

Market test

of 3 June 2021

In the context of the investigation of a complaint from the company Criteo, the companies Facebook Inc, Facebook Ireland Limited and Facebook France submitted to the *Autorité de la concurrence* a proposal for commitments, to address the competition concerns identified during the investigation of the case.

Pursuant to Article L. 464-2 of the French Commercial Code (*Code de commerce*), the *Autorité de la concurrence* has the power to (translated) "*accept commitments proposed by companies or organisations which are likely to put an end to its competition concerns which may constitute prohibited practices referred to in Articles L. 420-1, L. 420-2 and L. 420-5*", in accordance with the modalities set out in Article R. 464-2 of the same code.

By registered letter dated 10 September 2019, under number 19/0054F, the company Criteo lodged a complaint with the *Autorité de la concurrence* regarding practices applied in the online advertising sector by the companies Facebook Inc, Facebook Ireland Limited and Facebook France (hereinafter jointly referred to as "Facebook").

Facebook has approached the investigation services to consider handling this case through a commitment procedure.

Facebook provides vertically integrated advertising services to advertisers by directly marketing, through its proprietary advertising tools, inventories on Facebook, Instagram, Messenger, and those of third-party publishers, who use its advertising intermediation service for publishers (Facebook Audience Network). Facebook also enables an ecosystem of more than 100 advertising technology providers to offer advertisers complementary services to those of Facebook that help optimise ad campaigns, in particular through the Facebook Marketing Partners (FMP) programme. To become an FMP, companies are subject to a selection procedure and are obliged to comply with a number of commitments in terms of volumes and categories of advertising investment. In return, the program allows companies to benefit from a range of customised services, such as access to dedicated support and training, and enhanced brand image towards advertisers.

Criteo has reported various practices applied by Facebook: the withdrawal of Criteo's FMP status in July 2018, "denigration" behaviour against Criteo since the end of 2017, and the withdrawal of access to certain APIs, the User Level Bidding API and Order Level Reporting API, which were used for bidding, product recommendations in ads and measurement of performance of ad campaigns. The ULB API makes it possible to individualise the bidding amount and use the API beneficiary's proprietary product recommendation technology, while the OLR API provides access to Facebook user data to identify conversions made by web users who use multiple devices, and to attribute cross-device sales to a specific user based on their Facebook login details.



The competition-related concerns

In their preliminary assessment, the investigation services considered that Facebook's practices are likely to impair the conditions of access to advertising inventories and to data concerning ad campaigns on Facebook under conditions that are not transparent or objective, and that are also characterised by "denigration" actions and difference of treatments. These practices are likely to be prohibited by Articles L. 420-2 of the French Commercial Code (*Code de commerce*) and 102 of the TFEU.

As regards the FMP program, the investigation revealed various difficulties in the relationship between Facebook and the FMPs, which relate to both the definition and the application of investment commitments, and which pertain to a lack of transparency, stability, objectivity, and to difference of treatments. These concerns relate to the conditions under which the "support" services provided by Facebook to FMPs are withdrawn prior to the start of and during the probationary periods preceding the withdrawal of accreditations, the lateness and opacity of the information provided by Facebook to FMPs regarding the withdrawal of accreditations, i, the investment requirements applied to FMPs in order for them to participate in the FMP programme, and the communication of Facebook's sales teams with FMP customers prior to the withdrawal of an accreditation. The investigation services also consider that the involvement of third-party companies in the selection process may raise competition concerns as they may also be active in the online advertising sector and may be competitors of FMPs.

Furthermore, the conditions for removal the APIs that Facebook has put in place, in particular the ULB API, raise difficulties related in particular to limiting the ability of FMPs to provide value-added services through their own advertising technologies. In particular, the removal of the ULB API reduces Criteo's ability to optimize its campaigns in order to drive users' conversions, by using its own product recommendation tools in individual biddings. The investigation services consider the competition concern relating to the ULB API to be all the more significant as Criteo started using this API in 2016, following the closure of the Facebook Ad Exchange, which allowed buying intermediaries to implement campaigns at the individual level on the social network.

Facebook's proposed commitments

In response to these competition-related concerns, Facebook proposed several commitments..

- Commitments relating to the FMP AdTech program: the commitment to "maintain" the objectivity, clarity and non-discriminatory application of the FMP AdTech performance criteria, the commitment relating to modifications in the FMP AdTech performance criteria and which would include a two-month notice period; the commitment relating to FMP AdTech compliance and due diligence assessments based on established facts and objective reasons; the commitment regarding the procedure for withdrawal of the FMP AdTech Status or Badge in the event of non-compliance with the FMP AdTech performance criteria (probationary period); the commitment regarding the use of external service providers in the assessment of applications and keeping FMPs in the program.
- Commitments relating to Facebook's marketing communications that would include providing regular compliance trainings to the relevant sales teams;
- Commitments to develop and make available a "recommendation functionality" to FMP AdTech partners who have the FMP AdTech badge. The "recommendation functionality" would be an API that allows certain eligible FMP AdTech Partners to interact with Facebook's systems by transmitting: (i) individualised requests for product recommendations based on a



product catalogue approved and uploaded by the relevant FMP AdTech Partner; (ii) and/or individualised bid adjustments using a bid multiplier between 0.1 and 100 at the level of users with a Facebook account and identified by Facebook as being located in France, in each case in connection with Dynamic Ads advertising campaigns based on a "products" catalogue on facebook.com or on the Facebook app.

The commitments relating to the FMP AdTech programme and Facebook's marketing communications would be given for a period of three years from the date of implementation of the commitments, and the commitments to develop and make available a recommendation feature would be given for a period of two years from the date of implementation of the commitments.

The proposed commitments only apply to suppliers of advertising technology involved in advertising campaigns which target users of the Facebook and Instagram services identified by Facebook as being located in France.

The detailed content of this public proposal for commitments is available at the end of this market test.

Outcome of the procedure

If the proposed commitments, possibly supplemented and amended, are such as to meet the competition concerns that have been identified on the basis of Article L.464-2 of the French commercial code, the *Autorité de la concurrence* may close the case and make these commitments bindings.

Interested third parties are invited to submit their comments on this proposal for commitments, stating case number 19/0054F, no later than 5.00 p.m. on 5 July 2021, by e-mail to engagementsFB@autoritedelaconcurrence.fr or by mail to the following address:

Autorité de la concurrence
Bureau de la procédure
Aff. 19/0054F
11 rue de l'Echelle
75001 Paris