Related rights: the Autorité has granted requests for urgent interim measures presented by press publishers and the news agency AFP (Agence France Presse).

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It requires Google to negotiate with publishers and news agencies the remuneration due to them under the law regarding related rights for the re-use of their protected contents.

Background

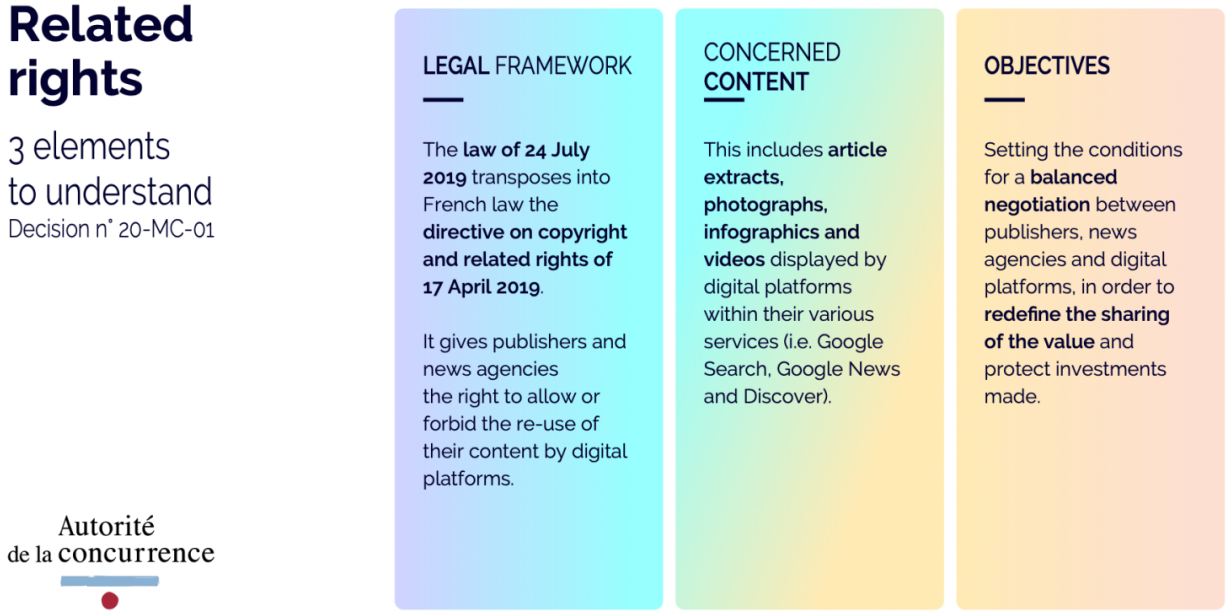
Following a complaint lodged in November 2019 by several unions representing press publishers (Syndicat des éditeurs de la presse magazine, l'Alliance de la presse d'information générale) and Agence France-Presse (AFP) of practices implemented by Google on the occasion of the entry into force of the law of 24 July 2019 on related rights, the Autorité de la concurrence today orders interim measures in the context of the urgent interim measures procedure. The Autorité found that Google's practices on the occasion of the entry into force of the related rights law were likely to constitute an abuse of a dominant position, and caused serious and immediate harm to the press sector.

It thus requires Google, within three months, to conduct negotiations in good faith with publishers and news agencies on the remuneration for the re-use of their protected contents. This negotiation must retroactively covers the fees due as of the entry into force of the law on 24 October 2019.

Google's practices contested by news publishers and the AFP

According to the complainants, the methods of implementation by Google of the law of 24 July 2019 aiming at creating a related right for the benefit of news agencies and press publishers would constitute an abuse of a dominant position, as well as an abuse of economic dependence.

The law of 24 July 2019 transposes into French law the directive on copyright and related rights of 17 April 2019, and aims to set the conditions for a balanced negotiation between publishers, news agencies and digital platforms, in order to redefine, in favour of press publishers and news agencies, the sharing of the value between these actors.



However, on the grounds of complying with the law, Google unilaterally decided that it would no longer display article extracts, photographs, infographics and videos within its various services (Google Search, Google News and Discover[1]), unless the publishers grant them the authorisation to use them free of charge.

In practice, the vast majority of press publishers have granted Google licenses to use and display their protected content, without possible negotiation and without receiving any remuneration from Google. In addition, as part of Google's new display policy, the licenses it has been granted by publishers and news agencies offer it the possibility of taking up more content than before.

Under these conditions, in addition to their complaint on the merits of the case, the complainants requested interim measures aimed at enjoining Google to engage in negotiations in good faith for the remuneration of the re-use of their content.

The Autorité believes that Google may have abused its dominant position in the market for general search services by imposing unfair trading conditions on publishers and news agencies.

The Autorité has led, upon receiving the referrals, an investigation to rule on the interim measures, and heard, not only Google, press publishers and the AFP, but also several economic players (other search engines for example) or institutional actors. The board of the Autorité held a session on 5 March 2020 to hear the complainants and Google. The decision issued today is intended to protect the complainant businesses from the consequences of potentially abusive practices, pending the decision on the merits of the case, which will be preceded by an investigation allowing the Autorité to rule on the existence of competition law breaches.

At this stage of the investigation, the Autorité considered that Google is likely to hold a dominant position on the French market for general search services. Indeed, its market share is around 90% at the end of 2019. In addition, there are strong barriers to entry and expansion on this market, linked to significant investments necessary to develop a search engine technology, and to the effects of networks and experience such as to make Google's position even more difficult to contest by competitive engines wishing to develop.

In the current state of the investigation, the Autorité considers that the practices denounced by the complainants are likely to be qualified as abuse of dominant position on several grounds:

- **Imposing unfair trading conditions**

At this stage of the investigation, Google may have imposed on publishers and news agencies unfair transaction conditions which would have allowed it to avoid any form of negotiation and remuneration for the re-use and display of protected content under related rights.

- **Circumvention of the law**

Google used the legal option to grant free licenses for certain content in certain cases, deciding that generally no remuneration would be paid for the display of any protected content. The Autorité notes that, in the state of the investigation, this choice seems difficult to reconcile with the purpose and scope of the law, which aimed to redefine the sharing of value in favour of press publishers vis-à-vis platforms, by assigning a related right which must give rise to remuneration, according to precise criteria. Furthermore, Google refused to provide publishers with the information necessary to determine the remuneration and considered that it could reproduce all the titles of the articles in their entirety, without seeking the publishers' agreement.

• **Discrimination**

By imposing a principle of zero remuneration on all publishers without examining their respective situations, and the corresponding protected content, according

to the precise criteria laid down by the law on related rights, Google may have treated in the same way, economic actors with different situations outside of any objective justification, and therefore of having implemented a discriminatory practice.

These different practices are likely to constitute an abuse of a dominant position from Google.

Google's practices caused a serious and immediate harm to the press sector, while the economic situation of publishers and news agencies is otherwise fragile, and while the law aimed on the contrary at improving the conditions of remuneration they derive from content produced by journalists.

These practices are made possible by the dominant position that Google is likely to hold in the market of general search services. This position leads Google to bring significant traffic to the websites of publishers and news agencies. Thus, according to the data provided by the complainants relating to 32 press titles, and not disputed by Google, the search engines - and therefore Google for a large part - represent, according to the sites, between 26% and 90% of the redirected traffic to their pages. This traffic is also very important and crucial for publishers and news agencies who cannot afford to lose any share of their digital readership due to their economic difficulties.

Under these conditions, publishers and news agencies are placed in a situation where they have no other choice than to comply with Google's display policy without financial counterpart. Indeed, the threat of downgrading from the display is synonymous for each press publisher with the loss of traffic and therefore of income, both if it is the only one affected by this downgrading and if this downgrading targets all the publishers.

This is the reason why most publishers have been led to accept conditions which are even more unfavourable for them after the entry into force of the law on related rights than those pre-existing.

Given all of these elements, the Autorité notes the existence of a serious and immediate effect on the press sector, resulting from the behaviour of Google, which, in a context of major crisis in the sector, deprives publishers and news agencies of a resource considered by the legislator as vital for the sustainability of their activities, and this at the crucial moment of the entry into force of the law. As a result, the Autorité issued several injunctions as a matter of urgency.

Interim measures pronounced

The objective of the interim measures pronounced is to allow publishers and news agencies wishing it, to engage in negotiations in good faith with Google in order to discuss both the terms of the re-use and display of their content that the remuneration associated to it.

During the negotiation period, Google will have to maintain the display of text extracts, photographs and videos according to the methods chosen by the publisher or the news agency concerned. In addition, in order to guarantee a balanced negotiation, the interim measures provide for a principle of neutrality on the way in which are indexed, classified and more generally presented the protected contents of the editors and agencies concerned with the services of Google.

Finally, these interim measures will remain in force until the adoption by the Autorité of its decision on the merits. During this period, and in order to ensure the effective implementation of these interim measures, Google will have to send the Autorité monthly reports on the procedures for implementing the decision.

Injunctions made to Google in the context of emergency measures

Google will have to negotiate in good faith with the publishers and news agencies that request it, and according to transparent, objective and non-discriminatory criteria, the remuneration due to them for any re-use of protected content.

This negotiation must also cover, retroactively, the period starting from the entry into force of the law on related rights, that is, on 24 October 2019.

This injunction requires that the negotiations effectively result in a proposal for remuneration from Google.

-> Google must conduct negotiations within 3 months from the request to open negotiations from a press publisher or a news agency

-> Neither the indexing, nor the classification, nor the presentation of the protected content taken up by Google on its services should in particular be affected by the negotiations.

-> Google will have to provide the Autorité with monthly reports on how it is complying with the decision.

These injunctions will remain in force until the publication of the decision on the merits of the Autorité.



[1] *Google Discover is accessible on tablets and smartphones. It presents users, without having to make a specific request, with content, including news content, according to their interactions with Google services: search history, activities on YouTube or Maps.*

DÉCISION 20-MC-01 OF 09 APRIL 2020

on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others and Agence France-Presse

See the decision

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