

**Cases No 19/0030 F, 19/0056 F and 19/0057 F**

**Commitments offered by Google under Article L.464-2, III of the French Commercial Code**

**Introduction**

On 30 September 2020, the French Competition Authority (“**FCA**”) issued a Statement of Objections (“**SO**”) addressed to Alphabet Inc., Google LLC, and Google Ireland Ltd (“**Google**”) relating to practices implemented in the online advertising sector.

Pursuant to Article L.464-2, III of the French Commercial Code and in accordance with the FCA’s Procedural notice of 21 December 2018 on the settlement procedure (“**the Settlement Notice**”)<sup>1</sup>, Google has expressed its willingness to enter into a settlement. Noting that, as set out in paragraph 16 of the Settlement Notice, “*The fact of waiving the right to contest the objections does not, in itself, constitute either an admission or an acknowledgment of responsibility on the part of the party concerned*”, Google wishes to emphasize that it has consistently strived and is striving to design its ad tech products to deliver benefits for publishers, advertisers, and users.

In the context of this settlement procedure, and without prejudice to the position that may be expressed by Google in other judicial and/or administrative proceedings, Google is willing to offer the following commitments (“**the Commitments**”) to address the objections expressed in the SO.

**1. Definitions**

1.1. In the context of the Commitments, the following terms will be defined as:

**AdX Buyers** - Ad buyers (including Google Ads, DV360 and the third-party ad networks, DSPs and trading desks that Ad Manager has a direct contractual relationship with) who buy inventory on AdX.

**AdX Direct Implementation** - the implementation described at paragraph 3.3.1 (or its modified or successor versions).

**Ad Manager** - Google’s Ad Manager platform which includes ad server functionality and optional real-time auction capabilities, including an ad exchange/SSP (referred to here as “**AdX**”).

**AdX** - the Ad Manager ad exchange/SSP functionality.

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<sup>1</sup> Paragraph 16 of the Settlement Notice provides that “*The fact of waiving the right to contest the objections does not, in itself, constitute either an admission or an acknowledgement of responsibility on the part of the party concerned.*”

**DSPs** - demand-side platforms provide a platform that allows advertisers and media agencies to buy advertising inventory from many sources.

**EEA Publishers** - publishers whose registered place of business is in the European Economic Area (“**EEA**”), have material activities in the EEA and use ad servers or SSPs to serve ads to users with an IP address in France.

**Exemption** - the exemption to Commitment 3 described at paragraph 2.16.

**French Publishers** - publishers whose primary place of business is France.

**Google** - The Google entities targeted by the SO, i.e. Alphabet Inc., Google LLC. and Google Ireland Ltd.

**Header Bidders** - Third-party SSPs that are integrated via Header Bidding.

**Header Bidding** - header bidding solutions allow publishers to send ad requests to, and receive bids from, multiple SSPs simultaneously.

**MBTW** - Minimum Bid To Win is a field indicating, after the auction, the minimum amount buyers would have needed to bid to win the ad opportunity.

**Mandate** - the agreement to be concluded between Google and the Monitoring Trustee, appointing the latter once it has been approved by the FCA and setting out its duties for the purpose of monitoring Google’s implementation of the Commitments.

**Monitoring Trustee** - one or more natural or legal person(s) who is/are approved by the FCA and appointed by Google, and who has/have the duty to monitor Google’s implementation of the Commitments.

**Open Bidders** - Third parties who participate in Open Bidding.

**Open Bidding** - an optional feature of Ad Manager that allows multiple third-party demand partners to bid on impressions sold via Ad Manager in a single auction with real-time, server-to-server bidding.

**Remnant Line Item Implementation** - the implementation described at paragraph 3.3.2 (or its modified or successor versions).

**Sensitive Ad Categories** - the sensitive categories of ads,<sup>2</sup> as classified automatically by Google’s automated systems (including unclassified advertisers), which may represent ads that publishers perceive as lower quality.

**SSPs** - supply-side platforms and exchanges provide the technology to automate the sale of digital inventory. They allow real-time auctions by connecting to multiple DSPs and ad

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<sup>2</sup> See “*Block sensitive categories*”, available at: [https://support.google.com/admanager/answer/2541069?hl=en&ref\\_topic=2913545](https://support.google.com/admanager/answer/2541069?hl=en&ref_topic=2913545).

buyers, collecting bids from them and performing the function of exchanges. They can also facilitate direct deals between publishers and advertisers.

**Unified Pricing Rules** - Unified pricing rules allow publishers using Ad Manager to manage pricing of their inventory across all indirect sources of demand in Ad Manager. For example, a publisher can set up a single unified pricing rule to control pricing from one place. These rules are applied to all partners equally, and cannot be set for individual buying platforms.

## **2. Google's commitments to address the first objection**

- 2.1. Google is offering the below commitments to address the first objection set out in the SO, that Google abused its dominant position in the EEA market for ad servers for website and mobile app publishers by applying technical and contractual terms to third-party technologies of non-search supply side platforms that are less favourable than the terms applied to their own technology.
- 2.2. The commitments outlined below are subject to any changes that are necessary to comply with applicable laws and regulations (including applicable privacy laws).

### ***First commitment***

- 2.3. **Commitment 1A:** Google commits to ensure that all third-party SSPs and all AdX Buyers that Ad Manager has a direct contractual relationship with, and that participate in the Ad Manager auction for web inventory from third-party publishers, will receive equal access to data related to outcomes from that auction.
- 2.4. **Commitment 1B:** Google commits to create an implementation that will:
  - 2.4.1. allow the following information to be shared with those Header Bidders who participate in the Ad Manager auction for web inventory, and who enter into a direct contractual relationship with Ad Manager for this solution:
    - 2.4.1.1. MBTW information; and
    - 2.4.1.2. Any additional relevant data related to outcomes from auctions that the Header Bidder participates in (including any applicable data that Ad Manager may make available in the future as it improves the product) that are also received by participating Open Bidders, and AdX Buyers;
  - 2.4.2. allow those third-party Header Bidders who enter into a direct contractual relationship with Ad Manager for this solution (as described above at paragraph 2.4.1) to obtain the benefit of similar optimisations for web inventory that apply to Open Bidders and AdX Buyers, to the extent this is technically feasible and such optimisations are applicable to Header Bidders.

- 2.5. Google commits that the price charged to publishers for this implementation would be as follows:
- 2.5.1. **Tier 1 Pricing:** The price for the full solution described above would not exceed 5% for web display inventory of Ad Manager 360 customers, and, in any case, will not exceed the standard price for Open Bidding.
  - 2.5.2. **Tier 2 Pricing:** Google will offer an intermediate solution that will offer simpler reporting on Header Bidding, and surfacing of some insights and opportunities related to potential optimisations, but would not include the sharing of MBTW data or other data on individual auctions; nor would it include many of the possible additional features of the full solution. The incremental cost for this intermediate solution would not exceed the cost of Ad Manager's standard ad serving fees.
- 2.6. This new real-time integration implementation will be optional. Publishers who do not consider that the value exceeds the price do not have to use it and may continue to use the existing Header Bidding integration or the Tier 2 solution. There would not be any contractual restrictions similar to the contractual restriction in Open Bidding that all transactions must be made on behalf of third-party ad buyers.
- 2.7. Google commits that it will offer:
- 2.7.1. a closed round of early alpha testing (which would be open to a selected group of publishers invited by Google) for this new implementation no later than 1 February 2022. Google will provide a list of the publishers it would propose to invite to the early alpha testing (including at least 5 French Publishers) to the FCA. After reviewing the list, the FCA can request that Google invite further French Publishers to participate in the early alpha testing, up to a limit of 5 French Publishers by 1 February 2022 and 20 French Publishers by 31 March 2022. Google will make best efforts to ensure all such specified French Publishers are included in the early alpha testing, but reserve the right to omit any, such as where this would not be technically feasible (e.g. where a publisher's implementation is incompatible with the product); and
  - 2.7.2. an open beta (which would be open to all EEA Publishers) for this new implementation by 30 June 2022. This timing is subject to prior successful testing of this new implementation and to the proactive participation of publishers and third-party SSPs in the development stages of this new implementation.
- 2.8. **Commitment 1C:** Google will provide MBTW information to Ad Manager 360 EEA Publishers who do not choose to use the Tier 1 solution, for auctions for the relevant publisher's web and app inventory, within 24 hours of the relevant auction (except where it is not possible to provide this information within 24 hours due to exceptional

circumstances beyond Google's control). To receive the MBTW information, EEA Publishers would need to contract with Google for the files and pay the standard price for the Ad Manager Data Transfer report files. EEA Publishers who contract to receive the MBTW information will be able to provide the information to any third-party SSPs they choose. For the avoidance of doubt, this MBTW information will allow the EEA Publisher to determine, for every auction won by an AdX Buyer (including Google Ads or DV360), or by an Open Bidder, the minimum amount any other buyer would have needed to bid in order to win the impression. For the avoidance of doubt, Google will only be able to provide the MBTW information that it holds and cannot provide any bids that are not known by Google. Google will implement this commitment within 120 days of notification of the FCA's decision. If there are more than 10 days in any calendar year for which data is not available within 24 hours, Google will waive the relevant data transfer fees for affected EEA Publishers for the entire calendar year.

- 2.9. **Commitment 1D:** In the event that the industry adopts approaches similar to Header Bidding that compete based on real-time prices in an ad server-managed unified auction for the majority of their traffic (as an alternative to app mediation) for app inventory, Google would give reasonable and pro-active consideration to the need to ensure that all third-party SSPs and all AdX Buyers who enter into a direct contractual relationship with Ad Manager and that participate in any Unified Ad Manager auction for app inventory from third-party publishers will receive equal access to data related to outcomes from that auction, to the extent this is technically feasible. For the avoidance of doubt, Google will not be required to provide any auction participants with data that Google does not hold.

***Second commitment***

- 2.10. **Commitment 2A:** Google commits not to restrict publishers that use Ad Manager from being able to negotiate specific terms or pricing rules with third-party SSPs. Google commits to continue to allow publishers that use Ad Manager to set per-SSP pricing rules directly with each SSP.
- 2.11. **Commitment 2B:** Google commits not to block publishers that use Ad Manager from deciding to include or exclude specific buyers.
- 2.12. **Commitment 2C:** Google commits to modify the operation of the Unified Pricing Rules to enable publishers to set differential price floors for Sensitive Ad Categories.
- 2.13. Google will implement this Commitment 2C at the latest within 9 months of the notification of the FCA's decision.
- 2.14. For the avoidance of doubt, Commitments 2A, 2B and 2C will not require Google to reverse the Unified Pricing Rules, under which any pricing floors that are set apply uniformly to all buyers.

**Third commitment**

- 2.15. **Commitment 3:** Google commits that the Ad Manager ad exchange functionality will not use third-party SSPs' prices in order to optimise bids in a way that third-party SSPs cannot reproduce due to lack of access to the same third-party SSP pricing information as Ad Manager. Google commits that Ad Manager will not share any bid from any Ad Manager auction participants with any other auction participant prior to the completion of the auction.
- 2.16. Commitment 3 will not prevent the operation of Ad Manager optimisations that use information about third-party SSPs' prices where the optimisation:
- 2.16.1. either reflects ad server functionality or applies to all participating SSPs; and
  - 2.16.2. where the optimisation is not optional, it benefits publishers in aggregate (the "**Exemption**").
- 2.17. For the avoidance of doubt, an Ad Manager optimisation can apply only to a subset of ad buyers or SSPs. Commitment 3 would restrict such an optimisation from using data on *other* buyers' or SSPs' prices that the optimisation does not apply to.
- 2.18. Google commits that it will provide the Monitoring Trustee annually with information outlining any new types of the optimisations by Ad Manager that fall within the Exemption. This information would describe what the optimisations do at a high-level, and the Monitoring Trustee may then request further information about such optimisations.

**Fourth commitment**

- 2.19. **Commitment 4:** Google commits to provide Ad Manager customers with at least 3 months notice (prior to the required adoption deadline) of any major changes to Ad Manager functionality that publishers must adopt and which requires significant adoption effort, excluding the following changes:
- 2.19.1. changes required to resolve security issues;
  - 2.19.2. changes required to address privacy concerns; and
  - 2.19.3. changes required by a competent authority, law or regulation.
- 2.20. Google will implement this commitment at the latest within 3 months of the notification of the FCA's decision.

**3. Google's commitments to address the second objection**

- 3.1. Google is offering the below commitments to address the second objection set out in the SO, that Google abused its dominant position in the EEA market for ad servers for website and mobile app publishers by applying technical and contractual terms to third-party ad

server technologies for website and mobile app publishers that are more restrictive than the terms applied to their own technology.

- 3.2. The commitments outlined below are subject to any changes that are necessary to comply with applicable laws and regulations (including applicable privacy laws).

***Fifth commitment***

- 3.3. The below commitments relate to the following two implementations that allow publishers to get real-time demand from AdX while using a third-party ad server. The below commitments would apply where publishers use a third-party ad server:

- 3.3.1. The “**AdX Direct Implementation**”: this is offered by Google as a way for publishers to access AdX demand using third-party ad servers or in-house ad servers. The publisher enters a floor in AdX or requests that its ad server enters the floor. The publisher can choose to enter a floor on any basis, including one that reflects the winning Header Bidding bid. This floor is then shared with AdX Buyers who compete to beat it.

- 3.3.2. The “**Remnant Line Item Implementation**”: the publisher can have its ad server send the winning price from the ad server to trigger in Ad Manager through a remnant line item. The winning price will be inclusive of Header Bidding and any other direct or indirect demand booked in the third-party ad server.

- 3.4. References to the AdX Direct Implementation and Remnant Line Item Implementation include the modified versions of these implementations and their successors. Google commits to ensure that any such modifications and successor products (including any successor product that combines the two implementations) will meet the objectives of Commitments 5A-5C being:

- 3.4.1. publishers can have price competition between AdX and other SSPs, without the floor price passed to AdX Buyers being set by reference to the winning price sent by the third-party ad server; and

- 3.4.2. the implementation(s) can be used without paying any ad serving fees to Google for impressions that are served using a third-party ad server and where AdX demand has competed in real-time for that impression.

- 3.5. Google commits that it will notify the Monitoring Trustee of any material proposed changes to these implementations and will provide sufficient information to allow verification that the above objectives are met.

- 3.6. **Commitment 5A:** Google commits to make technical changes to the AdX Direct Implementation so that publishers can have price competition between AdX and other SSPs, without the floor price passed to AdX Buyers being set by reference to the winning price sent by the third-party ad server. Google will allow the publisher to pass to Ad

Manager two prices as part of the AdX Direct Implementation: (i) a floor sent to buyers in the bid request; and (ii) a second price that may reflect the winning price inclusive of Header Bidding or any other direct or indirect demand booked in the third-party ad server. AdX will sell the impression where the AdX auction beats the highest of these two prices. AdX will implement a new data flow such that the second price will not be shared with any AdX Buyers.

- 3.7. Google commits that it will:
- 3.7.1. offer a closed round of early alpha testing (which would be open to a selected group of publishers invited by Google) for this technical change to the AdX Direct Implementation by 15 November 2021. Google will provide a list of the publishers it would propose to invite to the early alpha testing (including at least 5 French Publishers, or fewer if less than 5 French Publishers are using the AdX Direct Implementation) to the FCA. After reviewing the list, the FCA can request that Google invite further French Publishers using the AdX Direct Implementation to participate in the early alpha testing, up to a limit of 5 French Publishers by 15 November 2021; and
  - 3.7.2. make this technical change to the AdX Direct Implementation available to all EEA Publishers by 15 January 2022. This timing is subject to prior successful testing of these technical changes and to the proactive participation of publishers in the development stages of this new feature.
- 3.8. For the avoidance of doubt, Commitment 5A will not require Google to make any technical changes to the existing Remnant Line Item Implementation. With this implementation, the floor price passed to AdX Buyers is not set by reference to the winning price sent by the third-party ad server.
- 3.9. **Commitment 5B:** Google commits to waive any Ad Manager ad serving fees incurred by EEA Publishers using a third-party ad server that choose to use the Remnant Line Item Implementation on the relevant impressions up to a reasonable level that is consistent with normal use.
- 3.10. For the avoidance of doubt, Commitment 5B:
- 3.10.1. would apply only to the impressions that are served using a third-party ad server and where AdX demand has competed in real-time for that impression; and
  - 3.10.2. would not apply to the AdX Direct Implementation, which can already be used without paying any ad serving fees to Google.
- 3.11. Google will implement Commitment 5B at the latest by 15 January 2022.
- 3.12. **Commitment 5C:** Google commits to:

- 3.12.1. publish guidance for publishers on how to set-up the AdX Direct Implementation and the Remnant Line Item Implementation when using a third-party ad server;
  - 3.12.2. clarify that the AdX Direct Implementation and the Remnant Line Item Implementation are approved by Google when a publisher chooses to use a third-party ad server; and
  - 3.12.3. make the AdX Direct Implementation and the Remnant Line Item Implementation available to any ad inventory (for all formats, including video) using a third-party ad server, to the extent that feasible technical solutions exist and are permitted by privacy and other applicable laws and regulations.
- 3.13. Google will implement Commitment 5C at the same time as Commitment 5A and Commitment 5B, which will be at the latest by 15 January 2022.

#### **4. Implementation of the Commitments**

##### ***Entry into force of the Commitments***

- 4.1. The Commitments will enter into force upon notification of the FCA decision making them binding for Google.

##### ***Territory***

- 4.2. The Commitments are binding on Google in France.

##### ***Duration of the Commitments***

- 4.3. The Commitments are undertaken for a period of three years following the notification of the FCA's decision or, where applicable, following their effective implementation.
- 4.4. For monitoring purposes, the Monitoring Trustee will be notified of the effective date of implementation for each Commitment.

##### ***Review clause***

- 4.5. These Commitments are without prejudice to the possibility for Google to seize the FCA at any time with a request to revise or remove one or more Commitments in the event of new legal or factual circumstances. The FCA will examine such request which should be reasoned. New legal or factual circumstances justifying such request may, for example, include:
  - 4.5.1. A new regulatory framework resulting from the Digital Market Act if and when it enters into force;
  - 4.5.2. A significant evolution of market conditions.

## 5. Monitoring of the implementation of the Commitments

### *Appointment of the Monitoring Trustee*

- 5.1. Google commits to appoint an independent trustee (the “**Monitoring Trustee**”) in charge of monitoring the implementation of the Commitments. The Monitoring Trustee is to be independent of Google and is not and will not become exposed to a conflict of interest. The Monitoring Trustee should possess the necessary qualifications to carry out its Mandate.
- 5.2. The Monitoring Trustee shall be remunerated in such a way that it does not impede its independence and effectiveness in carrying out its mission.
- 5.3. Two months at the latest after the notification of the FCA decision, Google will propose to the FCA the names of up to three candidates for a Monitoring Trustee and a draft Mandate.
- 5.4. The proposal must include sufficient information to enable to FCA to verify whether the proposed Monitoring Trustee(s) fulfil(s) the conditions detailed in point 5.1. and must include the full text of the draft Mandate drawn up by Google, including all provisions necessary to enable the Monitoring Trustee to perform its duties under the Commitments.
- 5.5. If only one candidate Monitoring Trustee is approved by the FCA, Google will appoint this person or entity on the terms of the Mandate approved by the FCA. If more than one candidate Monitoring Trustee is approved by the FCA, Google will be free to choose which one to appoint amongst those approved.
- 5.6. If none of the proposed candidates for Monitoring Trustee is approved by the FCA, Google will propose the name(s) of one or two more candidate(s) for Monitoring Trustee within one month following the decision not to approve the first proposed candidates for Monitoring Trustee, following the procedure set out in 5.4 and 5.5 above. If none of the candidates of this second Google proposal is approved, the FCA will then designate the Monitoring Trustee which will be appointed by Google on the terms of the Mandate approved by the FCA.
- 5.7. The FCA may also request amendments to the draft Mandate proposed by Google prior to approving it.
- 5.8. Once the Monitoring Trustee has been approved by the FCA, Google will sign the Mandate with the Monitoring Trustee within one week following the approval decision. A copy of the Mandate will be sent to the FCA and no amendment will be made to the Mandate unless the FCA expressly agrees with such amendment.

### *Role of the Monitoring Trustee*

- 5.9. The Monitoring Trustee’s mission will be to monitor the implementation by Google of the Commitments. The Mandate will specify the Monitoring Trustee’s missions for each Commitment.

- 5.10. One month after the signature of the Mandate, the Monitoring Trustee will elaborate a work plan specifying the terms and conditions under which he intends to carry out its mission. A copy of this work plan will be sent to Google and the FCA.
- 5.11. A correspondent (one or several persons) responsible for liaising with the Trustee will be appointed within Google. The Monitoring Trustee may, at its discretion, consult all the persons that will be in charge of the implementation of the Commitments.
- 5.12. As part of the monitoring process:
  - 5.12.1. Google will provide the Monitoring Trustee with cooperation and assistance and shall provide it with all the information necessary for the execution of its Mandate, whether orally or in the form of written documents, relating to the implementation of the Commitments, to the extent that the Monitoring Trustee may reasonably require such access in carrying out its mission.
  - 5.12.2. Third parties may refer any issues relating to the implementation of the Commitments to the Monitoring Trustee.
- 5.13. The Monitoring Trustee will establish and will transmit to the FCA quarterly reports on the progress of its mission. A copy of these reports will be transmitted to Google.
- 5.14. In the event of any difficulty in the performance of its mission, in particular in the event of difficulty in the interpretation of the Commitments, or in the event of a difference of opinion with Google on the interpretation or scope to be given to any given Commitment, the Monitoring Trustee shall refer to the FCA, which shall deliver its position after having heard Google and let Google the possibility to express its own position in writing.

***Confidentiality***

- 5.15. The reports established by the Monitoring Trustee are strictly confidential with respect to third parties.
- 5.16. The Monitoring Trustee will be bound by the strictest confidentiality vis-à-vis third parties with regard to the execution of its mission.