

Only the French version is authentic  
and it prevails in the event of its  
differing from the translated version.

## **Decision 19-D-26 of 19 December 2019 regarding practices employed in the online search advertising sector\***

The *Autorité de la concurrence* (section IV),

Having regards to the letter registered on 6 March 2015 under number 15/0019 F, by which Gibmedia referred to the *Autorité de la concurrence* practices employed by Google Inc. (now Google LLC) and Google Ireland Ltd;

Having regards to Article 102 of the Treaty on the Functioning of the European Union (TFEU);

Having regards to Book IV of the French Code of Commercial Law (*Code de commerce*) and particularly Article L. 420-2 thereof;

Having regards to Decision 15-D-13 of 9 September 2015 regarding a request by Gibmedia for interim measures;

Having regards to the Decisions on business secrecy 16-DSA-189 of 19 July 2016, 19-DSADEC-193 of 29 May 2019, 16-DSA-193 of 20 July 2016, 18-DSA-074 of 9 March 2018, 16-DSA-195 of 21 July 2016, 16-DSA-91 of 13 April 2016, 16-DSA-124 of 3 June 2016, 16-DSA-125 of 3 June 2016, 16-DSA-126 of 3 June 2016, 18-DEC-078 of 12 March 2018, 17-DSA-214 of 18 May 2017, 16-DSA-05 of 7 January 2016, 17-DSA-058 of 8 February 2017, 16-DSA-198 of 25 July 2016, 16-DSA-199 of 25 July 2016, 16-DSA-200 of 25 July 2016, 15-DSA-385 of 20 November 2015, 16-DSA-127 of 6 June 2016, 16-DSA-128 of 6 June 2016, 16-DSA-129 of 6 June 2016, 16-DSA-130 of 6 June 2016, 16-DSA-131 of 6 June 2016, 16-DSA-99 of 18 April 2016, 16-DSA-203 of 27 July 2016, 16-DSA-132 of 8 June 2016, 16-DSA-133 of 8 June 2016, 16-DSA-134 of 8 June 2016, 16-DSA-206 of 28 July 2016, 17-DSA-218 of 23 May 2017, 16-DSA-60 of 4 March 2016, 16-DSADEC-01 of 23 March 2016, 18-DSA-086 of 21 March 2018, 16-DSA-136 of 13 June 2016, 16-DSA-141 of 13 June 2016, 16-DSA-207 of 2 August 2016, 17-DSA-227 of 30 May 2017, 17-DSA-228 of 30 May 2017, 17-DSA-229 of 30 May 2017, 17-DSA-230 of 31 May 2017, 17-DSA-231 of 31 May 2017, 17-DSA-232 of 31 May 2017, 17-DSA-233 of 31 May 2017, 17-DSA-234 of 31 May 2017, 17-DSA-235 of 31 May 2017, 17-DSA-236 of 31 May 2017, 17-DSA-237 of 31 May 2017,

17-DSA-238 of 31 May 2017, 17-DSA-297 of 20 July 2017, 18-DECR-338 of 17 October 2018,

\*Non-confidential version

18-DEC-339 of 11 October 2018, 18-DECR-340 of 11 October 2018, 18-DECR-341 of 11 October 2018, 18-DECR-342 of 11 October 2018, 18-DECR-343 of 11 October 2018, 18-DECR-344 of 11 October 2018, 18-DEC-345 of 15 October 2018, 18-DECR-346 of 11 October 2018, 18-DEC-347 of 11 October 2018, 18-DECR-348 of 11 October 2018, 17-DSA-241 of 1 June 2017, 17-DSA-242 of 1 June 2017, 17-DSA-085 of 22 February 2017, 19-DSA-533 of 25 September 2019, 17-DSA-002 of 4 January 2017, 18-DEC-353 of 15 October 2018, 18-DEC-360 of 16 October 2018, 19-DSA-098 of 14 March 2019, 18-DECR-357 of 17 October 2018, 18-DSA-361 of 17 October 2018, 16-DSA-29 of 2 February 2016, 16-DSA-32 of 4 February 2016, 16-DSA-40 of 11 February 2016, 16-DSA-177 of 8 July 2016, 16-DSA-178 of 8 July 2016, 16-DSA-237 of 22 August 2016, 16-DSA-240 of 22 August 2016, 16-DSA-244 of 22 August 2016, 16-DSA-246 of 22 August 2016, 16-DSA-247 of 22 August 2016, 16-DSA-337 of 10 October 2016, 16-DSA-339 of 12 October 2016, 16-DSA-342 of 17 October 2016, 16-DSA-363 of 26 October 2016, 17-DSA-110 of 13 March 2017, 17-DSA-121 of 17 March 2017, 17-DSA-193 of 10 May 2017, 17-DSA-203 of 11 May 2017, 17-DSA-253 of 13 June 2017, 17-DSA-254 of 13 June 2017;

Having regards to the observations submitted by Gibmedia, Alphabet Inc., Google LLC, Google Ireland Ltd, Google France and the representative of the Minister of the Economy;

Having regards to the note of 30 October 2019 submitted during the deliberations by the Google companies;

Having regards to the other evidence in the case;

The case officers (*rapporteurs*), the Deputy General Rapporteur, the representative of the Minister of the Economy and the representatives of Gibmedia, Alphabet Inc., Google LLC, Google Ireland Ltd and Google France, having been heard at the hearing with the *Autorité de la concurrence* of 18 October 2019,

Adopts the following decision:

## Summary<sup>1</sup>

*Under this Decision, the Autorité de la concurrence fines Google for abusing its dominant position in the online search advertising market, in violation of Article L. 420-2 of the French Code of Commercial Law (Code de Commerce) and Article 102 of the Treaty on the Functioning of the European Union.*

*This decision follows a complaint by Gibmedia. The investigation carried out led to a Statement of Objections concerning the non-transparent, non-objective and discriminatory application of the rules of Google's AdWords online search advertising service, renamed Google Ads in July 2018.*

*In the French online search advertising market, Google has a dominant position which, in many respects, presents "extraordinary" characteristics. Its search engine currently accounts for more than 90% of searches conducted in France and its share of the online search advertising market is probably greater than 90%. But above all, this dominance benefits from strong dynamics that make the Google Ads services particularly attractive to advertisers. The vast number of searches conducted using Google's search engine increases the search engine's attractiveness to internet users, but also makes the Google Ads services more attractive to advertisers, who need to ensure their ads reach a very large audience. This power of attraction and accumulation, related to the two-sided nature of the Google Ads platform and its ultra-dominant position, guarantees Google's constant growth.*

*Google defines and publishes the rules associated with the Google Ads advertising service. The rules specify the conditions under which advertisers can run ads on the Google network (the "**Rules**"). These Rules govern the interactions between internet users and advertisers on the two-sided Google Ads platform.*

*Google's dominance in the online search advertising market means that it has a special responsibility under competition rules, particularly as regards applying the Rules it has defined and which, de facto, influence advertisers' business models and regulate the interactions between internet users and advertisers.*

*The advertisers' position regarding Google's offer is particularly constrained. They have no other choice than to accept the Rules or to stop using Google Ads' services, even though these represent almost the only offer on the online search advertising market in France.*

*Some of these Rules are designed to prevent internet users from being exposed to malicious websites that could harm their interests. There is nothing in principle to be criticised about the setting of these Rules. However, the Rules in question must be defined and applied objectively, transparently and without discrimination, in view of both their impact on the activity of the advertisers and the websites and products they promote, and their more general effects on internet users and the whole ecosystem.*

*Any attempt to ascertain the exact scope of each Rule is thwarted by their lack of clarity and the absence, in some cases, of any clear distinction between them, even though there are many of them.*

*The opacity and lack of objectivity of the Rules make it difficult for operators to anticipate the conformity of their advertisements, products and services with the Google Ads Rules.*

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<sup>1</sup>This summary is strictly for information purposes. Only the grounds of the decision listed below are binding.

*They also mean that Google has all the discretion to ensure they are being respected and to modify them.*

*An examination of the conditions of application of the Rules shows that Google has used this discretionary power in a random and unfair manner by treating similar operators differently and by making sudden shifts in position with regard to the same advertisers, increasing the opacity of the Rules.*

*Google has also acted inconsistently towards certain advertisers, aggravating the lack of clarity of the Rules. Google's sales teams have thus been able to work proactively with some advertisers, offering them "personalised assistance" to develop their sites through the Google Ads services. However, some of the sites approached are sites that were previously suspended for breaching the Rules, particularly those designed to protect internet users.*

*Google's Rules and their application overstep what would be considered proportionate to the legitimate aim of protecting Google's consumers.*

*In addition to direct effects on the online search advertising market, this could also potentially harm competition in the downstream markets in which the advertisers operate. The formulation of the Rules and their unfair and discriminatory application are likely to discourage the entry of innovative sites while failing to bar sites that are potentially harmful for consumers. On the contrary, some of these sites receive personalised assistance from Google's sales teams to develop on Google Ads.*

*The Autorité has decided to impose financial and non-financial penalties. In addition to a fine of €150,000,000 imposed on the Google entities engaged in the practice, the Autorité has issued injunctions lasting five years and requiring Google to: (i) clarify the Google Ads Rules, (ii) clarify the suspension procedures to prevent sudden and unjustified suspensions, and (iii) introduce measures to prevent, detect and deal with violations of the Google Ads Rules. Finally, the Autorité requires it to publish the summary of the Decision, to be accessible using an html link entitled "Google fined by Autorité de la concurrence, the French competition authority" on the home page of the [www.google.fr](http://www.google.fr), [www.google.com](http://www.google.com) and [www.ads.google.com](http://www.ads.google.com) websites accessible in France, for a period of 7 consecutive days."*

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## **I. Findings**

### **A. PROCEDURE**

1. By letter of 6 March 2015, Gibmedia referred practices of Google Ireland and Google Inc. in the online search advertising market to the *Autorité de la concurrence* (the “*Autorité*”).
2. On 7 January 2015, Google had sent Gibmedia emails notifying it of the suspension of ads for four websites that it publishes, and then on 8 January 2015, an email informing it of the permanent suspension of its two AdWords accounts. These emails stated that Gibmedia had violated the rules on “untrustworthy promotions”.
3. In its complaint, Gibmedia argued that Google had a dominant position in the online search advertising market and that it had used abusive practices when it suspended Gibmedia’s accounts in January 2015.
4. In addition to its complaint on the merits of the case, Gibmedia submitted a request for interim measures, registered under number 15/0020 M, on the basis of Article L. 464-1 of the French Code of Commercial Law (*Code de commerce*).
5. By decision of 9 September 2015, the *Autorité* rejected the request for interim measures on the grounds that there was no serious and immediate risk to the economy, the sectors concerned, or the complainant’s interests, but decided to continue the investigation into the merits of the case<sup>2</sup>.

### **B. COMPANIES CONCERNED**

#### **1. GOOGLE**

##### **a) The company**

6. Google is a company created in 1998 whose founders invented the search engine of the same name, the most used search engine worldwide and in France. Google’s activities are now focused in four main areas: the supply of online search services, a platforms and operating systems offer<sup>3</sup>, online advertising and computer equipment.

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<sup>2</sup> Decision [15-D-13](#) of 9 September 2015 regarding a request by Gibmedia for interim measures.

<sup>3</sup> According to Google, its platforms and operating systems offer includes the operating system for Android mobile devices (for phones and tablets), the Google Chrome operating system (Chrome OS) (for computers and other devices), the Google Chrome web browser, Google Mail (an e-mail platform), Google+ (a social network), Google Play (Google’s online shop, which offers digital content and some mobile devices), Google Drive (a cloud-based sharing solution, which enables users to create, share, modify, and save documents using the Google Documents formats), Google Wallet (a virtual wallet service) and YouTube (YouTube enables users to upload, search for, and watch online videos).

7. In 2018, its global turnover was approximately €116 billion, including €[...] billion generated in France<sup>4</sup>.
8. In August 2015, Google announced its intention to create a new holding company, Alphabet Inc. After the restructuring, completed on 2 October 2015, Alphabet Inc. replaced Google Inc. as the Google group's consolidating entity, and Google Inc. became a wholly owned subsidiary of Alphabet Inc.
9. On 30 September 2017, Google Inc. changed its corporate structure to become Google LLC.
10. Google Ireland Ltd is a subsidiary of Google Ireland Holdings, whose ultimate parent company is Alphabet Inc. The vast majority of Google's revenue in France is generated by [...] <sup>5</sup>.
11. Founded in 2002, Google France is a limited liability company headquartered in Paris. It is a subsidiary of Google Inc., and specialises in the media advertising sector.
12. The companies Alphabet Inc., Google Inc. (now Google LLC), Google Ireland and Google France will be referred to together or separately in the rest of the decision as "Google".

#### **b) General overview of Google's activities**

13. Google's business model is based mainly on the interaction between services provided to users, without financial compensation but giving it access to the users' personal data, and online advertising services, from which it derives most of its revenue.

#### ***Google Search: free online search engine service***

14. The online search engine service, Google Search, is Google's flagship service, accessible via the website [www.google.com](http://www.google.com) or its local versions ([www.google.fr](http://www.google.fr) in France).
15. Google Search enables users to search for information on the Internet. When a user enters a keyword or series of keywords (which constitute a "query") into Google Search, Google Search offers them different categories of results derived from generic or specialised referencing.
16. In the case of generic or "natural" referencing, the results proceed from the application of algorithms developed by Google to identify the most relevant websites for the search in question, based on various criteria (such as frequency of viewing the sites or other sites that link to them, etc.).
17. In the case of specialised referencing, Google offers services directly in response to searches for news (Google News), price comparisons (Google Shopping), maps (Google Maps, enriched by the development of Google Street View, a service that provides 3D photographs of streets), and videos (via the YouTube service, which it bought in October 2006). These searches, which guide internet users to services managed by Google, are also referred to as "vertical searches".

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<sup>4</sup>In the case of its online advertising sales, Google's turnover in France consists of the revenue generated by impressions or clicks on ads by internet users with a French IP address.

<sup>5</sup>Classification mark 9821, Referral 15/0019F.

## *Google's advertising offer to advertisers*

### *Google Ads: a paid online search advertising service*

18. In addition to natural referencing, publishers of websites and mobile apps can also buy space from Google. A user who does a keyword-based search will therefore have two types of results: links to sites ranked by relevance and sites included in advertising banners, whose presence is linked to a payment to Google. This therefore gives advertisers another way of being put in contact with users. The websites that appear in this type of space are not selected solely for their relevance – as in the case of the general search engine results – but also because the website has paid for an advertising service.
19. As a preliminary point, in August 2018 Google renamed its “AdWords” online search advertising service “Google Ads”. In the rest of this decision, the use of the term “Google Ads” refers to Google’s advertising platform, regardless of its actual name at the time (“AdWords” or “Google Ads”).
20. The websites referenced by Google Ads appear in search results as “Ads”. They are not restricted to specific categories of products, services or information<sup>6</sup> and they typically appear above or alongside the natural referencing results. They are accompanied by a label informing users that they are ads.
21. The selection of results displayed is very different from the selection produced by natural referencing. The list of ads displayed depends on an auction of keywords, organised by Google Ads, in which interested advertisers take part. Ads appear with a commercial or “sponsored” link if the keywords are subject to bidding. If an internet user types in “ski trip”, this combination of words might have been bid for by travel companies wishing to promote their services. The same applies to keywords related to hotels, which individual hotels and online hotel booking sites may bid for.
22. The Google Ads advertisements displayed in response to a user's query depend more specifically on two parameters:
  - first, Google Ads identifies a set of relevant ads by associating the keywords that advertisers have bid for with those used in the user's query. This filter corresponds to the search for a result relevant to the user’s wishes;
  - then Google Ads classifies the relevant ads according to their Ad Rank. The ranking of an ad depends on the maximum price bid by an advertiser in an auction for each click on its ad, and the qualitative ranking of that ad (“Quality Score”). The Google Ads advertisements displayed most prominently are those with the highest Ad Rank.

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<sup>6</sup>Some product categories, such as guns, are expressly excluded.

23. When a user clicks on a Google Ads advertisement, the publisher of the website the user is directed to makes a payment to Google for that click. The advertiser thus only pays for its advertisement on the basis of clicks by internet users. The amount paid in this instance is known as the CPC or cost per click.
24. Google Ads advertisements thus enable advertisers to direct users of Google Search to their websites even if their ranking in the natural referencing results is not very high. In addition, when users are using a smartphone, advertisers can also include a “call extension” in their ads to redirect them straight to a phone call instead of a web page.
25. When internet users enter a search query, they receive two types of information in response: natural referencing (ranked by relevance) and advertising (ranked on the basis of an auction, reflecting advertisers’ preferences in terms of relevance). The online search engine activity and the provision of online search advertising space on Google’s website are highly interdependent, since the attractiveness of the latter is dependent on the success of the former. As described by the European Commission in its *Google Search (Shopping)* decision on the functioning of the online search engine<sup>7</sup>, there are positive network effects between the “users” side and the “advertisers” side, since the utility of the Google Ads services depends on the number of search engine users. The more users there are, the more attractive the advertising service is. Conversely, the more (relevant) ads there are, the more attractive the search engine is for users. Moreover, the more advertisers there are in a particular sector, the more other companies in the sector may also be interested in advertising, mainly to maintain an acceptable ranking in the search order.
26. This system has the characteristics of a multi-sided business; in this case it is two-sided. The search engine acts as intermediary between internet users and advertisers. If internet users find an ad relevant, they initiate an interaction with the advertiser by clicking on the link, possibly leading to a transaction. The quality of service offered to users by the search engine depends on both the relevance of the results delivered by referencing but also the relevance and value of the paid advertisements displayed. In a competitive market, a search engine therefore has a natural incentive to ensure the quality of the websites running ads.
27. The figure below shows the results displayed at the top of the first page of the Google search engine if an internet user enters the keyword “*covoiturage*” (carpooling).

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<sup>7</sup>Decision of 27 June 2017, *Google Search (Shopping)*, AT.39740, paragraphs 295 and 296. Google has appealed against the decision.

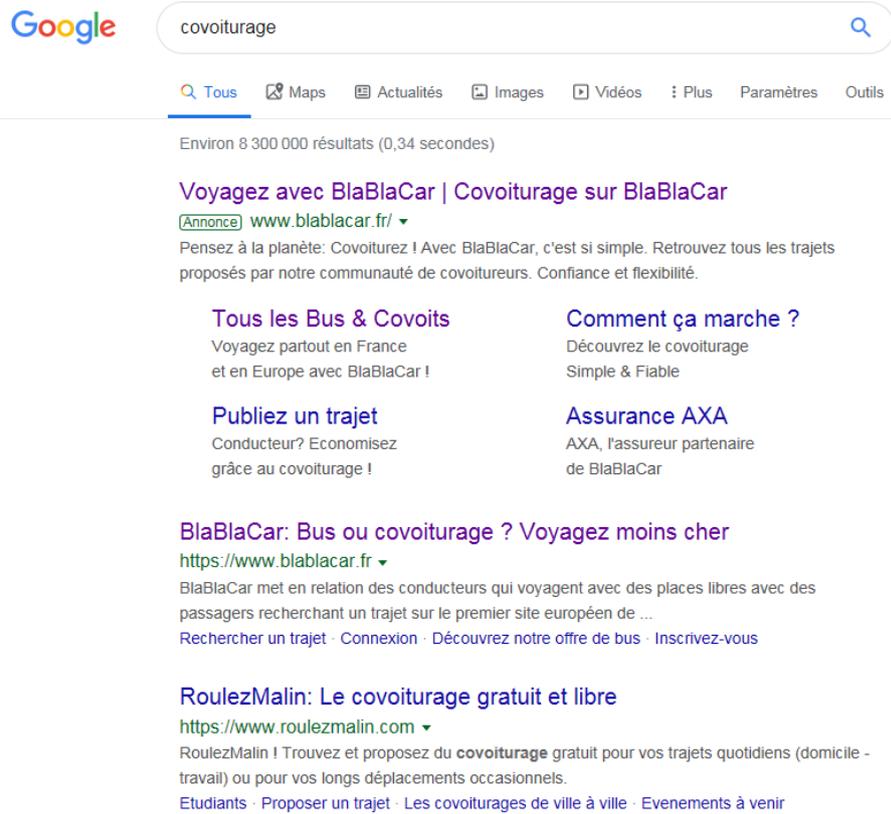
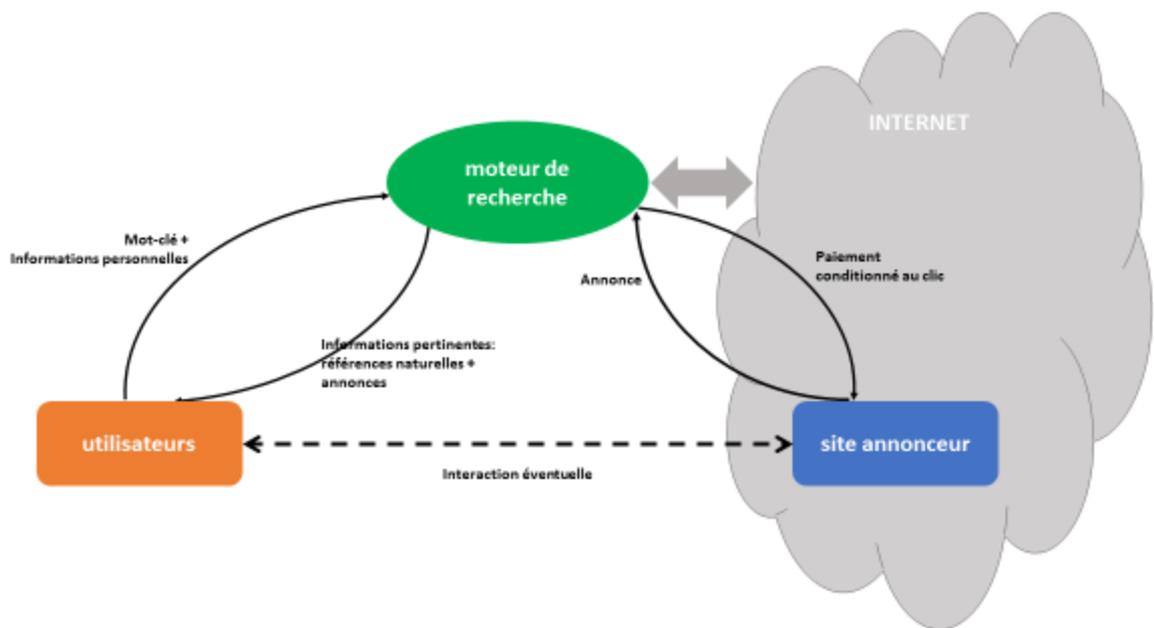


Figure 1 - Search page displayed on the Google website with the query “covoiturage” (carpooling).

28. The figure below summarises the combination of online search engine services and provision of online search advertising services.



*Figure 2 - Combination of Google Ads services and search services (source: Autorité)*

29. Google diversifies its activities to make its search engine more exhaustive and attractive, in particular by offering vertical search services. Instead of offering search results linking to websites, the Google Search web search engine also provides information direct without receiving payment from the user. For example, in the weather forecasting and directories sectors, internet users can access information from Google on these topics without going through third-party sites. These services are also supplied for translation (Google Translate), news (Google News), and the distribution of extracts from books (Google Books), etc.
30. For example, Google's weather forecasting services appear in the search results<sup>8</sup> in a type of presentation referred to as the OneBox.

<sup>8</sup>Classification mark 6179, Referral 15/0020M

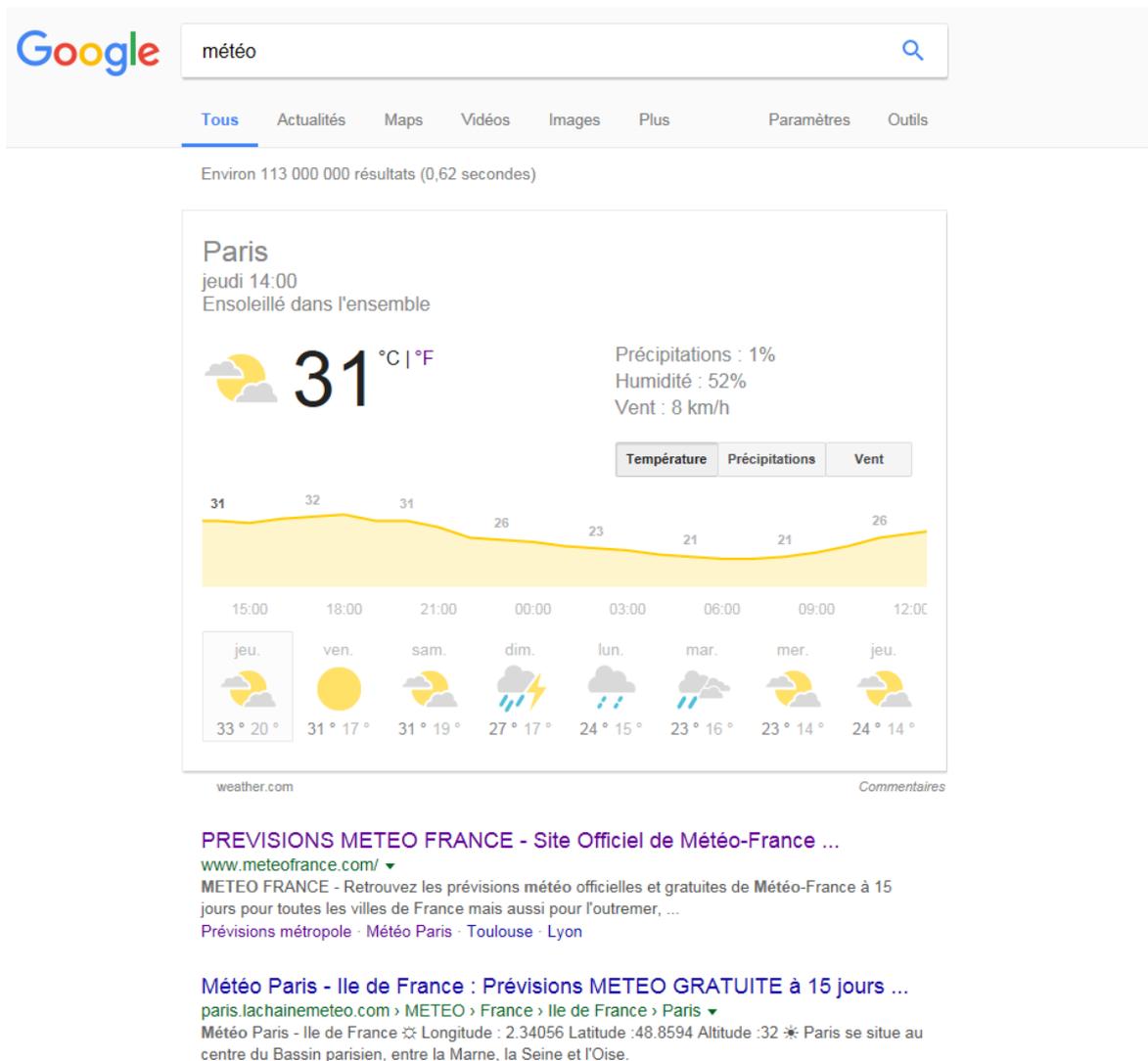


Figure 3 – Screenshot of the Google website

31. To provide these weather forecasts, Google entered into an agreement in [...] with the company [...], a subsidiary of the [...] group, which enables it to use the information on its different websites and services<sup>9</sup>.
32. Google stated that, in France, the number of “impressions” of the weather OneBox in 2015 was approximately [...] million. Approximately [...] million impressions were not followed by clicks to third-party websites, via natural search links or commercial links<sup>10</sup>.
33. Google has also developed directory and call forwarding features to put users in touch with businesses.
34. To provide the contact details of businesses, Google has entered into an agreement with the company [...] to acquire directory information<sup>11</sup>. [...] <sup>12</sup>.

<sup>9</sup>Classification mark 2420, Referral 15/0020M.

<sup>10</sup>Classification mark 1707, Referral 15/0019F.

<sup>11</sup>Classification mark 1370, Referral 15/0019F.

<sup>12</sup> Google also uses other data sources, particularly businesses voluntarily supplying their data.

35. The Google services that can display business telephone numbers from Google's local database include Google Search, Voice Search, Google Now, the Knowledge Panels, Google Maps and Google+<sup>13</sup>. On search engine results pages, the phone number of a business may be presented as part of a service known as a "local pack".
36. Since 2010, Google has combined its vertical search services with monetisation of the call extension service on some ads. In these cases, advertisers can pay for internet users to have the option of calling the contact number indicated on the website direct (call extensions or click-to-call ads). When a user clicks on the call button in the ad, the click is billed by Google to the advertiser<sup>14</sup>.
37. In 2013, Google explained that [50 – 100]% of people who perform searches on their phone use the click-to-call function. Google indicated that, in 2016, click-to-call ads generated turnover of €[...] million worldwide and €[...] million in France. This service is growing fast: in 2014, turnover was €3 million in France and €358 million worldwide<sup>15</sup>. According to Google, when an advertiser uses ads with call buttons, the click rate tends to increase<sup>16</sup>. These directory and call forwarding functions are the subject of regular innovations and improvements. In 2015, Google launched Call Only ads specifically to meet the needs of companies seeking to encourage users to contact them. In 2016, Google made SMS extensions available to advertisers. These enable internet users interested in a Google Ads advertisement to click on an icon that lets them contact an advertiser direct.

*Other advertising services offered by Google*

38. Google offers an online advertising intermediation service called AdSense for Search (hereinafter "AFS"), which displays ads on websites when users enter a query in the search bar of the website in question. Google also offers intermediation services in the online advertising market. In its *Google Search (AdSense)* decision, the European Commission took the view that Google had a dominant position in this market<sup>17</sup> through its AdSense advertising platform. This service enables website publishers to market advertising space on the pages of their websites to generate income. Advertisers buy advertising space through Google's display network<sup>18</sup> or the Google Ads search network<sup>19</sup>.

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<sup>13</sup>Classification mark 1370, Referral 15/0019F.

<sup>14</sup><https://support.google.com/adwords/answer/2453991>

<sup>15</sup>Classification mark 8343, Referral 15/0019F.

<sup>16</sup>[https://www.thinkwithgoogle.com/\\_qs/documents/690/click-to-call\\_research-studies.pdf](https://www.thinkwithgoogle.com/_qs/documents/690/click-to-call_research-studies.pdf)

<sup>17</sup> Commission Decision of 20 March 2019 on the application of Article 102 of the TFEU and Article 54 of the EEA Agreement, AT.40411 – *Google Search (AdSense)*. Google has appealed against this decision (Case T-334/19 (appeal against the *Google Search - AdSense* decision)).

<sup>18</sup>The display network consists of more than two million websites, videos and apps within which advertisers can run ads. The "display network" sites can reach more than 90% of sites throughout the world.

<sup>19</sup> Ads run on the Google Ads search network may be displayed next to search results, on other Google sites (e.g. Maps, Shopping and Google Images), and on the websites of third parties who are partners of Google's search network.

## *Services offered to internet users*

### *Paid services for reducing or removing advertising*

39. Although Google's services are generally accessible without payment and are financed by advertising, internet users can also pay for them in exchange for the reduction or removal of ads.
40. YouTube offers a very large number of videos without payment. Although the platform's main source of revenue has historically been advertising, its revenue model has diversified with the launch in the US of the paid YouTube Red/Premium offer, which guarantees an ad-free service in exchange for a monthly subscription of 9.99 dollars and is now available in France. Google says that its offer can be paid for in exchange for the ability "to enjoy a better viewing experience"<sup>20</sup>. It considers the absence of advertising to be an "additional feature", which represents some of the value added when internet users pay for the service. YouTube Red/Premium offers other additional features compared to the free version, particularly the ability to "download videos and playlists to watch offline"<sup>21</sup>.
41. More generally, in a context in which ad blockers began to be developed, some of them free of charge, in 2014 Google launched the Google Contributor service in the US. Since May 2018, a new version of this service has been available in around thirty countries including France. It is a paid service that enables internet users to display fewer ads on the websites they visit in exchange for a payment to Google in the form of a monthly subscription. Google explains how the service operates as follows: "You load your pass with €5. Each time you visit a page without ads, a per-page fee is deducted from your pass to pay the creators of the website, after a small portion has been kept by Google to cover the cost of running the service. The price per page is set by the creator of the site. You will be informed in advance if a site creator changes their price per page. Contributor is easy to update: change settings and add sites or remove them from your pass at any time"<sup>22</sup>.
42. Google justifies the launch of its service and its competitive position as follows: "Maintaining individual subscriptions with each website can be expensive and time consuming. The Contributor pass works with your Google Account to remove ads from the participating sites that you've selected. Simply sign in and browse the web as usual. You only pay for the pages that you view without ads"<sup>23</sup>.
43. Finally, in the Google Play app store, Google enables publishers of mobile apps to bill users in exchange for ad-free services.

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<sup>20</sup> <https://support.google.com/youtube/answer/6308757?hl=fr>

<sup>21</sup> <https://support.google.com/youtube/answer/6308757?hl=fr>

<sup>22</sup> <https://contributor.google.com/v/beta>

<sup>23</sup> <https://contributor.google.com/v/beta>

### *Other services*

44. Since 2008, Google has operated the Play Store app store, where users can download apps on various themes. Its revenue model is based on the marketing of advertising services, particularly through the AdMob platform, and on charging commission on every purchase made by users, generally at a rate of 30%. Some apps can be downloaded in exchange for payment of a price set by the app publisher. Some apps enable internet users to make in-app purchases to access certain additional content and features, such as ad-free use.

## **2. GIBMEDIA**

45. Gibmedia was created in 2005. It is wholly owned by the company BJ Invest. BJ Invest is controlled by Mr X..., who owns a 99.99% stake in it. On 31 December 2014, BJ Invest controlled other companies active in the e-commerce sector: JTM Web, Nomao, SND, Telemaque, Webdevin, Ameliste, Agence 73, Ecométrie, Edimat, FD2J, BJ Immo and SAS 16h10<sup>24</sup>.
46. Gibmedia has two main activities: publishing websites and mobile apps, and providing online payment solutions for website publishers, as part of an activity consisting of the aggregation of solutions supplied in particular by the main French electronic communications operators. In 2014, its turnover was €15.2 million<sup>25</sup>.
47. On the date of the complaint, Gibmedia was publisher of several websites providing “paid ad-free information”<sup>26</sup>: telephone directories (pages-annuaire.net and annuaires-inverse.net); weather forecasts (info-meteo.fr); legal and financial information about companies (info-societe.com); text messaging from a computer (easy-sms.fr); tax calculation (impot-calcul.fr); examination results (mes-resultats-examens.fr) and television programmes (mon-programme.tv).
48. Gibmedia’s services are billed using payment solutions provided by France’s main electronic communications operators: Orange, Free, Bouygues Telecom and SFR. These payment solutions, which are also marketed to other publishers are:
- Appel Premium (formerly Audiotel): the user is billed by the telephone operator as part of a call to a premium-rate telephone number displayed on the website visited;
  - SMS+: this solution enables publishers and advertisers to offer services billed via SMS or MMS by the mobile operators;
  - Internet+ Box: this service is offered by Bouygues Telecom, Free, Orange and SFR to their subscribers. It can be used for purchases on a pay-as-you-go or subscription basis. The payments appear on the bill prepared by the operator;
  - Internet+ Mobile: this service, accessible on mobile devices, has the same characteristics as the Internet+ Box offer and is available to Bouygues Telecom, Orange and SFR subscribers;
  - Contact+ (until 16 July 2016): this service was offered by Orange to its subscribers and was also activated by default. It could be used to make purchases online, which

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<sup>24</sup>Classification mark 10353, Referral 15/0020M.

<sup>25</sup>Classification mark 10233, Referral 15/0020M.

<sup>26</sup>Classification mark 4091, Referral 15/0020M.

then appeared on the bill prepared by Orange, on a pay-as-you-go or billing of time spent basis.

49. As part of its payment solutions aggregator activity, Gibmedia makes the various payment solutions available to website publishers for a fee, supplying them with an operating licence for its software interface as well as technical support services.
50. Gibmedia also sells advertising space via four platforms: Google AdSense, HiMedia, Teads and Yahoo. This is a much bigger source of revenue than the paid services (which generated over twenty times less income in 2014).
51. The revenue model of its offers varies depending on the internet user's terminal, the network and the electronic communications operator used.
52. No ads are displayed on the info-meteo.fr website when internet users pay to access the service<sup>27</sup>. However, free access to info-meteo.fr via a non-residential Internet service on a desktop computer or tablet is financed by advertising<sup>28</sup>. Similarly, free access to information on the annuaires-inverse.net and pages-annuaires.net sites is accompanied by advertising.
53. The paid services of the websites concerned also include other features such as listening anonymously to mobile voicemail messages without making the mobile ring, which are not available from other online directory services such as pagesjaunes.fr and 118712.fr.
54. Finally, access to the legal and financial information available on Gibmedia's info-societe.com website is based primarily on the billing of services to internet users. Only Orange subscribers who use the site do not see ads. Subscribers of other Internet service providers pay to use the service and therefore may see ads<sup>29</sup>, as is the case on competitors' sites.

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<sup>27</sup>Classification marks 4179 to 4182, Referral 15/0020M.

<sup>28</sup>Classification mark 4183, Referral 15/0020M.

<sup>29</sup>Classification marks 4165 to 4169, Referral 15/0020M.

## **C. BUSINESS MODELS OF WEBSITES OPERATING IN THE SECTORS TO WHICH THE COMPLAINT RELATES**

### **1. INTRODUCTION**

55. Website publishers can finance their activity either solely through advertising, offering an entirely free service to Internet users, or solely through payments by Internet users, or on a hybrid basis, combining both sources of revenue. For example, the revenue of Gibmedia's websites comes mainly from the sale of digital services to internet users and, to a lesser extent, from the sale of advertising space.
56. Websites can be accessed by direct input of the web address in the browser address bar, via a link from another website, from the results of a search in a search engine, or through advertising purchased on the basis of keywords, or advertising in general. When a website is launched on the market, a critical mass of users needs to be generated, and advertising usually plays a vital role in creating this traffic. Once a website is established, provided that it has a good reputation, some of its traffic is generated by other means (see paragraphs 443 et seq.).
57. Websites therefore broadcast information publicly in order to be referenced by search engines, and pay search engines so that their ads feature on search results pages.
58. For this type of multi-sided model to function effectively (in this case a two-sided model, where a search engine links users with advertisers), the search engine must define and apply rules that enable the different sides to interact with confidence. Users generally want to see their personal data protected or, if they click on a link presented by a search engine, want to not be exposed to situations where they risk being victims of abuse. Similarly, advertisers are prepared to pay for their ads, provided that they are presented in a relevant way to users. In return, the definition and application of these rules will have an effect on the websites' business models.
59. The referenced websites or advertisers include a category who offer information and related services. The following sections give three examples: legal and financial information services, directory and directory enquiries services, and weather information services. These three sectors are the ones to which the complaint relates, but the above observations are valid for many other sectors.

### **2. SERVICES PROVIDING LEGAL AND FINANCIAL INFORMATION ON COMPANIES**

60. In the sector of legal and financial information on companies, services are provided for payment, sometimes in combination with services available free of charge. Where they also provide free services, website publishers use a mixed revenue model based on charging for services and selling advertising space.

61. The revenue model of the info-societe.com website, published by Gibmedia since 2007<sup>30</sup>, is based mainly on selling official documents (articles of association, balance sheets, income statements, identification sheets, VAT numbers). Subscribers to Orange services can use Contact+ to be billed on a time-spent basis, or Internet+ to subscribe. Internet+ is also offered to customers of Bouygues Telecom, Free and SFR. Internet users can also pay on a pay-as-you-go basis by bank card<sup>31</sup>. The revenue model of info-societe.com relies marginally on the marketing of advertising space, via the Google AdSense services and those of HiMedia, an advertising platform that competes with Google.
62. Other websites in the sector include the sites of Infogreffe (infogreffe.fr), Société SAS (societe.com, fichier.com, dirigeant.com), Manageo/Les Echos (manageo.fr, bilansgratuits.fr), and Nextradio TV (verif.com). These companies have implemented revenue models based entirely or partially on the provision of paid services.
63. Infogreffe has deployed a revenue model based on the payment of access fees in the form of a subscription and payment for documents on a pay-as-you-go basis, at the prices set by Decree 2007-812 of 10 May 2007<sup>32</sup>. None of the websites published by the Infogreffe EIG “displays ads or supplies services backed by advertising”<sup>33</sup>.
64. Groupe La Poste is the publisher, via the subsidiary Société SAS, of the website and mobile app societe.com. They provide access to certain free information such as registrations, amendments and deletions in the RNCS and INSEE, and key figures from annual accounts. The documents that can be downloaded in exchange for payment are simplified balance sheets, full accounts, deeds and articles of association, Bodacc notices and documents related to shareholding relationships<sup>34</sup>. La Poste indicated that societe.com also provides company director information services by subscription. The payment methods used on the website are bank cards and premium-rate telephone numbers<sup>35</sup>. The mobile app societe.com uses the payment systems of the App Store and Google Play app stores, which take commission on any sales via the apps<sup>36</sup>.
65. Manageo publishes the websites manageo.fr and checknbiz.manageo.fr. It jointly publishes with the Echos group the bilansgratuits.fr website. These three sites have slightly different revenue models but none of them relies solely on advertising. They generally offer a number of different pricing plans and payment methods. Manageo.fr offers paid services billed on a pay-as-you-go, subscription or fixed period basis<sup>37</sup>. The payment methods offered are bank cards, payment on the Internet service provider’s bill (Internet+ and Internet+ mobile) and premium-rate telephone numbers (SVA+ and SMS+). The bilansgratuits.fr website also offers several different pricing plans and payment methods<sup>38</sup>. The turnover of bilansgratuits.fr is mainly from advertising revenue; product sales account for approximately only a quarter of the website’s revenue. Meanwhile, all the revenue of checknbiz.manageo.fr, which offers subscription access to “all information about French companies”<sup>39</sup>, comes from sales of paid services<sup>40</sup>.

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<sup>30</sup>Classification mark 4093, Referral 15/0020M.

<sup>31</sup>Document 22 of the Referral.

<sup>32</sup> <https://www.infogreffe.fr/societes/documents-officiels/infogreffe-gratuit.html>

<sup>33</sup>Classification mark 1167, Referral 15/0019F.

<sup>34</sup>Classification mark 3257, Referral 15/0019F.

<sup>35</sup>Classification marks 1316 (VC) and 177 (VNC), Referral 15/0019F.

<sup>36</sup>Classification mark 2202, Referral 15/0019F.

<sup>37</sup>Classification marks 4296 to 4298(VC)/4479(VNC), Referral 15/0019F.

<sup>38</sup>Classification marks 4299 to 4302 and classification marks 4482 and 4483 (VNC), Referral 15/0019F.

<sup>39</sup>Classification marks 4294 (VC) and 4475 (VNC), Referral 15/0019F.

66. NextRadio TV, through the company Nextinteractive, publishes the website *verif.com*. It offers both free information and services (identification data, balance sheets, secondary establishments, directors, alerts concerning companies, etc.) and others that are paid for (call forwarding, legal notices, financial statements, digitalised deeds, etc.)<sup>41</sup>.
67. The websites with the best positions in natural search results see a limited amount of their traffic generated by Google Ads referencing. Groupe La Poste said that 1% of the *societe.com* website's traffic came from Google Ads<sup>42</sup>. In the case of *bilansgratuits.fr* published by Manageo, only 1.25 % of the website's traffic came from Google Ads in 2015<sup>43</sup>. These two players occupied the top places in terms of Google Search's natural referencing for the query "*bilan entreprise gratuit*" (free company accounts) on 19 July 2018, along with the *Infogreffe.fr* website<sup>44</sup>.
68. On the other hand, Google Ads can account for a very large share of the traffic of some websites, particularly those that are not well known to the public. This was notably the case for the website published by Gibmedia. The share of its traffic that came from Google Ads commercial links was 82% in 2013, 91% in 2014 and 84% in 2015<sup>45</sup>.

### 3. DIRECTORY AND DIRECTORY ENQUIRIES SERVICES

69. Before the market was deregulated in 2005, directory and directory enquiries services provided by electronic means were paid services. After the market was opened up to competition, suppliers of directory services by electronic means also chose revenue models based on paid services. For several years, in parallel with their operation of directory enquiries services of the type 118 XYZ, companies such as Pages Jaunes and Orange implemented revenue models on the Internet based on paid services, which lasted for several years after the entry into the market of Gibmedia's directory websites.
70. Solocal stated that its QuiDonc service "became free on the Internet in April 2008 when it was accessible from *pagesjaunes.fr*, but Internet users still had to pay for the service when they accessed it through audience sites, depending on the choice of the publisher of the website offering it. [...] All the QuiDonc revenue came from payments by users"<sup>46</sup>. Iliad said that it stopped billing for this service in 2012<sup>47</sup>, four years after Gibmedia launched the *pages-annuaire.net* website.

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<sup>40</sup>Classification marks 4294 (VC) and 4475 (VNC), Referral 15/0019F.

<sup>41</sup>Classification mark 7505 and classification mark 7499 (VNC), Referral 15/0019F.

<sup>42</sup>Classification marks 1315 (VC) and 10205 (VNC), Referral 15/0019F.

<sup>43</sup>Classification marks 4295 (VC) and 10206 (VNC), Referral 15/0019F.

<sup>44</sup>Classification mark 11161, Referral 15/0019F.

<sup>45</sup>Classification mark 4121, Referral 15/0020M and classification mark 10884.

<sup>46</sup>Classification mark 3745, Referral 15/0019F.

<sup>47</sup>Classification mark 3674, Referral 15/0019F.

71. Currently, Orange and Solocal publish directory services on the Internet and via mobile apps, for which the revenue model is based on marketing advertising space<sup>48</sup>. These services have been enriched and in particular include “click to call” features in their mobile versions, as well as map services, which notably include the contact details of businesses. Both companies also continue to receive income from directory enquiries services provided by electronic means.
72. A large share of directory services provided by electronic means is based on the combined use of the telephone and Internet. This change has come about with the development of the “click to call” features described above. Suppliers of directory enquiries services who use short numbers of the type 118 XYZ, for which paid services<sup>49</sup> are billed on a pay-as-you-go and time-spent basis in the context of premium-rate telephone calls, also make combined use of the telephone and Internet.
73. The company 118 218 Le Numéro, which provides the 118 218 directory enquiries service, markets a mobile app available on Google Play<sup>50</sup>, which can be used, in exchange for payment, for unlimited directory enquiries and reverse phone lookup access, and for sending contacts by SMS and notifications. These services are available on the basis of two different monthly subscriptions<sup>51</sup>. Other players such as Solocal and Orange combine use of the telephone network for directory searches and billing with use of the Internet for sending search results, mainly by e-mail<sup>52</sup>. Other suppliers, such as Somnus (118 711) use their websites (cquicenumero.com) for reverse phone lookup searches and for making premium-rate telephone calls to a 118 XYZ-type number. This is also the case with the directory sites of Gibmedia and several of its competitors. They offer paid directory search services that can be billed in particular through calls to 08 XY-type premium-rate telephone numbers. The premium-rate telephone numbers are used to access the search results.
74. There are also several directory sites that provide paid services involving features not offered as part of the directory services available on the websites of players like Solocal and Orange. These additional features can be used in particular to obtain information about numbers that do not appear in the reverse phone lookup directory databases. To identify the owner of a mobile number without actually calling the number, the internet user can listen anonymously to the owner’s voicemail message without making the mobile phone ring. In the case of fixed-line numbers, internet users can geolocate the call and obtain information about the fixed lines of businesses, from similar numbers.
75. The services offered by Gibmedia’s directory websites (annuaire-inverse.net and pages-annuaire.net) thus consist of directory and reverse phone lookup services, features to identify a subscriber whose number is not listed in directory databases, and the removal of ads when the internet user pays for the service. The perimeter of the paid services can vary depending on the site, the subscriber’s electronic communications provider, and the

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<sup>48</sup>Classification marks 3690 (VC)/3818 (VNC) and 3691(VC)/3819 (VNC), Referral 15/0019F

<sup>49</sup> All directory enquiries services accessed using a number starting with 118 are “universal directory holders”, which means that they must be able to respond to any request for a subscriber number on any of the different operators’ lists of subscribers. An operator is any individual or legal person operating an electronic communications network open to the public or providing an electronic communications service to the public. Most directory enquiries services provided by telephone are paid services. Although their prices are set by the service provider, they are billed by the provider of the mobile or fixed-line telephone used to make the call.

<sup>50</sup> <https://play.google.com/store/apps/details?id=com.app118unlimited&hl=fr>

<sup>51</sup>Classification mark 1338, Referral 15/0019F.

<sup>52</sup> <https://info.pagesjaunes.fr/infoslegales/cgu-118008/>

payment methods available. For example, Gibmedia said that no information was available free of charge for “Orange Box” users using the pages-annuaire.net website.

76. The features offered on Gibmedia’s websites are also included in the services offered by several competitors. These companies generally use several payment methods, including Internet+ and Contact+. Several of them provide a service based on the combined use of a website or mobile app and calls to premium-rate telephone numbers, including 118 XYZ-type numbers. The website is used to enter the search query, and the phone call, which can be initiated from the website, is used to access to the results and bill for the service. The revenue models of these companies may also be based on marketing advertising space. Some of these companies can provide information without requiring payment. They can provide telephone numbers free of charge when the number is in their database, and offer paid services for listening to voicemail greetings when the number is not in the database.
77. These companies are:
- Ace Telecom (discretel.fr and inverseannuaire.com) explained to the Investigation Services that its “reverse phone lookup websites offer both information available free of charge and information for which payment is required: -information available free of charge in the case of reverse lookup of fixed-line numbers - information in exchange for payment by the user in the case of reverse lookup of mobile numbers”<sup>53</sup>.
  - Dispobiz, which has published the quipage.fr website since 2014, provides free of charge “searches by name of Private Individuals and/or Businesses” and paid services<sup>54</sup>, consisting mainly of anonymous listening to mobile voicemail messages (see paragraph 74)<sup>55</sup>.
  - Pratique group, which publishes the 118000.fr website, said that “access for businesses is through premium-rate telephone numbers except in the case of internet users who have created an account on the website. Access for private individuals is not through premium-rate telephone numbers”<sup>56</sup>. The site’s revenue model is also based mainly on paid services<sup>57</sup>.
  - Groupe La Poste, which publishes the annuaire.com website, said that its website has switched “from a business model heavily oriented towards payment to a model based on selling subscriptions to businesses”<sup>58</sup>.

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<sup>53</sup>Classification marks 3286 (VC) and 3727 (VNC), Referral 15/0019F.

<sup>54</sup>Classification mark 668, Referral 15/0019F.

<sup>55</sup>Classification mark 669, Referral 15/0019F.

<sup>56</sup>Classification mark 1228, Referral 15/0019F.

<sup>57</sup>Classification mark 1227, Referral 15/0019F.

<sup>58</sup>Classification marks 1316 (VC) and 1277 (VNC), Referral 15/0019F.

- Opendoo, which publishes the ctqui.com website and a mobile app, also said that it provides information free of charge, especially when telephone numbers are in the databases of the operators with which it has contracts, and offers paid services. In 2015, more than half of its turnover was from paid services and 10% from advertising<sup>59</sup>. It also provides paid directory services via its mobile app, and in this case shares the revenue with the app stores, including Google Play<sup>60</sup>.
- Somnus, which publishes three reverse phone lookup websites (cquicnumero.com, annuaire--inverse.com and a-qui-annuaire-inverse.fr) and a website for listening to mobile voicemail greetings (3690.fr), told the Investigation Services that its reverse phone lookup websites “offer different information free of charge depending on the website: name of the operator that owns the number range, date when the number was assigned to the operator, *département* and town or city (for geographical numbers), owner’s name and address when present in the directory, comments left by internet users about the number. They also offer access to a paid Audiotel number which also provides direct access to the voicemail greeting of numbers to identify the owner or can be used to make a direct identification request to the owner”<sup>61</sup>. Somnus operates several 118 XYZ-type numbers. The business model of these websites is based mainly on the provision of paid services.
- Audivox publishes the les-pages.com website, a directory and reverse phone lookup service, which can also be used to listen to voicemail messages anonymously without causing the mobile phone to ring. The website also uses Google’s AdSense service, but the revenue generated by this service accounts for only 5% of the site’s turnover, most of which comes from paid services<sup>62</sup>.

78. A very small amount of the traffic on the pages-jaunes.fr website between January 2014 and April 2017 came from Google Ads, because the website was well known from the old official directory enquiries service prior to the sector’s deregulation in 2005<sup>63</sup>.
79. However, Google Ads is responsible for a large share of traffic in the case of certain website publishers who are not known to the general public. For example, the table below shows the share of traffic from Google Ads out of the total traffic of Gibmedia’s websites that were suspended<sup>64</sup>.

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<sup>59</sup>Classification mark 2095, Referral 15/0019F.

<sup>60</sup>Classification mark 2096, Referral 15/0019F.

<sup>61</sup>Classification marks 2529 (VC) and 2516 (VNC), Referral 15/0019F.

<sup>62</sup>Classification mark 1096, Referral 15/0019F.

<sup>63</sup> Classification marks 8629 to 8632.

<sup>64</sup>Classification mark 4121, Referral 15/0020M.

	2012	2013	2014
Pages-annuaire.net	90%	91%	93%
Annuaire-inverse.net	56%	34%	37%

*Figure 4* – Share of the traffic on Gibmedia’s websites in the directory and directory enquiries sector contributed by Google Ads

80. Audivox said that 82% of visitors to the les-pages.fr website came via Google Ads in 2014 and 70% in 2015, the year its account was suspended<sup>65</sup>. Ace Telecom said that in 2013 and until 30 June 2014, more than 70% of traffic on the discretel.fr website came from Google Ads advertisements<sup>66</sup>.
81. Ecométrie declared that, to assess the traffic on its annuaire-inverse-france.com website, it was necessary to distinguish between two types of visitor profile: users wanting to identify an unknown telephone number, which was the website’s “core activity”, and users browsing “different areas of the website (news, forum, etc.) without reverse lookup of a phone number”<sup>67</sup>. It also said that, in the case of the former, 88% of traffic was generated through Google Ads in 2015. In 2013 and 2014, 82% and 79% of visits respectively came from clicks on Google Ads advertisements<sup>68</sup>. Ecométrie also publishes another website, pages-tel.com, with a much smaller audience than the annuaire-inverse-france.com website. It said that, in 2015, 99% of the website’s traffic came from Google Ads<sup>69</sup>.
82. Similarly, more than 80% of traffic on the website cquicenumero.com (Somnus) comes from Google Ads: 83% in 2013, 82% in 2014, 94.4% in 2015 and 90.7% in 2016<sup>70</sup>. In parallel, the number of visitors to this website increased fivefold between 2013 (714,815 visitors) and 2016 (3,546,885 visitors)<sup>71</sup>. In the case of Links Lab, during the period from September 2014 to December 2015, more than 90% of traffic on the allo-pages.fr website came from Google Ads<sup>72</sup>.

#### 4. WEATHER INFORMATION SERVICES

83. The Gibmedia website, info-meteo.fr, is an ad-free paid services offer launched in 2008<sup>73</sup>. The website only displays advertising space for internet users who access it from a non-residential fixed line<sup>74</sup>. Its operation is based on the purchase of weather information from companies such as Accuweather, Meteo Consult and Previmeteo<sup>75</sup>. According to Gibmedia, the website offers “numerous features such as detailed weather bulletins, weather forecasts for every city in France, weather maps to an on-demand degree of precision (national, regional or departmental map, with or without display of degrees, wind

<sup>65</sup>Classification mark 1096, Referral 15/0019F.

<sup>66</sup>Classification mark 8781, Referral 15/0019F.

<sup>67</sup>Classification marks 2067 (VC) and 10229 (VNC), Referral 15/0019F.

<sup>68</sup>Classification marks 2067 (VC) and 10229 (VNC), Referral 15/0019F.

<sup>69</sup>Classification marks 2068 (VC) and 10230 (VNC), Referral 15/0019F.

<sup>70</sup>Classification marks 8779 (VC) and 10216 (VNC), Referral 15/0019F.

<sup>71</sup>Classification marks 8779 (VC) and 10216 (VNC), Referral 15/0019F.

<sup>72</sup>Classification marks 1432 (VC) and 10225 (VNC), Referral 15/0019F.

<sup>73</sup>Classification marks 4179 to 4183, Referral 15/0020M.

<sup>74</sup>Classification mark 4183, Referral 15/0020M.

<sup>75</sup>Classification marks 4184 and 4185, Referral 15/0020M.

speeds and weather icons), accurate weather data such as real and perceived temperature, weather in the form of an icon, precipitation risks and wind data (force and direction) [...]”<sup>76</sup>.

84. When info-meteo.fr was launched in 2008, only the three-day forecasts on meteo-france.fr were available without payment; Météo France offered 4-day and 7-day forecasts in exchange for payment. From November 2008, Météo-France returned to this model and made forecasts longer than 3 days free of charge.
85. At present, the revenue model of Météo France’s website and mobile app is based on the marketing of advertising, but also the provision of paid services. Pay-as-you-go and subscription are the two main payment models. These services are supplied through several networks and electronic communications services: fax, Internet (subscriber area or e-mail) or text message<sup>77</sup>. In 2014, income from Internet advertising was a minor source of revenue for Météo France, and less than the income from the Audiotel & Mobile voice services, which are paid services.
86. Similarly, Meteo Consult, a Le Figaro group company, which publishes the Chaîne Météo television channel, the lachainemeteo.fr and meteoconsult.fr websites, and the La Chaîne Météo mobile app, also has a revenue model based on the supply of free services and paid services. On the one hand, on its lachainemeteo.fr website, Meteo Consult provides free weather forecasts monetised by advertising. On the other, the lachainemeteo.fr website promotes a number of paid services that are directly accessible on the meteoconsult.fr website. On this website, “only the current day’s weather forecast is accessible free of charge”<sup>78</sup>. A “subscription is necessary to view longer range forecasts”<sup>79</sup>, via the Arc-en-ciel offer, a service that guarantees to be ad-free<sup>80</sup>. Meteo Consult also offered this service billed on a time-spent basis, via the Orange Contact+ service<sup>81</sup>. On meteoconsult.fr, internet users can subscribe to paid shipping forecast services<sup>82</sup>. Compared to the free version, these offers remove ads and provide access to specific information (e.g. open sea area forecasts with the Phare subscription) and special features (e.g. printable pdf reports). Finally, the lachainemeteo.fr and meteoconsult.fr websites promote the La Chaîne Météo mobile app. It is free to download but internet users can subscribe to the VIP service<sup>83</sup>, paid for by subscription, in order not to see ads. The app is also published in English, with the name Weather Crave<sup>84</sup>.
87. Among the other French players on the Internet, there is also Previmeteo, publisher of previmeteo.com and provider of weather information and forecasts to Gibmedia. This website’s offer “used to be mainly by subscription”<sup>85</sup> but has “gradually evolved to freemium”<sup>86</sup>. The term “freemium” refers to a mixed business model combining a free basic version of which some functions may be reduced, non-existent or deliberately downgraded, and a paid version offering advanced features.

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<sup>76</sup>Classification marks 4094 and 4095, Referral 15/0020M.

<sup>77</sup>Classification mark 695, Referral 15/0019F.

<sup>78</sup>Classification mark 4587, Referral 15/0019F.

<sup>79</sup>Classification mark 4587, Referral 15/0019F.

<sup>80</sup><http://www.meteoconsult.fr/services-meteo/abonnement-meteo-premium-arc-en-ciel.php>

<sup>81</sup>Classification marks 661 (VC) and 685 (VNC), Referral 15/0019F.

<sup>82</sup><http://marine.meteoconsult.fr/services-meteo-marine/nos-offres-et-abonnements.php>

<sup>83</sup>Classification mark 4587, Referral 15/0019F.

<sup>84</sup>Classification mark 8977, Referral 15/0019F.

<sup>85</sup>Classification marks 872 (VC) and 1142 (VNC), Referral 15/0019F.

<sup>86</sup>Classification marks 872 (VC) and 1142 (VNC), Referral 15/0019F.

88. As mentioned above, Google is also active in the sector providing weather forecasts by electronic means.
89. On the one hand, Google provides weather information via the “Weather One Box”, which is accessible on the results pages of its search engine. For this Google has a contract with the company [...], under the terms of which it buys a stream of weather information that it displays on its results page in response to certain queries. Google believes that it “is not operating a ‘weather information service’”<sup>87</sup> and that the One Boxes “are one of the types of presentation of search results. One Boxes provide factual responses to users’ queries”<sup>88</sup>. Google said that it does not generate “advertising revenue linked to the provision of the weather information covered by the licence agreement”<sup>89</sup>.
90. On the other hand, in the Google Play Store app store, Google lists several thousand mobile apps, both free and paid for, providing weather information. In the case of paid transactions, the mobile app publishers pay Google commission on every sale made through the Google Play Store. Google therefore receives income from the sale of paid weather information services through its app store. Among the paid apps, a distinction should be made between apps that users must pay to download and apps that can be downloaded free of charge but which offer in-app purchases. Of the ten most popular apps in France that are free to download, three offer in-app purchases on Google Play: [...]<sup>90</sup>. Google also supplied a list of the ten most popular weather forecast apps that users must pay to download. Some of them also offer the possibility of making in-app purchases. This is the case with [...], which is the app downloaded most from the Google Play Store<sup>91</sup>.
91. In this sector, the websites with the best positions in Google’s natural search results use Google Ads on an occasional basis. This is the case with websites such as those published by Météo France, which are already widely known. This is also the case with Meteo Consult’s websites, which benefit from the support of the Le Figaro group. The group promotes lachainemeteo.fr on the lefigaro.fr website, which was the 15th most visited brand in France in July 2017<sup>92</sup>. On the other hand, Google Ads accounts for a very large share of the traffic on the info-meteo.fr website published by Gibmedia (82% in 2012, 90% in 2013, 84% in 2013), which is not well known to the general public<sup>93</sup>.
92. In conclusion, an examination of the three activities to which Gibmedia’s complaint relates shows, on the one hand, that the business models (free or paid services) of websites engaged in the same activity are very varied, and on the other, that the importance of Google Ads for each website depends mainly on how well known it is already. In this regard, it appears that Google Ads accounts for a large share of the traffic generated by several companies, including Gibmedia, which entered their respective markets after the large stakeholders, some of which were incumbents (Infogreffe, Solocal, Orange) or are companies attached to media groups (La Chaîne Météo). For these, already being widely recognised or having been in the market for some time are advantages in terms of market position, when it comes to acquiring traffic.

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<sup>87</sup>Classification mark 1704, Referral 15/0019F.

<sup>88</sup>Classification mark 1703, Referral 15/0019F.

<sup>89</sup>Classification mark 7008, Referral 15/0020M.

<sup>90</sup>Classification mark 1563, Referral 15/0019F.

<sup>91</sup>Classification mark 1565, Referral 15/0019F.

<sup>92</sup><http://www.mediametrie.fr/internet/communiqués/l-audience-internet-global-en-france-en-juillet-2017.php?id=1740>

<sup>93</sup>Classification mark 4121, Referral 15/0020M.

## **D. PRACTICES IDENTIFIED**

93. In its complaint, Gibmedia accuses Google of having abruptly suspended the Google Ads account used by its websites under conditions that were not objective, transparent or non-discriminatory. In this context, it objects to the definition and conditions of application by Google of the rules on advertising and suspension of accounts.
94. These questions will be examined as part of a review of the Google Ads rules (1), the methods used by Google to ensure advertisers comply with them (2) and the implementation of the suspension procedures by Google (3).

### **1. THE GOOGLE ADS (FORMERLY ADWORDS) RULES**

95. The Google Ads (formerly AdWords) Rules (hereinafter “the Rules”) concern, on the one hand, the content of the Rules to be respected by advertisers in order to be eligible for the Google Ads advertising services offered by Google (a) and, on the other, the Rules that apply if ads, websites, and associated Google Ads accounts are suspended (b).

#### **a) Definition of the Rules**

96. Google defines and publishes Rules that specify the conditions under which an advertiser may display advertising on the “Google network”. To open a Google Ads account, every advertiser must expressly commit to respect the associated rules, which form an integral part of the general terms and conditions that all advertisers must read and accept, and which set the terms of the contractual relationship between Google and the advertiser.
97. The Rules are binding on advertisers, but they are frequently revised by Google. The change log in the Google Ads Help Center reveals, for example, a list of 18 revisions in 2018. A single category of Rules can change several times in one year (for example, the category “Other restricted businesses” changed four times in 2018). The Rules are therefore very unstable, making it difficult to keep track of them over time.
98. In particular, the Rules are designed to protect internet users using the Google Search web search engine, to prevent their exposure to ads directing them to websites that could harm their interests.
99. The successive Rules on which Google’s suspension of Gibmedia’s accounts and other similar websites was based, will be presented for the following four periods: (i) the Rules in force from July 2012 to August 2014, (ii) the revision of the Rules in September 2014, (iii) the changes made to the Rules in March 2018 and (iv) the changes made to the Rules in March 2019.
100. However, in view of the complexity and instability of the Rules, the descriptions below use the descriptions of the successive versions of the Rules, which are relevant to an examination of the validity of the complaint, without reproducing the Rules in force in their entirety.

### *Rules in force from July 2012 to August 2014*

101. Prior to September 2014, the Rule on “untrustworthy promotions” did not exist. According to Google, this practice was nevertheless covered by a set of Rules comprising in particular the following three Rules: “sale of free items”, “unclear billing”, and “cloaking”<sup>94</sup>.

102. Google explained the content of each of these rules as follows<sup>95</sup>.

- The Rule on the “sale of free items” was defined as follows:

“Google AdWords does not allow promotion of the sale of items or services available free of charge elsewhere. Nor do we allow the sale of forms or government services available free of charge or at a lower cost on an official or government website. We created this rule to prevent our users from being misled”. Several examples accompanied this definition to illustrate the way Google applied the Rule.

- The Rule on “cloaking” was defined as follows:

“Google AdWords does not allow cloaking or system circumvention (techniques for showing different content to internet users and to Google). Google uses automated tools that explore an advertiser’s website and provide relevant data for the AdWords programme. If advertisers do not show the same content to Google and to internet users, internet users may find themselves on a different website from the one they expected, leading to a misleading user experience. We created this rule to guarantee our users’ safety”.

The Rules explained the following to advertisers: “if you use this practice, your website may be considered misleading”.

This definition of the Rule on cloaking is similar to the one used by Google in the “Webmaster guidelines” applicable to natural referencing, to which the Google Ads Rules expressly referred before September 2014. Cloaking is defined there as “the practice of presenting different content or URLs to human users and search engines”<sup>96</sup>.

- The Rule on “unclear billing” was defined as follows:

“Google AdWords prohibits billing or pricing models that are not transparent for users. In other words, the payment process must be transparent and you must clearly indicate to internet users how they will be billed”.

103. These three Rules are summarised in the table below:

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<sup>94</sup>Classification mark 11342.

<sup>95</sup>Classification mark 719, Referral 15/0020M.

<sup>96</sup> <https://support.google.com/webmasters/answer/66355>

<b>Rules in force before September 2014</b>	
<p><i>Rule on the promotion of the sale of items or services available free of charge elsewhere</i></p>	<p><i>Google does not allow the promotion of items or services available free of charge elsewhere. Nor do we allow the sale of forms or government services available free of charge or at a lower cost on an official or government website.</i></p> <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>- <i>Billing for free items</i>      <i>No: Google does not allow the promotion of websites that bill for products or services available free of charge elsewhere</i></li>   <li>- <i>Billing for services associated with products or services available free of charge elsewhere, or for official forms or services</i>      <i>Yes, under certain conditions: Google allows the promotion of websites that bill for services associated with products or services available free of charge elsewhere or associated with official forms or services, provided that the following information is presented together on all landing pages, and is clearly visible above the fold</i> <ul style="list-style-type: none"> <li>• <i>The website clearly indicates if it is affiliated or not with the government body, official source or free source</i></li> <li>• <i>The website states that the products, services or forms are available free of charge (where appropriate) from the government body, official source or free source, or at a lower cost than the amount billed by the advertiser.</i></li> <li>• <i>The website must describe the services offered in addition to those offered by the government body, official source or free source. In other words, advertisers must not give a false impression of the added value they are providing by promoting features or services available free of charge from the official source.</i></li> <li>• <i>Your advertisements and landing pages cannot promote services that offer little or no added value for users.</i></li> </ul> </li> </ul>
<p><i>Rule on unclear billing practices</i></p>	<p><i>Google AdWords prohibits billing or pricing models that are not transparent for internet users. In other words, the payment process must be transparent and you must clearly indicate to internet users how they will be billed.</i></p> <p><b>Requirements:</b></p> <ul style="list-style-type: none"> <li>- <i>Your billing terms and conditions must be clear and visible to internet users.</i></li> <li>- <i>You cannot provide billing terms and conditions just via a link.</i></li> <li>- <i>Your prices and billing methods must be clearly visible on your website. In the case of subscriptions or billing of regular charges, the price and the billing interval must be clearly indicated on the page used by internet users to enter their information. You must also add a checkbox so that internet users can confirm their choice.</i></li> <li>- <i>Displaying prices and billing information in very fine print on your website is not considered to be a sufficiently visible method of display for internet users.</i></li> <li>- <i>Opt-out selling is prohibited. This type of selling uses a subscription billing model. When regular amounts are billed to a user (e.g. €9.99 a week), this constitutes a subscription. With this type of model, users who register for the service promoted by the advertiser automatically sign up to a subscription, which they can only cancel if they request cancellation before receiving the first bill.</i></li> </ul>

<p><i>Rule on cloaking</i></p>	<p><i>Google AdWords does not allow cloaking or system circumvention (techniques for showing different content to internet users and to Google). Google uses automated tools that explore an advertiser's website and provide relevant data for the AdWords programme. If advertisers do not show the same content to Google and to internet users, internet users may find themselves on a different website from the one they expected, leading to a misleading user experience.</i></p> <p><b><i>Cloaking techniques</i></b></p> <p><i>Cloaking is the practice of showing different content or URLs to internet users and to Google. If you use this practice, your website may be considered misleading</i></p> <p><i>Here are some examples of cloaking</i></p> <ul style="list-style-type: none"> <li>• <i>Different content is shown to Google and to internet users</i></li> <li>• <i>A page of HTML text is shown to Google, but a page of images and Flash content displays for internet users</i></li> </ul> <p><i>If your website contains elements that cannot be explored by search engines (rich media files other than Flash, JavaScript or images, for example), it is possible that some visitors to your website will also not be able to display them. Instead of showing cloaked content to Google, here are some examples of things you can do to comply with this rule:</i></p> <ul style="list-style-type: none"> <li>• <i>Supply substitute text describing the images for visitors using screen readers or who have chosen to disable images in their browser.</i></li> <li>• <i>Supply the JavaScript text content in a &lt;noscript&gt; tag.</i></li> </ul> <p><i>Check that you are providing identical content in both elements (e.g. provide the same text in the JavaScript script and the &lt;noscript&gt; tag. If the content you insert in the substitute element is substantially different, it might not comply with this rule.</i></p> <p><b><i>System circumvention</i></b></p> <p><i>When Google explores a page containing a JavaScript script, it may not follow or index the links generated by the script. Inserting links into a JavaScript script is not in itself a misleading practice. This rule applies to situations where links are inserted with the intention of misleading Google. When you analyse the JavaScript script on your website to check that it follows our guidelines, take account of the final intention</i></p>
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*Figure 5- Rules in force before September 2014*

***Revision of the Rules in force in September 2014***

104. The Rules applicable when Gibmedia's account was suspended in January 2015 were the rules that came into force in September 2014. They concern four categories of practice: "prohibited content", "prohibited practices", "restricted content" and "editorial and technical" requirements.
105. The "prohibited practices" category included three subcategories: "abusing the ad network"; "data collection and use"; and "misrepresentation" of a business, product or service.
106. This last subcategory, also described as "misleading statements about you, or about a product or service" was presented in the following way by Google: "We want users to trust the ads on our platform, so we strive to ensure ads are clear and honest, and provide the information that users need to make informed decisions. Consequently:

- We do not allow advertising that encourages users to make purchases or downloads, or to commit themselves in any other way without first providing all relevant information or obtaining the user’s explicit consent.
  - We only allow advertising that describes your business, products or services accurately, realistically and honestly.”<sup>97</sup>
107. This subcategory was illustrated by “some examples of practices”, namely: “omissions of relevant information”, “unavailable offers”, “misleading or unrealistic offers” and finally “untrustworthy promotions”.
108. The Rule on “untrustworthy promotions” applicable in September 2014 was defined as follows: “concealing or misstating information about the business, product or service. Examples: enticing users to part with money or information under false or unclear pretences, presenting a false identity, business name, or contact information, charging users for products or services that are normally free, or creating “phishing” websites to gather user information”<sup>98</sup>. So, from September 2014, the Rule on charging for items that are normally free became an example of another Rule referred to as “untrustworthy promotions”.
109. “Untrustworthy promotions” constitute “a serious violation” justifying removal of permission for advertisers to use the Google Ads advertising programmes<sup>99</sup>. The description “serious violation” should be compared with Clause 12 of the general terms and conditions in force in September 2014, which state that “Either party may terminate these Terms at any time immediately upon notice to the other party (except in the case of repeated or serious violations, especially of a Policy)”<sup>100</sup>.
110. According to Google, the combination of these two types of stipulation enabled it to suspend advertisers’ accounts without notice for “untrustworthy promotions”. During the investigation of the request for interim measures, Google stated that “the suspension of Gibmedia’s AdWords account is due solely to serious violations by the company of the AdWords Rules”<sup>101</sup>. It “suspended Gibmedia’s accounts because of a serious violation, as clearly stated in the e-mails sent on 7 and 8 January 2015, which explain that Google considers Gibmedia’s practices to be ‘a serious violation’ prompting immediate suspension of its AdWords accounts”<sup>102</sup>.
111. There were no major changes to the Rule on “untrustworthy promotions”, which was later renamed “untrustworthy behaviour”, until March 2018.
112. The Rule on “omissions of relevant information” applicable in January 2015 listed a series of prohibited behaviours including: “Failure to clearly and conspicuously disclose the payment model and full expense that a user will bear”. This Rule provided a series of examples concerning billing conditions that consumers needed to be made aware of: “Price, delivery costs and other billing-related information; interest rates; late payment fines or recurring subscription cost; using premium-rate telephone numbers in call extensions”.

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<sup>97</sup>Classification mark 11500, Referral 15/0019F.

<sup>98</sup>Classification mark 11501, Referral 15/0019F.

<sup>99</sup>Classification marks 11501 and 11502, Referral 15/0019F.

<sup>100</sup>Classification mark 11463, Referral 15/0019F.

<sup>101</sup>Classification mark 6727, Referral 15/0020M.

<sup>102</sup>Classification mark 721, Referral 15/0020M.

113. There were no major changes to the Rule on “omissions of relevant information”, later renamed “missing information”, until March 2019.
114. The subcategory “abusing the ad network” was illustrated with a series of examples, in particular “manipulating the Google network” which was defined as “Practices designed to circumvent or interfere with Google’s advertising systems and processes. Example: Cloaking, using dynamic DNS to switch page or ad content, or manipulating ad text or site content to avoid automatic checks by our system, or restricting access by the AdsBot exploration robot to so many of your landing pages that it makes it difficult to meaningfully review your ad, site or account”.
115. There were no major changes to the Rule on “manipulating the Google network” until March 2019.
116. The content of these last three Rules is summarised in the table below:

<b>Rules in force in September 2014</b>	
<i>Rule on untrustworthy promotions</i>	<p><i>Concealing or misstating information about the business, product or service</i></p> <p><i>Examples: Enticing users to part with money or information under false or unclear pretences, presenting a false identity, business name, or contact information, charging users for products or services that are normally free, or creating “phishing” websites to gather user information</i></p> <p><i>We take Untrustworthy Promotions very seriously and consider them to be a serious violation of our rules. Advertisers or sites that engage in these practices are not permitted to advertise with us again, so please err on the side of caution in being clear about the product, business or service that you're promoting. Note that in determining whether to trust you as an advertiser or site manager, we may review information from multiple sources including your ad, website, accounts and third-party sources</i></p>
<i>Rule on omissions of relevant information</i>	<p><i>Failure to clearly and conspicuously disclose the payment model and full expense that a user will bear</i></p> <p><i>Examples: Price, delivery costs and other billing-related information; interest rates; late payment fines or recurring subscription cost; using premium-rate phone numbers in call extensions</i></p>
<i>Rule on manipulating the network</i>	<p><i>Engaging in practices that attempt to circumvent or interfere with Google's advertising systems and processes</i></p> <p><i>Example: Cloaking, using dynamic DNS to switch page or ad content, or manipulating ad text or site content to avoid automatic checks by our system, or restricting access by the AdsBot exploration robot to so many of your landing pages that it makes it difficult to meaningfully review your ad, site or account</i></p>

Figure 6 - Rules in force in September 2014

### **Changes made to the Rules in March 2018**

117. As of March 2018, Google changed its rules on one of the issues under discussion in this case. This change removed the prohibition on the “Sale of free items” from the category “untrustworthy behaviour”, which at the same time was itself renamed “unacceptable business practices”. The rule on the “sale of free items” was incorporated into the Rules on “prohibited content” in the “other restricted businesses” section. Only the violation of this category of Rules (“untrustworthy behaviour”, which had become “unacceptable business practices”) is explicitly referred to as leading to immediate suspension of a Google Ads account (see section 129).
118. This change should therefore, in principle, have had an impact on the measures Google could take in the event of a violation. As explained below, because the Rule on the “Sale of free items” was no longer in the category of violations that could lead to immediate suspension of a Google Ads account, non-repeated violation of the Rule on the “sale of free items” could not lead to the rejection of ads or the suspension of an account without the notice procedure being followed.
119. The new Rule on the “sale of free items” states that advertisers are not allowed to “charge for products or services where the primary offering is available from a government or public source for free or at a lower price” and specifies that: “You can bundle something free with another product or service that you provide. For example, a TV provider can bundle publicly available content with paid content, or a travel agency can bundle a visa application with a holiday package. However, the free product or service can’t be advertised as the primary offering.”<sup>103</sup>.

### **Changes made to the Rules in March 2019**

120. In March 2019<sup>104</sup>, as a result of Decision 19-MC-01 of 31 January 2019 on a request by Amadeus for interim measures, for the most part upheld by the Paris Court of Appeal<sup>105</sup>, in which the *Autorité* instructed Google, as an interim measure, to clarify the content of its Rules on paid-for call directory services and to change the account suspension procedure so that it was not abrupt and insufficiently motivated, Google made further changes to the Rules.
121. Google clarified the Rule on the “sale of free items” accordingly by adding a non-exhaustive list of examples of prohibited behaviour and incorporated into the Rule a troubleshooter for paid-for call directory services. This troubleshooter gives operators of paid-for call directory services examples of behaviour prohibited on Google Ads when it comes to advertising their businesses. These examples include “paid for directory/call forwarding/call recording services advertising contact numbers for unaffiliated businesses (in ads and/or keyword content) as opposed to their directory services/call forwarding services”.

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<sup>103</sup> Report, paragraph 154. Classification mark 15566, Referral 15566.

<sup>104</sup> [https://support.google.com/adspolicy/answer/9283031?hl=fr&ref\\_topic=29265](https://support.google.com/adspolicy/answer/9283031?hl=fr&ref_topic=29265)

<sup>105</sup> Judgment of the Paris Court of Appeal of 4 April 2019, *Amadeus*, 19/03274.

122. Google also clarified the Rule on “missing information” by updating a document entitled “troubleshooter”. This troubleshooter explains the criteria used by Google to determine whether an ad complies with the “missing information” Rule and includes a special text box containing an example of the application of this Rule to paid-for call directory services.
123. Finally, Google clarified the “circumventing systems” rule in the “abusing the ad network” section of the Rules by (i) including examples of cloaking, particularly by adding a special text box on paid-for call directory services, (ii) clarifying that “circumventing systems” also covers repeated rule violations across any of an advertiser’s accounts, and (iii) highlighting the serious risks to users of failure to comply with the Rule.

Figure 7-- Rules in force in March 2019

<b>Rules in force in March 2019</b>	
<i>Rule on the sale of free items</i>	<p><i>The following is not allowed: Charging for products or services where the primary offering is available from a government or public source for free or at a lower price.</i></p> <p><i>Examples (non-exhaustive list): Services for passport or driving licence applications; health insurance applications; documents from official registries, such as birth certificates, marriage certificates or company registrations; exam results; tax calculators; paid for directory/call forwarding/call recording services advertising contact numbers for unaffiliated businesses (in ads and/or keyword content) as opposed to their directory services/call forwarding services.</i></p> <p><i>Note: You can bundle something free with another product or service that you provide. For example, a TV provider can bundle publicly available content with paid content, or a travel agency can bundle a visa application with a holiday package. However, the free product or service can't be advertised as the primary offering.</i></p> <p><i>When considering whether ads for a paid-for call directory service comply with the Sale of Free Items policy, we take the following into account:</i></p> <ul style="list-style-type: none"> <li>• <i>Whether your keyword content relates to unaffiliated businesses and/or government services (e.g. your ad may be disapproved if you use keywords like 'national insurance', 'pension services' or company names/branded keywords);</i></li> <li>• <i>Whether your ad text claims to be the call centre for a government service and/or unaffiliated business instead of a paid-for call directory service;</i></li> <li>• <i>Whether your landing page is designed to mimic the website of an unaffiliated business and/or government service, to disguise that the service provided is a call directory/call forwarding service.</i></li> </ul> <p><i>If, however, you use keywords like 'telephone directory service' and your ad is clear as to the nature and cost of your service, and otherwise complies with all Google Ads policies, you may advertise your service through Google Ads.</i></p> <p><i>If we find that an ad does not comply with this rule, we'll disapprove the ad and it won't be allowed to run. You'll receive an email informing you that your ad has been disapproved and which policy violation caused the disapproval. If we see continued violations of this policy, this could result in you no longer being able to show ads on an associated landing page/account.</i></p> <p><i>Most ads are reviewed within 1 working day, though some can take longer if they need a more complex review. If you aren't able to fix these violations, or you choose not to, please remove your ad to help prevent your account from becoming suspended in the future for having too many disapproved ads.</i></p>
<i>Rule on missing information</i>	<p><i>Failure to clearly and conspicuously disclose the payment model and full expense that a user will bear</i></p> <p><i>Examples: Price, delivery costs and other billing-related information; interest rates; late payment fines or recurring subscription cost; using premium-rate phone numbers in call extensions</i></p> <p><i>Check the ad and its destination to see where they might be missing important information.</i></p>

	<p><i>Here are some examples:</i></p> <ul style="list-style-type: none"> <li>• <i>Payment model and billing information: Make sure that your site or app clearly and conspicuously discloses the full expense that a user will bear, as well as how your billing process works. When making the determination whether something is clear and conspicuous, we may take into account factors like:</i></li> <li>• <i>Whether the pricing information is visible and obvious to users (for example, having no pricing information on the landing page, or hiding the information, is a bad start because users should have access to this information before using the service);</i></li> <li>• <i>Whether customers can easily see and understand the costs that they're going to incur, or whether, to the contrary, the page is designed in a way to hide the pricing information or make it difficult for customers to understand the costs that they're going to incur (for example, displaying the pricing information in grey characters over a grey background, using very small fonts or displaying other elements of the page over the important information);</i></li> <li>• <i>Whether the fee structure is easily understandable (for example, the formula presented to explain how the cost of the service will be determined should be as simple and straightforward as possible).</i></li> </ul> <p><i>Specific example: When charging users via the use of a premium-rate phone number, clearly and conspicuously show the costs that the user will bear, such as the price per call and/or the price per minute of the call.</i></p>
<p><i>Rule on circumventing systems</i></p>	<p><i>The following is not allowed: Engaging in practices that attempt to circumvent or interfere with Google's advertising systems and processes</i></p> <p><i>Example: Cloaking (showing different content to certain users, including Google, than to other users) that aims at or results in interference with Google's review systems, or hides or attempts to hide non-compliance with Google Ads policies (for example, redirection to non-compliant content, using dynamic DNS to switch page or ad content, or manipulating site content or restricting access to so many of your landing pages that it makes it difficult to meaningfully review your ad, site or account)</i></p> <p><i>Specific example: A paid-for call directory service repeatedly adds and removes keyword content related to unaffiliated businesses and/or government services (which violates the Sale of Free Items policy) after an ad has been approved; a paid-for call directory service changes its landing page to replace a non-premium rate telephone number linked to an ad that was approved, with a premium-rate telephone number.</i></p> <p><i>Note: Cloaking doesn't include providing content personalisation that adds genuine value for certain users, such as different language versions of the same content, as long as the offering is still substantially the same, the variation in content is still compliant with Google's Ads policies and Google is able to review a version of the content.</i></p> <p><i>Example: Repeated policy violations across any of your accounts, including creating new domains or accounts to post similar ads to ads that have been disapproved (for this or any other Google Ads policy rule).</i></p> <p><i>We take violations of this policy very seriously and consider them egregious, as they pose a risk to the security of our users or their property (for instance, from criminal activity and/or malicious ads). Note that in determining whether an advertiser or destination is violating this policy, we may review information from multiple sources including your ad, website, accounts and third-party sources. Accounts that violate this policy may be suspended and may not be allowed to advertise with us again. If you believe that there's been an error, and that you haven't violated our policy, submit an appeal and explain why. We only reinstate accounts in compelling circumstances, so it's important that you take the time to be thorough, accurate and honest. Learn more about suspended accounts</i></p>

124. Finally, in September 2019 Google announced an update of the “Other restricted businesses” category, which includes the Rule on the “sale of free items”, to take place in December 2019 such that ads for call directory, call forwarding and call recording services would no longer be allowed<sup>106</sup>.

#### **b) Rules on warning and suspension procedures**

125. In the Rules in force in 2015, three types of decision may be taken by Google, depending on whether the Rule violation by a customer concerns an ad or a website. In the case of a website, a distinction is made depending on whether or not the violation is repeated or serious.

“What happens if you violate our rules?”

- Ad disapproval: ads that don’t follow these rules may be disapproved. A disapproved ad won’t be able to run until the rule violation is fixed and the ad is approved.
- Domain disabling: We may suspend websites that violate these rules. This means that the website can no longer be advertised until the problem is fixed.
- Account suspension: an account may be suspended if you have several violations or a serious violation. If this happens, all ads in the suspended account will stop running, and we may no longer accept advertising from you. Any related accounts may also be suspended, and your new accounts may be automatically suspended. Learn more about suspended accounts”<sup>107</sup>.

126. Domain disabling, more commonly referred to as “website suspension”, is where Google suspends all ads for a particular site that violates the Rules. In this case the suspension concerns the website, not the publisher’s account. In practice, if an advertiser has opened an account to advertise several websites, domain disabling will suspend only ads for the website that violates the Rules. The compliant websites can still be advertised on Google’s advertising platform.

127. Account suspension is where Google suspends ads for all websites associated with the same account. In practice, if an advertiser has opened an account to advertise several websites, account suspension will suspend ads for all the websites associated with the account, even if some of them do not violate the Rules.

128. If the violation by a particular website is not serious, Google first suspends the site. Google then sends one or more notifications telling the advertiser that the content of their website no longer complies with the Rules and cannot be advertised on Google Ads. If the advertiser fails to correct the website content, its account could be suspended: “It is Google policy to send several notifications to advertisers before suspending their accounts for non-serious violations of the AdWords policies. The first notification is sent when the advertiser’s ad or website is disabled because of a violation. If the advertiser continues to violate Google’s rules, it receives further notifications (...). The aim of the first notification is to inform the advertiser that its content is no longer compliant and can no longer be run on AdWords. A final warning is sent if the advertiser continues to commit AdWords rule violations, and fails to fix previous violations. This final warning explains

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<sup>106</sup> [https://support.google.com/adspolicy/answer/9455538?hl=fr&ref\\_topic=29265](https://support.google.com/adspolicy/answer/9455538?hl=fr&ref_topic=29265)

<sup>107</sup> Classification mark 1607, Referral 15/0020M.

that the advertiser's account is at serious risk of being suspended if the violations continue"<sup>108</sup>.

129. If the violation is serious or repeated, the advertiser's account may be suspended without notice by Google. The ability to do this stems from Clause 12 of the general terms and conditions of use, which stipulate that: "Either party may terminate these Terms at any time immediately upon notice to the other party (except in the case of repeated or serious violations, especially of a Policy [Rule])"<sup>109</sup>.
130. What constitutes a serious violation is not defined, either in the general terms and conditions or in the Rules. However, during the investigation, Google provided a list of Google Ads Rules the violation of which would be considered "not serious", specifying that "serious and non-serious violations are dynamic categories; the list in Appendix 2.1 [appendix on "AdWords rule violations considered non-serious"] can change in response to advertisers' changing behaviour"<sup>110</sup>.
131. Concerning the changes to the Rule on the "sale of free items", in March 2018 Google "amended its Rules so that violating the prohibition on the sale of free items was no longer considered a serious violation likely to result in immediate suspension of the advertiser's account"<sup>111</sup>.
132. According to Google, some rule violations may also be considered to be aggravating circumstances, though it did not clearly state that this would have any impact on notice periods. In this regard, in its observations of 23 June 2015, submitted for the investigation concerning the request for interim measures, Google said that "cloaking is a violation in itself, which comes under the AdWords rule on abusing the ad network. However, Google considers all cloaking practices that could be used by an advertiser to be an aggravating circumstance if the rule on untrustworthy promotions is violated"<sup>112</sup>.
133. To conclude, at the very least since 2012, the Rules have been changed very frequently by Google, and this has an effect on the definition of the Rules, their status and their importance. The "sale of free items" is an illustration of a Rule that has frequently been changed. This practice, which is prohibited by Google, was a Rule with a general definition illustrated by examples, prior to September 2014. It then became one of the examples used to explain violations of another Rule, on "untrustworthy promotions". In March 2018, the Rule was inserted into another category of less important Rules, and its repeated violation was therefore no longer to be considered serious. Moreover, these Rules lack clarity, making it difficult for advertisers to understand them and identify how they will be applied in practice.
134. However, a detailed review of changes to the Rules shows that, despite these regular changes in presentation, there is a certain amount of constancy in the way Google enforces certain Rules. These Rules are the ban on selling services available free of charge elsewhere on the Internet and the obligations concerning billing information, which must be met by websites offering paid services to consumers. Cloaking has also always been the subject of a separate Rule. However, the designations of these Rules, their content and the penalties for violating them can change.

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<sup>108</sup> Classification marks 4768(VC)/8894(VNC).

<sup>109</sup> Classification mark 1591, Referral 15/0020M.

<sup>110</sup> Classification marks 4768(VC)/8894(VNC) and 4769(VC)/8895(VNC), Referral 15/0019F, underlining added.

<sup>111</sup> Classification mark 11342, Referral 15/0019F.

<sup>112</sup> Classification mark 6700, Referral 15/0020M.

## 2. METHODS USED BY GOOGLE TO ENFORCE THE RULES

### a) Methods used by Google to notify advertisers of the content of and changes to the Rules

135. Google said that advertisers can access the content of its Rules and a Help Center from their Google Ads account. When the general terms and conditions change, advertisers are notified through their account. They must accept the general terms and conditions again to keep using Google Ads. When changes are made to the Rules, Google has also said that advertisers are informed via the “change log” available in the Google Ads website’s Help Center. The change log lists announcements of changes to the Rules in chronological order<sup>113</sup>.
136. A review of the change log shows that at least two changes to the Rules on the “sale of free items” were announced before the practice was incorporated into the Rule on “untrustworthy promotions” in September 2014.
- A message published on 5 June 2012 in the Help Center states: “The Google Ads rules on the sale of free items will change around mid-June 2012. The rules are changing to improve transparency and user experience for the following kinds of sites: Sites selling services associated with official forms or services - Sites selling services associated with free products or services. The change will affect all countries. We made this decision to better protect our users. We'll send notifications to affected advertisers. After the new rules go into effect, the rule description will be updated to reflect this change”<sup>114</sup>.
  - A message published on 19 March 2013 in the Help Center states: “The Google Ads rule on the sale of free items and government services will change on around 19 April 2013. The rule is changing to prohibit services that deceive users with the sale of free items and government services. The change will affect all countries. We made this decision to protect users from the deceptive sale of free items and government services. See a preview of the updated version of the "Sale of free items and government services" rule, which will replace the current rule on 19 April”<sup>115</sup>.
137. Google did not publish a specific message concerning the Rule on “untrustworthy promotions”. This Rule was introduced in September 2014 as part of a more general revision of all the Rules, announced in a message in June 2014, the content of which is reproduced below:
- “In September 2014, we're launching a new and improved Google Ads Policy Centre.
- Why we're making these changes:** We want to make our Google Ads rules more user-friendly, accessible and engaging for both advertisers and users. We hope that these changes will give you a clearer picture of what Google cares about and why.

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<sup>113</sup>Classification mark 11338, Referral 15/0019F.

<sup>114</sup> [https://support.google.com/adspolicy/answer/2620897?hl=fr&ref\\_topic=7330871](https://support.google.com/adspolicy/answer/2620897?hl=fr&ref_topic=7330871)

<sup>115</sup> [https://support.google.com/adspolicy/answer/3032350?hl=fr&ref\\_topic=7330871](https://support.google.com/adspolicy/answer/3032350?hl=fr&ref_topic=7330871)

Here's what you can expect:  
fewer and simpler Google Ads rules  
more transparency into why we have each rule  
more insight into how a rule can affect your ads

**What it means for you:** Almost all advertisers who comply with our current rules will also comply with the new rules. However, over the coming months, you should spend some time getting to know the new rules and thinking about whether you need to make changes. For example, we'll be introducing some new restrictions relating to weapons, tobacco and fireworks that will be reflected in our new Dangerous Products & Services rule.

**What do you need to do:** Review the new Policy Centre and make sure that your ads, website and business will meet these requirements when the rules go into effect around September of this year.

Google requires that advertisers comply with all applicable laws and regulations, as well as AdWords rules, at all times, so it's important that you keep up to date on these requirements for the places where your business operates, as well as any other places your ads are showing.

(Posted June 2014)<sup>116</sup>.

138. The announcement that the “sale of free items” rule was being incorporated into the “other restricted businesses” category in March 2018 was the subject of a message published in the “Change log” in November 2017:

“In March 2018, we will rename and reorganise some of our Google Ads rules and pages for improved readability and understanding. All policy actions and corresponding messaging to Google Ads advertisers will include updated rule names. Note that these changes will not impact what is currently restricted or prohibited by the rules.

Some examples of what’s changing:

Advertisers will find that some of our rules, such as the rule against charging for products that are typically free, which is currently classified as “Untrustworthy behaviour” under the Misrepresentation rule, will be enforced under the Other restricted businesses rule after the reorganisation.

Additionally, we will rename the “Untrustworthy behaviour” rule to “Unacceptable business practices”. (Posted November 2017)<sup>117</sup>.

139. Lastly, Google announced a change to the “other restricted businesses” rule in December 2019 in a message published in September 2019:

“In December 2019 we will update our Other restricted businesses rule to no longer allow ads for call directory, forwarding or recording services. These services usually involve calling a phone number to obtain another phone number (or business information such as address) or to be connected to another service. This policy will not restrict ads for online directory services or call recording software”<sup>118</sup>.

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<sup>116</sup> <https://support.google.com/adspolicy/answer/6025827?hl=fr>

<sup>117</sup> [https://support.google.com/adspolicy/answer/7572356?hl=fr&ref\\_topic=29265](https://support.google.com/adspolicy/answer/7572356?hl=fr&ref_topic=29265)

<sup>118</sup> [https://support.google.com/adspolicy/answer/9455538?hl=fr&ref\\_topic=29265](https://support.google.com/adspolicy/answer/9455538?hl=fr&ref_topic=29265)

## **b) Methods used by Google to detect violations of the Rules**

140. Google employs an international team of 1000 people globally, known as Trust & Safety (formerly “Policy”), to manage, apply and enforce its advertising rules<sup>119</sup>. Asked during the hearing about the number of Google employees dedicated to checking the compliance of French (or French-language) websites with the Google Ads Rules, Google could not give a precise figure. It appears from the case that the nature of the (human or automated) checks is variable, as is the territory (France or Ireland) where they are carried out.

### ***Checks that may be automated***

141. During the investigation, Google explained that it carries out “automatic” and “manual” checks of its customers’ activity on ads, pages, websites and accounts.
142. To check landing pages, it uses an indexing system designed specifically for reviewing page content<sup>120</sup>, which establishes the probability of a landing page belonging to a category of websites that Google considers to be in violation of the Rules<sup>121</sup>. [...] <sup>122</sup>. [...] <sup>123</sup>. [...] <sup>124</sup>.
143. Google explained that the manual checking procedure can include the review of information from various sources such as the ad, the website, the advertiser’s account, and third-party sources<sup>125</sup>. [...] <sup>126</sup>, [...] <sup>127</sup> [...] <sup>128</sup> [...] <sup>129</sup>.

### ***Checks that may be carried out outside French territory***

144. During the investigation, Google specified that it carried out checks of French websites outside France, particularly in the Republic of Ireland. For advertisers that may have different landing pages for different countries, Internet service providers (ISPs) or equipment (or any combination of these), Google may use [remote tools]<sup>130</sup>.
145. Since the start of 2015, Google’s manual checks have been able to cover both Orange and SFR in France. Google can therefore review different versions of websites for these ISPs from Ireland. Previously, remote manual checks were arranged on an ad hoc basis and generally did not cover different versions for different ISPs<sup>131</sup>.
146. It turns out that the ISP of the entity carrying out the check can have an impact on the result. Google thus accused Gibmedia of giving it access to a version of a website that complied with the Rules but was different from the version accessible to internet users<sup>132</sup>.

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<sup>119</sup>Classification mark 1847, Referral 15/0019F.

<sup>120</sup>Classification mark 2047, Referral 15/0019F.

<sup>121</sup>Classification mark 2047, Referral 15/0019F.

<sup>122</sup>Classification mark 3829, Referral 15/0019F. [...].

<sup>123</sup>Classification mark 2047, Referral 15/0019F.

<sup>124</sup>Classification mark 3831, Referral 15/0019F.

<sup>125</sup>Classification mark 2048, Referral 15/0019F.

<sup>126</sup>Classification mark 3836, Referral 15/0019F.

<sup>127</sup>Classification mark 3836, Referral 15/0019F.

<sup>128</sup>Classification mark 3836, Referral 15/0019F.

<sup>129</sup>Classification mark 3835, Referral 15/0019F.

<sup>130</sup>[...].

<sup>131</sup>Classification mark 3835, Referral 15/0019F.

<sup>132</sup>Classification marks 1969 (VC) and 2656 (VNC), Referral 15/0019F.

147. Google said that “Gibmedia’s websites offered different (free or paid) content to users according to whether they were in Ireland (like Google’s checking teams) or in France, so that the violations would not be detected by Google’s automatic systems or its analysts”<sup>133</sup>. Regarding the Contact+ solution, Google said that “the members of the AdWords team did not have access to the Contact+ version of Gibmedia’s websites, which could only be seen by Orange subscribers. The AdWords teams were redirected to another version of Gibmedia’s websites, offering either payment by calling a premium-rate telephone number (so the customer was given clear information about the payment method - for example for the [www.annuaires-inverse.net](http://www.annuaires-inverse.net) website), or offering information that was apparently free but was not accessible without the Contact+ option (e.g. [www.info-societe.com](http://www.info-societe.com))”<sup>134</sup>.
148. However, it appears that the people involved in the Google Ads account checking procedure were not all based in the same country. Some of them were in France. Only these teams, and not the checking teams in Ireland, could access Gibmedia’s websites under similar conditions to Orange subscribers, provided that they had a residential contract with Contact+ access.
149. Following the suspension of the accounts of Interactiv and its subsidiary Digi-Media, the circumstances of which are explained in more detail below, Interactiv mentioned the limited availability of Contact+ for Orange subscribers, and the impossibility of Google accessing certain versions of its websites. On 17 April 2015 it wrote that its “accounts are currently suspended on the grounds of ‘Untrustworthy promotions’, and have been since 07/01/15. We have never managed to obtain any further information (via telephone/e-mail/web support). This is particularly surprising because we spent around € 3,000,000 on these accounts in 2014. We think the reason is as follows, though we have no confirmation: we monetise our services using online payment methods that depend on the ISP, for example for Orange customers we monetise using Contact+, which is not available with other ISPs. When we have [a] customer of an ISP that we cannot bill in this way, we offer a ‘degraded’ version of the service: free of charge but with advertising. The problem is that your editorial checking teams or web crawlers<sup>135</sup> always see the free version. There might therefore be a suspicion of concealed payment. We have been transparent in our communications with Google on the subject but we have had no response. Furthermore, you can see that we have honoured all our payments, even those payable after the suspension”<sup>136</sup>.

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<sup>133</sup>Classification mark 714, Referral 15/0020M.

<sup>134</sup>Classification mark 6716, Referral 15/0020M.

<sup>135</sup> Google crawling is an activity that consists of the search engine exploring on a regular basis the pages and content offered by a website or mobile app. More generally, crawling is used by Google to explore web content for [indexing](#) purposes.

<sup>136</sup>Classification mark 4548, Referral 15/0019F.

### c) Resources provided to advertisers by Google to comply with the Rules

150. In its observations on the Statement of Objections, Google said that advertisers could contact its teams by telephone, e-mail, instant messaging, or on forums to ask them about the scope or interpretation of a Rule. Some advertisers also have an account manager whom they can contact direct<sup>137</sup>.
151. However, advertisers do not have access to Google's Policy teams in charge of checking website compliance with the Rules. Advertisers can only talk to Google's support services, which pass on the instructions provided by these Policy teams. By e-mail on 28 May 2013, Google refused an advertiser's request to speak directly to Google's teams responsible for compliance<sup>138</sup>.
152. Google's Policy teams are referred to by various different names by the support services in their contacts with advertisers: sometimes "specialists"<sup>139</sup>, "editorial team"<sup>140</sup>, "verification team"<sup>141</sup> or "service policy team".
153. The documents in the case file show that Google's support service has to liaise with Google's Policy teams to explain to an advertiser why a website has been suspended. An e-mail from Google to La Poste on 22 November 2012 after its site was suspended in November 2012 states: "Your site was reactivated on 12 October after changes were made and I had spoken numerous times to the team of specialists (I was in contact with Pierre-Henri and Guillaume). As a result of your new message, I have again spoken to our team of specialists responsible for reviewing websites to find out more. They should come back to me within 72 working hours, so I will get back to you as quickly as possible. Thank you for your patience and understanding. I sincerely apologise for the inconvenience caused"<sup>142</sup>.
154. Google's support service is therefore unable to assure advertisers that the changes it asks them to make to comply with a rule will be sufficient for a website to be considered compliant with that rule by the Policy teams. In some cases, the support services tell advertisers that they will recommend to Google's Policy teams that the suspension of their website be lifted, only to find that the Policy teams refuse, as illustrated by the following exchange<sup>143</sup>:
- E-mail sent by Google to Audiovox on 21 February 2014: "Thank you for the changes you have made. I will now submit your website to the verification team, **recommending that the suspension be lifted**. I will update you as soon as I know more (Tuesday/Wednesday). Thank you for your patience"<sup>144</sup>.
  - E-mail sent by Google to Audiovox on 25 February 2014: "The verification team has just contacted me and told me that unfortunately your website still cannot be advertised because it is still not fully compliant with the following rule in our policy: User safety - Misrepresentation [...]. Please take the time to find out more about this rule and make sure your website complies with it generally, not just in respect of the example I have given. Once you have done this, please contact me again and I will deal with your case as a priority. I still cannot guarantee this will be

<sup>137</sup>Classification mark 11338, Referral 15/0019F.

<sup>138</sup>Classification mark 7701, Referral 15/0019F.

<sup>139</sup>Classification mark 7759, Referral 15/0019F.

<sup>140</sup>Classification mark 7701, Referral 15/0019F.

<sup>141</sup>Classification mark 1120, Referral 15/0019F.

<sup>142</sup>Classification mark 1310, Referral 15/0019F.

<sup>143</sup> The original spelling has been reproduced, as in all quoted documents.

<sup>144</sup>Classification mark 1115, Referral 15/0019F.

enough to pass the verification test because that's not up to me. But at the moment, this is the only problem that the verification team has reported"<sup>145</sup>.

155. Some advertisers may be monitored by Google account managers. They can submit review requests to Google's compliance teams to have the suspension of a site lifted, but this does not necessarily produce results, as the following exchange illustrates:

E-mail sent by a Google account manager to Audiovox on 14 May 2014 on the suspension of its vos-demarches.com website: "Dear Sir, I have sent you the information available to me, which was provided by the policy service responsible for checking website compliance. It appears that your site violates these rules. I have sent you the rules in question (payment for a free administrative service). As things stand, I am unable to have your site re-approved, despite three review requests"<sup>146</sup>.

156. In exchanges on 22 and 23 October 2014, a Google account manager notified Ecométrie that the handling of its account was moving to other Google personnel because of a change to the account manager's job. Ecométrie expressed concern to the account manager, explaining that he was the only person to have succeeded in speaking direct to Google's policy service: "[...] I'm also concerned about your departure because you are the only person who has managed to make the Policy team see sense when we had problems. [...] Having to build up another relationship of trust and explain our added value again gives me some cause for concern, especially in the context of a possible account suspension. You also told me that you had managed to speak direct to a member of the Policy team, which was extremely reassuring. Do you think you would be able to pass on 'all your added value' to Leah and Mehdi"<sup>147</sup>.

157. In response, the account manager said that he would still have a direct line to the Policy service in his new post and suggested that to Ecométrie that he would set up a "war room" with its new account managers if its site were suspended: "Don't worry, I'm based one floor below Mehdi and have a direct line to Leah (in addition to the one I'll still have to Policy). If the slightest concern arises, I'll organise a 'war room' with them. It'll be as if I'm still there!"<sup>148</sup>.

158. In conclusion, the resources provided to advertisers by Google to enable them to comply with the Rules appear to be insufficient. Advertisers are not able to speak direct to those in charge of applying the Rules or have their cases and requests handled effectively. Furthermore, although rule changes are generally announced in the "change log" available in Google's Help Center, the means of detecting violations and guaranteeing compliance do not appear, on the basis of the above evidence, to be uniform.

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<sup>145</sup>Classification mark 1120, Referral 15/0019F.

<sup>146</sup>Classification mark 1107, Referral 15/0019F.

<sup>147</sup>Classification mark 978, Referral 15/0019F.

<sup>148</sup>Classification mark 978, Referral 15/0019F.

### 3. GOOGLE'S USE OF THE SUSPENSION PROCEDURES

#### a) Context of the complaint

159. At the time of the complaint, Gibmedia was publisher of several websites: telephone directories (pages-annuaire.net and annuaires-inverse.net); weather forecasts (info-meteo.fr); legal and financial information about companies (info-societe.com); text messaging from a computer (easy-sms.fr); tax calculation (impot-calcul.fr); examination results (mes-resultats-examens.fr) and television programmes (mon-programme.tv).
160. In 2010 Gibmedia signed its first contract with Google, opening an account (no. 378-811-0123) to advertise the pages-annuaire.net, annuaires-inverse.net, info-societe.com and info-meteo.fr sites. In July 2011, it opened a second account (no. 565-283-8911), which was also used to advertise these sites.
161. During the four years when Gibmedia used the Google Ads (formerly AdWords) service, Google temporarily suspended the site(s) in question or Gibmedia's accounts six times, before the final suspension in January 2015:
- In January 2011 Google suspended the annuaires-inverse.net site for violation of the Rules on "site and landing page quality" and for displaying an incorrect URL<sup>149</sup>;
  - In May 2011, Google suspended the info-meteo.fr site for violation of the "unclear billing practices" and "site quality" rules<sup>150</sup>;
  - In February 2013, Google suspended the annuaires-inverse.net site for violation of the "site quality" rule<sup>151</sup>;
  - In April 2013, Google suspended the info-meteo.fr site for violation of the "unclear billing practices" rule<sup>152</sup>;
  - In June 2014, Google suspended ads for the annuaires-inverse.net site for violation of the "user safety" rules<sup>153</sup>;
  - In August 2014, Google suspended the www.impot-calcul.fr and www.annuaires-inverse.net sites and Gibmedia's account no. 565-283-8911 account for violation of the "sale of free items" rule<sup>154</sup>.
162. During exchanges that took place between Google and Gibmedia following the last account suspension (in August 2014), Google asked Gibmedia, in an e-mail dated 5 September 2014, what the price of its paid services was and what billing methods Gibmedia was using on its www.impot-calcul.fr and www.annuaires-inverse.net websites<sup>155</sup>. Gibmedia replied to Google on the same day that "most of the service [was] free of charge" and that, for the paid services, Gibmedia offered services accessible to

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<sup>149</sup> Classification marks 2536 to 2544, Referral 15/0020 M.

<sup>150</sup> Classification mark 2547, Referral 15/0020 M.

<sup>151</sup> Classification mark 2594, Referral 15/0020 M.

<sup>152</sup> Classification mark 2596, Referral 15/0020 M.

<sup>153</sup> Classification mark 1998, Referral 15/0020 M.

<sup>154</sup> Classification mark 9009, Referral 15/0019 F.

<sup>155</sup> Classification mark 2038, Referral 15/0020 M.

users “via a paid number or an SMS service”<sup>156</sup>. Gibmedia did not mention in this exchange that it used the Contact+ payment solution to bill Orange users, even though most of its revenue comes via this payment method<sup>157</sup>.

163. Google said that it launched a major investigation in the summer of 2014 into practices likely to mislead consumers in violation of the “untrustworthy promotions” rule, which would have included Gibmedia following detection of the “user safety” rule violation in June 2014<sup>158</sup>. According to Google, it was during this investigation that Google discovered user complaints published on forums and blogs, as well as articles published by consumer protection associations, criticising Gibmedia’s practices. During this investigation, Google also discovered that Gibmedia was billing Orange users via the Contact+ option.
164. [...] <sup>159</sup>. Google already had bailiffs reports from 2010 and 2013 mentioning consumer complaints related to unwanted software downloads from sites operated by Gibmedia<sup>160</sup>.
165. Despite these suspicions of fraud, Google notified Gibmedia, in an e-mail dated 10 September 2014, of the end of the suspension. However, it warned Gibmedia that in future it might not accept further appeals by Gibmedia if its account was suspended again<sup>161</sup>.
166. [...] <sup>162</sup>.
167. On 7 January 2015, at 17:55, Google sent Gibmedia e-mails notifying it that ads for the info-meteo.fr, pages-annuaire.net, annuaires-inverse.net and info-societe.com sites had been suspended. The reason given for the suspension in each of these e-mails was violation of the “untrustworthy promotions” rule. The e-mails also asked Gibmedia to make “the necessary changes to the site, which at present violates” Google’s Rules.
168. A few hours after receiving the suspension e-mails for the four sites, at 00:18 on 8 January 2015, Gibmedia received two e-mails informing it that its two accounts, no. 378-811-0123 and no. 565-283-8911<sup>163</sup>, were being permanently suspended. These e-mails state that: “This means that all accounts associated with this account will be suspended. You cannot create other accounts and your ads will no longer run on Google, or on Search network partner sites, or on Display Network placements”<sup>164</sup>.

#### **b) Different treatment of comparable websites**

169. In its observations for the investigation concerning the request for interim measures, Google said that “Gibmedia is one of a group of companies that own or operate a large number of sites for which the business model is based either on forcing the user to download software without its consent, or on billing the user for services available free of charge online”<sup>165</sup>. Although Google permanently excluded Gibmedia from its advertising platform in 2015, it continued to promote its sister company Ecométrie, which publishes

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<sup>156</sup> Classification marks 2036 to 2037, Referral 15/0020 M.

<sup>157</sup> Classification marks 2036 to 2037, Referral 15/0020 M.

<sup>158</sup> Classification mark 11355, Referral 15/0019F.

<sup>159</sup> Classification mark 1862, Referral 15/0019F. The original text is in English: “[...]”.

<sup>160</sup> Classification marks 2609 et seq., Referral 15/0020M.

<sup>161</sup> Classification mark 2045, Referral 15/0020M.

<sup>162</sup> Classification mark 2011, Referral 15/0019F. “[...]”.

<sup>163</sup> Classification marks 81 and 82, Referral 15/0019F.

<sup>164</sup> Classification marks 81 and 82, Referral 15/0019F.

<sup>165</sup> Classification mark 707, Referral 15/0020M.

reverse phone lookup websites similar to those of Gibmedia. Other differences in the treatment of similar sites by Google can be observed in the directory sector.

***Inconsistent treatment of directory sites published and operated by BJ Invest group***

170. BJ Invest is the parent company of Gibmedia and Ecométrie. These two companies each publish websites offering free and paid reverse phone lookup services.
171. At the time of their last suspension, the reverse phone lookup sites of Gibmedia and Ecométrie offered free services and paid services, which were partly similar. The last time it was reactivated in June 2014, the *annuaires-inverse-France.com* website offered free and paid services. The paid services could be used to locate a fixed-line number on a red list, or to listen direct to the voicemail of mobile numbers not listed in its directory databases<sup>166</sup>. The paid services offered by the call directory sites published by Gibmedia have certain similarities. They offer the ability to listen anonymously to the voicemail of mobile numbers not listed in Gibmedia's databases, to obtain information about the caller's location, or to find out the company that owns the line when a call is received from a company's internal number.
172. The paid services offered by the reverse phone lookup sites of Gibmedia and Ecométrie are billed using several similar payment methods, including Contact+. Based on the information provided by Google and Ecométrie, the Contact+ payment solution used by the *annuaire-inverse-France.com* website was not mentioned by Ecométrie in its exchanges with Google in 2014. Furthermore, in July 2015, Google's teams gave advice to Ecométrie on how to track purchases made using Contact+: "As we discussed on the phone, you have 2 solutions for tracking purchases made using Orange Contact+"<sup>167</sup>. During the hearing with the Investigation Services, the Google account manager responsible for relations with Ecométrie said that he had not had an "alert [internally] for Contact+"<sup>168</sup>.
173. So even though the business model of the call directory sites published by Ecométrie and Gibmedia is similar and these sites had already violated the "Sale of free items" rule<sup>169</sup> between 2011 and 2014, Google treated them differently in 2015.
174. In the case of the *annuaires-inverse.net* website, Google notified Gibmedia in an e-mail dated 10 September 2014 that the suspension of the site was lifted, but informed it that in future it might not accept any further appeals if the websites were suspended again<sup>170</sup>. In the case of the *annuaire-inverse-France.com* website, however, Google wrote to Ecométrie on 27 June 2014 that it would receive special treatment to minimise the risk of a further account suspension: "Regarding the prevention of suspension risks. Our debrief with Policy is as follows:- *annuaire-inverse-france.com* is considered to be in a grey area, i.e. similar to the call redirection services prohibited by Google's Rules, but not exactly the same. To minimise the likelihood of *annuaire-inverse-france.com* again being likened to these banned services, we have left a note explaining why the website is legal under the current rules, provided that it does not change its service and the rules don't change. This

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<sup>166</sup>Classification mark 891, Referral 15/0019F.

<sup>167</sup>Classification mark 1007, Referral 15/0019F.

<sup>168</sup>Classification mark 1737, Referral 15/0019F.

<sup>169</sup> So the *annuaire-inverse-france.com* site published by Ecométrie was suspended three times between July 2012 and June 2013, whereas the *annuaires-inverse.net* site was suspended four times between 2011 and 2014. Classification marks 892 and 893, Referral 15/0019F.

<sup>170</sup>Classification mark 2045, Referral 15/0020M.

note is very comprehensive and in particular mentions the fact that the team that reactivated annuaire-inverse-france.com on Tuesday must now be contacted before it is suspended. This team knows the case history and can restate the conclusions that mean annuaire-inverse-france.com is now active on AdWords”<sup>171</sup>.

175. On 8 January 2015, Google would announce the permanent suspension of the accounts associated with Gibmedia’s reverse phone lookup sites<sup>172</sup>, whereas it would give Ecométrie’s directory services site personalised assistance from 2015, enabling the site to record “exceptional growth” in sales through Google Ads<sup>173</sup>.
176. These differences in treatment occurred even though the checking teams appeared to be the same for both publishers. Following the suspension of its discretel.fr website in June 2014, Ace Telecom asked Google to apply equivalent treatment to other competing sites, including those of Gibmedia and Ecométrie. In its e-mail of 9 June 2014, Ace Telecom wrote to Google: “[...] We also note that the www.annuaire-inverse.net website, which offers an identical service to ours and does not display the text required of us, is still running ads on AdWords. Please would you apply the same treatment to this site”<sup>174</sup>. In a letter dated 10 June 2014, accompanied by screenshots of ads, Ace Telecom also reported the presence on Google Ads of the annuaire-inverse-france.com website, published by Ecométrie<sup>175</sup>. However, on 13 June 2014, Google confirmed the suspension of Ace Telecom’s website because of a violation of the “sale of free items” Rule and said that the list of competing sites had been forwarded to its “specialists”<sup>176</sup>, without giving further details.
177. The table below shows the similarities between the reverse phone lookup sites published by Ecométrie and Gibmedia, related to the type of paid services that they offer to internet users, the billing methods they use, and the existence of previous suspensions of those sites for violations of the Rules.

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<sup>171</sup>Classification marks 928 and 929, Referral 15/0019F.

<sup>172</sup>Classification marks 81 and 82, Referral 15/0019F.

<sup>173</sup>Classification mark 8170, Referral 15/0019F.

<sup>174</sup>Classification mark 3331, Referral 15/0019F.

<sup>175</sup>Classification marks 3339 and 3340, Referral 15/0019F.

<sup>176</sup>Classification mark 3357, Referral 15/0019F.

Figure 8– Presentation of the services and billing methods used by the reverse phone lookup sites published by Ecométrie and Gibmedia and previous suspensions of these sites

Company	Website name	Type of paid services offered at time of last suspension	Payment method	Previous suspension of site
Ecométrie	annuaire-inverse-France	<ul style="list-style-type: none"> <li>- Telephone number geolocation,</li> <li>- Mobile number greeting playback and</li> <li>- Call forwarding to a business (excluding government administrations).</li> </ul>	<ul style="list-style-type: none"> <li>- Contact+</li> <li>- Internet+</li> <li>- Premium-rate calls and texts</li> <li>- Paid subscriptions<sup>177</sup>.</li> </ul>	<ul style="list-style-type: none"> <li>- On 10 July 2012, the website was suspended because of “user safety”, then reactivated on 12 July 2012</li> <li>- On 3 June 2014, the website was suspended because of the “sale of free items”, then restored on 10 June 2014 after Ecométrie explained how its site worked</li> <li>- On 20 June 2014, the website was suspended because of the “sale of free items”, then restored on 24 June 2014.</li> </ul>
Gibmedia	annuaires-inverse.net pages-annuaire.net	<ul style="list-style-type: none"> <li>- In the case of fixed-line numbers not listed in directory databases, geolocation and obtaining information about the fixed-line numbers of businesses, with similar numbers</li> <li>- Possibility of listening anonymously to mobile subscribers’ voicemail</li> </ul>	<ul style="list-style-type: none"> <li>- Contact+.</li> <li>- Internet+.</li> <li>- Premium-rate calls and texts.</li> </ul>	<ul style="list-style-type: none"> <li>- In January 2011, Google suspended the annuaires-inverse.net site for violation of the site and landing page quality rules, and for displaying an incorrect URL</li> <li>- In February 2013, Google suspended the annuaires-inverse.net site for violation of the site quality rule</li> <li>- In June 2014, Google suspended ads for the annuaires-inverse.net site for violation of the user safety rules</li> <li>- In August 2014, Google suspended the www.impot-calcul.fr and www.annuaires-inverse.bet sites for the “sale of free items”</li> </ul>

<sup>177</sup>Classification marks 891(VC) and 882(VNC), Referral 15/0019F.

### *Inconsistent treatment of other sites identified during the investigation*

178. In addition to the directory sites of Gibmedia and Ecométrie, other differences in treatment have been observed in the sectors to which the complaint relates, during the period covered by the investigation.

#### *Suspended reverse phone lookup sites*

179. Sites other than those of Gibmedia could no longer access Google Ads to advertise paid directory services, particularly the les-pages.com website published by Audivox, and the discretel.fr website published by Ace Telecom.

#### ◆ Discretel.fr

180. As stated above, the discretel.fr website was suspended by Google on 26 May 2014 for a violation of the “sale of free items and official services” rule<sup>178</sup>. Ace Telecom received an account suspension risk warning on 8 April 2014 for “unclear billing practices”<sup>179</sup>, followed by an account suspension risk warning related to “sale of free items and official services” practices on 16 June 2014<sup>180</sup>. At the time of the site suspension, the payment methods used were premium-rate telephone numbers, SMS+, Internet+ Box and Internet+ Mobile. Contact+ was not used on this site.
181. Ace Telecom initially contested the suspension of its site and had bailiff’s reports written, notably for the purpose of establishing the presence of competitors’ sites (those of Gibmedia and Ecométrie) on Google Ads. It wrote the following message to Google: “Your argument that our service does not provide any added value is wrong. Our service is a reverse phone lookup service for fixed lines and mobiles. There is an official reverse phone lookup service for fixed lines, which is why we agree to provide the same service free of charge. However, for mobiles, there is no free official service. The only way of finding out who owns a mobile without calling the number direct is to listen to its voicemail without making the mobile phone ring. This service is not provided by Pages Jaunes (if this is the ‘official’ service you are referring to)”<sup>181</sup>. Google informed it of the reasons for suspension on 11 June 2014: “Advertising of this type of online directory site is not permitted on AdWords. This is more to do with the business model, which does not really provide added value compared to the existing official offer (online directory), than the content of your site”<sup>182</sup>. Ace Telecom challenged these reasons on the same day<sup>183</sup>. In response, Google said on 13 June 2014 that it upheld the suspension and that its decision was “final”. Google again said that the site’s “business model” was “not in conformity with the rules”<sup>184</sup>, but did not specify which rules had been violated.

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<sup>178</sup>Classification mark 3295, Referral 15/0019F.

<sup>179</sup>Classification marks 4900 and 4901, Referral 15/0019F.

<sup>180</sup>Classification marks 4902 and 4903, Referral 15/0019F.

<sup>181</sup>Classification mark 3350, Referral 15/0019F.

<sup>182</sup>Classification mark 3345, Referral 15/0019F.

<sup>183</sup>Classification mark 3350, Referral 15/0019F.

<sup>184</sup>Classification mark 3357, Referral 15/0019F.

182. Despite contesting the suspension, Ace Telecom decided on 20 June 2014 to change its revenue model by abandoning the provision of paid services, in order to maintain access to Google Ads<sup>185</sup>. However, Ace Telecom said that it quickly went back to a revenue model based on paid services because “the new business model turned out not to be viable. We therefore stopped all AdWords advertising for this site. In July 2014, because the site was no longer advertised on the Google AdWords network, we reinstated mandatory payment for reverse phone lookup services in order to monetise traffic from the natural results of search engines. The payment method used was an Audiotel premium-rate telephone number”<sup>186</sup>.
183. Ace Telecom said that it hosts the *inverseannuaire.com* site<sup>187</sup>, which has been published by Nathacom since 2014<sup>188</sup>. Like the *Discretel* site, the *inverseannuaire.com* site provides a reverse phone lookup service for mobiles. At the time of its launch, it used four payment methods: Audiotel, Internet+ Box, Internet+ Mobile and SMS<sup>189</sup>. PayPal and Contact+ were also offered in May and September 2015 respectively<sup>190</sup>. Ace Telecom said in its response that the site had never been suspended on Google Ads<sup>191</sup>.

◆ *Les-pages.com*

184. The *les-pages.com* website, published by the company Audivox, provides directory and reverse phone lookup services. It provides free access to information in directory databases and charges users to use caller identification features when the caller’s number is not in its databases.
185. The two payment methods offered are Contact+ and premium-rate calls. The payment solution aggregators who provide these services are SFR in the case of the premium-rate telephone numbers and DispoFi for Contact+<sup>192</sup>. Audivox stated that 82% of visitors to its *les-pages.fr* website came via Google Ads in 2014, and 70% in 2015<sup>193</sup>.
186. Audivox’s account was suspended in March 2015. At 18:30 on 3 March 2015, Audivox received two ad suspension e-mails telling it that its site violated the rules on “manipulating the Google network”<sup>194</sup> and the rules on “untrustworthy promotions”<sup>195</sup>. Just a few hours later, at 00:21 on 4 March 2015, Google informed its customer that its account was suspended because of a violation of the “untrustworthy promotions” rules<sup>196</sup>.
187. Audivox said that it published other sites via other accounts, which were still advertised on Google Ads at the time of its response to the request for information<sup>197</sup>. These were the *vos-demarches.com*, *calcul-impots.com*, *point-meteo.fr*, *recettes.net*, *wikimot.fr* and

<sup>185</sup>Classification marks 3284 and 3375, Referral 15/0019F.

<sup>186</sup>Classification marks 3287 (VC) and 3728 (VNC), Referral 15/0019F.

<sup>187</sup>Classification marks 3282 (VC) and 10324 (VNC), Referral 15/0019F.

<sup>188</sup>Classification mark 3284, Referral 15/0019F.

<sup>189</sup>Classification marks 3287 (VC) and 3728 (VNC), Referral 15/0019F.

<sup>190</sup>Classification marks 3287 (VC) and 3728 (VNC), Referral 15/0019F.

<sup>191</sup>Classification mark 3284, Referral 15/0019F.

<sup>192</sup>Classification mark 1096, Referral 15/0019F.

<sup>193</sup>Classification mark 1096, Referral 15/0019F.

<sup>194</sup>Classification mark 1128, Referral 15/0019F.

<sup>195</sup>Classification mark 1130, Referral 15/0019F.

<sup>196</sup>Classification mark 1132, Referral 15/0019F.

<sup>197</sup>Classification mark 1095, Referral 15/0019F.

slimness.fr websites. Some of these sites, such as point-meteo.fr, provided paid services billed via Orange's Contact+ payment service<sup>198</sup>.

*Reverse phone lookup sites on Google Ads*

188. Some Google customers that provide paid call directory services by electronic means have never had their accounts suspended. Other customers have, but have managed to have the decision reversed by Google by talking to its teams. These sites include quipage.fr (Publidia/Dispobiz), allo-pages.fr (Links Lab), inverseannuaire.com (Nathacom), qcquicenumero.com (Somnus) and annuaire-inverse-france.com (Ecométrie).

◆ Quipage.fr

189. Quipage.fr is published by Publidia, which has been controlled by Dispobiz since 2013. The site offers paid-for call directory and reverse phone lookup services, billed by means of various payment methods including Contact+. Other methods used are premium-rate telephone numbers, Internet+ and bank cards. Dispobiz said that “information for which payment was not required” concerned “searches for private individuals and/or businesses by name”<sup>199</sup>. Advertising of the site on Google Ads began on 16 December 2014<sup>200</sup>. The company declared that it stopped advertising its directory service on Google Ads in 2016, but that this decision was not due to a suspension measure applied by Google<sup>201</sup>. The company Dispobiz said that the directory product was offered, in the context of a delegated publishing business, to two partners using Google Ads (Links Lab, which publishes allo-pages.fr and Audivox, which publishes les-pages.com)<sup>202</sup>.
190. Dispobiz said that some of the sites it publishes, including through its subsidiary Publidia, that were affected by the “sale of free items” problem, were suspended by Google (impots-facile.com, resultat-bac-brevet.fr), but that quipage.fr had never been suspended<sup>203</sup>. The table below shows the situation in detail for the sites in question.

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<sup>198</sup>Classification mark 8328, Referral 15/0019F.

<sup>199</sup>Classification mark 668, Referral 15/0019F.

<sup>200</sup>Classification mark 668, Referral 15/0019F.

<sup>201</sup>Classification mark 8622, Referral 15/0019F.

<sup>202</sup>Classification mark 669, Referral 15/0019F.

<sup>203</sup>Classification mark 671, Referral 15/0019F.

Editeurs	Sites	Moyens de paiement	Adwords : sites ayant été suspendus	Adwords : sites actuellement suspendus	Adwords
<b>Thématique calcul impôts</b>					
Dispofi	impots.dispofi.fr	OUI			OUI
Dispofi	prime-pour-l-emploi.fr	OUI			OUI
Publidia	impots-facile.com	OUI	OUI		OUI
Pôle Solution	Net-impots.fr	OUI			OUI
<b>Thématique patrimoine</b>					
Dispofi	bail.dispofi.fr	OUI			OUI
Dispofi	dispofi.fr	NON			NON
Dispofi	epargne.dispofi.fr	NON			NON
Dispofi	retraite.dispofi.fr	NON			NON
Dispofi	assurance-auto.dispofi.fr	NON			NON
Dispofi	mutuelle.dispofi.fr	NON			NON
<b>Thématique comparateur</b>					
Disposur	disposur.fr	NON			OUI
<b>Thématique examens</b>					
France Examen	france-examen.com	OUI	OUI	OUI	OUI
France Examen	resultats-des-examens.fr	OUI	OUI	OUI	OUI
Dispofi	admis-examen.fr	OUI	OUI	OUI	OUI
Publidia	resultats-bac-brevet.fr	OUI	OUI	OUI	OUI
Ulysse Service	info-resultats-examens.fr	OUI	OUI	OUI	OUI
Pôle Solution	resultat-examen.eu				OUI
Disposur	resultats-bac-brevet-2014.fr	OUI			OUI
<b>Thématique concours</b>					
Publidia	concours-fonction-publique.publidia.fr	OUI			OUI
Publidia	atsem.fr	OUI			OUI
Publidia	concours-adjoint-administratif.publidia.fr	OUI			OUI
Publidia	concours-police-municipale.fr	OUI			OUI
Publidia	concours-police-nationale.fr	OUI			OUI
Publidia	emploi-public.publidia.fr	NON			NON
Publidia	publidia.fr	NON			NON
Ulysse Service	concours-fonction-publique.com	OUI	OUI	NON	OUI

Figure 9 – Situation of sites published by Dispobiz

◆ Allo-pages.fr

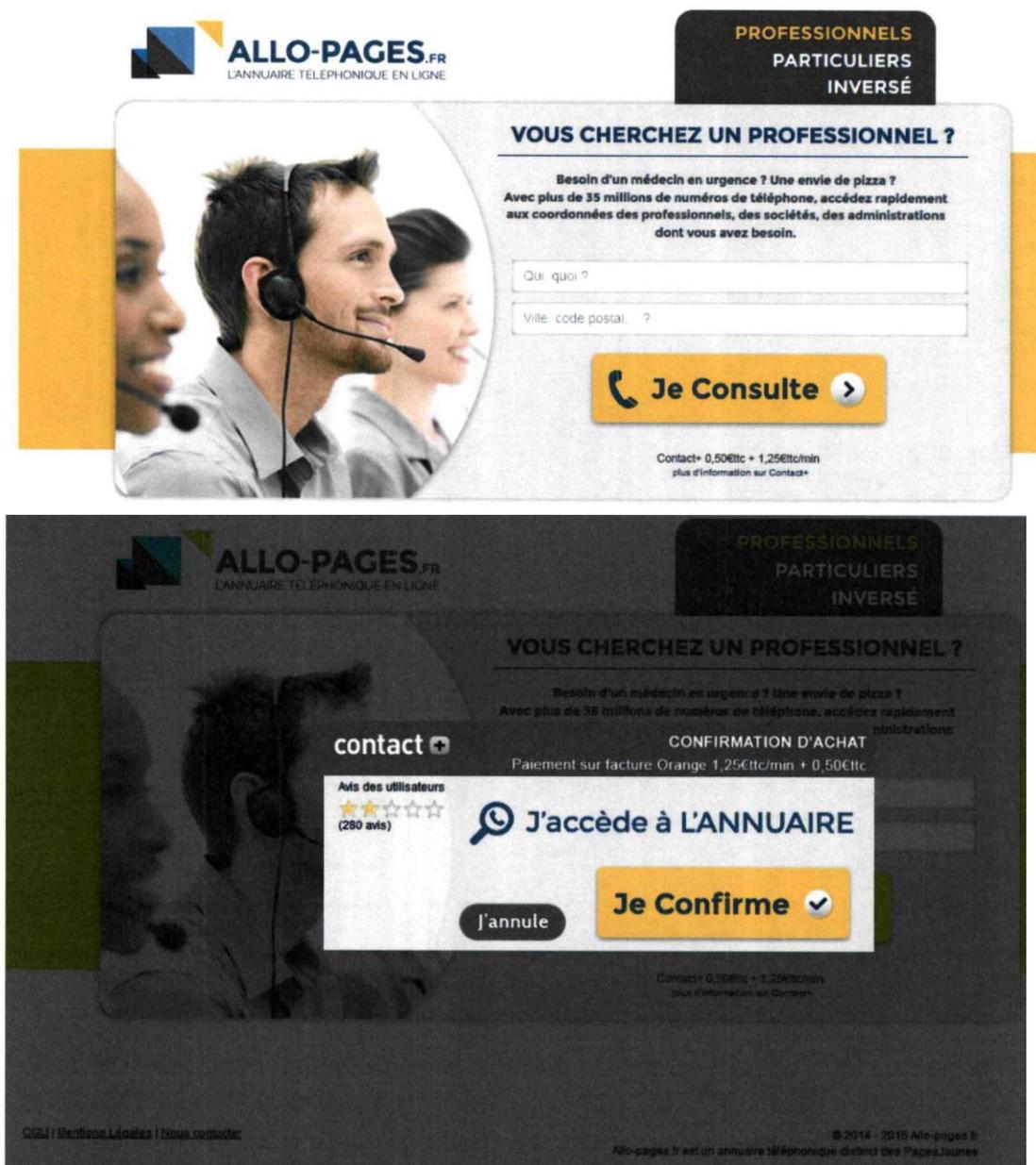
191. The Allo-pages.fr website is published by Links Lab. The site provides paid-for call directory services for businesses and individuals, who are billed via the Contact+ and Audiotel payment services. It also sells advertising space through Google’s AdSense advertising intermediation service<sup>204</sup>. Links Lab also explained that in 2015, 80% of its revenue came from payments made using Contact+, whereas advertising revenue generated 15% of its turnover<sup>205</sup>. It said that its website had not been suspended by Google. In 2017, allo-pages.fr was still advertised on Google Ads<sup>206</sup>.
192. Links Lab provide screenshots showing the home page of the “payment confirmation request” for the Contact+ version of its website in December 2015. These pages contain similar information to Google’s screenshots of the Gibmedia website in July 2015.

<sup>204</sup>Classification mark 794, Referral 15/0019F.

<sup>205</sup>Classification mark 794, Referral 15/0019F.

<sup>206</sup>Classification mark 8346, Referral 15/0019F.

Figure 10 – *Screenshots of the allo-pages.fr website (Links Lab)*<sup>207</sup>



<sup>207</sup>Classification mark 795, Referral 15/0019F.

Figure 11 – Screenshots of Gibmedia's directory websites<sup>208</sup>



193. Other sites published by the company did, however, have their accounts suspended. The bilan-imc.fr website was suspended on 18 November 2015, but the suspension was lifted on the same day, without explanation<sup>209</sup>. The publi-examen.fr site was suspended from advertising on 7 July 2015, because of a violation of the “site quality rules”<sup>210</sup> and a cloaking violation<sup>211</sup>. Google added that “your site’s business model is considered to be unclear and lacking in transparency for users”<sup>212</sup>. The itineraire.info site, a map and journey planning service, was suspended but Links Lab did not receive any e-mails from Google. Links Lab said that a Google employee told it that the site had been suspended because it was using the Bing Maps API but not contributing any added value. The suspension was lifted after visual changes were made to the site and content pages were added<sup>213</sup>.

◆ Cquicenumero.com

194. The cquicenumero.com website, published by Somnus, was suspended twice in 2014, but these suspensions were lifted<sup>214</sup>. Somnus said that the free information “available on the site at the time” was the “name of the operator assigned the range of numbers that included

<sup>208</sup>Classification marks 4100 and 4101, Referral 15/0020M.

<sup>209</sup>Classification mark 797, Referral 15/0019F.

<sup>210</sup>Classification mark 807, Referral 15/0019F.

<sup>211</sup>Classification mark 804, Referral 15/0019F.

<sup>212</sup>Classification mark 804, Referral 15/0019F.

<sup>213</sup>Classification mark 797, Referral 15/0019F.

<sup>214</sup>Classification marks 2520(VC)/10214(VNC) and 2521, Referral 15/0019F.

the requested number”, the “type of number (mobile, geographical fixed line, non-geographical fixed line, special), the “number of times the number had been looked up on the site”, and the “name and address of the owner of the number, where this information is available free of charge on the Internet”<sup>215</sup>.

195. This site uses Audiotel payment methods almost exclusively and the service provided is based on combined use of the site for making searches, and premium-rate telephone numbers (118 711 or 118 718) for accessing the search results and charging for the service. Finally, the prices for the service offered by Somnus’ directory sites (€2.99 on connection + €2.99/minute) are significantly higher than those of Gibmedia’s sites charged using Contact+ (€0.50 inc. tax on connection + €1.25 inc. tax/minute) and premium-rate telephone numbers (€1.35/call then €0.34/minute)<sup>216</sup>.
196. Additionally, a few seconds after the free result of the reverse phone lookup is displayed, a window appears asking if the user found the information they wanted. If they click “no”, a second window appears. It invites the user to go to a different website, a-qui-annuaire-inverse.fr, also published by Somnus, which was suspended by Google in 2014.

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<sup>215</sup>Classification mark 4817, Referral 15/0019F.

<sup>216</sup>Classification mark 4155, Referral 15/0020M.

Figure 12 – Screenshot of the *cquicenumero.com* website (April 2019)

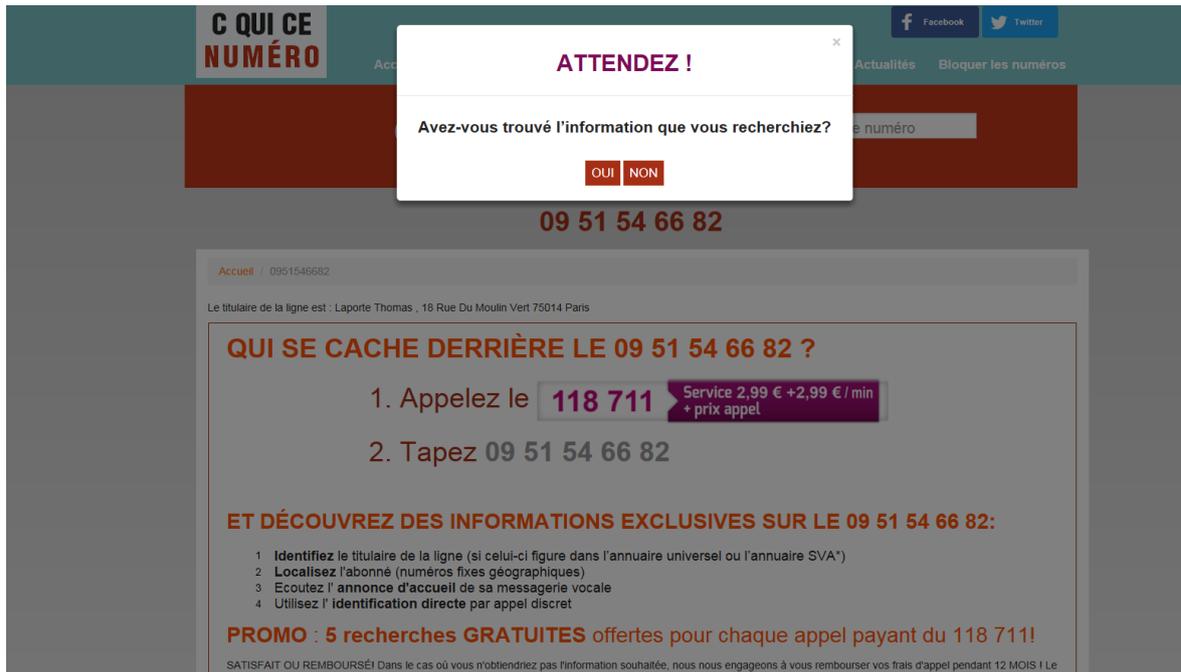
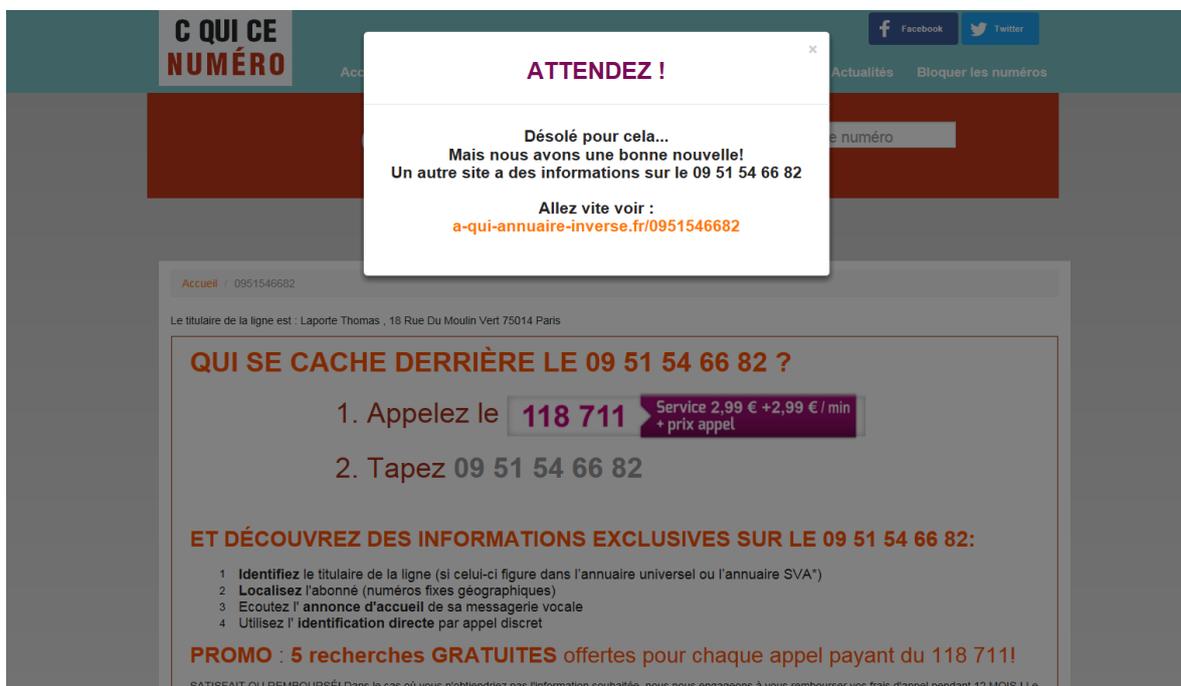


Figure 13 – Screenshot of the *cquicenumero.com* website (April 2019)



197. The table below summarises the above information, which highlights Google's random and inconsistent treatment of sites as regards suspension in cases of alleged violation of certain Rules by advertisers.

Figure 14 – Different treatment of certain sites in the directory and directory enquiries sector

Company	Website name	Type of paid services offered at time of last suspension	Payment method
<b>Sites suspended from Google Ads platform</b>			
Ace Telecom	Discretel.fr	- Reverse mobile number lookup	- premium-rate telephone numbers, - SMS+, - Internet+ Box - and Internet+ Mobile
Audiovox	Les-pages.com	- Reverse mobile number lookup	- Premium-rate calls Contact+
<b>Sites present on Google Ads platform</b>			
Dispobiz	Quipage	- Reverse phone lookup for individuals and businesses	- Premium-rate calls, Internet+, bank card - Contact+
Nathacom	inverseannuaire	- Reverse mobile number lookup	- Audiotel, Internet+, SMS - Contact+ in September 2015
Links Lab	Allo-pages.fr	- Paid-for call directory services for businesses and individuals	- Audiotel - Contact+
Somnus	Cquicenumero.com	- Directory enquiries and call forwarding - Identification of the owner of a line and voicemail playback for mobiles - Text or call blocking	- Mainly Audiotel

**c) The instability of the Rules and effect of changes in Google’s interpretation on the fate of the annuaire.com website**

198. The annuaire.com website, published by Société SAS, a subsidiary of La Poste, was suspended four times by Google for violating the Rules on the “sale of free items” between July 2012 and June 2013<sup>217</sup>.
199. The exchanges produced by Google show that the repeated nature of the violations by the annuaire.com website was due not to repeated failures by this site to comply with a Rule that remained unchanged, but to successive changes to this Rule or changes in its interpretation by Google’s teams in the space of less than one year.

***First suspension in July 2012***

200. By e-mail on 19 July 2012, Google informed La Poste and Ad’Forall, its Internet marketing agency, of the suspension of Google Ads advertisements to its annuaire.com website for violation of the “sale of free items and official services” rule<sup>218</sup>.
201. After several exchanges with Google’s teams, La Poste made changes to the annuaire.com website. In particular it proposed that, on each page where a paid-for number was offered when the service could be obtained free of charge elsewhere, users would be redirected to the Google Maps service<sup>219</sup>. However, Google noticed that the links to Google Maps “with the number available free of charge” were not valid, and initially upheld its suspension of the site<sup>220</sup>. La Poste stated that, as a result of the changes requested by Google, the annuaire.com website was reactivated in August 2012, though it did not receive confirmation from Google that the suspension had been lifted<sup>221</sup>.

***Second suspension in September 2012***

202. By e-mail on 26 September 2012, Google’s support service informed La Poste and Ad’Forall again that Google Ads advertisements to its annuaire.com website had been suspended for violating the “sale of free items and official services” rule<sup>222</sup>.
203. Ad’Forall wrote to Google to express its incomprehension, since the site had been suspended for the same reasons as in July 2012 and corrections had already been made to remedy the problem: “Hi, I don’t understand why you’ve suspended the AdWords account again for the www.annuaire.com site (822-828-8736). This was suspended for the same reason 2 months ago. We made the necessary corrections. We have checked, and the rules have not changed since then”<sup>223</sup>.

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<sup>217</sup> During the investigation, Google submitted the entirety of its exchanges with annuaire.com. These exchanges appear at classification marks 7535 to 7902, Referral 15/0019F.

<sup>218</sup> Classification mark 3652, Referral 15/0019F.

<sup>219</sup> Classification mark 1290, Referral 15/0019F.

<sup>220</sup> Classification mark 1290, Referral 15/0019F.

<sup>221</sup> Classification mark 3649, Referral 15/0019F.

<sup>222</sup> Classification mark 3652, Referral 15/0019F.

<sup>223</sup> Classification mark 7452, Referral 15/0019F.

204. On 4 October 2012, Google’s support service wrote a holding message to La Poste, acknowledging that the site had not changed since it was approved in August: “I am contacting you quickly to tell you that I’ve spoken to the editorial team today but I haven’t heard back from them yet. I explained that you haven’t changed anything on your site and that it was approved in August”<sup>224</sup>.
205. On 5 October 2012, Google’s support service said that it had heard back from the “specialists” and provided several instructions for obtaining the lifting of the annuaire.com site’s suspension. In the e-mail, Google’s support service explained that: “only the specialists are authorised to decide whether or not to lift the suspension of your www.annuaire.com website”<sup>225</sup>.
206. On 9 October 2012, Google’s support service said that the annuaire.com site was “almost compliant” with the Rules and asked for further changes to be made to the site, explaining: “I’m very sorry about these new changes that need to be made... As I said before, only the specialists are authorised to decide whether or not to lift the suspension of your website. As always, I’m trying to argue in your favour with the specialists and trying to obtain constructive comments to progress your case”<sup>226</sup>.
207. After this exchange with Google’s support service, La Poste made further changes to the annuaire.com website, which was reactivated by Google on 12 October 2012.

### *Third suspension in November 2012*

208. In an e-mail on 23 November 2012, Ad’Forall wrote to Google to ask it to explain a new suspension of the annuaire.com website. “Once again you’ve stopped running ads for the annuaire.com website, AdWords account 737-329-8873 and 822-828-8736. We made the changes for the “Billing for services associated with products or services available free of charge elsewhere” rule requested last time and the site DOES NOT CONTAIN numbers for official services (town halls, job centres, etc.)! We don’t understand what’s wrong this time, it’s been stopped twice in 4 months, and it’s really starting to cause problems”<sup>227</sup>.
209. On the same day, Google’s support service wrote to Ad’Forall: “Your site was reactivated on 12 October after changes were made and I had spoken numerous times to the team of specialists [...]. As a result of your new message, I have again spoken to our team of specialists responsible for reviewing websites to find out more”<sup>228</sup>.
210. By e-mail on 26 November 2012, Google wrote to Ad’Forall: “The specialists have finally been in touch with me and have confirmed that the suspension of your website <http://www.annuaire.com/> is being upheld. I’m very sorry. Our rules have changed, and the link (to the official page <http://www.118000.fr>) does redirect to the page showing the telephone number concerned”<sup>229</sup>. However, the change log in Google’s Help Center does not mention a change of Rules between 19 October 2012 (when the site annuaire.com was last reactivated) and 23 November 2012 (when the third site suspension took place) (see paragraph 136).

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<sup>224</sup>Classification mark 7555, Referral 15/0019F.

<sup>225</sup>Classification mark 7766, Referral 15/0019F.

<sup>226</sup>Classification mark 7759, Referral 15/0019F.

<sup>227</sup>Classification mark 1310, Referral 15/0019F.

<sup>228</sup>Classification mark 1310, Referral 15/0019F.

<sup>229</sup>Classification mark 1310, Referral 15/0019F.

211. In response to an e-mail from Ad’Forall asking whether it was possible to be warned in advance of a change in the Rules and to be given at least a week before a site was suspended<sup>230</sup>, Google’s support service replied: “I completely understand your frustration. Unfortunately, it’s not possible to warn all AdWords of changes to the Google AdWords rules”<sup>231</sup>.
212. By e-mail on 3 December 2012, Ad’Forall indicated that the annuaire.com website had made the required changes and asked for the account associated with it to be reactivated<sup>232</sup>.
213. On 17 December 2012, Google wrote to the annuaire.com website confirming that its accounts had been reactivated<sup>233</sup>.

#### *Fourth suspension in June 2013*

214. On 21 May 2013, La Poste wrote to Google after a new suspension of its account: “Please call me back immediately, this is the third time this year that our accounts have been suspended even though we haven’t made any changes. We’ve been compliant with your policies since last August, we’ve been approved”<sup>234</sup>.
215. On the same day, the support service wrote to La Poste that the annuaire.com website had been suspended because of a new update to the rule on the sale of official services and free items the previous month: “I’ve analysed your account history and your website, and the reason why it has been suspended is that our rule on the sale of official services and free items was updated on 19 April. The new rule states in particular that “Your ads and landing pages cannot promote services that offer little or no added value for users compared to the original, automated or official online application process.” Directory sites offering paid-for numbers available free of charge elsewhere are thus all affected by this new rule and will no longer be able to advertise on AdWords”<sup>235</sup>.
216. At the time of this new suspension in June 2013, La Poste told Google that it had not received any notification and had not been given any time to make the necessary changes on its website<sup>236</sup>. Google replied that the update to the rule had been announced in a notice in the Help Center one month before the new rule was introduced<sup>237</sup>.
217. On 28 May 2013, La Poste complained about this new suspension, asking to speak to somebody in charge of Google’s editorial team and mentioning its membership in SVA+<sup>238</sup> (see paragraph 0 below): “I’d like to speak to somebody from your editorial team in France. I don’t see why ARCEP and SAV+ (the added value services association) and GESTE (publishers’ group) thought that we offered added value for consumers and Google has decided unilaterally, without warning, that we don’t”<sup>239</sup>.

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<sup>230</sup>Classification mark 1308, Referral 15/0019F.

<sup>231</sup>Classification mark 1307, Referral 15/0019F.

<sup>232</sup>Classification mark 7540, Referral 15/0019F.

<sup>233</sup>Classification mark 7549, Referral 15/0019F.

<sup>234</sup>Classification mark 7744, Referral 15/0019F.

<sup>235</sup>Classification mark 7743, Referral 15/0019F.

<sup>236</sup>Classification mark 7732, Referral 15/0019F.

<sup>237</sup>Classification mark 7732, Referral 15/0019F.

<sup>238</sup>Classification mark 7739, Referral 15/0019F.

<sup>239</sup>Classification mark 7712, Referral 15/0019F.

218. SVA+ is a self-regulatory body set up at the initiative of electronic communications operators and publishers of added value services. SVA+ is the ethics authority specific to telephone services with value added (“SVA”), which sets the rules for lawful use of SVAs and makes recommendations on best practice to those active in the sector. According to the website of the Directorate-General for Companies, the role of SVA+ is to combat unfair practices and propose changes in its sector to ensure ethical consistency in order to guarantee high quality services to consumers by giving them clear information and protecting consumers and children<sup>240</sup>.
219. In response to this complaint, Google said that it reserved the right to apply more restrictive criteria than the law and that it would not take account of the associations’ opinions: “The editorial team’s decisions when writing our rules are the outcome of internal discussions, and while they obviously remain within the framework of the law, they may be more restrictive than the law. So even if associations and groups have decided that your website provides added value, our rules will be drafted independently by our editorial team. It will therefore unfortunately not be possible to speak direct to the editorial team”<sup>241</sup>.
220. On 12 June 2013, Google wrote to La Poste that the content of the annuaire.com website would have to offer added value for the suspension to be lifted: “For the suspension of your site to be lifted, not only do you have to add this text, but unique content with added value also has to be present on the website”<sup>242</sup>.
221. So although the reason for suspending the annuaire.com website was originally a violation of the “sale of free items” rule, in subsequent exchanges Google mentions difficulties related to “unclear billing” practices.
222. On 20 June 2013, Google mentioned the existence of two separate problems related to the fact that “the billing information for the premium-rate telephone numbers is not sufficiently clear and visible at present” and the site did not provide “sufficient added value” to justify charging premium rates for free numbers<sup>243</sup>. Regarding billing conditions, Google asked for a link to the free number to be presented visibly next to the premium-rate number and for the cost of forwarding the call to be displayed, so that the annuaire.com website could be reviewed by the Policy teams<sup>244</sup>. Having made the requested corrections to improve the clarity of its billing conditions, La Poste received a message from Google telling it: “your site still violates our rules on the sale of free items and services, though the Unclear Billing problem has been resolved. The suspension of your site www.annuaire.com therefore cannot be lifted”<sup>245</sup>.

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<sup>240</sup> <https://www.entreprises.gouv.fr/numerique/services-a-valeur-ajoutee-telephoniques-sva>

<sup>241</sup> Classification mark 7701, Referral 15/0019F.

<sup>242</sup> Classification mark 7693, Referral 15/0019F.

<sup>243</sup> Classification mark 7687, Referral 15/0019F.

<sup>244</sup> Classification mark 7608, Referral 15/0019F.

<sup>245</sup> Classification mark 7606, Referral 15/0019F.

223. On 24 June 2013, in response to a question from La Poste asking why its site did not offer any added value, Google wrote that added value was not assessed on the basis of the site's content, but on the consumer's experience when dialling a premium-rate telephone number compared to a free number: "It is not the customer experience on your website in general that is taken into account, but the experience when the telephone number is dialled. So even though your site offers very comprehensive information sheets, information financed among other things by premium-rate telephone numbers, when I compare the user experience of using a free number to the experience of using the premium-rate version, no added value is offered"<sup>246</sup>. This message contradicts the message Google sent to La Poste on 12 June 2013, which stated that the suspension could be lifted if the content of the annuaire.com website provided added value (see paragraph 220).

#### **d) Assistance and promotion services offered by Google**

##### *Services offered to sites previously suspended due to violations of the Rules*

224. Google's sales teams, which are different from the teams responsible for checking compliance with the Rules, work proactively with certain advertisers, offering them assistance services provided by account managers. Some of the sites approached by Google's sales teams are reverse phone lookup sites that were previously suspended for violating the Rules, particularly those on the "sale of free items" and "untrustworthy promotions".

##### *Assistance services offered by Google to Interactiv-DigiMedia*

225. The company Interactiv received messages on 7 January 2015 notifying it of the suspension of ads for six sites that it published (mes-idees-recettes.com; infos-plans.com; traduction-rapide.net; revisioncode.com; score-qi.com). After submitting an information request to Google, Interactiv received six account suspension letters on 8 January 2015, on the grounds of violation of the "untrustworthy promotions" rules<sup>247</sup>. Interactiv tried to have its accounts reactivated by pointing out differences in the treatment of non-suspended sites offering similar services, in particular within the maps, recipes, exam results, health services, and train timetables sectors<sup>248</sup>.

226. Interactiv said that it was approached on 17 April 2015 by a member of the Google sales team who was "clearly uninformed" about the situation with its accounts. According to Interactiv, this exchange lasted several weeks, without achieving the reactivation of its accounts or precise feedback about the reasons for the suspension<sup>249</sup>.

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<sup>246</sup>Classification mark 7630, Referral 15/0019F.

<sup>247</sup>Classification mark 4534, Referral 15/0019F.

<sup>248</sup>Classification mark 4546, Referral 15/0019F.

<sup>249</sup>Classification marks 4546 and 4547, Referral 15/0019F

a.mabchor via contact digi-media France <contact.dmf@interact-iv.com>  
Répondre à [REDACTED]  
À : contact.dmf@digi-media.fr

17 avril 2015 à 16:30

Bonjour,

Je vais vous présenter notre programme et vous expliquer comment nous pouvons vous aider à attirer davantage de clients en ligne grâce à Google AdWords.

Qu'est-ce que le programme Google AdWords ?

Google AdWords permet aux annonceurs de promouvoir leur entreprise auprès de milliers d'internautes locaux qui recherchent activement vos produits ou services. Vous pouvez atteindre vos clients potentiels au bon endroit et au moment opportun, en diffusant des annonces ciblées à côté des résultats de recherche Google ou d'articles pertinents sur le Réseau Display de Google. Grâce au paiement par clic, vous payez uniquement lorsqu'un internaute clique sur votre annonce, ce qui vous permet d'attirer de nouveaux clients de façon rentable.

Je travaille pour Google, dans une équipe qui fournit une assistance aux nouveaux annonceurs AdWords souhaitant travailler directement avec Google pour promouvoir leur entreprise. Si vous choisissez de travailler avec nous, vous bénéficierez d'une campagne personnalisée, élaborée exclusivement en fonction de vos propres objectifs commerciaux.

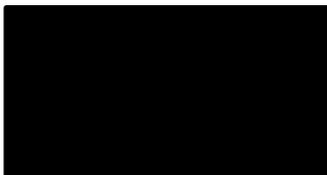
- Consultation : une fois que vous avez décidé de mettre en place une stratégie marketing en ligne, nous discuterons en détail de vos besoins commerciaux et des objectifs de votre campagne AdWords.

- Confirmation : dès que nous sommes d'accord sur votre stratégie et votre investissement AdWords, nous vous demandons de confirmer votre budget quotidien minimal et nous élaborons un plan pour les quatre semaines que va durer notre collaboration.

- Personnalisation : sous une semaine, vous recevez une campagne AdWords personnalisée. Elle se compose de mots clés (termes de recherche qui déclencheront la diffusion de vos annonces), de textes publicitaires (annonces textuelles ciblées qui seront diffusées lorsque des internautes rechercheront vos mots clés) et d'enchères (prix maximal que vous êtes prêt à payer par clic pour diffuser vos annonces sur Google).

- Optimisation : pendant les premières semaines, mon équipe vous fournira des conseils sur la façon d'améliorer les performances de vos campagnes afin d'accroître votre retour sur investissement.

J'espère recevoir de vos nouvelles très bientôt.



### *Assistance services offered by Google to Ecométrie*

227. Ecométrie is a sister company of Gibmedia. It is wholly owned by the BJ Invest group, which bought the company on 6 October 2014<sup>250</sup>. It publishes the annuaire-inverse-France.com website, which provides directory enquiries and call forwarding services.
228. Ecométrie had received a personalised assistance service for the annuaire-inverse-France site since March 2014. By e-mail on 3 March 2014, Ecométrie wrote to Google about its assistance requirements: “More than ever, we need to improve our campaigns, to see what our account manager thinks about specific issues, to share our environment, and to build up a collaborative relationship and mutual trust”<sup>251</sup>. On 21 May 2014, Google offered Ecométrie a personalised meeting at Google’s offices in Paris<sup>252</sup>.

<sup>250</sup>Classification marks 1569 to 1613, Referral 15/0019F.

<sup>251</sup>Classification mark 968, Referral 15/0019F.

<sup>252</sup>Classification mark 973, Referral 15/0019F.

229. In parallel with this assistance, annuaire-inverse-France.com suffered three account suspensions between July 2012 and June 2014, which were lifted by Google:
- on 10 July 2012, the website was suspended because of “user safety”, then reactivated on 12 July 2012;
  - on 3 June 2014, the website was suspended because of the “sale of free items”, then restored on 10 June 2014 after Ecométrie explained how its site worked;
  - on 20 June 2014, the website was again suspended because of the “sale of free items”, then restored on 24 June 2014<sup>253</sup>.
230. In an e-mail dated 11 February 2015, entitled “Summary & AdWords recommendations”, Google sent Ecométrie a list of recommendations to reduce the average cost-per-click of its campaigns<sup>254</sup>. In an e-mail dated 2 July 2015, it offered Ecométrie solutions for tracking purchases made by internet users using the Contact+ payment solution<sup>255</sup>. Finally, in an e-mail dated 5 October 2015, Google reiterated an offer of assistance in these terms: “I am contacting you again to assist you with optimising your AdWords account. [sic] is to give you my expertise and advise you as effectively as possible based on your objectives. For example, I could work on: •Optimising your keywords and ads; •Setting up new AdWords functionalities •Developing your strategy”<sup>256</sup>.

*Assistance services offered by Google to Somnus*

231. Somnus publishes three directory sites, cquicenumero.com, annuaire-inverse.com and a-qui-annuaire-inverse.fr<sup>257</sup>, which were subject to several Google Ads suspensions during 2014. Following these suspensions, Google offered assistance services to two of these sites to develop their sales on Google Ads.
232. First, the site a-qui-annuaire-inverse.fr was suspended for violating the “sale of free items and official services” rule, on 2 June 2014<sup>258</sup>.
233. On 13 June 2014, a few days after this suspension, Google offered an assistance service to the a-qui-annuaire-inverse.fr website to increase its online sales via the Google Ads advertising service in the following terms: “Hi, We recently tried to contact you several times by e-mail and phone but were unable to reach you. This is the last time we will contact you because we don’t want to flood your inbox. However, we’d like your company to really take this opportunity to develop its online business. If you want to generate extra sales through your website and develop your online business, please contact us”<sup>259</sup>. However, Somnus said that it was no longer using Google Ads to advertise the site<sup>260</sup>.

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<sup>253</sup>Classification marks 892 (VC)/10227 (VNC) and 893(VC)/10228 (VNC), Referral 15/0019F.

<sup>254</sup>Classification marks 980 and 981, Referral 15/0019F

<sup>255</sup>Classification mark 1007, Referral 15/0019F.

<sup>256</sup>Classification mark 1017, Referral 15/0019F

<sup>257</sup>Classification marks 2519 (VC) and 10213 (VNC), Referral 15/0019F.

<sup>258</sup>Classification mark 8232, Referral 15/0019F.

<sup>259</sup>Classification mark 8085, Referral 15/0019F.

<sup>260</sup>Classification mark 2521, Referral 15/0019F.

234. Next, the cquicenumero.com account was suspended twice in 2014. The first suspension was from 9 April 2014 to 23 April 2014, for unclear billing practices. The second suspension was from 27 May 2014 to 2 July 2014 for the sale of free items and official services<sup>261</sup>.
235. On 24 August 2016, Google offered the cquicenumero.com website a personalised assistance service on Google Ads called “Google Growth Accelerator”. In its assistance offer, Google states: “We have already worked with a number of stakeholders in your sector, such as annuaire-inverse-France and 118 001, which have benefited from exceptional growth on AdWords”<sup>262</sup>.
236. As stated above, annuaire-inverse-France is a website published by Ecométrie, a sister company of Gibmedia, which had been suspended several times between 2012 and 2014 for violation of the “sale of free items” rule. The 118 001 site is published by Amadeus, some of whose accounts would be suspended for violating the same rule in January 2018.

*Advertising of digital services for which a warning was issued by the public authorities*

237. In its observations in response to the Statement of Objections, Google produced appendices containing exchanges with the DGCRRF and the Interministerial Directorate for Digital, Information Systems and Communication (DINSIC) in which the public authorities drew Google’s attention to the existence of sites and digital services advertised on Google Ads for which the conditions of sale on the Internet could harm consumer interests.
238. Following these warnings, Google continued to promote sites selling these types of service on Google Ads, especially the Amadeus website, which received personalised assistance from Google until the end of 2017.

*Google’s personalised assistance service to Amadeus*

239. In a message dated 24 January 2017, an official from DINSIC sent an e-mail to Google telling it that he had “identified another increasingly common problem, which is directory enquiries numbers (e.g. 118 918, 118 818, 118 811) charged at €2.99 per call then €2.99 per minute”<sup>263</sup>.
240. The presence of directory enquiries services on Google Ads remained significant in the 2017-2018 period, when these informal exchanges with DINSIC were taking place. Despite these exchanges with the public authorities, Google worked proactively to increase the presence of Amadeus’ directory enquiries services, particularly at various sales events organised by Google, in July 2017 at its offices, and in November 2017 at the Le Mandarin restaurant in Paris.

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<sup>261</sup>Classification marks 2520(VC)/10214(VNC) and 2521, Referral 15/0019F.

<sup>262</sup>Classification mark 8170, Referral 15/0019F.

<sup>263</sup>Classification mark 12082, Referral 15/0019F.

241. Amadeus had numerous exchanges with Google about its sales strategy, about the way competition in the directories and directory enquiries sector was changing, and about how to run campaigns for these sites on Google Ads<sup>264</sup>. The information provided by Amadeus shows that Google was involved in writing the ads and publishing the home pages of Amadeus' sites<sup>265</sup>. Google encouraged Amadeus to develop advertising campaigns on keywords related to public services such as tax and social security, in order to increase call volumes to Amadeus' premium-rate telephone numbers.
242. In the context of its exchanges with Amadeus, Google mentioned a collaboration with the company E-kanopi concerning campaigns for its *annuaire-inverse.com* website, even though the company had previously been suspended from the advertising platform<sup>266</sup>. E-kanopi's accounts had been suspended in 2010, prompting a complaint to the *Autorité*<sup>267</sup>.

*Administrative documents services*

243. On 31 May 2016, the DGCCRF wrote to Google to complain about practices used by the Internet company [...] and its subsidiaries, which were selling administrative documents on several websites, e.g. birth certificates, vehicle documents and criminal record reports, even though these documents were provided free of charge by government bodies (except for company registration certificates). In its letter, the DGCCRF said that these websites were being advertised through the Google Ads service<sup>268</sup>.
244. In October 2016, the DINSIC also discussed with Google the reporting of paid sites that did not provide any added value to users and offered simple procedures that could be carried out entirely online on official government websites, such as obtaining a criminal record report<sup>269</sup>.
245. In its observations on 23 June 2015, Google explained that "Google AdWords does not allow advertising of the sale of items or services available free of charge elsewhere. Nor does Google permit advertising of the sale of forms or government services available free of charge or at a lower cost on an official or government website. This rule is designed to prevent Google users from being misled and buying a service that can actually be obtained free of charge from official sources. For example, Google does not allow AdWords advertisers to advertise sites selling the ESTA visa for the US, when this visa [can] be obtained from the US federal government's website in exchange for a fee set by law (...)"<sup>270</sup>.
246. However, the investigation found that numerous ads for car registration document, birth certificate and US ESTA application services were present on Google Ads in 2019. Google had therefore not suspended the ads or accounts providing the services complained about by the DGCCRF and DINSIC<sup>271</sup>.

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<sup>264</sup>Report, paragraphs 209 to 211, classification marks 15582 to 15584, see also classification marks 12907, 15264 to 15282, 15278, Referral 15/0019F.

<sup>265</sup> See, for example, classification marks 12780, 12795, 12796, 12855, 12987, 12777, 13001, 13462, 13704, 14046, 14077, 14156.

<sup>266</sup>Classification marks 14987 and 15582, Referral 15/0019F.

<sup>267</sup>Decision 13-D-07 of the *Autorité* of 28 February 2013 on a complaint by E-kanopi.

<sup>268</sup>Classification marks 12018 to 12020, Referral 15/0019F.

<sup>269</sup>Classification mark 12023, Referral 15/0019F.

<sup>270</sup>Classification mark 6697, Referral 15/0020M.

<sup>271</sup>Classification marks 15437 to 15438, Referral 15/0019F.

Google

actes de naissance

Tous Actualités Images Shopping Vidéos Plus Paramètres Outils

Environ 28 800 000 résultats (0,40 secondes)

**Recherche actes de naissance | Entrez un nom, tout simplement**  
 Annonce [www.myheritage.fr/](http://www.myheritage.fr/) ▼  
 Trouvez facilement des **actes de naissance** dans nos archives. Essai gratuit de 14 jours !  
 Recherchez un nom & la technologie fera des découvertes incroyables- Commencez maintenant.  
 12% de réduction. Facile à Utiliser. Site Familial Privé. Des documents historiques.

**Kit ADN de MyHeritage**  
 Seulement 69 € - Prix spécial!  
 Livraison gratuite sur 2+ kits !

**Remontez votre histoire**  
 Vos ancêtres vous attendent.  
 Découvrez-les dans nos données !

**Acte de naissance : demande de copie intégrale ou d'extrait | service ...**  
<https://www.service-public.fr/particuliers/vosdroits/F1427> ▼  
 13 nov. 2018 - Un **acte de naissance** peut donner lieu à la délivrance de 3 documents différents : la  
 copie intégrale, l'extrait avec filiation et l'extrait sans ...

Figure 15 – Google Ads advertisements in response to the query “*actes de naissance*” (birth certificates) (9 May 2019)

Google

carte grise

Tous Images Actualités Maps Vidéos Plus Paramètres Outils

Environ 58 100 000 résultats (0,47 secondes)

**Service Carte Grise en Ligne | Agréé Ministère de l'Intérieur**  
 Annonce [www.demarchescartegrise.com/carte-grise/demarches](http://www.demarchescartegrise.com/carte-grise/demarches) ▼  
 4,6 ★★★★★ avis sur demarchescartegrise.com  
 Changement de Carte Grise en ligne. Sans déplacement en Préfecture. Obtenez la nouvelle cart...

**Changement Propriétaire**  
 Véhicule d'occasion, demandez  
 un changement de propriétaire

**Tarifs et simulation**  
 Selon votre démarche, calculez  
 le coût de votre Carte Grise

**CarteGrise.Com® Site Officiel | Agréé Ministère de l'Intérieur**  
 Annonce [www.cartegrise.com/](http://www.cartegrise.com/) ▼  
 4,6 ★★★★★ avis sur cartegrise.com  
 Faites votre Carte Grise en Ligne. Testé et Approuvé. Expédition à votre domicile en 48h. Comme  
 15000 clients par Mois faites votre Carte Grise en 5Mn avec Cartegrise.com®. Paiement sécurisé.  
 Sans aller en Prefecture. N°1 de la Carte Grise. Réseau Agréé. Carte Grise en 5Min.  
 Faire ma Carte Grise · Changement de Domicile · Prix Carte Grise  
 Changement de titulaire - dès 28,90 € - En 5 min seulement - Plus ▼

**Service de Carte Grise rapide | Carte Grise pas cher en ligne**  
 Annonce [www.cartegrise-siv.fr/Carte-Grise](http://www.cartegrise-siv.fr/Carte-Grise) ▼  
 4,6 ★★★★★ avis sur cartegrise-siv.fr  
 Changement de propriétaire, d'adresse ou demande de duplicata ? Votre Carte Grise en ligne

Figure 16- Google Ads advertisements in response to the query “*carte grise*” (car registration document) (21 March 2019)

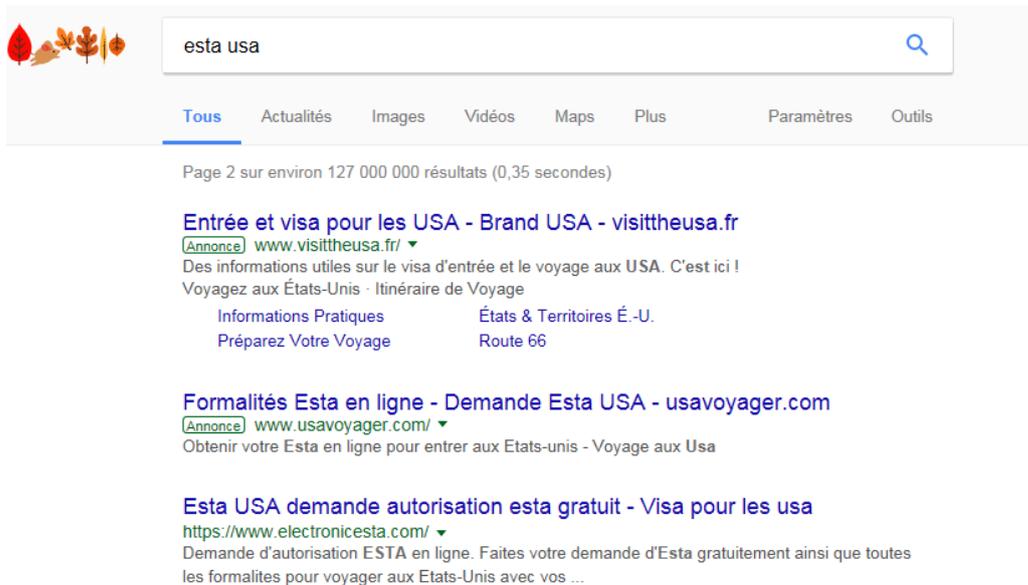


Figure 17- Google Ads advertisements in response to the query “esta usa” (22 September 2017)

247. Google’s behaviour towards advertisers thus appears very ambiguous, and indeed inconsistent. Whereas Google was complaining to some advertisers that they were not applying its Rules correctly, and was suspending accounts for this reason, at the same time it was offering the same advertisers personalised assistance services designed to maximise coverage of internet users searching for keywords corresponding to these sites’ services, through its Google Ads advertising offer. In conclusion, Google’s behaviour, consisting of the definition of the contractual Rules to be respected by advertisers wishing to buy the Google Ads advertising services, and the implementation of those Rules, puts advertisers in a position where they cannot know beyond doubt what is expected of them, and exposes them to arbitrary and unfair exclusion decisions.

## E. STATEMENT OF OBJECTIONS

248. On 30 October 2018, the following Statement of Objections was made:

“An objection is made against Google Inc. (now Google LLC), as perpetrator and parent company, Google Ireland Ltd and Google France, as perpetrators, and Alphabet Inc., as parent company, for abuse of their dominant position in the French online search advertising market by not applying the AdWords Rules in an objective, transparent and non-discriminatory manner.

Google Inc. (now Google LLC) drew up AdWords advertising rules that were not defined in an objective, transparent and non-discriminatory manner.

Google Inc. (now Google LLC), Google Ireland Ltd and Google France applied these rules in a manner that was not objective, transparent and non-discriminatory.

These practices could have effects in particular on:

- the French market in paid weather information services provided by electronic means;
- the French market in paid services providing legal and financial information about companies by electronic means;

- the French market in paid telephone directory enquiries services provided by electronic means;
- the French market selling online advertising space.

These practices, which violate Article L.420-2 of the French Code of Commercial Law (*Code de Commerce*) and Article 102 of the TFEU, have been engaged in since 2012 and are still engaged in today.

This Statement of Objections, drawn up in accordance with Article L. 463-2 of the French Code of Commercial Law, gives Alphabet Inc., Google Inc. (now Google LLC), Google Ireland Ltd and Google France, and the representative of the Minister of the Economy a period of two months to view the case file at the offices of the *Autorité de la concurrence* and to submit their observations”.

## II. Discussion

### A. PROCEDURE

249. Google contends that the Investigation Services, at the report stage, arbitrarily and unfairly included elements from a separate procedure concerning Amadeus for which an investigation into the merits is currently in progress<sup>272</sup>, and which gave rise to a decision ordering urgent interim measures on 31 January 2019<sup>273</sup>, for the most part upheld by the Paris Court of Appeal on 4 April 2019<sup>274</sup>.
250. Google considers that the Statement of Objections does not contain any further developments concerning the company Amadeus and criticises the Investigation Services for sending two information requests to Amadeus after the Statement of Objections was received, which enabled more than 2,800 classification marks from the Amadeus procedure to be added to the case. Google also notes that the report devotes several paragraphs to Amadeus' particular situation and mentions several times the interim measures decision of 31 January 2019 and the ruling of the Paris Court of Appeal of 4 April 2019.
251. Google concludes from this that the Investigation Services at the report stage had made a “*de facto* link” between the Gibmedia procedure 15/00019F and the Amadeus procedure 18/0047F and states that it reserves all rights as regards the rules of procedure before the *Autorité*, rights of defence and the adversarial principle<sup>275</sup>.
252. However, the *Autorité* has already recalled that, although the *inter partes* phase of the procedure provided for by Article L. 463-1 of the French Code of Commercial Law begins with the sending of the Statement of Objections, this does not preclude the Investigation Services from adding new documents to the case after it has been sent. “The Statement of Objections, which starts the *inter partes* phase of the procedure, does not bring an end to the investigation and does not prohibit the production of new documents in accordance with the requirements of Article 18 of the Ordinance of 1 December 1986 [current Article L. 463-1 of the French Code of Commercial Law]”<sup>276</sup>.
253. Regarding the documents submitted to the parties by the Investigation Services after the first Statement of Objections, the Paris Court of Appeal also judged that their addition to the case file did not breach the rights of defence if all the interested parties were able to consult the case file and present their observations on the subject. “Where items of evidence thus collected have been made available for consultation by the companies in question, which have been able to discuss freely their probative value and put forward their own evidence and arguments against them and present their own observations, neither the origin nor the nature of the documents on which the Statements of Objections are based, nor the plurality of these Statements of Objections in themselves constitute an attack on the adversarial principle, or rights of defence, or the right of the parties to a fair trial”<sup>277</sup>.

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<sup>272</sup>Classification mark 15976, Referral 15/0019F.

<sup>273</sup> Decision 19-MC-01 of 31 January 2019 on a request by Amadeus for interim measures.

<sup>274</sup>Judgment of the Paris Court of Appeal of 4 April 2019, *Amadeus*, 19/03274.

<sup>275</sup>Classification marks 15976 and 15977, Referral 15/0019F.

<sup>276</sup> Decision 94-D-19 of the *Conseil de la concurrence* of 15 March 1994 on competition in the removals sector in Bordeaux, p. 11. See also the ruling of the Paris Court of Appeal of 20 November 2014, 2012/06826, page 22.

<sup>277</sup>Judgment of the Paris Court of Appeal of 24 June 2008, *Société France Travaux et al.*, 2006/06913, p. 18.

254. In the feed meal case, the *Cour de Cassation* (French Supreme Court) ruled that rights of defence were not violated by the addition to the case of new documents sent by the German competition authority after the Statement of Objections had been sent, provided that these documents did not reveal any new practices and did not change either the scope or extent of the objections themselves<sup>278</sup>.
255. Consequently, since the new documents do not *de facto* alter the objections stated, the addition of new documents to the case does not violate any rights of defence, provided that the accused have been able to access the case file and submit observations on the documents in question<sup>279</sup>.
256. In the context of this procedure, the Statement of Objections criticises Google for “abusing [its] dominant position in the French online search advertising market by not implementing the AdWords rules in an objective, transparent and non-discriminatory manner”, and states that these practices have in particular had effects “on the French market in paid directory enquiries services provided by electronic means”.
257. The Statement of Objections makes express reference to the company Amadeus and its 118001.fr website in its analysis of the effects of Google’s practices<sup>280</sup>. For its part Google, in its observations in response to the Statement of Objections, mentions the suspension of Amadeus’ account to contest the existence of anticompetitive effects of its practices<sup>281</sup> and identifies the website 118001.fr as a direct competitor of Gibmedia in the directories sector<sup>282</sup>.
258. In the light of these facts, the documents sent by Amadeus in response to the requests for information by the Investigation Services, which include all of its exchanges with Google about the Google Ads service, particularly those related to the suspension of its account, do not refer to any new practices and do not extend or alter the objections submitted to Google in the context of this procedure.
259. Moreover, the documents submitted by Amadeus were made known to Google at the report stage. Google therefore had a two-month period in which to submit its observations on these documents, in accordance with Article L. 463-2 of the French Code of Commercial Law.
260. Finally, adding documents forwarded by Amadeus in the context of this procedure to the case file does not link it to procedure 18/0047F, which remains separate and is still at the investigation state.
261. Consequently, adding to the case the documents forwarded by Amadeus in the context of this procedure does not harm Google’s rights of defence.

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<sup>278</sup>Judgment of the *Cour de Cassation* of 4 October 2017, 1355 F S-D.

<sup>279</sup>Decision 06-D-04 of the *Conseil de la concurrence* of 13 March 2006 on practices in the luxury perfumes sector, paragraph 417.

<sup>280</sup>Statement of Objections, paragraphs 654 and 655 (classification marks 11186 and 11187, Referral 15/0019F).

<sup>281</sup>Classification mark 11424, Referral 15/0019F.

<sup>282</sup>Classification mark 12240, Referral 15/0019F.

## **B. APPLICABILITY OF EU LAW**

262. The Statement of Objections was made on the dual basis of Article L. 420-2 of the French Code of Commercial Law and Article 102 of the Treaty on the Functioning of the European Union (hereinafter “TFEU”).
263. Article 102 TFEU provides that “any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States”.
264. In its guidelines on the effect on trade concept (OJEU 2004 C 101, p. 81), the European Commission states that Articles 81 and 82 of the EC Treaty, now Articles 101 and 102 TFEU, apply to horizontal and vertical agreements, as well as to abusive practices by undertakings which are “capable of affecting trade between Member States”, and can be held to do so “appreciably”.
265. In paragraph 93 of its guidelines, the Commission says that: “where an undertaking, which holds a dominant position covering the whole of a Member State, engages in exclusionary abuses, trade between Member States is normally capable of being affected”.
266. The Commission states, in paragraph 96 of the guidelines, that “any abuse which makes it more difficult to enter the national market should therefore be considered to appreciably affect trade”.
267. In the case in question, the reported practices cover at least the whole of France, since Google sells its services throughout the whole of France, and the practices can make it more difficult to enter the market in publishing and selling services by electronic means.
268. Consequently, Google’s practices are capable of affecting trade between Member States appreciably and are covered by Article 102 TFEU. Google has not contested this either in its response to the Statement of Objections or its response to the report.

## **C. VALIDITY OF THE OBJECTIONS**

### **1. DEFINITION OF THE MARKET**

#### **a) Principles**

269. The application of Articles L. 420-2 of the French Code of Commercial Law and Article 102 TFEU, which prohibit abusive practices, first requires the definition of the relevant markets in which the undertaking in question has a dominant position. As regards abuse of a dominant position “the proper definition of the relevant market is a necessary precondition for any judgment as to allegedly anti-competitive behaviour, since, before an abuse of a dominant position is ascertained, it is necessary to establish the existence of a dominant position in a given market, which presupposes that such a market has already been defined”<sup>283</sup>.

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<sup>283</sup>Judgment of the Court of First Instance of 6 July 2000, *Volkswagen AG v Commission*, T-62/98, paragraph 230.

270. In its Notice on the definition of relevant market for the purposes of Community competition law of 9 December 1997 (hereinafter “Commission notice on the definition of relevant market”), the Commission states that “a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products’ characteristics, their prices and their intended use”. Substitutability is generally assessed in terms of demand substitutability, “the most immediate and effective disciplinary force on the suppliers of a given product, in particular in relation to their pricing decisions”, but it can also take account of supply substitutability.
271. In the same document, the Commission also defines the market geographically, specifying that “the relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas”.
272. In France, the *Autorité* has said that “the market, within the meaning of competition law, is defined as the meeting place of supply and demand for a specific product or service. [...] Perfect substitutability between products and services is rarely seen; the *Conseil* regards as substitutable and on the same market products or services for which it could reasonably be said that those on the demand side view them as alternatives to choose between in order to meet the same demand”<sup>284</sup>.

#### **b) The online search advertising market**

273. The *Autorité*’s decision-making practice draws a distinction between the offline advertising market and the online advertising market and, within the online market, distinguishes between online advertising linked to searches and other forms of online advertising<sup>285</sup>.
274. In its Google/AdSense decision of 20 March 2019<sup>286</sup>, the Commission confirmed the relevance of this segmentation by taking the view that a national online search advertising market does exist.

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<sup>284</sup> See in particular Decision 10-D-19 of 24 June 2010 on practices in the markets for gas supply, heating installations and management of heating and collective heating networks, paragraphs 158-159; Decision 10-D-13 of 15 April 2010 on practices in the container handling sector at the port of Le Havre, paragraph 220; Judgment of the Paris Court of Appeal of 20 January 2011, *Perrigault*, 2010/08165.

<sup>285</sup> Decision 10-MC-01 of 30 June 2010 on the request by Navx for interim measures, paragraphs 123 et seq.; Decision 15-D-13 of 9 September 2015 on the request by Gibmedia for interim measures, paragraphs 56 to 63; Opinion 10-A-29 of 14 December 2010 on competition in online advertising, paragraphs 111 et seq.; Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector; Commission Decision of 21 December 2016, *Verizon v Yahoo*, M.8180, paragraph 25; Commission Decision of 3 October 2014, *Facebook v WhatsApp*, M.7217 paragraphs 75 and 79; Commission Decision of 18 February 2010, *Microsoft v Yahoo! Search Business*, M.5727, paragraph 61; Commission Decision of 11 March 2008, *Google v DoubleClick*, M.4731, paragraphs 45, 46 and 51.

<sup>286</sup> Commission Decision of 20 March 2019 on the application of Article 102 of the Treaty on the Functioning of the European Union and Article 54 of the EEA Agreement, AT.40411 – *Google Search (AdSense)*, paragraph 137. Google has appealed against this decision to the General Court.

## *Material scope*

### *Online and offline advertising markets*

275. The *Autorité* and the Commission have until now considered that online advertising is a separate market from other forms of advertising<sup>287</sup>, particularly television advertising<sup>288</sup>.
276. In its opinion on data processing in the online advertising sector of 6 March 2018<sup>289</sup>, the *Autorité de la concurrence* found that competition conditions in the television and online advertising markets were still significantly different. The barriers to entry into the television advertising market are different and greater than in the sector for the publishing and sale of online advertising. Moreover, whereas publishing of online services is characterised by a wide diversity of stakeholders and services, publishing of television services is a much more homogeneous sector.
277. In a more recent opinion on the audiovisual sector, however, the *Autorité* found growing convergence between advertising in the form of online videos and advertising on television channels' websites, caused by porosity between the online and offline advertising markets<sup>290</sup>. The *Autorité* found that, "although the distinction between the television advertising market and the online advertising market continues to exist today, in particular due to the regulatory framework, there is nevertheless a growing convergence between the two markets, illustrated in particular by the marked development of online video advertising and the broadcasting, on channels' websites, of advertisements as part of catch-up television services, which have similar characteristics to online advertising in terms of format, pricing and regulation".
278. This finding does not, however, concern the online search advertising offer.
279. The *Autorité* considers that market segmentation between online and offline advertising, which is not contested by Google in the context of this procedure, can be maintained in this case.

### *The different online advertising markets*

280. In its 2010 opinion on competition in the online advertising sector, the *Autorité* considered in particular that "at present, online search advertising and display advertising still meet essentially different needs of advertisers"<sup>291</sup>. In its opinion of 6 March 2018 on data processing in the online advertising sector, the *Autorité* did not identify any changes liable to alter these findings<sup>292</sup>. In the responses to the *Autorité*'s consultation, many stakeholders submitted observations on the differences between the two categories of online advertising. According to one advertiser, online search advertising "provides certainty that internet users are being offered content relevant to them. The advantage is that the advertiser is not pushing the content, but in a way the internet users are choosing the content and the

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<sup>287</sup>Decision M.8180, *Verizon v Yahoo*, 21/12/2016, paragraph 25; Decision M.7217 – *Facebook/WhatsApp*, 03/10/2014, paragraphs 75 and 79; Decision M.5727, *Microsoft /Yahoo! Search Business*, 18/02/2010, paragraph 61; Decision M.4731, *Google/DoubleClick* of 11 March 2008, paragraphs 45, 46 and 51. Opinion of the *Autorité de la concurrence* of 14 December 2010, 10-A-29, on competition in online advertising, paragraphs 111 et seq.; Decision of 30 June 2010, *Navx*, 10-MC-01 on the request by Navx for interim measures, paragraphs 123 et seq.

<sup>288</sup> See in particular Decision 10-DCC-11 of 26 January 2010 on the acquisition of sole control of NT1 and Monte-Carlo Participations by the TF1 group.

<sup>289</sup>Paragraph 173, Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector.

<sup>290</sup>Opinion 19-A-04 of 21 February 2019, paragraphs 197 et seq.

<sup>291</sup>Opinion 10-A-29 of 14 December 2010 on competition in online advertising, paragraph 150.

<sup>292</sup>Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector.

offering they want to be informed about”. According to this analysis, internet users expect to see the responses displayed immediately after they enter a query, and the sponsored links appear among or alongside the directly solicited responses, which is less the case with other forms of advertising. The targeting of other forms of advertising, including on social networking sites, is not so precise in terms of the ad’s subject and the moment when it is displayed. According to another advertiser, “search engines have an important place in a company’s strategy. They can reach a population actively searching for information. Online search advertising is therefore an effective online advertising tool and generally delivers a higher return on investment than other types of online advertising”<sup>293</sup>.

281. At European level, while leaving the question open, the Commission considered in 2014 that: “The market investigation also supported to a large extent the existence of a further sub-segmentation of the online advertising market between search and non-search advertising. Indeed, the majority of the advertisers who took part in the market investigation considered that search and non-search ads are not substitutable as they serve different purposes (for search ads, mainly generating direct user traffic to the merchant's website, while, for non-search ads, mainly building brand awareness) and, as a result, most advertisers would not be likely to switch from one type to another in the event of a 5 to 10% price increase. Similarly, the majority of the competitors who took part in the market investigation submitted that search and non-search ads are not substitutable from an advertiser's point of view”<sup>294</sup>.
282. In its decision on the request by Gibmedia for interim measures, the *Autorité* considered that “online search advertising remains likely to be a relevant market, separate from other forms of online advertising”<sup>295</sup>.
283. The investigation into the merits confirmed the relevance of this market segmentation. The degree of substitutability between online search advertising and other forms of online advertising does not appear sufficient to conclude that they belong to the same relevant market.
284. Firstly, online search advertising is distinct from other forms of online advertising. It is based on an active search by the internet user, who requests links in response to a query. The search engine provides both natural links given by the search engine’s algorithms (natural referencing) and ads (resulting from an auction between advertisers) (see paragraph 25).

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<sup>293</sup>Ibid, paragraph 179.

<sup>294</sup> Commission Decision of 3 October 2014, Facebook/WhatsApp, M.7217, paragraph 76: “The market investigation also supported to a large extent the existence of a further sub-segmentation of the online advertising market between search and non-search advertising. Indeed, the majority of the advertisers who took part in the market investigation considered that search and non-search ads are not substitutable as they serve different purposes (for search ads, mainly generating direct user traffic to the merchant's website, while, for non-search ads, mainly building brand awareness) and, as a result, most advertisers would not be likely to switch from one type to another in the event of a 5-10% price increase. Similarly, the majority of the competitors who took part in the market investigation submitted that search and non-search ads are not substitutable from an advertiser's point of view”.

<sup>295</sup>Decision 15-D-13 of 9 September 2015 on a request by Gibmedia for interim measures, paragraphs 56 to 63.

285. During an active search, internet users reveal some of their preferences, and they therefore constitute a particularly valuable target for advertisers.
286. Online search advertising can thus target prospects very close to the act of purchasing, unlike other types of (online or offline) advertising, which are aimed more at creating interest in a brand or product further ahead of the act of purchasing.
287. In this regard, Microsoft considers that “advertising associated with searches enables ads to be targeted in line with the real-time expression of a consumer’s interest revealed by their search query. It is a key distinguishing factor between search advertising and all other forms of online advertising and produces a higher level of monetisation than other online advertising formats”<sup>296</sup>.
288. The objectives of online advertising and display advertising are therefore different. Advertisers use the commercial links on search engines when they want to generate online purchases immediately. They use “display” techniques when they are aiming primarily to develop their brand image and reputation (branding).
289. Secondly, online search advertising has particular features in terms of format. It is mainly in the form of text. It has significant similarities to natural links, reducing consumers’ vigilance about which type of link they are using (commercial or “natural”). This presentation means that there is less need for ad design in the online search advertising sector. This explains why this type of advertising is less costly to produce than other types of online advertising, such as video advertising.
290. Thirdly, the degree of substitutability between search advertising and other forms of online advertising is also limited from the point of view of the suppliers. Entry into the online search advertising market requires the prior development of a general search engine, significant investment in technologies dedicated to the provision of search advertising, and access to data sets that optimise content referencing.
291. Google’s dominant position in the French search engine market, with a market share constantly above 90% and significant barriers to entry, should therefore be noted<sup>297</sup>.
292. In its observations in response to the Statement of Objections, Google argues that online search and non-search advertising form just one market, on the grounds that:
- i) both can be used for precise targeting because of innovations in online advertising in terms of ad retargeting and behavioural predictions<sup>298</sup>;
  - ii) search and non-search advertising use broadly similar formats;
  - iii) the differences in market structure are due solely to supply substitutability and are not relevant when assessing demand substitutability;
  - iv) account should be taken of recent decisions confirming that search and non-search advertising compete with one another.

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<sup>296</sup>Classification mark 3658, Referral 15/0019F.

<sup>297</sup>Commission Decision of 27 June 2017, *Google Search (Shopping)*, AT.39740, paragraphs 271 to 330. Google has appealed against the decision to the General Court.

<sup>298</sup>Classification mark 11441, Referral 15/0019F.

293. Regarding the argument in i), although other forms of online advertising offer better targeting features, particularly through contextual or behavioural ads and ads on social networks, they cannot target ads as precisely as online search advertising.
294. Regarding contextual and behavioural advertising, and advertising targeted to an internet user's social networking profile, analysing the content of the pages they have viewed, their browsing history, and social media reveals the focus of the internet user's interests, but not an immediate need revealed by an active search with a keyword. There is no demand expressed by the internet user at a specific moment, and the ad content may not correspond to the internet user's true current interests when they view a website. These advertisements are therefore less likely to be converted into purchases.
295. Regarding the argument about formats in ii), Google gave several examples of search-related ads enriched with a photo to substantiate its comment. However, these isolated examples are not enough to invalidate the finding that search-related ads mostly consist essentially of text. In its Google/AdSense decision of 20 March 2019<sup>299</sup>, the Commission states on this subject that online search advertising is different from other forms of online advertising in that, generally, it consists solely of text and its production cost is much lower than that of other forms of online advertising requiring enriched graphic formats.
296. Regarding the argument about market structure in iii), an analysis of the degree of supply substitutability is indeed a pertinent criterion for defining relevant markets, in addition to an analysis of demand substitutability. Paragraph 20 of the Commission notice on the definition of relevant market specifies in this respect that supply substitutability may have equivalent effects to demand substitutability in terms of effectiveness and immediacy. For supply substitutability to be taken into account, suppliers must be able to switch production easily towards substitute products, and to market them in the short term without incurring significant additional costs or risks in response to small and permanent changes in price.
297. In the case in question, as stated above, search and non-search ads are not demand substitutable (see paragraphs 284 et seq.) and their degree of supply substitutability (see paragraph 290) is not sufficient to be able to define a single online advertising market.
298. Lastly, regarding the argument about the failure to take account of the recent decision-making practices of the French and national authorities, mentioned in iv), the *Autorité* bases its analysis on the objective factual considerations set out in paragraphs 284 et seq. In any case, the most relevant decision-making practice supports the market definition used here. Google refers to the aforementioned Opinion of 14 December 2010 which stated that the online advertising market was dynamic and changing rapidly<sup>300</sup> and to the Commission's Google/DoubleClick decision of 11 March 2008 and Microsoft/Yahoo decision of 18 February 2010 which state that online advertising has been characterised by a degree of convergence between formats<sup>301</sup>. However, these opinions and decisions were delivered before the Commission Facebook/WhatsApp decision of 3 October 2014 which, although it did not settle the issue definitively, highlighted the relevance of market segmentation between search and non-search advertising, based in particular on a market investigation conducted among customers and competitors of Facebook (see paragraph

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<sup>299</sup>Commission Decision of 20 March 2019 on the application of Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement, AT.40411 – *Google Search (AdSense)*, paragraph 137. Google has appealed against this decision to the General Court.

<sup>300</sup>Opinion 10-A-29 of 14 December 2010 on competition in online advertising, paragraph 108.

<sup>301</sup>Commission Decision of 11 March 2008. Google/DoubleClick, M.4731, paragraph 52; Commission Decision of 18 February 2010, Microsoft/Yahoo! Search Business, M.5727, paragraph 74.

281). The Commission's Google/AdSense decision of 20 March 2019 confirmed the definition of an online search advertising market that was separate from other advertising markets<sup>302</sup>.

### ***Geographic dimension***

299. The online search advertising market is national.
300. Firstly, online search ads are textual and written in different languages. Similarly, certain keywords that advertisers bid for generally depend on the language of the country where the services are provided. In the case of searches in English, the Google Ads service may display relevant ads based on the country where the search was made. So although search engines are accessible from all countries, Google has developed national versions of its Google Search service on which the Google Ads advertisements are run.
301. Google has also set up a sales organisation that takes into account specific national details. For example, there is a Google team dedicated to advertising for the French market<sup>303</sup> responsible for French small and medium-sized businesses, and networks of Google Ads partners organised into geographical areas. Finally, the online advertising sector is generally regulated by legal frameworks that are wholly or partly national.

### ***Conclusion***

302. In conclusion, the relevant market in which the practices mentioned in this decision were engaged in is the French online search advertising market.

## **2. GOOGLE'S DOMINANCE AND PARTICULAR RESPONSIBILITY**

### **a) Google's dominant position**

303. A dominant position is defined as "a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers"<sup>304</sup>.
304. The existence of a dominant position may derive from several factors which, taken separately, are not necessarily determinative<sup>305</sup>. Among these factors, a highly important one is the existence of very large market shares<sup>306</sup>.
305. It is thus settled case-law that very large market shares are in themselves, and save in exceptional circumstances, evidence of the existence of a dominant position. According to ECJ case-law, a 50% market share is in itself, and save in exceptional circumstances, evidence of the existence of a dominant position<sup>307</sup>.

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<sup>302</sup>Commission Decision of 20 March 2019 on the application of Article 102 of the TFEU and Article 54 of the EEA Agreement, AT.40411 – *Google Search (AdSense)*. Google has appealed against this decision to the General Court.

<sup>303</sup>Classification mark 1734, Referral 15/0019F.

<sup>304</sup>Judgment of the Court of 14 February 1978, *United Brands Company and United Brands Continentaal BV v Commission*, 27/76, paragraph 65.

<sup>305</sup>*Ibid*, paragraph 72.

<sup>306</sup>Judgment of the Court of 12 December 1991, *Hilti v Commission*, T-30/89, paragraph 90; and judgment of the Court of 25 June 2010, *Imperial Chemical Industries v Commission*, T-66/01, paragraphs 255 and 256.

<sup>307</sup>Judgment of the Court of 3 July 1991, *AKZO v Commission*, C-62/86, EC Rep. P. I-3359, paragraph 60.

306. Aside from the size of market share of the undertaking in question, account should also be taken of the ratio between the market shares of the undertaking concerned and its competitors. An undertaking which has a very large market share and holds it for some time, because of the volume of production and the scale of supply which it represents – in a situation where those with much smaller market shares cannot rapidly meet the demand from those who would like to break away from the undertaking with the largest market share – is, by virtue of that share, in a position of strength, which makes it an unavoidable trading partner and consequently secures for it, at the very least during relatively long periods, the freedom of action which is the special feature of a dominant position<sup>308</sup>.
307. In the case of recent and fast-growing sectors characterised by short innovation cycles and a dynamic context, the Court of First Instance considered that large market shares are not necessarily indicative of market power<sup>309</sup>. On the other hand, the high market shares criterion remains relevant in fast-growing markets that do not show signs of instability during the period at issue and where a stable hierarchy is established<sup>310</sup>.
308. Indicators other than market share are also taken into account when determining a dominant position. The existence of barriers to entry or barriers to expansion and the compensatory purchasing power of customers are worthy of particular mention<sup>311</sup>.
309. In the case in question, over the whole period of the practices, Google had a dominant position in the online search advertising market. Its market shares were very large, while its competitors' market shares remained very small (a). Google's dominant position is confirmed by the existence of high barriers to entry into the online search advertising market (b).

### *Google's market shares*

310. Google provided an estimate of its shares of the online search advertising market in France by value. The total estimate for the size of this market is based on two external sources, the annual reports of the Interactive Advertising Bureau (IAB) and the "Search Engine Marketing" reports by Jupiter/Forrester. Google then calculated its own revenues in France based on the advertiser's billing address.
311. Google provided an estimate of its market shares as gross revenues and revenues net of traffic acquisition costs (TAC) for 2014 and 2015<sup>312</sup>. This estimate is shown in the table below.

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<sup>308</sup>Judgment of the Court of 13 February 1979, *Hoffmann-La Roche v Commission*, 85/76, paragraph 41; Judgment of the Court of First Instance, *Van den Bergh Foods v Commission*, T-65/98, paragraph 154; Judgment of the General Court of 25 June 2010, *Imperial Chemical Industries v Commission*, T-66/01, paragraph 256; Judgment of the Court of First Instance of 30 January 2007, *France Télécom v Commission*, T-340/03, paragraph 100.

<sup>309</sup>Judgment of the General Court of 11 December 2013, *Cisco Systems, Inc. and Messagenet SpA v European Commission*, T-79/12, paragraph 69.

<sup>310</sup>Judgment of the Court of First Instance of 30 January 2007, *France Telecom v Commission*, T-340/03, paragraphs 107 and 108.

<sup>311</sup>Judgment of the Court of First Instance of 7 October 1999, *Irish Sugar v Commission*, T-228/97, paragraphs 97-104.

<sup>312</sup>Classification mark 3838, Referral 15/0019F.

Figure/Table 18 – Google’s shares of the online search advertising market in France by value

	2014	2015
<b>Net revenues (excluding TAC)</b>	[70 – 80]%	[80 – 90]%
<b>Gross revenues</b>	[70 – 80]%	[80 – 90]%

Source: RBB analysis based on Google’s revenues and the segment size supplied by the IAB

312. Google’s leading competitor Microsoft, which operates the Bing search engine, has a market share of less than 5% in France, ten times smaller than Google’s. In 2015, the combined revenue in France of Yahoo<sup>313</sup> and Microsoft<sup>314</sup> for online search advertising was no more than €[...] million, whereas Google’s revenue was €[...] million<sup>315</sup>. In the light of these comparative revenues in a market with only these three players, Google has a market share of around [90–100]%, and consequently the analysis in the above table probably underestimates Google’s true market power. This market share is more in step with the market share by volume of Google’s search engine as reported below (see paragraph 313). Indeed, using the search engine is the trigger for online search advertising.
313. The hypothesis that another search engine might in the near future generate substantial revenue in France in the online search advertising market seems highly unlikely. In 2015, fewer than 2% of searches in France were done using search engines other than Google Search, Bing or Yahoo Search. In 2016, Google accounted for approximately 90.6% of searches, compared to 5.2% and 2.5% for Bing and Yahoo Search respectively. The MSN (linked to Bing) and DuckDuckGo search engines generated 0.9% and 0.6% of queries respectively<sup>316</sup>. The graph below illustrates the stability and size of Google’s position with regard to searches in France in 2016 (see also paragraph 291 above).

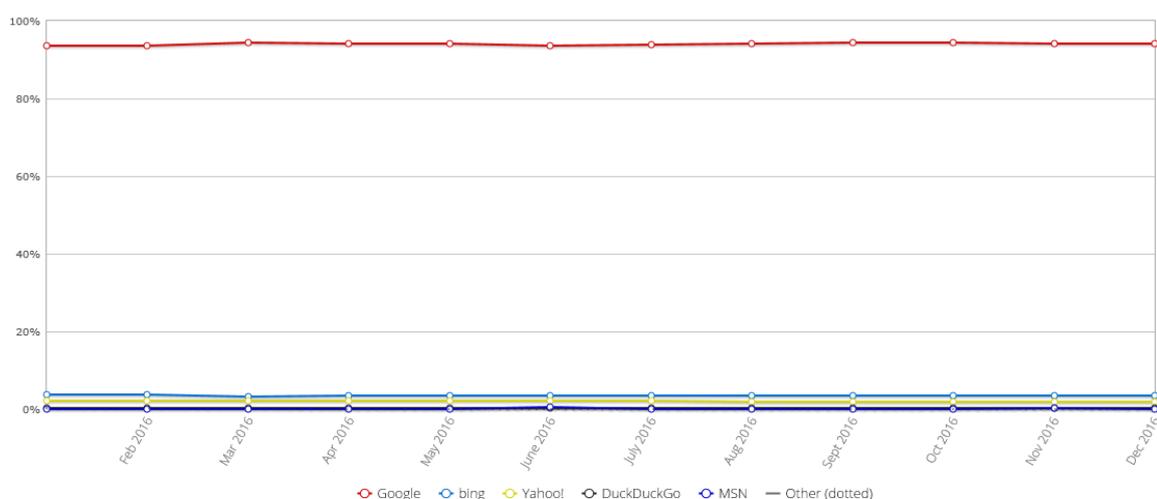
<sup>313</sup>Classification marks 2535(VC) and 2541(VNC), Referral 15/0019F.

<sup>314</sup>Classification marks 3659 (VC) and 10221 (VNC), Referral 15/0019F.

<sup>315</sup>Classification mark 3838, Referral 15/0019F.

<sup>316</sup><http://gs.statcounter.com/search-engine-markset-share/all/france/2016>

Figure 19 – Comparison of the positions of search engine operators in France in 2016



Source: Statcounter

314. Google argues that market share cannot be used to establish the existence of a dominant position in the case of dynamic and fast-changing industries. Google adds that Facebook is its most significant competitor and also mentions Amazon as the fastest-growing competitor in the online advertising market.
315. However, it is not relevant to take the advertising revenue of Facebook and Amazon into account when calculating Google's market shares. These companies are not operating a general search engine and are not present in the online search advertising market (the Commission excluded social networking sites and merchant platforms from the relevant market in its *Google Search (Shopping)* decision<sup>317</sup>).
316. In accordance with settled case-law on the matter, the fact that Google holds very large market shares in the online search advertising market and the stability of these market shares is therefore a clear indicator of its dominant position. This all the more true given that there has been significant growth in the market in the period in question (approximately 16% according to Google)<sup>318</sup>.

<sup>317</sup>Decision of 27 June 2017, *Google Search (Shopping)*, AT.39740, paragraphs 178 to 183 and 216 et seq. Google has appealed against the decision to the General Court (European Union).

<sup>318</sup>Google's observations in response to the Statement of Objections, paragraph 365

### *The existence of high barriers to entry*

317. Google's position is strengthened by the fact that the online search advertising market is characterised by significant barriers to entry.
318. To become a supplier in its own right of online search advertising services, a new entrant must make significant investment in terms of capital and time, in several areas<sup>319</sup>:
- the development, maintenance and refinement of a general search engine. The Commission's *Google Search (Shopping)* decision notes in this regard that the barriers to entry and expansion are significant (paragraphs 285 to 305 of the *Google Search (Shopping)* decision). For example, no new search engine has succeeded since search engines were launched in developing more than a 1% market share (paragraphs 302 to 305 of the *Google Search (Shopping)* decision);
  - the development of a technology for linking internet users' queries with relevant ads. A technology of this kind relies not only on the development of algorithms but also on databases populated with users' search behaviour. Having this technology and databases of past searches generates significant scale effects (see, for example, paragraphs 287 and 288 of the *Google Search (Shopping)* decision);
  - the design of a real-time auction system: because of the limited advertising space available on a web page, online search advertising suppliers must be able to select and run the most relevant online search ads for a given query. An auction mechanism seems to be the best way of doing this profitably and effectively; and
  - a general system of rules governing interactions between users and advertisers, in particular including a fraud detection system.
319. The barriers to entry are also due to the existence of significant network effects between the online search advertising service and the use of the general search engine service. The more numerous and diverse the users of a search engine are, the greater the capacity to target audiences and the greater the probability that an ad will be relevant and therefore "clicked on" (see paragraph 25).
320. In view of Google's very significant position in terms of online search services in France (more than 90% of queries, as stated above in paragraph 313) and the fact that this activity is highly interdependent with the provision of online search advertising services, Google has a competitive advantage that would be difficult for a new entrant to match. The fact that a company the size of Microsoft has not been able to challenge Google's position in the online search advertising market in France shows how difficult it would be for a new entrant to develop in this market.

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<sup>319</sup>Statement of Objections, paragraphs 431 and 432 (classification marks 10887 and 10888, Referral 15/0019F).

## ***Conclusion***

321. Google therefore has a very dominant position in the online search advertising market. This dominant position presents in many respects the “extraordinary” aspects identified by the Commission in the Microsoft case<sup>320</sup>. The position held by Google with a market share probably of more than 90% in France (see paragraph 312) and significant barriers to entry into the online search advertising market is intrinsically linked to its position in the online search engines market. In the *Google Search (Shopping)* case, the Commission found that Google's market share in the search engines market was always above 90% between 2008 and 2016<sup>321</sup>; the barriers to entry are very high in this market and rely in particular on network effects between users and advertisers<sup>322</sup>. Because of these advantages, the Rules become the “*de facto* standard” for advertisers wishing to buy online search advertising services in France, since other players offering this type of advertising have a market share in France that is more than 10 times smaller than Google’s.

### **b) Google’s responsibility**

#### ***The principle of special responsibility of dominant companies***

322. According to settled case-law, if a company is in a dominant position, it has special responsibility for ensuring effective, undistorted competition is not harmed by its behaviour<sup>323</sup>. Dominant companies thus have a special responsibility in the market, which means they may be prohibited from engaging in certain behaviours that, if carried out by other companies, would be part of the normal functioning of competition in the market.

323. Unlawful behaviour by a dominant company consists of abusing that position in a market where the degree of competition is already weakened precisely because of its presence. Through recourse to methods different from those governing normal competition between commercial operators, abuses consist of or have the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition<sup>324</sup>.

#### ***Concrete assessment of the extent of Google’s responsibility***

##### *Assessment of Google’s responsibility*

324. The extent of a dominant company’s responsibility is assessed in practice by looking at the particular circumstances of each case.

325. The level of dominance is a particular criterion for assessing the company’s responsibility. The less opportunity the customers of a dominant company have to obtain equivalent alternative services to those offered by the dominant company, the more the company is

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<sup>320</sup>Commission Decision of 24 March 2004, *Microsoft*, COMP/C-3/37, paragraphs 429, 472 and 560; Judgment of the Court of First Instance of 17 September 2007, T-201/04, paragraph 387. The term “extraordinaire” is undoubtedly a literal translation of “extraordinary” which would probably be better rendered in French by “exceptionnel”.

<sup>321</sup>Decision of 27 June 2017, *Google Search (Shopping)*, AT.39740. See Table 3, which shows that Google’s lowest market share in France between 2008 and 2016 was 92.8%.

<sup>322</sup>Decision of 27 June 2017, *Google Search (Shopping)*, AT.39740, paragraphs 292 et seq.

<sup>323</sup>Judgment of the Court of 13 February 1979, *Hoffmann-La Roche v Commission*, 85/76; Judgment of the Court of 9 November 1983, *Michelin v Commission*, 322/81, paragraph 57, Judgment of the Court of 2 April 2009, *France Télécom v Commission*, C-202/07 P, paragraph 105, and Judgment of the Court of First Instance of 7 October 1999, *Irish Sugar v Commission*, T-228/97, paragraph 112.

<sup>324</sup>Judgment of the Court of Justice of 17 February 2011, *TeliaSonera*, C-52/09, and the case-law cited.

able to abuse its position, and this ability increases the responsibility it has towards its competitors, customers and consumers.

326. In the case in question, various circumstances lead to the conclusion that Google's responsibility towards its commercial partners, which buy its Google Ads advertising services, is particularly great.
327. Firstly, the result of Google's dominance, whether this is expressed in terms of market share (very large and stable), growth of Google Ads (continuous and sustained), or barriers to entry (high and linked particularly to its dominant position in the search engines market), is that advertisers wishing to buy online search advertising can practically not find any alternatives to Google Ads.
328. But above all, this dominance benefits from strong dynamics that make the Google Ads services particularly attractive to advertisers. The more searches are made by internet users, the better Google's search engine performs (see paragraph 319). Increasing the number of searchers increases the search engine's attractiveness to internet users, but also to advertisers who have an interest in their ads reaching a very large audience. This power of attraction and accumulation increases the importance of the Google Ads services for advertisers and mechanistically guarantees constant growth for Google.
329. The Rules governing advertisers' eligibility and behaviour have the function of "regulating" those advertisers. They seek to ensure the search engine is as attractive as possible both for users and for advertisers. In other words, they ensure the interaction between advertisers and users via the search engine functions optimally, from the point of view of the profitability of Google's business.
330. The conjunction of these two factors – Google's attractiveness and its regulatory power over advertisers – increases its market power beyond that of just a dominant operator that can act independently of its competitors, its customers and ultimately its consumers, because of its large share of a particular market. Google is not only able to act autonomously in the market to serve its own interests, but can also guide advertisers' business models, restrict their entrepreneurial freedom, and ultimately influence the quality and diversity of the offer available to internet users.
331. Because of Google's market power in the online search advertising market, the inconsistent and random implementation of the Rules is likely to disrupt the online search advertising market in which Google operates, but also the downstream markets in which the advertisers are active. This disruption of the downstream markets could firstly harm users' interests by exposing them to potentially abusive behaviours by sites that would have been suspended from Google Ads if the Rules had been correctly applied. The random and inconsistent implementation of the Rules can also influence the way advertisers construct their business models. They may, for example, be dissuaded from offering certain potentially innovative services to internet users in case the services are prohibited by the Rules, even if they do not necessarily pose a risk to internet users. Under these circumstances, Google's responsibility as a dominant company in the online search advertising market must be assessed very carefully, since behaviour could be considered abusive that is merely negligent. In the *Google Search (Shopping)* case, the Commission

explained that it could conclude that Google had abused its dominant position, whether this abuse was committed intentionally or negligently<sup>325</sup>.

### *Google's obligations*

332. As stated in paragraph 321, Google has an “extraordinary” dominant position in the online search advertising market. In view of the characteristics of this dominance, Google has a particular responsibility towards users and advertisers, which means that it must define and apply in an objective, transparent and non-discriminatory way the Rules governing operators’ access to and ongoing use of its advertising platform.
333. In its observations, Google puts forward a number of arguments regarding the legitimacy of (i) the purpose of the Rules, which is to combat malicious ads that would harm internet users and degrade the quality of the services Google offers, and (ii) the definition of the Rules, which is the manifestation of Google exercising its contractual freedom. These points are summarised below.

#### ◆ Objective of the Rules

334. According to Google, malicious ads represent a threat to internet users, who risk exposure to certain risks or nuisances, to honest advertisers, whose advertising investment is disrupted, and to Google, which must guarantee the quality of the services it offers.
335. These points are not contested by the *Autorité*, which has already acknowledged, in Decision [13-D-07](#), e-Kanopi, that the “AdWords content policy, guided by the objective of protecting consumers’ interests by preventing internet users from downloading unwanted software or paying for free items, stems from the desire to offer the best possible service to Internet users and appears objectively justified. The adoption of such a policy is therefore not anticompetitive and falls within the legitimate exercise of Google's business freedom”<sup>326</sup>.
336. However, the same Decision specifies that “Google’s freedom to define its policy on AdWords and AdSense content does not mean that the company is not obliged to implement that policy in an objective, transparent and non-discriminatory manner”<sup>327</sup>.

#### ◆ Ability to define Rules

337. Google recalls, firstly, that choosing its co-contracting parties and defining and applying the Rules, which enable it in particular to terminate contractual relationships entered into for an indeterminate period, are part of the exercise of its contractual freedom, a principle of constitutional value that can only be restricted by competition law under very strict and well justified conditions. On this matter, the Court of Justice considered that “the imposition by a Member State of an obligation to contract (...) constitutes a substantial interference in the freedom to contract which economic operators, in principle, enjoy”<sup>328</sup>.

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<sup>325</sup>Decision of 27 June 2017, *Google Search (Shopping)*, AT.39740, paragraphs 722 et seq. Google has appealed against the decision. For abuse committed through negligence by La Poste, see also the Decision of the *Conseil de la concurrence* 05-D-63 of 17 November 2005, paragraphs 209 and 210.

<sup>326</sup>Decision 13-D-07 of the *Autorité* of 28 February 2013 on a complaint by E-kanopi, paragraph 46.

<sup>327</sup>Decision 13-D-07 of 28 February 2013 on a complaint by E-kanopi, paragraph 47.

<sup>328</sup>Judgment of the Court of 28 April 2009, *Commission v Italy*, C-518/06, paragraph 66.

338. Secondly, Google considers that disputes stemming from the termination of contracts are covered by contract law, and not competition law. The co-contracting party not at fault that believes itself to have been injured can claim damages, the amount of which depends on the harm caused by the circumstances of the termination.
339. However, the objection against Google is not the existence of an account suspension procedure, but the implementation of its content policy in a non-objective, non-transparent and discriminatory manner that could have an effect on the markets in which the advertisers operate.
340. Moreover, as stated by Article 6 of the French Civil Code (*Code civil*) and recalled by the decision-making practice and case-law mentioned above, contractual freedom cannot be exercised independently of compliance with public policy provisions, which is what the competition rules are. The examples of abuse of a dominant position mentioned in Article L.420-2 of the French Code of Commercial Law and Article 102 TFEU also refer to abuses where contracts are involved. The principle of contractual freedom, like the principle of entrepreneurial freedom, does not absolve a dominant company of its responsibility where abuses are committed.
341. Finally, contract law and competition law each have different purposes. Whereas contract law protects the contracting parties' private interests as regards the conditions of contract formation and proper contract execution, competition law protects public economic policy and applies where the practices in question could affect competition in the market.
342. In conclusion, the "extraordinary" nature of the dominant position held by Google's Google Ads platform gives it a very special responsibility towards users and advertisers. For the dual purpose of ensuring users are not exposed to sites that could harm their interests and competition is not disrupted in advertisers' downstream markets, Google must define and apply the Rules of access and maintenance on its advertising platform in an objective, transparent and non-discriminatory way.

### **3. QUALIFICATION OF THE PRACTICE TARGETED BY THE OBJECTION**

#### **a) Applicable principles**

343. According to the Statement of Objections, Google is alleged to have implemented unfair Rules by defining and applying the Rules in a non-objective, non-transparent and discriminatory manner, with the "implementation" of the Rules covering both the definition of the Rules and their application. Specifically, Google's Rules have given Google the flexibility to differentiate between advertisers and treat them inconsistently.
344. An assessment should therefore be made of the conformity of the practices in view of these principles.

#### ***Practices that could be described as "unfair trading conditions"***

345. With regard to unfair treatment, a) of the second paragraph of Article 102 includes, among the practices that can be qualified as abusive, the act of "directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions".
346. The application of the provisions of a) of the second paragraph of Article 102 is not reduced to the qualification of unfair or excessive prices, since it also refers to other unfair trading conditions. Several judgments deal with cases where unfair trading conditions are

considered abusive, in particular where the practices in question concern the imposition of trading conditions by the dominant operator.

347. In a judgment of 21 March 1974, *BRT v SABAM and Fonior*<sup>329</sup>, the Court of Justice expressly referred to (a) of the second paragraph of Article 102 of the Treaty. The case concerns a company that holds a monopoly for the management of copyright, enacts and implements Rules applied with regard to third parties (in this case, the members of the management company). The Court points out that, according to the terms of the above-mentioned provisions, a practice must be regarded as abusive where it consists, in particular, in “directly or indirectly imposing unfair trading conditions”. It considers “that the fact that an undertaking entrusted with the exploitation of copyrights and occupying a dominant position within the meaning of Article 86 imposes on its members obligations which are not absolutely necessary for the attainment of its object and which thus encroach unfairly upon a member's freedom to exercise his copyright can constitute an abuse”<sup>330</sup>.
348. In a judgment of 5 October 1988, *Alsatel v Novasam*, the Court of Justice, referring to Article 102 of the Treaty, also considered that certain contractual terms imposed by a dominant operator may be abusive. It points out “Although the obligation imposed on customers to deal exclusively with the installer as regards any modification of the installation may be justified by the fact that the equipment remains the property of the installer, the fact that the price of the supplements to the contract entailed by those modifications is not determined but is unilaterally fixed by the installer and the automatic renewal of the contract for a 15-year term if as a result of those modifications the rental is increased by more than 25% may constitute unfair trading conditions prohibited as abusive practices by Article 86 of the Treaty [102 TFEU] if all the conditions for the application of that provision are met”<sup>331</sup>.
349. In a more recent judgment of 16 July 2015, *Huawei Technologies*, the Court clarified the conditions for the application of Article 102 with regard to implementation of the commitment of a holder of a standard-essential patent (SEP), formulated with a standards body, to issue licences on fair, reasonable and non-discriminatory (FRAND) terms: “...the proprietor of an SEP which considers that that SEP is the subject of an infringement cannot, without infringing Article 102 TFEU, bring an action for a prohibitory injunction or for the recall of products against the alleged infringer without notice or prior consultation with the alleged infringer, even if the SEP has already been used by the alleged infringer. Prior to such proceedings, it is thus for the proprietor of the SEP in question, first, to alert the alleged infringer of the infringement complained about by designating that SEP and specifying the way in which it has been infringed. (...) Secondly, after the alleged infringer has expressed its willingness to conclude a licensing agreement on FRAND terms, it is for the proprietor of the SEP to present to that alleged infringer a specific, written offer for a licence on FRAND terms, in accordance with the undertaking given to the standardisation body, specifying, in particular, the amount of the royalty and the way in which that royalty is to be calculated. (...) By contrast, it is for the alleged infringer diligently to respond to that offer, in accordance with recognised commercial

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<sup>329</sup>Judgment of the Court of 21 March 1974, *Belgische Radio en Televisie et Société belge des auteurs, compositeurs et éditeurs (BRT) v SV SABAM*, C-127/73.

<sup>330</sup>*Ibid*, paragraph 15.

<sup>331</sup>Judgment of the Court of 5 October 1988, *Société alsacienne et lorraine de télécommunications et d'électronique (Alsatel) v Novasam*, C-247/86, paragraph 10.

practices in the field and in good faith, a point which must be established on the basis of objective factors and which implies, in particular, that there are no delaying tactics”<sup>332</sup>.

350. In the opinion delivered in the case, Advocate General Wathelet stressed that: “In those circumstances, which are characterised, on the one hand, by the infringer’s technological dependence following the incorporation into a standard of the teaching protected by the patent and, on the other hand, by unfair or unreasonable conduct by the SEP-holder, at variance with its commitment to grant licences on FRAND terms, towards an infringer which has shown itself to be objectively ready, willing and able to conclude such a licensing agreement, the bringing of an action for a prohibitory injunction constitutes recourse to a method different from those governing normal competition; it has an adverse effect on competition to the detriment, in particular, of consumers and the undertakings which have invested in the preparation, adoption and application of the standard; and it must be regarded as an abuse of a dominant position for the purposes of Article 102 TFEU”<sup>333</sup>
351. Whatever the nature of the operating practice, the standard of proof remains the same, and consists in assessing whether the conduct of the dominant undertaking was carried out to a “reasonable extent”. The case law thus specifies that “the fact that an undertaking is in a dominant position cannot disentitle it from protecting its own commercial interests if they are attacked, and that such an undertaking must be conceded the right to take such reasonable steps as it deems appropriate to protect its said interests”<sup>334</sup>.
352. With regard to conduct by the dominant undertaking which imposes unfair trading conditions, the case law examines whether such conditions are both necessary and proportionate to fulfil the objective pursued by the dominant undertaking or the realisation of its social purpose<sup>335</sup>.
353. Unlike the provisions of subparagraph (c) of the second paragraph of Article 102, applicable to cases of discrimination (see below), those of subparagraph (a) concerning unfair trading conditions do not specifically provide that the practices in question inflict a competitive disadvantage. In the *Alsatel* case referred to above (see paragraph 348), the Court of Justice applied Article 102 literally, and considers that unfair trading conditions could be characterised under Article 102 without the need to demonstrate anticompetitive effects.

#### ***Effects on competition resulting from unfair trading conditions***

354. The notified objection concerns not only practices involving the establishment of unfair Rules, but also their non-objective, non-transparent and discriminatory application.
355. The notion of inequity is not the same as that of discrimination.
356. When a dominant undertaking lays down discriminatory rules, those rules affect only a limited number of its customers - those who are discriminated against - while those who are not discriminated against are not adversely affected by the discriminatory practice. On the other hand, when a dominant undertaking defines unfair trading conditions, these have wider effects since they are likely to apply to all its customers.

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<sup>332</sup>Judgment of the Court of 16 July 2015, *Huawei Technologies*, C-170/13, paragraphs 60-71.

<sup>333</sup>Opinion of Advocate General Melchior Wathelet in *Huawei Technologies*, C-170/13, paragraph 74.

<sup>334</sup>See, for example, the judgment of the Court, *United Brands*, cited above, paragraph 189.

<sup>335</sup>Judgment of the Court of First Instance of 6 October 1994, *Tetra Pak*, T-83/91, paragraphs 138-140; judgment of the Court of Justice, *BRT*, cited above, paragraphs 8-11.

357. Thus, the definition and application of unfair trading conditions are capable of undermining the normal functioning of the entire market in which the dominant undertaking operates when the latter has a monopoly or holds extremely high market shares or an “extraordinary” dominant position. In such a case, the products or services offered by the dominant undertaking represent all or almost all of what the market has to offer and customers wishing to acquire them will have no choice but to accept the transaction terms determined by the dominant undertaking, however unfair they may be, because they will not be able to turn to alternative operators that meet their needs.
358. The definition and application of unfair selling conditions by a dominant undertaking may also disrupt the functioning of the markets in which the customers of the dominant undertaking operate, in particular where the dominant undertaking treats customers operating in the same market in a discriminatory or haphazard manner.
359. Subparagraph (c) of the second paragraph of Article 102 TFEU qualifies discriminatory treatment as those potentially abusive practices which may consist in “applying dissimilar conditions to equivalent transactions with other trading partners, thereby placing them at a competitive disadvantage” (emphasis added).
360. In the *British Airways* judgment, the Court of Justice of the European Union (CJEU) recalled that in order to prove an abuse of a dominant position, “there must be a finding not only that the behaviour of an undertaking in a dominant market position is discriminatory, but also that it tends to distort that competitive relationship, in other words to hinder the competitive position of some of the business partners of that undertaking in relation to the others”<sup>336</sup> (emphasis added).
361. The case law concerning the provisions of Article 102 applicable to discrimination<sup>337</sup>, which provide that the practices in question inflict a “competitive disadvantage”, sets out the procedures for proving the effects, in particular when the conduct of a dominant undertaking affects markets other than the one in which it is present<sup>338</sup>.
362. The Court of Justice recently had to rule on the concept of “competitive disadvantage” in the *MEO* case<sup>339</sup> in a request for a preliminary ruling from the Portuguese Competition, Regulation and Supervision Court<sup>340</sup>.

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<sup>336</sup>Judgment of the Court of 15 March 2007, *British Airways v Commission*, C-95/04, paragraph 144; see also Judgment of the Court of 19 April 2018, *MEO v Serviços de Comunicações e Multimédia*, C-525/16, paragraph 25.

<sup>337</sup>Article 102, paragraph 2 (c).

<sup>338</sup> Judgment of the Court of 15 March 2007, *British Airways v Commission*, C-95/04, paragraphs 143-145. The Court of Justice states, “The commercial behaviour of the undertaking in a dominant position may not distort competition on an upstream or a downstream market, in other words between suppliers or customers of that undertaking. Co-contractors of that undertaking must not be favoured or disfavoured in the area of the competition which they practise amongst themselves. Therefore, in order for the conditions for applying subparagraph (c) of the second paragraph of Article 82 EC to be met, there must be a finding not only that the behaviour of an undertaking in a dominant market position is discriminatory, but also that it tends to distort that competitive relationship, in other words to hinder the competitive position of some of the business partners of that undertaking in relation to the others (...). In that respect, there is nothing to prevent discrimination between business partners who are in a relationship of competition from being regarded as being abusive as soon as the behaviour of the undertaking in a dominant position tends, having regard to the whole of the circumstances of the case, to lead to a distortion of competition between those business partners. In such a situation, it cannot be required in addition that proof be adduced of an actual quantifiable deterioration in the competitive position of the business partners taken individually.” See also Judgment of the Court of Justice, 19 April 2018, *MEO v Serviços de Comunicações e Multimédia*, C-525/16, paragraph 30.

<sup>339</sup>Judgment of the Court, 19 April 2018, *MEO v Serviços de Comunicações e Multimédia*, C-525/16.

<sup>340</sup>In this case a cooperative for the management of artists’ and performers’ rights was the subject of a complaint concerning a possible abuse of a dominant position. The company, which is the only body responsible for the management of neighbouring rights in Portugal, was accused of setting prices and conditions that differed between two providers of a pay service for the transmission of the television signal and its content.

363. In this case, the Court ruled that: “The concept of ‘competitive disadvantage’, for the purposes of subparagraph (c) of the second paragraph of Article 102 TFEU, must be interpreted to the effect that, where a dominant undertaking applies discriminatory prices to trade partners on the downstream market, it covers a situation in which that behaviour is capable of distorting competition between those trade partners. A finding of such a ‘competitive disadvantage’ does not require proof of actual quantifiable deterioration in the competitive situation, but must be based on an analysis of all the relevant circumstances of the case leading to the conclusion that that behaviour has an effect on the costs, profits or any other relevant interest of one or more of those partners, so that that conduct is such as to affect that situation”<sup>341</sup>.
364. In the judgment, the Court also stated, with regard to the standard of proof, that: “With regard to the issue whether, for the application of subparagraph (c) of the second paragraph of Article 102 TFEU, it is necessary to take into account the seriousness of a possible competitive disadvantage, it must be pointed out that fixing an appreciability (*de minimis*) threshold for the purposes of determining whether there is an abuse of a dominant position is not justified. However, in order for it to be capable of creating a competitive disadvantage, the price discrimination referred to in subparagraph (c) of the second paragraph of Article 102 TFEU must affect the interests of the operator which was charged higher tariffs compared with its competitors.”
365. On the other hand, a dominant undertaking in a given market may be accused of an abuse the effects of which affect other markets, provided that its conduct is causally linked to its dominant position and that the market on which it is dominant and those on which the abuse has its effects are sufficiently connected<sup>342</sup>.
366. In conclusion, in the developments that follow the *Autorité* will assess whether Google’s Rules constitute an abuse of a dominant position by first determining whether they are reasonable measures to achieve the goal of protecting consumers, in particular by determining whether they are transparent, objective and non-discriminatory. The examination of potential effects will then be carried out, firstly, on the market where Google is dominant both vis-à-vis advertisers and users; and secondly, on downstream markets which have a sufficient nexus to the market where Google is dominant. In both cases, the *Autorité* will examine whether the implementation of the Rules is likely to disrupt the competitive functioning of the relevant markets.

***Absence of a need to demonstrate a disproportionate advantage for Google***

367. Google argues, relying in particular on the *Tetra Pak II*<sup>343</sup> and *BRT*<sup>344</sup> judgments, that an abuse of exploitation can only be characterised if the undertaking “exploits” its customer or business partner, i.e., uses its dominant position to obtain an advantage from its customer or business partner (e.g. by imposing unfair conditions or excessive prices).
368. However, by suspending advertiser accounts, Google would be depriving itself in the short term of the revenues generated by these advertisers without any long-term benefit.

<sup>341</sup>Judgement of the Court, 19 April 2018, *MEO v Serviços de Comunicações e Multimédia*, C-525/16.

<sup>342</sup>See in particular the judgments of the Court of 6 March 1974, *Istituto Chemioterapico Italiano and Commercial Solvents v Commission*, 6/73 and 7/73, paragraph 22, and of 3 October 1985, *CBEM*, 311/84, paragraph 26; judgment of the Court of First Instance of 17 December 2003, *British Airways v Commission*, T-219/99, paragraph 91; see also the judgment of the Paris Court of Appeal of 22 February 2005, *JC Decaux*, delivered on appeal against Decision 04-D-32 of 8 July 2004 by the *Conseil de la concurrence*.

<sup>343</sup>Judgment of the Court of First Instance of 6 October 1994, *Tetra Pak (II)*, T-83/91.

<sup>344</sup>Judgment of the Court of 21 March 1974, *BRT v SABAM*, C-127/73.

Moreover, a dominant undertaking would not benefit from a lack of objectivity and transparency in contract conditions. The only economic rationale for Google to suspend accounts would therefore be to improve its services on the search engine for users and to protect bona fide advertisers, potential competitors of malicious operators.

369. However, the demonstration of the need for the dominant undertaking to derive a disproportionate advantage from its abusive practices in the context of an abuse of exploitation is not required either by the texts or by case law.
370. The judgment of the Court of First Instance in *Tetra Pak* thus highlights the harmful nature of contractual clauses with regard to the customers on whom they are imposed: “It is clear that the tied-sale clauses and the other clauses referred to in the Decision went beyond their ostensible purpose and were intended to strengthen Tetra Pak’s dominant position by reinforcing its customers’ economic dependence on it. Those clauses were therefore wholly unreasonable in the context of protecting public health, and also went beyond the recognized right of an undertaking in a dominant position to protect its commercial interests (see, in relation to second point, the judgment in *United Brands v Commission*, cited above, paragraph 189). Whether considered in isolation or together, they were unfair”<sup>345</sup>.
371. The Court’s judgment in *BRT* also consisted in examining whether limits on the freedom of authors to dispose of their works remain necessary and proportionate to the achievement of the association’s social objective<sup>346</sup>.
372. It follows from the foregoing that the demonstration of a disproportionate advantage to the dominant undertaking is not necessary for the demonstration of an abuse.
373. In any event, Google sometimes has competing interests that may cause it to define and implement Rules in an opaque and ambiguous manner.
- From an institutional point of view, it is in its interest to be able to show that it complies with the consumer protection requirements of the public authorities, and with the commitments intended to clarify the Rules it voluntarily proposed to the *Autorité* in the *Navx* case<sup>347</sup>.
  - From a commercial point of view, Google’s interest is to maximise its advertising revenues with regard to all advertisers, even if it means accepting the promotion of sites likely to harm the consumer on the Google Ads platform, as long as this does not lead to a loss of revenue linked to user disaffection that would exceed this gain. For example, it is not uncommon for Google to offer personalised support to advertisers such as E-kanopi and Ecométrie who have experienced “exceptional growth” on Google Ads<sup>348</sup> and whose accounts had been suspended for violating its Rules<sup>349</sup>, even though their allegedly non-compliant practices persisted.
374. It is therefore not clear that Google’s behaviour did not benefit it. In this respect, it should be noted that the advertising investments on Google Ads of sites that engage – in Google’s

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<sup>345</sup>Judgment of the Court of First Instance of 6 October 1994, *Tetra Pak (II)*, T-83/91, paragraph 140.

<sup>346</sup>Judgment of the Court of 21 March 1974, *BRT v SABAM*, C-127/73, paragraphs 6-11.

<sup>347</sup>Decision 10-D-30 of 28 October 2010 concerning practices in the online advertising sector. Article 2 of the enacting terms: “The *Autorité* acknowledges that, in practice, Google will apply the principle of the improvements and clarifications made pursuant to these commitments to all content and rules of the AdWords service in all countries covered by the service”.

<sup>348</sup>Decision 19-MC-01 of 31 January 2019 on the request by Amadeus for interim measures, paragraph 51.

<sup>349</sup>Report, paragraphs 50 and 207 (classification marks 15545 and 15582, Referral 15/0019F).

own terminology – in ‘untrustworthy promotions’ sometimes account for more than half<sup>350</sup>, or even more<sup>351</sup>, of their total turnover. Google is therefore, in some cases, the primary beneficiary of practices that it considers harmful to the consumer, by deriving significant advertising revenues from their promotion on its platform. Google would not have received these advertising revenues if it had established sufficiently clear and objective Rules and applied them consistently.

375. In addition, beyond the objectives stated and recalled in paragraph 98, the definition and interpretation of the Rules have been opaque and haphazard with, for customers with similar profiles, an application leading to suspensions for some, and support for more effective referencing policies for others. This behaviour may have prompted publishers to develop sites offering exclusively non-paid services to users, and financed indirectly by the sale of advertising space through display advertising for which Google also offers online advertising intermediation services linked to searches through its AdSense platform. However, as the European Commission's decision of 20 March 2019 on Google AdSense<sup>352</sup> established, Google holds a dominant position in the latter market (see paragraph 38).

### *Conclusion*

376. It follows from the above that in order to establish that Google has abused its dominant position, the *Autorité* will first demonstrate that the definition and application of the Rules are unfair. Such a practice does not constitute a reasonable measure to safeguard Google's interests and is therefore not objectively justified (b). The *Autorité* will then demonstrate that this behaviour had effects, at least potentially, in the relevant market for online search advertising where Google holds an “extraordinary” dominant position, but also in the digital services markets where its customers operate (c).

### **b) Unfair character of the definition and application of the Rules**

377. Factual analysis of Google's behaviour shows that advertisers are unable to understand what is expected of them in order to comply with the Rules and maintain their ads on Google Ads. First, the text of the Rules is so ambiguous, complex and difficult to understand that it prevents publishers from having a clear understanding of them and from being able to assess whether their behaviour is in conformity with the Rules. A bona fide advertiser is not in a position to make a relevant assessment to determine whether the advertisements it runs comply with the Rules. In addition, they are very unstable and subject to change without systematic notification.

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<sup>350</sup>Gibmedia stated in its complaint that its investments in Google Ads represented 55% of the turnover for its publishing business in 2013 and 53% in 2014 (classification mark 4119, Referral 15/0020M). Gibmedia invested €2,222,000 for the pages-annuaire.net site in 2013, for turnover of €3,228,014 (classification mark 4118, Referral 15/0020M). Ecométrie, which has been controlled by BJ Invest since late 2014, also invests a significant part of its turnover in Google Ads to promote annuaire-inverse-france.com. In 2014, this site had turnover of €2,765,000, and invested €1,523,312 in Google Ads. In 2015, turnover was approximately €2,253,000 and investments with Google Ads were €1,162,082 (classification mark 8644, Referral 15/0019F). For all online directory sites, see paragraphs 599 et seq. of the Statement of Objections (classification marks 11172 et seq., Referral 15/0019F).

<sup>351</sup>In 2015, Dispobiz invested €75,730 with Google Ads for the quipage.fr site, which had turnover of €70,695 (classification mark 8636, reference 15/0019F). In 2014, Nathacom invested €17,000 with Google Ads for its site inverseannuaire.com, which had turnover of €16,660 (classification marks 3282 (VC)/10324(VNC), Referral 15/0019F).

<sup>352</sup>Commission Decision of 20 March 2019 on the application of Article 102 of the TFEU and Article 54 of the European Economic Area Agreement, AT.40411 – Google Search (AdSense). Google has appealed this decision.

378. The appreciation of the precise scope of each Rule is hampered by their large number, the opacity of their formulation and the absence, at times, of a clear distinction between them. Two particular examples reported by the complainant of the procedure deserve to be presented in greater detail, given their importance for advertisers in the markets analysed. These are the Rules on the “sale of free items” and “untrustworthy promotions”.
379. The following developments will successively demonstrate that the Rules are not fair (i) because the “sale of free items” Rule is neither objective nor transparent and the “untrustworthy promotions” Rule is opaque. In addition, the Rules are highly unstable and there are no routine notifications; the Rules have been applied unfairly (ii), and Google has not presented a relevant justification for the lack of transparency and objectivity of its Rules (iii).

### ***The Rule is unfair in its definition***

#### *Lack of objectivity and transparency of the “sale of free items” Rule*

380. As stated in paragraphs 97 et seq., the “sale of free items” Rule underwent many changes between 2012 and 2019. Its scope and interpretation should therefore be analysed in the light of the evolution of the text.

#### ◆ Rule in force from July 2012 until August 2014

381. The exchanges between Google and La Poste concerning annuaire.com show that an initial version of the “sale of free items” Rule, applicable between July 2012 and April 2013, required operators offering a paid digital service available free elsewhere to insert a link directing the Internet user to a competing site offering the same service free of charge.
382. At the time of the suspension of annuaire.com in July 2012, Google had thus indicated to La Poste that “on each page where a number is proposed which can otherwise be obtained free of charge, you must specify a link of a site from which you can obtain this number free of charge”<sup>353</sup>. The publisher of the site then proposed to include links to the Google Maps service including telephone numbers accessible directly from Google Maps, which was then considered as the “free service” of directories<sup>354</sup>. Within the framework of this modification of annuaire.com, Google nevertheless noted that the links to Google Maps “with the number available free of charge” were not valid and maintained the suspension of the site<sup>355</sup> (see paragraph 201).
383. Beginning in April 2013, Google amended the “sale of free items” Rule by removing the requirement for websites offering digital pay services to refer users to a site that makes the same information available free of charge.
384. However, the new wording of the Rule on the sale of free items did not clearly delimit its scope of application. The Rule prohibited “the promotion of websites that charge fees for products and services that are freely available elsewhere”, while providing for the possibility of charging fees for “services associated” with free products or services. However, to the extent that the same digital service is likely to be offered free of charge or for a fee on the Internet, it is not possible to determine precisely which category of services falls within the qualification of “associated services”, for which the charging of a fee is

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<sup>353</sup>Classification mark VC 1294, Referral 15/0019F.

<sup>354</sup>Statement of Objections, paragraphs 172 and 685, classification marks VC 10813 and 10962.

<sup>355</sup>Classification mark 1290, Referral 15/0019F.

allowed, and “services which are available free of charge elsewhere”, which cannot be sold.

385. In addition, with respect to associated services, the Rule added that “your ads and landing pages may not promote services that offer little or no added value to the user compared to the original, automated or official online request process”. It should be noted that this reference to the fact that the service must “offer added value” is particularly generic and difficult to interpret, as the notion is not at all explicit. The assessment of the added value of the service in this case is based solely on Google's analysis. In the context of an exchange with La Poste in June 2013, Google refused to take into account La Poste's membership in the self-regulatory body SVA +, whose purpose is precisely to determine which services provide added value to the consumer (see paragraphs 217 to 220). Neither La Poste nor Google therefore had objectively verifiable means of determining whether a service on its site provided sufficient added value and did not amount to the sale of “free services”.
386. Thus, the wording of the Rule in force at that time left Google enough leeway to make a discretionary assessment of what constituted a free service.

◆ Rule in force from September 2014 to March 2018

387. Since September 2014, the “sale of free items” Rule has served as an example of “untrustworthy promotions” (see paragraph 108). The example prohibits, without further clarification, “charging users for products or services that are normally free of charge”.
388. This concise formulation, instead of a precise definition with concrete illustrations, gives Google much leeway. It is not easy to determine the “normally free” nature of a service, as shown by the variety of offers and economic models that exist in the three sectors covered by the complaint and analysed in detail in the present case.
389. For example, in the sector of legal and economic information about companies, sites generally provide services for a fee (see paragraph 62). Specific legal information documents about companies is, for example, accessible on the *infogreffe.fr* website at rates set by Decree 2007-812 covering the rates for commercial court clerks and amending the French Code of Commercial Law (*Code de commerce*).
390. Weather websites offer a large amount of free information, but the largest sites in the French market have also offered specific paid services for more than ten years. This is the case of Météo France and Meteo Consult, which offer ad-free paid subscription plans which include additional options, such as à la carte services (see paragraphs 85 and 86).
391. In the telephone directory services sector, telephone numbers are generally provided on sites without any financial compensation from users, but several also offer additional paid services. (see paragraphs 69 et seq.).

◆ Rule in force since March 2018

392. Since March 2018, the various versions of the Rule prohibiting the “sale of free items” forbid the practice of “charging for goods or services when the main offer is available free of charge, or at a reduced price, from a government or public source”. The Rule is accompanied by a cursory list of examples of relevant digital services. (see paragraph 119).
393. While the designation of the Rule is somewhat more detailed than the one in force in September 2014 since it refers to “governmental” or “public source”, its scope remains

vague. The Rule covers both free digital services available from a government source and those available free from a “public” source. Internet access is public.

394. As the concept of “public source” is not defined, a broad reading of the Rule therefore permits any digital pay service to be considered as likely to fall under the prohibition of “sale of free items” as long as it is available without financial consideration elsewhere on the Internet. The Rule further obliges the advertiser to make a particularly difficult assessment, since it is up to the advertiser to determine whether the information in question is available on the Internet, even though this availability may vary over time.

◆ Google's position on the wording of the Rule

395. In its observations in response to the Statement of Objections, Google stated that the Rule on the sale of free items “does not prohibit advertisers from monetising services on their website other than through advertising, provided that the website does not conceal or misrepresent the fact that the service is paid for, thereby inducing users to pay for a service or information that they can obtain free of charge, or at a greatly reduced price, from official or publicly available sources”<sup>356</sup>.

396. Google therefore appears to limit the scope of the “sale of free items” Rule to situations where the Internet user is not clearly informed of the billing terms of a service that is available for free elsewhere.

397. However, none of the versions on file of the “sale of free items” Rule contains such a restriction. Due to its general wording, the Rule still seems to apply to the sale of any digital service accessible without financial consideration elsewhere on the Internet, even if the customer is clearly informed of the paid nature of the service.

398. To this day, the scope of the “sale of free items” Rule remains difficult to grasp. The explanations provided by Google during the hearing focused on user information and did not resolve questions about the scope and autonomy of the Rule, and the specific conditions under which it could apply.

399. It follows from the foregoing that the “sale of free items” Rule is neither objective nor transparent in its formulation. As explained in paragraphs 471 et seq., it was also applied in an erratic and unpredictable manner, adding to the uncertainties surrounding its designation.

*Opacity of the “untrustworthy promotions” Rule*

400. The “untrustworthy promotions” Rule was intended to address situations where the advertiser “conceals or misrepresents information about a company, product or service”. The Rule expressly stated that such behaviour constitutes “a serious breach”. As such, its violation could lead to an immediate and definitive suspension of an advertiser's account in accordance with the general terms of sale which provide that a site may be suspended without notice in the event of a “serious breach” of the Rules.

401. The Rule provides a non-exhaustive list of examples of untrustworthy promotions, including “charging users for products or services that are normally free of charge”.

402. Uncertainty about the precise scope of the Rule affects the nature of the procedure to apply in the event of a breach. Although not mentioned in the Rules that are applicable for this

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<sup>356</sup>Classification mark 11387, Referral 15/0019F.

period, Google claims that the “untrustworthy promotions” Rule also covered both practices intended to hide or misrepresent billing conditions as well as cloaking<sup>357</sup>.

403. However, after a careful review of the text of the Rules, it appears that the latter two practices are dealt with in separate Rules and that failure to comply is subject to sanctions different from those covering “untrustworthy promotions”.
404. Practices consisting in hiding information on the billing conditions of a service are indeed covered by the separate category of misleading statements called “omission of relevant information”, which covers practices consisting in “not clearly identifying the payment model and all charges to be borne by the user”.
405. During the investigation, Google provided an appendix which includes all of the non-serious violations under the Rules<sup>358</sup>. According to Google, under the category of “misleading statements”, only “untrustworthy promotions” is considered a serious breach. Because “omissions of relevant information” fall within the categories of “misrepresentation” that are not included under “untrustworthy promotions”, Google's explanation may imply that withholding information concerning billing terms is a “non-serious breach” as defined in the Rules. This category of violations should therefore not result in the immediate suspension of an advertiser's account.
406. When Gibmedia's accounts were suspended for “cloaking” in January 2015, they were presented as an example of “manipulation of the Google network”. This practice falls under the “Ad Network abuse” Rules, which are separate from the “untrustworthy promotions” Rule. Unlike “untrustworthy promotions”, “manipulation of the Google Network” was not considered a “serious breach” under the Rules in force as of September 2014<sup>359</sup>. It is therefore not possible to infer from reading these Rules that this practice constituted a “serious breach” that could lead to an immediate suspension of an advertiser's account.
407. Google's characterising an advertiser's practice as “untrustworthy promotions” when it falls under another Rule category is therefore not contractually neutral. The direct consequence for website publishers is that Google assumes the right to suspend the account of the advertiser without notice, although this possibility is not provided for in the contractual stipulations.
408. The example of Google's interpretation of the scope of the “untrustworthy promotions” Rule shows that, regardless of Google's editorial choices in formulating the Rules and their frequent unilateral changes, Google takes the liberty of indirectly requalifying the nature of the breaches, which significantly changes the applicable account suspension procedures.

*Instability of the Rules and absence of systematic notification of changes*

409. During the period at issue, Google changed the content of the Rules on numerous occasions and frequently changed its position on their interpretation. The instability of the Rules has the effect of keeping certain advertisers in a situation of legal and economic insecurity since they are exposed to changes in Google's position, and therefore to the suspension of their website or even their account which they cannot anticipate or prevent with specific behaviour.

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<sup>357</sup>Classification mark 11341, Referral 15/0019F.

<sup>358</sup>Classification mark 4772, Referral 15/0019F.

<sup>359</sup>Classification marks 11491-11493, Referral 15/0019F.

410. For example, it was noted above that as of June 2014 (see paragraph 165), Google suspended the account linked to Gibmedia's annuaire-inverse.net website before authorising it again on 10 September 2014. At the time of the suspension, Google asked for clarification on the fee-based nature of the service, its added value and the information provided to consumers. In September 2014, following several exchanges with the managers of the Gibmedia site, Google considered that the offering, although paid, of the site annuaire-inverse.net was in compliance with its Rules on the sale of free services. In the absence of any change in the site's revenue model and the services provided between September 2014 and January 2015, it is difficult to understand why the offering of annuaire-inverse.net was suspended permanently by Google a few months later.
411. Google's advertisers are thus placed in an insecure and precarious situation that is all the more so as Google can change its interpretation of a Rule by applying it differently without expressly modifying its content. It may also amend the content of a Rule without systematically notifying the advertisers concerned by the change.
412. For example, Google suspended the annuaire.com website three times between July and November 2012, and a fourth time in June 2013, justifying these suspensions by changes to the "sale of free items" Rule (see paragraphs 198 et seq.).
413. In an e-mail dated 27 November 2012 in response to a request from La Poste to be informed of changes to the Rules, Google indicated that it was not possible to inform all customers of the changes to the Rules and invited them to consult the Help Center to be informed of these changes. However, the Help Center's Change Log mentions only a change to the "sale of free items" Rule in mid-June 2012 and none in the second half of 2012 (see paragraph 136). The "sale of free items" Rule was thus not formally amended between July and November 2012 and La Poste could not predict changes in Google's position on the compliance of its directory service with the Rules.
414. Google again justified the last suspension of annuaire.com in June 2013 by an update to the "sale of free items" Rule. Although this change was actually published on the Help Center, La Poste informed Google that it had not been notified and that it had not been given any advance notice to make the necessary changes to its website<sup>360</sup>.
415. In this respect, by refraining from notifying advertisers affected by a change to the "sale of free items" Rule, it should be noted that Google reduced the scope of the commitments it made before the *Autorité* in the 2010 *Navx* case (see paragraph 373)<sup>361</sup>. In this case, Google had in fact undertaken to make the operation of its advertising service for radar detectors in France more transparent and predictable for advertisers, in particular by implementing, under Commitment 3, a procedure for targeted notification of changes to the content policy of Google Ads through 2013. While these commitments concern radar detectors in France, the *Autorité's* decision nevertheless took note, in Article 2, of Google's voluntary commitment to apply the same improvements and clarifications to all of its Google Ads content policies, in addition to the radar database sector. It must be noted that, contrary to what Google had voluntarily committed to in 2010, the facts of the case show that the changes to the Google Ads content policy during the period at issue were not systematically subject to a targeted procedure to inform and notify.

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<sup>360</sup>Classification mark 7732, Referral 15/0019F.

<sup>361</sup>Decision 10-MC-01 of 30 June 2010 on the request for interim measures submitted by Navx, paragraphs 123 et seq.

416. In addition, a review of the change log available on the Google Ads website shows that advertisers are not always informed in advance of the content of the Rules for which Google has announced a revision, nor of the date on which they will come into effect. This is in particular the case of the announcement regarding the change of the category of “other restricted businesses” Rule, which is related to the “sale of free items” Rule published in September 2019. The announcement includes a simple summary of the forthcoming changes and the month in which the change will take place (December) (see paragraph 139). The content of the announcement is particularly elliptical, and does not give any indication of the exact scope of the new Rule or the precise date on which it will be applied.
417. From the foregoing it emerges that the Rules are unstable and that their changes are not subject to a procedure for clearly informing and systematically notifying advertisers.

#### ***Unfair application of the Rules***

418. In the present case, the notified objection concerns both the definition of the Rules and their application. First of all, it should be noted that the lack of transparency and objectivity in the definition of the Rules gives Google a margin of discretion in their application which may in practice lead Google to treat some advertisers unfairly. This can be illustrated by Google's treatment of operators of online directories (see paragraphs 471 et seq.).

#### ***Google's failure to provide adequate justification for the lack of transparency and objectivity of its Rules***

419. First, Google believes that the definition of the Rules should be broad enough to apply to the content and business models that currently exist or may appear on the Internet, and which it believes are constantly evolving. Google considers that it should be able to apply its Rules without having to rewrite them each time a site implements new practices or launches a new business model, and that the designation of these Rules should not be unduly prescriptive, which could limit Google's ability to detect new malicious behaviour.
420. While Google's goal of efficiency in the definition of its Rules is not objectionable in principle, Google, as a dominant operator with a special responsibility to its competitors and customers (see paragraphs 322 et seq.) is required to reconcile it with its obligation to define the operating Rules of its advertising platform in an objective, transparent and non-discriminatory manner.
421. Moreover, and as explained above (see paragraphs 97 et seq.), Google frequently changes its position on the formulation of the Rules, whose wording and interpretation are already extremely confusing. The Rules on “sale of free items” and “untrustworthy promotions” cannot be considered objective, transparent and non-discriminatory. In addition, Google unilaterally decides to change their interpretation and wording without providing even minimal information to website publishers of its position. Advertisers are therefore unable to understand precisely whether their services promoted on Google Ads are likely to be affected by these Rules and, if so, whether they may be considered to be in a breach of the Rules that warrants suspension.

422. Second, Google maintains that advertisers may ask questions about the scope or interpretation of the Rules by contacting Google by phone, e-mail, instant messaging, or through forums. In addition, some advertisers have the benefit of an account manager.
423. While the ability of advertisers to interact with certain Google teams is a necessary adjunct to the implementation of the Rules, it does not address the lack of objectivity and transparency in the Rules and their interpretation. On the one hand, the opacity and unintelligibility of the Rules cannot be resolved with information services, however efficient they may be. In addition, advertisers do not, in practice, have access to the Policy teams in charge of monitoring the compliance of sites with the Rules. For example, Google refused a request from an advertiser to speak directly with Google's compliance teams<sup>362</sup>. In contact with Gibmedia between June and September 2014 about the suspension of *impot.gouv.fr* and *annuaires-inverse.net*, Google's account manager for the company said he was not supposed to apply the Rules<sup>363</sup>.
424. It is also clear from the evidence of the case that the support teams with whom advertisers may sometimes interact have difficulty themselves in understanding the scope and content of the Rules and in some cases have to turn to the Policy teams to try to obtain "constructive comments" from them (see paragraph 206). In addition, Google's Help Center cannot assure advertisers that the changes it asks them to make to comply with a Rule will be sufficient for a site to be deemed compliant with the said Rule by the Policy teams because it does not have the authority to make compliance decisions. In some cases, the support teams make a commitment to the advertisers to recommend to the Policy teams that their site suspension be lifted, but are disqualified by the Policy teams (see paragraph 154). The explanations put forward by the support teams to justify maintaining the suspension of a website are sometimes very summary and imprecise, as demonstrated by the response formulated by the support team to Ace Telecom indicating that this "type of online directory site" is not authorised (see paragraph 181).
425. As for the account managers to which certain advertisers have access, they are also not in charge of applying the Rules. They may be led to favour a sales approach and to weakening the position of the clients they accompany with regard to the Rules. This is particularly the case for Amadeus: Google's sales teams actively contributed to promoting its services on Google Ads by participating in the drafting of ads and the home page of its site until late 2017 before Google suspended the site in January and July 2018 (see paragraphs 0 and 242).

### *Conclusion on the nature of the practice*

426. As a result, Google's Rules are characterised by not being objective, transparent, or consistently applied. They do not reflect an adequate consideration of Google's consumer protection objectives. Their implementation is thus unfair within the meaning of (a) of the second paragraph of Article 102 of the TFEU.
427. In particular, the Rules give Google the discretion to interpret them as it sees fit.
428. An examination of the "sale of free items" Rule shows that its wording leaves Google full discretion to interpret what is to be considered free or paid on advertisers' sites (see paragraphs 381 et seq.).

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<sup>362</sup>Classification mark 7701, Referral 15/0019F.

<sup>363</sup>Classification marks 1725 and 1726, Referral 15/0019F.

429. Google's discretionary power can also be seen both (i) in its broad interpretation of the “untrustworthy promotions” Rule, which allows it to address practices that are normally covered by other categories of Rules, and (ii) in its ability to unilaterally amend the Rules without systematically announcing changes in advance or notifying publishers. Contrary to what Google claims, advertisers have no reliable way of knowing the position of the Policy team before contracting with Google or during the execution of their contract.
430. Thus, Google has a real right of control over advertisers’ sites and publishers’ business activity. The Rules are imposed by Google, modified at will and without notice, applied and interpreted in a haphazard and inconsistent manner according to sites and circumstances.
431. Compliance with the Rules is a necessary condition for benefiting from Google's offerings in the search advertising market, even though Google's dominance, as discussed above (see paragraphs 303 et seq.), deprives publishers of an equivalent alternative. Publishers are therefore particularly constrained in their position with respect to Google's service, having no choice but to accept the Rules and the haphazard processing of their application, or to refrain from using the services of Google Ads.
432. Google's Rules and market position give Google disproportionate leeway which directly impacts publishers seeking to grow through Google Ads services.
433. The following developments will demonstrate that the potentially harmful effects of these Rules are found in this case.

### **c) Effects of the practice**

434. The lack of fairness in implementing the Rules leads to effects on the market for online search advertising (a) and on related markets where some advertisers are present (b).

#### ***Effects of the practice on the online search advertising market***

435. In the online search advertising market, the advertising investment of advertisers who comply with the Rules is disrupted by the continued non-compliance of advertisers and the uncertainty associated with the implementation of the Rules.
436. As explained above (see paragraph 21), the placement of advertisements on Google Ads is based on an auction mechanism among advertisers. However, advertisers who comply with the Rules are likely to pay artificially higher prices for their advertising since they potentially have to outbid advertisers who violate the Rules. The unfair and discriminatory application of the Rules is therefore likely to lead to artificial inflation of the price of ads on the Google Ads platform to the detriment of advertisers who comply with them.
437. Second, advertisers may also lose an ad spot for which an advertiser not complying with the Rules would have outbid. In this case, the Internet user is exposed to advertising linked to a site that is likely to harm their interests, whereas the site would not have been referenced on Google Ads if the Rules had been defined and applied correctly. As will be developed below (see paragraphs 500 et seq.), these effects are likely to affect the well-being of Internet users.
438. Exposure of users to malicious advertising on Google Ads may also disrupt the advertising strategy of advertisers who abide by the Rules. Indeed, when an Internet user, wishing to access a service, clicks on Google Ads referring them to a malicious site, the Internet user may be dissuaded from using Google Ads when buying similar services in the future for

fear of further inconvenience. This phenomenon, known as “ad blindness”, has been studied and quantified by Google researchers<sup>364</sup>. Maintaining malicious sites on Google Ads is detrimental not only to the Internet users who fall victim to them, but also to the reputation of bona fide advertisers present on Google Ads, whose advertising investment is diminished.

### *Effects of the practice on related markets*

439. Case law, at both the EU and national levels, accepts that an undertaking dominant in a given market may be accused of an abuse whose effects affect other markets, provided that its conduct is causally linked to its dominant position and that the market on which that position is held and those on which the abuse has its effects are sufficiently connected<sup>365</sup>.
440. As regards the markets in which the effects of the practices are found, the investigation focused mainly on the effects of Google's practices in relation to the three business sectors concerned by the Gibmedia complaint, namely the electronic provision of paid weather information, directory information and legal and economic business information services. However, this approach is not exclusive: Google's behaviour has had effects on other markets related to the supply of information. Thus, the case reveals cases of suspension of sites or accounts that do not concern the sectors in question. In early January 2015, Google suspended sites that belong to other sectors, which Google considers to be “official” services, such as test results or administrative procedures, and “unofficial” services, such as services concerning children's names, pregnancies, sports information or fee calculations (see paragraph 166)<sup>366</sup>.
441. There is also a nexus between the market for search advertising on the one hand and the markets for website publishing and the marketing of digital services on the other. The nexus results from the specific advertising offer when it is associated with searches by Internet users. A search-related advertisement is generally not a direct promotion of a product or brand, as is often the case with traditional off-line advertising offers or online advertising offers that are not search-related, but rather a promotion of a publisher's website in order to complete a transaction (see paragraph 286). However, the marketing or the success of the launch of digital services proposed by the sites will depend on the search results of Internet users on the relevant keywords, and therefore on the commercial links provided by the search engine. This is all the more so as the success in terms of clicks on a Google Ads link can increase the chances of natural referencing following a search.
442. Thus, Google's practices are likely to have an impact on all the markets in which publishers of digital Internet service sites operate. The Rules set and applied by Google are particularly important for publishers in that Google dominates the search advertising market.

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<sup>364</sup>Classification mark 16026, Referral 15/0019F.

<sup>365</sup>See in particular the judgments of the Court of 6 March 1974, *Istituto Chemioterapico Italiano and Commercial Solvents v Commission*, 6/73 and 7/73, paragraph 22, and of 3 October 1985, *CBEM*, 311/84, paragraph 26; judgment of the Court of First Instance of 17 December 2003, *British Airways v Commission*, T-219/99, paragraph 91; see also the judgment of the Paris Court of Appeal of 22 February 2005, *JC Decaux*, delivered on appeal against Decision 04-D-32 of 8 July 2004 by the *Conseil de la concurrence*.

<sup>366</sup>Classification mark 2011, Referral 15/0019F.

### *Importance of Google Ads services for some website publishers*

- ◆ Not all publishers have a real alternative to Google Ads

443. There are four ways to access a website:

- direct access (or visit): the Internet user directly enters the URL address of the site he wishes to access on his browser without making a request on an online search engine;
- accessed by a search engine: the Internet user formulates a request in the search bar, then accessed the site by clicking on one of these two categories of results:
  - a result produced by natural referencing;
  - a result from Google Ads;
- accessed using non search-related advertisements (e-mails, posted advertising);
- accessed using another site: the Internet user is referred to a site by clicking on a link that is displayed while consulting another site.

444. With Google Ads, advertisers can bid on keywords in order to have advertising space presented to Internet users conducting searches including these keywords on Google. Google Ads thus aids publishers to attract visits to their sites. The traffic then generates revenue for them from the sale of goods or services and/or advertising revenue. As a Google account manager said, one of the roles of Google Ads is to generate traffic for sites lacking visibility on the Internet: “A lot of companies don't show up visibly, i.e., in the first results of natural research. AdWords will generate traffic interested in the client's services, for given requests.”<sup>367</sup> According to a June 2017 Ifop/Ad's up Consulting study<sup>368</sup>, nearly half (45%) of Internet users who use the Google search engine most often click on sponsored Google Ads results (and therefore not on links, free for publishers, corresponding to natural referencing), whereas the proportion of those who never click on commercial Google Ads links is only 20%<sup>369</sup>.

445. Some established sites with high brand awareness may use display advertising to maintain their brand and the attractiveness of their products or services. On the other hand, the gain obtained from Google Ads is less than for a new entrant or an unknown website since by typing a keyword, a user can either enter the name of the site or see it at the top of the optimised search results in order of relevance.

446. The ability of Google Ads to develop, in some cases strongly, the traffic of certain websites is highlighted by the example of Amadeus. By making extensive use of Google Ads services, Amadeus, one of the websites in the online directories sector, experienced rapid growth in 2016-2017, to the point where, less than 18 months after its entry into the market and according to a presentation made to it by Google, it obtained, from mobile terminals, more than half the number of clicks addressed to the 118712.fr website, published by Orange, the incumbent operator for directory enquiries in France.

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<sup>367</sup>Classification mark 3712, Referral 15/0019F.

<sup>368</sup>Ad's up is a Google Ads certified agency specialising in digital marketing.

<sup>369</sup><https://ads-up.fr/blog/etude-ifop-perception-annonces-google-adwords/>

447. Alternatives to Google Ads to increase website traffic have specific qualities that may limit their relevance to advertisers, not to mention a character that can be substituted for Google Ads.
448. First of all, in order to develop site traffic, publishers can try to optimise their search results on Google in order to appear in the initial results (excluding commercial links) on the Google search page. Nevertheless, such natural referencing, or search engine optimisation (SEO), is a potentially long and complex exercise, which may require the modification of sites, marketing and technical studies. Moreover, SEO is a continuous process, which must take into account evolutions of the Google Search algorithm. Moreover, studies on the behaviour of Internet users<sup>370</sup> have shown that the rate of clicks on the first page was extremely high, whereas the first page of results contains only a limited number of links (10). What's more, the rate of clicks on the first page itself decreases rapidly: according to the studies in question, the first three links are thus at least three times more visited than the next three links.
449. The European Commission made a similar finding in its *Google Shopping* decision<sup>371</sup>, which found that the first three to five results of a query generate significant traffic, while the following results are much less popular: according to the Commission's figures, 98% of clicks would be on the first page containing ten results and more than three quarters of clicks would be concentrated on the first five links. As the number of providers in the various online business sectors is frequently more than 10, SEO cannot work for all providers at the same time and SEO cannot therefore be used by all publishers as an alternative to Google Ads. This finding echoes the statement by a Google account manager referred to above (see paragraph 444).
450. Secondly, the optimisation on other search engines and services equivalent to Google Ads offered by competitors of Google have as their main limitation that the use of alternative search engines to Google is low. Bing and Yahoo Search, the two main alternative search engines to Google, receive between 15- and 40-times fewer queries than Google. In this respect, website publishers have referred to the limitations of services equivalent to Google Ads offered by Google's competitors, in particular their much lower potential<sup>372</sup>.
451. Thirdly, publishers can also develop direct visits to their sites, i.e., without the Internet user going through a search engine, or generate traffic using other types of advertising (e-mail, social networks, display advertising, etc.). Nevertheless, the development of direct visits implies that publishers can develop awareness of their website and the services it offers, which involves devoting potentially substantial financial resources to this end. As for the other forms of advertising, there are differences that make them imperfect substitutes for online search advertising, which has led to the definition of a specific search advertising market. Search advertising differs from other forms of online advertising in that it engages users in an active search process so it can generate immediate sales. Conversely, other forms of online advertising aim rather at developing brand awareness and reputation; moreover, these other forms of advertising do not target Internet users who have an immediate need resulting in an active search with the same precision found in search advertising.

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<sup>370</sup>See, for example, <https://www.abondance.com/20181127-38461-taux-de-clic-dans-les-resultats-de-recherche-google-etude.html> or <https://www.positioneo.fr/taux-de-clic-dans-les-resultats-google>.

<sup>371</sup>Decision of 27 June 2017, *Google Search (Shopping)*, AT.39740, paragraphs 454 et seq.

<sup>372</sup>See, for example, classification mark 9782, Referral 15/0019F.

452. As a result of the above, publishers do not have a real alternative to Google Ads to develop traffic to their websites. This finding is corroborated by several examples of websites in the case where a significant portion of the traffic came from Google Ads: in addition to the sites mentioned by the complainant, this is the situation, for example, of the websites of many of its competitors in the online directories sector (websites of Audivox, Links Lab, Ecométrie, Ace Telecom, etc.). It is also consistent with the fact that several of the sites whose Google Ads accounts have been suspended have experienced significant decreases in the traffic directed to them<sup>373</sup>, indicating a difficulty for these sites to find another vehicle to generate traffic. Finally, it is illustrated by the example of the website of Ecométrie, whose contract concluded at the time of its acquisition provided for a reduction in the purchase price in the event that all or part of Ecométrie's Google Ads accounts were cut off for more than 60 days, which shows that the development of Ecométrie was, according to both the seller and the buyer, linked to the quality of the relationship with Google.

- ◆ Google's cost-benefit analysis confirms the lack of alternatives for certain types of advertisers

453. Google has produced a cost-benefit analysis challenging this analysis. According to this study, which focuses on the three markets in which the complainant is active, i.e. online directories, weather information services and economic and legal information on companies, and covering the period 2004-2018, the share of traffic from paid referencing (Google Ads, “paid” clicks) to sites present on these markets is more than [...] times lower than the traffic to these sites from natural referencing (“free” clicks). More generally, website publishers would have multiple sources of traffic. In addition, sites that are now well established have been able to develop without significant recourse to paid referencing. In these circumstances, the study concludes that it would not be demonstrated that Google Ads would play an important role in competition in the markets in which Gibmedia is active.

454. The approach adopted by the study does not, however, reflect the diversity of situations for website publishers, for the following reasons.

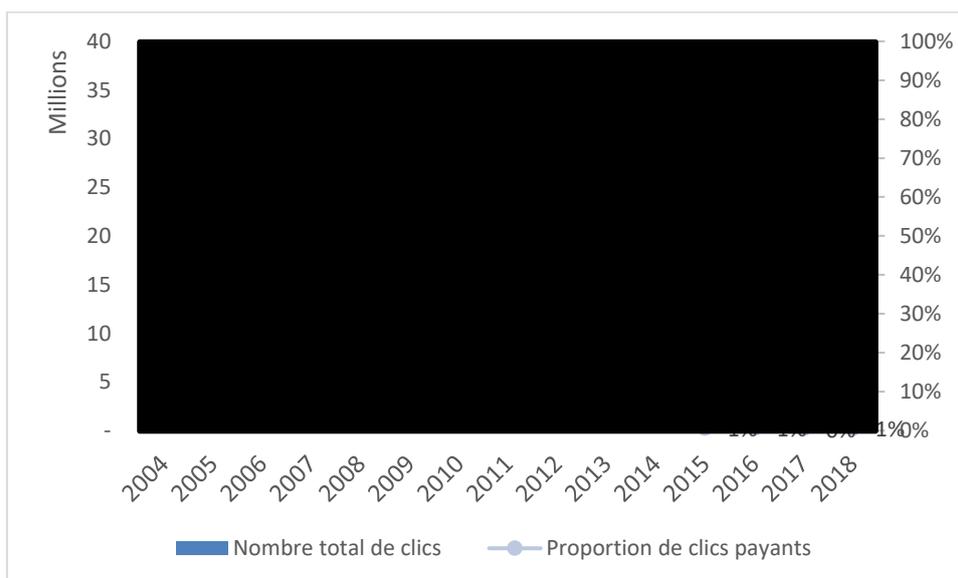
455. Firstly, in order to calculate the relative proportions of “paid” and “free” clicks for each of the markets in which Gibmedia is active, the study took into account a set of sites present in these markets, including in particular sites belonging to parent companies, whose situation may be specific and whose strategy may not be easily reproducible by smaller competitors. By relying on the resources of their parent company, such websites can indeed have a greater capacity to optimise their search engine or develop their reputation via, for example, off-line advertising, so that it is easier for them to do without paid referencing, which is indeed apparent from the data transmitted and used by Google in its study. It would therefore have been relevant to isolate sites without parent companies in the analysis.

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<sup>373</sup>Between 2014 and 2015, the year of the suspension of the AdWords account, the turnover and traffic of pages-annuaires.net were divided by nearly 5. In 2016, the turnover was only €260,214, an amount approximately 12 times less than the turnover in 2013. Between 2014 and 2015, the turnover and traffic of annuaires-inverse.net were divided by 1.7 and 2.6 (see paragraphs 559 and 560 of the Statement of Objections - classification mark 11162, Referral 15/0019F). Audivox's les-pages.com website received only 176,940 visitors during the months of September, October and November 2015. One year earlier, during the same period, it had received 2,507,203 visitors (see paragraph 561 of the Statement of Objections - classification mark 11162, Referral 15/0019F).

456. Secondly, in order to demonstrate the allegedly marginal role of Google Ads in driving competition in the markets in which website publishers are active, the Google study calculated shares of paid and free clicks over the period 2004-2018 for all the sites it identified in the markets concerned. Such an analysis raises a question of method and masks significant differences between sites and over time.
457. Looking first at the method, Google's cost-benefit analysis calculated the shares of paid and free clicks by considering all the requests made by Internet users on the Google search engine. In doing so, it has taken into account requests for which winning customers is not very credible, making paid referencing irrelevant. Thus, the so-called “navigation” requests, for which the Internet user types the name of a site in order to use Google search to click on its precise address, are not relevant to evaluate the means of gaining a customer, since the latter already knows the site in this case. The shares of paid clicks received from Google calculated from non-browsing queries would therefore be higher than those indicated by the study.
458. Google's cost-benefit analysis masks two types of heterogeneity between sites. On the one hand, by making a calculation over a period of almost 15 years, the cost-benefit analysis does not take into account the fact that the weight of Google Ads may have varied over time and may have been significantly greater during periods of launch and growth of online services in the sectors under study. For example, for online business legal and economic information services, the share of Google Ads on the total number of Google clicks to sites not associated with parent companies was significant between 2009 and 2013 (between [0-10] and [10-20]%), during which time the total number of visits to such sites from Google increased more than fourfold. The share of paid referencing is then more limited, particularly from 2015 onwards (around [0-5]% of clicks), bearing in mind that many Google Ads account suspensions were carried out by Google between 2014 and 2015.

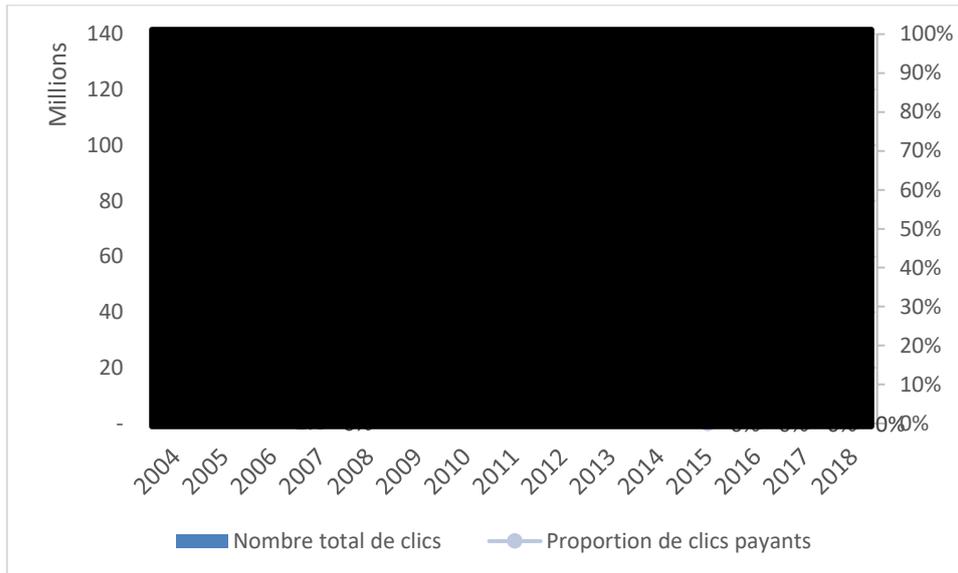
Figure 20 - Evolution of total number of clicks from Google in millions and percentage of paid and free clicks for online legal and economic information services on companies (not backed by parent companies)



Source: Google data

459. For online weather information services, the average share of Google Ads is 29% between 2007 and 2011 for sites not backed by parent companies, during which time the number of visits to these sites from Google is multiplied by about 25 and ceases to be confidential (the number of clicks, on the order of one million in 2007, exceeds 32 million in 2011). The share of paid referencing is then more limited, between [0 - 5]% between 2012 and 2014 and close to [0 - 5]% after 2015.

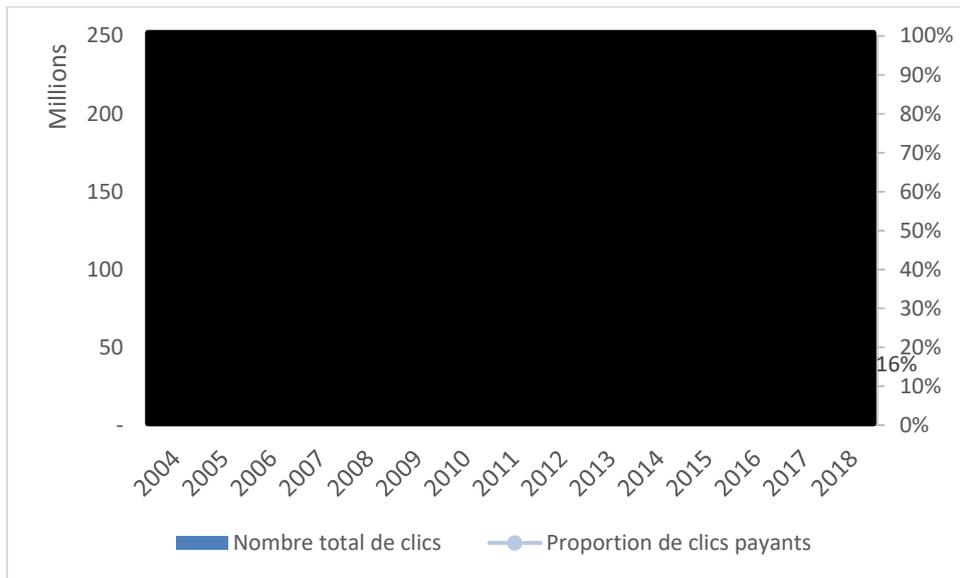
Figure 21 - Evolution of total number of clicks from Google in millions and proportion of paid and free clicks in %, for online legal and economic information services on companies (not backed by parent companies)



Source: Google data

460. Finally, the situation in the market for telephone directory services is somewhat different, as paid listing has always played a significant role, starting in 2005. The rate of paid click-throughs for sites not backed by parent companies has thus exceeded [10-20]% each year, even exceeding [20-30]% in six years (2006, 2007, 2014 to 2017) and [30-40]% in 2016 and 2017.

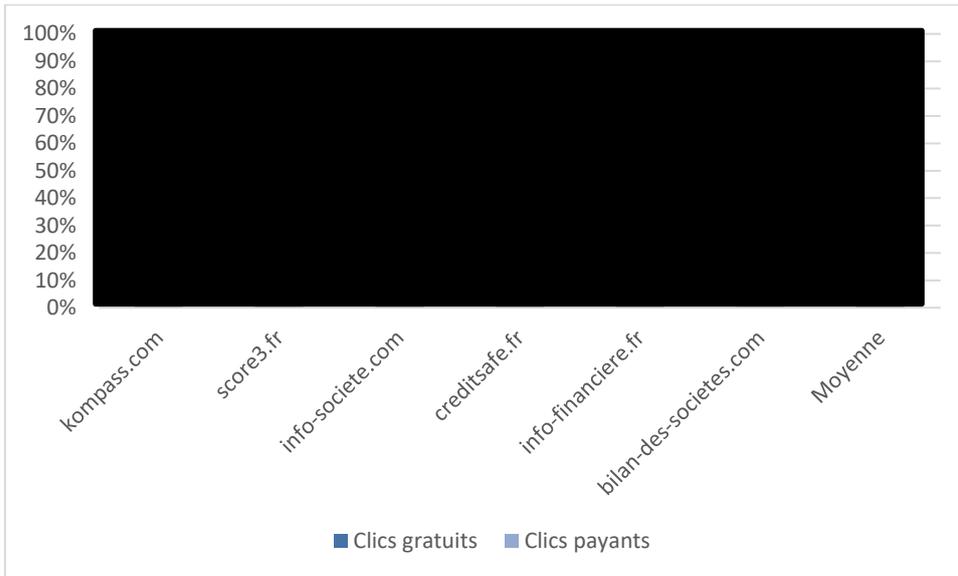
Figure 22 - Evolution of total number of clicks from Google in millions and proportion of paid and free clicks in %, for online directory services on companies (not backed by parent companies)



Source: Google data

461. On the other hand, the calculation carried out by Google's cost-benefit analysis of an average of paid click rates per site, weighted by the traffic received by each site, masks a strong heterogeneity between the different sites in terms of their more or less significant use of paid referencing via Google Ads. A significant proportion of the sites without parent companies have made intensive use of paid referencing in the three sectors covered by the cost-benefit analysis for the period 2004-2018. For example, almost a third of websites not backed by parent companies in the business information sectors had more than [80 - 90]% paid clicks among the clicks received from Google. In the directories sector, eight of the top 20 websites not backed by parent companies had more than [80-90]% paid clicks among clicks received from Google, and more than half of the top 20 sites had half or more paid clicks among clicks originating from Google. While the situation is more nuanced for weather information sites, two of the 12 sites identified by Google in this market that are not backed by parent companies received more than [80-90]% of paid clicks from Google.

Figure 23– Proportions of paid click-throughs for online business information services (not backed by parent companies) between 2004 and 2018 (arithmetic mean)



Source: Google data

Figure 24– Proportions of paid click-throughs for the top 20 online directory services (not backed by parent companies) between 2004 and 2018 (arithmetic mean)



Source: Google data

Figure 25— Proportions of paid click-throughs for weather information services (not backed by parent companies) between 2004 and 2018 (arithmetic mean)

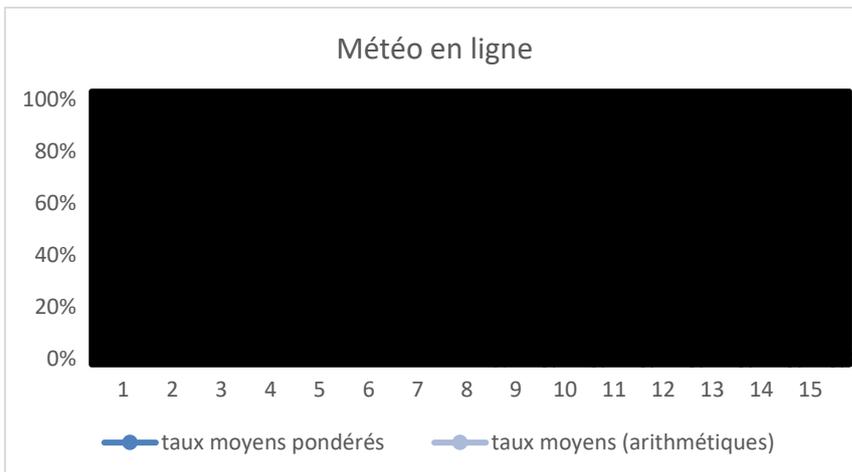
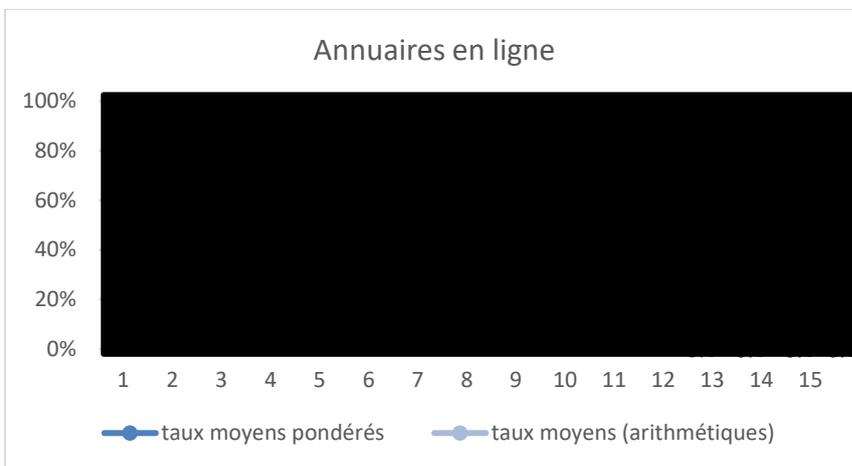
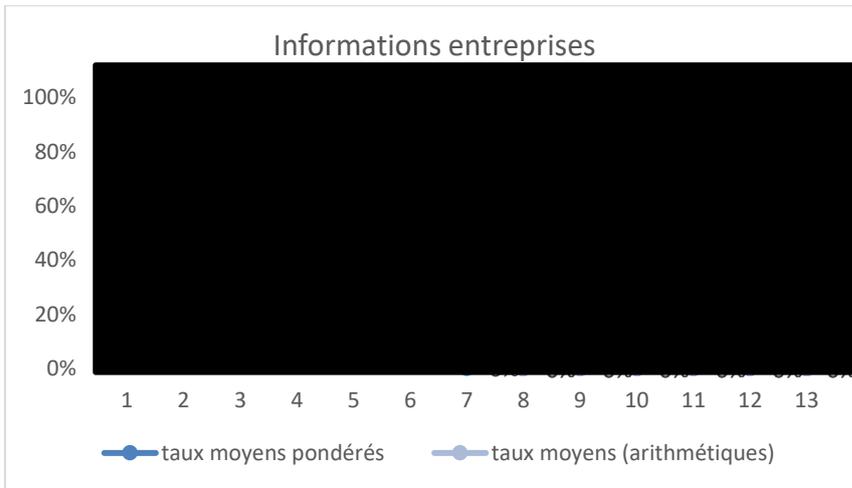


Source: Google data

462. It can also be noted that paid referencing seems to be more used by publishers in the first years of launching their website, as seen in the following graphs, which show the evolution of the proportion of paid clicks among the clicks coming from Google for sites not backed by parent companies of a given “age”<sup>374</sup> in each of the three sectors on which Google's cost-benefit analysis focused: the average proportion of paid clicks for sites of a given age, weighted by the traffic of each site from Google is shown in orange, and in grey the average proportion of paid clicks for sites of a given age, without weighting. For sites not backed by parent companies, Google Ads represented an (arithmetic) mean in the first two years of the websites’ life of more than [50 - 60]% of the total number of clicks on Google for business information sites, more than [60 - 70]% of the total number of clicks on Google for directory sites, and between [10 - 20] and [20 - 30]% of the total number of clicks on Google for weather information sites. These shares tend to be lower for sites that have been in existence for a longer period of time.

<sup>374</sup> The “age” of a given site is determined by referring to the year in which click-through data on the site in question appeared in the data provided by Google. The sites for which Google click data are available from the first year in the data provided by Google have been reiterated, as their true age is not known.

Figure 26— Shares of paid clicks by “age” of websites that are not backed by parent companies, from 2004 onwards



Source: Google data

463. This observation, which shows the significant share of paid referencing during the first years of the sites' existence, also applies to some of the sites for which paid referencing is relatively limited on average during 2004-2018. For example, in the business information sector, score3.fr, which has less than [0 - 5]% paid clicks among the clicks received from

Google over the period 2004-2018, generated at least [20 - 30]% of its traffic from Google via Google Ads during its first four years of existence; similarly, creditsafe.fr's traffic (less than [0 - 5]% paid clicks over the period 2004-2018) from Google is almost exclusively linked to Google Ads during its first two years of existence. Also, in the weather information sector, more than [70 - 80]% of the clicks received from Google by meteorama.fr or previmeteo.com (which, over the period 2004-2018, had less than [0 - 5]% paid clicks among the clicks from Google) were paid in the first year of existence of these sites.

464. Thirdly, Google highlights the importance of other sources of traffic, including directing visits, in only three examples of sites in special situations. The first example is the 118712.fr site published by Orange, whose legitimacy in terms of telephone information is particularly strong, given that it previously operated the directory information number “12”. The second example is Meteo Consult, which is one of the two main providers of weather data along with Météo France. The third example is that of Infogreffe, which is linked to the commercial courts and therefore has particular legitimacy when it comes to legal and economic information on companies. These examples cannot therefore call into question the finding that these other sources of traffic are unlikely to be significant for publishers with limited recognition or resources.
465. Finally, in a recent decision, the Commission found that a clause in a selective distribution agreement prohibiting a reseller from bidding on certain keywords on Google's advertising platform was likely to affect the viability of its Internet business and had to be qualified as a restriction by object<sup>375</sup>.
466. The data used to produce Google's cost-benefit analysis thus confirm the importance of Google Ads for some of the websites. The less a website is known and the more recent its entry on the market, the more essential Google Ads becomes. Furthermore, the study does not call into question the conclusion that Google Ads services do not have a real equivalent for some of the websites.

◆ Conclusion on the nexus

467. The Google Ads advertising platform must therefore be regarded as an essential vehicle for certain advertisers with a low level of recognition to enter or remain in a market for the provision of digital services. The nexus required by case law is therefore established.

*Google's definition of the Rules*

468. As mentioned above, the lack of fairness in the implementation of the Rules prevents advertisers from anticipating the impact of the Rules on their activities or adapting them in a preventive manner. This uncertainty reduces the incentives for advertisers to launch innovative business models that might be found to be non-compliant with the Rules. This is particularly the case with business models in which the Internet user agrees to pay for access to content in exchange for less exposure to display advertising, or reduced transmission of personal data.
469. Google has indeed defined a Rule on the sale of free items which could favour sites based on a free model over paid sites. Since the concept of “normally free services” or “available free elsewhere on the Internet” is impossible to grasp precisely, some sites may refrain from providing paid information and finance themselves exclusively through advertising to

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<sup>375</sup>Commission Decision of 17 December 2018, *Guess*, AT.40428, paragraphs 51, 52 and 120.

avoid being sanctioned by this Rule. This was notably the case for Ace Télécom, which, in order to remain on Google Ads after its suspension in June 2014, initially decided to finance itself exclusively through advertising (see paragraph 0). Google is also active in the online advertising intermediation market and offers its intermediation services to sites who seek to finance themselves through display advertising. For example, the Rule on the sale of free items may indirectly favour other Google advertising services, in this case, intermediation services.

470. Likewise, until April 2013, the “sale of free items” Rule required sites providing information accessible free of charge elsewhere on the Internet to insert a link referring the Internet user who clicked on it to a site offering the same information free of charge. The “sale of free items” Rule allowed a free site to unduly benefit from a carry-over of traffic from paying sites, even though these sites had made sometimes significant investments on Google Ads to increase their audience. Among the free sites likely to benefit from this transfer of traffic is Google Maps. As explained above, annuaire.com, which sells paid online directory services, proposed to insert links to the Google Maps site, which displays the telephone numbers of companies and offers call extension services on which Google is paid each time a user clicks (see paragraph 36).

#### *Google's application of the Rules*

471. The lack of objectivity and transparency in the Rules has effectively enabled Google to apply the Rules in a haphazard and unfair manner by treating similar operators differently (i) and adopting reversals of position with respect to the same publishers that increase the opacity of the Rules and Google's margin of discretion (ii). Google does not present any justification for these practices (iii).

#### ◆ Unjustified inconsistent and haphazard treatment

472. Google argues that the suspension of the accounts of Gibmedia and a few other advertisers was objectively necessary, in that it was aimed at protecting users.
473. However, this legitimate objective of consumer protection cannot justify Google's inconsistent and haphazard treatment of advertisers in comparable situations.
474. Google cannot suspend an advertiser's account on the grounds that it would offer services that it considers contrary to the interests of the consumer while agreeing to reference and actively support on its advertising platform sites that sell comparable services under comparable conditions.
475. In this case, Google suspended the accounts attached to the reverse phone lookup sites published by Gibmedia, Ace Telecom and Audiovox for violation of the “untrustworthy promotions” Rule in 2015, while the reverse directory sites published by the companies Ecométrie (annuaire-inverse-France), Nathacom (inverseannuaire), Links Lab (allo-pages), Somnus (cquicenumero) and Dispofi (quipage) continued to be promoted on Google Ads.
476. Contrary to Google's contention, these differences in treatment cannot be justified by “significant” differences in services or the presentation of billing terms.
477. In particular, the evidence in the case shows that the sites linked to the accounts that Google has permanently suspended offer services equivalent to those that have continued to be promoted on Google Ads and that their billing practices are very similar.
478. Thus, the digital pay services offered by the two sister companies Ecométrie (directories-inverse-France) and Gibmedia (directories-inverse.net, pages-annuaires) were equivalent in terms of content (geolocation of fixed telephone numbers not indexed in their base,

anonymous listening of mobile phone reception messages) and billing method (each of the reverse look-up directory sites used in the Contact+ payment method) in 2015. However, although Google definitively suspended the sites published by Gibmedia in January 2015, the site published by Ecométrie was the subject of personalised support from Google in the same and subsequent years to develop its sales (see paragraphs 170 et seq.).

479. Similarly, the reverse directory site published by Ace Telecom (discretel.fr), suspended on Google Ads in 2014, and the reverse directory site published by Nathacom and hosted by Ace Telecom (inverseannuaire.com), maintained on Google Ads, proposed, at the time of the suspension of discretel.fr in 2014, equivalent digital pay services (identification of mobile numbers by listening anonymously to their greeting), and identical billing methods (the site published by Nathacom having implemented the Contact+ payment method in September 2015) (see paragraph 183).
480. The reverse look-up directory site quipage.fr published by Dispofi offered a paid service for listening to a mobile number. The service was billed using Contact+, which represented 78% of the site's revenues<sup>376</sup>. Dispofi indicated that the directory product was offered as part of a delegated publishing activity to two partners using Google Ads (Links Lab, publisher of allo-pages and Audiovox, publisher of les-pages.com)<sup>377</sup>. The two sites used identical payment solutions for consulting the answering machine of a mobile number, it being specified that the Contact+ solution accounted for the vast majority of their revenue (80% for the Links Lab website and 70% for the Audiovox website in 2015). However, while the sites allo-pages.fr and quipage.fr continued to be promoted on Google Ads (see paragraphs 190 and 191), les-pages.com was definitively suspended by Google in March 2015 (see paragraph 186).
481. Finally, it should be noted that the reverse directory site "cquicenumero" published by Somnus and promoted on Google Ads invites Internet users to consult another website, a-qui-annuaire-inverse.fr, also published by Somnus, which had been suspended from Google Ads in 2014 (see paragraph 196)<sup>378</sup>.
482. In its observations, Google first of all puts forward the argument that Gibmedia's sites are harmful to Internet users and that it has a bad reputation. According to Google, there is ample evidence of the negative impact of Gibmedia's practices on consumers. Gibmedia "does not require any user consent for payment", and its business model is said to be based on "fraudulent use of the Contact+ billing method"<sup>379</sup>. In the case file, Google provides many very unfavourable comments from Internet users and evokes many consumer complaints. Gibmedia's practices are "described by Internet users as a 'scam', 'abusive procedures', 'scam that can also be described as an abuse of weakness', 'deceptive business' or a 'money trap'"<sup>380</sup>.
483. Contact+ is an online payment method based on time billing. Orange is the only operator to have offered this payment solution, which was activated by default on its subscribers. Contact+ provides several steps prior to accessing the service offered by the publisher: a first button with the mention Contact+ appears and indicates the fee level composed of a fixed (per session) cost and a variable (per minute) rate; after clicking on the first button, a confirmation panel displayed by Orange asks the user to validate the choice. This panel

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<sup>376</sup>Classification mark 668, Referral 15/0019F.

<sup>377</sup>Classification mark 669, Referral 15/0019F.

<sup>378</sup>Report, paragraph 202.

<sup>379</sup>Classification mark 6715, Referral 15/0020M.

<sup>380</sup>Classification mark 6690, Referral 15/0020M.

includes the Contact+ logo, the name of the service, the rate level, the purchase confirmation notification and “payment on Orange bill”, the ceiling per session, the average of user votes, confirmation or cancellation of the purchase, according to a font size and background left to the discretion of the publisher. This payment solution was phased out in 2016, following much consumer criticism.

484. The existence of these negative comments seems to stem from the fact that the Internet user, unaware that the Contact+ option of his Orange subscription is activated by default, is not aware that he can be billed outside the payment methods he usually uses, such as a credit card number or calling a premium rate number. While an attentive Internet user cannot fail to be alerted by the double request for confirmation and the mention of the paying nature of the site, an inattentive or overly quick consumer, uninformed of the default activation of the “Contact+” option of his contract with Orange, seems easily abused.
485. Google is not however being criticized for preventing the abuse of sites linked to this billing method, but for making its content policy opaque by haphazard and inconsistent treatment of publishers offering the same services. Google could thus legitimately consider that Orange's Contact+ pay-per-minute billing was likely to mislead the consumer, given the automatic activation of the service. However, such a breach was not included in the Rules and at the same time Google continued to promote some sites using this billing process on Google Ads after Gibmedia's sites were suspended. Google's behaviour is therefore particularly difficult for advertisers to understand.
486. Secondly, according to Google, the difference in treatment is justified by the fact that, unlike Gibmedia's sites, the unsupported online directory sites clearly presented the Contact+ billing method. This explanation is not admissible in the light of the information in the case. It emerges from the screen-shots of the allo-pages.fr site produced by Links Lab in December 2015<sup>381</sup> and those of Gibmedia's online directory sites produced by Google in July 2015<sup>382</sup> that the presentation of the Contact+ process was, on the contrary, similar between these two operators. While Gibmedia's online directory sites were suspended in January 2015, the allo-pages directory site continued to be promoted on Google Ads in 2015.

◆ Google's marketing and sales support

487. Haphazard interpretation of Google's Rules was noted above (see in particular paragraphs 472 et seq.), in view of the lack of consistency in the position of the Policy and Support Teams on the interpretation of the Rules.
488. The same applies to the application of the Rules. While Google suspended certain advertisers because it considered that the promotion of online directories was not authorised on its advertising platform, its sales teams subsequently offered those same advertisers support programmes aimed at increasing investment in Google Ads in order to improve their referencing within Google Search.
489. Such is the case of Interactiv, which was approached by a Google sales representative on 17 April 2015, whereas six of its accounts had been suspended for “untrustworthy promotions” in January 2015 (see paragraph 226).

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<sup>381</sup>Classification mark 795, Referral 15/0019F.

<sup>382</sup>Classification mark 795 (for Links Lab) and classification mark 11357 (for Gibmedia), reference 15/0019F.

490. This is also the case of Somnus, which publishes two online directory sites (a-qui-annuaire.fr and cquicenumero) suspended by Google for violation of the “sale of free items” Rule during the first half of 2014. A Google salesman thus proposed personally accompany the a-qui-annuaire.fr site about ten days after the website was suspended. Similarly, “Google Growth Accelerator” support service was offered to the site cquicenumero.com on 24 August 2016.
491. Ecométrie, Gibmedia's sister company, which Google has suspended three times between 2012 and 2014, also benefited in parallel from personalised support from its sales teams, who suggested that the site organise a war room against Google’s Policy teams responsible for enforcing the Rules to prevent further suspension of the site. After the last suspension of the Ecométrie website on 20 June 2014, Google has continued to make offers to the site to support its sales on its advertising platform. The site is even cited by Google's sales teams as having “exceptional growth” on Google Ads in order to promote their support offer to other online directory companies<sup>383</sup>.
492. Google also collaborated with E-kanopi for the advertising campaigns of its website annuaire-inverse.com, even though the company had previously been suspended from this ad platform<sup>384</sup>. It should be recalled that E-kanopi had been the subject of account suspensions in 2010, which had led to a complaint to the *Autorité*.
493. Finally, Amadeus benefited from personalised support from Google’s teams (“Google Growth Accelerator” then “Mid Market Sales”<sup>385</sup>) until late 2017, before being suspended by Google for the first time in January 2018 and again in July 2018. Beginning in January 2017, public authorities had warned Google that the directory information services “billed €2.99 per call then €2.99 per minute” were likely to harm the interests of the consumer<sup>386</sup>. However, these services are precisely those that were marketed by Amadeus and which were highlighted by Google's sales teams as part of the support provided to the website until late 2017 (see paragraphs 239 et seq.).
494. It is clear from the above that Google's sales teams have made a significant contribution to the development of sites marketing services that its own Policy teams had banned to protect consumers.

*Google’s failure to provide justification to explain the lack of objectivity and transparency in the application of the Rules*

495. Google believes that the Rules should be largely automated in order to monitor as objectively and efficiently as possible as many ads as possible on a daily basis. According to Google, its automatic control tools are increasingly numerous and sophisticated. They are based on indicators that can detect non-compliant ads and are sometimes supplemented by manual checks in the most complex cases. However, they do not detect all non-compliant advertisements at any given time. Google therefore believes that it cannot wait for all identical violations to be detected before taking action, even if this may lead to differences in treatment over time between similar sites.

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<sup>383</sup>Classification mark 8170, Referral 15/0019F.

<sup>384</sup>Classification marks 14987 and 15582, Referral 15/0019F.

<sup>385</sup>See Decision 19-MC-01 of 30 January 2019 on the request by Amadeus for interim measures, paragraphs 44-48.

<sup>386</sup>Classification mark 12082, Referral 15/0019F.

496. This explanation does not stand up to scrutiny. As explained above (see paragraphs 224 et seq.), Google's sales teams approached many sites to promote their services on its advertising platform, even though they had previously been suspended for breaches of the Rules. In these cases, Google had already detected and punished violations of the Rules, but this has not prevented it from providing sales support to the sites that committed them.
497. In addition, while Google has every reason to implement the monitoring tools and procedures that it believes are best suited to detect violations of the Rules, it cannot haphazardly and inconsistently suspend advertisers from its advertising platform simply because its own monitoring tools do not cover the diversity of services on advertisers' sites.
498. Furthermore, there is no support for the argument that the inconsistent application of the Rules is due to cloaking by certain sites. Google's explanations that Gibmedia had engaged in cloaking by not revealing to it that it was using the Contact+ payment solution illustrate this point. Google's inability to detect "Contact+" billing practices is indeed mainly explained by the fact that Google did not have an Orange subscription, which cannot be blamed in itself on Gibmedia.
499. As mentioned above, only Orange offered the Contact+ pay-per-minute billing method (see paragraph 483). The websites that offered this billing method therefore developed specific versions of their sites for Orange subscribers different from those available to subscribers of other ISPs that did not offer this method of payment. Google has however stated that it has a very limited choice of suppliers (in many countries only one supplier is available) and that it was only beginning in early 2015 that its manual review from Ireland was able to cover both Orange and SFR in France (see paragraphs 144 and 145). Previously, the remote manual review was organised on an *ad hoc* basis and did not cover different versions depending on the ISP<sup>387</sup>.

#### ***Conclusion on the effects of the practice***

500. It follows from the foregoing that Google's conduct in establishing, implementing and enforcing the Rules is contrary to the provisions of Article 102 TFEU and L. 420-2 of the French Code of Commercial Law, due to the effects of this practice.
501. In addition to the direct effects on the market of online search advertising, this has the effect, at least potentially, of disrupting the functioning of competition in the downstream markets in which the publishers operate. As indicated above (see paragraphs 445 et seq.), the Google Ads platform is an essential vehicle, in particular for certain largely unknown websites, for entering or remaining in a market for the provision of digital services. However, these websites can contribute to boosting competition on the Internet, at least by diversifying the range of services available to Internet users, but also, for some, by offering innovative services that meet certain preferences of Internet users or are of better quality than those displayed in the initial results of Google's search page.
502. However, the opacity of the Rules and their haphazard application are likely to modify the incentives of website publishers, particularly innovative ones, and discourage them from developing models based on billing users. Indeed, the possibility of using Google Ads' services to gain initial visibility among users is subject to increased risks due to Google's behaviour. The haphazard application of the Rules and their high instability are likely to dissuade websites from investing in the development of new digital services, particularly if they are likely to be affected by the "sale of free items" Rule. The fact that a service or

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<sup>387</sup>Classification mark 3835, Referral 15/0019F.

content is accessible free of charge on the Internet does not mean that its marketing as a paid service does not provide “added value” for the consumer, for example by reducing exposure to advertising or by facilitating or structuring access to information that may be scattered over several sources on the Internet.

503. Furthermore, the discriminatory application of the Rules is also likely to favour, in an unjustified manner, certain categories of competitors over others and to disrupt the competitive functioning of downstream digital service markets. The unfair and discriminatory definition and application of the Rules does not prevent keeping sites that are potentially harmful to the consumer. Thus, Google's behaviour also has a negative effect on the other half of the search advertising business, the users.
504. The Rules do not prevent the creation and development of sites that sell “normally free” services at abusive prices with opaque billing conditions without providing any added value for the consumer, since the entry cost of such sites is insignificant and their profit-seeking is short-sighted.
505. Google's practices therefore do not effectively remove from users' search results sites that mislead consumers, for example by selling them services they thought were free or by not clearly informing them of the prices to be paid. The quality of the offering on the markets under consideration is affected, even though the clear application of transparent Rules should encourage innovative sites to develop using Google's services and thus have the opposite virtuous effect on the markets.
506. Discouraging the initiative of sites to offer truly competitive and innovative services, and consequently reducing the diversity of the offering, Google's practices weaken the competitive pressure between sites present in the same market.
507. Moreover, Google, by treating inconsistently and in haphazard fashion the digital service websites with similar marketing practices that it considers harmful, is disrupting the normal functioning of the online advertising market without effectively protecting consumers.
508. As Google rightly points out, malicious advertisements are indeed a threat to (i) Internet users, who may be exposed to certain risks or inconveniences by clicking on advertisements, and (ii) bona fide advertisers, whose advertising investment is disrupted<sup>388</sup>. There is therefore a doubly negative effect on users by exposing them to harmful content and disrupting competition in downstream markets where users are also customers.
509. In the present case, Google's practices are likely to cause anticompetitive effects in a large number of downstream markets. The existence of at least potential anticompetitive effects caused by Google's practices has been established in the online directories sector, as the *Autorité* has found evidence of discriminatory and unfair treatment in this sector by Google. In addition, in January 2015, Google suspended Gibmedia's info-meteo.com website, which offered paid weather information services billed by Contact+, on the grounds that they contravened the “untrustworthy promotions” Rule (see paragraph 167). On the other hand, Audiovox stated that its weather information site, point.meteo.fr, which also offered paid services billed by Contact+ had not been suspended from Google Ads (see paragraph 187). Interactiv also reported differences in treatment in the areas of mapping, cooking recipes, test results, health services and train schedules (see paragraph 225).

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<sup>388</sup>Google's comments in response to the Report, paragraph 20, classification mark 15957, Referral 15/0019F.

#### **d) Conclusion on Google's abusive practices**

510. Google's practice is contrary to the rules in Articles 102 TFEU and L. 420-2 of the French Code of Commercial Law because of its purpose and harmful effects on competition.
511. The non-objective and non-transparent definition of the Rules makes it possible for Google to apply the Rules in an unfair and discriminatory manner. Such a practice is likely to disrupt the functioning of the market for online search advertising, as well as that of the downstream markets for the provision of digital services where Google Ads customers operate. These practices also expose the Internet user to potentially harmful sites.
512. In the present case, the *Autorité* has demonstrated that the Google Ads Rules, in particular those on the sale of free items and untrustworthy promotions, are anticompetitive in that they are not defined in a transparent and objective manner and are liable to have anticompetitive effects on the market for online search advertising and on downstream markets. The *Autorité* has demonstrated the existence of anticompetitive effects, at least potentially, on the downstream business of online directory services.
513. It follows from the foregoing that the establishment and implementation of the Google Ads Contractual Rules, applicable between Google and advertisers in the online advertising market, constitute abusive practices, which violate Articles 102 TFEU and L. 420-2 of the French Code of Commercial Law.

#### **e) Duration of the practice**

514. According to the Statement of Objections, “the practices [...] have been implemented since 2012 and are still being implemented today.” In the report, the Investigation Services state that the breach began on 24 July 2012 - the date on which Google allegedly asked annuaire.com to include hyperlinks to its own Google Maps service - and ended on 30 October 2018, the date on which the Statement of Objections was sent<sup>389</sup>. Google contests the duration of the breach.
515. As regards the starting date of the breach, Google submits that the date used in the Statement of Objections is unrelated to the alleged objection. Google considers that the practice alleged against it on 24 July 2012 corresponds to self-promoting practices and that that practice is not part of the evidence presented in the Statement of Objections to justify the starting point of the period. According to Google, the case does not contain any evidence to establish that it suspended the annuaire.com site under “non-objective, non-transparent and discriminatory” conditions which are the subject of the objection. Google concluded that the objection could not begin before January 2015, the period in which Gibmedia's sites were suspended.
516. The Statement of Objections expressly mentions the conditions for suspending the site annuaire.com at the stage of the findings<sup>390</sup> and qualification of the practices<sup>391</sup>, to illustrate the lack of objectivity and transparency of the procedures for suspending accounts applied by Google. In its observations in response to the Statement of Objections, Google moreover stated that it considered that the annuaire.com site was likely to be

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<sup>389</sup>Report, paragraphs 390 and 391, classification marks 15625 and 15626, Referral 15/0019F.

<sup>390</sup>Paragraphs 171, 172, 238 of the Statement of Objections, classification marks 11045, 11046 and 11067, Referral 15/0019F.

<sup>391</sup>Paragraphs 495 and 496 of the Statement of Objections, classification mark 11143, Referral 15/0019F.

affected by the practices for the purposes of its analysis of the anticompetitive effects of the practices<sup>392</sup>. The conditions of suspension of the annuaire.com site are therefore criticised in the Statement of Objections for their lack of objectivity and transparency - a practice directly related to the notified objection - and the site was taken into account by Google in the defence presented before the *Autorité*.

517. In the light of the above, Google's arguments should be rejected and the date of 24 July 2012 should be retained as the starting date for the practices.
518. As regards the end date of the breach, Google submits that the Statement of Objections does not explain how the practices would still be ongoing at the date of the sending of the Statement of Objections, as the Rules have been amended several times since January 2015 (date of suspension of Gibmedia's sites). In this regard, it points out that the “sale of free items” Rule was amended in March 2018, so that a violation of the Rule no longer results in immediate suspension of the advertiser's account.
519. In March 2018, Google did amend its “untrustworthy promotions” (now “unreliable behaviour”) Rule so that it no longer includes the sale of free items Rule and its violation no longer results in immediate account suspension. The Rule has however been reintroduced under another category of Rules called “Other restricted businesses” and, although it has a new designation, it still does not meet the criteria of objectivity and transparency, since its scope is still difficult to grasp and does not precisely delimit the category of digital services it covers (see paragraph 392).
520. Given the foregoing, the date of 30 October 2018 shall serve as the date on which the practices in question ended.

## **D. IMPUTABILITY FOR THE PRACTICE**

### **1. APPLICABLE PRINCIPLES**

521. It is apparent from the settled case law that Articles L. 420-2 of the French Code of Commercial Law and 102 TFEU cover breaches committed by undertakings, a concept which designates an economic unit, even if, from a legal point of view, that unit is made up of several natural or legal persons. Such an economic entity shall, where it infringes the competition rules, be liable for that breach in accordance with the principle of personal liability<sup>393</sup>.
522. Thus, within a group of companies, the parent company may be held liable for the behaviour of a subsidiary, particularly when, although the subsidiary has a separate legal personality, it is not autonomous in determining its behaviour on the market, but

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<sup>392</sup>See footnote 221 of Google's observations in response to the Statement of Objections, classification mark 11421, Referral 15/0019F.

<sup>393</sup>See, in particular, the judgments of the Court of Justice of 10 September 2009, *Akzo Nobel et al. v Commission*, C-97/08 P, ECR I-08237, paragraphs 55 and 56, and *General Química v Commission*, C-90/09 P, ECR I-0001, paragraph 36; see also the judgment of the Court of Appeal of Paris of 29 March 2012, *Lacroix Signalisation et al.* C-97/08 P, ECR I-0001, pp. 18 and 20.

essentially applies the instructions given by the parent company, particularly with a view to the economic, organisational and legal ties between these two legal entities<sup>394</sup>.

523. In the specific case where a parent company directly, or indirectly via an intermediate company, owns all or almost all of the capital of its subsidiary, which is the offending party, it is simply assumed that the parent company has a decisive influence on the behaviour of its subsidiary, a presumption that is compatible with the principles of personal responsibility and individualised punishments. In this case, the competition authority need only provide evidence of this capital ownership to attribute the behaviour of the subsidiary that is the perpetrator of the practices to the parent company. The parent company can rebut this presumption by providing evidence to demonstrate that its subsidiary is autonomous in determining its line of action on the market. If the presumption is not rebutted, the competition authority will be able to hold the parent company jointly and severally liable for the payment of the fine imposed on its subsidiary<sup>395</sup>.

## 2. ASSESSMENT OF THE PRESENT CASE

524. First, the practices can be attributed to Google Inc., which became Google LLC in September 2017, as the perpetrator, insofar as the Rules and procedures for supervising advertiser activity are defined at the global level by Google LLC<sup>396</sup>. [...] <sup>397</sup>. [...] <sup>398</sup>

525. The practices can also be imputed to Google Ireland Ltd as perpetrator. In this regard, Google stated, “The AdWords service is provided to French AdWords advertisers by Google Ireland Limited” [...] <sup>399</sup>. In addition, advertisers must accept the terms and conditions of Google Ireland Ltd in order to use the Google Ads service<sup>400</sup>. Google Ireland Ltd. is a subsidiary of Google Ireland Holdings, whose parent company is Alphabet Inc.

526. Lastly, the practices can be imputed to Google France as perpetrator. Indeed, it appears that Google France may be involved in investigations leading to the suspension of sites or accounts, and that it was involved in the internal investigation concerning Gibmedia<sup>401</sup>.

527. Secondly, the practices can be imputed to Alphabet Inc. as the parent company of the three offending companies as of 2 October 2015. As of that date, Alphabet Inc. replaced Google Inc. (which became Google LLC in September 2017) as a consolidating entity<sup>402</sup>. The ultimate parent company of Google Ireland Ltd, which is a wholly owned subsidiary of Google Ireland Holdings, is Alphabet Inc.<sup>403</sup>. Google LLC became a wholly owned subsidiary of Alphabet Inc.<sup>404</sup>.

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<sup>394</sup>*Akzo Nobel et al. v Commission*, cited above, paragraph 58, *General Química v Commission*, paragraph 37, and *Lacroix Signalisation et al.*, cited above, pp. 18 and 19.

<sup>395</sup>*Akzo Nobel et al. v Commission*, cited above, paragraphs 60 and 61, *General Química v Commission*, paragraphs 39 and 40, and *Lacroix Signalisation et al.*, cited above, paragraphs 19-20.

<sup>396</sup>Classification mark 1473, Referral 15/0019F.

<sup>397</sup>Classification mark 2036, Referral 15/0019F.

<sup>398</sup>Classification mark 9821, Referral 15/0019F.

<sup>399</sup>Classification mark 9821, Referral 15/0019F.

<sup>400</sup>Classification mark 597 et seq., Referral 15/0019F.

<sup>401</sup>Classification mark 1864, Referral 15/0019F.

<sup>402</sup>Classification mark 9068, Referral 15/0019F.

<sup>403</sup>Classification mark 9041, Referral 15/0019F.

<sup>404</sup> [https://abc.xyz/investor/pdf/20171231\\_alphabet\\_10K.pdf](https://abc.xyz/investor/pdf/20171231_alphabet_10K.pdf)

528. The practices can also be imputed to Google LLC as the parent company of Google Ireland Ltd. and Google France for the period from 2012 to October 2015, when Alphabet Inc. was founded.

## **E. PENALTIES**

### **1. FINES**

#### **a) Adopting a flat-rate method**

529. The Notice of 16 May 2011 on the method for determining financial penalties (“the Notice”) clarifies the method that the *Autorité* follows in setting the amount of the penalties it imposes for breaches of the rules of competition. It provides a practical expression to the legal criteria of seriousness of the alleged actions, damage to the economy, individualisation and consideration of recurrence<sup>405</sup>. The Notice thus offers companies greater transparency of the Rules and ensures consistent application<sup>406</sup>.
530. The Notice also helps to ensure the effectiveness of the fines imposed by the *Autorité*. The Court of Justice has held in this respect that the effectiveness of the fines imposed by competition authorities in Europe is a prerequisite for the consistent application of European competition rules<sup>407</sup>. Effectiveness ensures that sanctions will fulfil their dual function of punishing the undertaking according to the seriousness of the actions committed and the resulting damage to the economy and of deterring both the undertaking in question and other economic operators from committing further breaches of competition rules<sup>408</sup>.
531. Application of the Notice should not however undermine these objectives of consistent application of the method for determining and ensuring the effectiveness of the imposed sanction. The Notice thus “commits the *Autorité*, who shall determine the financial penalties it imposes in a consistent manner. It can therefore be invoked against it, unless it explains in the reasons for its decision the particular circumstances or the reasons in the general interest which lead it to depart from it in a given case”<sup>409</sup>.
532. The circumstances of the case lead the *Autorité* not to apply the Notice on Fines. Its application would result in the imposition of a fine which would be disproportionate to the seriousness of the actions committed and the extent of the damage caused to the economy and would be devoid of any deterrent or punitive character.
533. The reference in the Notice to the seriousness of the actions and the extent of the damage caused to the economy is the value of all the categories of products or services related to the breach and sold by the undertaking concerned<sup>410</sup>.

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<sup>405</sup>Criteria specified in Article L.464-2, I, paragraph 4 of the French Code of Commercial Law.

<sup>406</sup>Notice on Fines, paragraphs 14 and 7.

<sup>407</sup>Court of Justice, 11 June 2009, *XBV*, C-429/07, paragraph 37.

<sup>408</sup>Notice cited above, paragraph 11.

<sup>409</sup>Notice cited above, paragraph 7.

<sup>410</sup>Notice cited above, paragraph 33.

534. In the present case, the practices in question concerned all of Google's Rules and all of its customers. The value of the sales cannot therefore be reduced to the value of Google Ads' advertising services in the three markets concerned by the complaint. The evidence in the case file shows that many other sectors have been affected by Google's practices, including sites concerning examination results, competitions, tax calculations, administrative documents, mapping services, cooking recipes, health sites (see for example the paragraph 225). Such an approach would lead to a fine whose total amount would not be proportionate to the need for deterrence. According to Google, the sales concerned do not represent [...] total sales of Google Ads<sup>411</sup>. This approach would not enable the *Autorité* to set a fine proportionate to the seriousness of the alleged actions and the damage caused to the economy, which require account to be taken of the nature of the restriction, its object, the market share of the company involved, the situation in the market in which the competition rules were broken<sup>412</sup> and the scale of the breach<sup>413</sup>.
535. A disproportionate fine given the imperative for deterrence would not meet the need to set fines at a sufficiently repressive and dissuasive level. However, the context of the practices shows the importance of the deterrent function of the fine to be imposed on Google.
536. It should be recalled that the competition concerns relating to the clarity and application of the Rules to website publishers are not new to Google. With two decisions in 2010<sup>414</sup>, the *Autorité* took interim measures and then made binding commitments to clarify the content policy for advertisers in the radar detector sector. On the occasion of the proceedings on the merits, Google indicated to the *Autorité* that in practice it will apply the improvements permitted by the clarification of the Rules to all content allowed on the Google Ads service in all countries concerned by the service. The *Autorité* has taken note of Google's willingness to provide more transparency and predictability to advertisers beyond the individual case submitted to the *Autorité*.
537. In a subsequent decision in 2013 to reject a complaint for lack of evidence, the *Autorité* however expressed doubts about the system employed by Google. The decision states, "The *Autorité* has doubts as to the practical scope given by Google to the commitments, made voluntarily in the context of the above-mentioned case, to extend the improvements and clarifications provided by the commitments addressing the *Autorité*'s concerns in the radar database sector to all of its Adwords policies and content. The *Autorité* also questions Google's interpretation of the circumstances of serious and immediate risk that would justify non-compliance with the procedure set out in Commitment 4. An overly broad interpretation of these elements could lead Google to consider that in the event of a breach by the customer of the contractual rules, it would not be bound by the said procedure." It also notes that "an overly restrictive interpretation of the commitment formally acknowledged to Google in Article 2 of Decision 10-D-30 of 28 October 2010 with regard to a particular market participant would likely give rise to concerns on the part of the *Autorité de la concurrence* regarding the appearance of possible distortions of competition"<sup>415</sup>. Thus, beginning 2013, the *Autorité* had warned Google of the legal risk that its practices entailed.

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<sup>411</sup>Classification mark 15995.

<sup>412</sup>French Supreme Court (*Cour de cassation*), Commercial Chamber, 27 September 2017, *Spie Sud Ouest*.

<sup>413</sup>Notice cited above, paragraphs 27 et seq.

<sup>414</sup>Decisions 10-MC-01 and 10-D-30, *Navx*.

<sup>415</sup>Decision 13-D-07, paragraphs 77 et seq.

538. Moreover, this disproportionate fine would be imposed on an undertaking whose dominance presents the “extraordinary” characteristics noted above (see paragraph 321).
539. It follows from the foregoing that application of the Notice would not, in the present case, make it possible to ensure that the financial penalty fulfils its repressive and deterrent functions or to take account, in a manner appropriate to the case and consistent with decision-making practice, of the seriousness of the alleged actions and damage caused to the economy. It is therefore appropriate to adopt a flat-rate method.

#### **b) Flat-rate determination of the amount of the fine**

540. According to Article L. 464-2, I, paragraph 3, the *Autorité* may impose financial penalties that are proportionate to the seriousness of the alleged actions, the size of the damage caused to the economy, the financial situation of the company or the group to which the latter belongs, and the possible recurrence of anticompetitive practices. These legal criteria will be analysed in succession.

#### *Seriousness of the charges*

541. In order to assess the seriousness of the charges in the case in point, the nature and characteristics of the breach must be examined, as well as the status of the persons likely to be affected.
542. With respect to the practices, which consist of a lack of objectivity, transparency and discrimination in the implementation of the Rules, the ambiguity of Google's behaviour described above should be recalled. Even though Google publicly states its goal is to protect consumers, it continues to collect significant amounts of money from sites that should have been suspended if the Rules had been clearly defined and enforced. Even if the case does not reveal a deliberate and comprehensive strategy aimed at disrupting competition in the online search advertising market and downstream markets, Google has been negligent at best and opportunistic at worst in developing business offers for publishers of sites which had previously been suspended from Google Ads for conduct which Google itself considered dubious.
543. This behaviour took place even though Google was regularly alerted to the importance of complying with competition rules. The Commission sanctioned it in the cases involving Google Shopping (27 June 2017), Google Android (18 July 2018) and Google Search AdSense (20 March 2019)<sup>416</sup>. Since 2010 the *Autorité* has on several occasions specified the conditions under which the Rules shall be defined and applied by Google in decisions granting or rejecting interim measures<sup>417</sup>, commitments<sup>418</sup>, or rejections for lack of evidence<sup>419</sup>.

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<sup>416</sup>Commission Decisions of 27 June 2017, AT.39740 - *Google Search (Shopping)*; of 18 July 2018, AT.40099 - *Google Android*; and of 20 March 2019, AT.40411 - *Google Search (AdSense)*. Google has appealed these decisions: Case T-612/17 (appeal of *Google Search - Shopping* decision); Case T-604/18 (appeal of *Google Android* decision), Case T-334/19 (appeal of *Google Search - AdSense* decision).

<sup>417</sup>Decision 19-MC-01 concerning a request for interim measures by Amadeus (granted), Decision 15-D-13 concerning a request for interim measures by Gibmedia (rejection), Decision 10-MC-01 concerning a request for interim measures by Navx (granted), Decision 05-D-34 of 27 June 2005 concerning practices implemented on the market for the sale of audiovisual equipment on the Internet (rejection).

<sup>418</sup>Decision 10-D-30 (*Navx*) concerning practices employed in the Internet advertising sector .

<sup>419</sup>Decision 13-D-07 (*E-kanopi*) of the *Autorité*.

544. With regard to the persons likely to be affected by the practices, the Rules apply to all advertisers, whose size and economic power vary widely. It should be noted that the effects of the practices are particularly harmful for new entrants who are small or offer innovative models and seek to be referenced on Google Ads to gain recognition and develop on the Internet.
545. Furthermore, the practice alleged against Google is likely to harm “vulnerable consumers”, in that it has the effect, at least potentially, of maintaining advertising exposure to sites that would abuse consumers.

### *Damage to the economy*

546. The significance of the damage to the economy will be assessed in the present case in the light of the following elements: the scale of the breach, the relevant economic characteristics of the sector and finally the cyclical and structural consequences of Google's practices.
547. As to the scale of the breach, the Rules of Google at issue were applicable to all advertisers using Google Ads services. In particular, they concerned all the advertisers that make up Google's demand on the French search advertising market, where Google holds an “extraordinary” dominant position resulting from a market share ten times higher than that of its main competitors, an unparalleled reputation and the barriers to entry into this market (the significant investment required to develop a high-performance search engine and tools for enhancing and managing an associated advertising platform) (see paragraphs 310 et seq.). Google alone achieved an annual turnover in excess of €[...] on average over the period of the practices on the search advertising market in France.
548. In terms of characteristics, the online advertising sector, and in particular the search advertising market, is experiencing strong dynamics in France and worldwide, partly echoing the growth of online commerce. The *Autorité's* Opinion 18-A-03 on data mining in the Internet advertising sector noted in this respect that the Internet had become the leading advertising medium, ahead of television, and that online advertising had grown on the order of 10% in 2016 and 2017. In particular, Google has experienced continuous and strong growth over the period of the practices. In this context, the different types of online advertising, and particularly search advertising, are important growth drivers for many economic stakeholders.
549. In addition, search advertising, in particular via Google Ads, is a key source of traffic for some websites, especially in their first years of operation, when it is difficult to find effective alternatives for generating traffic (see paragraphs 445 et seq.).
550. In these circumstances, Google's practices may have impeded competition in online markets in several respects.
551. Firstly, it was found that the suspension or closure of Google Ads accounts resulting from Google's application of the Rules at issue resulted in very substantial decreases in traffic and turnover for the websites concerned, in contrast to the growth displayed by those websites when they had access to Google Ads<sup>420</sup>.

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<sup>420</sup>Between 2014 and 2015, the year of the suspension of the AdWords account, the turnover and traffic of pages-annuaire.net were divided by nearly 5. In 2016, the turnover was only €260,214, an amount approximately 12 times less than the turnover in 2013. Between 2014 and 2015, the turnover and traffic of annuaire-inverse.net were divided by 1.7 and 2.6 (see paragraphs 559 and 560 of the Statement of Objections - classification mark 11162, Referral 15/0019F). Audivox's les-pages.com website received only 176,940 visitors during the months of September, October and November

552. Second, and more generally, Google's Rules at issue have created uncertainty as to whether publishers who choose a fee-based model are able to use Google Ads services on a long-term basis.
553. In so doing, they may have dissuaded website publishers from using paid models, whereas such models could in some cases result in enriched services for Internet users, or at least in conditions of access to services or information that some consumers might value (e.g. absence of advertising). In addition, Google could take advantage of such an incentive to adopt a "free" model, with sites financed by advertising, insofar as it offers services to website publishers for selling their advertising space (Google AdSense).
554. Thirdly, by limiting the possibilities of differentiating business models between sites, the Rules at issue may have hindered the growth of new websites or those with limited means to the benefit of existing competitors.
555. These different effects are accentuated by the opaque nature of the Rules and their variable application over time and sites by Google. In this respect, Google has occasionally offered support to certain websites, which has led to encouraging them to develop through Google Ads and then depriving them of this development vehicle. The damage is also reinforced by Google's very strong dominant position in the market for Internet search services, so that the effects of the practices on the referencing of sites on Google Ads have not led to a reduction in the number of users of Google's search engine. In particular, neither the referencing of non-value-added services that Google has sometimes allowed to develop nor the non-referencing of services that are potentially valued by consumers but in violation of the Rules has resulted in the loss of significant numbers of users or affected Google's revenue growth.
556. There are however two important factors attenuating the damage to consider. First, some websites manage to develop without necessarily using Google Ads. Secondly, depending on the sector, the likelihood that sites opting for a paid model rather than a free model funded by advertising are seeking to grow is more or less strong, so the damaging effect of the opacity of the Rules put in place by Google and their haphazard application does not have the same magnitude for all sectors.

#### *Adapting the fine to the size of the group*

557. The assessment of the individual situation may lead the *Autorité* to take into account the size of the undertaking in question or the group to which it belongs<sup>421</sup>. The *Autorité* may thus adapt the penalty in the light of the size, economic strength and overall resources of the group to which the perpetrator belongs.
558. In the present case, the breach in question was attributed to Google LLC, Google Ireland Ltd and Google France as perpetrators and to Alphabet Inc. as parent company, which together constitute an undertaking for the purposes of competition law.
559. In order to assess the power and contributive capacity of companies, it should be noted, firstly, that in 2017, the companies responsible for the practices had a turnover in France on the search advertising market of approximately €[...]<sup>422</sup>. Secondly, the offending

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2015. One year earlier, during the same period, it had received 2,507,203 visitors (see paragraph 561 of the Statement of Objections - classification mark 11162, Referral 15/0019F).

<sup>421</sup>French Supreme Court (*Cour de cassation*), Commercial Chamber, 28 April 2004, *Colas Midi-Méditerranée et al.*, 02-15203.

<sup>422</sup>Classification marks VC 12539-12561, Referral 15/0019F.

companies belong to the group owned by Alphabet Inc., an international group with a consolidated worldwide turnover of €98.328 billion in 2017 and €116 billion in 2018.

560. In the light of those factors, and whereas the fight against anticompetitive practices requires that the penalty be an effective deterrent, the amount of the financial penalty imposed must be substantially increased.

#### *Amount of the fine*

561. In view of the above, including the established seriousness of the actions, the certain significance of the damage caused to the economy and the economic strength of the undertaking concerned, a financial penalty of €150,000,000 should be imposed on Google LLC, Google Ireland Ltd and Google France, the companies which are the perpetrators of the breach, including €72,000,000 jointly and severally with Alphabet Inc., as parent company since 2 October 2015<sup>423</sup>.
562. This amount does not exceed the applicable legal limit of 10% of Alphabet Inc.'s highest consolidated worldwide pre-tax sales.

## **2. NON-FINANCIAL PENALTIES**

563. Article L. 464-2, I, of the French Code of Commercial Law empowers the *Autorité* not only to order undertakings or organisations that have engaged in an anticompetitive practice to put an end to it within a specified period, but also to impose special conditions on them. The injunctions are intended to ensure that the sanctioned company will change its behaviour for the future in order to stop the harm to competition. They must be proportionate to the objective being pursued.
564. The granting of injunctions is essential where harm to competition results from contractual provisions still in force at the time of the *Autorité's* decision. Google shall therefore be ordered to take the necessary measures to bring to an end the breaches still ongoing at the time of this Decision and effectively restore the competitive situation in the markets affected by the practices.
565. These injunctions include clarifying the Google Ads Rules to address their lack of objectivity and transparency (a) and amending Google's account suspension procedures to ensure that they are not abrupt and unjustified (b). Google must also put in place procedures to alert, prevent, detect and address violations of its Rules, so that actions to suspend Google Ads sites and accounts are strictly necessary and proportionate to the goal of consumer protection (c).

### **a) Injunctions regarding clarification of Google Ads Rules**

566. First, Google shall clarify the wording of the Google Ads Rules that are designed to protect users of its online Google Search from malicious ads and websites (hereafter, the “Rules for the Protection of Internet Users”).

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<sup>423</sup>Alphabet Inc. is ordered to pay jointly and severally a share of the fine, calculated on the basis of the duration of its participation (3 years) in the breach over a period of 6 years and 3 months.

567. In this respect, the wording of the Rules for the Protection of Internet Users must include not only their definition, but also their nature by specifying the degree of seriousness of the breach.
568. The list of Rules for the Protection of Internet Users for which a breach is considered serious, and for which an accelerated suspension procedure can thus be applied, must be limited to what is strictly necessary and proportionate to the objective of consumer protection. In all cases, the Rules for the Protection of Internet Users must be based on objective, transparent and non-discriminatory criteria for identifying possible breaches.
569. Second, Google needs to review its procedures for notifying users of changes to the Rules for the Protection of Internet Users that it intends to implement.
570. In the event of a change in a Rule for the Protection of Internet Users, the advertisers concerned by this change must be systematically notified individually by electronic or postal means at least two months in advance of:
- its precise content, specifying whether it relates to a serious breach;
  - changes from the previous version;
  - any changes to the other Rules for the Protection of Internet Users; and
  - of the effective date of the change.
571. Updates to the “change log” must accompany individual notifications and within the same timeframe.
572. A notice period of less than two months may apply to changes in the event that national law requires Google to make a change within a period incompatible with the two-month notice period referred to above.
573. This section (the section of this injunction beginning “Second”) is applicable in the event of a change in the account suspension procedures that Google would consider, in compliance with the injunction below.

**b) Injunctions concerning the application of suspension procedures**

574. Google shall clarify its suspension procedures in accordance with the following rules.
575. Immediate suspension of an account is only possible in the event of serious breach. A serious breach is when certain Rules, an exhaustive list of which is specified by Google under the previous injunction and in accordance with the criteria of necessity and proportionality, have been violated. It may also be established when three breaches of the same Rule have been identified, and confirmed on appeal, by Google within a two-year period. Google will provide an alert notification to the account holder concurrently with the suspension, which will fully specify the Rules that Google has determined have been violated and will provide the account holder with the opportunity to justify the violation, remedy it or request an explanation of the allegation.
576. In the case of a non-serious violation, the account suspension process shall include a warning one week prior to any suspension that (a) fully details the Rules that Google has found to have been violated, (b) specifies the consequences of multiple violations of this policy for the suspension of the affected Google Ads account or other related accounts, and (c) directs Google Ads customers to the Google Ads Help Center. This warning shall provide sufficient time before any suspension of the account for the advertiser, as appropriate, to justify this breach, to remedy it or to ask for explanations on the nature of the alleged breach.

577. Google should be required to publish a single document, downloadable from a location on the Google Ads site that is easily accessible from the advertiser's Google Ads account (e.g., via an html link), which specifies the reasons and the various steps that may lead to the suspension of an account. This document shall include:

- a definition of the concept of serious violations whose finding is likely to lead to an immediate suspension of an advertiser's Google Ads account. This definition will be supplemented by the exhaustive list of Google Ads Rules that fall into the category of serious violations; and
- a description of the different steps leading to the suspension of an account, distinguishing between the procedures applied by Google to sanction serious breaches and the procedures applied by Google to sanction non-serious breaches.

**c) Measures for preventing detecting, and responding to violations of Google Ads Rules**

578. First, in order to prevent violations of the Rules from being caused or maintained by Google's own business units, it is necessary that they have sufficient knowledge of the content and scope of the Google Ads Rules and the risks that their customers and users face if they do not comply with the Rules.

579. Google shall organise a mandatory annual training course for staff in charge of the personalised support of the companies using Google Ads.

580. Second, in order to make it easier to detect violations of the Google Ads Rules and their enforcement, Google shall establish a process for consumers to report violations of the Google Ads Rules and the regulations in force. This procedure shall be easily accessible to the consumer. For example, it could be accessible through a specific link on the search pages of the French versions of Google search engine sites next to links to the Google Terms of Service and Privacy Rules.

581. Third, in order to enable the *Autorité* to verify that the suspension measures imposed by Google are in line with the *Autorité*'s consumer protection objective, Google will provide the *Autorité* with an annual report containing the following information:

- i) the total number of sites which have been the subject of complaints lodged with Google by Internet users in France under the procedure referred to in paragraph 580, indicating the total number of accounts that have been suspended as a result of these complaints;
- ii) the total number of sites promoted on Google Ads in France whose ads or accounts have been suspended by Google for reasons related to the protection of Internet users, specifying for each site:
  - its domain name,
  - the Google Ads account number with which the website is associated,
  - the issue it deals with;
  - the Rule(s)s violated by the advertiser;
  - how the violation is detected: complaints from Internet users or by other means to be identified;

- the nature of the suspension (suspension of ads, suspension of accounts, etc.), the date on which the suspension measure was announced, and, if applicable, the date on which the suspension measure ended.
582. Google shall submit this report to the *Autorité* on an annual basis no later than the last day of the first quarter of the calendar year (31 March). On the Google Ads website, Google will publish a non-confidential version of the report, which will specify the measures it has implemented to protect Internet users.
583. This report will make it possible, with regard to the information referred to in point (i), to analyse Google's response to consumer complaints against sites promoted on Google Ads. The information referred to in point (ii) will make it possible to verify that the means used and the suspension measures imposed by Google are in line with its consumer protection policy.
584. The information contained in the report shall be supported by documentary evidence (e.g., exchanges between Google and advertisers regarding the suspension of their accounts) in order for the *Autorité* to verify its accuracy.
585. Google may however be able to avoid this obligation to provide supporting documentation by appointing an independent third party, presented to and approved in advance by the *Autorité*, which will be responsible for checking the accuracy of the information contained in the report. Such an independent third party shall be submitted with the draft mandate for approval by the *Autorité* within one month of notification of this Decision.

#### **d) Other measures**

##### ***Scope of the injunctions***

586. The injunctions referred to in points (a), (b) and (c) concern all the contractual stipulations concluded between Google and advertisers in the market for online search advertising on the French market. This last criterion is verified either by the advertiser's billing address or by the IP address of the Internet users who clicked on the ad link. If the billing location is in France, or if the IP address is French, the injunctions apply.

##### ***Duration of injunctions***

587. All the injunctions referred to in points (a), (b) and (c) shall enter into force within three months of notification of this Decision and shall remain valid until 1 January 2025.

##### ***Measures to monitor injunctions***

588. Google will submit to the *Autorité*'s services:
- a. within two months, a report detailing all the measures and procedures it intends to implement to comply with the injunctions;
  - b. a report detailing all the measures and procedures it has put in place to comply with the injunctions within six months of notification of this Decision.
589. Google has the option of using an independent trustee to monitor compliance of the measures and procedures that it has implemented to comply with the injunctions. The trustee shall submit their reports within the same time limit. Such a trustee shall be submitted together with the draft mandate for approval by the *Autorité* within two weeks of notification of this decision.

**e) Publication injunction**

590. In view of the facts established by this Decision and the practice penalised, it is appropriate to order, on the basis Article L. 464-2, I, of the French Code of Commercial Law, the publication of the summary on pages 3 and 4 of this Decision, within two months of the notification of this decision. This summary must be accessible via an html link entitled “Google fined by *Autorité de la concurrence*, the French competition authority” placed immediately under the search bar on the home page of the websites [www.google.fr](http://www.google.fr), [www.google.com](http://www.google.com) and [www.ads.google.com](http://www.ads.google.com) accessible in France, in font size 14, and for a period of 7 consecutive days. It may be followed by a note stating that the decision has been appealed in the Paris Court of Appeal should such an appeal be made.

## DECISION

**Article 1:** It is established that Alphabet Inc., Google LLC, Google Ireland Ltd and Google France have infringed the provisions of Articles L. 420-2 of the French Code of Commercial Law (*Code de commerce*) and 102 of the TFEU by defining and applying the Google Ads (formerly AdWords) Advertising Platform Rules in a non-transparent, non-objective and discriminatory manner.

**Article 2:** The following financial penalties shall be imposed for the practices referred to in Article 1:

- €72,000,000 to Alphabet Inc., Google LLC, Google Ireland Ltd, Google France, jointly and severally;
- €78,000,000 to Google LLC, Google Ireland Ltd and Google France, jointly and severally.

**Article 3:** Alphabet Inc., Google LLC, Google Ireland Ltd and Google France are ordered to comply in all respects with the injunctions set out in paragraphs 566 to 590 of this decision.

Deliberations on the oral report by Mr Mathieu Guennec and Ms Laure Dosogne Varaire, rapporteurs, and the speech by Mr Nicolas Deffieux, Deputy General Rapporteur, by Mr Henri Piffaut, Vice-President, President of the hearing, Mr Savinien Grignon Dumoulin, Mr Alexandre Menais, Mr Jérôme Pouyet and Mr Christophe Strassel, members.

Hearing Secretary,

President of the hearing,

Claire Villeval

Henri Piffaut

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