

**Opinion No 10-A-29 of 14 December 2010  
on the competitive operation of online advertising**

English version 

of the *Avis n° 10-A-29 du 14 décembre 2010 sur le fonctionnement concurrentiel de la publicité en ligne*

The *Autorité de la concurrence* (section I B),

Considering the letter recorded on 18 February 2010 under number 10/0014 A, whereby the Minister for the Economy, Industry and Employment referred the matter of online advertising to the *Autorité de la concurrence* for its opinion on the basis of article L 462-1 of the Commercial Code;

Considering the Treaty on the Functioning of the European Union;

Considering Book IV of the Commercial Code;

Considering the other submitted documents;

The rapporteur, the deputy general rapporteur and the Government commissioner, heard during the session of 20 October 2010;

The representatives of the *Union des entreprises de conseil et achat média* (*Udecam*, union of media consulting and space-buying firms), the *Union des annonceurs* (*UDA*, union of advertisers) the press delegation and Yahoo!, Facebook, Microsoft, Pages Jaunes and Google, heard on the basis of the provisions of article L 463-7 of the Commercial Code;

Hereby issues the following opinion:

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The *Autorité de la concurrence* provides the present translation into English of its *Avis n° 10-A-29 du 14 décembre 2010 sur le fonctionnement concurrentiel de la publicité en ligne* to enhance public access to information about its advisory and decision-making practices.

Only the French version is deemed authentic. The *Autorité de la concurrence* accepts no responsibility or liability whatsoever with regard to this translated document.

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# I. Introduction

## A. THE BACKGROUND AND THE REQUEST FOR AN OPINION

1. The internet occupies an increasingly important position in everyday life, both for private individuals and in the business world. Search engines, Google in particular, which have made considerable advances in the quality and speed of web searches, have become the entry point and the benchmark for very many web users throughout the world. In playing a key part in user browsing, search engines have also made themselves useful, or even indispensable, to numerous players, commercial or otherwise, wishing to showcase their content, their services or simply their brand online.
2. This central position of search engines and of Google, which has very quickly become the leading player, has incurred criticism and even raised concerns among numerous stakeholders, some of whom feel they are victims of unfair or even unlawful conduct on the part of the search engine. Broadly speaking, the criticism and concerns are raised by:
  - competing search engines, who believe that Google’s hegemony stems from exclusionary conduct, or online players who fear that the way in which Google is diversifying into other markets is not based on competition on merit;
  - advertiser customers or website publishers that are members of Google's advertising syndication network who, given their lack of bargaining power, denounce Google’s arbitrary and opaque conduct;
  - the press, which is a customer, partner, competitor and potentially supplier of Google at one and the same time, which, besides the grievances already referred to above, considers itself a victim of free-riding practices and predatory pricing that would aggravate the sector’s already dire position.
3. The *Création et Internet* mission (‘Creation and Internet’), entrusted to Messrs Patrick Zelnik, Jacques Toubon and Guillaume Cerutti, mentioned these concerns in the report it submitted to the Minister for Culture and Communication in January 2010. It also recommended referring the matter to the *Autorité de la concurrence* for its opinion on the situation of the online advertising market.
4. On 17 February 2010, the Minister for Economic Affairs, Finance and Employment referred to the *Autorité* for its opinion on how competition works in the online advertising sector, pursuant to article L 462-1 of the Commercial Code. The Minister asked the *Autorité* more particularly to express an opinion on the following points:
  - the possible segmentation of the online advertising market between contextual and display advertisements;
  - the technical barriers to market entry for search engines, likely to give the main player in this market a position of strength over third parties;

- contractual relationships between website publishers on the one hand and search engines acting as ad-sales houses on the other;
  - the risks that could arise from the vertical integration of search engine and website publisher activities;
  - the nature of the remedies for the potential risks of anti-competitive acts that could be considered with a view to guaranteeing properly regulated competition in online advertising.
5. In this Opinion, the *Autorité* will endeavour to present the online advertising sector (part II), then to demarcate the relevant markets (part III). It will then examine the position of the two main online advertising participants in France, namely Google and Pages Jaunes, as well as any barriers to entry into the previously defined market segments (part IV). Lastly, it will study the competitive functioning of the online advertising sector and where appropriate will suggest remedies for the difficulties encountered (part V).
  6. In the first place, the *Autorité de la concurrence* wishes to point out that many of the grievances raised by market players fall outside the scope of competition law. Some, for instance, come under trademark law or contractual relationships, which can only be referred to a commercial court judge. Others stem from the normal working of markets that, like the internet, are perpetually undergoing a process of innovation: new technical or economic models call the old ones into question, leading everyone to reposition themselves in relation to a new competitive process stimulated by technological breakthroughs.
  7. Now, it is essential not to impede this process of innovation. Technological innovations are indeed a source of gains in productivity, investment and jobs, and help stimulate competition in the markets. In particular, the advent and then the ongoing enhancement of search engines offer web users truly useful functionalities, which can also create value for advertisers and partners of syndication networks.

## **B. THE INVESTIGATION PREPARATORY TO THE SECTOR INQUIRY**

### **1. THE HEARINGS**

8. In conducting the sector enquiry before issuing the opinion, the *Autorité de la concurrence*'s investigating teams interviewed the main players in the online advertising sector as well as specialists in statistical surveys of this sector.
9. Google was thus interviewed several times and significantly enlightened the investigating teams through the numerous economic studies it supplied. Pages Jaunes was also interviewed, as were Facebook and Google's competing search engines active in France, to whom a questionnaire was sent. All these companies were also heard at a session on last 20 October by the *Autorité*'s Board.
10. Evidence and statements were also gathered from the *Syndicat des régies Internet (SRI)*, federation of internet ad-sales houses), as well as from several media sales houses, including press publishers ad-sales houses. Representatives of press federations were interviewed by the rapporteur and then heard in open session. They passed numerous documents on to the *Autorité*.

11. The investigating teams also interviewed a representative of a major media agency and questioned specialised media agencies. The *Union des entreprises de conseil et achat média* (*Udecam*, union of media consulting and space-buying firms) was heard in open session. A major media agency also submitted a spontaneous contribution after the open session.
12. As for the *Union des annonceurs* (UDA) (advertisers' union), it gave evidence to the rapporteur and was then heard in open session.

## 2. THE QUESTIONNAIRE SENT TO ADVERTISERS: METHODS AND CRITICISM

### *The recipients*

13. The investigating teams wished to gain greater insight into how the markets operate from the point of view of the advertisers. For lack of sufficient time to give them all a hearing, they sent out a questionnaire (reproduced in the annex hereto) to three types of advertisers.
14. The first group comprises major advertisers using multiple channels. These advertisers communicate globally through numerous channels (online and offline, leading media and 'below the line') and are among the largest advertisers on the French market. Their online expenditure, particularly on AdWords (Google's flagship service), is limited as a percentage of their communication budget, but high in value. UDA provided their contact details.
15. The second group comprises advertisers who make extensive use of advertising linked to searches on the Google search engine. These advertisers were selected from among the 500 largest advertisers using Google's AdWords service. Some of them were also large multi-channel advertisers and were thus included in the previous group. Others have above all high communication expenditure online. They generally include e-merchants or e-retailers.<sup>1</sup> It is primarily in this group that one finds advertisers selling at least one of their products exclusively online.
16. The third group comprises small users of advertising services linked to searches on the Google search engine. These advertisers spend very little (around the last 5 deciles in Google's distribution of receipts). It should be noted that the 10% of customers spending the most on search-related space purchases in AdWords generate [75–95]% of Google's revenue. These small advertisers thus contribute little to Google's revenue and therefore their responses should not be over-weighted.

### *The responses*

17. About 75 of the 230 questionnaires sent out were returned. Some 60 large advertisers responded, 22 of whom are among the biggest French spenders in terms of overall expenditure on communication all channels taken together (online and offline) and 41 of whom (some may have been double-counted) are among the 500 largest advertisers in terms of spending on Google AdWords. Some 20 of the large advertisers who responded sell at least one product or service exclusively online, and for the 38 companies who gave a percentage of revenue generated online, this percentage averages 55%. Roughly 17 advertisers who spend little or nothing on

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<sup>1</sup> Online merchants or retailers.

AdWords (in the region of the median for some of them and lower for others) responded to the questionnaire.

18. The respondents can be classified according to the following business segments: banks and/or insurance, food, e-commerce, tourism and travel, computing, property, cars and/or related services, telecommunications, advertising and/or communication and/or special events, fashion and/or luxury goods, vocational training or education, large retailers, energy, small retail business.
19. Google formulated criticisms of the method adopted to prepare the questionnaire. The *Autorité* explains why it disagrees with these criticisms (see annex).

## **II. The online advertising sector**

20. The online advertising sector is booming. According to European Commission estimates, global expenditure on online advertising increased from roughly €13 billion in 2005 to nearly €17 billion in 2006 and was expected to reach €26 billion in 2008.<sup>2</sup> In France, expenditure on online advertising was €2.11 billion in 2009,<sup>3</sup> up 6% on the preceding year.
21. To meet their communication objectives (brand awareness and performance), advertisers have various channels of communication at their disposal (media and non-media) (A). The internet, through its flexible technology, offers a variety in terms of format, targeting and pricing model (B). Advertising offers online are traditionally broken down into segments, the main ones being search engines, display and directories. Two heavyweight operators stand out in France: Pages Jaunes and Google (C).

### **A. MEDIA AND NON-MEDIA CHANNELS OF COMMUNICATION MEETING ADVERTISERS' OBJECTIVES**

22. The different channels of communication (media and non-media) (1) satisfy two major objectives of advertisers (branding and performance) (2).

#### **1. MEDIA AND NON-MEDIA COMMUNICATION**

23. Businesses wanting to show their products or services to potential customers make use of advertising. The advertising message reaches its target audience in a variety of ways through different mediums.

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<sup>2</sup> European Commission Decision C(2008) 927 final of 11 March 2008 in case COMP/M.4731 – Google/Double Click, preamble 9.

<sup>3</sup> According to a study by the *Observatoire de l'e-Pub*, published in January 2010 by the *Syndicat des régies Internet*, the *Udecam* and Cap-Gemini.

24. In the case of the major media, the advertisement reaches its target through a medium that is distinct from the message itself. The advertisement fits into a medium that the potential customer uses for its own sake or at the very least a medium distinct from the message that is designed to contain several messages.
25. This first group includes the press, television, radio and cinema, which allow advertisers to insert their messages into a context of autonomous consumption of news or entertainment. This group even includes outside (billboard) advertising; even though the billboard itself only serves one purpose (the display of advertisements), it outlives the showing of a particular advertisement and is part of a framework. Advertising in the media is restricted by the amount of space the medium decides to allocate to the advertisement, that is, the advertising inventory put at the disposal of advertisers. The voice of advertising is therefore necessarily constrained by the prime vocation of the medium (e.g. news for the press, entertainment for television).
26. Other types of media or of advertising acts, the sole purpose of which is to distribute trade advertisements or messages, do not have the same space constraints that the traditional media impose (where advertising is subordinated to their prime purpose); they are traditionally classified as non-media. This group includes direct marketing (including addressed or unaddressed postal mail), promotions, point-of-sale promotion, fairs and exhibitions, but also other communication acts that do not seem to be part of advertising in the strict sense, because the message itself is difficult to identify, like advertising sponsorship, corporate sponsorship, public relations spending.
27. Paper directories have traditionally been classified as non-media, even though they may be procured for their own sake, because they render a self-contained business listing and classification service, in which only an enhanced or priority listing (including a logo, banner, etc.) constitutes a real promotion for advertisers. Here the space constraint is not as strong as it is in the mass media, the press in particular, where the editorial content must predominate.
28. Finally, online advertising for its part is classified more often than not as media communication. Use of the internet is personal and independent of the distribution of advertisements, and it is within this personal universe that advertising can be disseminated. The relevance of this classification is, however, questionable as far as certain types of online advertising are concerned.<sup>4</sup>

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<sup>4</sup> France Pub considers that online directories, in the same way as paper directories, fall outside the 'media' category and therefore classifies them as 'non-media'. Emailing could also be classified as non-media, in the same way as direct marketing.

### Media/non-media classification of different channels of communication

Media	Non-media
Television	Direct marketing
Radio	Promotions
Cinema	Point-of-sale promotion
Billboards	Attendance at fairs and exhibitions
Internet*	Advertising sponsorship
	Corporate sponsorship
	Public relations expenditure
	Paper directories

\* Subject to the observations formulated in the previous paragraph.

#### 2. TWO DIFFERENT GOALS: ‘BRANDING’ AND ‘PERFORMANCE’

29. For a company, the purpose of advertising expenditure is to boost profits or the volume of business. For that matter, this characteristic is not specific to advertising expenditure. But even if the ultimate aim of advertising is to boost or maintain sales of the goods or services it offers, the company may have intermediate goals that in the short term will not necessarily be the most effective for boosting sales. Two main groups of communication aims are generally distinguished: firstly, brand awareness, public exposure, brand building, which are generally grouped under the umbrella term of *branding*, and secondly, more ‘transactional’ goals of immediate sales or direct responses, which are grouped under the umbrella term of *performance*.
30. These two objectives indeed seem in part to complement each other: building brand image and brand awareness increases the effectiveness of the levers that generate short-term responses.
31. On the internet, the criteria for measuring the effectiveness of an advertising campaign seem to be easier to define and less contentious than in the other media. Unlike what the major traditional media offer, the technology of the internet gives one the ability to ensure that the advertising message reaches the user. One can indeed find out the precise number of web users who have been exposed to an advertisement, since the advertisement has been loaded and displayed (generally termed an impression) on their screens. One can also measure certain types of interaction with the display of ads by monitoring and counting clicks when the ad is clickable. Lastly, in certain cases, one can monitor the web user’s behaviour, after exposure to the ad, right up to the point at which the online purchase is made, or the user performs any other action encouraged by the advertiser.
32. These are the reasons why the internet appears to be particularly suited to meeting these objectives of performance and direct response, the effectiveness of which can be measured instantly: online purchase, signing up to a list, making an appointment, generating traffic categorised as targeted or search.

33. However, the internet also satisfies ‘branding’ aims, in a medium- or long-term approach, by expanding on the brand message and taking advantage of the power of the medium in terms of coverage and audience as well as exposure time. The average European spends nearly 1¾ hours a day browsing the web, more than a quarter of the time spent on the four mass media: television, radio, daily newspapers, and the internet (EIAA Mediascope Europe 2008). Thanks to the steady and widespread introduction of broadband, advertising communication methods that only recently were reserved for the broadcasting media are now used online (like commercials, comparable to those broadcast on television).

**B. THE INTERNET OFFERS GREAT FLEXIBILITY OF COMMUNICATION IN TERMS OF FORMAT, TARGETING AND PRICING MODEL**

34. The internet is a particularly flexible medium that, through the development of technology and the continual interplay of innovations, offers advertisers a great variety of means of communication in terms of format (from a text link to video) (1), targeting (from traditional demographic targeting to active search-based ads) (2) and pricing (payment per click and payment per impression) (3).

**1. ONLINE ADVERTISING FORMATS**

35. The simplest advertising format is the textual link, which consists of a hyperlink to a page on the advertiser’s site in the form of a short text that lets the advertiser get a message across to the web user.
36. Other formats are not confined to text, even if they include it: they feature graphic elements in the form of images, videos or enriched ads (rich media).
37. The simple banner, the first banner to appear on the internet in 1994, in .gif format, originally became the benchmark standard for advertising banners. Measuring 468 x 60 pixels, it is found at the top of the page. But banners can now be placed elsewhere on a web page. The range of available sizes has expanded and continues to do so as screen dimensions increase. The skyscraper (a vertical banner measuring 120 x 600 pixels) and the rectangle (180 x 150) are other traditional formats.
38. Innovation moves fast with regard to presentation, enabling the advertiser to be highly creative in its communication by varying visual and audio effects as well as the degree of interactivity between the internet user and the advertisement. Ads can be large or small, displayed automatically or on request, and can be either static or animated (i.e. they expand, drop down, collapse). The ad can be displayed in a specific place on the page, pop up in a new window (pop-up or pop-under ads), drop down as the mouse moves over it (roll-over or mouse-over ads) or be displayed on a transitional, or splash, page. Ads that appear on splash pages are also called ‘interstitial’ or ‘transitional’ and redirect the user to the desired page after a few moments or after a further click.
39. With ever faster internet connections, animated graphical ads have given way to veritable videos that sometimes resemble TV advertising videos. On a site with content, the location of the banner can thus be reserved for a video (video in-banner).

40. Ads can also be integrated into a video stream viewed by the web user on demand (in-stream pre-roll, in-roll or post-roll videos, but also ‘interstitial’ ads) or into a game (in-game ads).
41. Advertisers also have other innovative products at their disposal: event-driven advertising (transparent flash, page skins), special operations with custom integration of the advertiser’s message on a content site, creation of a co-branded mini-site.

## 2. TARGETING

42. Online advertising can use targeting techniques similar to those used in offline media. They are based primarily on criteria of audience and affinity with the advertiser’s target. These criteria are above all socio-demographic: each online newspaper, television or radio site knows the statistics of its readership in terms of age, sex and socioeconomic group. These characteristics can be divided into specialised subcategories on the site (e.g. the ‘Finance’ channel of an online newspaper<sup>5</sup>). Unlike other media, the internet also factors in the time slot and location.
43. Finer targeting, known as contextual targeting, can use the content of the page to display an ad that appears to match the centres of interest revealed by the reading of this page. Targeting can be limited to arranging a page by subject (property, dating/lonely hearts, astrology, fashion, etc.), in which case this is merely a refining of special-interest channels. But it can also consist in a robot automatically scanning the page for keywords to bring out salient themes. This type of contextual advertising can in principle be offered more easily by search engines, because they have a broad base of advertisers outbidding one another on precise keywords and it is easier for a particular page to find an ad that will fit more relevantly into a page whose content has been analysed.
44. Behavioural advertising is a form of online advertising in which ads are chosen according to web users’ online browsing behaviour, based for instance on the sites they have visited. Web user browsing patterns, as in the case of contextual targeting, reveal an interest in a particular subject, which is all the greater as the web user continues browsing on a particular subject. In behavioural targeting, advertisers place advertisements that match the supposed expectations of web users as revealed by their browsing history.
45. Behavioural targeting can even go so far as revealing a presumed intention to buy when, through tracking techniques, an online retailer knows that a web user has navigated through its site and shown interest in certain products without actually buying them. So-called retargeting advertising can then suggest the same product again to the web user when he is browsing elsewhere online.
46. It is not up to the *Autorité* to express an opinion on how targeting and tracking techniques can affect web users’ privacy. By the same token, an analysis of the consequences of introducing so-called opt-out mechanisms (whereby web users can indicate, in a unique and permanent manner, their refusal to have their browsing history ‘tracked’), falls outside the scope of this Opinion.

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<sup>5</sup> A ‘channel’ is the special-interest section of an e-newspaper or portal.

47. Finally, advertisements displayed further to a search on a search engine respond to an active process on the part of the web user, materialised by a precise query. This type of targeting is particularly valuable and productive, because the active search implies an intention to buy.

### **3. PRICING MODELS**

48. The first type of pricing on the internet is flat rating, which is especially suited to prestige offers (special operations, site layout and branding).
49. However, one of the distinctive features of the internet medium is to be able to know whether the target audience has actually received the advertising message, because the web user has displayed the page (one impression), or has clicked the ad (one click), or because the user's browsing has been tracked, the user has completed a buying act, filled in a questionnaire or even made an appointment. In such cases, the display of the advertisement on the internet can be charged by the number of impressions (actual rather than presumed receipt of the message), the number of clicks or the number of conversions, i.e. acts that the advertiser wants the web user to perform (sign-up, purchase). These are the preferred pricing methods on the internet.
50. They primarily consist in 'cost per click' (hereafter 'CPC') pricing and 'cost per thousand impressions' (hereafter 'CPM') pricing. In the former case, the advertiser pays whenever a web user clicks its advertisement. In the latter case, the advertiser pays for each thousand impressions of its advertisement.
51. 'Cost per action' (hereafter 'CPA') pricing is also used. In this case the advertiser pays whenever a web user performs a predefined action (e.g. when the web user completes an online form, makes a purchase, etc.)
52. Lastly, intermediaries can be paid commissions on sales, thus taking the risk on the conversion rate of advertising campaigns. This pricing method is often used in affiliation campaigns.

### **C. CATEGORIES TRADITIONALLY DISTINGUISHED IN ONLINE ADVERTISING AND THE KEY PLAYERS**

53. The industry groups internet offers into major categories, the main ones being search (advertising linked to search engines), display and directories (1). In the sector in question, two key players stand out: Google and Pages Jaunes (2).

#### **1. THE MAIN CATEGORIES OF ONLINE ADVERTISING**

54. Several categories of online advertising have been defined depending on the type of products offered. This classification, which is found in publications and summary surveys, distinguishes between advertising through the commercial links of search engines, display advertising, directories and other categories that are less significant in terms of sales such as emailing.
55. The definition of these categories, in principle dictated by commercial considerations and/or availability of statistics, does not, however, prejudice the existence of relevant

markets. Indeed, the boundaries between these categories shift from one study to the next.

56. According to figures published by *France Pub* (a survey carried out by the *Hersant Média* group on the advertising investments of advertisers), the overall advertising market was estimated at €29.7 billion in France in 2009. Internet advertising is estimated at €1.18 billion, accounting for 11.1% of advertisers' expenditure in the mass media and roughly 4% of total expenditure on communication. However, in online advertising, *France Pub* includes banners, links and emailing: the scope of online advertising thus demarcated is thus more limited than those defined in other studies.
57. The *Observatoire de l'e-Pub* survey, published in January 2010 by SRI, *Udecam* and Cap-Gemini, estimates the online advertising market in France at €2.11 billion in 2009. The figures given below are taken from this last survey.

#### a) The commercial links of search engines

58. The first category of online advertising corresponds to the commercial links of search engines, better known as sponsored links. These are text links to a page on the advertiser's site and include a short commercial message.
59. Two types of commercial links can be distinguished: those that appear on the results pages of search engines after web users run searches (commonly known as search-based ads) and those that are displayed on a page depending on its content (known as contextual links).
60. Commercial links generated revenue of €880 million in 2009. On the basis of available statistics, this figure also includes the contextual commercial links offered by Google on AdSense for Content, its syndication network, €[0–150] million in 2009.
61. Sold at CPC by the search engines, the commercial links make it easy to control return on investment and ensure very accurate budgeting (the advertiser sets the maximum CPC and budget). Commercial links are generally marketed and sold by the search engines on a bid basis. Advertisers can bid on an infinite number of keywords, because it is they who choose the keywords, rather than the search engines proposing a specific list. The bidding system also allows the advertiser to benefit from the phenomenon known as '*long tail*': rare queries generate few clicks; however, if the advertiser has bid on a lot of rare keywords, this can generate high sales.
62. This marketing method also generally offers a high degree of flexibility (the option of cancelling the campaign at the last moment, short-lived campaigns) and can thus attract a large advertiser base. It does not generate significant additional costs to create the advertising message. On the other hand, it does not let one control the competitive environment in which the advertisement will appear: the advertiser cannot know in advance which competitors will appear in the commercial links when the keyword it has bid on will be searched for by a web user.
63. Putting contextual links in the same category as search-related links is open to debate: if one considers their format (text links) and their pricing method (CPC), contextual links can indeed be put in the same category as search-based ads; on the other hand, if one dwells on the fact that they appear even when the web user has not

actively run a search, they can be included in the display category (presented below), or even in an ad hoc category if one believes that their format does not offer enough scope for communication, particularly for creating or promoting brand image.

64. Thus the *Observatoire de l'e-Pub* includes contextual links in the category of search engines (under the *search* heading), whereas other publications, such as Kantar Media's Internet Barometer, puts them partly in the *display* category.

#### **b) Display**

65. *Display* is generally defined in studies as ads with graphics (ranging from a simple image to rich media or video): it thus encompasses a wide range of offers in terms of quality and the amount of leeway the advertiser has to present its product. The quality of the context counts more for a means still largely used for branding campaigns. Controlling the competitive environment, in other words the other advertisers featured on the page, is much easier than with search-related commercial links.
66. 80% of graphic display is said to be priced by CPM. In 2009 it generated €480 million of revenue.
67. However, one should point out that the precise limits of the *display* notion are still unclear for advertisers. The latter appear at times to hesitate between the loose definition of *space buying*, regardless of the advertising format (textual, graphic) that will occupy this space, and a definition, which most of the respondents to the questionnaire subscribe to, based solely on the format, which confines *display* to non-textual advertising (35 respondents out of 48 define *display* according to the graphic or video format).
68. These hesitations are also seen in terms of targeting: certain advertisers lay great stress on 'the absence of prior targeting' that display involves, on targeting based 'solely on criteria of regular site traffic', and only accepting 'graphic banners with no contextual or behavioural targeting', whereas other advertisers, who make up the majority of those we polled, include contextual or behavioural targeting in *display*.
69. Therefore, if the meaning of displaying an ad on a content page is chosen to define *display* advertising rather than the format (image or text) of the ad, contextual links can be added to the *display* category, whose cumulative revenue would then have totalled €[500–600] million in 2009.

#### **c) Directories**

70. These are an enhanced listing and ranking service offered to advertisers in a contacts database that is as comprehensive as possible. If the web user also searches an online directory, the communication expense of businesses does not consist in purchasing a viewing of the advertisement related to the query, but rather in improving its ranking or making its directory entry more complete. Directory listing offers are generally valid for several months for a flat-rate fee. The number of keywords is very limited for the advertiser: they include the headings of various professions (directories may

try to offer users relevant headings if a query does not match any predefined category).<sup>6</sup>

71. The revenue of directories, primarily Pages Jaunes as far as France is concerned, was €149 million in 2009.

#### **d) Other less significant categories in terms of revenue**

72. Affiliation is a performance-based advertising technique whereby an advertiser offers to pay intermediaries or partner sites (affiliates) to bring in a sale or a contact. Certain affiliation players purchase commercial links or display advertising space to acquire conversions (sale, contact, etc.) for the affliator. Affiliation sales, estimated at €157 million in 2009, thus include double counts with other categories.
73. Emailing is the online rendering of direct marketing. It involves sending an advertising message by email. It must not be confused with contextual or other ads included in emails or email services websites. Emailing revenue totalled €104 million in 2009.
74. Price comparison sites rank the offerings of partner businesses for searches based on particular models of products. They are generally paid on a commission basis. They can be considered as specialised search engines. Price comparison sites generated revenue of €101 million in 2009.

#### **e) The special case of advertising on mobile phones**

75. Advertising on mobile phones is still in its infancy in France. In 2009 it generated €23 million of revenue. If one were to leave aside issues related to questions concerning the statistics and specifics of the medium, advertising on mobile phones could be broken down into the other aforesaid categories by content more than by screens. In particular, the banners on mini-sites could be grouped with display, and search-based ads on search engines on mobile phones could be likened to the same type of searching on computers. Other offers are, however, specific to mobiles: e.g. the advertisements in applications or commercial SMSs.
76. Numerous advertisers stated that we were only ‘at the beginnings of the use of this medium’. Although certain advertisers still adopt a wait-and-see policy, most of the major advertisers who already use advertising on mobile phones marginally intend to invest more to ‘keep track of developments in the offering and in behaviours’, because the mobile is ‘a fast-developing medium’, because we are seeing ‘terminals increasingly adapted for the web and new uses’ and ultimately because advertising communication on mobile phones has, more particularly through the widespread use of ‘geolocation’ thanks to smartphones, unique characteristics centred around proximity, interactivity and immediacy.<sup>7</sup>

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<sup>6</sup> The directories, which generate heavy traffic on their site, can also market graphic advertisements in addition to their listing offer (such ads, which are not online directory listings, are highlighted by the word ‘Advertisement’ on the Pages Jaunes site). The SRI survey strives to estimate their influence and reclassify them as display.

<sup>7</sup> Smartphones (mobile phones with an open operating system) will develop geolocation advertising: an important area of development for directories.

77. In view of the still embryonic nature of advertising on mobile phones and the small proportion of revenue it generates, this category of advertising will not be analysed in greater depth for the purposes of this Opinion.

## Revenue generated in 2009 by category of online advertising

Categories of online advertising	Revenue generated in 2009* (in millions of euros)
Commercial links	880
Display	480
Directories	449
Affiliation	157
Emailing	104
Price comparison sites	101
Mobile phone advertising	23
<b>Total</b>	<b>2,110**</b>

\* Sources: 2010 survey by the *Observatoire de l'e-Pub*

\*\* Since some services are double-counted because they appear in two categories, the total revenue of the sector is lower than the sum total of revenue figures for each category

### 2. THE MAIN PLAYERS

78. We should start by presenting the main players in the online advertising sector depending on whether they operate on the demand side (a), the supply side (advertising space) (b) or as intermediaries (c). This Opinion will then turn its attention to the special place that two major players occupy in this sector, namely Pages Jaunes and Google (d).

#### a) On the demand side: the advertisers

79. While some advertisers purchase display space directly and while many of them buy it directly for search-based ads on the engine's interfaces, many others call on the services of a media agency, which buys advertising space on their behalf and runs their campaigns.
80. There are agencies that specialise in online advertising and certain intermediaries that specialise in campaigns on search engines.

#### b) On the supply side: the publishers

81. The increasing number of pages online enables advertisers to place their advertisements on several types of site.
82. The first category, which transposes the traditional model of media communication onto the internet, comprises content sites (news or entertainment). Most of the mass media players fall into this category: newspaper and magazine sites, television sites (with catch-up television offerings) and radio sites. It also includes internet-specific players (also known as pure players), which indeed may subsequently operate offline (following the example of *Rue 89*, which offers a version at newsstands).

83. The second category includes functional sites offering products and services, in particular the sites of online retailers, auction sites, directories and search engines, both generalist and specialist (vertical searching).
84. Certain sites fall into both categories. This is the case for the portals (like Yahoo!), which offer their own content as well as web browsing aids. That is also the case for social networks (like Facebook) or sharing sites, which combine content (put online in part by users) and social networking functionality.

### **c) Intermediation**

85. For the sale of display advertising, only a few major publishers sell their inventories through their own media brokers. These media brokers are associated with mass media players (radio, television, press), major online players (Microsoft, Yahoo!) or pure players (Dailymotion). Google sells YouTube's display inventory directly. Pages Jaunes sells its display inventory through its own media broker (Horizon Media).
86. Other media brokers (weborama, 24/7, IMedia), sometimes called multi-media, do intermediation and enable small sites unable to sell their inventory directly to sell space to advertisers.
87. For their unsold inventory, i.e. what they do not sell directly, publishers can go through networks or exchanges that bring together supply (unsold space) and demand (advertisers). Google AdSense is a syndication network of Google partner sites, which displays advertisements (usually commercial links) in a reserved space for advertisers using Google's AdWords service. In the networks and exchanges, the publisher is generally unaware of which advertisers will be present (even though there may be ways of restricting certain categories) and, by the same token, the advertiser generally does not know on which site it will feature. The profession speaks of blind selling.

### **d) Two major players: Pages Jaunes and Google**

#### ***Pages Jaunes***

88. Pages Jaunes offers mainly preferential directory listing packages. These are offered for periods of three months, six months or one year. Pages Jaunes has [400,000–550,000] advertiser customers online (and [600,000–750,000] if paper directory listings are included).
89. The basic directory listing entry, with just the company name, address and telephone number, is free. It offers the following paid-for directory listing packages: “*Accès*” (‘Access’), which appears before the basic entries, lists advertisers in other localities. “*Module*” (‘Module’) offers a range of products comprising a text block along with a clickable link giving hours of business, presenting the advertiser's business and featuring a visual with a more detailed presentation highlighting the advertiser's commercial strengths. “*Module*” offers guarantee priority space in the hit list. Other directory listing offers, enhanced either in precision or position, consist of ‘links to site’, “*pack vitrine*” (‘showcase pack’) or “*pôle position*” (‘pole position’).

90. Pages Jaunes also proposes graphic advertising offers (boxes, horizontal half-banners, vertical banners) that are clearly labelled 'advertisement' on the site, to distinguish them from the directory listing offer.
91. The Pages Jaunes site has recently undergone a facelift to look more like a portal, and offers web users new services in addition to directory listings for businesses.
92. In 2009, Pages Jaunes's online sales of directory listings, graphics and site creation came to €[380–500] million euros, according to the figures supplied by the company itself.

### *Google*

93. The US company Google was formed in 1998. Its main revenue stream is the sale of search-related online advertising and contextual advertising linked to web page content. Google's success is based on the relevance and exhaustiveness of its search engine. The PageRank algorithm developed by the company's founders has resulted in a degree of relevancy in the results never previously achieved.
94. As early as September 2001, according to XiTi's figures, Google had a 30% share of the connections market in France, against 23% for Yahoo! In 2002, its search engine market share passed the 50% mark, reached two-thirds in 2003 and 90% by the beginning of 2007, a position it continues to occupy in France.

### *Organic search results and commercial links*

95. Organic search results are not based on a financial consideration on the part of website publishers but rather on the results of an algorithm that endeavours to rank web pages according to their relevance to the query. In principle, it is therefore neutral in terms of the order in which the results are listed. Search engines also feature commercial links to advertisers' sites, against payment. These commercial links appear when web users run a search that includes keywords the advertiser has bid for, in addition to the search engine results.

### *The AdWords service*

96. AdWords is the name of the advertising space sales service offered by Google. It allows the advertiser to link one or more keywords with its advertisements.<sup>8</sup> The AdWords service is based on a second-price auction mechanism for the purchase of keywords. In practice, advertisers bid for keywords so that a commercial link can appear beside or above the search engine's hit list if the surfer's query contains the said keywords.
97. The advertiser then pays for each click on its commercial links. Advertisers are not ranked solely by the maximum cost per click they have specified. This propensity to pay for a click is weighted by a quality factor that among other things factors in the expected click rate for the advertisement, i.e. the number of clicks generated for one impression. It is quite natural to rank an advertiser prepared to pay only €1 per click, but whose click rate is high, higher than an advertiser prepared to pay €10, but whose advertisements generate no clicks.

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<sup>8</sup> If the advertiser so wishes, the engine can also display the advertisement if it judges that the keyword belongs to the semantic field of the query.

98. Google is thought to have [50,000–90,000] advertiser customers in France, based on the answer to question 11 of the questionnaire sent out to the search engines. However, this figure includes double-counts, because a given advertiser can have more than one account. In a memo sent to our investigation services, Google claims to have only [40,000–55,000] customers in France.
99. The search engine activity and that of supplying advertising space are the two faces of a ‘two-sided’ market, in which the success of the former conditions the appeal of the latter. Note, however, that while the quality of the search engine results is of paramount importance to advertisers in that it generates surfer traffic, the reverse is no doubt less true. The usefulness that web users derive from the search engine is more sensitive to variation in the quality of the search engine results than to that of paid-for results.

*The AdSense for Search service*

100. Google also offers to supply a function that searches on the page of a partner site’s publisher in the context of a partnership, through the AdSense for Search (AFS) programme. This local search engine displays the organic results and search-based ads. The advertising revenue is shared by Google and the partner site.

*The AdSense for Content service*

101. The AdSense for Content (AFC) programme for its part displays advertisements (images or commercial links) related to page content. Depending on the words featured on the page of an AdSense network partner site, Google displays the relevant ads among those of advertisers wishing to use this type of advertising (graphic advertising is still marginal). Google is thus an intermediary between the AdSense network member site and the advertiser using the AdWords interface.

*New activities*

102. Google is also diversifying its activities. One form of diversification aims to consolidate the exhaustiveness of its search system to maintain its lead in terms of appeal. Scanning and rendering searchable the collections of university libraries and those of private-sector publishers is one example of this. Google is also striving to enrich the basic search with new specialised search services (vertical search): news (Google News), price comparison sites (Google Shopping in beta version in France), mapping (Google Maps, enriched by the development of Google Street View, offering 3D photographs of streets), videos (through the takeover of YouTube).
103. Google also proposes offers, free for the time being, similar to those of the directories (the option of creating a factsheet on one’s company, which is then indicated on Google Maps by means of push pins) and shows the contact details of local professionals on the results page when a query that seems to imply a local search is run on the main search engine (e.g. ‘restaurant Dijon’ or ‘locksmith Lyon’).
104. Google has also bought the ‘Android’ operating system for mobile phones and more recently the AdMob mobile phone advertising platform.

105. The company has taken over DoubleClick (specialised in ad management and serving technologies).<sup>9</sup> It has also broken into the online browser market (Google Chrome) and is starting to develop online applications ('cloud computing').
106. In 2009, Google's advertising revenue in France came to €[800–1,000] million, [80–90]% of which was from search-based ads on the Google domain<sup>10</sup> and the AdSense For Search network.

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<sup>9</sup> In this respect see the aforesaid decision of the European Commission Google/DoubleClick.

<sup>10</sup> [www.google.fr](http://www.google.fr), [www.google.co.uk](http://www.google.co.uk), [www.google.com](http://www.google.com), etc.

## Google's various activities

Activities	Description
<b>Natural search engine results</b>	An algorithm that ranks web pages depending on the relevance to the surfer's query (no financial consideration)
<b>Commercial links</b>	Paid-for services offered to advertisers, so that alongside or above the organic search results appear commercial links to their website, depending on the keywords typed in by the web user.
> AdWords service	Sale of advertising space, based on a second-price auction mechanism for the purchase of keywords: <ul style="list-style-type: none"> <li>- advertisers bid for keywords so that a commercial link appears beside or above the organic search results</li> <li>- the advertiser pays for each click on the commercial link</li> </ul>
> AdSense for Search (AFS) service	Provides a local search engine on a partner site, showing search-based ads, in addition to organic results (the advertising revenue being shared between Google and the partner site).
> AdSense for Content (AFC) service	Displays relevant advertisements depending on the words featured on the page of a partner site (service acting as an intermediary between the AdSense network partner site and the advertiser using the AdWords interface).
<b>New activities</b>	
> Strengthening the search engine	<ul style="list-style-type: none"> <li>- Scanning and making searchable collections of university libraries and private-sector publishers.</li> <li>- Developing specialised search services (vertical search): <ul style="list-style-type: none"> <li>o News (Google News)</li> <li>o Price comparison sites (Google shopping)</li> <li>o Mapping (Google Maps/Google Street View)</li> <li>o Videos (takeover of YouTube with sales of display ads on this site)</li> </ul> </li> </ul>
> Local searches	Offer of services similar to those offered by the directories, displaying the contact details of local professionals
> Development of various services and applications	<ul style="list-style-type: none"> <li>- Development of a browser (Google Chrome) and online applications ('cloud computing')</li> <li>- Takeover of DoubleClick, Android, AdMob</li> </ul>

### III. Demarcation of the relevant markets

107. In the first place, it should be pointed out that the remit of the *Autorité*, when referred to for an opinion on the basis of article L 462-1 of the Commercial Code, is not to determine whether or not such and such a practice by an operator contravenes articles L 420-1 and L 420-2 of the code. Only a complaint involving the presence of both parties as provided for in article L 463-1 et seq. of the code can, in fact, lead to a decision regarding the lawfulness of the practice in question with regard to those provisions that more particularly prohibit anti-competitive abuse of a dominant position in a defined market.
108. Moreover, we draw the reader's attention to the fact that, in view of the very rapid technological advances in this sector, as well as potential mergers between certain leading players, the *Autorité's* analysis<sup>11</sup> of the online advertising market as set out herein is liable to be modified. It should thus be considered a reflection of how things stand at present, factoring in certain features of this market (two-sided market, a bidding market) that combine recent and sophisticated economic analyses in a complex manner. Furthermore, the two-sided nature of this market makes it theoretically difficult to apply certain standard tests, such as the SSNIP test (see below), due to the complex balance of pricing between the two sides of the market. Therefore, although light can be shed on possible boundaries of potential relevant markets in the online advertising sector, this is difficult to do for all the advertising categories concerned with any degree of certainty.
109. Finally, there is no choice but to accept that the question of the segmentation of the online advertising market as well as that of the position Google is likely to occupy in it are issues shared by numerous competition authorities, including the US Federal Trade Commission, the Italian and German competition authorities and the European Commission, even though the latter has not yet decided on this within the framework of its decision-making practice. The *Autorité de la concurrence* itself has not yet issued a final opinion on whether or not distinct relevant markets exist within the online advertising market. In its decision No 10-MC-01 of 30 June 2010 related to protective measures requested by the company Navx, the *Autorité* merely stated that it had '*already recognised the existence of an online advertising market, which is distinct from other advertising media. To date, this segmentation is still relevant*' and concluded that, at the '*protective measures stage, and pending an in-depth examination of the content, online search-based advertising is likely to be a relevant market, within the broader sector of online advertising. This segmentation has already been adopted by the Federal Trade Commission (FTC), the US competition authority, in its analysis of the Google/DoubleClick merger.*'
110. Should one define a relevant market, in the sense of competition law, for search-based ads? Can one distinguish it from display type offers? These are central questions that the Opinion will broach. In this respect, it would appear that substitutability between different advertising channels is limited, more particularly between online advertising and offline advertising (A). In addition, owing to the highly specific nature of search-based ads in terms of targeting, a specific search-based advertising market could be identified (B). Based on a different economic

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<sup>11</sup> In particular, talks between Microsoft and Facebook.

model, listing advertising in directories would also appear to be identifiable as a specific market (C).

**A. ONLINE AND OFFLINE ADVERTISING ARE NOT IN THE SAME MARKET**

111. Google and Apple claim that there is only one advertising market in the broad sense of the term, encompassing not only online advertising but also offline advertising.
112. While a degree of convergence can be observed between these two advertising methods (1), their substitutability is insufficient to classify them in the same relevant market (2).

**1. A DEGREE OF CONVERGENCE BETWEEN DIFFERENT TYPES OF ADVERTISING**

113. To maximise their sales, advertisers choose and leverage different types of advertising methods (the ultimate aim of all of them being to generate sales for the advertiser) by comparing the rates of return on investment they each offer.<sup>12</sup> They seek to allocate their advertising expenditure optimally depending on their objectives. Such an approach is said to be favoured by the convergence of campaign performance ratings: CPC, CPM equivalent, cost per acquisition of a contact.
114. Advertising expenditure optimisation programmes (or “*mix média*”, media mix) have thus been developed to meet the requirements of advertisers. Our enquiry has shown that each prominent media agency develops its own models.
115. During the enquiry leading up to this Opinion, Google submitted a study on the ‘*impact of media mix optimisation companies on the substitutability between different forms of advertising*’. This study cites the example of company Market Share Partners (MSP).
116. MSP offers a fully customised consulting service to several dozen large customers, known as GPSs, who provide series of precise statistics (sales, number of new customers, advertising expenditure in various media, etc.) over a relatively long period of time, typically three years.
117. MSP has also developed an online tool dubbed Compass for businesses that are unable or unwilling to provide statistics as detailed as those supplied by GPS customers. Compass incorporates certain variables indicated by advertisers (sector, nature of the advertising message, competition) to advise them on how best to apportion their communication expenditure between different advertising channels. This model is said to strive to factor in the cross-media effects between different types of advertising.
118. Out of six fictitious businesses presented in the study, representing different types of business and pursuing cross-media strategies (they all advertise in the press, on television, engage in *display* and *search* advertising; indeed some even engage in

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<sup>12</sup> One should point out that all the expenditure of a company, and more generally all its actions, aims to generate sales, not just its advertising expenditure. The fact that a company seeks optimal allocation of its R&D investments, efficient organisation of its distribution agreements and proper allocation of its advertising expenses does not necessarily mean that all these inputs are on the same market.

billboard and radio advertising), the reallocation of investment in advertising after a relative increase of 10% in the price of search-based ads<sup>13</sup> is analysed, the aim of these fictitious businesses being to maintain their level of revenue. The outcome of this simulation is that the Compass tool recommends a reduction of between 5.7% and 14.3%, not in advertising *expenditure* in search, as stated in the RBB Economics note submitted by Google, but in *volumes* of search-based ad *impressions*, in other words quantities. This reduction in the volume of search-based ads goes hand in hand with an increase in the volumes of other types of advertising, mainly online *display*, or less often plus a reduction in the volumes of other advertising media (mainly advertisements in magazines, in particular in both cases). The study supplied by Google concludes from this that the other means of advertising are a substitute for search-based ads.

119. But the existence of a certain degree of substitutability between different types of advertising does not necessarily mean that the advertising products fall within the same relevant market as far as competition law is concerned. For this to be the case, the degree of substitutability must be high enough to prevent a company having a monopoly over one of the services from setting a long-standing price for this service that is significantly higher than it would be were the market to operate in a competitive manner (the hypothetical monopolist test).

## 2. INSUFFICIENT SUBSTITUTABILITY

120. The main arguments put forward by Google to justify the existence of a single advertising market relate firstly to the convergence (on the supply side) of online and offline advertising, which manifests itself in advertising offers bundling all media (a), and secondly to the reduction in offline communication expenditure concomitant with the development of online advertising, which is claimed to demonstrate arbitration between these various media (b).

### a) Cross-media offers

121. Google presents the convergence between online and offline advertising as a factor supporting a broad definition of the advertising market (a single online and offline market) or, at the very least, of online advertising without segmentation.
122. Google asserts that, given the development of the cross-media offers proposed by the main media brokers, such as ‘press+internet+mobile’ or ‘television+internet’ offers, the advertiser does not set the budget for each channel independently and that as a result there is no reason to distinguish between offline and online advertising.
123. However, the existence of cross-media offers does not necessarily imply a high degree of substitutability between the various media. It could even indicate a degree of complementarity between the media. As Google itself emphasises: ‘*Not only do advertisers factor in all media when they plan their campaigns, but they also take the view that the use of several media in a multi-media campaign is intrinsically favourable because it enables them to catch the attention of consumers at different stages of the decision-making process.*’

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<sup>13</sup> By price, the study means the cost per impression, i.e. the CPM.

124. Furthermore, almost all the advertisers who responded to the questionnaire sent out by the *Autorité* continue to believe that the internet addresses certain needs better than other channels. In addition to the finer targeting and greater interactivity that this medium offers, there is a lower entry cost and the existence of tracking and reporting tools (campaign monitoring), which allow better control of the return on investment.
125. Moreover, numerous advertisers (over three-quarters of the respondents) stress the current limitations of the online format, which is still less effective than certain offline offers in terms of coverage, penetration rate and work on branding.
126. These differences in characteristics between online and offline advertising thus prompt one not to classify these different types of advertising in the same market. This is also in line with the decision-making policies of the competition authorities, which have inferred from these differences in characteristics the fact that online and offline advertising could not be placed in the same market.
127. In its decision No 10-DCC-11 of 26 January 2010 on the exclusive takeover of NT1 and Monte-Carlo Participations (AB group) by the TF1 group, the *Autorité de la concurrence* took the view that television advertising and online advertising were not in the same market. The *Autorité* also considered in this decision that *'each medium has its own function and role and their modes of consumption are different and complementary. (...) The budgets allocated to each medium are not determined by making the various media compete with one another on the basis of their cost, but more by matching the objectives of the advertisers with the qualitative contributions specific to each of these different media.'*
128. The question of the positioning of the internet with respect to the other media was also raised by the European Commission in 2008 in its Google/DoubleClick decision. The Commission thus emphasised the distinct nature of online advertising and of offline advertising. In this respect it stated that *'this broad definition of the market cannot be accepted, mainly because the market survey has revealed that the majority of the respondents regard offline advertising and online advertising as distinct markets'*.
129. Moreover, the Commission stressed the distinctive feature of online advertising in terms of targeting: *'online advertising is used for specific purposes. Unlike offline advertising, online advertising is deemed to have the potential to reach a more targeted audience more efficiently. [...] Online advertising has a unique audience measuring system that tells the advertiser the exact number of users who have viewed or clicked its advertisement, and also offers swift "retargeting" of the advertisement. The efficiency of online advertisements can consequently be measured more accurately than with the traditional systems used in offline advertising.'*
130. While there is probably a degree of convergence between online and offline offers, this does not call into question the accepted separation between online and offline advertising by the competition authorities.

#### **b) Arbitration between the different media**

131. According to Google, the substitutability of different advertising media is also proven by the decline in spending on offline communication concomitant with the growth in online advertising.

132. However, the existence of arbitration between different products does not in itself prove enough substitutability to conclude that the products fall within the same relevant market.
133. The drop in offline communication expenditure cannot be ascribed solely to the emergence of online advertising, which is only one of the factors to be taken into account. The appearance of free newspapers and the development of the *TNT* (DTTV) channels have, among others, also had a deflationary impact on the prices and volumes of offline advertising. Now, the appearance of new advertising communication levers or technological innovations justifies the reallocation of advertising expenditure without proving the high degree of substitutability of the offers in the sense that they are said to be in the same relevant market.
134. The change in the relative budget shares allocated to different advertising media by advertisers cannot be systematically attributed to an effect of substitution, because it is the very goal pursued by the advertiser that can change.
135. Thus, in 2009, following the economic crisis, businesses were forced to cut their communication expenditure and favour channels guaranteeing short-term return on investment (affiliation programmes aimed at clearing stocks, price comparison sites, search-related commercial links generating immediate sales) at the expense of investments in *branding* to develop brand image and awareness (which are also relatively inert in the short term), which are by nature longer term.
136. **In conclusion, it would appear that online advertising and offline advertising are not part of the same relevant market. It is also advisable to find out whether several markets coexist in online advertising.**

#### **B. THE RELEVANT MARKET FOR SEARCH-BASED AD OFFERS**

137. The market, as is understood in competition law, is defined as the meeting point of supply and demand for a specific product or service. In theory, in a market the units offered are fully substitutable for consumers, who can therefore choose between several offers if there is a choice, which implies that each offerer is in competition through the prices of the other offers. Conversely, an offerer in a market is not directly restricted by the pricing strategies of offerers in different markets, because the latter market products or services that do not satisfy the same demand and that consequently are not substitutable for consumers. Perfect substitutability between products or services is rarely observed; the *Autorité de la concurrence* considers substitutable, and part of the same market, the products or services that requesting parties can reasonably be assumed to consider as alternatives that they can choose from to satisfy a given demand.
138. The demarcation of the relevant market must therefore proceed from an examination of the objective characteristics of the product in question as well as from the competitive and structural conditions of supply and demand.
139. The relevant market is demarcated in two stages: to begin with, the *Autorité* identifies the goods and services traded in the said market; it then demarcates the geographic area concerned.

140. There are numerous factors that restrict the substitutability of search-based ads and *display*-related offers. They relate to the specifics of the needs satisfied by search-based ad offers (1), which render close offers non-substitutable (2). The results of the questionnaire sent out to advertisers confirm the existence of a relevant market for search-based ad offers (3). The Compass study on the optimisation of the *media mix* cannot refute the previous conclusions (4).

#### 1. THE SPECIFICS OF THE NEEDS SATISFIED BY SEARCH-RELATED OFFERS

141. The needs satisfied by search offers are not the same as those satisfied by *display*. The goals pursued are different (a); in addition, search-based ads target prospects better (b) and make campaigns more affordable (c).

##### a) The goals pursued by *search* and *display* are distinct

142. This stems from observation of the behaviour of advertisers, who use the commercial links of search engines when they wish to induce online purchases immediately, whereas they look to display techniques when they want first and foremost to enhance their brand image and reputation (branding). In other words, display is reserved for branding objectives and search-based ads for performance objectives.
143. Furthermore, the advertisers on these two media are very different, as revealed by the aforesaid SRI-Udecam-CapGemini study, according to which the numbers of advertisers bear no comparison: fewer than 5,000 advertisers use display advertising (online), whereas the Google search engine alone has roughly [40,000–55,000].
144. Even though this trend is becoming less marked (a study conducted by AudienceScience and Forrester Consulting<sup>14</sup> shows that, for a sample of US advertisers, the audience targeting techniques that use a graphic display format are deemed as effective in achieving branding aims as direct responses), the answers to the questionnaire show that commercial links do little to create brand image, owing to their format, which is limited to a short phrase. Nearly 8 out of 10 advertisers are unanimous in stating, with regard to commercial links: *‘the sales pitch is very limited, because the number of characters is limited in the advertisements’*, *‘purchasing sponsored links does little to meet the communication needs of brand renown, because the expression options are confined to text’*, *‘it is hard to construct image and renown with searches alone’*.
145. The main aim advertisers pursue, as the answers to questions 23 to 59 show, is to *‘generate an immediate online buying act’*. Three other answers, albeit less frequent, stand out: *‘increase visits to your site’*, *‘be sure that the web user finds you when he/she types your brand name in the search engine’*, *‘generate an offline purchase in the very short term’*.
146. On the contrary, the reason most frequently put forward for making use of display advertising is its effectiveness in developing brand awareness. It enables one to *‘increase awareness of an offer’*, *‘considerably increase brand interest indicators’*, *‘communicate brand values and create the dream’*, *‘work on the brand image’*,

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<sup>14</sup> *The Current State of Audience Targeting*, February 2010.

*'increase awareness of a brand or product', 'explain a product' and 'play with the brand'*, thanks to the interactivity that the internet offers.

147. Moreover, Google claims that the progressive convergence of display and search pricing models could indicate that the objectives of these two types of advertising are converging. Indeed, for some years now we have noted an increase in the display inventory sold *'on performance'*, mainly at CPC.<sup>15</sup>
148. We should point out, however, that display *'on performance'*, if sold at CPC, does not always satisfy the objective of immediate return on investment. Even in a campaign aimed solely at boosting brand awareness, CPC charging is understandable because a click on an advertisement is proof of interaction with a potential consumer, and therefore of a sign of interest.<sup>16</sup>
149. Thus the convergence of pricing models does not necessarily point to a convergence of objectives.
150. **It follows that search-related advertising and display advertising today satisfy advertiser needs that are still essentially distinct.**

#### **b) The targeting of prospects**

151. The specifics of the search-related commercial link seem above all to reside in the different way of targeting the prospect. Search-based ads more particularly target prospects who are very close to fulfilling the buying act, unlike other types of (online or offline) advertising that aim more to arouse interest in a brand or product well before the buying act itself.
152. Search-related advertising thus answers an active search: the web user expects links in response to a query and the engine supplies both natural algorithmic links and commercial links, the relevance of which is to the search engine's advantage because they constitute the bulk of its revenue. A not negligible proportion of web users click on sponsored links, the appeal of which is demonstrated by the order of display, itself dependent on the click rate of each link (the ratio of the number of clicks to the number of impressions).
153. As the user is performing an active search, he receives a targeted message designed to induce him to buy. When performing an active search, consumers reveal some of their preferences and therefore constitute a target having a particular value for advertisers.
154. In the words of the AdWords mini-guide put online by Google: *'Web users who run a search (...) express a need through the keywords that they choose.'* They therefore have more chance of being interested in the product and transforming their search into a buying act. The related advertising thus has a different value for the advertiser.
155. The active nature of the search was indeed the factor advertisers mentioned most often in justifying the fact that search-based advertising met certain communication needs better than other channels (question 21 was open-ended): *'based on an active*

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<sup>15</sup> The SRI-Udecam-Cap Gemini study estimated the proportion of display sold on performance at 20% in 2009. The use of the results of the questionnaire sent out to advertisers has led to a comparable breakdown between types of pricing (80% of sales of display space are at CPM or a flat fee).

<sup>16</sup> This is the case for Facebook offers sold at cost per click, where the user who clicks on an advertisement is redirected to a fan site of an advertiser whose main aim is to boost brand awareness.

*process on the part of the web user (a query), advertising on search engines captures the prospect and displays a targeted message in response to a precise search' or even 'there is no other communication channel that enables us to reach customers who tell us very clearly that they are looking for a particular product'.<sup>17</sup>*

156. General-interest media agencies therefore regard search-based ads as the last advertising lever for finalising the purchase, since the sale has been prepared upstream by product and brand promotion campaigns. Search-related advertising thus occurs very far downstream in the '*decision tunnel*',<sup>18</sup> leading to the purchase and turns out to complement the communication acts performed further upstream.
157. Conversely, display is aimed at a wider yet untargeted audience that is further away from a buying act. For advertisers, this is evident in the fact that display aims to '*rapidly achieve a good coverage*' and '*rapidly reach a wide audience*', but that on the other hand its shortcoming is that it '*[does not satisfy] a precise need of the web user*'.

### **c) More affordable campaigns with search**

158. Search-based and display ads are also distinguished by the cost of organising campaigns, since search-based ads are much more affordable. There is no cost of entry and no minimum purchase amount and the budget can be very tightly controlled, because the advertiser can both cap the CPC and control the total investment budget. 14 out of 37 advertisers explicitly mention '*cost control*' as a benefit of search.
159. Display advertising on the other hand requires more initial investment. The general terms of sale of media brokers generally include a minimum space purchase. In addition, display advertising generates banner creation expenses that are much higher than those incurred in creating the text of a commercial link, in particular for innovative formats (video, enriched).
160. **It follows from all the foregoing that *display* is not a close substitute for search-based ads and therefore cannot be deemed to be part of the same market.**

## **2. THE NEAREST PRODUCTS IN TERMS OF TARGETING QUALITY ARE NOT REAL ALTERNATIVES**

161. At this stage, one should consider whether other products, which may seem relatively similar in terms of prospect targeting, such as contextual advertising offers (a), the

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<sup>17</sup> In particular, advertisers stress the fact that display '*does not satisfy any particular need of the web user*' or '*does not match web user queries*'. On the other hand, most advertisers state that one of the qualities of display is to be '*quickly reach a good coverage*', '*rapidly reach a wide audience*', '*the reach of display is greater on the internet*'. Although display does not target consumers who are actively looking for a particular type of product, it can nonetheless showcase a new product and 'create' a need that is hitherto non-existent and thus not yet expressed on the search engines.

<sup>18</sup> Some advertisers and media agencies emphasise the difficulty of estimating the proportion of returns of each communication channel leading to a purchase: '*it is difficult to assess the ultimate returns, given the fact that the customer's path, before reaching our site (...), can be very complex*', '*the issue of the last click*', '*the notion of decision tunnel (deferred purchase) must be factored in*' to evaluate the return on investment that can actually be attributed to a particular channel.

Facebook offer (b), the *retargeting* offers (c) or search engine optimisation (d), could be deemed to be substitutes for search-based ads.

#### **a) Contextual advertising**

162. As explained earlier, contextual advertising is now very targeted, as is behavioural advertising, in particular the retargeting offers. One should therefore examine whether these products can form alternatives to search-based ads.
163. First of all, as far as contextual advertising is concerned, an analysis of the content of viewed pages only reveals the user's centre of interest, but not an immediate need rendered tangible by an active search. No form of demand is expressed.
164. Consequently, it is not a genuine alternative for an advertiser: the conversion rate is much lower; there are few pages whose content is close enough to the advertising message for the contextual advertisement to be inserted into it with relevance. Advertisers stressed the fact that one of the limits of contextual advertising is that it was not operative '*in the search phase*', '*in the active phase*'. This results in '*low volume and lower click and conversion rates than the sponsored search-related link*'.
165. 28 advertisers polled by the questionnaire during the enquiry used '*contextual*' advertising offers in graphic or video format. In most of these cases, contextualisation was limited to accurate theme-based targeting based on the web user's presumed centres of interest, but which were still quite general (for instance, '*astrology*', '*cars*', '*stocks and shares*', '*household goods*', '*music*', '*dieting*', '*health and beauty*'). This less precise targeting cannot be a real alternative to search-based ads.
166. Contextual advertising is thus used by the big brands to extend brand presence online, as a follow-up to more traditional campaigns in richer formats aimed at developing brand awareness.

#### **b) Facebook: a future challenger?**

167. More specifically regarding the Facebook offer, or other social networks, presented by Google as achieving high-quality targeting based on web user profiles, it is not by the same token comparable.
168. A social network like Facebook clearly has a great deal of information on user profiles that it could make money from in future in the form of advertising links. The access Facebook has to users' profile data and to their lists of contacts, the large amount of traffic it generates, the duration of user connections and the high level of user loyalty it enjoys constitute important assets, which it could in fact use to significantly improve the quality of its ad targeting in order to compete with general-interest search engines.
169. Such a development, albeit subject to due observance of user privacy rules, could in the future give a social network like Facebook, which would possess such data preferentially or exclusively, a competitive edge that would bring about some change in the current positions.
170. As things stand, however, offers closely targeting the profiles of social network users do not appear to be regarded as a credible alternative to search-based ads, mainly because they do not satisfy users' active queries (advertisements on Facebook are

predominantly used for branding campaigns thanks to the interaction<sup>19</sup> afforded by the *'like'* or *'recommend'* buttons<sup>20</sup>).

### c) Retargeting

171. The behavioural targeting that *retargeting* allows is also hardly a substitute for a search-related commercial link.<sup>21</sup> This service consists in showing web users, after an initial visit to a commercial site, advertisements with links to the site that are displayed on other web pages visited by the web users. This type of advertising boosts the conversion rate (completion of the buying act). For this reason it is more a complement to a search-related commercial link than a substitute. In addition, the retargeting service is offered solely to the advertiser who had this initial contact with a web user liable to be interested in a product: access to this qualified prospect is denied to other advertisers, who would otherwise compete to acquire the prospect, unlike what happens when a web user types a query in a search engine.
172. Advertisers who use retargeting stress that, while this tool *'catches web users who would not have performed an immediate buying act'* and *'converts sales that would not have materialised otherwise'*, *'the web user must have visited the site at least once, therefore through another type of advertising'*. Therefore, this form of *'advertising does not appear to be an independent form of advertising but rather one that complements other types of advertising'* and *'it is often impossible to cover a wide audience with this type of communication'*, it is difficult or impossible to *'communicate about a new service or acquire new customers'* and the impact is low on *'web users who are not yet familiar with our brands, products and/or services'*. Use of this type is still *'marginal in global branding and performance strategies'*.

### d) Search engine optimisation (SEO)

173. Lastly, organic search engine optimisation, i.e. the site's hit list ranking in search engines, could also appear to be a credible alternative at first sight. However, barring very specific cases, it is very difficult for an advertiser to be ranked free of charge on certain keywords. Search engine optimisation (SEO) is difficult and does not guarantee a good ranking on all keywords. Even though there is no cost per click, it would be unrealistic to expect it to be free, inasmuch as considerable and repeated investments are made in it.
174. For many of the advertisers we polled, organic search engine optimisation alone does not generate enough traffic. Furthermore, it is only part of a medium- or long-term strategy aimed at displaying permanent content, whereas paid-for SEO, if one is prepared to pay the price, guarantees immediate exposure for a short-term campaign. Search-related advertising is thus infinitely more flexible and responsive than organic search engine optimisation. It also allows one to control the commercial message.

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<sup>19</sup> Hence a payment per click generally, even for branding offers.

<sup>20</sup> This button, which the site publisher places on a web page, is a community tool enabling the web user who visits the site to publish an excerpt from the page (with a link to the site) on his/her Facebook profile and thereby share this content with members of his/her network of contacts.

<sup>21</sup> Even though the format does not appear to be a fundamental point, one can nonetheless remark that behavioural advertising is more often than not in graphic format.

175. The main relationship between organic and paid-for search engine optimisation ultimately seems to be one of a complementary nature, particularly since studies show that communication is more effective when a brand is present both in organic results and in paid-for commercial links. This complementary nature is emphasised in the accounts of certain advertisers: *'we offer web users who are searching for our brands (products) a dual message: a more corporate message, in the organic link, and a more topical message – which is easy to adapt (a special offer, a reduction, the release of a new product), in the paid-for link. The synergy between these two levers is very important for us.'*
176. **It follows from the foregoing that these new advertising methods are not close substitutes for search-based ads.**

### 3. THE RESULTS OF THE QUESTIONNAIRE

177. In order to assess more precisely the degree of substitutability between different advertising channels, the *Autorité* prepared a questionnaire, already referred to in paragraphs 13 to 18, which aimed to determine the reaction of advertisers to an increase in the price of search-based ads.
178. Ideally, one could have wished to conduct a 'hypothetical monopolist test' (or 'SSNIP test') to determine the relevant market. This test consists in assessing whether a hypothetical vendor having all the products deemed to be part of the same market (and not just the initial product) could raise its price significantly and sustainably ('small but significant non-transitory increase in price' or *SSNIP*) while also boosting its profits. To define a relevant market, one therefore needs to proceed by iteration, starting from as small as possible an initial scope (comprising the benchmark product and its closest substitute). If the chosen scope is too narrow, a significant non-transitory increase in price would cause a great number of consumers to look to other products considered substitutable, which would render the price increase profitless. One then needs to repeat the test, extending the scope of products until the hypothetical monopolist finds it profitable to increase the price.
179. This quantitative approach takes account of the fact that two items are only very rarely perfectly substitutable or totally unconnected. However, this kind of test is not always easy to implement, particularly when there are no clearly set prices for the products. As far as online advertising is concerned, the price advertisers pay is the result of a bidding mechanism and is therefore never known in advance by the advertisers.
180. In addition, in 'two-sided' markets, i.e. markets in which a price rise for a particular category (the advertisers in this instance) may affect the quality of service rendered to the other side of the market, or the propensity of consumers on the other side of the market (the web users) to pay for the service, both sides (or faces) of the market must be factored in. In the special case of online advertising, web users pay nothing for their search results. In addition, a moderate reduction in the number of commercial links is unlikely to prompt a web user to change search engines if the relevance of the organic results remains unchanged. One can thus reasonably believe that confining one's analysis to only one face of the market does not markedly modify the approach.

181. Thus the questionnaire that the *Autorité* sent out to advertisers did not set out to conduct an SSNIP test as such, but rather to determine the behaviour of advertisers, more particularly in respect of the substitutability between different advertising channels. Despite the methodological limitations of this test,<sup>22</sup> the answers to the *Autorité*'s questions concerning a rise in the price of the AdWords service bear out the fact that few advertisers would want to reallocate a significant portion of their advertising expenditure on search-based ads were there to be a moderate increase in the price of this type of advertising. It thus confirms the limitations of substitutability between search-based ads and other types of advertising.
182. Two questions were asked to try and estimate the impact of a 10% rise in the price of search-based ads on advertisers' expenditure. As the price paid by the advertiser is fixed through a bidding mechanism and not proposed by Google in a fee schedule, a credible price rise mechanism for search-based ads had to be found. One option was to add a 10% administration charge to the cost per click, all other things being equal (question 93). The second option was to suppose that Google would decide to display fewer search-based ads per results page and that this reduction in the amount of advertising space would force advertisers to increase their maximum cost per click on keywords by 10% for the advertisement to have the same display as previously (question 94).
183. Of the 61 advertisers who answered these two questions, only 8 (question 93) or 7 (question 94) stated that a 10% price rise would lead them to cut their expenditure on AdWords; expenditure would increase for 9 of them (question 93) or 10 of them (question 94) and would remain unchanged for the majority of them (44).
184. The results are even more significant if one excludes the very small advertisers polled,<sup>23</sup> because 90% of the large multi-channel advertisers (18 out of 20) and between 64% (25 out of 39 answers to question 94) and 72% (28 out of 39 answers to question 93) of large advertisers on the search channel would maintain their expenditure on search-based ads. Most of these who would change their behaviour rather than cut expenditure on search.
185. In other words, for advertisers a rise in the price of search-based ads would appear not to entail a cut in expenditure devoted to such advertisements. For the main advertisers, such a rise could even lead to a moderate increase in their expenditure.
186. The substitutability between search-based ads and other means of communication therefore seems too narrow to allow one to take the view that search-based advertising belongs to the same relevant market as other advertising channels, whether online or offline.
187. The results of the responses to questions 93 and 94 do not seem to stem from a desire on the part of the advertisers to choose the 'easiest' and most non-committal answer, namely no change in expenditure, as Google contends. When advertisers were asked to say how they would react to a 10% rise in the price of display, a much smaller proportion of them said they would not change their expenditure on display. For instance, faced with a hypothetical 10% increase in the price of display (question 92),

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<sup>22</sup> For instance, since the questionnaire was sent to advertisers using AdWords, it explicitly referred to a rise in the price of the service offered by Google. However, only one company answered that it would switch to other search engines. The results would thus have been the same had the question been about an increase in the price of search-based ads on all search engines.

<sup>23</sup> They only represent a small proportion of Google's revenues.

a quarter of the advertisers who answered that a price rise would not affect their expenditure on AdWords would nonetheless consider modifying their expenditure on other channels *'that meet the same objectives as display'*. It thus seems that display advertising has closer substitutes than search-based ads, from the advertisers' point of view.

188. **In conclusion, the results bear out the market analysis based on the qualitative criteria of the services in question. The degree of substitutability observed between *search* and *display*, and more generally between search and other types of offers, is not enough to allow one to define a relevant market that combines search-based ads and other types of advertising.**

#### 4. THE COMPASS STUDY ON OPTIMISATION OF THE MEDIA MIX BEARS OUT THIS RESULT

189. As already mentioned, the MSP/Compass study provided by Google shows that, if faced with a 10% rise in the price of search, advertisers would tend to cut their volume of search-based advertising (*number of impressions*) by between 5.7% and 14.3%, according to the (fictitious) cases in question. Since this reduction would go hand in hand with an increase in the volumes of other types of advertising, particularly display, Google concludes that other types of advertising are a substitute for search-based ads.
190. One should first point out that the study produced by Google is based on six fictitious advertisers whose objective is to maintain revenue. This objective may seem less natural than one of maintaining advertising expenditure or maximising profit.
191. Be that as it may, if the study set out to resemble a hypothetical monopolist (SSNIP) test, it would have been better to study how a price increase in search would affect the profits – or at least the receipts – of search engines. In the case in point, the MSP/Compass model does not clearly show a drop in receipts, because they increase in three of the six cases (between 0.3% and 3.8%) and decrease (by 0.6% to 5.7%) in the other three cases.
192. If the receipts of search engines on average decrease (insignificantly) after the price rise, profits could well increase, since the volumes, and therefore the costs borne by the search engines, also fall. If one assumes that variable costs amount to 10% of the initial price of search advertising, which does not seem excessive and appears to be the order of magnitude recognised by Google,<sup>24</sup> the 10% rise in the price of search advertising would be profitable for search engines in five out of six cases.
193. **So the results of this study would also point to the low degree of substitutability between search and other types of advertising.**

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<sup>24</sup> In its answer to question 15 of the questionnaire submitted on 22 September 2010, Google states *'that costs represent around [...] % of its gross AFS revenues. Google estimates that the level of costs incurred for the display of search ads on Google's search engine properties is slightly lower (i.e. in a range of around [10-...])'*. The question was *'According to the figures in the answer to question 10, 51% of AFS gross revenue is worth [...] % of AFS net revenue (for online contracts), which represents costs of [...] % (ads service, anti-spam, processing of credit cards, agency and reseller fees). Is the order of magnitude of these costs, which appear to be variable costs, comparable for the display of search-based ads on the page of Google's search engine?'*

## 5. CONCLUSION ON SEARCH-BASED ADS

194. In light of the above, the substitutability between search-based ads and other types of advertising products appears relatively narrow. This is primarily due to the specifics of this channel in terms of targeting, as well as the lack of a real alternative. The advertisers' answers to the questionnaire sent out by the *Autorité de la concurrence*, as well as the study conducted using the Compass tool on fictitious cases, despite their methodological limitations, seem to bear out this conclusion and, in any event, do not introduce any factors liable to call into question the converging evidence justifying the definition of a relevant market for search-based ads, subject to the principle laid down in the introduction to this part.

### C. THE SEPARATE MARKET OF ONLINE FRENCH DIRECTORY LISTINGS

#### a) The offers proposed by the directories

195. Among the advertising offers of the various online directory sites, those of Pages Jaunes are the most comprehensive and offer advertisers graphic advertising and listing advertising.

##### *Graphic advertising offers*

196. Pages Jaunes offers graphic ads 'contextualised' by subject and, in this case, linked to a search on a section by the web user in the search bar.
197. Pages Jaunes's graphic ads offers (half-banners, inserts, etc.) seem to need to be placed either in the display advertising segment, or more probably in the search-based ads market (they appear after the web user runs a search; the web user can be offered the choice of a heading to narrow down the search).<sup>25</sup> The large number of headings and subheadings (200,000 sub-headings) is cross-linked to postcodes.
198. These offers, which on the Pages Jaunes site are clearly presented as advertising, stand out from online directory listings, which form the bulk of Pages Jaunes's online receipts.

##### *Online directory listings*

199. Online directory listings and the classification proposed by the directories do not seem substitutable for search-based ads on search engines for the following reasons.

##### *A particular advertisement selection method*

200. The service rendered to the company is different, because the advertiser does not buy a commercial link or a graphic ad to display if a keyword is typed in the web user's query, but rather a better listing in the directory in terms either of ranking or of exposure and precision in the supplementary details.

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<sup>25</sup> On this point, the answers to the questionnaire show that advertisers are undecided. Roughly the same number of advertisers is ready to group search-based graphic ads with textual search-based ads as with 'graphic' display ads (question 62).

201. The rendered service can thus be distinguished from search-based ads depending on the method used to select the ad. In its aforesaid Google/DoubleClick decision, the European Commission notes that the ad selection method distinguishes a third category, alongside search-based ads in search engines and non-search-based ads: ‘A third category can be identified (if one is to believe third-party reports on the online advertising market, for instance Jupiter and IAB – Interactive Advertising Bureau), namely classified ads:<sup>26</sup> these are listed on dedicated web pages under specific product or service headings (e.g. houses for sale in particular inner suburbs, active plumbers in a given town)’ (preamble 11).
202. The Commission explicitly puts online directory [www.pagesjaunes.fr](http://www.pagesjaunes.fr) in this third category: ‘Offline classifieds are customarily grouped in a separate section of a newspaper or magazine and generally linked to the area where the newspaper or magazine is distributed. Online classifieds allow specific geographic targeting thanks to the geographical specifications that the web user can input on the website in question (e.g. yell.com; pagesjaunes.fr).’<sup>27</sup>

*A different pricing model and period of commitment*

203. The pricing model for online directory listings is different from that of search-based ads: payment is made on a flat-fee basis. The period of the offer is different: three months to one year for Pages Jaunes against a single click for general-interest search engines.

*A limited choice of keywords*

204. The choice of keywords is much smaller: the advertiser can only choose from among 200,000 keywords of professional activities, arranged under 2,000 headings, which it can combine with geographical location criteria.
205. The online directory listings of Pages Jaunes are thus ideal for locating professionals. On the other hand, they do not enable the advertiser to be linked to keywords that it chooses within the semantic field of its business, nor do they tell web users that the advertiser sells a particular product. Their responsiveness and flexibility are thus much lower.

*A different customer base*

206. This explains the great difference between the customer bases of Pages Jaunes and Google: Pages Jaunes’s directory listing offers attract roughly [400,000–550,000] customers against roughly [40,000–55,000] for Google’s search-based ads.
207. Geolocation and online directory listings are prized by SMEs who want to refer potential customers to a physical offline contact. Even though Pages Jaunes has also embarked on a website development activity, which concerns [50,000–80,000]

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<sup>26</sup> The *classifieds*, in the original English text, include both the directories, as note 9 quoted below proves, and classified ads (property, cars, etc.). Traditionally in France, classified ads are not part of the advertising market (because they involve the sale of a specific item and are therefore not advertising a product or brand). Theme-based small ads seem to need to be grouped as separate markets per theme. In the Minister for the Economy’s letters C 2007-19 and C 2007-127, property, car and boat ads were deemed separate markets. In any event, classified ads online are not in the same market as listing on general-interest directories like Pages Jaunes or the ‘118’ sites. We should also stress that Pages Jaunes offers its own classifieds site, [www.annoncesjaunes.fr](http://www.annoncesjaunes.fr).

<sup>27</sup> Footnote 9 under preamble 11 of the Google/DoubleClick decision.

companies (primarily SMEs), the main aim of searches on Pages Jaunes is not to access the website itself. Unlike advertising on general-interest search engines, the online directory listing is of no use to an e-vendor.

208. Directory listing and business localization offers thus meet an extremely targeted demand. In this respect it should be pointed out that this type of answer to geographical searches could be particularly appreciated on smartphones that feature a geolocation function. The application developed by Pages Jaunes is said to be one of the five most popular downloads in France.

*A service perceived as specific by the advertisers*

209. The advertisers to whom the questionnaire was sent clearly distinguish search-based ads from listing advertising in directories. By far the main aim of advertising in directories (question 80) is to *'give the web user your contact details'*, whereas, for search-based ads (question 23), the aim that appears most often in number one position, and remains well ranked, is to *'generate an immediate online buying act'*. Followed by (either first, albeit less often or nonetheless well ranked): *'increase visits to the site'* then *'be sure that the web user finds you when he/she types your brand name'* (this concerns the corporate site of major brands), then *'generate an offline buying act in the short term'*, *'announce short-term promotions'*. Answer *'Give the web user your contact details'* is only ranked 11<sup>th</sup> out of 13 in number of points.<sup>28</sup>
210. In response to a 10% rise in the price of Google AdWords (questions 93 and 94), no advertiser says it will switch specifically to the directories.
211. In response to a hypothetical closure of their AdWords account (question 90), advertisers who answered the questionnaire invest above all in organic SEO (8/10), then in other search engines (6/10), then in display ads and emailing (5/10). Only 2 out of 10 advertisers consider increasing their investment in directories (among other channels).
212. It follows that the online directory listings of directories form a separate market within the online advertising market, distinct from that of search-based ads.

**b) The entry of search engines into the directories market**

213. Local searches (e.g. 'hairdresser 75015') can be run in search engines, but search engines do not yet make money from online directory listings, contenting themselves with showing traditional search-based ads, based on the purchase of keywords and paid at cost per click.
214. As has just been demonstrated, online directory listings in directories are not a substitute for search-based ads. In the range of offers proposed by the directories, only Pages Jaunes's graphic ads offers can be considered the closest equivalent to search-based ads.
215. However, even if one were to accept a looser definition of a 'local search' market, encompassing not only enhanced listing in directories but also search-based ads revolving around geographical queries and graphic ads shown in directories that

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<sup>28</sup> To use the answers to the questionnaire, we awarded 4 points to the answer given first, 3 to the second answer, 2 to the third and 1 to the fourth. The different choices could then be compared.

relate to the web user's query, only a fraction of Google's revenue in France should be taken into account.

216. Unlike the offers on Google or other search engines, Pages Jaunes's online directory listings do not let one implement a veritable campaign of commercial links (which implies total freedom in the choice of keywords and message, as well as the possibility of high responsiveness and adaptability).
217. According to the estimates that Google has divulged in the press,<sup>29</sup> roughly 20% of Google queries have a local component. The proportion of related revenue is, however, in principle much smaller, because it is the other types of queries and advertisers that generate the biggest revenue streams of search engines (leading traditional advertisers and e-retailers).
218. On the other hand, Google, with its Google Places, is developing a service for locating businesses that is clearly distinct from the traditional commercial links of the search engines. Companies can fill in a factsheet free of charge and place tabs on Google Maps. This offer is comparable to the functionality offered by Pages Jaunes or the sites of online directories linked to telephone directory operators (like '118 000', '118 712', etc.). If Google were to enrich paid-for priority online directory listings or tab enhancement offers, this would be in direct competition with the online directory listing of Pages Jaunes.
219. The fact that Google has started offering clickable tabs in four US cities could indicate its intention to enter this local directory listing market with more traditional money-making schemes (purchasing more locatable and visible listing to match the offers of the directories). In the future, Google will no doubt be in a position to exert a degree of competitive pressure on Pages Jaunes thanks to its Google Places offer integrated into the Google Maps service. But this is merely a potential development.
220. From all the foregoing, it turns out that, as things stand, the online directory listings of directories within the online advertising market constitute a separate relevant market, in that they cannot be substituted for either search-based ads on search engines or *a fortiori* the other types of online advertising not linked to active web user demand.<sup>30</sup>

#### **D. THE GEOGRAPHICAL DIMENSION OF MARKETS THUS DEFINED**

221. The geographical market of search-based ads and that of online directory listings proposed by directories in principle have a nationwide dimension, because of the existence of both language and cultural barriers.
222. Indeed, as even the European Commission admitted in its aforesaid Google/DoubleClick ruling, with regard to the online advertising market, the provision or purchase of advertising space is the subject of '*differentiation based on national preferences, languages and cultural specifics*'. It follows that even

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<sup>29</sup> Google vs. Facebook on Places, Amir Efrat, *The Wall Street Journal*, 19 August 2010.

<sup>30</sup> It does not seem necessary to add classified ads (cars and property), which are not for that matter considered advertising offers by the French professionals of the sector.

multinationals are required to formulate communication strategies country by country.

#### **IV. The position of companies and barriers to entry**

223. This part analyses the position of market participants on the previously identified markets and market segments.

##### **A. THE POSITION OF MARKET PARTICIPANTS IN THE DISPLAY ADVERTISING SEGMENT**

224. No single player appears to be in a position to achieve dominance in the market for display advertising space.

225. Indeed, even if one included contextual commercial links (such as those offered by Google AdSense for Content) in display advertising, because they are displayed links without this being explicitly requested by the web user, Google's share of this market would be under 20%.

226. Facebook is merely one player among many for the time being. A major media agency has estimated its market share at roughly 10% of display.

227. If display advertising were segmented, e.g. to distinguish intermediary advertising from direct sales, or to account for the distinctive features of certain media (like video), the structure of these sub-markets could well reveal players as leaders. This question is beyond the scope of this Opinion.

##### **B. GOOGLE'S POSITION IN THE SEARCH-BASED ADS MARKET**

228. Several factors point to Google having a dominant position in the search-based ads market.

229. Market share, profitability and pricing levels are the first evidence of this (1). In addition, while the capacity to set high prices in this market seems limited, Google appears to be in a position at the very least to exercise market power through the contracts it concludes with its advertisers (2). Finally, the barriers to entry seem high to compete with both the Google search engine and the search-based ads business (3).

##### **1. THE MAIN EVIDENCE OF A DOMINANT POSITION: MARKET SHARE, PRICE DIFFERENTIAL, PROFITABILITY**

230. Market share (a), high profitability (b) and consistently higher prices than the competition (c) are very convincing evidence of a dominant position.

**a) Market share: around 90%**

231. In terms of market share, Google represents over 90% of the search-based ads market in France. This position would not be fundamentally altered if one included specialised search engines or contextual links.

**b) Very high profitability**

232. According to the latest published figures, Google's global revenue totalled nearly \$21 billion for the first nine months of 2010. Operating income (before tax) topped \$7 billion, a ratio in excess of 35%.

**c) Prices consistently higher than those of the competitors**

233. Note that Google's cost per click prices are higher than those charged by the competing search engines, which could be accounted for by the fact that Google attracts more bidders given its central position in web user navigation.

**Examples of keywords in finance and insurance, index 100 for Yahoo!, based on average CPC in 2009**

	Yahoo!	Google
<i>crédit revolving</i> (revolving credit)	100	149
<i>crédit consommation</i> (consumer credit)	100	167
<i>prêt personnel</i> (personal loan)	100	200
<i>réserve argent</i> (cash reserve)	100	181
<i>crédit en ligne</i> (online loan)	100	321
<i>rachat crédit</i> (credit redemption)	100	470
<i>rachat crédit conso</i> (consolidated loan redemption)	100	218
<i>prêt conso</i> (consolidated loan)	100	215
<i>assurance voiture</i> (car insurance)	100	161
<i>demande crédit</i> (credit application)	100	174
<i>demande prêt</i> (loan application)	100	323
<i>assurance décès</i> (life assurance)	100	228
<i>devis assurance voiture</i> (car insurance quotation)	100	167
<i>rachat prêt</i> (loan redemption)	100	340

**2. THE MARKET POWER GOOGLE CAN EXERCISE**

234. The fact that Google controls neither the volume of the search-based ads that it offers nor the price fixed by bidding could argue in favour of little market power (a).

However, it appears that Google is able to influence pricing in other ways (in particular the quality score) (b). Finally, Google's market power is most liable to be exercised in its contractual relationships with advertisers (c).

**a) Seemingly little market power over volumes and prices**

235. One could contend that, even though Google enjoys a large share of the search-based ads market, it has little market power, since it cannot control the pricing of its offer since it results from a bidding mechanism.
236. By the same token, Google does not have the means, as it claims, to alter the volume of queries on a keyword, which depends on decisions made independently by web users, and thereby to restrict volumes to raise its prices.
237. The ever-increasing competition in the search engines market has therefore not apparently had the effect of lowering prices. If web user needs result in 1,000 queries a day for a given keyword and 100 advertisers bid on a query, whether there are 10 search engines each having a 10% market share or only one having a monopoly, this would have no effect on the number of daily bids on this keyword, nor on the number of advertisers taking part.<sup>31</sup>

**b) Google does have certain ways of influencing price, however**

238. The answers to the questionnaire show that, even though few advertisers would cut their spending on AdWords if prices were raised by 10%, few would increase it either. It thus appears that the price actually paid by advertisers is already close to the propensity to pay.
239. This is not surprising for bids on keywords that are much in demand, for which the number of bidders is far higher than the number of available spaces. In this case the price paid may well be naturally close to the maximum cost per click that advertisers are ready to pay. According to Google, 66% of its revenue comes from bids for which all the spaces are sold.
240. However, many market participants have pointed out that, because of the lack of transparency in the bidding mechanism, Google is thought to enjoy a degree of leeway to manipulate the bidding process.

***The impact of the quality score***

241. Google explains that the ranking of bidders depends on the CPC weighted by a quality score whose central factor is the click rate. In this respect it contends that it is normal for a search engine to award a higher ranking to an advertiser bidding only up to €0.10 but who can obtain 20 clicks for 1,000 impressions than to an advertiser whose bid fixed at €0.30 only obtains 3 clicks. According to Google, maximum click rate has the advantage of maximising the search engine's profits, ranking advertiser on merit and satisfying the web user, who sees the most relevant ads at the top of the list.

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<sup>31</sup> The reasoning is based on the economic mechanism underlying the bidding process (in particular second-price bidding), which reproduces the results of a competitive market in the presence of a monopoly or buyer's monopoly.

242. In a written answer dated 27 August 2010, Google describes this virtuous circle as follows:

*'It is in both the advertisers' and the publishers' interests that the ads displayed by Google attract as many clicks as possible in relation to the number of impressions and that they thus achieve a high click rate.*

*'(...) The higher the click rate, the more often users click on the ad (and reach the destination page) when they see it. In the end, it is the relevance of the ad that generates a high click rate. Web users will only click ads that they consider useful and relevant.*

*'(...) The higher the click rate for an ad, the more the advertiser, publisher and Google will be satisfied, insofar as their revenue will grow as and when users click the ads of advertisers that Google places on the sites of publishers.*

*'The click rate is therefore a system of measurement that brings together the interests of all the players in the value chain, including web users who, as explained above, will only show an interest in and click the ads that they consider useful.'*

243. On the basis of this reasoning, a search engine would not be interested in disregarding the click rate indicator, because it would be in its interests to favour links having the maximum click rate.

244. However, there appear to be situations in which moving away from the click rate can increase the profits of a search engine. A Yahoo! research article shows that it can be more beneficial to rank links, not by the product of the CPC and the click rate, but by under-weighting the click rate. If the click rate is not under-weighted, the ranking admittedly factors in the positive effect of a high click rate on a link, but not the negative externality of the quality and relevance of the link on the click rate of other links.

245. This practice of aiming to limit the influence of the click rate in the ranking of results, whether or not it is implemented by search engines,<sup>32</sup> at the very least proves that one can fine-tune the ranking formula to optimise the search engine's profits while at the same time undermining the usefulness for web users and advertisers. In conclusion, unlike the virtuous circle described by Google, the search engine's interests are not necessarily the same as those of the advertiser or the web user.<sup>33</sup>

246. It would not, however, appear that this possibility stems solely from the dominant position that a search engine may hold, but also and above all from the opaqueness of the algorithms and their implementation.

### **c) Market power wielded in the contractual relationship with advertisers**

247. The capacity of a search engine to cut itself off from competitive pressure can also be exerted in the contractual relationships that it builds up with its customers. This is the

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<sup>32</sup> Google states that it does not engage in this practice, a fact that cannot be ascertained, however.

<sup>33</sup> It appears, however, that reducing the relevance of results could impair the experience of the user on the search engine having a dominant position and could shrink its market share. It could, however, offer a lower degree of relevance on the syndication network (search solutions on partner sites, including search engines like lo.st or Orange). For instance, searching for 'Jean Tibéri' on lo.st, aol or the search bar of the Orange portal, which are members of Google's syndication network, throws up numerous commercial ads for denim trousers.

case when the search engine adopts the following forms of conduct without running the risk of losing a substantial proportion of its customers:

- the possibility of maintaining internal malfunctioning in communicating with its advertiser customers: answers that vary depending on the person they are addressing, or even no answers to enquiries. Now, the specialised media agencies that redirect pages to an intermediate page for a fraction of a second, for the purpose of collecting the statistics on the sponsored links campaigns of their customers, have been criticised by Google for having too long load times for certain advertisements; when they asked their account manager what the maximum load time was, no answer was forthcoming;
- the possibility of threatening to close one or even all the accounts of an advertiser on the grounds that the latter has violated the rules of the service, even though the said rules are not always clearly defined or are open to interpretation. In this respect, in connection with the matter that led to the adoption of the aforesaid decision 10-MC-01 of 30 June 2010, Navx had denounced the sudden breach of its contract by Google: The *Autorité de la concurrence*, at the stage of taking protective measures, had concluded that there was a lack of clarity and transparency on the part of Google, more particularly in connection with the ban on road traffic control avoidance systems and the procedure for notifying modifications to the applicable rules<sup>34</sup>;
- possibility of closing an advertiser's account once and for all;
- the freedom to pursue a policy of purchasing keywords, against the advice of the media agencies and advertisers. Now, since last 14 September,<sup>35</sup> Google has announced that it would no longer disallow the use of brand names as keywords in advertisements and even as keywords on which companies other than the company owning the brand wish to bid. Despite the opposition of its customers, Google can thus impose a new rule without fearing a falloff in demand or defection to the competition (on the contrary, it appears that several advertisers are being forced to increase their expenditure to buy the keyword matching their brand).<sup>36</sup>

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<sup>34</sup> Google then proposed some commitments, which were accepted by the *Autorité* in its decision 10-D-30 of 28 October 2010 on practices implemented in the online advertising sector.

<sup>35</sup> Further to a judgment pronounced by the Court of Justice of the European Union on 23 March 2010 as part of a preliminary ruling (attached cases C-236/08 to C-238/08), the commercial, financial and economic chamber of the *Cour de Cassation* (French Supreme Court) handed down four judgments on Google's advertising AdWords advertising system on 13 July 2010. It considered that the search engine service provider that restricts itself to storing keywords and displaying ads was not committing an offence and therefore incurred no liability. Google then announced that it would change its commercial policy regarding its AdWords system from 14 September 2010.

<sup>36</sup> The end of the brand-related keyword protection system is indeed one of the reasons put forward by the large advertisers to explain why they are considering increasing their expenditure on search ads in the short or medium term. None of the eight advertisers spontaneously raising the problem of the non-protection of brand-related keywords (when answering the question on the potential drawbacks of the bidding system) are planning to cut their expenditure on AdWords, and seven of them are planning to increase it.

248. It follows from the foregoing that Google's capacity to act independently of its customers is proof of its market power.<sup>37</sup>

### 3. THE EXISTENCE OF HIGH BARRIERS TO ENTRY

249. In order to minimise the existence of barriers to entry, Google claims that the competition is 'only a click away', i.e. web users can change search engines at no cost. However, even assuming this to be the case, the 'only a click away' competition does not in any event concern the 'advertisers' side of the two-sided market (a). In addition, numerous barriers to entry exist both on the 'web users' side (b) and on the 'advertisers' side of this two-sided market (c).

#### **a) The 'only a click away' competition does not concern, at the very least, the 'advertisers' side of the two-sided market**

250. According to Google, the competition is 'only a click away', meaning that the web user and the advertiser are only prepared to bear an extremely small cost before switching to the competition. As far as users are concerned, if they are not satisfied with a search engine, all they have to do is type the name of a different search engine into the search bar.

251. Even assuming that the competition is 'only a click away' for web users, which this Opinion does not need to ascertain, one need only point out that as long as the Google search engine is used for the overwhelming majority of queries, advertisers cannot deprive themselves of 90% of queries in their search-based communication. Certain companies quite simply cannot increase their budget allocated to other search engines for technical reasons: it is not because advertisers' demand for ads linked to a rare word is increasing on Bing or Yahoo! that more users will type this rare word into their search bar.

252. This privileged position of Google as a percentage of queries is the main justification for opening an AdWords account, according to the answers of the advertisers that the *Autorité* polled:<sup>38</sup> Google is 'an inescapable feature of the web', 'Google attracts nearly 90% of French users' queries', Google enjoys a 'hegemony in internet searches'. Other aspects appear less often, and in addition to the importance of market share: 'the simplicity of the programme', 'the wide range of functions', 'management interface far in advance of the competition'.

253. A search engine having a very important position on the 'web users' side of the two-sided market can thus afford to invest as a priority in enhancing the quality of the search engine in order to maintain its lead, without devoting the same effort to satisfying advertisers on the other side of the two-sided market. It can be assured of the fact that the latter will stay with it as long as the search engine brings in the best part of the queries.

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<sup>37</sup> More generally, many advertisers point out that Google can impose a modification of its rules without negotiation and often without notice. The only possible reaction of advertisers is to adapt to the new situation as quickly as possible.

<sup>38</sup> The question was: 'What in your view are the features of the Google offer that justify your having an AdWords account?'

254. In this respect it is striking to observe that only one out of the 65 advertisers who completed the questionnaire said it would increase its expenditure on competing search engines if there was a 10% price rise for AdWords, even though the prices of the same keywords are already higher on Google (roughly 50% higher on Google than on Yahoo! for very popular queries on loans in 2009).

#### **b) The barriers to entry to compete with the Google search engine**

255. High fixed costs, the size effect and Google's lead as far as exhaustive indexing is concerned form high barriers to entry on the 'web users' side of the two-sided market.

##### ***High fixed costs***

256. The barriers to entry on the search engine market appear high, in terms of both the cost of developing algorithms and the cost of hosting pages (for a general-interest engine).
257. The cost of the initial investment in developing a paid-for algorithmic solution for a general-interest search engine was estimated by one respondent at several hundred million euros.
258. In addition, as most of the large general-interest search engines have developed specialised search solutions often integrated into the organic results, a new entrant on the market is forced to expand simultaneously on several segments of universal search.
259. The barriers to entry seem less forbidding for the specialised or vertical search sector. It would appear, however, that Google gives specialised search sites a bad score, because they offer no proprietary content (which is normal for a search engine, whether or not it is specialised). These sites could thus have difficulty making themselves known, all the more so since Google's own vertical search solutions could be enhanced if integrated into the results of algorithmic searches.<sup>39</sup>

##### ***The size factor to enhance the relevance of the algorithm***

260. In addition, it is difficult to enhance the relevance of the algorithm without a certain minimum volume of queries. This is all the truer as regards the rarer queries. Algorithms are enhanced through a testing process on a fraction of web users running a search and who see a slightly different hit list. If the volume of queries is too small, the tests risk being run on samples that are insufficiently representative.

##### ***Google's lead as far as exhaustive indexing is concerned***

261. Besides the problem of the relevance of the algorithm, there is also that of the exhaustiveness of the index. According to figures on the number of indexed pages obtained by the *Autorité de la concurrence*, Google has an undeniable lead. In 2008, for that matter, Google in its public communication (*The Official Google Blog*) claimed to have won first place in terms of volume of indexed content.<sup>40</sup>

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<sup>39</sup> Since 2007, Google has included in its organic results any specialised results (images, videos, news, etc.) that it considers relevant to the user's query (which it calls 'universal search').

<sup>40</sup> 'So how many unique pages does the web really contain? We don't know; we don't have time to look at them all! :-)' Strictly speaking, the number of pages out there is infinite – for example, web calendars may

262. Furthermore, certain types of content are exclusive or privileged, either by their very nature or contractually. Thus Google has scanned the holdings of several libraries and publishers as part of its Google Books and Google Scholar projects. In its 2009 annual report, Google stated that it had scanned 12 million books and indexed them for online searches.<sup>41</sup> The versions of these documents that Google has scanned and stored on its servers cannot be indexed by competing search engines. Even if libraries and publishers were to allow another search engine to scan their collections, it is hard to see what benefit they would derive from this, because their library holdings have already been scanned and indexed.
263. In this respect one should point out that certain beneficiaries have challenged Google's systematic scanning policy (a court ruling on the Google Books Settlement, negotiated by Google on the one hand and representatives of publishers and authors on the other, is still pending in the United States) and it is uncertain whether other search engines could follow in Google's wake by scanning books in bulk without taking a legal risk.
264. Google's takeover of YouTube could also give it privileged access to this world-famous video-sharing site. As will be seen later, the indexing of this site's videos, and particularly the most recent ones, could be easier for its owner Google than for other search engines.

### **c) The barriers to entry to compete in the search-based ads market**

265. The insufficient traffic generated by search engines competing with Google, as well as their difficulty in developing a syndication network and proposing a complementary contextual advertising offer, are barriers to entry on the 'advertisers' side of the two-sided market.

#### *The lack of traffic on other search engines*

266. The main barrier to entry in the search-based ads market stems from the lack of traffic on other search engines on the other side of the two-sided market. Even though many advertisers are present on the three search engines,<sup>42</sup> the cost for a

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*have a 'next day' link, and we could follow that link forever, each time finding a 'new' page. We're not doing that, obviously, since there would be little benefit to you. But this example shows that the size of the web really depends on your definition of what's a useful page, and there is no exact answer.*

*We don't index every one of those trillion pages – many of them are similar to each other, or represent auto-generated content similar to the calendar example that isn't very useful to searchers. But we're proud to have the most comprehensive index of any search engine, and our goal always has been to index all the world's data.*

<http://googleblog.blogspot.com/2008/07/we-knew-web-was-big.html>

<sup>41</sup> 'Google Books lets users search the full text of a library-sized collection of books to discover books of interest and to learn where to buy or borrow them. Through this program, publishers can host their content and show their publications in our search results. We also work closely with participating libraries to digitize all or part of their collections to create a full-text searchable online card catalog. Google Books links bring users to pages containing bibliographic information and several sentences of the search term in context, sample book pages, or full text, depending on author and publisher permissions and book copyright status. To date, we have scanned and indexed over 12 million books for search. (...)'

<sup>42</sup> Note, however, that Bing and Yahoo! seem to have far fewer customer accounts posting advertisements in France than Google, even though the statistics that the *Autorité* has obtained are not exactly comparable.

small advertiser of optimising a campaign on Yahoo! or Bing may be disproportionate having regard to the number of clicks hoped for.

***The difficulty of developing a syndication network***

267. For competing search engines, there are also barriers to entry on the syndication network (the network of sites that use the search solution and post search-based ads). Firstly, certain sites may fear that their ranking will be inferior on Google if they participate in a competing network. Secondly, even if an alternative search engine offered a more generous revenue-sharing rate, the partner site would not necessarily win out in the end compared with what it would earn with Google, which, with more traffic and therefore more advertisers, has higher bids and a broader base of receipts to share out.

***The difficulty of proposing a complementary contextual advertising offer***

268. For contextual advertising, which can be a complementary development vector for a search engine, a large advertiser base lets one propose more relevant advertising on a network partner's page. The click rates are thus higher for the partners, which attracts partner sites and makes the network more appealing for advertisers, whose ads have more chance of being published on a relevant page. And yet Bing does not offer contextual advertising and Yahoo! discontinued it in 2009.

**Conclusion regarding Google's position**

269. Several factors point to Google enjoying a dominant position in the market for search-based ads: its profitability; its very large market share, which it has maintained for several years; the fact that Google can disassociate itself to a considerable extent from the dissatisfaction of advertisers within the framework of its contractual relations with them; and the existence of barriers to entry into the two-sided online search market, both for 'web users' and 'advertisers'.

**C. THE POSITION OF PAGES JAUNES IN THE DIRECTORIES MARKET**

270. In view of Pages Jaunes's very large market share in terms of value, but also in terms of volume (1), and its branding and brand awareness, both of which are significant barriers to entry (2), in all likelihood Pages Jaunes holds a dominant position in the online directories market.

**1. A VERY LARGE MARKET SHARE AND THE PROFITABILITY**

**a) Market share in value**

271. Pages Jaunes enjoys a virtual monopoly in the online directory listings market. The market share of '118' online directories is negligible, in terms of both revenue and traffic. According to estimates provided by an expert in the sector, the revenue of competing directories totals no more than [0–10]%.

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There are thought to be fewer than [8,000–15,000] customer accounts using search-based ads for Yahoo! and Microsoft compared with more than [50,000–90,000] accounts for Google).

272. Even though the services offered by Google on Google Places and Google Maps are similar to those provided by Pages Jaunes and other directories, Google's offer is free for now and is therefore excluded from the calculation of market shares.<sup>43</sup> Ultimately, there is a possibility that Google could enter the directories market with a fee-charging online directory listings offer.
273. If a more broad-based local search market were defined, the revenue that Google generates through search-based commercial links would be hard to assess with any accuracy. But it would in any event be less than 20% of search-related revenue, or even much less. The market share of Pages Jaunes would thus still exceed 75%.

#### **b) The profitability of Pages Jaunes**

274. In 2009, with a revenue of €1,164 million (online and paper directory), Pages Jaunes posted an operating income of €487 million (a ratio of over 40%).

### **2. BARRIERS TO ENTRY**

#### **a) Market share in terms of traffic**

275. Pages Jaunes's market share in terms of traffic is the main barrier to entry. This is because it is difficult for a competing directory to charge for better online directory listings if the number of searches on the online directory is extremely low.
276. The traffic of the '118' directories only allows traditional money-making from advertising (display and contextual advertising, particularly by being a partner of the AdSense network). Making money from enhanced online directory listings remains marginal.

#### **b) Brand name and awareness**

277. The Pages Jaunes brand name, which is becoming a generic term for business directories, is also undoubtedly a barrier to entry.
278. Because of the renown of its brand, Pages Jaunes has a sustainable competitive edge over competing directories, notwithstanding the possibility for the latter of purchasing at some stage the keyword 'pages jaunes' ('yellow pages') and

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<sup>43</sup> Were one to consider, even though this does not seem justified, that the search-based ads which appear when a local search ('hairdresser 75015') is run on Google Addresses or Google Maps could be a substitute for Pages Jaunes's online directory listings, this would in any case make up only a small proportion of Google's revenue, which would have to be taken into account in this hypothetical competition with Pages Jaunes and other directories in a broader 'local search' market.

One cannot contend that the advertising campaigns conducted through the sponsored links of advertisers bidding on hundreds of keywords to meet their direct sales targets online or to boost brand awareness (such campaigns generating the vast majority of Google's sales) could find an adequate substitute on an online directory. Online directories meet a very specific need for web users: finding the contact details and geographical coordinates of local businesses, which limits the possibilities in terms of communication for companies. The search-based ads of general-interest search engines satisfy a much wider range of communication needs because they satisfy a much wider range of needs for web users.

In any event, even in an extended local search market, Pages Jaunes's market share would still be greatly preponderant.

redirecting users to their own service, since Google announced its change in policy regarding the AdWords system, further to the judgments given by the *Cour de Cassation* (French Supreme Court) on 13 July 2010 after a preliminary ruling before the Court of Justice of the European Union<sup>44</sup>.

279. In this respect Pages Jaunes let it be understood in the hearing that it would protect its brand if a competitor bought the keyword ‘pages jaunes’, even if the competitor then redirected users to its own directory site (‘118 xxx’) without ambiguity in the advertisement. According to Pages Jaunes, such a practice would constitute a case of ‘*free riding*’.
280. Another factor liable to be a barrier to entry is the lead that Pages Jaunes enjoys in updating and correcting its databases on account of its renown. When an entry is wrong in online directories, the company should inform its telephone operator, from which the directories purchase the right to use the database. The first reaction of many companies, however, is to inform Pages Jaunes directly of the error, which gives it a free advantage on its competitors.
281. Awareness of the Pages Jaunes brand is still very strong, as the evidence given during the enquiry shows. Pages Jaunes was presented as an ‘*inescapable medium as regards online directory listings of addresses*’, on which ‘*web users automatically search*’, and one should not ignore that fact if one wants ‘*to be present alongside competitors*’. Indeed, companies are continuing to increase their expenditure on Pages Jaunes, for instance to support the expansion of a local network of physical points of sale.

### **Conclusion on the position of Pages Jaunes**

282. The high profitability of Pages Jaunes, its brand awareness and very large market share of online directories are evidence of the existence of a dominant position in the online directories market. This position seems, however, disputable, at least in the medium term, as is shown by Google’s entry into this market, with products that are free for the time being. The question of knowing whether such potential competition would exert enough pressure on Pages Jaunes to cast doubt on the converging indications noted earlier remains open.

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<sup>44</sup> See footnote to paragraph 247 above.

## V. The competitive operation of the online advertising sector

283. The advent of search engines has profoundly altered web users' browsing habits. The development of search-based ads has opened up new communication possibilities for advertisers.
284. Such an innovation, which appeared in such a short space of time, can but call into question the previous balance and the market development assumptions made by the various players in the advertising sector. It is therefore only natural that rumblings of discontent are making themselves heard and that opposition is all the more marked as only one player seems to dominate this new market: its hegemony is feared, its market power dreaded, the risks of arbitrariness are emphasised.
285. As stated in the introduction, concerns are voiced primarily by three types of players: (i) potential or actual competitors of the search engine, (ii) advertisers who use the AdWords service or publishers who are Google partners within the framework of the AdSense syndication network, (iii) finally newspaper publishers, whose relationship with Google is based sometimes on cooperation, sometimes on competition.
286. After putting to one side questions outside the ambit of competition law (A), the *Autorité* will examine several types of practices for which Google is criticised. For each of them, it will draw up an analytical chart to assess to what extent the practice is compatible with competition law (B). It will then express an opinion on the hypothetical regulatory measures the government is considering in its referral (C), and finally it will more specifically look into the position of the press (D).

### A. QUESTIONS OUTSIDE THE AMBIT OF COMPETITION LAW

287. Some of the grievances put forward by players in the online advertising sector fall outside the scope of competition law. Such is the case for purely contractual disputes that can only be referred to the commercial court judge, as well as conflicts related to the protection of intellectual property. By the same token, it is not up to the *Autorité* to give an opinion on concerns revolving around breaches of web user privacy.

#### *Commercial disputes*

288. Certain grievances heard during the enquiry in fact relate to purely contractual disputes, which are covered by commercial law.
289. In this respect the *Autorité de la concurrence* must point out that competition law is designed to protect public economic order, not the position of such and such a company. It does not set out to regulate the sharing of value or to guarantee the fairness of dealings between companies: its role is to ensure that the market as a whole operates in a competitive manner, for the benefit of the user companies and ultimately the consumers. Transparency and fairness in trade relations are absolutely defensible values, but the *Autorité de la concurrence* can only take them into account if effective market competition is in jeopardy.

290. Commercial disputes thus only fall within the scope of competition law if they are likely to affect operation of the market as a whole, disregarding individual sets of circumstances. In the Navx case for instance, the *Autorité* held the view that the difference in Google's treatment of GPS manufacturers and other suppliers of speed camera databases distorts competition in the markets concerned to the detriment of innovations or price cuts from which consumers would otherwise have benefited.

### ***Keywords and brands***

291. As was pointed out earlier, since 14 September 2010 Google has allowed any company to bid on brand names in its AdWords service. Previously, the holder of a registered trademark could object to this trademark name appearing in the text of an advertisement or being bid on by other companies. Google admittedly continues to prohibit trademark infringement in its AdWords regulations but no longer carries out prior checks.
292. Many advertisers challenge this decision of Google's and denounce the fact that they will from now on be forced to 'defend' their brand by outbidding for the corresponding keywords. They also fear that this may put the onus primarily on them to monitor infringement practices, thereby generating additional costs.
293. But this is covered by intellectual property law, not by competition law. In any event, Google's new policy is ambivalent from the point of view of economic analysis. On the one hand, the possibility of buying the keywords of brands is pro-competitive, because the brands will compete more with one another. On the other, it gives Google easy guaranteed income, because a brand will be forced to outbid to remain in first place in commercial links or quite simply bid if it was not already in first place.<sup>45</sup>

### ***Invasion of web user privacy***

294. Behavioural targeting techniques, already mentioned in paragraphs 44 et seq. of this Opinion, have aroused legitimate concerns among certain associations defending the principle of privacy. The US Federal Trade Commission (FTC) has indeed taken a stance in favour of instituting so-called *opt-out* techniques allowing web users to indicate, in a unique and permanent manner, their refusal to have their browsing history 'tracked' by the sites that they visit.
295. It is not up to the *Autorité* to examine matters related to the privacy of web users; such matters are dealt with by the *Commission nationale informatique et libertés* (CNIL, the French data privacy regulator) pursuant to law 78-17 of 6 January 1978, and by the courts of law under article 9 of the Civil Code. But, as much for Google as for social networks like Facebook, the search engine must present like its potential competitors at least, from a point that cannot be absent from the debate: the risks of invasion of privacy, if treated seriously by the authorities in charge of data protection and the competent courts, can have serious implications for the online searched-based ads market.

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<sup>45</sup> Nevertheless, this outbidding could only be limited, because it is quite likely, for instance, that Pepsi's ad displayed in response to a search on Coca Cola could be deemed irrelevant by web users and obtain a low-quality score, unlike Coca Cola's ad for the keyword 'Coca Cola'. According to a memo supplied by Google and based on the history of countries where Google's policy on brand keywords was different from that applying in France before 14 September 2010 (like the United Kingdom), the inflationary effect would be minimal.

## **B. POSSIBLE REMEDIES UNDER COMPETITION LAW**

296. Given the specifics of the online advertising sector in France and the misconduct denounced by the respondents, the Opinion will review a (non-exhaustive) typology of practices that Google could engage in to wield its market power. For each of them, it will draw up an analytical chart to assess to what extent the practice is compatible with competition law (B). In this respect we should point out that a company having a dominant position is not blameworthy in itself under competition law. Only the abuse of market power is punishable under article L 420-2 of the Commercial Code and article 102 of the Treaty on the Functioning of the European Union.
297. By proceeding in this manner, the *Autorité de la concurrence* hopes to shed light on the sector by providing a '*guide de lecture*' (interpretation guidelines) on practices that, depending on their specific circumstances and their impact on the market, may or may not constitute abuse of a dominant position. However, given that the *Autorité* has been referred to in a consultative rather than a judicial capacity, it will not rule on the legality of any specific scheme.
298. In the practices being considered and presented below, we will firstly distinguish potential crowding-out practices, i.e. ones that are likely to discourage, delay or eliminate competition in markets in which Google is or could be present (1) and, secondly, conduct more akin to unfair operations, i.e. affecting customers, suppliers or partners of Google, without their necessarily being its competitors (2).

### **1. POSSIBLE CROWDING-OUT PRACTICES**

299. This category traditionally includes strategies that a company in a dominant position pursues to try to discourage, delay or eliminate competitors through methods other than competition on merit: raising artificial barriers to entry, coupling products or services put on the market, predatory pricing, excessive customer retention policy, 'lock-in' exclusivities, etc. In assessing compliance of these strategies, the competition authorities weigh up the efficiency gains that companies may strive for – more particularly for the benefit of the consumers to whom such gains can be passed on in the form of price cuts, innovations, better quality – against the restrictive effects of competition that consumers will ultimately suffer, on account of the disappearance of competitors, or a reduction in the competitive intensity in the market.
300. Two types of strategies in this category could be implemented by Google:
- securing its dominant position by artificially putting up barriers to entry in the search engine or search-based ads market, so as to hamper the emergence of competitors;
  - leveraging the very strong position that the search engine enjoys to distort competition in the search-based ads market.

#### **a) Raising barriers to entry in the search engine and search-based ads businesses**

301. Such barriers to entry may:

- be of a contractual nature: a policy of exclusivity designed to prevent competing search engines from indexing content in as exhaustive a manner as Google can (protecting the search engine business), or restricting the range of choices offered to publishers as regards advertisements (protecting the advertising brokerage business);
- or of a technical nature: several concrete examples of such obstacles will be covered later.

***Exclusive agreements relating to indexed content***

302. As pointed out above, the indexing scope of content available online is a major competitiveness factor in the search engine business. Exclusivity agreements on the indexing of certain types of content that Google has signed with partners would thus give it a major competitive edge. Under established case law, exclusivity agreements are not anticompetitive in themselves. Limited exclusivity can help drive the market and have beneficial competitive effects. Moreover, exclusivity can be justified, for instance if it is granted in exchange for an investment that generates efficiency gains for the benefit of consumers. Within this framework, the competition authorities endeavour to ascertain that the scope and duration of the exclusivity agreement are proportionate to this investment.<sup>46</sup>
303. The example of contracts signed by Google with libraries to scan their assets is interesting in this respect. Google pointed out that these contracts stipulated that the library should deny automatic access to the files that it scanned: a competing search engine cannot therefore index files scanned by Google for a specified length of time.<sup>47</sup>
304. Such clauses cannot be condemned per se under competition law. They aim to protect an investment from the risk of free riding. Since scanning is a costly operation and it is highly unlikely that Google would engage in it unless it derived a benefit, *a fortiori* if the files in question were easily accessible and free of copyright. Moreover, this investment results in richer information for web users. This exclusivity clause could thus be indicative of competition on merit. The scope and length of exclusivity will, however, be a decisive assessment factor for the competition authorities.
305. In this respect the enquiry revealed the existence of a contract between Google and the library of Lyon on the scanning of its works. This contract, which enables the library to make digital copies made by Google available to the public on its own

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<sup>46</sup> In this respect the European Commission stated, in point 28 of its communication entitled ‘Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings’ (OJEU 2009, C 45, p. 7), that ‘*In the enforcement of Article 82, the Commission will also examine claims put forward by a dominant undertaking that its conduct is justified (1). A dominant undertaking may do so either by demonstrating that its conduct is objectively necessary or by demonstrating that its conduct produces substantial efficiencies which outweigh any anticompetitive effects on consumers. In this context, the Commission will assess whether the conduct in question is indispensable and proportionate to the goal allegedly pursued by the dominant undertaking.*’

<sup>47</sup> Answer of 5 October 2010 given by Google: ‘*Libraries that are partners of Google Book Search must restrict automated access to scanned copies created by Google. Google Book Search partners may nonetheless sign contracts with any other search engine, authorising them to automatically access scanned copies of books to index and search them. Google officially confirmed its position in a letter dated 19 July 2010 to Mr Anthony Whelan, principal private secretary to the Digital Agenda Commissioner (Neelie Kroes).*’

website, features a 25-year exclusivity clause prohibiting the scanning of the library's assets by any other company during that time. Besides the 25-year time span, which appears very excessive given the pace of change in the sector – a fact that Google referred to in connection with other aspects of the enquiry for that matter –, the scope of such an exclusivity clause seems out of proportion. Although it may well be legitimate for Google to protect itself from a risk of free riding by temporarily prohibiting competing search engines from indexing the works Google has scanned itself, denying a search engine the possibility of competing with Google by investing its own resources in the scanning is not admissible. Google for that matter seems to have realised this when it pointed out (during the course of the enquiry) that it would not enforce this clause of the contract.<sup>48</sup>

### *Limited exclusivity clauses in AdSense contracts*

306. The contracts governing relations between Google and partner sites of the AdSense for Search network and the AdSense for Content network include clauses granting Google exclusivity to commercial links on certain pages of the partner site. Thus in certain cases the partner site cannot display the ads of competing networks if it shows ads supplied by Google.
307. There are slight differences between the different types of AdSense contracts,<sup>49</sup> but the common principle of the clauses in question is, for pages of the AdSense partner site on which Google ads appear, to prohibit the display of targeted ads<sup>50</sup> served by competing networks or even ads that could be confused or associated with those of Google.
308. On the other hand, these clauses are not generally thought to prohibit the Google partner site from publishing ads of other networks on other pages of the site, as long as such pages do not feature Google ads, or from displaying traditional graphic ads on a page that also features Google ads (because there can then be no possible confusion).
309. More specifically with regard to AdSense for Search contracts, which allow a partner site that has installed a Google search engine on a page of its site to display search-based ads served by Google on the results page and share any revenue generated by user clicks on commercial links with Google, the simplified and service contract clauses require the partner to display three Google ads, in a single block in a better position than any other or identical similar ad supplied by another network.
310. These exclusivity clauses could work in favour of the Google network compared with other intermediation networks (because the Google network ads have a privileged or exclusive position, as the case may be) and make it more difficult for a competitor to set up a network of partner sites. In this respect we should point out that for a search engine the development of a network of partner sites generates a larger volume of web user queries and consequently higher receipts.

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<sup>48</sup> In an answer sent to the *Autorité* on 27 August 2010, Google stated: 'While the partnership agreement between Google and the library of Lyon does indeed include certain exclusivity clauses, these clauses were not added at the request of Google. In any event, Google clearly stated in the aforesaid letter its intention not to enforce these exclusivity clauses.'

<sup>49</sup> The different types of AdSense contracts are as follows: online contracts, simplified contracts and service contracts.

<sup>50</sup> Targeted ads as opposed to purely display ads with no particular targeting.

311. Consequently, an analysis on the merits of such exclusivity clauses would need to take several factors into account: Google's position in the advertising brokerage market,<sup>51</sup> the precise scope of the required exclusivity,<sup>52</sup> the effect on the competition (in particular the precise impact of such exclusivity clauses on other syndication networks of search-based ads or a new entrant), the proportion of AdSense revenues in the advertising revenue of partner sites, and lastly the justifications for such exclusivity in terms of economic efficiency for the advertisers, the partner site, the web users and Google.

#### *Technical barriers*

312. Barriers to entry can also take the form of technical obstacles put in the way of competitors.

#### *The YouTube case*

313. Certain aspects of the case suggest for instance that Google discourages the indexing of YouTube pages by other search engines. The Google videos site for instance does not feature site maps, i.e. a comprehensive description of how the site is organised to facilitate its indexing, unlike what Google would recommend to identical video-sharing sites that wish to facilitate their indexing by search engines. Apparently Bing, Microsoft's search engine, can only index a fraction of YouTube, unlike Google. To assess the compliance of these practices, one needs to assess on the merits whether the absence of a site map provided by YouTube can be objectively justified, whether or not it is really the cause of late indexing of YouTube by competing search engines, and lastly whether the Google search engine has more detailed information on behalf of its subsidiary.

#### *Interoperability between the interfaces of search-based ads advertisers*

314. Some respondents drew the *Autorité's* attention to a clause in Google's API<sup>53</sup> contract, which they said hampered interoperability between the different advertiser interfaces. Each advertiser is allegedly forced to run its advertising campaigns on each advertising platform, which puts small search engines at a disadvantage, since they do not generate as much traffic and therefore as many benefits for advertisers. Consulted on this point, several media agencies indicate, however, that technical solutions exist to get round this limitation.
315. There is some evidence that several software programs have been developed with a view to copying advertising campaigns automatically from one platform (e.g. AdWords, Google's dominant platform) to another (e.g. adCenter for Bing). It was

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<sup>51</sup> By distinguishing if necessary, firstly, the provision by publishers of search-based commercial links (the case for AFS partners) and, secondly, the provision of commercial links and ads in other non-search-based formats (the case for AFC partners).

<sup>52</sup> The scope of exclusivity does indeed seem unclear. The investigation services had asked Google whether the Ligatus ads were part of the advertisements '*that one could confuse with those placed by Google*' for online or simplified contracts or '*advertisements targeted on the content*' for Google service contracts. In a written answer dated 5 October 2010, Google stated that it was '*not in a position to confirm outright that the display of ads supplied by Ligatus would on no account infringe the terms of the online contracts, simplified contracts or service contracts*' and that it was '*necessary to assess due compliance of the Ligatus ads (or those of any other third party) with the provisions of the Google AdSense contracts case by case*'.

<sup>53</sup> Application Programming Interface

stated during the enquiry that these programs could not be marketed, either due to pressure that Google exerted on developers, or due to the risks that AdWords customers ran due to the ban on using these programs imposed under terms of use of AdWords, which could not be ascertained, particularly since the offending clause in the API contract has since been relaxed.

316. To assess the compliance of such practices, one would need to determine the extent to which manual porting of data, which is always possible, is a pertinent solution to circumvent the ban mentioned earlier. One would also need to estimate the impact on the competition of restrictions on programmatic porting as well as any possible technical or commercial justifications for such limitations.<sup>54</sup>

#### **b) Leverage effect supported by the search engine or search-based ads businesses**

317. Search engines have become essential tools to access information and are often the front door to the internet. For many website publishers, Google's search engine is a very important source of traffic, whether through organic search results or through the commercial links of the AdWords service. It follows that the way the search engine ranks websites is of paramount importance for them, as is the 'quality score' assigned to them to weight bids on the AdWords service.<sup>55</sup>

#### ***Manipulation of the ranking or the quality score?***

318. During this enquiry, certain websites complained of Google's practices concerning the ranking or quality score assigned to them. Among others, they mentioned (i) sudden and in their view unjustified changes in the rankings or scores and (ii) better rankings or scores for the services of Google or its subsidiaries (in particular the YouTube video service and the Google Maps geographical search service; this is expanded on below). This is precisely the matter that has been referred to the European Commission, further to the complaints lodged by suppliers of vertical search services, who contend that their services are penalised in the results of Google's free and fee-paying searches and that these searches give its own vertical search services an advantage by assigning them a preferential ranking. The start of the enquiry was announced on last 30 November: we need to wait for the outcome of the related investigations.
319. To rule out the possibility of such manipulation, Google puts forward two arguments. The first is the fact that the search engine must retain the ability to avert or correct certain misleading or malicious acts of websites, whenever they infringe the interests of web users. The second is the statement whereby it would not be in a search engine's interests to bias the presentation of search results, inasmuch as web users would then easily detect this drop in relevance and would turn to the competition at no cost.

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<sup>54</sup> Google believes that 'the general terms of API AdWords strike a fair balance between, on the one hand the fact of allowing agencies and SEMs to export data programmatically' and on the other hand the answer to justified concerns of defending sensitive commercial information, at least at an aggregated level.

<sup>55</sup> Each advertiser is weighted for each keyword for which it bids. This weighting is fixed by Google depending on the site's relevance for web users running searches on the keyword. Google's concern is to avoid websites free riding on the advertising service with advertisements bearing no relation to the web user's search.

320. The first argument is no doubt admissible in principle. One would still have to ascertain that it is indeed the protection of web users, rather than a desire to boost the search engine's revenue, that justifies the shift in ranking.
321. The second argument would be more convincing if it were not precisely the lack of transparency that web users suffer. The alleged pressure exerted by web users depends on the degree of transparency as regards the preparation of the results as well as the competitiveness of other search engines. But the opaqueness of the algorithm Google uses was denounced by numerous market participants during the enquiry. In addition, Google enjoys a clear lead over its competitors in the exhaustiveness of indexed content, as has been pointed out earlier, which it is claimed gives it greater freedom, up to a point, to alter the relevance of the ranking, should it so wish. Above all, web users are no doubt less sensitive to a moderate reduction in the relevance of commercial links than to a reduction in organic results.
322. Incidentally, even if Google derived no economic benefit in the short term in biasing its results in favour of its own services, owing to the fact that web users would probably go elsewhere, such conduct could be indicative of an economically rational attitude if viewed over the long term and if the arbitration factors included the benefits derived from the distortions of competition on the sources concerned.
323. In what follows we examine two types of conduct by Google observed on France. Without necessarily constituting a manipulation of results or quality scores, they could raise certain questions with regard to the rules of competition.

#### *The presentation of geographical search results in textual search results*

324. When the terms of a query imply a geographical search (e.g. 'plumber 75001'), Google displays a selection of tradesmen and a *Google Map* showing their location as part of the organic search results.<sup>56</sup> It does not list other websites offering geographical search services in the same way. This practice thus gives the Google Maps service an artificial advantage. Admittedly this service is not currently fee-charging in France. But it is in certain cities in the United States,<sup>57</sup> which may be a sign of things to come.
325. This practice could be analysed by taking one's inspiration from an analytical grid developed by the *Autorité de la concurrence* in its Opinion relative to the crossed usage of client databases<sup>58</sup> dated 14 June 2010 (Opinion 10-A-13), in light of the national context and competition law. In this Opinion, the *Autorité de la concurrence* takes the view that the use, by a company having (or having had) a legal monopoly in the market, of information obtained on the said market to develop its business in a second market open to competition, for instance by advertising this business to customers acquired through the legal monopoly, in principle constitutes an anticompetitive practice. On the other hand, this is not necessarily the case for a company in a dominant position that uses a customer base obtained through competition on merit. In particular, such a practice could increase competition in the second market if the company concerned is a new entrant in it.

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<sup>56</sup> On the date of the hearing, the map was displayed in the middle of the organic results; it is now displayed above the commercial links in the right-hand column.

<sup>57</sup> A company can include tags to bring out its listings on the general results pages or on Google Maps, a fee-charging service available only in certain cities in the United States.

<sup>58</sup> *Cross-selling*.

326. This analytical grid appears to be applicable to the present situation, since Google uses the traffic of its search engine (first market) to favour its Google Maps service and thereby make it more competitive with a view to easing its entry into the online directory listings market (second market), which is in principle, and subject to the reservations formulated earlier, a distinct market dominated by Pages Jaunes.
327. To assess the compliance of these practices on the merits, one should assess (i) to what extent the benefit thus derived by Google in the online directories market is likely to stimulate competition in this market, taking Google's position as new entrant in this market into account, (ii) whether the users, be they businesses or web users, derive any benefit from this situation and (iii) whether the means Google employs remain proportional. Is the presentation of results clear enough for web users? Does it not throw them into confusion? Is the advantage that Google Maps enjoys limited over time to what Google needs in order to launch its new business in the online directories market?

### *The participation of Google or its subsidiaries in AdWords bidding*

328. The second practice is the participation of Google or its subsidiaries in AdWords service bidding. Several Google accounts (internal accounts) are listed among the 500 largest advertisers using AdWords, as supplied by Google at the request of the investigation teams. For instance YouTube, Google's subsidiary, which offers an online video service, purchases keywords related to video: competitors have stated that they are unable to do likewise, given the levels of bidding.
329. As long as this is simply a financial transfer between two business lines within the same group, it may be in Google's interests to artificially raise the bidding to exclude competitors of YouTube, without this really costing it anything in real terms. One could object that Google then loses the advertising revenue spent by other video-sharing sites to purchase search-based commercial links. But this loss can be offset by the surplus advertising receipts on YouTube resulting from the increase, at least relative, in traffic on this site.
330. An enquiry is necessary to assess the compliance of such practices, in order to determine whether the amount of bids originating from Google's internal accounts remains proportional to the intrinsic value of the commercial link or if it includes a strategic dimension in the form of a forcing-out premium, which would stifle competition in markets where the advertisers are active, more particularly the publishers of video services.

## **2. EXPLOITATIVE ABUSES**

331. The classification 'abuse of a dominant position' applies not only to practices enabling a company to leverage its market power to force out current or potential competitors. In addition to these so-called crowding-out practices, which competition authorities examine as a priority, so-called abuses of operation also contravene competition law; these consist in a company disrupting the operation of other markets through exorbitant conduct (excessive prices, unjustified discrimination, etc.).
332. We will now illustrate the possibility of such strategies that could be implemented both in the AdWords business and in the AdSense service.

### a) The AdWords service

333. The AdWords service is intimately linked to the Google search engine: not only in its operation (because commercial links rely on requested keywords and are displayed alongside or above the search results), but also in financial terms (the AdWords service is the main revenue stream of the Google group: it funds the search engine's innovation programme – which is extremely costly).
334. At the time of our enquiry, many advertisers stressed the lack of transparency of the AdWords service in the bidding mechanism. Almost half of the advertisers who answered the question about 'the good and/or bad sides of the bidding mechanism' explicitly mentioned this aspect.
335. This lack of transparency is felt more particularly on the actual mechanism of fixing the cost per click (CPC) paid (*'the minimum CPC for the first page is unjustified and excessively high'*), on the *'quality score'*, presented as *'an unknown and uncontrollable factor, totally controlled by Google'*, on the exposure of the competition and on the positioning of the advertisement.
336. It was also denounced with regard to the nature of the content that may be offered on the AdWords service and the conditions in which Google polices the applicable rules. This is precisely the point on which the *Autorité de la concurrence* intervened in the Google vs. Navx case, the latter being a small company that offered – mainly on AdWords – software for locating speed control equipment on roads.
337. In the protective measures that it ordered (aforesaid decision 10-MC-01 of 30 June 2010), then in its decision on the merits of the case (aforesaid decision 10-D-30 of 28 October 2010), the *Autorité de la concurrence* noted both the lack of objectivity and transparency in the content rules – with regard to the traffic control avoidance devices – published on AdWords and the discriminatory application to which the regulations had given rise.
338. The lack of objectivity and transparency concerned:
- the products affected by the ban on traffic control avoidance devices, the said ban being the objection raised to the advertiser: the rule did not clearly apply to either the databases or the speed camera detectors;
  - the scope of the ban: the advertisers were unsure whether the ban applied only to the use of keywords and the promotion of products in the text of the advertisement or on the destination page of the commercial link, or whether it also covered redirection pages accessible from the destination page;
  - the procedure for notifying changes in the rules: the advertisers were given no prior notice of changes to the rules or of their effective date; in addition, Google reserved the right to interpret the rules within the framework of bilateral exchanges without changing the general rule;
  - the procedure that leads to suspension of the AdWords account: this could be done without any real prior notice, because the warning messages refusing the ad would not be considered warnings.
339. Discrimination, which arose in part from the lack of objectivity and transparency in the content policy, was evident in the differences in the treatment of suppliers of speed camera databases:

- GPS manufacturers (TomTom and Garmin), who could promote the supply of such databases on their site without being excluded from the AdWords service, and manufacturers of speed camera detectors and databases (SCDB, Coyote, Navx, AlerteGPS), who could not;
  - in the amount of information given to advertisers: some of them were notified, in writing and early enough to avoid being suspended, of the exact scope of the rule, or the interpretation that Google made of it (as was the case for Affiliation) and others were only notified in writing after their account had been suspended (this was the case for Navx).
340. Google's commitments before the *Autorité de la concurrence*, which the latter rendered compulsory on 28 October 2010, have resulted in the issued injunctions (protective measures) being extended over time and specified. Google thus undertook to make the operation of its AdWords service more transparent and predictable for advertisers with regard to traffic control avoidance devices in France:
- by specifying the devices that can and cannot be advertised, speed camera detectors and databases in particular;
  - by specifying the ambit of the ban, and more particularly whether it applies solely to the content of the ads or whether it extends to the destination and redirection pages of advertisers and the use of keywords;
  - by setting up a targeted information and notification procedure for changes in AdWords content policy (more restrictive changes must be notified three months in advance, barring any exceptions specified in the commitments);
  - by specifying the procedure that could lead to a suspension of the advertiser's account if it violated the AdWords content policy. Barring exceptions, this procedure includes at least two stages, including a final and formal warning informing the advertiser of the alleged violation and the risk of having its account suspended.
341. This case compellingly illustrates how competition law can quickly remedy a situation,<sup>59</sup> by correcting potentially unfair conduct.

#### **b) The AdSense service**

342. Certain Google partners complain that they lack information on the 'AdSense for content' and 'AdSense for Search' services. The partners of these syndication networks more particularly stress the opaqueness surrounding revenue-sharing arrangements.
343. Clause 12.1 of the AdSense online contract stipulates for the benefit of the co-contractor that *'the share of that revenue that you get will be determined by Google from time to time in its absolute discretion. You acknowledge that Google will not and does not have to tell you how it works out that share or what percentage of the total advertising revenue earned by Google from the Ads and Referral Buttons which appear on Proprietary Element(s) your share represents. Payment will be calculated solely based on records maintained by Google.'*

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<sup>59</sup> Referral dated 16 February 2010; protective measures ordered on 30 June 2010, decision on the merits of the case rendered on 28 October 2010.

344. Google recently agreed to disclose the percentages of receipts passed on to partner publishers. It made commitments to that effect before the Italian competition authority, initially on an application by the national federation of Italian newspaper publishers. Google decided to propose commitments to allay the concerns of the Italian competition authority, whose decision is expected shortly.
345. Since 24 May 2010, the percentage of receipts passed on to partners having taken out an online contract with Google has thus been given by the latter to its partners through the online user interface.<sup>60</sup> The share of receipts owing to partners having an online contract currently stands at 51% of gross revenues generated by the AFS services and 68% of the gross revenues generated by the AFC services.

**C. GOOGLE'S POSITION DOES NOT JUSTIFY THE INTRODUCTION OF A REGULATORY FRAMEWORK, BUT COULD LEAD TO THE ADOPTION OF TARGETED MEASURES**

*The advisability of regulatory measures*

346. In its letter of referral, the minister questions the advisability of adopting regulatory measures to preventively ward off any competitive difficulties that may arise in the online advertising sector.
347. This questioning echoes the positions adopted by the *Autorité de la concurrence* in several Opinions, which recommend that the legislator take specific measures to prevent or correct known competitive risks. More often than not, these were transitional or more lasting measures consisting in:
- supporting the opening up of network industries (telecoms, energy, railways) to competition by imposing obligations of access to infrastructures;
  - issuing certain guarantees favouring continued competition to accompany the privatisation of public-sector companies, like motorway concession holders (Opinion 05-A-22<sup>61</sup>) or airports (Opinion 10-A-04<sup>62</sup>);
  - regulating the diversification on competitive markets of public corporations or companies having a legal monopoly: EDF-GDF (Opinion 94-A-15<sup>63</sup>), SNCF (Opinion 09-A-55<sup>64</sup>);
  - lowering barriers to entry or mobility in sectors where the play of competition is restricted, such as retail distribution (Opinion 10-A-26<sup>65</sup>) or mobile telephony (Opinion 08-A-16<sup>66</sup>);

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<sup>60</sup> <http://adsense.blogspot.com/2010/05/adsense-revenue-share.html>

<sup>61</sup> Opinion dated 2 December 2005 further to a request for Opinion from AMCRA (Association for the defence of competition on motorway networks) regarding competition issues that may ensue from the announced privatisation of the semi-public motorway concession holders.

<sup>62</sup> Opinion dated 22 February 2010 further to a request for an Opinion from AMCRI (Association for the defence of competition on networks and infrastructures) regarding competition issues that may ensue from the privatisation of French airports.

<sup>63</sup> Opinion dated 10 May 1994, further to a request for an Opinion on the problems arising from the diversification of EDF and GDF activities with regard to the competition.

<sup>64</sup> Opinion dated 4 November 2009 on the public land transport sector.

- guaranteeing consumers’ freedom of choice, hindered by exclusivity clauses deemed to be ‘lock-in’ (Opinion 09-A-42<sup>67</sup>) or the compulsory bundling of products or services (Opinion 09-A-49<sup>68</sup>).
348. But, for the *Autorité de la concurrence*, the adoption of a regulatory framework for a sector must remain the exception to the rule, subject to three conditions:
- (1) there are known obstacles to the workings of competition in the market in question;
  - (2) competition law provides no suitable and sufficient remedy;
  - (3) the regulation measures under consideration must remain proportional to the demonstrated obstacles.

### ***The remedies of competition law***

349. The analysis conducted by the *Autorité* in this Opinion clearly shows that competition law can prevent, correct or sanction certain forms of conduct deemed to constitute an abuse of a dominant position and thereby place limits on Google’s activities that are liable to impair effective competition between market players.
350. For instance, when the *Autorité de la concurrence* was referred to on the matter of opaque and discriminatory practices on the part of Google in connection with the AdWords service, it ordered the search engine, as stated in paragraphs 336 et seq. of this Opinion, to abide by a series of injunctions issued as a precautionary measure, which were then extended and specified within the framework of a commitments procedure.
351. The European Commission for its part announced on last 30 November that it was instigating an in-depth investigation of Google. The Commission’s investigation will establish whether Google abused a dominant position by lowering the ranking of certain services in the organic results of vertical search services and awarding its own vertical services a preferential ranking. The Commission will also investigate a possible downgrading of the quality score of competing vertical services ranked in paid-for results. It will also examine claims that Google allegedly imposed exclusivity clauses on its advertising partners or computer and software vendors. Lastly, it will investigate possible restrictions on the portability of advertising campaigns to competing advertising platforms.
352. The Commission should thus be required to settle the question of the methods that the search engine implements to rank websites in organic search results or in the framework of commercial links, a question that raises many concerns.
353. On all these points, competition law alone can provide remedies.

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<sup>65</sup> Opinion dated 7 December 2010 on the affiliation contracts of independent stores and the procedures for acquiring commercial property in the food retailing sector.

<sup>66</sup> Opinion dated 30 July 2008 on the position of virtual mobile network operators in the French mobile telephony market.

<sup>67</sup> Opinion dated 7 July 2009 on the relations of exclusivity between the activities of electronics communications operators and content distribution activities and services.

<sup>68</sup> Opinion dated 7 October 2009 on the conditions of competition in the borrower insurance sector for mortgages.

### *Due regard for the innovation process*

354. The *Autorité* also wishes to draw the government's attention to the risks that would ensue from too early or too rigid a regulatory intervention. In this respect one must hail the industrial and economic success of Google and more generally underscore the gains for the economy that innovation can contribute in the search engines and online advertising sector.
355. The development of search engines offers web users a quality service at no charge and ad links that are often useful, if one is to believe the click and conversion rates. New functionalities and enhanced services appear thanks to the competition between search engines.
356. For smaller website publishers, who were unable to sell their available advertising inventory directly, Google's solutions are an often welcome source of earnings.<sup>69</sup> For larger sites, the AdSense network offers an additional outlet for sales of *non-premium* inventory.
357. Lastly, for very many advertisers, search-related commercial links are often a particularly effective new communication channel that complements other means of communication. For certain small advertisers, for whom budget is a fundamental constraint, and who confined themselves to local advertising channels because they could not access traditional national advertising channels, search-based ads have given them access to a much broader scope of communication. The development of search-based ads has thus gone hand in hand with that of online sales.
358. Most advertisers seem satisfied on the whole with their search-based advertising campaigns (mostly run on AdWords as far as the advertisers polled by the *Autorité* are concerned). In fact, 62 of the 68 advertisers who answered question 26 of the questionnaire said they were satisfied '*with the efficiency of their search-based ads*'. Compared with other online advertising channels, this is one of the highest approval ratings.

### *Targeted measures to guarantee non-discriminatory treatment of market participants*

359. It follows from the foregoing that competition law appears to be a potentially effective instrument for limiting or sanctioning any distortions of competition that some of Google's practices could generate.
360. Incidentally, as was stressed forcefully in paragraphs 354 to 358, one should make sure not to artificially curb the innovation process at work in online sectors in general and in online advertising in particular. The successive technological breakthroughs in this sector and the transformation in web user behaviour are an essential cog in the smooth operation of markets and the vitality of the economy. Therefore, even though concentrations of economic power are observed, at least provisionally, in one or other of the segments in the online advertising sector, these form an integral part of a process of innovation.
361. Indeed, it is this process of innovation that will see new forces emerge that are likely to call Google's position into question. For example, the development of the mobile web and smartphones could see new online search methods emerge: searches activated on app stores (the example of Apple's App Store); searches based no longer

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<sup>69</sup> Google provided numerous and substantiated testimonials.

just on text (given the sometimes cramped keyboards) but potentially on images, sounds, places, etc. By the same token, the extension and enhancement of social networks (such as Facebook and Twitter) could also change web user behaviour and offer them new ways of accessing online content.

362. This being the case, the *Autorité de la concurrence* does not recommend introducing a comprehensive regulatory framework, on the model of those instituted to ensure the opening-up to competition of the network industries. Indeed, Google's position is neither one of a legal monopoly nor that of a public undertaking: it is through a remarkable effort of innovation, the launch and maintenance of which are the fruits both of risk-taking and sustained investment, that the company has achieved its acknowledged success, through competition on merit.
363. For all that, certain new questions resulting from the specific model of search engines may call for targeted measures on the part of government, designed to reinforce transparency and guarantee non-discriminatory treatment of market players. The current regulatory and fiscal frameworks were sometimes designed before the advent of search engines and commercial links: consequently, they may need to undergo specific adaptations. The *Autorité* will return to this question in the rest of this Opinion, more specifically with regard to the legal framework stemming from the 'Sapin law' and its appropriateness to the current operation of the online advertising sector (see paragraphs 372 et seq.).

#### **D. THE SPECIAL POSITION OF THE PRESS**

##### **a) The grievances of the press with regard to Google**

364. The French newspaper publishers have submitted a number of grievances against Google to the *Autorité de la concurrence*. Besides the opaqueness of the contractual relationship (1), the press denounces the destabilisation of the traditional *display* economic model based on editorial quality (2), a lack of equity in the rights and duties that apply to the press and search engines (3) and lastly the '*free riding*' of Google News (4).

##### ***The opaqueness of the contractual relationship in the AdSense contract***

365. The press denounces the opaqueness of the contractual relationship that Google has concluded with AdSense partners. This point, which is not specific to newspaper publishers, has already been discussed. In the case of newspaper publisher sites, we should point out that participation in the AdSense programme represents only a small or very small proportion of the sites' advertising revenue. The bulk of advertising revenue is still provided by direct sales of display advertising space to advertisers at either a cost per thousand impressions or a flat rate, or at cost per click.
366. The receipts from Google AdSense are only a supplement at the very most. In this type of companion sale, it appears that Google AdSense is increasingly in competition with alternative solutions like the one offered by the performance-based advertising network Ligatus.

### ***Destabilisation of the traditional display economic model***

367. Even though advertising revenue is essential for newspaper publishers' sites, the new paradigm imposed on the online advertising sector, based solely on performance indicator (like cost per click), is thought to be weakening the traditional media model, which relies on editorial quality. Newspaper publishers' concerns are aggravated by the possibility of posting graphic advertisements on the AdSense network at cost per click and prices considered to be excessively low, so much so that they depreciate the value of the *display* formats that the press primarily lives on.
368. The emergence of new products and services, which can be marketed with different pricing methods from those of the traditional services, is part of the natural and competitive workings of the economy: it ultimately benefits the consumer.
369. Thus payment at cost per click, and the absence of a minimum purchase offered by the AdWords service as well as other performance-based offers, now makes it possible for numerous small and medium-sized undertakings that used to be excluded from the advertising market, at least at national level, to access it.
370. In addition, it would appear that search engines and newspaper publishers propose offers in separate markets. It is by no means an established fact that Google's revenues '*cannibalise*' the advertising revenues of newspaper publishers. Even though they obviously have advertisers in common, Google addresses a much broader customer base and meets a need of precise targeting much further down the consumer's 'decision tunnel', whereas the offer of newspaper publishers is much further upstream in corporate communication.
371. Our enquiry has not uncovered any predatory pricing to date. The commercial links offered by Google in its AdSense programme, and marginally the graphic ads, are not placed in positions of the same quality as ads sold directly by the ad-sales houses. The pressure that advertisers exert for a wider choice of performance-based offers cannot be put down solely to Google. We note, moreover, that this pressure was particularly strong in 2009, when the economic crisis led advertisers to refocus on direct response campaigns rather than on longer-term brand image and awareness development campaigns.

### ***A lack of transparency that could lead to discriminatory treatment of market participants and could call for specifying or complementing the legal framework stemming from the Sapin law***

372. Several newspaper publishers lament the lack of transparency of AdSense reporting. In their view, an examination of the offers of other intermediaries having features comparable with those of Google on certain points would highlight the gaps in the information supplied by Google. Amazon Affiliates and Mobil ADdict were said to be substantially more transparent, although the *Autorité* was unable to ascertain these assertions belatedly made known to it.
373. One of the reasons for the dissatisfaction of publishers stems from the lack of auditing or certification of the data provided by Google, in particular the net receipts that form the basis for calculating the share passed on to partners: '*That revenue will be determined by a number of factors, including (a) the number of valid clicks on Ads displayed on your Proprietary Element(s), (b) the number of valid impressions of Ads displayed on your Proprietary Element(s), (c) the number of valid completions of Referral Events initiated through Referral Buttons displayed on your Proprietary*

*Element(s), and/or (d) other events performed in connection with the display of Ads on Proprietary Element(s)*' (clause 12.1 of the online contract already quoted in paragraph 343).

374. The suspicions that certain publishers harbour concerning the figures provided by Google are justified in their view by the lack of clarity in Google's *reporting* and the impossibility for the partner to check the figures originating from Google's records.
375. For this reason the press denounces the discriminatory treatment of online advertising players. It contends that the rights and duties are not the same for search engines on the one hand and for the traditional ad-sales houses that market the inventory of content publishers on the other. The question in particular is posed of the scope of law 93-122 dated 29 January 1993 on the prevention of corruption and on the transparency of economic life and public procedures, known as the Sapin law, which aimed to introduce more transparency into the advertising sector.
376. The Sapin law guarantees advertisers transparency in advertising when they call on the services of an intermediary (e.g. a media agency) to buy space: it places the onus on the medium or ad-sales house that sells the space and on the intermediary commissioned by the advertiser.
377. But the Sapin law did not tackle the separate question of the transparency that a publisher could demand of an intermediary that it commissions to sell its advertising inventory to advertisers. At the time the law was passed, the ad-sales houses were more often than not closely tied to the advertising media and the question of transparency between the publisher having an advertising inventory and the ad-sales house charged with the task of selling it was not a real issue.
378. The development of multiple-media ad-sales houses and networks selling to advertisers the pooled advertising space of hundreds or even thousands of publishers now raises the question of the transparency that a publisher (or an ad-sales house tied to a publisher) can legitimately expect from the intermediary that it uses to sell some or all of its advertising space. This question undoubtedly calls for legislative clarification. The legislator could for instance introduce minimum *reporting* obligations (in the case of Google AdSense type networks for example, regarding the provision to site publishers of further details on keywords, the destination of links, the conversion rate of clicks, etc.) as well as, for larger networks, an auditing mechanism, possibly controlled by a third-party certifying body.

### ***The 'free riding' of Google News***

379. Finally, the press criticises '*a form of economic free riding*' at work in the operation of the Google News aggregator: Google, by presenting the premium content of each paper, which no publisher can evidently offer individually, would become the benchmark news site, without paying any financial consideration to the newspapers that bear the cost of creating quality news. The press points out, however, that Google has already signed agreements including a financial consideration with AFP or Twitter.
380. The search engine's answer in this respect is that the *quid pro quo* for newspaper publishers is nothing other than the traffic Google generates for them, it being up to them subsequently to make money from this traffic by selling the inventory to advertisers. Google adds that it does not publish search-based commercial links on Google News.

381. This presentation is incomplete, however. Google does not confine itself to providing a short extract and a link to an article only on the Google News secondary site. When a search run on the general-interest search engine is considered as having a connection with news topics, Google reinjects a few Google News links into the organic results page itself. These links help refresh the results returned by the general-interest search engine, thereby enhancing its reputation for quality and relevance. In addition, they are displayed on a page of the general-interest search engine, on which Google offers commercial links related to the searches, a source of indirect revenue.
382. Furthermore, one can appreciate the argument whereby Google, with its Google News service, does more than just index the content of newspaper publishers: it aggregates, ranks and finalises the presentation of the content. In doing so, it itself offers editorial content similar to that offered on other news sites, with the standard sections arranged by topic, without bearing the cost of producing the news. It capitalises on the distinctive features of each publisher and their comparative advantages in each field (*L'Équipe* for sport, *Les Échos* and *La Tribune* for financial news) in order to offer web users 'the best there is', which no single paper can do on its own.
383. It is therefore very important that newspaper publishers can demand to be, and get, excluded from Google News without being delisted from the Google search engine. The latter company has recently made commitments to that effect before the Italian competition authority: the indexing of press content in Google News must be unbundled – by means of a simple and prior procedure – from that of content accessible through the general-interest search engine.
384. France's *Autorité de la concurrence* will see that these undertakings, which Google claims that it has already implemented, are complied with in France.
385. This should help newspaper publishers regain a degree of bargaining power. Note that many newspapers have brought back subscription charges, at least for part of the content on their websites. It is just possible that the emergence of digital tablets will accompany this 'return to subscription access' and will also give the press a chance to find new ways of making money from their online content.<sup>70</sup> In this context, the solution for the press may lie in news pooling projects competing with Google News and offering integrated online purchasing solutions.

#### **b) Digital kiosk projects**

386. Major players in the national daily press (*Libération*, *Le Figaro*, *L'Équipe*, *Les Échos*, *Le Parisien*), joined by several magazines (*L'Express*, *Le Point*, *Le Nouvel Observateur*), have announced the formation of a *Groupeement d'intérêt économique* (*GIE*, economic interest grouping) with a view to setting up a common portal for the online press. The purpose of this portal would be to concentrate press content in digital format and sell it through a common billing system.
387. This initiative follows on from that of the regional daily press, which set up a common application in last September on the iPad, as well as Lagardère's Relay

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<sup>70</sup> One should also point out that Google offered to discuss with publishers the implementation of a number of solutions aimed at helping them make money from their content, such as micro-payments or a system of free first clicks (followed by redirection to a subscription or paid-for page).

service, available online and on the iPad, which says that it offers access to 450 downloadable magazines.<sup>71</sup>

388. For newspapers and magazines, such initiatives aim to gradually establish a paid-for digital model, as an alternative to practices common until recently, which consisted for most publishers in putting all or part of their newspaper or magazine content online free of charge. By concentrating a large number of newspapers and magazines on the same portal, these publishers hope to be able to generate heavy traffic and facilitate the billing of the content with a common system. It is also a matter of regaining control of the distribution of their content, in reaction to the Google News site.
389. In their principle, these initiatives may be a relevant answer to the questions or concerns mentioned earlier. They may enable the press to establish a viable and sustainable economic model online. Moreover, these digital portals should foster the emergence of innovative offers for consumers, such as subscriptions or special-interest search services covering a large number of papers and magazines.
390. The planned kiosks may also be a source of simplification for web users, who currently have to manage a great number of accounts to access the various sites of national newspaper sites.
391. Beyond their economic dimension alone, these plans may ultimately work in favour of continued independence in the provision of quality news, through the new revenue streams that they could provide to the press, thereby contributing to the general-interest objectives that form a consensus in any living democracy.
392. In implementing their plan, the newspapers will naturally need to ensure that the rules of competition are duly observed. It is no doubt too early to examine in detail the plans under consideration, but the *Autorité* can already make the following recommendations, thanks to its extensive decision-making practice as regards groupings or cooperation agreements between competing companies.
393. Firstly, agreements between companies that include specific anticompetitive clauses (common price-fixing, market share-out, prohibited buying and selling, etc.) can only be compatible with competition law if they satisfy all four criteria of exemption: the agreement must generate efficiency gains; it must not result in an elimination of competition; the agreement must be strictly proportional to the goals pursued; a large proportion of the efficiency gains must be passed on to consumers.
394. Secondly, when membership of a grouping (like a *GIE*, economic interest grouping) is a prerequisite for market access or a significant competitive benefit, the membership rules must be objective, transparent and non-discriminatory.
395. By way of clarification, the following could constitute clauses that are contrary to competition rules:
  - exclusivity clauses obliging newspapers to be present on only one portal at a time: such clauses may be justified if the market is very competitive (e.g. because there is a significant number of portals and none of them dominates the market, so that exclusivity contributes to drive competition) or if the exclusivity

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<sup>71</sup> 'Relay.com is a platform for downloading magazines, books, comics and software, and is run by HDS Digital. Relay.com, the largest press downloading site, with over 2,000,000 magazines downloaded in 2009 and 600,000 unique visitors, has also introduced the first unlimited news download package in partnership with WWF.' (Lagardère press release of 31 August 2010)

clauses are the quid pro quo for investments benefiting consumers and the duration of which is proportional;

- conditions requiring participation in agreements or membership of *GIEs* that would arbitrarily exclude players or categories of them (e.g. pure players from online subscription press); such conditions would distort competition if these portals were a privileged channel for accessing paid-for news for web users. On this point, the chairman of the SPQN (the national daily press federation) stated in the hearing that the digital kiosk plan was indeed intended to be very broad-based;
- the adoption of a common line of conduct, in particular on pricing: more particularly, fixing uniform prices would only seem justified for offers of services that are also common to the participants in an agreement or members of the *GIE* (e.g. a subscription service or specialised search service covering a large number of newspapers and magazines).

396. Competition law thus does not disallow the setting up of digital kiosks, provided a number of precautions are taken. If the government were to give significant financial backing to one or more projects of this type, it could consult the *Autorité de la concurrence* on the basis of a precise project, so as to guarantee the players as much legal certainty as possible.

## CONCLUSION

397. In view of the growing importance of the internet in the everyday life of both private individuals and the commercial sphere, one measures the ***essential role that search engines play as entry point to online browsing***, and notably the main one among them in France, namely Google.

398. One should first stress that the appearance and permanent enhancement of these search engines, and of the commercial links that support and finance them, provide ***really useful and potentially value-creating functionalities***. The commercial links offer new channels to advertisers, particularly to SMEs and online retailers, who can thus expand their export business or provide new services or lower prices for consumers by developing online distribution for instance. Moreover, advertising is an important source of revenue that allows online players to offer web users constantly renewed services and content, thereby fostering a ***cycle of innovation that is absolutely virtuous in its principle***.

399. ***But the rapid expansion of search engines and commercial links also unsettles numerous players***, a situation that led the government to seek the opinion of the *Autorité de la concurrence*. Several categories of players, be they partners, customers or competitors of Google, believe that they are victims of its conduct, which they believe is unfair or even unlawful.

400. ***Many of the grievances that we heard do not fall solely within the scope of competition law***. Some stem firstly from the normal workings of markets that, like the internet, are perpetually undergoing a process of innovation: new technical or economic models call the old ones into question, and lead everyone to reposition themselves. Other grievances, covered by trademark or commercial contract law, are a matter for the commercial court judge.

401. To assess *purely competitive questions*, the sector-based survey conducted by the *Autorité de la concurrence*, the findings of which are summarised in this Opinion, examined the various offers of online advertising and sought to determine the extent to which they are interchangeable for advertisers. The *Autorité* wished to back up this examination with an in-depth enquiry, more particularly by means of questionnaires sent to advertisers, and fill it out with observations gathered after a very stimulating debate involving the very numerous players concerned. It emerges from this that ***the commercial links offered by search engines are a really distinctive feature for advertisers***, from the point of view of the communication goal, the targeting offered, the position they occupy in user browsing patterns and the pricing arrangements. In particular, the commercial links appear not to be substitutable for *display* banner or video offers. The development of smartphones and social networks, which concentrate a growing proportion of the traffic, could call this assessment into question in a few years' time. These alternatives do not seem, however, to be exerting any significant competitive pressure on search engines at the time of writing of this Opinion.
402. The *Autorité de la concurrence* also looked into the position of the key online advertising players in France, namely Google and Pages Jaunes. There is a lot of evidence pointing to the particularly strong position occupied by Google: market share, pricing level, the nature of relations with customers, level of margin, etc. Moreover, the barriers to entry appear high for developing a competitive search engine business, more particularly in view of the investments at stake for developing algorithms and indexing content, as well as the size effect. Subject to new data or arguments that were not brought to the attention of the *Autorité* in this consultative procedure, these factors lead one to consider that ***Google currently holds a very dominant position in the search-based advertising market***. While Pages Jaunes also dominates the online directory business, the barriers to entry appear to be less prohibitive.
403. This dominant position is not of course reprehensible per se: it is the result of a tremendous effort in innovation, sustained by significant and ongoing investment. Only the abusive exploitation of such market power may be sanctioned. The *Autorité de la concurrence* has therefore examined the competitive operation of the online advertising market and drafted an analytical framework for several types of practices to assess their compliance with competition law. It has distinguished potential crowding-out practices, aimed at discouraging, delaying or eliminating competitors through processes that are not a product of competition on merit (putting up artificial barriers to entry, exclusivity clauses that are excessive in their scope or duration, technical obstacles, etc.) and possible abuses of operation, whereby the search engine could impose exorbitant conditions on its partners or customers, treat them in a discriminatory manner or refuse to guarantee a minimum degree of transparency in its contractual relationships with them.
404. The *Autorité*, which gives its opinion in an advisory and non-contentious capacity, does not express an opinion on the compliance of such practices, which for that matter often require long and complex investigations if pursued. And yet this analytical framework clearly shows that ***competition law can place limits on Google's acts and address the competitive issues emphasised by the players***. Recently referred to by the company Navx regarding opaque and discriminatory practices on the part of Google, the *Autorité de la concurrence* thus ordered the search engine to implement a series of protective measures, which were then

extended and expanded on within the framework of a commitments procedure. The Commission for its part has just initiated formal proceedings with regard to Google, to settle in particular the question of the methods that the search engine implements to rank websites in organic search results or within the framework of commercial links, a question that raises many concerns.

405. This being the case, ***the Autorité de la concurrence does not recommend introducing a comprehensive regulatory framework***, on the model of those instituted to ensure the opening up to competition of the network industries. For all that, certain new questions resulting from the specific model of the search engines may call for ***targeted measures on the part of government, designed to guarantee non-discriminatory treatment of market players from a regulatory and fiscal point of view***.
406. More particularly regarding the press, which is very affected by this Opinion, since it is at the same time a customer, partner, competitor and potentially supplier of Google, the *Autorité* notes that ***the legal framework stemming from the Sapin law regarding transparency in the advertising sector is not wholly suited to Google's offers***, which did not exist when the law was passed. ***The Autorité de la concurrence therefore invites the legislator to specify or complete this legal framework*** to take into account the new conditions of operation of the advertising sector.
407. For all that, the press is still faced with the digital challenge and it would not be responsible to single out Google as the main cause of the difficulties that this sector is experiencing. In this respect ***the Autorité hails the initiatives taken by the sector's players to pool their resources and encourage the emergence of a fee-paying model***. With the aim of providing greater legal certainty, this Opinion provides analytical elements on how to ensure the compatibility of the planned digital kiosks with competition law.

**The proposals of the *Autorité de la concurrence* to address the concerns of the market players are summarised in the tables below:**

**Concerns of the general-interest search engines:**

<b>Concern</b>	<b>Analytical grid</b>	<b>Follow-up</b>
Exclusive agreements related to indexed content	<p>Check that exclusivity clauses are limited in scope and duration and are proportional to the investment granted.</p> <p>Regarding agreements on the scanning of books with libraries, check that they do not ban the scanning of information assets by a competitor.</p>	Examination where appropriate by the <i>Autorité de la concurrence</i>
Exclusivity clauses in AdSense contracts	<p>Check the precise scope of exclusivity required of the partner and its impact on the development of syndication or intermediation networks by competitors.</p> <p>Examine where appropriate the justifications provided in terms of efficiency gains.</p>	European Commission enquiry
Obstacles to competing search engines indexing YouTube, a Google subsidiary	<p>Check whether YouTube's practices hinder search engines in competition with Google in indexing its content.</p> <p>Examine where appropriate the justifications provided in terms of efficiency gains.</p>	In principle, European Commission enquiry. Otherwise, possible examination by the <i>Autorité de la concurrence</i>

**Concerns of the ‘vertical’ search engines:**

<b>Concern</b>	<b>Guideline</b>	<b>Follow-up</b>
Obstacles to the simultaneous use by advertisers of several search-based ads platforms	Examine to what extent advertisers can easily transfer their campaign from one platform to another and whether any restrictions that Google may impose are justified.	European Commission enquiry
Possible manipulation of the search engine ranking or ‘quality score’ awarded to advertisers to weight the bidding process on the AdWords service	Investigate to establish whether such manipulation practices are or are not engaged in by Google.	European Commission enquiry
The promotion of Google Maps in search results for any query implying a geographical search	Check that the means that Google uses to enter the online directory listings market and compete with Pages Jaunes are proportionate.	In principle, European Commission enquiry. Otherwise, possible examination by the <i>Autorité de la concurrence</i>
The participation of Google or its subsidiaries in AdWords bidding	Check that the amount of the bid remains proportional to the value of the service and does not include a forcing-out premium.	In principle, European Commission enquiry. Otherwise, possible examination by the <i>Autorité de la concurrence</i>

**The concerns of advertisers (AdWords customers) and partners of the syndication network (AdSense):**

<b>Concern</b>	<b>Guideline</b>	<b>Follow-up</b>
Use of brand names as keywords in AdWords bids	Outside the scope of competition law	Within the scope of competence of the commercial court judge
Purely contractual disputes, unfair practices	Outside the scope of competition law	Within the scope of competence of the commercial court judge
Lack of transparency and discriminatory application of the rules defining content that can be allowed on the AdWords service	Clarify the scope of the rules governing content and notify advertisers of any modifications well in advance.	Commitments rendered mandatory by the <i>Autorité de la concurrence</i> (aforesaid decision 10-D-30 of 28 October 2010)
Sudden closure of the advertiser's AdWords account	Do not suspend the AdWords account without prior warning (barring a case of absolute necessity).	Commitments rendered mandatory by the <i>Autorité de la concurrence</i> (aforesaid decision 10-D-30)
Opaqueness of the share-out of revenue between Google and the AdSense partner site	Amend the AdSense contract and inform the partner of its share.	Google's commitments submitted to the Italian competition authority.  Implementation to be monitored by the <i>Autorité de la concurrence</i> in France

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**Concerns of the press publishers:**

<b>Concern</b>	<b>Guideline</b>	<b>Follow-up</b>
The inadequacy of the regulatory framework stemming from the Sapin law to guarantee transparency with respect to publishers in the online advertising market	Establishment of minimum reporting obligations in favour of publishers imposing themselves on syndication or intermediation networks, or even a third-party certifying and auditing mechanism for the largest networks.	Amendment of the legal framework
'Free riding' of Google News	Offer newspapers opportunity to opt out of Google News without their being delisted on the general-interest search engine.	Google's commitments submitted to the Italian competition authority. Implementation to be monitored by the <i>Autorité de la concurrence</i> in France
	Encourage the creation of digital kiosks between press publishers, subject to a number of precautions designed to preserve competition.	Plan to be submitted for Opinion to the <i>Autorité de la concurrence</i> , which provided an analytical grid for the initiatives under consideration, whose principle it encourages.

Deliberation on the debriefing of Mr Paul-Emmanuel Piel and the speech by Mr Sébastien Soriano, deputy general rapporteur, by Mr Bruno Lasserre, president, Mrs Françoise Aubert, Mrs Anne Perrot, Mrs Elizabeth Flüry-Hérard, and Mr Patrick Spilliaert, vice-presidents, Mrs Pierrette Pinot, Mr Jean-Vincent Boussiquet, Mr Yves Brissy, Mr Noël Diricq, and Mr Denis Payre, members.

The meeting Officer  
Thierry Poncelet

The Chairman  
Bruno Lasserre

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## Annex

This annex includes firstly a copy of the questionnaire<sup>1</sup> sent to advertisers during the investigation preparatory to this Opinion and secondly the *Autorité de la concurrence*'s responses to the methodological criticisms formulated by Google.

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<sup>1</sup> The questionnaire was circulated in its original French version

# Advertisers' questionnaire

Opinion 10/0014A

**Submission deadline: ...**

By letter recorded on 18 February 2010 under number 10/0014A, whereby the Minister for the Economy, Industry and Employment referred the matter of the competitive operation of online advertising to the *Autorité de la concurrence* for its Opinion.

As part of the investigation preparatory to this Opinion, we ask you to complete the following questionnaire. Please complete and return it by Monday ...

**You are reminded that under article L 450-8 of the Commercial Code<sup>2</sup> you are required to complete this questionnaire.**

*You may provide any relevant documents to substantiate and back up your statements.*

*Certain questions may not be relevant in your particular case, for instance if you do not engage in certain types of advertising.*

*If you cannot answer certain questions accurately, try and give an approximate answer or an order of magnitude. An approximate answer is preferable to no answer at all. In such cases, you should specify that it is an approximation.*

*If you use AdWords, your answers to questions 79 to 91 are particularly important.*

## **I. Your company**

- 1. Please state the name of your company.**
- 2. Give the internet address of your site(s) (if you have any).**
- 3. Give the name of the person who completed this questionnaire and an email address and a telephone number at which he/she can be reached.**
4. Describe your line of business and the products or services you sell on the French market.
5. How many employees do you have in France?

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<sup>2</sup> This article states: **'If anyone objects, in any way whatsoever, to the fulfilment of the duties with which the agents appointed by article L 450-1 are entrusted pursuant to this book, this will be punished by a prison sentence of six months and a fine of 7,500 euros.'**

6. Do you sell services or products solely online? If so, which ones? What proportion of your revenue comes from direct online selling?
7. Specify your annual revenue (in France and worldwide) since 2005.

***II. Your communication policy***

8. With which of the following two statements do you most agree:
- I start by drawing up an overall communication budget then break it down and apportion it to each advertising channel.
  - I draw up a separate budget for each channel (or each main group, which may include several channels I consider comparable). The overall communication budget is the sum total of the various budgets worked out independently.

***III. Your expenditure on communication***

9. State your expenditure on communication and/or advertising year by year since 2005.
10. What means of communication and/or advertising did you use in 2009 (tick the relevant boxes)?
- Television
  - Cinema
  - Radio
  - Press (including local or free advertising press, please specify: .....)
  - Billboard advertising and other types of outdoor advertising
  - Printed directories
  - Direct marketing
  - Promotion (including point-of-sale advertising)
  - Trade shows and fairs
  - Sponsorship and patronage
  - Press relations
  - Internet (emailing, display space buying, affiliation, sponsored links, online directories, mobile phone, etc.)
  - Other. Please specify: .....
11. Besides the creation of advertisements, what types of intermediaries do you call on to enhance your communication and/or advertising campaigns? Do you manage any advertising channels yourself (without any intermediaries) for your advertising campaigns (e.g. running a Google AdWords account yourself)?

**IV. Your expenditure on internet communication**

12. What means of online advertising did you use in 2009 (tick the relevant boxes)?
- Search-based ads on general-interest search engines (Google, Bing, Yahoo!). Please specify: .....
  - Search-based ads on specialised search engines. Please specify: .....
  - Search-based ads on partner networks of the search engines (e.g. AdSense for Search). Please specify: .....
  - Contextual advertising in the form of commercial links (e.g. AdSense for Content). Specify with which networks: .....
  - Contextual advertising in the form of banners, video, etc. Specify with which networks: .....
  - Behavioural advertising (linked to user browsing patterns, etc.). Specify with which networks: .....
  - Display advertising (graphics, video, special operation, etc.) that is neither contextual nor behavioural.
  - Affiliation. Specify which affiliation platforms: .....
  - Emailing. For the address database, do you go through an intermediary or do you build it up yourself; if so, how: .....
  - Price comparison sites. Which ones: .....
  - Ads on mobile phones. Specify with which intermediaries: .....
13. With which of the following two statements do you most agree:
- I start by drawing up an overall online communication budget then break it down and apportion it to the various online advertising channels.
  - I draw up a separate budget for each online channel (or each main group, which may include several channels I consider comparable). The overall online communication budget is the sum total of the various budgets worked out independently.
14. State your expenditure on online communication year by year since 2005.
15. What aims do you pursue in your online communication?
- Branding (brand awareness or image)
  - Performance (immediate buying act, sign-up, download, etc.)
  - Other. Please specify: .....
16. Do you intend to increase or reduce the proportion of your expenditure on online communication in the short or medium term? Briefly give your reasons.
17. Are there communication needs that are better met by the internet than by other types of advertising? Briefly elaborate on your answer.
18. Are there communication needs that the internet does not satisfy as much as other types of advertising? Briefly elaborate on your answer.

19. What departments or services in your company are in charge of the various types of online advertising? More specifically, do the same staff deal with both search-based ads and display advertising?

V. *Search-based ads*

*If you do not use this type of advertising, proceed directly to part VI on contextual advertising.*

20. Do you intend to increase or reduce your expenditure on search-based ads (e.g. AdWords) as a proportion of your online communication expenditure in the short or medium term? Briefly give your reasons.
21. Are there communication needs that are better met by search-based ads than by other types of advertising? Briefly elaborate on your answer.
22. Are there communication needs that search-based ads do not satisfy as much as other types of advertising? Briefly elaborate on your answer.
23. What are your main aims in using search-based ads (give up to four and, if there is more than one, number them in order of importance)?
- Induce an immediate online buying act
  - Induce an offline buying act in the very short term
  - Let web users have your contact details (telephone number and/or address, etc.)
  - Showcase a new product or service
  - Advertise short-lived promotions
  - Redirect users to a dedicated advertising site
  - Boost your brand awareness
  - Increase the buying intention in the medium term
  - Introduce a new attribute for your brand image
  - Raise web users' interest in your brand
  - Be sure that web users find you when they type your brand name in their search engine
  - Boost visits to your site
  - Obtain a sign-up to add to your database of prospects (e.g. for subsequent emailing)
  - Other. Please specify: .....
24. In a few sentences, describe a typical and representative example of a recent advertising campaign using search-based ads to achieve the aims you stated in your answer to the previous question.
25. Do you find it easy to evaluate the return on investment from search-based ads?

26. Are you satisfied with the effectiveness of your search-based ads?
27. Do you feel that the cost per click of your search-based advertisements has risen or fallen over the last few years?
28. What is the average cost (CPC, CPM, etc.) of your search-based ads?

## **VI. Contextual advertising**

*If you do not use this type of advertising, proceed directly to part VII on behavioural advertising.*

29. What is the format of your contextual advertisements (commercial links, images, videos, etc.)? Give an order of magnitude of the portion allocated to each format.
30. Do your contextual advertisements meet a branding or performance need?
31. Are there communication needs that are better met by contextual advertising than by other types of advertising? Briefly elaborate on your answer.
32. Are there communication needs that contextual advertising does not satisfy as much as other types of advertising? Briefly elaborate on your answer.
33. What are your main aims in using contextual advertising (give up to four and, if there is more than one, number them in order of importance)?
  - Induce an immediate online buying act
  - Induce an offline buying act in the very short term
  - Let web users have your contact details (telephone number and/or address, etc.)
  - Showcase a new product or service
  - Advertise short-lived promotions
  - Redirect users to a dedicated advertising site
  - Boost your brand image
  - Increase the buying intention in the medium term
  - Introduce a new attribute for your brand image
  - Raise web users' interest in your brand
  - Boost visits to your site
  - Obtain a sign-up to add to your database of prospects (e.g. for subsequent emailing)
  - Other. Please specify: .....
34. In a few sentences, describe a typical and representative example of a recent advertising campaign using contextual advertising to achieve the aims you stated in your answer to the previous question.
35. How is payment made? CPC, CPM, CPA, other?

36. Do you feel that the cost (CPC, CPM, etc.) of contextual advertisements has risen or fallen over the last few years?
37. What is the average cost (CPC, CPM, etc.) of your contextual advertisements?

**VII. Behavioural advertising**

*If you do not use this type of advertising, proceed directly to part VIII on display advertising.*

38. What is the format of your behavioural advertisements (commercial links, images, videos, etc.)? Give an order of magnitude of the portion allocated to each format.
39. Do your behavioural advertisements meet a branding or performance need?
40. Are there communication needs that are better met by behavioural advertising than by other types of advertising? Briefly elaborate on your answer.
41. Are there communication needs that behavioural advertising does not satisfy as much as other types of advertising? Briefly elaborate on your answer.
42. What are your main aims in using behavioural advertising (give up to four and, if there is more than one, number them in order of importance)?
  - Induce an immediate online buying act
  - Induce an offline buying act in the very short term
  - Let web users have your contact details (telephone number and/or address, etc.)
  - Showcase a new product or service
  - Advertise short-lived promotions
  - Redirect users to a dedicated advertising site
  - Boost your brand awareness
  - Increase the buying intention in the medium term
  - Introduce a new attribute for your brand image
  - Raise web users' interest in your brand
  - Boost visits to your site
  - Obtain a sign-up to add to your database of prospects (e.g. for subsequent emailing)
  - Other. Please specify: .....
43. In a few sentences, describe a typical and representative example of a recent advertising campaign using behavioural advertising to achieve the aims you stated in your answer to the previous question.
44. How is payment made? CPC, CPM, CPA, other?

45. Do you feel that the cost (CPC, CPM, etc.) of behavioural advertisements has risen or fallen over the last few years?
46. What is the average cost (CPC, CPM, etc.) of your contextual advertisements?

### ***VIII. Display***

47. What is your definition of 'display'? (For example, does it include graphic banners or video in contextual targeting, i.e. linked to page content, or in behavioural targeting, i.e. linked to web user browsing patterns?)

*If you do not use this type of advertising, proceed directly to part IX on special cases.*

***NB: In what follows, contextual and behavioural advertising should be excluded from display advertising as far as possible. On the other hand, it includes videos and special operations (e.g. site branding operations).***

48. How much do you spend on display? Break it down by main formats (graphic, video, special operations).
49. Do you intend to increase or reduce your expenditure on display-type advertising (e.g. on newspaper publisher sites) as a proportion of your internet communication expenditure in the short or medium term? Why?
50. Are there communication needs that are better met by display-type advertising than by other types of advertising? Briefly elaborate on your answer.
51. Are there communication needs that display-type advertising does not satisfy as much as other types of advertising? Briefly elaborate on your answer.
52. Do you find it easy to evaluate the return on investment from display-type advertising? How do you go about doing so? Are you satisfied with the effectiveness of your display-type advertisements?
53. Do you feel that the price of advertising space for display-type advertisements (before any discount negotiated by a media agency) has risen or fallen over the last few years?
54. What are the methods of payment for your display advertisements (CPM, CPC, flat rate for display for a given period of time, other)? State the approximate proportion of display advertisements paid for with each payment method. Is there a trend towards using certain payment methods to the detriment of others?

55. What is (roughly) the average cost of a display advertisement (you can state more than one cost depending on the main types of display advertising you use)?
56. Do you attach importance to the editorial quality of the sites on which your display-type advertisements are shown (e.g. do you value the fact that the image conveyed by these sites has affinities with your target)? Are you prepared to pay more to show your advertisement on a site with better editorial quality?
57. On which sites is your display advertising shown most often? Give orders of magnitudes as a percentage.
- I don't know, an intermediary deals with it all
  - Portals
  - Sites of newspaper publishers
  - Sites of radio stations
  - Sites of television channels
  - Sites of traditional businesses that have developed online services (FNAC, Pages Jaunes, etc.)
  - Sites of pure (online) players that are primarily commercial (Amazon, eBay, etc.)
  - Sites of pure (online) players that are primarily non-commercial (aufeminin, doctissimo, etc.)
  - Blogs
  - Social networking sites (Facebook)
  - Networks of sites (like AdSense for Content), state which: .....
58. For display advertising, do you deal directly with the site's publisher or through an intermediary (or intermediaries) (if so, which ones, and do you know on which site your advertisement will be shown)?
59. What are your main aims in using display advertising (give up to four and, if there is more than one, number them in order of importance)?
- Induce an immediate online buying act
  - Induce an offline buying act in the very short term
  - Let web users have your contact details (telephone number and/or address, etc.)
  - Showcase a new product or service
  - Advertise short-lived promotions
  - Redirect users to a dedicated advertising site
  - Boost your brand awareness
  - Increase the buying intention in the medium term
  - Introduce a new attribute for your brand image
  - Raise web users' interest in your brand
  - Boost visits to your site
  - Obtain a sign-up to add to your database of prospects (e.g. for subsequent emailing)
  - Other. Please specify: .....

60. In a few sentences, describe a typical and representative example of a recent advertising campaign using display advertising to achieve the aims you stated in your answer to the previous question.

***IX. Special cases***

61. Even though search-based ads are more often than not textual rather than graphic, one can use search-based graphic ads (images, videos, etc.) generally charged at cost per click. Do you use them?
62. Do you consider that search-based graphic ads are more like a search-based textual advertisement or more like a graphic display advertisement?
63. Even though contextual advertising is more often than not textual rather than graphic, one can use contextual graphic advertisements (images, videos, etc.) linked to page content. Do you use it and, if so, is it generally charged at CPC or CPM?
64. Do you consider that a contextual-type graphic advertisement charged at CPC is more like a contextual-type textual advertisement or more like a graphic display advertisement?
65. Do you consider that a contextual-type graphic advertisement charged at CPM is more like a contextual-type textual advertisement or more like a graphic display advertisement?

***X. Advertising on mobile phones***

*If you do not use this type of advertising, proceed directly to part XI on affiliation.*

66. How much do you spend on advertising on mobile phones? Distinguish between SMS campaigns, banners and applications (and give the rough proportion of each type of advertising on mobile phones).
67. Do you intend to increase or reduce your advertising expenditure on mobile phones? Briefly give your reasons. Distinguish between SMS campaigns, banners and applications.
68. Are there communication needs that are better met by advertising on mobile phones than by other types of advertising? Briefly elaborate on your answer.

69. Are there communication needs that advertising on mobile phones does not satisfy as much as other types of advertising? Briefly elaborate on your answer.

## ***XI. Affiliation***

*If you do not use this type of advertising, proceed directly to part XII on online directories.*

70. What is your definition of affiliation?
71. How much do you spend on affiliation?
72. Do you intend to increase or reduce your advertising expenditure on affiliation networks? Briefly give your reasons.
73. Are there communication needs that are better met by affiliation than by other types of advertising? Briefly elaborate on your answer.
74. Are there communication needs that affiliation does not satisfy as well as other types of advertising? Briefly elaborate on your answer.

## ***XII. Online directories (e.g. Pages Jaunes)***

*If you do not use online directories, proceed directly to part XIII (questions for advertisers using AdWords).*

75. What is your advertising or communication expenditure on online directories?
76. Specify the types of products and services you purchase on online directories (e.g. seem to be ranked higher, have a more detailed insertion, search-based ads, in whatever form: text or images, banners, etc.).
77. Do you intend to increase or reduce your expenditure on online directories as a proportion of your online advertising or communication expenditure in the short or medium term? Briefly give your reasons.
78. Are there communication needs that are better met by advertising or communicating on online directories than by other types of advertising? Briefly elaborate on your answer.
79. Are there communication needs that advertising on online directories does not satisfy as much as other types of advertising? Briefly elaborate on your answer.

80. What are your main aims in advertising on online directories (give up to four and, if there is more than one, number them in order of importance)?

- Induce an immediate online buying act
- Induce an offline buying act in the very short term
- Let web users have your contact details (telephone number and/or address, etc.)
- Showcase a new product or service
- Advertise short-lived promotions
- Redirect users to a dedicated advertising site
- Boost your brand awareness
- Increase the buying intention in the medium term
- Introduce a new attribute for your brand image
- Raise web users' interest in your brand
- Boost visits to your site
- Obtain a sign-up to add to your database of prospects (e.g. for subsequent emailing)
- Other. Please specify: .....

81. In a few sentences, describe a typical and representative example of a recent advertising campaign using online directories to achieve the aims you stated in your answer to the previous question.

### ***XIII. Questions for advertisers using AdWords***

*If you do not use AdWords, proceed directly to part XIV on search engine optimisation on Google (organic results).*

82. What are the features of the Google offer that in your view justify having an AdWords account?

83. Do you plan to increase your expenditure on AdWords?

84. What in your opinion are the good and/or bad aspects of the AdWords bidding mechanism?

85. If the click rate<sup>3</sup> for your advertisements drops on AdWords for some keywords, do you tend to

- Do nothing
- Stop bidding or bid less often on these keywords (in any case on AdWords)
- Raise your bid (i.e. the maximum CPC)
- Try and increase the quality score of your advertisement

86. What means do you use to try and raise the quality score of your advertisements?

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<sup>3</sup> Ratio of the number of clicks to the number of impressions

87. Do you know the quality score of your advertisements? If so, have you ever noticed a sudden drop in the quality score, e.g. after Google AdWords rules have been redefined? Please expand on this.
88. If Google were to suspend your AdWords account, do you consider that your company would be in serious difficulty? Do you consider that some of your lines of business would be in serious difficulty? If so, which ones?
89. If Google were to suspend your AdWords account, how long would you need, at the very least, to reorganise your communication?
- I only use AdWords sparingly and would not need to reorganise my communication.
  - Less than 1 month
  - 1 to 3 months
  - 3 to 6 months
  - 6 months to 1 year
  - More than 1 year
  - The question does not arise in terms of time to adapt, and in any event I would not be able to find any alternative to AdWords
90. If Google were to suspend your AdWords account, would you increase your investments in communication on other advertising channels? If so, specify which ones:
- Search engine optimisation
  - Emailing
  - Display advertising
  - Other search engines
  - Paper directories
  - Online directories (e.g. Pages Jaunes)
  - Promotion (including point-of-sale advertising)
  - Classified ads
  - Free advertising press
  - Local press
  - National press
  - Direct marketing
  - Cinema
  - Television
  - Radio
  - Other. Please specify: .....

91. Supposing the price of display advertising space dropped by 10%, all other things being equal. Would this affect your level of expenditure on AdWords?

- No, I would not modify my expenditure on AdWords.
- Yes, I would spend less on AdWords and spend more on display.
- In fact, thanks to the lower price of display advertisements, I would spend less on display and could thus increase my expenditure on AdWords.

92. Supposing the price of display advertising space increased by 10%, all other things being equal. Would this affect your level of expenditure on AdWords?

- No, I would not modify my expenditure on AdWords or on any other types of advertising. I fix my investment in display advertising separately from other advertising expenditure.
- No, I would not modify my expenditure on AdWords, but I might modify other advertising expenditure that achieved the same objectives as display. For instance expenditure on television, press, etc., in which case specify which ones: .....
- Yes, I would spend less on AdWords to maintain my display-type communication.
- Yes, I would spend less on display and more on other online channels because I fix a total budget for online communication. AdWords would be just as affected as the others.
- Yes, I would spend less on display advertising and more on other advertising channels, be they online or offline, because I fix a total budget for communication. AdWords would be just as affected as the others.
- Yes, I would spend less on display advertising and above all more on AdWords.

93. Supposing Google decided to add a 10% administration charge to the cost per click you currently pay, all other things being equal. How would you react?

- I would try not to modify my total expenditure on AdWords (in which case tick one of the choices below)
  - But I would lower my bids on my keywords to try and maintain the number of clicks.
  - But I would maintain my bids on the keywords (I would therefore get fewer clicks).
  - But I would increase my bids on keywords generating the best return on investment and would stop bidding on certain keywords.
  - Other. Please specify: .....
  
- I would increase my spending on AdWords to try and maintain the number of clicks and my bids on the keywords (in which case tick one of the choices below)
  - On the other hand, I would not change any other advertising expenditure items (directories, display, etc.).
  - In order to be able to spend more on AdWords, I would have to spend less on other types of advertising (other search engines, directories, display, etc.). Please specify: .....
  - Other. Please specify: .....
  
- I would cut my total expenditure on AdWords because the return on investment on a click that is 10% dearer would be insufficient, at least for certain keywords (in which case tick one of the choices below). Specify by how much you would cut your total expenditure on AdWords as a percentage: .....
  - I would not change expenditure on other types of advertising. I fix my investment in AdWords separately from other advertising expenditure.
  - I would increase my expenditure on other search engines (Yahoo!, Bing, etc.) but would not change expenditure on other types of advertising. I fix my investment in search-based ads separately from other advertising expenditure.
  - I would increase my expenditure on other online channels because I fix a total budget for online communication. I do not believe that any of these channels would be any worse affected than the others.
  - I would increase my expenditure on other advertising channels, be they online or offline, because I set a total budget for communication. I do not believe that any of these channels would be any worse affected than the others.
  - I would increase my expenditure on certain very specific advertising channels (e.g. display, contextual advertising, online directories like Pages Jaunes, local press, free advertising press, direct marketing, etc.). Specify which ones:  
.....
  - Other. Please specify: .....

94. Supposing Google decided to display fewer search-based ads per results page. Such a reduction in advertising space would force advertisers to increase their maximum cost per click on keywords for the advertisement to have the same exposure as previously. Supposing you had to increase your cost per click by 10%, all other things being equal, to achieve the same exposure for your advertisements. How would you react?

- I would try not to modify my total expenditure on AdWords (in which case tick one of the choices below)
  - I would not change my bidding on my keywords to try and maintain the number of clicks, but my advertisements would be less exposed.
  - I would increase my bids on keywords by 10% but, with an unchanged total budget, I would therefore get fewer clicks.
  - I would increase my by 10% bids on keywords with the best return on investment and would stop bidding on certain keywords.
  - Other. Please specify: .....
  
- I would increase my total expenditure on AdWords in order to maintain the number of clicks while paying more for clicks to maintain the quality of exposure of my advertisements (in which case tick one of the choices below)
  - On the other hand, I would not change any other advertising expenditure items (directories, display, etc.)
  - In order to be able to spend more on AdWords, I would have to spend less on other types of advertising (other search engines, directories, display, etc.). Please specify: .....
  - Other. Please specify: .....
  
- I would cut my total expenditure on AdWords because the return on investment on a click that is 10% dearer would be insufficient, at least for certain keywords (in which case tick one of the choices below). Specify by how much you would cut your total expenditure on AdWords as a percentage: .....
  - I would not change expenditure on other types of advertising. I fix my investment in AdWords separately from other advertising expenditure.
  - I would increase my expenditure on other search engines (Yahoo!, Bing, etc.) but would not change expenditure on other types of advertising. I fix my investment in search-based ads separately from other advertising expenditure.
  - I would increase my expenditure on other online channels because I fix a total budget for online communication. I do not believe that any of these channels would be any worse affected than the others.
  - I would increase my expenditure on other advertising channels, be they online or offline, because I set a total budget for communication. I do not believe that any of these channels would be any worse affected than the others.
  - I would increase my expenditure on certain very specific advertising channels (e.g. display, contextual advertising, online directories like Pages Jaunes, local press, free advertising press, direct marketing, etc.). Specify which ones: .....
  - Other. Please specify: .....

***XIV. Referencing on Google search engine (organic results)***

- 95.** The organic referencing on Google search engine is free. Why do you buy space for search-based ads, since this solution is not free?
- 96.** Do you have good exposure, in other words are you well ranked in organic results for common keywords related to your business?
- 97.** Have you ever noticed certain pages of your site being delisted (i.e. no longer indexed by Google and no longer accessible by organic searching)? If so, has Google given you any explanations?
- 98.** Have you ever noticed a sudden drop in your organic search engine ranking (e.g. moving from page 1 to page 5 overnight)? If so, has Google given you any explanations?
- 99.** How much do you invest annually to raise or maintain your organic search engine ranking?
- 100.** Do you use the services of a search engine optimisation professional to improve your organic search engine ranking, or those of an intermediary?

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## **Responses to Google's criticisms**

This questionnaire should not be regarded as a survey, which it is not, since the size of the sample and the selection of companies does not match the methodology of a survey. This is why some of Google's criticisms in connection with this questionnaire, deemed to infringe the good practices of pollsters, are irrelevant.

### *Too transparent?*

For instance, Google criticises the questionnaire because it tells the advertiser the name of the sponsor, in this instance the *Autorité de la concurrence*, which is not the case for surveys. In this respect, one only has to point out that in the case of a hearing, the company is obviously aware of the name of the party requesting the information, because it generally attends the hearing in person in the very premises of the *Autorité*. Moreover, without this transparency on the part of the *Autorité*, the companies would probably not have divulged sensitive information on their communication strategy, which may constitute business secrets. That being the case, the fact of knowing the context in which this questionnaire was prepared could only encourage the companies to give precise and substantiated answers.

### *Too direct?*

Google believes that the questionnaire, which is aimed too directly at it, has encouraged advertisers to answer the questions in connection with Google in a negative manner. Such insistence could according to Google have led respondents to believe that the *Autorité* was pointing the finger of suspicion. Yet we should point out that fewer than 20 of the 100 questions were specifically aimed at Google users. Moreover, if the advertisers had been invited to attend a hearing, the rapporteur would have had to inform them of the background to the preliminary enquiry conducted by the *Autorité*, in the case in point a referral for opinion by the Minister for Economic Affairs, Finance and Employment further to the report submitted by the *Création et Internet* ('Creation and Internet') mission, to which would have been appended a draft referral to the *Autorité* focusing specifically on the relations between Google and website publishers.

### *Too biased?*

Google lays great stress, moreover, on the importance of the order of the questions and answers, which could influence the advertisers. However, for practical reasons related to the processing of the answers, it was impossible to change the order of the questions and answers from one advertiser to the next. Be that as it may, it is highly unlikely that companies responding to an official questionnaire of the *Autorité de la concurrence*, and having it completed by their communication department or media agency, would decide to complete it as quickly as possible by always ticking the first answers and not reading the other choices. On the contrary, the numerous comments and details the advertisers provided generally show that they took great care in answering the questionnaire. Furthermore, even if the order of the answers did influence the advertisers' answers, which has yet to be proved, that would not necessarily have adversely affected Google: for certain questions concerning it in particular, the most favourable choice was indeed first in the list of proposed answers (in this respect, see the questions on the minimum time needed to reorganise communication after a Google account is suspended or the list of the main aims of display advertising).

### *Too restrictive?*

Google also points out that it would have been desirable to avoid so-called ‘reasoned’ answers, that is, ones that include a form of reasoning to explain the purpose or issues behind the question. Nevertheless, in this questionnaire (a copy of which is appended hereto), we should point out that most of the questions were either open-ended or ones featuring as exhaustive as possible a list of options (the list of choices is for that matter taken from studies supplied by the various parties, in particular by Google itself). In the latter case, the ‘other’ answer was available more often than not. Some questions are indeed reasoned, like the one on the conduct of companies after a 10% rise in the cost per click: the increase in expenditure is justified by the desire to ‘maintain the number of clicks and bids on keywords’, while the reduction in expenditure is suggested ‘because the return on investment on a click that is 10% dearer is insufficient’. But the explanatory reasoning justifying the reduction in expenditure is logical and along the same lines as Google’s arguments, which presents return on investment as the sole indicator advertisers take into consideration to optimise the allocation of their communication expenditure. As for the argument justifying an increase in expenditure, even if it were deemed too restrictive, its inclusion in the questionnaire would in any case work in Google’s favour, because it would tend to diminish the proportion of respondents who say that they increase their expenditure.

### *Too closed?*

Lastly, Google criticises the questionnaire for not including the ‘don’t know’ option for certain questions. First, this absence is accounted for by the need to obtain answers in a procedure governed by competition regulations, in order to reveal the truth about the facts, behaviour and market circumstances that call for precise answers on the part of those polled (in a hearing, a rapporteur is seldom content with a ‘don’t know’ and may rephrase the question to elicit evidence, which is not the case in a survey). Second, a large proportion of the advertisers who responded to the questionnaire were relatively large companies, having staff dedicated to advertising. These advertisers were thus particularly well qualified to choose an answer other than ‘don’t know’. In any event, in the question on the reaction of the advertiser to a price increase for search-based ads, the absence of the ‘don’t know’ option may well have led one to overestimate the number of companies that do not change their expenditure and underestimate those that increase or reduce it. The conclusion drawn from the use of this question would thus not be altered.

**In conclusion, the methodological criticisms made by Google, which the *Autorité* does not share, do not ultimately appear to have had any real impact on the advertisers’ responses. Accordingly, they cannot alter the general gist of the conclusions stemming from this questionnaire, which for that matter is only one of a number of factors that the *Autorité* has taken into account in its analysis of competition.**