Decision 21-D-11 of June 07, 2021

regarding practices implemented in the online advertising sector

Posted on: July 26, 2021 | Sector(s) :

DIGITAL

PRESS / MEDIA

Presentation of the decision

Summary

By the terms of the present decision, the *Autorité de la concurrence* fines Google for having abused its dominant position in the market for ad servers for publishers of websites and mobile apps, in violation of Articles L. 420-2 of the French Commercial Code (Code de commerce) and 102 of the Treaty on the Functioning of the European Union ("TFEU").

This decision follows a referral by several press publishers who monetise the content of their websites and mobile apps through the supply of advertising space, using two advertising technologies sold by Google: (i) the Doubleclick for Publishers (hereinafter "DFP") ad server; and (ii) the Doubleclick AdExchange (hereinafter "AdX") programmatic advertising space sales platform.

The publishers who referred the practices have argued that Google's two technologies benefited each other to the detriment of competing technology providers and to the detriment of the yield of their own advertising inventories.

The digital display advertising industry and advertising technologies for publishers

In order to market the advertising space on their websites and apps, publishers use various types of technology, in particular ad server technology and

programmatic advertising platforms:

- the **ad server** is a tool that allows the serving of ads on the website or mobile app of the publisher. It also makes it possible to manage the sale of advertising space in a unified manner, in particular by giving the publisher the ability to choose, for the same advertising space, between transactions concluded directly with advertisers (known as "guaranteed campaign elements") and the programmatic sale on multiple platforms which organise auctions (i.e. according to an automated mechanism);
- the **supply side platforms for the programmatic sale of advertising space** (**"SSP"**) are "marketplaces" where buyers of advertising space and publishers wishing to sell advertising space (or "impressions") come together. They typically solicit bids from advertisers for a given impression, then conduct an auction between the different prices offered by the advertisers, and finally transmit the winning bid to the ad server.

In order to optimise their revenues and maximise their chances of selling a given ad space, publishers generally offer the same ad space for sale via multiple auction platforms simultaneously. In contrast, publishers generally use a single ad server to organise the competition between the different bidding platforms. The interoperability of an ad server with the bidding platforms therefore determines both the revenue that publishers derive from their advertising spaces and the attractiveness of the auction platforms.

The practices implemented by Google to promote its own advertising intermediation technologies

Google has engaged in two distinct practices whereby its DFP ad server favoured its AdX SSP and, conversely, its AdX SSP favoured its DFP ad server.

Firstly, the DFP ad server favoured the AdX bidding platform, in particular by indicating to it the price offered by competing SSP platforms. AdX used this information to optimise the bidding process it was implementing, in particular by varying the commission received on impressions sold according to the intensity of competition.

Secondly, Google has imposed technical and contractual limitations on the use of the AdX platform through a third-party ad server. As a result, the modalities of interaction offered to third-party ad server clients were inferior to the modalities of interaction between DFP and AdX, which penalised both third-party SSPs and publisher clients.

Google has requested the *Autorité* to apply the settlement procedure, pursuant to the provisions of Article L. 464-2 (III) of the French Commercial Code (Code de commerce). The application of the settlement procedure resulted in an official settlement report being drawn up, which was signed with the General Rapporteur, setting out the maximum and minimum amount of the financial penalty that could be imposed by the *Autorité*.

In the course of the discussions with the General Rapporteur in the context of the settlement, Google also proposed commitments.

In the first instance, Google proposed several commitments that aim to ensure that Google offers third-party SSPs a way to interoperate with the DFP server, allowing competition on the merits between AdX and third-party SSPs for buying inventory from publishers using DFP.

In the second instance, Google committed to making changes to the existing configurations (AdX Direct and Unsold Campaign Element) that allow publishers using third-party ad servers to access AdX demand in real time.

The *Autorité*, having examined all the facts of the case file, considered that a fine of €220 million should be imposed, this amount being within the range set out in the official settlement report.

Furthermore, the *Autorité* considered that the commitments offered by Google were making it more likely for the latter to be once more in compliance with the law, and improve the competitive functioning of the market for ad servers and SSP platforms. It therefore made these commitments mandatory for a period of three years from the date of notification of the decision or, where appropriate, from their actual implementation date.

This summary is for information purposes only. Only the following numbered paragraphs of the decision are authentic.

Information about the decision

Origin of the case	News Corp Inc. Groupe Figaro, Groupe Rossel La Voix
Decision	Established practice(s) Financial penalty
Procedure(s)	Settlement
Company(ies) involved	Google LLC, Google Ireland Ltd, Alphabet Inc.

Monitoring of remedies

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Full text of the decision (in French)
3.33 MB

See full text of the decision (in English)
1.35 MB

Commitments
144.24 KB

le communiqué de presse/ press release