omission when ensuring a well-informed citizenry in a democratic society—or so the thinking goes.

One look at the FTC's self-defeating consent order in *Omnicom/IPG* should belie this fallacious reasoning. By resolving an antitrust claim premised on a functioning market with a remedy premised on a market failure, the FTC's consent order is not just

[46] *See* Compl., *supra* note 39, ¶ 21.

[47] *See*, *e.g.*, OECD, Competition Enforcement in Oligopolistic Markets at 3, OECD Roundtables on Competition Policy Papers, No. 172 (May 19, 2015) ("[P]rofit-maximising firms in oligopoly markets will rationally take into account their rivals' behaviour and anticipated reactions when setting prices and other competitive variables.").

ineffectual but counterproductive, provided its antitrust claim is correct. No matter how well intentioned its motives, the government will only work at cross-purposes with itself and undermine its own cause if it cannot untangle itself from doublethink.

It is not obvious why news producers would want to withhold diverse content that would make the quality of their products more attractive and valuable to their customers, and the administration is already out on a limb in presuming that doing so can give rise to a federally actionable news distortion claim. Why then court the significant First Amendment risk of burdening news publishers' editorial judgments only to pursue regulatory and enforcement actions that contradict and counteract each other? Rather than working toward an "uninhibited marketplace of ideas in which truth will ultimately prevail,"[48] the government is running itself in circles and getting nowhere.

[48] *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367, 390 (1969).