Decision 19-D-26 of December 19, 2019

regarding practices implemented in the sector of online search advertising sector

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DIGITAL

Presentation of the decision

Summary

Under this Decision, the Autorité de la concurrence fines Google for abusing its dominant position in the online search advertising market, in violation of Article L. 420-2 of the French Code of Commercial Law (Code de Commerce) and Article 102 of the Treaty on the Functioning of the European Union.

This decision follows a complaint by Gibmedia. The investigation carried out led to a Statement of Objections concerning the non-transparent, non-objective and discriminatory application of the rules of Google's AdWords online search advertising service, renamed Google Ads in July 2018.

In the French online search advertising market, Google has a dominant position which, in many respects, presents "extraordinary" characteristics. Its search engine currently accounts for more than 90% of searches conducted in France and its share of the online search advertising market is probably greater than 90%. But above all, this dominance benefits from strong dynamics that make the Google Ads services particularly attractive to advertisers. The vast number of searches conducted using Google's search engine increases the search engine's attractiveness to internet users, but also makes the Google Ads services more attractive to advertisers, who need to ensure their ads reach a very large audience. This power of attraction and accumulation, related to the two-sided

nature of the Google Ads platform and its ultra-dominant position, guarantees Google's constant growth.

Google defines and publishes the rules associated with the Google Ads advertising service. The rules specify the conditions under which advertisers can run ads on the Google network (the "Rules"). These Rules govern the interactions between internet users and advertisers on the two-sided Google Ads platform.

Google's dominance in the online search advertising market means that it has a special responsibility under competition rules, particularly as regards applying the Rules it has defined and which, de facto, influence advertisers' business models and regulate the interactions between internet users and advertisers.

The advertisers' position regarding Google's offer is particularly constrained. They have no other choice than to accept the Rules or to stop using Google Ads' services, even though these represent almost the only offer on the online search advertising market in France.

Some of these Rules are designed to prevent internet users from being exposed to malicious websites that could harm their interests. There is nothing in principle to be criticised about the setting of these Rules. However, the Rules in question must be defined and applied objectively, transparently and without discrimination, in view of both their impact on the activity of the advertisers and the websites and products they promote, and their more general effects on internet users and the whole ecosystem.

Any attempt to ascertain the exact scope of each Rule is thwarted by their lack of clarity and the absence, in some cases, of any clear distinction between them, even though there are many of them.

The opacity and lack of objectivity of the Rules make it difficult for operators to anticipate the conformity of their advertisements, products and services with the Google Ads Rules.

They also mean that Google has all the discretion to ensure they are being respected and to modify them.

An examination of the conditions of application of the Rules shows that Google has used this discretionary power in a random and unfair manner by treating similar operators differently and by making sudden shifts in position with regard to the same advertisers, increasing the opacity of the Rules.

Google has also acted inconsistently towards certain advertisers, aggravating the lack of clarity of the Rules. Google's sales teams have thus been able to work proactively with some advertisers, offering them "personalised assistance" to develop their sites through the Google Ads services. However, some of the sites approached are sites that were previously suspended for breaching the Rules, particularly those designed to protect internet users.

Google's Rules and their application overstep what would be considered proportionate to the legitimate aim of protecting Google's consumers.

In addition to direct effects on the online search advertising market, this could also potentially harm competition in the downstream markets in which the advertisers operate. The formulation of the Rules and their unfair and discriminatory application are likely to discourage the entry of innovative sites while failing to bar sites that are potentially harmful for consumers. On the contrary, some of these sites receive personalised assistance from Google's sales teams to develop on Google Ads.The Autorité has decided to impose financial and non-financial penalties. In addition to a fine of €150,000,000 imposed on the Google entities engaged in the practice, the Autorité has issued injunctions lasting five years and requiring Google to: (i) clarify the Google Ads Rules, (ii) clarify the suspension procedures to prevent sudden and unjustified suspensions, and (iii) introduce measures to prevent, detect and deal with violations of the Google Ads Rules. Finally, the Autorité requires it to publish the summary of the Decision, to be accessible using an html link entitled "Google fined by Autorité de la concurrence, the French competition authority" on the home page of the www.google.fr, www.google.com and www.ads.google.com websites accessible in France, for a period of 7 consecutive days."

Only the French text of the decision is authentic and prevails.

Information about the decision

Origin of the case	Gibmedia
Decision	Order to publish Established practice(s) Financial penalty
Company(ies) involved	Alphabet Inc., Google LLC, Google Ireland Ltd, Google France

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