6 March 2018: Sector-specific investigation into online advertising

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The Autorité de la concurrence has made public its opinion in which it analyses a very complex market characterised by a fragile competitive equilibrium.

Given the concerns of stakeholders in the sector, the General Rapporteur announced that his services will proceed with a preliminary examination of the information collected to determine whether it is necessary to initiate one (or more) investigation(s).

A wide-ranging sector-specific preliminary investigation

Over a year ago, the *Autorité de la concurrence* initiated a vast sector-specific investigation into online advertising. It has today made public its conclusions further to a broad consultation of all market stakeholders. Hearings, targeted questionnaires, online consultation, and hearings of the Board have taken place to gain the most precise understanding possible of the sector's function. In its opinion of nearly one hundred pages, the *Autorité* describes the dynamics and mechanisms of this sector. When the *Autorité* handles a referral or issues an opinion at its own initiative concerning competition problems in the sector, this opinion will provide it with a very accurate framework of analysis by which it can more efficiently conduct investigations into the cases it handles.

This press release only partially describes the entirety of the work conducted by the *Autorité*. For further details, please refer to the full text of the opinion and its summary.

The opinion hereby made public examines so-called "display" advertising; that is, tiles, banners, and skins that are integrated in site contents for viewing by internet users. Display advertising is different from so-called "search[1]" advertising, which the *Autorité* examined in 2010 (see the press release of 14 December 2010). This opinion is also an extension of the publication, on 10 May 2016, of the joint study of the *Autorité* and its German counterpart, the Bundeskartellamt, on data and related issues for implementation of competition law[2].

INTERNET ADVERTISING: LEADING FORM OF ADVERTISING IN FRANCE

Internet advertising in France has become the leading form of advertising (ahead of television). Internet advertising investments were estimated at 3.5 to 4.2 billion euros in 2016; in Europe, France ranks 3rd behind the United Kingdom and Germany. Growth in the sector is strong (12% in France in 2017), supported by the widespread use of programmatic technologies (which allow automation of campaign preparation and deployment), development of video advertising, and the extensive use of social networks, search engines, and video-sharing

platforms.

One explanation for the success of online advertising, especially compared to television advertising, is that it can be targeted based on collected data.

A vast range of data are collected as users navigate the Internet: customer data (interest areas, age, gender, language), contact information (email address, telephone number), usage data (pages consulted, time spent at a site, etc.), purchasing data (products purchased, number of orders), geolocalisation data, interest areas, geographic data, sociodemographic data, etc.

It is currently crucial for companies to access this data since this information makes it possible to set up targeted ads and address an identified population. This major upheaval in the advertising sector has led to the development of an entire ecosystem.

A SECTOR THAT FUNCTIONS IN A COMPLEX WAY AND IS DOMINATED BY GLOBAL STAKEHOLDERS

- ***A sector characterised by the presence of numerous stakeholders…***

Over the past several years, this development has led to new business areas, new stakeholders, such as Criteo (specialised in retargeting) and new technologies. There are now services for advertisers, such as trading desks and platforms specialised in programmatic purchasing and the optimisation of campaigns, also called demand side platforms (DSP), which optimise and automate the purchase of advertising space. For publishers, supply side platforms (SSP), which optimise and automate the sale of advertising space, have developed; one example is ad networks that are similar to advertising departments and sell advertising space to small independent sites.

The study conducted by the Autorité made it possible to exhaustively describe and analyse the function of this new market, a characteristic of which is the complexity of its processes. The market has many stakeholders, both in terms of publishers and intermediation service providers, whose processes are based on technological services that are not only advanced and innovative, but also highly

“sequenced”, which can give an impression of opacity.

> For further details on the sector’s function, see page 16 and following of the opinion.

While very few stakeholders have entered the online advertising market and been able to capture part of its value, the sector’s competitive equilibrium is fragile, since stakeholders are confronted with competition from global stakeholders, present at several levels of the value chain (publishing, intermediation), with Google and Facebook leading the pack.

- ***…With two major operators: Google and Facebook***

Facebook and Google, the two leaders of the online advertising sector, mainly provide free services to Internet users and generate most of their revenue from the sale of advertising services to publishers and advertisers. The success of their advertising services is based on their processing of the colossal volume of information they have gathered through the popularity of their sites. Both globally and within France, most of the revenue in this sector is generated by these two operators.

The *Autorité* has identified several significant competitive advantages that Google and Facebook have:

> *Strong popularity among Internet users*

The development of strong positions by Google and Facebook is mainly based on their operation of sites and services popular among Internet users such as Google Search, YouTube, Chrome, Gmail, Google Maps, Instagram, WhatsApp, and for Facebook, its social network.

> *Vertical integration and presence in both publishing and advertising intermediation*

As with other stakeholders, Google and Facebook are involved in both of these activities, but with a number of visitors and with audiences that are unsurpassed on their own sites and applications, the inventories of which

are only accessible through their own advertising tools. These same tools can be used for campaigns on third-party sites, and Google, in particular, has developed an unparalleled presence in all of the intermediation activities, by supplying intermediation services, to both advertisers and publishers- services that are sometimes indispensable.

> Very powerful targeting capabilities

By collecting data not only from their services but also from third-party sites and applications that use their advertising services, Google and Facebook have unrivalled volumes of data, due to the number of users of their services but also the type of data collected: sociodemographic and behavioural.

Given the volume and variety of data but also the size of the advertising inventories on offer, Google and Facebook can provide advertisers with the possibility of reaching broad audience segments (due to the number of users of the services) that are accurately defined (due to usable data and the numerous targeting options).

> Google's specific advertising advantage related to searches

Google's range of advertising services is the most extensive on the market. More specifically, Google is one of the rare companies to offer Display and Search advertising services, where it has occupied a very strong position for nearly twenty years. As a result, it has developed several links between Display and Search services, for example by offering a unique interface from which advertisers and their agencies can manage Search campaigns and Display campaigns, and by offering data analysis services based on the two activities.

PROBLEMS BROUGHT TO THE ATTENTION OF THE AUTORITÉ DE LA CONCURRENCE

As part of the investigation leading to the opinion, many stakeholders described a set of situations and practices involving different advertising sector stakeholders that in some cases, should these situations and practices be determined to exist, could have effects on competition.

Among the technical intermediaries, many stakeholders do not have proprietary sites where they can directly sell advertising space. Their position is fragile on many levels. They cannot offer advertisers access to inventories that are as extensive as those offered by Google and they remain in an uncertain situation with regard to their ability to collect data on third-party sites and applications in order to offer customised advertising. Internet users are more and more doubtful about the use of their data and they increasingly use technological solutions offered by software publishers and device manufacturers (especially Apple) that limit data collection and ad display, which has an immediate effect on the revenue and profitability of publishers and certain intermediaries whose activities are based on data use.

Furthermore, several stakeholders consider that their situation is weakened by the individual and collective practices of certain stakeholders.

> *Strategies involving bundling or tied sales, low prices, and exclusivities*

Certain stakeholders have identified practices which they consider bundling or tied sales, low prices, and exclusivities: the association of several intermediation services, association of intermediation services and services supplying targeting data, and association between an intermediation service and exclusive access to a site's inventory.

> *For further details, see sections 248 to 249 of the opinion*

> *Leveraging effects*

Other stakeholders point to the leveraging of key positions in certain service markets to enable development on other markets. The behaviours in question concern the media audit and media agency sectors, but also the supply of advertising services and of services for the use of advertiser data.

> For further details, see section 250 of the opinion

> ? Practices involving discriminatory treatment

Certain publishers and intermediaries are of the opinion that they are subjected to different treatment by stakeholders they consider dominant in the advertising intermediation sector.
These behaviours involve the possibility of monetising certain types of content and the access conditions of DSPs for market positions and certain inventories.
> For further details, see section 251 of the opinion

?> Impediments to interoperability

Several stakeholders also noted the development of impediments to interoperability in the advertising intermediation sector, which could affect the interconnection conditions of certain intermediaries with others in the context of real-time auctions and the deployment of campaigns of their advertiser customers.
> For further details, see section 252 of the opinion

> Restrictions on the possibilities of collecting and accessing certain data

Lastly, some stakeholders highlighted restrictions concerning the possibility of collecting and accessing certain data. Certain large stakeholders apparently refuse to: integrate tracking information from campaigns for certain advertising formats, supply data on qualification by audience impression, or supply research statistics for advertiser brands. Certain publishers consider that they are also subject to limitations regarding access to data generated by their services and distributed on other platforms.
> For further details, see section 254 of the opinion

While it is not legally possible for the *Autorité* to examine these questions in the context of an opinion, the General Rapporteur announced that his services will proceed with a preliminary examination of the information collected to determine whether it is necessary to initiate one (or more) investigation(s). Only an inter partes examination will make it possible to establish whether these practices exist and whether they are in breach of competition law.

[1] Display advertising comprises tiles, banners, and skins, which, in the same manner as traditional advertising billboards within public spaces in cities, are integrated in the content of a publisher's website to be seen by Internet users.
[2] Joint study of the Autorité de la concurrence and the Bundeskartellamt of May 2016 on data and related issues for the implementation of competition law, published on 10 May 2016 (http://www.autoritedelaconcurrence.fr/doc/rapport-concurrence-donnees-vf-mai2016.pdf).
[3] A form of behavioural targeting that consists in addressing an advertising message to profiles that have shown an interest in buying a product, for example by adding items to their basket without completing the purchase when visiting the website of an advertiser.
[4] The advertising inventory includes all of the available advertising space for sale at a given time, for a given period, and for a given advertising medium..

> See full text of Opinion 18-A-03 of 6 March 2018 regarding data usage in the online advertising sector and its summary (in English)

> To know more about our sector enquiries, see our video below (in French)

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