Decision 20-MC-01 of April 09, 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

Posted on: April 09, 2020 | Sector(s) :

DIGITAL

PRESS / MEDIA

Presentation of the decision

Summary

Under this Decision, the Autorité de la concurrence (hereinafter 'the Autorité') orders interim measures against Google LLC, Google Ireland Limited and Google France (hereinafter 'Google').

On 15 and 19 November 2019, the Syndicat des Éditeurs de la Presse Magazine (hereinafter “SEPM”), the Alliance de la Presse d'Information Générale, the Syndicat de la Presse Quotidienne Nationale, the Syndicat de la Presse Quotidienne Régionale, the Syndicat de la Presse Quotidienne Départementale and the Syndicat de la Presse Hebdomadaire Régionale (hereinafter jointly “APIG”), which represent the interests of a very large number of newspaper and magazine publishers in France, and Agence France-Presse (hereinafter “AFP”), respectively referred to the Autorité practices employed by Google in the press, online public communication services and online advertising sectors.

According to the complainants, Google's implementation of Law 2019-775 of 24 July 2019, which is designed to create a related right in favour of news agencies

and publishers (hereinafter, the “Law”), constitutes an abuse of a dominant position in violation of Articles L. 420-2 of the French Commercial Code (Code de commerce) and 102 of the TFEU, as well as an abuse of a situation of economic dependency.

The Law of 24 July 2019, which transposes into French law Article 15 of Directive 2019/790 of 17 April 2019 on copyright and related rights in the Digital Single Market, aims to establish the conditions for balanced negotiations between publishers, news agencies and online public communication services in order to redefine the sharing of value between these stakeholders and in favour of publishers and news agencies. However, in order to comply with the Law, Google unilaterally decided that it would no longer display excerpts from articles, photographs and videos within its various services unless the publishers gave it permission to do so free of charge. In practice, the vast majority of news publishers have granted Google free licenses for the use and display of their protected content, without any negotiation and without receiving any remuneration from Google. In addition, under Google's new display policy, the licences granted to Google by publishers and news agencies give it the opportunity to reuse more content than before the Law on Related Rights came into force.

Against this backdrop, and in parallel with their complaints on the merits of the case, the complainants requested that interim measures be ordered in order to force Google to enter into negotiations with them in good faith.

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 of monthly searches was around 90% at the end of 2019. In addition, there are significant barriers to entry and expansion in this market due to the significant investments needed to develop search engine technology, and to network and experience effects that make Google's position difficult to challenge.

Furthermore, at this stage of the investigation, the Autorité considers that the practices referred by the complainants could be regarded as anti-competitive.

On the one hand, in that Google may have imposed unfair transaction conditions on publishers and news agencies within the meaning of Articles L. 420-2 of the French Code of commercial law (Code de commerce) and 102 a) of the TFEU by avoiding any form of negotiation and remuneration for the reuse and display of content protected under related rights.

On the other hand, Google is likely to have treated economic stakeholders in different situations in an identical manner, without any objective justification, and, therefore, to have employed a discriminatory practice within the meaning of Articles L. 420-2 of the French Commercial Code (Code de commerce) and 102 c) of the TFEU.

Finally, in that Google may have abused its dominant position to circumvent the Law on Related Rights, in particular (i) by using the possibility available to publishers and news agencies to grant free licences to systematically impose a principle of non-remuneration for the display of protected content on its services, without any possibility of negotiation; (ii) by refusing to communicate the information needed to determine the remuneration; and (iii) by using headlines of articles in their entirety based on the assumption the Law on Related Rights was not, on principle, applicable to them.

In its assessment, the Autorité also took into account the fact that Google's new display policy imposed more unfavourable trading conditions on industry stakeholders than those that existed prior to the entry into force of the Law on Related Rights and those that should have resulted from negotiations in good faith.

These practices are made possible by Google's likely dominant position on the market for general search services. This position leads to Google bringing significant internet traffic to the sites of publishers and news agencies. This traffic is also proving to be irreplaceable and critical for publishers and news agencies, which cannot afford to lose any part of their digital readership because of the economic difficulties noted by the legislator, and which justified the urgent adoption of the Law on Related Rights. Under these conditions, publishers and news agencies are placed in a situation where they have no choice but to comply with Google's display policy without any financial

compensation. Indeed, the threat of downgraded display terms equates, for each news publisher, to a loss of traffic and therefore revenue, both if it is the only one affected by this and if it affects all publishers. It is also the reason why these publishers are forced to accept conditions that are even more unfavourable to them following entry into force of the Law on Related Rights than those that existed before it came into force.

The Autorité has found that serious and immediate harm has been caused to the press sector as a result of Google's behaviour, which, in the context of a major crisis in this sector, deprives publishers and news agencies of a vital resource to ensure the continuity of their activities, and this at the crucial time of entry into force of the Law on Related Rights. It has ordered interim measures allowing publishers and news agencies, if they so wish, to enter into negotiations in good faith with Google with a view to discussing both the terms and conditions for the reuse and display of their protected content and the corresponding remuneration. These negotiations must take place within a limited period of three months following the publisher or news agency's request and, in respect of remuneration, must include the period since 24 October 2019. During the negotiation period, Google shall continue to display text excerpts, photographs and videos in the manner chosen by the publisher or news agency concerned. In addition, in order to ensure a balanced negotiation, the interim measures provide for a principle of neutrality in the negotiations in terms of the way in which the protected content of the publishers and agencies concerned is indexed, classified and more generally presented via Google's services, as well as a principle of neutrality in those negotiations in terms of the other commercial relations that Google has with publishers and news agencies. Finally, these interim measures will remain in force until the Autorité publishes its decision on the merits. During this period, and in order to ensure the effectiveness of these interim measures, Google shall provide the Autorité with regular reports on the arrangements for implementing this Decision.

This summary is strictly for information purposes. Only the grounds of the decision are binding.

Information about the decision

Mesures conservatoires	oui
Origin of the case	Syndicat des Éditeurs de la Presse Magazine (SEPM) Alliance de la Presse d'Information Générale, Syndicat de la presse quotidienne nationale, Syndicat de la presse quotidienne régionale, Syndicat de la presse quotidienne départementale, Syndicat de la presse hebdomadaire régionale (APIG)
Decision	Injunction(s)
Company(ies) involved	Google LLC Google Ireland Ltd Google France

Read

Full text of the decision in English
1.1 MB

Full text of the decision (in French)
1.61 MB