

## CASES N°19/0074F, 19/0078F AND 19/0080F - RELATED RIGHTS

### COMMITMENTS PROPOSAL OF ALPHABET INC, GOOGLE LLC, GOOGLE IRELAND LIMITED AND GOOGLE FRANCE

9 May 2022

- (1) The present commitments are proposed by Alphabet Inc., Google LLC, Google Ireland Limited and Google France (or any entity or subsidiary which would substitute itself for any of these entities during the term of the commitments) (hereinafter “**Google**”), on the basis of Articles L. 464-2, I and R.464-2 of the Commercial Code.
- (2) Their objective is to respond in an appropriate, credible and verifiable manner to the competition concerns expressed by the French competition authority (the “**FCA**”) in its preliminary assessment of 3 December 2021 (the “**Preliminary assessment**”), adopted in the context of joined cases n°19/0074F, 19/0078F and 19/0080F.
- (3) In compliance with Decision n° 20-MC-01 of 9 April 2020 (the “**IM Decision**”), the Paris Court of appeal’s decision of 8 October 2020, and Decision n° 21-D-17 of 12 July 2021 (the “**Compliance Decision**”), the commitments set out below, proposed by Google, are intended to allow the FCA to close the aforementioned investigation through the FCA’s acceptance of such commitments. Google commits to withdraw its ongoing appeal against the FCA’s Compliance Decision.

#### **GOOGLE’S PROPOSED COMMITMENTS**

- (4) Pursuant to Articles L.464-2 I and R.464-2 of the Commercial Code, Google commits to implement the measures described in the present commitments proposal (the “**Commitments**”), which it believes bring a relevant, credible, proportionate and verifiable response to the FCA’s competition concerns.

#### **1. Google’s proposed Commitments to remedy the FCA’s competition concerns and close the proceedings on the merits before the FCA**

##### 1.1. Introduction

- (5) The purpose of the present document is to offer Commitments which will have the effect of perpetuating and completing the interim measures ordered by the FCA in its IM Decision, beyond their current applicable term. The appointment of a monitoring trustee (the “**Monitoring Trustee**”), who may appoint one or more expert(s) (the “**Expert(s)**”), under the conditions listed in *Annex 3*, and the inclusion of an arbitration to determine pricing terms in accordance with the terms set out in Article L. 218-4 of the Intellectual Property Code (“**IPC**”) in case of persistent disagreement will further facilitate the objective of finding mutually acceptable agreements negotiated in good faith.

##### 1.2. Scope of the Commitments

- (6) The Commitments below apply to:
  - (i) any press publisher within the meaning of article L. 218-1 IPC, i.e. any person who publishes a press publication within the meaning of Article L. 218-1 I IPC or an online news service

(“service de presse en ligne”) within the meaning of article 1, para. 2, of law n°86-897 of 1st August 1986 to which Article L. 218-1 IPC refers (a “**Press Publication**”),

(hereinafter a “**Press Publisher**”), and

(ii) any news agency recognised as such by an *Arrêté* published in the Official Journal following a favourable vote by the *Commission Paritaire des Publications et Agences de Presse (CPPAP)*, according to article 1 of the French Ordinance n°45-2646 of 2 November 1945 regulating news agencies

(hereinafter a “**News Agency**”),

whose authorisation is required, according to Article L. 218-2 IPC, prior to the reproduction or communication to the public of their protected content (which includes, for Press Publishers, texts, photos and videos incorporated in their Press Publication and for News Agencies, texts, photos and videos incorporated by Press Publishers in an identical manner in their Press Publications and those which they make available to the general public) (“**Protected Content**”), subject to exceptions listed in Article L. 211-3-1 IPC.

- (7) In case of disagreement between Google and a publisher or news agency regarding their qualification as a Press Publisher or News Agency and/or regarding whether a Press Publisher’s domain contains Protected Content, Google and/or the concerned publisher or news agency can submit the matter to the Monitoring Trustee, who will appoint an IP rights expert, and will issue an opinion, within ten (10) business days of the matter being referred, whether or not they and/or their domain qualify as such (subject to any jurisdictional decision having adjudicated on this matter). Google commits to comply with the Monitoring Trustee’s opinion. The deadlines for data sharing mentioned in the Second Commitment, as well as the three (3) months negotiation period mentioned in the Fourth Commitment, will not begin until the Monitoring Trustee determines that the publication of the Press Publisher or News Agency falls within the scope of Article L 218-1 IPC and until receipt of a Complete Negotiation Request as defined at para. 13 hereinafter.
- (8) Press Publishers, News Agencies or any collecting society or association appointed by them to negotiate on their behalf (“**Collecting Societies**”) are hereinafter designated as “**Negotiating Parties**”.
- (9) According to Article L. 211-4, V IPC, a Protected Content published after 6 June 2019 is protected for two years starting on the 1st January of the civil year following the year of the first publication of this Protected Content.

#### **First Commitment:**

- (10) Google commits to negotiate in good faith, with Negotiating Parties who so request, the remuneration by Google for displaying Protected Content on its products and services, in accordance with the terms set out in Article L. 218-4 of the IPC, on the basis of transparent, objective and non-discriminatory criteria. Such negotiations will cover the period of usage of Protected Content starting from 24 October 2019 (applying Google’s proposed remuneration methodology for Existing Uses of Protected Content to this retroactive period), for any negotiation request made before the entry into force of the Commitments.
- (11) Unless the Negotiating Parties request otherwise, the negotiations will not cover Google News Showcase or other new products and services that do not exist on the date of their Complete Negotiation Request as defined in paragraph 13 (uses in the product and services subject to negotiations being defined as the “**Existing Uses**”). If the negotiations relate to the Existing Uses and Google News Showcase and/new types of uses of Protected Content, the negotiations of Existing Uses shall be conducted independently and a distinct amount of remuneration will be allocated to the Existing Uses.

- (12) This Commitment implies that the negotiations actually lead to Google making an offer for remuneration. Such an offer for remuneration may be zero. Google's offer will include a proposal to update the amount of remuneration, at least once a year by 1st February, based on information communicated by Google pursuant to the Second Commitment regarding the extent of its usage of Protected Content and associated exploitation revenue data of the preceding year, and a final regularization payment at the end of the agreement if relevant.
- (13) Any request to enter into negotiations will be sent via the on-line form available at <https://support.google.com/webmasters/answer/12272141> or another alternative channel proposed by Google. Such a request must include all information listed in *Annex 2* as well as an executed confidentiality agreement according to the template provided in *Annex 4* to be considered as complete (a "**Complete Negotiation Requests**").
- (14) Such negotiations, including the assessment of the completeness of any request to enter into negotiations, will take place under the supervision of a Monitoring Trustee, whose missions are described at *Annex 3* hereinafter.

### **Second Commitment:**

- (15) Google commits to share with Press Publishers and News Agencies the information provided for in Article L. 218-4 IPC.
- (16) As a first step, Google commits to share the elements listed at *Annex 1* with the Negotiating Parties who submitted a formal negotiation request, within at most ten (10) business days (for individual negotiations) or fifteen (15) business days (for Collecting Societies or associations) of their Complete Negotiation Request.
- (17) As a second step, the Monitoring Trustee, the Negotiating Parties and Google can ask each other for the communication of further information pursuant to Article L. 218-4 IPC. Google commits to share the further information requested within fifteen (15) business days of the request or of the Monitoring Trustee's opinion in case of disagreement. In case of disagreement between Google and a Negotiating Party regarding the technical feasibility or relevance of such further information requests pursuant to Article L. 218-4 IPC, they may submit the matter to the Monitoring Trustee, who may appoint one or several experts and will issue an opinion.
- (18) Without prejudice to the data listed in *Annex 1* which will be shared with the Negotiating Parties, Google will be entitled to ask the Monitoring Trustee to take into account the confidentiality of the further information requested. In such a case, the Monitoring Trustee can propose, if applicable:
  - (i) that such information will be communicated in accordance with the modalities provided for in paragraph 17, if such further information do not call for any particular protective measure;
  - (ii) to implement appropriate confidentiality procedures (such as restricting access to the Negotiating Party's advisers only, or sharing a version where confidential information are redacted), or
  - (iii) when this data includes particularly sensitive or confidential commercial information, and may enable the Monitoring Trustee to assess Google's remuneration offers in a more comprehensive manner or in connection with a Negotiating Party's request for data, that such information will be shared with the Monitoring Trustee and the Experts only. Google's Search ads and Display ads advertising revenues in France fall into this category.

Google commits to comply with the modalities proposed by the Monitoring Trustee.

- (19) The Monitoring Trustee is entitled to extend the deadlines set at paragraphs 16 and 17 above upon a reasoned request.

### **Third Commitment:**

- (20) Google commits to maintain, for the period defined in paragraph 22 hereinafter, the display modalities implemented at the time of the request to enter into negotiations, in accordance with the parameters chosen by the concerned Press Publishers. With regards to Press Publishers and Agencies who did not provide Google with an authorisation to display their Protected Content on or after 24 October 2019, but who would like to enter into negotiations with Google in the context of the First and Second Commitments, Google commits not to oppose the display of their Protected Contents on its services, in accordance with the modalities chosen by such Press Publishers and Agencies, during the Negotiation period.
- (21) Google will comply with the maximum parameters and modalities permitted by the Press Publisher for the display of its Protected Content, using tools and other methods that Google makes available (e.g., Publisher Center, structured data).
- (22) This Commitment applies for the duration of the Negotiation Period as defined in paragraph 23 hereinafter and, to the extent applicable, the Arbitral Tribunal Price Determination procedure set out in the Fourth Commitment.

### **Fourth Commitment:**

#### Offer for remuneration

- (23) Google commits to conduct the negotiations mentioned in the First and Second Commitments within three months of the date of receipt of the Negotiating Party's Complete Negotiation Request (the "**Negotiation Period**").
- (24) Such negotiations will involve Google making an offer for remuneration, in accordance with the conditions provided for in the First Commitment, within three (3) months of receipt of the Complete Negotiation Request. This three (3) month period can be extended by mutual agreement.

#### Arbitral Tribunal Price Determination

- (25) If Google and a Negotiating Party are not able to reach an agreement on the date of expiry of the Negotiation Period (a "**Disagreement**"), either party may (without the possibility, for Google, to impose it on the Negotiating Party), within 1 month of the end of the Negotiation Period (or any longer period agreed between Google and the Negotiating Party), request the determination by an arbitral tribunal (the "**Arbitral Tribunal Price Determination**") of a remuneration based on the criteria set out in Article L. 218-4 IPC, including, inter alia, the extent of the usage of the Negotiating Party's Protected Content on Google's products and services and expressed as a price per impression, without prejudice to the methodology used by the arbitral tribunal to determine such a remuneration (the "**Price**").
- (26) The arbitral proceedings will be limited in scope to the determination of a Price of Protected Content made available to the public by Google in France.
- (27) Google's remuneration offer for the usage of the Negotiating Party's Protected Content shall be at least equal to the Price set by the Arbitral Tribunal.

#### *Arbitration procedure*

- (28) The arbitration procedure shall be conducted as follows (unless the parties mutually agree to follow a different arbitration procedure):

- a. If the Negotiating Party so wishes, Google will bear the fees of the arbitration judges and the costs of the procedure referred to at points b to k hereinafter, except the Negotiating Party's lawyer fees (without prejudice, as regards to lawyers fees, to Article 38 of the rules of arbitration of the International Chamber of Commerce ("ICC")).
- b. The ICC rules of arbitration shall apply.
- c. The first arbitral tribunal shall be made up of three arbitrators, each having experience in intellectual property and copyright licensing negotiations. Each party may select one arbitrator, and the president shall be selected by the two party-appointed arbitrators from a list of names nominated by the parties. Failing agreement within thirty (30) calendar days, the appointment of the President shall be by the International Court of Arbitration in accordance with ICC rules of arbitration.
- d. The arbitration will be conducted in French.
- e. The arbitral tribunal shall apply French law to the Disagreement.
- f. The seat of the arbitration will be in Paris.
- g. The information and documents exchanged between Google and the Negotiating Party and with the Monitoring Trustee and Experts in the context of the negotiations will be shared with the arbitral tribunal at the beginning of the arbitration procedure, without prejudice to the possibility for the arbitral tribunal to request the communication of additional documents, and in particular information relating to offers made by Google to other Negotiating Parties, pursuant to the provisions of Articles 1467 and 1506 of the French Civil Procedure Code..
- h. The procedure will be a six (6) months fast-track procedure, or any longer period jointly agreed between the parties. The arbitral tribunal will set a calendar with the parties to be in a position to take a decision within this six (6) months timeframe (or any longer period agreed between the parties). The Parties to the Arbitration shall consent to the use of email for the exchange of documents.
- i. The arbitration will be conducted in strict confidence and the arbitral proceedings and decision shall be confidential. Each party shall maintain the confidentiality of the arbitral decision and of the confidential documents submitted in the course of the arbitration by the other party, unless such documents are used in the proceedings for any reexamination of the first arbitral tribunal decision or disclosure is required by law or pursuant to an order by a court, tribunal, or a governmental authority.
- j. The first arbitral tribunal's decision shall be subject to a non suspensive *de novo* reexamination on issues of fact and law in accordance with the following procedure:
  - i. Either party may require the reexamination of the first arbitral tribunal's decision by a second arbitral tribunal within thirty (30) calendar days of notification of the draft decision by the first arbitral tribunal to the parties and the first arbitral tribunal's decision will only be signed and become a final award if no such request is submitted within that time frame.
  - ii. Google commits to abide by the draft decision of the first arbitral tribunal until the second arbitral tribunal issues its award.
  - iii. Unless the parties agree otherwise, the second arbitral panel shall be chosen and will operate as the first arbitral panel in accordance with the rules and procedure set out in points (b) to (i) above. No member of the first arbitral

panel shall serve as a member of the second arbitral panel or otherwise be involved in the reexamination in any capacity.

- iv. The parties agree that the second arbitral tribunal shall have full authority to revisit the issues decided by the first arbitral tribunal. The parties can however agree to limit the issues to be reexamined.
  - v. The reexamination shall be treated as a separate arbitration. The seat of the arbitration shall be in the same jurisdiction as the first arbitration.
  - vi. The second arbitral tribunal's award will be final and binding upon the parties and will prevail over the first arbitral tribunal's decision.
- k. Any procedural rules governing the arbitration procedure not set out above will, at each instance, be decided by the arbitral panel, in accordance with the procedural rules of the relevant arbitral tribunal.

**Fifth Commitment:**

- (29) Google commits that the existence and outcome of the negotiations covered by the First and Second Commitments do not affect the indexation, ranking and display of Protected Contents displayed by Google on its products and services.
- (30) This Commitment does not prevent any improvements and innovations of the products and services offered by Google, provided that they do not involve, directly or indirectly, any harmful consequences to the interests of the holders of the related rights concerned by on-going negotiations with the Negotiating Party covered by the First and Second Commitments and that prejudicial consequence is because of or linked to these negotiations. This Commitment will not prevent Google, under the supervision of the Monitoring Trustee, from taking action to cease indexing, referencing or presenting the Protected Content of Press Publishers or News Agencies that do not comply with the policies and terms required for participation in Google's products and services (e.g., the content policies for Google News, the Google Search Webmaster Guidelines, or Google's terms of service), or that breach an agreement necessary for participation in the relevant product or service.
- (31) This Commitment applies for the duration of the Negotiation Period and, to the extent applicable, the Arbitral Tribunal Price Determination with the concerned Negotiating Party.

**Sixth Commitment:**

- (32) Google commits to take the necessary measures so that the negotiations covered by the First and Second Commitments do not affect the other economic relationships between Google and Press Publishers or News Agencies.
- (33) Without prejudice to Google's capacity to generally create, modify or cease any products or services, this Commitment will mean that any remuneration amount paid to the Negotiating Parties for their related rights for the Existing Use of their Protected Content must be negotiated independently by Google from any other commercial arrangements (including Google News Showcase) between Google and Press Publishers or News Agencies, whether or not the latter are parties to the negotiations.
- (34) This Commitment applies for the duration of the Negotiation Period and, to the extent applicable, the Arbitral Tribunal Price Determination with the concerned Negotiating Party.

**Seventh Commitment**

- (35) Press Publishers and News Agencies who, prior to the FCA's Commitments Decision (as defined in para. 38 hereinafter), (a) had already signed an agreement with Google for the

remuneration of the Existing Use of their Protected Content on Google's products and services; or (b) had been offered such agreements; or (c) are entitled to an offer pursuant to a framework agreement concluded between Google and an association mandated on their behalf, will be entitled to present a new Complete Negotiation Request, and benefit from the provisions set forth in these Commitments. This Commitment will be implemented with no penalty for the amendment or termination of the agreement as the case may be, and the remuneration agreed upon in the pre-existing agreements will continue to apply until the date of such amendment or termination, without prejudice to a possible reassessment pursuant the new offer.

## **2. Appointment of the Monitoring Trustee in charge of monitoring compliance with the Commitments**

- (36) The FCA will appoint an independent Monitoring Trustee, who will be in charge of monitoring Google's compliance with the Commitments.
- (37) The procedure for appointing this Monitoring Trustee, the rules governing the Conflicts of interest, its Missions, its Remuneration, Google's commitment to cooperate and the rules applicable to the Duration, replacement, discharge and renewal of the Monitoring Trustee's mandate, are detailed at *Annex 3*.

## **3. Implementation and term of the Commitments**

- (38) The Commitments will be implemented by Google starting on the date of formal notification of the FCA's decision accepting Google's Commitments (the "**Commitments Decision**") and will remain in force for a period of five years, renewable once by a decision of the FCA motivated by a new competitive analysis.
- (39) On the basis of paragraph 46(a) of the FCA's Commitment Guidelines of 2 March 2009 relating to antitrust commitments, Google will be entitled to submit to the FCA a request for the revision or termination of the Commitments before the end of their term, in case there is a significant change to one of the facts on which the Commitments Decision relies.

**Annex 1 - List of information to be provided by Google to Negotiating Parties pursuant to paragraph 16 of the Commitments**

Google commits to review once a year with the Monitoring Trustee and, as the case may be, to amend the list of information listed in this Annex 1.

For purposes of this Annex, “in France” refers to the location communicated by the user’s device (GPS, IP address or other) insofar as usage data is concerned; and to the geographic allocation used by Google for accounting purposes insofar as revenue data is concerned (unless explicitly stated otherwise).

**Data relating to usage<sup>1</sup> in France**

***Google Search***

1. Number of impressions and click through rate (CTR) for impressions in France on Search (“All”, “News”, “Images” and “Videos” tabs) for the concerned Press Publisher or News Agency Protected Content (for all queries) per month for the twelve months preceding the request to enter into negotiations
  - a. in absolute numbers; and
  - b. as a percentage of all CPPAP certified Press Publisher impressions (the “List”) in France - once a year on 1st February, Google will update the List to include impressions of Press Publishers considered as eligible by the Monitoring Trustee pursuant to the procedure set out in para. 7 of the Commitments;
  - c. as a percentage of all Search impressions in France.
2. Estimated share of newsy queries out of total Search queries in France

***Google News***

3. Number of impressions and click through rate (CTR) for impressions in France on Google News for the concerned Press Publisher or News Agency Protected Content per month for the twelve months preceding the request to enter into negotiations
  - a. in absolute numbers;
  - b. as a percentage of all CPPAP certified Press Publisher impressions (the “List”) in France - once a year on 1st February, Google will update the List to include impressions of Press Publishers considered as eligible by the Monitoring Trustee pursuant to the procedure set out in para. 7 of the Commitments; and
  - c. as a percentage of all News impressions in France.

***Google Discover***

4. Number of impressions and click through rate (CTR) for impressions in France on Google Discover for the concerned Press Publisher or News Agency Protected Content per month for the twelve months preceding the request to enter into negotiations
  - a. in absolute numbers;

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<sup>1</sup> Google may adapt the start date of the twelve month period to align with its quarterly financial disclosures.



- b. as a percentage of all CPPAP certified Press Publisher impressions (the “ **List**”) in France - once a year on 1st February, Google will update the List to include impressions of Press Publishers considered as eligible by the Monitoring Trustee pursuant to the procedure set out in para. 7 of the Commitments ; and
- c. as a percentage of all Discover impressions in France.

**Data relating to Google revenue<sup>2</sup> in France**

*“Direct Search revenues”*

- 5. Search ads revenue generated in France associated with all Press Publishers’ Protected Content impressions (for all queries) in France for the past twelve months preceding the request to enter into negotiations.
- 6. Search ads revenue generated in France associated with the concerned Negotiating Party’s Protected Content impressions (for all queries) in France for the past twelve months preceding the request to enter into negotiations.

*“Additional indirect Search Ads revenues”*

- 7. Search ads revenues generated in France from queries subsequent to those which resulted in the display of Protected Content (in a recursive fashion for six subsequent queries, provided that there are that number of subsequent queries) within the same user visit.
- 8. Estimate of the value of the Protected Content on Discover in France, for example by reference to comparable European markets in which Discover generates advertising revenue.<sup>3</sup>
- 9. Estimate of the value of Protected Content on Google News in France, for example based on the value of Protected Content estimated for Discover.
- 10. Information on the types of data collected by Google in France, instances when such data is collected and use of such data by Google, when Protected Content is displayed on Google’s products and services.
- 11. Information on how Google’s Search algorithms operate and lead to the display in France of Protected Content in response to a Search query.

*“Display ads revenues”*

- 12. Monthly programmatic Display ads gross revenue from Display ads shown in France on the Press Publisher or News Agencies’ domain for the past twelve months preceding the request to enter into negotiations.
- 13. Net revenue retained by Google from the gross revenue mentioned in point 12 (i.e. Google’s net revenue after deduction of the contractual revenue share payments to the relevant Press Publisher or News Agency).

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<sup>2</sup> Google may adapt the start date of the twelve month period to align with its quarterly financial disclosures.

<sup>3</sup> Google will only share with the Monitoring Trustee the detailed extrapolation calculation because it contains confidential and commercially sensitive business information regarding the ads revenue Google makes in other jurisdictions.

14. Share of the net revenue mentioned in point 13 generated following a referral of Google's search engine' user towards the website of the Press Publisher or News Agency.

**Annex 2 - List of information to be communicated by the Negotiating parties to Google  
pursuant to paragraph 13 of the Commitments**

Google commits to review once a year with the Monitoring Trustee and, as the case may be, to amend the list of information listed in this Annex 2.

- Nature of the Negotiating party (press publisher, news agency, collecting society)
- Name and contact details of the Negotiating party
- Domain names (URL) of the Negotiating party's Protected Content for which the Negotiating Party wishes to enter into negotiations
- For associations or Collecting Societies, a list of their members who provided a mandate to negotiate with Google on their behalf
- A signed Non-confidentiality Agreement made available by Google, following the model provided at *Annex 4*.
- Any (IPTC) metadata tags regularly used by the Negotiating party (or its members), if applicable

### Annex 3 - Designation and missions of the Monitoring Trustee

#### 1. Procedure for the designation of the Monitoring Trustee

- (1) Within thirty (30) business days following the formal notification of the Commitments Decision, Google will propose to the FCA, for its approval, the names of three persons or organisations amongst which it proposes to designate a Monitoring Trustee. The proposal will include a draft mandate entitling the Monitoring Trustee to perform the missions described at section 3 hereinafter, as well as the Monitoring Trustee's work plan to perform such missions.
- (2) The proposal will also include the Monitoring Trustee's remuneration modalities.

#### *Approval or rejection by the FCA*

- (3) The FCA will have the discretion to approve or reject the proposed Monitoring Trustee and to approve the proposed mandate. If the FCA only approves one name, Google shall designate the concerned person or organisation as Monitoring Trustee, according to the terms of the mandate approved by the FCA. If several names are approved, Google shall be free to choose the Monitoring Trustee to be designated amongst the approved names.
- (4) The Monitoring Trustee shall start working within five (5) business days following the FCA's approval of the draft mandate.

#### *New proposal by Google*

- (5) If all of the proposed Monitoring Trustees are rejected by the FCA, Google will submit to the FCA the names of at least two other persons or organisations within twenty-one (21) business days from the date on which Google is informed of the FCA's rejection.

#### *Monitoring Trustee designated by the FCA*

- (6) In the event that all trustees proposed in this new proposal should be rejected by the FCA, the FCA will itself designate, after consulting Google, one or several Monitoring Trustees that Google will appoint in accordance with the mandate approved by the FCA.

#### 2. Conflicts of interest

- (7) Any currently existing relationships between the Monitoring Trustee and Google will be described in the draft mandate that will be submitted to the FCA. On this basis, the Monitoring Trustee will confirm that, starting from the date of signature of the mandate, it is not subject to any conflicts of interest which may affect its fairness or its capacity to independently perform its missions in accordance with the mandate (hereinafter "**Conflict of Interests**").
- (8) If the Monitoring Trustee is informed of a Conflict of Interest in which it is involved, it commits to immediately resolve such Conflict of Interest. If the Conflict of Interest cannot be resolved within a reasonable timeframe, the Monitoring Trustee will immediately inform the FCA thereof. Similarly, if Google is informed of the existence of a Conflict of Interest of the Monitoring Trustee, it will inform the FCA thereof without delay.
- (9) Furthermore, the Monitoring Trustee commits to put in place the necessary measures to guarantee its independence and that of its employees.
- (10) For the duration of the mandate and for a period of one year from the end of the mandate, the Monitoring Trustee undertakes not to provide Google with services of any kind, and in particular advice, and more generally undertakes not to accept any job, function or social mandate within Google.

### 3. Missions of the Monitoring Trustee

- (11) The Monitoring Trustee will have the following missions:
- (i) verify Google's complete compliance with the Commitments;
  - (ii) conduct a monthly (or within a shorter timeframe if and when deemed necessary by either the Monitoring Trustee or Google) meeting with Google (virtually or in person) to discuss the status of negotiations and any difficulties encountered;
  - (iii) engage (virtually or in person), at their request, with Negotiating Parties who have made or want to make a formal request to enter into negotiations with Google, to discuss the status of the negotiations and any difficulties encountered;
  - (iv) engage (virtually or in person) with Google without delay whenever the Monitoring Trustee has concerns that Google may not be complying with the Commitments;
  - (v) inform the FCA without delay should Google fail to comply with the Commitments;
  - (vi) submit to the FCA a quarterly report on Google's compliance with the Commitments;
  - (vii) provide, at the FCA's request, any explanations regarding Google's compliance with the Commitments;
  - (viii) provide Google with a non-confidential copy of its reports to the FCA mentioned in (v), (vi) and (vii).
- (12) The Monitoring Trustee will refer to the FCA any difficulties in performing its missions, notably in case of difficulties or diverging views on the interpretation of a Commitment.
- (13) The reports prepared by the Monitoring Trustee in the course of the performance of its missions will be confidential and must not be shared with any third party. The Monitoring Trustee will prepare non-confidential versions of these reports, which will be shared with Google and the Negotiating Parties.
- (14) When performing its missions, the Monitoring Trustee will be entitled to appoint, having informed Google and the Negotiating Parties, one or several technical, financial or intellectual property right experts to assist it (the "**Expert(s)**"). The Experts shall be independent and free of any conflicts of interests with Google and the Negotiating Parties. Google and the Negotiating Parties will be provided with an opportunity to make representations to any Expert appointed by the Monitoring Trustee.
- (15) The Monitoring Trustee will prepare non-confidential versions of the conclusions and findings of such Experts, which will be shared with Google and the Negotiating Parties, who will both be given the opportunity to discuss such conclusions and findings with the Monitoring Trustee. When appointing such Experts, the Monitoring Trustee and Experts will be bound by a strict confidentiality obligation vis-à-vis third parties, regarding the performance of their missions.
- (16) In the event that an Arbitral Tribunal Price Determination procedure has been initiated by Google or a Negotiating Party, the conclusions of the arbitral tribunal shall be binding on both the Monitoring Trustee and the Experts.
- (17) Google shall communicate to the Monitoring Trustee and to the Expert, as the case may be, any documents reasonably necessary for the performance of its missions, including:
- all data shared by Google with Negotiating Parties;
  - all remuneration offers made by Google to Negotiating Parties ;

- all counter-proposals made to Google by Negotiating Parties;
  - all contracts concluded between Google and Negotiating Parties.
- (18) The Monitoring Trustee and the Expert(s) may also ask Google to provide them with any documents, information and explanations necessary to perform their missions and, to the extent necessary, ask an independent auditor to certify the accuracy of the financial data provided by Google.

4. Remuneration of the Monitoring Trustee

- (19) The Monitoring Trustee (and any Expert appointed by the Monitoring Trustee) will receive remuneration, to be agreed upon with Google, for the performance of its missions. The Monitoring Trustee's remuneration shall not impede the proper performance of its mandate or its independence.
- (20) The Monitoring Trustee (and any Expert appointed by the Monitoring Trustee) will also be entitled, upon presentation of receipts, to the reimbursement of any costs reasonably incurred for the performance of its missions.

5. Google's commitment to cooperate

- (21) Google commits to fully cooperate with the Monitoring Trustee (as well as with any Expert designated by the Monitoring Trustee), in order to enable the latter to perform its missions.

6. Duration, replacement, discharge and renewal of the Monitoring Trustee's mandate

- (22) The Monitoring Trustee will perform its missions until the expiry of the term of the Commitments.
- (23) In case the Monitoring Trustee is permanently prevented from performing its missions for any reason, including in case of a Conflict of Interest or in case of a fault in the performance of its missions:
- (a) the FCA may, after having heard the Monitoring Trustee, require Google to replace the Monitoring Trustee; or
  - (b) Google may, with the FCA's prior approval, replace the Monitoring Trustee.
- (24) Google may revoke the Monitoring Trustee with the FCA's prior approval. Google commits in such cases to propose a new Monitoring Trustee to the FCA, in accordance with the procedure described at point 1 above, within fifteen (15) business days. The Monitoring Trustee may be required to continue to perform its missions until a new Monitoring Trustee, to whom the revoked Monitoring Trustee will have transferred all the relevant information and documents, is in place.
- (25) Except in case of revocation case described above, the Monitoring Trustee will only be entitled to stop acting as a trustee after the FCA has discharged it from its functions (i) at the expiry of the term of the Commitments or (ii) for any other valid motive, including in case of a Conflict of Interest.

## Annex 4 - Model of confidentiality agreement

### NON-DISCLOSURE AGREEMENT

This non-disclosure agreement (the “**Agreement**”) is entered into between Google LLC (“**Google**”), for itself and in the name and on behalf of its Affiliates (as defined hereinafter), and **[INSERT PUBLISHER]** (“**Publisher**”). This Agreement is effective as of the earlier of the two signature dates hereinafter (“**Effective Date**”).

WHEREAS, by way of Law No. 2019-775 of July 24, 2019 (hereinafter, the “**Law**”), which entered into force on October 24, 2019, France has transposed into the French Intellectual Property Code (IPC) Article 15 of the Directive 2019/790 on copyright and related rights in the Digital Single Market.

WHEREAS, the new Article L. 218-2 IPC grants news agencies and press publishers, as defined under Article L. 218-1 IPC (collectively, “**Press Publishers**”), an exclusive right to authorize or prohibit the reproduction and communication to the public, in whole or in part, of press publications, in digital form (hereinafter “**protected content**”), by an online public communication service. In doing so, the Law expressly excludes from this new right the use of hyperlinks and “*isolated words or very short extracts from a press publication*” (Article L. 211-3-1 IPC).

WHEREAS, Google has received a formal request from Publisher to enter into negotiations as to the terms of use and display of their content (the “**Negotiations**”).

WHEREAS, the parties will in this context make certain information available for discussion and review, and will conduct the Negotiations with the intention that i) this information shared during, and ii) any elements of, the Negotiations, will all remain confidential, only be used for the Negotiations and to evaluate and potentially enter into a business transaction (collectively, the “**Purpose**”), and not be disclosed to any other party, except for the purpose of Google’s reporting obligations to the French Competition Authority or as otherwise permitted under this Agreement.

NOW, THEREFORE, the parties agree as follows:

#### 1. Definitions.

- a. “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with, a party.
- b. “**Confidential Information**” means information that one party (or an Affiliate) discloses to the other party under this Agreement, regardless of the form in which such information is disclosed (that is whether written, digital, electronic or oral), that is marked or indicated as confidential or would normally be considered confidential under the circumstances. It does not include information that is independently developed by the receiving party, is rightfully given to the receiving party by a third party without confidentiality obligations, or becomes public through no fault of the receiving party.

#### 2. Confidentiality.

- a. A party (the “**Discloser**”) may, in the course of the Negotiations, disclose Confidential Information to the other party (the “**Recipient**”).
- b. Recipient may use Confidential Information only for the Purpose. Recipient must use a reasonable degree of care to protect Confidential Information and to prevent any unauthorized use or disclosure of Confidential Information. Recipient may share Confidential Information with its employees, directors, agents or third party contractors (“**Delegates**”) who need to know it for the Purpose. Each party procures that each of its Delegates is made aware of the confidential nature of the Confidential Information, complies with the obligation to keep it confidential, and observes the terms of this

Agreement as if they were a party to it. Each party acknowledges that it will be liable for any breach of this Agreement by any of its Delegates. Additionally, Google may disclose Confidential Information of Publisher to the French Competition Authority in the course of fulfilling its reporting obligations. Publisher may disclose Google's Confidential Information to the French Competition Authority, any monitoring trustee appointed by it or any arbitral tribunal to the extent necessary in light of the Purpose and upon reasonable prior notice to Google.

- c. A party may disclose Confidential Information when compelled to do so by law if it provides reasonable prior notice to the other party, unless a court orders that the other party not be given notice.

### **3. Term and Termination.**

- a. This Agreement is effective from the Effective Date and continues until termination of the Negotiations. This Agreement's provisions will survive as to Confidential Information that is disclosed before termination.
- b. Unless the parties otherwise agree in writing, Recipient's duty to protect Confidential Information expires five years from disclosure.

**4. Remedies.** The parties agree that breach of this Agreement by Recipient may cause the Discloser substantial and irreparable injury and acknowledges that monetary damages may be insufficient remedy for unauthorized disclosure or use of Confidential Information. Without waiving any rights or remedies and in addition to any other remedy to which a party may be entitled at law, a party may seek specific performance and other injunctive.

### **5. Defense and Indemnity.**

- a. Obligations. Subject to Subsection 5(c) (Conditions), each party will indemnify the other party and its Affiliates against (a) settlement amounts and approved by the indemnifying party and (b) damages and costs awarded in a final judgement against the indemnified party by a competent court, in any third-party legal proceeding to the extent arising from the indemnifying party's breach of this Agreement.
- b. Exclusions. This Section 5 will not apply to the extent the underlying allegation arises from the indemnified party's breach of this Agreement.
- c. Conditions. Section 5(a) (Obligations) is conditioned on the indemnified party: (a) promptly notifying the indemnifying party in writing of any allegations that preceded the legal proceeding, and (b) tendering sole control of the indemnified portion of the legal proceeding to the indemnifying party, subject to the indemnified party's right to approve defence counsel, such approval not to be unreasonably withheld (and which approval may be withheld or withdrawn if there is a conflict of interest).

### **6. General.**

- a. This Agreement imposes no obligation to proceed with any business transaction.
- b. No party acquires any intellectual property rights under this Agreement except the limited rights necessary to use the Confidential Information for the Purpose.
- c. This Agreement does not create any agency or partnership relationship. This Agreement is not assignable or transferable by either party without the prior written consent of the other party.
- d. This Agreement is the parties' entire agreement on this topic, superseding any prior or contemporaneous agreements. Any amendments must be in writing. The parties may



execute this Agreement in counterparts, which taken together will constitute one instrument. Failure to enforce any provisions of this Agreement will not constitute a waiver.

- e. This Agreement is governed by the laws of France, excluding its conflict-of-laws principles. The exclusive venue for any dispute relating to this Agreement shall be the relevant courts of Paris, France.

**Google LLC**

**Publisher: [INSERT ENTITY NAME]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 1600 Amphitheatre Parkway

Address: \_\_\_\_\_

Mountain View, California 94043

\_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Date: \_\_\_\_\_