

Autorité
de la concurrence



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

**Decision 19-MC-01 of 31 January 2019
on the request by Amadeus* for interim measures**

The Autorité de la concurrence (section IV),

Considering the letters registered on 4 May 2018 under numbers 18/0047 F and 18/0048 M by which Amadeus brought an action before the *Autorité de la concurrence* against Google Ireland Limited and Google Inc., now Google LLC, and requested the imposition of interim measures;

Considering Article 102 of the Treaty on the Functioning of the European Union;

Considering Book IV of the French Code of commercial law (*Code de commerce*);

Considering Business Secrecy Decisions 18-DECR-315 of 24 September 2018, 19-DSA-016 of 07 January 2019, 19-DSA-023 of 14 January 2019, 19-DSA-024 of 14 January 2019, 19-DSA-031 of 17 January 2019, 19-DSA-037 of 21 January 2019, 18-DSA-231 of 18 July 2018, 18-DSA-233 of 20 July 2018, 18-DSA-240 of 31 July 2018, 18-DSA-302 of 17 September 2018, 18-DSA-386 of 02 November 2018, 18-DSA-442 of 06 December 2018;

Considering the comments submitted by Amadeus, Google LLC, Google Ireland Limited and Google France;

Considering the other evidence in the case;

The *rapporteur* (case officer), the Deputy General Rapporteur, the representative of the Minister of the Economy and the representatives of Amadeus, Google LLC, Google Ireland Limited and Google France, having been heard at the hearing of 23 January 2019;

Adopts the following decision:

*Non-confidential version

Summary¹:

Amadeus, which operates a directory enquiry service under the premium-rate number 118 001, lodged a complaint with the Autorité de la concurrence over Google's practices in the online advertising market, which it considered to constitute an abuse of a dominant position and an abuse of economic dependence.

Amadeus reproached Google for suspending some of its accounts with Google AdWords (which became Google Ads in the summer of 2018) and for refusing most of its ads since January 2018.

In parallel with its complaint on the merits of the case, Amadeus requested the declaration of interim measures aimed at: (i) the implementation of an objective, transparent and non-discriminatory Google Ads content policy, (ii) the implementation of a procedure for suspending advertisers' accounts with formal warning and sufficient notice, (iii) the restoration of its Google Ads account within 48 hours of notification of the decision, and (iv) a clearer and unambiguous distinction between natural search results and AdWords advertising.

As the investigation progressed, the Autorité considered that Google should be regarded as holding a dominant position in the French market for search-related online advertising. Indeed, its search engine now accounts for more than 90 % of all searches carried out in France. There are also strong barriers to entry into this business related to the size of the investments required to develop high-performance algorithms and the size of the accumulated data available to Google. Finally, given their number and the absence of equally attractive alternative offers, advertisers do not have countervailing buyer power.

In addition, the Autorité considered that, given the state of the evidence produced in the debate, Google's practices are likely to characterise a sudden termination of commercial relations with Amadeus under conditions that are neither objective nor transparent. This finding is based, in particular, on the fact that the suspension of Amadeus's accounts took place without warning, without clear mention of the alleged breaches and even though Google's sales teams were closely involved in the development of the very advertising campaigns considered not compliant with its content policy.

In addition, the Autorité also found that, given the state of the evidence produced in the debate, the practices reported by Amadeus are likely to be regarded as discriminatory. This is based, in particular, on the fact that other directory enquiry services have been able to run ads via Google Ads even though ads written by Amadeus using identical terms were refused.

These practices may have produced anticompetitive effects since, on the one hand, the Google Ads service is of significant importance in competition between directory enquiry service providers and, on the other hand, Amadeus has produced evidence that account suspensions have had very significant effects on its call volume, turnover and profitability.

Indeed, Google's practices have suddenly and deeply affected Amadeus, whose sole business is the provision of paid directory enquiry services. Its turnover thus fell by 90 % between 2017 and 2018 and it recorded more than €390,000 in losses in August 2018.

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

Noting the serious and immediate harm to the complainant, the Autorité de la concurrence imposed interim measures aimed at: (i) clarification of Google Ads rules applicable to paid electronic directory enquiry services, (ii) implementation of a procedure for suspending advertisers' accounts with formal warning and sufficient notice, (iii) training of sales staff on the content of clarified Google Ads rules, and (iv) manual review of the compliance of ad campaigns proposed by Amadeus's unsuspended accounts.

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I. Findings

A. THE COMPLAINT

By letter registered on 4 May 2018 under number 18/0047 F, Amadeus brought a complaint before the *Autorité de la concurrence* (hereinafter referred to as the *Autorité*) against Google Ireland Limited and Google Inc. which became Google LLC (hereinafter referred to as Google).

According to the complainant, Google has a dominant position in the market for search-related online advertising and has implemented abusive practices by suspending some of its accounts with Google AdWords (renamed “Google Ads” in the summer of 2018) and by refusing most of its advertising since January 2018. In so doing, it would also have abused the situation of economic dependence in which Amadeus would find itself with regard to Google.

In addition to its complaint on the merits of the case, Amadeus requested, by letter registered on 4 May 2018 under number 18/0048 M, the imposition of interim measures on the basis of Article L. 464-1 of the French Code of Commercial Law (*Code de commerce*).

B. COMPANIES AND SECTORS CONCERNED

1. AMADEUS AND THE TELEPHONE ENQUIRY SERVICE SECTOR

Amadeus has its headquarters in Toulouse and was created in 2010 by Alain Abadie, who is both the manager and majority shareholder (98%).

Amadeus has been operating a directory enquiry service under the premium-rate number 118 001 since November 2015. This telephone service provides consumers with the contact details of an individual, a professional, a company or an administration and connects them directly to the number they are looking for.

The short telephone numbers in the form of 118 XYZ were created by Decision 05-0061 of the *Autorité de régulation des télécommunications* (now the *Autorité de régulation des communications électroniques et des postes* or ARCEP) of 27 January 2005 in order to open up the market for directory enquiry services to competition, replacing the service provided until then by dialling 12, which was operated by the incumbent telecommunications operator France Telecom (now Orange).

The 118 XYZ numbers are assigned by decision of ARCEP to offer telephone directory enquiry service including at least the universal enquiry service mentioned in Article R. 10-7 of the French Post and electronic communications code (*Code des postes et des communications électroniques*).

In accordance with ARCEP Decision 05-1085 of 15 December 2005, these numbers may freely use “time-based pricing with a call set-up charge”. The framework for their pricing arrangements will change as from 1 August 2021, since a ceiling will be introduced both for the call set-up charge (i.e. €3.00/call including VAT) and for the duration charge (i.e. €0.80/minute including VAT) (see Article 6 of ARCEP Decision 2018-0881 of 24 July 2018 establishing the French national telephone numbering plan and its management rules). It may also be

noted that, in addition to the regulation implemented by ARCEP within the framework of its own remit and the specific regulatory framework applicable to it, “self-regulation” has been put in place by the sector for so-called “value-added” voice services. Thus, a charter containing ethical recommendations has been drawn up by the French Association of Mobile Multimedia (AFMM) and defines the conditions that must be met by “118 XYZ” numbers in their relations with telecom operators and consumers. These recommendations included the maximum amounts that can be charged by 118 service operators and the notification statement applicable to the rates for these numbers (this was applicable since 1 October 2015 before being updated in 2018).

Until 22 March 2018, Ynover Telecom, also owned and managed by Alain Abadie, was attributed the 118 001 number (classification marks 626-628). However, it was operated by Amadeus (classification mark 3072), to which it was finally transferred as of 1 March 2018 (classification marks 641-643). Amadeus has also been attributed 118 512 since 11 October 2018, and was attributed 118 333 between 28 July 2016 and 8 March 2018 (classification marks 632-634 and 638-640). According to Amadeus, “118 333 (had) been reserved to analyse network performance” (classification mark 3545) and its operation “was suspended due to difficulties encountered following the suspension of Amadeus’ AdWords account” (classification mark 7).

As part of its telephone directory enquiries business, Amadeus runs a total of 42 websites such as www.118001.fr, www.service-energie.info, and www.suivre-colis.com (for the complete list see classification marks 3286 and 3287). These sites, which are not well known, generate a low volume of traffic from natural search engines. Thus, when an Internet user seeks telephone information, these sites do not appear at the top of the natural search results. In reality, they are not intended to appear at the top of natural search results and are used by Amadeus only to welcome Internet users who click on the ads it publishes, mainly via the Google Ads service (formerly Google AdWords) (classification mark 3287). Traffic from ads, instead of being sent to the site's generic home page, is sent to a specific landing page, corresponding to the ad on the Google Ads service. In practice, these landing pages are not accessible from the home page of the sites in question, which do not always have home pages, but only from advertisements run by Amadeus.

In fact, ads placed by Amadeus with Google Ads account for almost all the traffic of the sites it runs and thus generate most of the calls received by 118 001 (classification mark 3349). Although Amadeus does not have tools to measure traffic to its sites from its ads placed with Google Ads, it appears from the accounting information produced during the investigation that its expenses for Google Ads represent more than 70% of its turnover.

In the event of a call to 118 001, the consumer is billed the following charges, in addition to the call price:

- €2.99 at connection, and
- €2.99 per minute, including for the duration of the call if the call is connected to the number sought.

According to the findings of the Investigation Services, these tariffs are in the high average given tariffs charged by other 118 operators, while being comparable to the standard in the sector (classification marks 3867-3869).

In 2016, the first full year of operation of its service, Amadeus achieved a turnover of €5,752,200, for a profit of €1,528,242. In 2017, this turnover amounted to €12,476,548 for a reduced profit of €1,385,234. The significant difference between turnover and profits is mainly due to Amadeus' advertising spending, which was €9,066,586.46 in 2017 for the Google Ads service alone.

2. GOOGLE AND THE ONLINE SEARCH ADVERTISING INDUSTRY

Founded in 1998, Google is a multinational subsidiary of Alphabet.

Google's business model is mainly based on the interaction between services provided without financial compensation and online advertising services from which it derives most of its revenue.

Google offers a wide range of services, including the generalist search service or "search engine" "Google Search" and the search-related online advertising service called "Google Ads" (formerly "Google AdWords").

Google Search is accessible via the website www.google.com or local versions of it (in France www.google.fr).

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 that are derived from a referencing that can be general or specialised.

In the case of general referencing, so called "natural" referencing, whose results come from the application of algorithms developed by Google, which aim to identify the most relevant search results, based on different criteria (for example, the consultation of the site, the fact that it appears as a link in other sites, etc.).

In addition, Google Search may offer another category of results, namely online ads related to Google Ads searches (ads on "Google Ads").

Google Ads is not limited to specific categories of products, services or information. They typically appear above or below the results of natural referencing and are accompanied by a label to inform users that it is advertising.

The nature of the results that are then displayed is very different, since only ads for which the advertiser has paid a price can appear, and the result displayed is the result of an auction process.

Displaying ads on Google Ads in response to a user's query involves a two-step process:

- first, Google Ads identifies a set of relevant ads by associating the keywords that advertisers have attached to their ad with those used in the user's query. This filter corresponds to the search for a relevant result relating to the user's wishes.
- secondly, Google Ads classifies the relevant ads according to their "Ad Rank". The ranking of an ad depends on two factors: the maximum price indicated by an advertiser for each click on its ad in an auction, and the qualitative ranking of that ad (the "Quality Score"). The ads on Google Ads that are displayed prominently are those with the highest Ad Rank.

When a user clicks on an ad from Google Ads, Google receives a fee corresponding to that click from the advertiser, i.e. the publisher of the website to which the user is directed. The advertiser typically only pays for his ad according to the clicks made by Internet users in a system known as for "cost per click" ("CPC").

Google Ads thus allow advertisers to direct users who have made a specific query on Google Search to their website, even when the website does not have a high ranking in natural search results. In addition, when users are connected using a smartphone, advertisers can also integrate a "call extension" into their ads to redirect them directly to a phone call instead of a web page.

In 2017, Google achieved a worldwide turnover of over €95,000,000,000, including €[60,000,000,000 - 70,000,000,000] through the sale of search-related online advertising space (classification marks VC 5905-5906). The turnover in France through the sale of search-related advertising space was at least €[1,500,000,000 - 2,000,000,000] (classification marks VC 5905-5906).

C. REPORTED PRACTICES

The complainant, who used the Google Ads advertising service to generate calls to 118 001, believes that Google suddenly suspended some of its Google Ads accounts under non-transparent, non-objective and discriminatory conditions. In addition to these suspensions, Google allegedly refused the advertisements run by Amadeus' unsuspended accounts under conditions that were also non-transparent, non-objective and discriminatory.

After presenting the rules governing the Google Ads service (1.) and the commercial relations maintained since the beginning of 2016 by Google and Amadeus (2.), the conditions under which Google suspended Amadeus's active accounts and then refused to allow Amadeus to run ads will be explained (3.).

1. GOOGLE'S ADVERTISING TERMS AND CONDITIONS AND GOOGLE ADS RULES

Google defines and publishes “Google Ads rules” that specify the conditions under which an advertiser may display advertising on the “Google Network”.

These rules are an integral part of Google's Terms and Conditions and are expressly accepted by the advertiser when opening a Google Ads account. Information about Google Ads rules is available on sites published by Google, and Google informs users of changes to the rules in its Change log.

Google Ads rules applicable at the time of the suspension of Amadeus's active accounts from January 2018 covered four main areas, namely: “Prohibited content”, for example, trade in arms or medicines and child pornography, “Prohibited practices”, which are concerned here, “Restricted content” defined as content that can be advertised “under certain conditions”, for example erotic content, gambling or financial services, and “Editorial and technical” requirements that apply to the way advertisements are written and transmitted technically.

a) Rules concerning “Misrepresentation”

The rules for Prohibited practices contain a section on “Misrepresentation”, which refers to the conduct of advertisers intended to mislead users as to the identity of the advertiser, the nature of the goods or services offered, their cost, etc. (classification mark 6008).

For example, “Misrepresentation” rules prohibit:

- not clearly and conspicuously disclosing the payment model and all costs to be charged to the user (“Missing information”);
- suggesting an affiliation with or approval by an individual, organisation, product or service (“Misleading content”);
- running ads whose content does not correspond to that of the landing page (“Unclear relevance”);
- to conceal or misrepresent information about a company, product or service (“Unreliable conduct”) (formerly known as “Untrustworthy promotions” and renamed, since March 2018, “Unacceptable business practices”).

At the time of the events in question, the “Unreliable conduct” rule cited as an example the “Sale of free items” defined as “charging users for products or services that are normally free”.

Any violation of the rules falling into the category of unreliable conduct was, and remains, likely to result in the immediate suspension of the advertiser's Google Ads account. For example, the Google Ads Advertising rules state, “We take dishonest business practices very seriously and consider them to be an egregious violation of our rules. If we find such practices in your account, it may be suspended” (classification mark 6008).

As of March 2018, Google significantly changed its rules on one of the issues under discussion in this case. This amendment removed the prohibition on the “Sale of free items” from the category “Unreliable conduct”, which at the same time was itself renamed “Unacceptable business practices”. This “Sale of free items” rule has been incorporated into the “Prohibited content” rules in the “Other Restricted Activities” section. Therefore, and since only the violation of the rules of “Unreliable conduct”, which has since become “Unacceptable business practices”, is explicitly targeted as being likely to result in an immediate suspension of the Google Ads account, its violation is no longer likely to result in the suspension of an account, but may result in ad refusals.

b) Rules concerning “Abusing the ad network”

The rules on prohibited practices also contain a section on “Abusing the ad network”, which refers to the conduct of advertisers whose purpose is to circumvent or trick Google's ad verification system (classification mark 6008).

For example, the rules on the “Abusing the ad network” do not allow:

- linking to a site or application that offers software that is dangerous to users or their equipment (“Malicious or unwanted software”);
- promoting identical or similar content from multiple accounts, on identical or related queries, in order to gain a traffic advantage over other auction participants (“Unfair advantage”);
- engaging in practices that violate Google’s guidelines to webmasters wishing to be naturally referenced by its search engine (“Webmaster guidelines”);
- engaging in practices that attempt to circumvent Google's automated system checks (“Circumventing systems”).

These rules, for their part, have not undergone any major changes since January 2018.

c) Suspension procedure for violating Google Ads rules

The rules and procedures that apply when suspending an account are set out in the Terms and Conditions for Google Ads and on the Google Ads Help Centre website.

Article 13 of the Terms and Conditions for Google Ads of 1 September 2017 - and which has remained applicable since then - provides that:

“Either party may terminate these Terms at any time immediately upon notice to the other party (except in the event of repeated or serious breach of contract, including a Policy), (...). Google may suspend the Customer's participation in the Programmes at any time, for example in the event of payment problems, suspected or actual breaches of the Policies or these Terms or for legal reasons.”

The Help Centre states that “when a Google Ads account is suspended, the ads associated with it can no longer be run, and the advertisers concerned can no longer create content” (classification mark 6008).

The Help Centre also states “(We) encourage advertisers to identify the reasons why their account was suspended. However, please note that if the reason is particularly serious, the account can never be reactivated” (classification mark 6008).

2. COMMERCIAL RELATIONS BETWEEN GOOGLE AND AMADEUS

a) Personalized support for Amadeus by Google

Google proactively works with advertisers by providing them with personalized support programs and account managers.

Google has a personalized support program called “Google Digital Growth”, also called “Google Growth Accelerator” (“GGA”) (classification marks 416-418). Google presents GGA as “a short-term 90-day program designed to support start-ups with high growth potential. The objective is to multiply by [2-5] the advertiser's revenues generated by Google Ads in 90 days. To join the program, the advertiser must at least double its expenses on Google Ads on the date it enters the program” (classification mark VC 4266; classification mark VNC 4540).

On 20 April 2016, less than four months after Amadeus began operating on Google Ads, Google offered Amadeus the benefit of the GGA. In its assistance offer, Google states: “We have just finished working with <http://www.annuaire-inverse.com>, a company quite similar to yours. (...) We have acquired a fair amount of knowledge applicable to your issues” (the website <http://www.annuaire-inverse.com/> is published by e-Kanopi, which submitted a similar complaint to the *Autorité de la concurrence* on 10 June 2010, rejected for lack of evidence by Decision 13-D-07 of 28 February 2013). In response to a questionnaire from the Investigation Services, Google indicated that it selected Amadeus to participate in the program “because it believed that Amadeus could increase its revenues through Google Ads and that it knew its growth ambitions” (classification mark 4544).

It was confirmed during the hearing that Amadeus had been selected by Google as the beneficiary of this personalized support program in consideration of its special place among 118 operators and in view of its growth potential as part of an optimisation of its practice of running ads on Google Ads. It was also pointed out that Amadeus was, over the period under consideration, by far the largest Google Ads advertiser among the 118 operators, in consideration of the amounts spent on the Google Ads service.

Following its participation in the 90-day GGA program, Amadeus continued to receive personalised support from Google as part of the “Mid-Market Sales” (“MMS”) program. This program “aims to provide advertisers with high-quality, long-term support (...)” (classification mark 4540).

In this context, Google specifies that its team for MMS accounts with the highest advertising expenses (“high touch team”) has “continued to provide the same level of support to Amadeus (...), including regular conference calls, an audit of its Google Ads accounts, “keyword packs”, campaign optimisation, etc.” (classification mark 4545).

Thus, between April 2016 and January 2018, Amadeus’s representatives regularly exchanged with their Google Ads account managers about (i) Amadeus's business strategy and their respective views of the directory enquiry industry, (ii) how Amadeus's ads were written, (iii) how the ad landing pages were presented and operated, and (iv) whether the ads were compliant with Google Ads rules.

Initially, Google and Amadeus continuously discussed Amadeus’ business strategy, including at various Google business events. Thus:

- on 4 July 2017 Google invited representatives from Amadeus to a meeting at its offices to draw up an “annual performance report”, analyse “market trends, your competitive situation” and identify “growth drivers for 2017/2018”. During this meeting, which took place on 13 July 2017, Google made a presentation that encouraged Amadeus to “extend high-potential verticals” with the following recommendations: “On-call pharmacy + 4% additional call volume (...) example: on-call pharmacy number”, “Tax assistance: +7% additional call volume Jan-June High average conversation duration, peak May-June example: declaration/simulation/tax credit” and “Social Security Assistance + 8% call volume example: Social Security Marseille, social security telephone number” (classification marks 424-444). In response to a questionnaire from the Investigation Services, Google clarifies that the terms “on-call pharmacy number”, “declaration/simulation/tax credit” and “social security Marseille, social security telephone number” are examples of Google Search queries and keywords used by advertisers on Google Ads (classification mark 4552).
- on 17 November 2017, Amadeus representatives were invited to participate, with “about twenty of the most important MMS advertisers” in an “exclusive dinner” organized by Google at the Mandarin Oriental in order to “exchange and network to build together an innovative partnership in 2018” (classification marks 422 and 4552).

Secondly, Google teams were directly involved in writing the ads on Amadeus. In this respect, the account managers have in particular:

- transmitted to Amadeus “ready-made ads” (see, for example, classification marks 4949-4956), an example of which is reproduced below:

Example of a “ready-made” ad proposed by account managers (classification mark 4950)

#W3	SAV Groupama textuelle m	{Keyword:Services	Logement				
Assurance		clients} par	Conseillers	Habitation			http://118001.fr/service-client
et Santé		téléphone	24h/7	auto Santé	contact-	Service-	1.fr/service-
S&D			Appeler ici	Retraite.	numéro	Client	client
				Professionn			
				els			

Editor’s note: The {Keyword:ServicesClients} tag allows advertisers to automatically display a keyword from the Internet user’s query (in this case the customer service name of a given trademark) in the text of their ads.

- provided extensive information on the choice of the most relevant keywords, in particular with regard to the queries from users of its search engine and their use by Amadeus’s competitors (see, for example, classification marks 4842-4843, 4850-4870 and 4889-4937). For example, account managers provided “keyword packages” entitled “FNAC” with keywords such as “FNAC SAV”, “FNAC after-sales service”, or “FNAC telephone number” (classification marks 4328 et seq.), “On-call pharmacy” (classification marks 4341 et seq.), “parcel tracking” with keywords such as “UPS number”, “parcel post tracking» or “Chronopost tracking”(classification marks 4361 et seq.), “Scam-assistance Services” which targeted victims of various types of scams (classification marks 4148 and 4292-4327);
- produced analyses of Amadeus’s ad groups (also known as campaigns). For example, Google provided Amadeus with a list of its ad campaigns concerning customer service departments of companies that are “not yet offering large-scale ad campaigns” (see, for example, classification marks 4698 and 4957-4961).
- conducted campaign and keyword optimisation operations directly from Amadeus’ active accounts (see for example classification marks 1950-1951 and 4847-4849).

Third, Google teams were directly involved in organising and writing the content of the landing pages of Amadeus ads. In this respect, the account managers have in particular:

- provided audits relating to the loading speed of the landing pages of the ads run by Amadeus (see for example classification marks 4781, 4793-4816 and 4962);
- recommended to Amadeus to “create a landing page per sector (...) e.g. a specific “e-commerce” landing page where the generic e-commerce terms, or even brands are mentioned?” or to “change the URL in the ad (...) to match it to each ad group” (classification mark 4962).

Fourth, Google advised Amadeus on the compliance of its ads and landing pages with Google Ads rules (see, for example, classification marks 1395, 1328-1333, 1308-1310, and 1932-1933). Thus:

- regarding the use of trademarks as keywords Google regularly informed Amadeus: “No risk of suspension on this point from Google’s perspective” (classification mark 1314) or, just before the suspension of its most active account, “118 001 is totally within its rights” (classification mark 1395).

- regarding the use of trademarks and logos on the landing pages of ads, Google informs Amadeus that this is possible provided that it is “clear that you are a contact service and not the after-sales service of the brand - do not include trademarks in the URLs- **clearly highlight the fees as you do**” (classification marks 1328-1331) (emphasis and underlining added).

The exchanges on file attest to Amadeus's follow-up of these recommendations, for example by adding - at Google's request - an additional mention on the landing pages of some of its ads (see, for example, classification marks 2060-2062 and 1314). In this regard, Google produced the internal exchanges relating to the suspension of Amadeus's main Google Ads account, including an e-mail dated (confidential) from Amadeus account managers to Google's “Policy” Department that states (confidential) (classification mark VC 5769). On the same day, another of these e-mails states (confidential) (VC 5771). In a progress report on (confidential) that appears in these exchanges, the account managers indicate (confidential) (classification mark VC 5811).

b) Amadeus’ place among Google’s customers

In response to a request from the Investigation Services, Google describes Amadeus as “one of the most important” MMS advertisers (classification mark 4556).

During the meeting, Google clarified that Amadeus was the only provider of directory enquiry services that had received direct support from Google Ads’ sales teams for the management of its accounts.

As part of its personalized coaching, Amadeus was required to spend a minimum of €1,100 per day (classification mark 416) and (confidential) per quarter (classification mark VC 4266; VNC 4540) (approximately (confidential)) on Google Ads. In a progress report relating to (confidential) mentioned above, Google Ads account managers mention (confidential) as well as (confidential). They specify that, in view of the situation, (confidential) (classification mark VC 5811).

Between 29 February 2016 and 31 March 2018, Google billed Amadeus €11,784,941.58 (classification marks 324-414).

3. THE SUSPENSION OF AMADEUS’ MAIN GOOGLE ADS ACCOUNTS AND THE REFUSAL OF ADS

a) The suspension of certain accounts of Amadeus in January 2018

As a preliminary point, it is specified that, in order to be able to use the Google Ads service, an advertiser must open a “Google Ads account”. Once identified as the owner of the account, the advertiser accesses an interface through which he can create and administer several “sub-accounts” (hereinafter “the accounts”) which are identified by separate numbers. Each of these accounts can be used to manage advertising campaigns according to its own terms and conditions.

Between 15 March 2013 and 3 April 2018, Amadeus created a total of 13 accounts in its Google Ads account. Some of these accounts were used daily to run ad campaigns, others only for testing purposes, others were never used (a table summarizing the status of Amadeus’s accounts as of 29 October 2018 was sent by Google (classification marks 3874-3876)).

On 10 January 2018, Google informed Amadeus of the suspension of its most active account “due to misrepresentation” and notified it of the possibility of “appealing this decision” (classification mark 2884). This suspension was not notified in advance and is not the result of a refusal of the ad for the same reason. The suspension notification email contained a hyperlink to the “Misrepresentation” page of Google Ads Advertising Policies (see <https://support.google.com/adspolicy/answer/6020955?hl=en>).

In its Comments of 29 October 2018 and in response to the Investigation Services’ questionnaire of 14 November 2018, Google provided information on the background of the suspension. It thus explains that it was alerted by the public authorities “in 2017” of the advertising practices of certain directory enquiry services (classification marks VC 3616-3617; VNC 3991-3992). After “thorough investigation”, Google reportedly found that some operators’ advertising campaigns violated several provisions of Google Ads rules on “Misrepresentation”, including the rule on the “Sale of free items” (classification mark 3976). In this context, it reportedly began suspending the accounts of operators of premium-rate numbers in late 2017 (classification mark 4545) and uncovered the practices it accused Amadeus of in January 2018 (classification mark 3994).

After the suspension of its account, on 10 January 2018, Amadeus initiated an internal appeal procedure, using the form provided for this purpose in the Google Ads rules which specify that in the event of flagrant non-compliance with these rules or conditions of use, “Accounts that violate these rules may be suspended and may not be allowed to advertise with us again. If you believe there’s been an error, and that you haven’t violated our rules, please submit an appeal.” In response, Google sent him an e-mail on 13 January 2018, stating: “We thank you for your patience. It has been confirmed that your account does not comply with AdWords rules. As this decision is irrevocable, it will not be reactivated. Avoid creating other AdWords accounts, as they will also be suspended” (classification mark 1416).

Between 15 and 29 January 2018, Google informed Amadeus of the suspension of all of its active accounts, i.e. those that were actually used to run ads, “because of misrepresentation” (classification marks 2883 and 1501-1503) or because they would present “serious or recurring cases of non-compliance with our advertising rules” (classification mark 455). None of these suspensions were notified in advance or were the result of a refusal to advertise for the same reason.

In response to these various account suspensions, Amadeus created new Google Ads accounts, which were in turn suspended, this time on the grounds of “Circumventing systems” (classification mark 1498).

On 14 February 2018 Amadeus sent an email to its account manager to obtain an explanation of these suspensions. The email states:

“We have had no communication with your team since last week despite our follow ups, while you were to inform us of the response from your legal [sic] in [New York].

Since the suspension of our account, we have followed your requests to the letter and have not tried to communicate through other channels even though not a single day has passed since then without a competitor running its ads on your network.

Thank you for your feedback” (classification mark 465).

The next day, Amadeus’s account manager replied as follows:

“Sorry for my late reply.

Brice will contact you tomorrow without fail to keep you informed by phone and give you more background on the situation.

Thank you for your patience” (classification mark 465).

Thus, on 15 February 2018, more than a month after the initial suspension of one of its accounts, Amadeus still had not been given precise details of the reasons why its active Google Ads accounts had been suspended.

b) The reactivation of Amadeus’ accounts in March 2018 and the refusal of ads

On 15 and 16 March 2018, Amadeus was finally informed by Google of the reactivation of the accounts for which an internal appeal had been lodged, after “verification of bank data and compliance with rules”. If the accounts were reactivated, most of the ads run from Amadeus’ accounts were nevertheless refused on the grounds of “Sale of free items” (see for example classification marks 2084-2089, 2092-2096, 2098-2100, 2105-2108, 2115-2130, 2213-2219, 2188 and 1492).

In its Comments of 29 October 2018, Google explains that account reactivations are linked to discussions it may have had in another dispute (classification marks VC 3601 and VNC 3976). According to Google, it was as a result of these discussions that it transferred the “Sales of free items” rule to a section concerning violations that did not result in the immediate suspension of the account. However, Amadeus never had this information at its disposal.

In this context, Amadeus issued a formal notice to Google on 28 March 2018 to “authorise the running of ads attached to (suspended) accounts, as long as they are lawful and comply with the AdWords conditions of use, and this at the latest within 48 hours” (classification marks 474-476).

By letter of 4 April 2018 (classification marks 478-480), Google's counsel finally provided Amadeus with the documents explaining the suspension of its accounts and the refusal of advertisements.

In this letter, Google's counsel explained that Amadeus allegedly ran ads “aimed at sites and URLs whose titles do not correspond in any way to the content offered on the landing pages (e. g. service-energie.info (...)). The user who clicks on the ad is redirected to a site that does not provide the information they can expect from reading the ad text, but that leads them to call 118 001, which provides a paid telephone enquiry service.

Several methods are used to maintain this confusion: the choice of keywords (examples: “Assistance”, “cancellation”, “La Poste customer service”, “Colissimo follow-up, “contact Darty”), the text of the ads (example : “Advisor available 24/7”), or the content of the destination site (examples: false search function, misleading statement).

When calling 118 001, users have to pay a price to obtain the telephone number they are looking for, whereas they can obtain this number free of charge elsewhere, for example on the websites of public bodies and merchants or in an online directory. In addition, the destination websites to which Amadeus ads refer do not always clearly and prominently highlight or even mention the pricing of calls to 118 001 (e. g. contact-assurance.fr/habitation, suivre-colis.com/tracking).”

In this letter, Google indicates that this conduct would be contrary both to the rule concerning “Sale of free items” and to all the rules relating to “Misrepresentation” (to which the former was integrated until March 2018, see section 1. a. above).

c) The suspension of certain of Amadeus's accounts for circumventing systems and the current status of its accounts

On 2 May, 18 June and 10 August 2018, Amadeus's main Google Ads accounts were again suspended in succession, this time for the following reason: "Circumventing systems" (classification marks 3875, 3876 and 3999). They will no longer be reactivated.

In its Comments of 29 October 2018, Google stated that Amadeus had been constantly "creating new campaigns and websites so that its non-compliant ads would pass Google's system checks" (classification marks 3977 and 3998). It adds that the "Circumventing systems" rule "applies when Google finds that an advertiser persistently and deliberately violates the Google Ads rules and implements certain strategies (e.g. by creating new domains) to avoid detection" (classification mark 3999).

At the same time, Amadeus states that its three unsuspended accounts (only two of which were actually used to run, or attempt to run, ads) would no longer be able to run ads, since they would be systematically refused by Google within a maximum interval of three weeks (classification mark 5909).

In this respect, Google affirms that these accounts are able to display ads that comply with Google Ads rules as clarified by Google's advice letter of 4 April 2018 mentioned above (classification mark 3999). It specifies that advertisements are likely to be rejected "by Google's automatic system checks" because they refer "to a landing page in a domain associated with repeated violations of the "Sale of free items" rule", which "may be approved if the manual review conducted by Google's "Policy" teams reveals that campaigns published in connection with that domain are now compliant" (classification mark 6030).

Amadeus produces examples of ads rejected on 8, 9 and 19 November 2018 and 9 January 2019 on the grounds of "Sale of free items", although it considers that these ads comply with the Google Ads rules thus elucidated (classification marks 5055, 5911-5920 and 5989). Amadeus also provides examples of ads actually run by its competitors in August 2018, even though ads written, in its opinion, in identical terms are refused over the same period when it tries to run them via its accounts (classification marks 3393-3424).

II. Discussion

Article L. 464-1 of the French Code of Commercial Law (*Code de commerce*) provides that: "The Autorité de la concurrence may, at the request of the Minister of Economy, of the persons mentioned in the last paragraph of Article L. 462-1 or of the companies, after having heard the parties to the case and the representative of the Minister of Economy, take the interim measures that are asked for or that it deems necessary. These measures may be taken only if the reported practice seriously and immediately affects the Economy as a whole, or that of the concerned industry, the consumers' interests or the complainant. These measures may include the suspension of the practice in question and an order that the parties return to the ex ante state of affairs. They must remain strictly limited to what is required to face the emergency."

According to the case law of the French Supreme Court (*Cour de cassation*), interim measures may be decided "as soon as the facts that have been reported, and referred to by the investigation

in the proceedings on the merits, appear likely, in the light of the evidence produced during the debates, to constitute a practice contrary to Articles L. 420-1 or L. 420-2 of the French Code of Commercial Law ” (*Cour de cassation*, judgement of 8 November 2005, Neuf Télécom, 04-16857). It is therefore necessary to examine whether the reported practices are likely, at this stage of the case, to constitute anticompetitive practices.

The following developments concern the applicability of European law (A), relevant markets (B), Google's position on the search-related online advertising market and Amadeus's possible economic dependence (C), the qualification that may be given to the practices reported by Amadeus (D) and the request for interim measures (E).

A. APPLICABILITY OF EUROPEAN LAW

In its guidelines on the effect on trade concept in Articles 81 and 82 of the Treaty (OJEU 2004 C 101, p. 81), the European Commission states that Articles 81 and 82 of the EC Treaty, now Articles 101 and 102 of the Treaty on the Functioning of the European Union (hereinafter referred to as “TFEU”), apply to horizontal and vertical agreements, as well as to abusive practices by undertakings which “may affect trade between Member States”, and this “in a significant manner”.

1. EFFECT ON TRADE BETWEEN MEMBER STATES

Abuses of a dominant position committed in the territory of a single Member State are likely, in certain cases, to affect intra-Community trade, as the Commission points out in point 93 of its guidelines: “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.”

In the present case, the reported practices would, if proven, cover all of France, since Google markets its offers throughout France.

Consequently, the alleged practices are likely to affect trade between Member States.

2. SENSITIVE NATURE OF THE EFFECT ON TRADE BETWEEN MEMBER STATES

The Commission states, in point 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.”

The practices of Google that have been reported by Amadeus are likely to make it more difficult for directory enquiry services to enter the market. Consequently, these practices are likely to qualify under Article 102 of the TFEU.

B. RELEVANT MARKETS

The following developments will focus first on the issue of the delimitation of the search-related online advertising market on which Google would implement abusive practices (1.), and

secondly on the delimitation of the market for electronic enquiry services on which these practices would have an effect (2.).

1. SEARCH-RELATED ONLINE ADVERTISING

The past decisions of the *Autorité de la concurrence* and the European Commission traditionally distinguish between the offline advertising market and the online advertising market, and within the latter market, online search-related advertising from other forms of advertising on the Internet (Decisions [10-MC-01](#) of 30 June 2010 on the request for interim measures submitted by Navx, paragraphs 123 et seq.; [15-D-13](#) of 9 September 2015 on a request for interim measures by Gibmedia, points 56-63. *Autorité de la concurrence*, Opinion [10-A-29](#) of 14 December 2010 on the competitive functioning of online advertising, paragraphs 111 et seq.; Opinion [18-A-03](#) of 6 March 2018 on data mining in the Internet advertising sector; Decisions M.8180, Verizon/Yahoo, 21/12/2016, paragraph 25; M.7217 - Facebook/Whatsapp, 03/10/2014, paragraphs 75 and 79; M.5727, Microsoft/Yahoo!Search Business, 18/02/2010, paragraph 61; M.4731, Google/DoubleClick of 11 March 2008, paragraphs 45, 46 and 51).

Despite technological and commercial developments since these decisions, search-related online advertising still differs significantly from other forms of online advertising.

First, the format of search-related online advertising is essentially textual, while other forms of advertising use various formats (text, video, images).

Next, sponsored links appear as part of a specific search by an Internet user and a query submitted to a search engine. Search-related advertising is thus based on performance. Its main objective is not to develop trademark awareness, but to encourage Internet users to click on a commercial link.

Finally, from the point of view of providers, the degree of substitutability between search-related advertising and other forms of online advertising also appears limited, since entry into the market for search-related online advertising requires the prior development of a generalist search engine, significant investment in technologies dedicated to the provision of search-related advertising and access to data sets that optimise content referencing.

The geographical dimension of such a market appears to be national in the current state of the investigation. On the one hand, search-related advertisements are textual and written in a specific language. On the other hand, Google has set up a sales organisation that takes into account specific national details. Thus, Google indicated during a meeting that a sales team, located in Ireland, is responsible for small and medium-sized French companies. Similarly, Google has developed networks of partner agencies that are structured by geographic regions. Finally, the Internet advertising sector is generally subject to legal frameworks that are wholly or partly national.

In conclusion, the French online market for search-related advertising is likely to constitute a relevant market at this stage of the investigation.

2. SUPPLY OF PAID DIRECTORY ENQUIRY SERVICES USING ELECTRONIC MEANS

In its Decision [06-D-20](#) of 13 July 2006 on practices implemented by France Télécom, Pagesjaunes Groupe and Pagesjaunes SA, the *Conseil de la concurrence* identified a specific market for directory enquiry services, the characteristics of which were as follows:

“In the initial analysis, it is possible to isolate the market for telephone directory enquiry services from other directory enquiry services. The latter differs from the others in several aspects, both in supply and demand:

- This is an “on-demand” consultation service as opposed to providing a list of data (paper directories, provision of a CD-ROM);
- Its access is possible in a mobile situation, as opposed to a directory consultation service on the Internet for ergonomic reasons and given the low development of mobile Internet for the moment;
- This is a paid service for the end user, which distinguishes it from both “paper” directories and Internet services provided free of charge” (*Conseil de la concurrence* Decision 06-D-20 of 13 July 2006 on practices implemented by France Télécom, Pagesjaunes Groupe and Pagesjaunes SA in the telephone and Internet enquiry services sector, p. 42).

In view of the technological and commercial developments of the last thirteen years, this initial analysis no longer necessarily seems justified. On the one hand, the mobile Internet has undergone significant development. On the other hand, several companies offer paid directory enquiry services on the Internet (e.g. 118218 -The number that uses both the Internet and telephone services to provide its enquiry service). In addition, several services use websites or applications to formulate queries and then place calls to premium rate numbers to provide the result of the query.

At this stage of the investigation, it cannot therefore be excluded that enquiry services provided over the Internet and those provided via telephone calls belong to the same market for electronic enquiry services, and that it is therefore not necessary to segment this market according to the electronic communications network used.

Whatever the definition of the product market, its geographical dimension is likely to be national, both for linguistic reasons and for the relevance of the information provided. On the one hand, the information is provided in French, and on the other hand, the information likely to be offered mainly concerns natural and legal persons in France.

C. GOOGLE'S POSITION IN THE RELEVANT MARKET AND AMADEUS'S POSSIBLE ECONOMIC DEPENDENCE

1. GOOGLE'S POSITION IN THE ONLINE SEARCH ADVERTISING MARKET

In 2010 and 2014, the *Autorité* already considered at the interim measures stage that Google had a largely dominant position in the French market for search-related online advertising.

The evidence produced in the debate shows that, since January 2016, the date on which Google and Amadeus began commercial relations as part of its telephone enquiry business, this position has been maintained or even strengthened.

This assessment is based on the market shares of Google and competing online advertising services (a), the existence of barriers to entry and expansion (b), and the absence of countervailing buyer power (c).

a) On Google's market shares

First, the *Autorité* has already found that Google's position in the market for search-related online advertising is based on its position in the market for general search services. Indeed, “an advertiser will be all the more interested in advertising space related to a search engine as this engine will attract significant traffic” (Decision [10-MC-01](#) of 30 June 2010 on the request for interim measures submitted by Navx, p. 132).

In the market for general search services, Google generates more than 90% of French Internet users' queries via its Google Search service (classification mark 5057). The annual volume of queries made by Internet users whose IP addresses are located in France has also increased over the last three years, from [110,000,000,000 - 115,000,000,000] in 2016, to [115,000,000,000 - 120,000,000,000] in 2017, and [120,000,000,000 - 125,000,000,000] in 2018 (classification mark VC 5907).

Secondly, in 2017 Google achieved a worldwide turnover of €[60,000,000,000 - 70,000,000,000] through the sale of search-related online advertising space. The revenues generated by Google on the French online search-related advertising market have grown significantly over the past three years, from at least €[1,000,000,000 - 1,500,000,000] in 2016, to €[1,500,000,000 - 2,000,000,000] in 2017, and to €[1,500,000,000 - 2,000,000,000] in 2018 (classification marks VC 5905-5907).

For these three years, the revenues generated worldwide by Microsoft, Google's main competitor in the search-related online advertising market, have never exceeded \$[6,000,000,000 - 8,000,000,000] (approximately €[5,000,000,000 - 7,000,000,000]) (classification mark VC 6122).

b) On barriers to entry and expansion

A search-related online advertising platform requires at least three elements, namely: (i) a general search service to associate user queries with search results; (ii) the technology to associate user queries with relevant ads; and (iii) an advertiser base broad enough to effectively compete with other search-related online advertising platforms.

The development and subsequent combination of these three elements requires significant investments that appear, at this stage of the investigation, likely to constitute barriers to entry into the French market for search-related online advertising. In addition, access to sufficiently large data sets can be a barrier to entry.

c) On the lack of countervailing buyer power

Finally, it seems that advertisers do not have significant countervailing power, particularly because of their high number and the absence of an alternative offer as attractive as the Google Ads service. The fact that Google is able to charge significantly higher prices than competing services such as Bing Ads also suggests that there is no countervailing buyer power.

Conclusion

In conclusion, at this stage of the investigation, Google appears likely to hold a dominant position in the French market for search-related online advertising.

2. ON THE POSSIBLE ECONOMIC DEPENDENCE OF AMADEUS ON GOOGLE

After reviewing the criteria identified by the *Autorité de la concurrence*'s past decisions (a), their application to the circumstances of the case will be analysed (b).

a) The *Autorité*'s past decisions

Article L. 420-2, paragraph 2, of the French Code of Commercial Law prohibits "(...) whenever it is susceptible to affect the functioning or structure of the competition, the abusive exploitation, by a company or group of companies, of the condition of economic dependence in which a customer company or supplier finds itself vis à vis such company. These abuses may consist of the refusal of sale, tied sales or the discriminatory practices..."

According to consistent past decisions of the *Conseil de la concurrence*, confirmed by the Paris Court of Appeal and the French Supreme Court (*Cour de cassation*), to characterize the existence of a situation of economic dependence, it is necessary to take into account "the reputation of the supplier's trademark, the importance of the supplier's market share, the importance of the supplier's share in the turnover of the reseller and, finally, the difficulty for the distributor to obtain equivalent products from other suppliers" (see judgements of the French Supreme Court of 12 October 1993 and the Paris Court of Appeal of 4 June 2002, and Decision [09-D-02](#) of 20 January 2009 of the *Conseil de la concurrence* concerning a request for interim measures submitted by the Syndicat National des Dépositaires de Presse).

The amendment to Article L. 420-2 of the French Code of Commercial Law (*Code de commerce*) introduced by the law of 15 May 2001, which eliminated the reference to the notion of "equivalent solution", does not exempt the parties from demonstrating its existence. Indeed, the *Conseil de la concurrence* had the opportunity to point out, after the entry into force of the law of 15 May 2001, that the state of economic dependence implies "the impossibility for a company to have a solution that is technically and economically equivalent to the contractual relations it has established" (see Decision [01-D-49](#) of 31 August 2001).

On the absence of an alternative solution for the distributor, the Paris Court of Appeal specified in a judgement of 15 October 2008, SCEA Vergers de la Motte, that "the state of economic dependency is defined as a situation of a company which does not have the possibility of substituting for its supplier(s) one or several suppliers that can satisfy its demand for supplies under comparable technical and economic conditions; it follows that the mere fact that a distributor supplies a significant or even exclusive part of its supplies from a single supplier is not sufficient to characterise its state of economic dependence within the meaning of Article L. 420-2 of the French Code of Commercial Law."

In addition, the *Conseil de la concurrence* considered that "situations of dependence falling within the scope of the aforementioned provision of the *French Code of Commercial law* [Article L. 420-2] are part of bilateral relations between two companies and must therefore be assessed on a case-by-case basis, and not globally for the entire profession" (see Decisions [03-D-42](#) of 18 August 2003 relating to practices implemented by Suzuki and others on the motorcycle distribution market and [09-D-02](#), above).

Finally, the French Supreme Court (*Cour de cassation*) notes in its 2009 annual report that “the status of economic dependence is excluded when the importance of turnover is the consequence of a deliberate choice by the reseller to concentrate or refocus its business with a single partner (Com., 10 December 1996, Bull. 1996, IV, 310, appeal 94-16.192). In this case, the reseller does not suffer from their state of economic dependence: they have chosen it by adopting a commercial strategy at their own risk and peril (Contrats, Concurrence Consommation July 2004, commentary, p. 140, observations by Marie Malaurie-Vignal).”

b) Application in this case

In order to characterize a situation of economic dependence, it is therefore necessary to assess whether the following four criteria are met:

- (i) the supplier's trademark is sufficiently well known;
- (ii) the supplier has a significant market share in the relevant market;
- (iii) the supplier's share of the customer's turnover is significant;
- (iv) the customer does not have an alternative solution under comparable technical and economic conditions.

For the first criterion, it appears at this stage of the investigation that Google enjoys a certain reputation since it is the first brand in the Brandz Top 100 ranking established by Kantar and WPP in 2017 and 2018 (see: <http://online.pubhtml5.com/bydd/rxhd/>).

As to the second criterion relating to the supplier's market share in the relevant market, it appears from the above developments concerning Google's position in the relevant market that, at this stage of the investigation, Google appears likely to hold a dominant position in the French market for search-related online advertising.

As for the third criterion relating to Google's share of Amadeus's turnover, Amadeus points out that until 26 April 2016, the date on which its personalised support began with Google's sales teams, “the 118001 was mainly promoted in direct marketing through outgoing advertising calls on an opt-in basis for mobile phones, this promotional method was abandoned in favour of AdWords on that date” (classification mark 3349).

However, as of 27 April 2016, Amadeus's turnover would be “100% due to the promotional campaigns run on the AdWords network until the account was suspended in January 2018 and the alternative measures (natural referencing and promotion on the non-surtax.fr website) initiated as of that date” (classification mark 3349).

While this statement seems to be moderate, the fact remains that Google's share of Amadeus's turnover is, at the very least, very significant.

Indeed, the evidence gathered at this stage of the investigation indicates that its expenses represented 72.7% of its turnover for 2017 (in 2017, Amadeus's turnover was €12,476,548 and its Google Ads expenses were €9,066,586.46).

Finally, the fourth criterion refers to the assessment of the extent to which the significant part of the turnover that can be attributed to Google results or not from Amadeus's deliberate choice to concentrate its online advertising expenditure on Google Ads.

Amadeus argues that it could not rely on other suppliers responding to its request for supply under comparable technical and economic conditions. However, several enquiry service operators make little or no use of the Google Ads service.

In this respect, Google points to Amadeus's weakness in natural referencing and the existence of other advertising channels to which it was likely to turn, including other search-related online advertising services. In particular, it recalls that, in a judgement of 25 October 2013, E.U.R.L. Webdeviin, the Paris Court of Appeal considered that the existence of companies such as Twitter, Facebook, Yahoo or Microsoft in the online advertising market “implies the absence of economic dependence between Webdeviin and Google.” Finally, it notes that, until 26 April 2016, the date on which Amadeus began receiving personalised support from Google's sales teams, it generated significant turnover mainly by using other promotional methods.

In response to the suspension of its Google Ads accounts, Amadeus indicates that it has attempted to expand its business through the online advertising service related to Bing Ads searches (classification marks 5063-5098), Google Ads' main competitor, and the online advertising service not related to Facebook Business searches (classification marks 5099-5116). According to Amadeus, “the Bing network has proved to be zero in terms of returns on investment” (classification mark 620).

In a second step, Amadeus explains that it has run banner ads on the website “www.nonsurtaxe.fr” (sic). Although the site benefits from “excellent” natural referencing according to Amadeus, the results of the investment would also have been nil. According to Amadeus, this lack of efficiency can be explained by the fact that its direct competitors were still able to run ads via Google Ads.

Amadeus concludes that:

- “The ads on Google Ads cannibalize Google Search's natural results, which lose all their effectiveness as soon as a Google Ads ad is present.
- Natural referencing is no longer relevant when the ad from Google Ads is present at the top of the natural references” (classification mark 620).

The investigation into the merits of the case will determine whether or not Amadeus is economically dependent on Google. However, it is not necessary to rule on this point, since, at this stage of the investigation, Google appears likely to hold a dominant position in the French market for search-related online advertising.

D. THE POTENTIALLY ANTICOMPETITIVE NATURE OF THE REPORTED PRACTICES

Amadeus considers that Google “lacked transparency and objectivity in the application of its AdWords content policy, in violation of its commitments before the *Autorité de la concurrence*”, “applied this content policy in a discriminatory manner” and “abused its dominant position by abruptly severing (their) commercial relations” (classification mark 19). It considers that these practices violate the provisions of Articles 102 of the TFEU and L. 420-2 of the French Code of Commercial Law (*Code de commerce*) since they “have had very significant anticompetitive effects, not only with regards to Amadeus and consumers but also on the telephone enquiry market” (classification mark 15).

In its Comments of 29 October 2018, Google argues that “the elements relied on by Amadeus are in no way likely to characterise an anticompetitive practice,” that it has “applied the Google Ads rules in a transparent, objective and non-discriminatory manner both to Amadeus and to many other operators engaged in the same practices,” and that “in any event most of its accounts were reactivated after their initial suspension, and that two of them are still active.”

In addition, Amadeus has been unable to demonstrate “any anticompetitive effect of the conduct alleged against Google” and “Google's actions [are] objectively justified by the need to protect users.”

After a review of the *Autorité*'s past decisions (1), the objective and transparent nature of the implementation of the Google Ads rules (2) and the question of the existence of discriminatory practices (3) will be examined in turn.

1. REVIEW OF THE *AUTORITÉ*'S PAST DECISIONS

In Decision 10-MC-01 of 30 June 2010 on Navx's request for interim measures, the *Autorité* emphasised that “Google's likely dominant position in the market for search-related online advertising does not in itself imply, under competition law, an obligation on Google to open up its AdWords service to any business solely on the grounds that it would not be prohibited by the laws and regulations of the country in which that activity takes place.”

In its decision of 28 February 2013 on the complaint by e-Kanopi, the *Autorité* considered 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” (Decision [13-D-07](#) above, p. 46).

In its Decision [15-D-13](#) of 9 September 2015 on a request for interim measures by Gibmedia, the *Autorité* noted that it recognised “Google's freedom to freely define AdWords content policy, including its right to implement requirements stricter than those set by public authorities, in particular in the field of consumer protection” (Decision 15-D-13 of 9 September 2015 on a request for interim measures by Gibmedia, page 179).

In these three decisions, however, it considered that Google's “freedom to define its AdWords content policy does not exempt Google from the obligation to implement that policy under objective, transparent and non-discriminatory conditions” (Decision 10-MC-01 of 30 June 2010 on Navx's request for interim measures, point 248; Decision 13-D-07 of 28 February 2013 on a complaint by E-Kanopi, p. 47).

In the event that Google does not comply with these obligations, the practices reported by Amadeus could, if proven, fall into the category of abusive exploitation. In the Navx case, the *Autorité* noted that “this type of conduct (...) results from the excessive or non-objective use of market power likely to harm the proper functioning of the markets, beyond the sole interest of the company in question.” The *Autorité* had also recalled that it is “settled case-law that dominant companies have a particular responsibility in the market, under which they may be prohibited from engaging in certain conduct which, if carried out by other companies, would fall within the normal functioning of the market. A company in a dominant position in a market cannot therefore invoke, in order to justify any type of conduct in the market it dominates, the absence of any current or tangible potential commercial interest on the affected market.”

In view of the existence of this market power, the *Autorité* has specified that Google must comply “in particular” with the following obligations:

- “(i) define general and unambiguous rules”;

- “(ii) clearly inform advertisers of their existence, and, where appropriate, change these rules by also clearly informing advertisers, giving them sufficient notice before they enter into force”;
- “(iii) define a procedure for the control and suspension of accounts, which should also be objective and transparent”;
- “(iv) ensure a non-discriminatory application of the rules and procedures thus defined” (Decision 10-MC-01 of 30 June 2010 on the request for interim measures submitted by Navx, point 248).

Pending its decision on the merits, the *Autorité* had instructed Google to make its AdWords content policy on devices for circumventing traffic radars in France and the procedures for monitoring that policy more transparent and predictable for advertisers. It also required that Navx's AdWords account be reinstated within five days so that Navx could resume running its advertisements.

In the context of the commitment procedure following the granting of interim measures, the *Autorité* expressed four competition concerns relating to the lack of objectivity and transparency regarding the products covered by the prohibition on devices for circumventing traffic radars, the scope of the prohibition, the procedure for notifying amendments to the AdWords rules and the notification procedure for suspension of AdWords accounts.

Google then undertook to make the operation of AdWords regarding devices for circumventing traffic radars in France more transparent and predictable for advertisers, in particular by specifying the devices for which advertising is allowed or prohibited and by specifying the procedure that may result in the suspension of the advertiser's account in the event of a breach of the AdWords content policy. Unless urgent, this procedure had to include at least two steps, including a final formal warning to inform the advertiser of the alleged violation and the risk of suspension of its account.

In addition to these commitments, the mandatory implementation of which ended in January 2015, Google had informed the *Autorité* that in practice it would apply to all content accepted on the AdWords service and in all countries concerned by the service the principle of improvements and clarifications made pursuant to the commitments. The *Autorité* had taken note of Google's intention to provide advertisers with more transparency and predictability beyond the individual case submitted to it (see paragraph 93 of Decision 10-D-30 of 28 October 2010 on practices in the Internet advertising sector).

2. CONCERNING THE OBJECTIVE AND TRANSPARENT NATURE OF THE IMPLEMENTATION OF GOOGLE ADS RULES

Article L. 420-2 of the French Code of Commercial Law (*Code de commerce*) provides that practices of abuse of a dominant position may consist in particular of “a breach of established commercial relations”. Article 102 of the TFEU refers to practices consisting of “direct or indirect imposition of unfair purchase or selling prices or other unfair trading conditions”. Finally, in its 2010 opinion on the competitive functioning of the online advertising sector, the *Autorité* distinguished between “possible operational abuses, whereby the search engine would impose exorbitant conditions on its partners or customers, treat them in a discriminatory manner or refuse to guarantee a minimum level of transparency in the contractual relations it enters into with them” (emphasis added).

Google claims that the account suspensions and ad refusals which Amadeus has reported are justified by the violation of the rules on the “Sale of free items”, several of the rules on the category “Misleading Statements”, and the rule on “Circumventing systems”.

In the current state of the investigation, the *Autorité* considers that Google's practices are likely to characterise a sudden termination of commercial relations under conditions that are neither objective nor transparent.

First, the suspensions of accounts in January and February 2018 on the grounds of “Misleading statements” occurred without prior warning and were not the result of any refusal of ads for the same reason. In addition, the letters notifying these suspensions did not explicitly refer to any Google Ads rules but only to the general category of “Misleading Statements”.

Secondly, as noted above, since 27 April 2016, Amadeus's account managers have been continuously and fully informed of the operating procedures and content of Amadeus's advertising campaigns, both in terms of the choice of keywords, the drafting of ads and the content of landing pages. In this context, Google cannot legitimately claim that it discovered “in January 2018” that certain accounts belonging to Amadeus were being used to implement practices that it considers contrary to the Google Ads rules.

Thirdly, as noted above, the account managers actively participated in the development of Amadeus's advertising campaigns, again with regard to the choice of keywords, the drafting of ads and the content of landing pages. The practices described by Google's counsel in their above-mentioned letter of 4 April 2018 thus correspond in all respects to the strategy recommended by the account managers. By way of illustration, the “ready-made ads” proposed by account managers are written in a structure and in terms similar, if not identical, to those of the ads put forward by Google to justify the suspension of certain accounts and certain refusals of ads (classification marks 4949-4956 and 4556-4562). However, in its Comments of 29 October 2018, Google reported a strategy “deliberately” implemented by Amadeus (classification marks 3986 and 3987).

Fourth, as noted above, the account managers regularly provided Amadeus with guarantees regarding the compliance of its advertising campaigns with the Google Ads rules. The internal exchanges dated (confidential) brought to the debate by Google in response to a request from the Investigation Services are in this respect unambiguous (confidential) (classification mark VC 5769) or (confidential) (classification marks VC 5809-5814).

Fifth, the fact that Amadeus still has unsuspended accounts to date must be assessed in the light of the ad refusals received by Amadeus when it actually tries to use them to run ad campaigns. In this respect, Google provides no evidence to justify these refusals by a violation of the Google Ads rules and merely indicates that the ads in question are likely to be refused “by Google's automatic control systems” because they refer “to a landing page of a domain associated with repeated violations of the ‘Sale of free items’ rule”, which “may be approved if the manual review conducted by Google's “Policy” teams reveals that the campaigns published in connection with that domain are now compliant” (classification mark 6030).

It will be investigation into the merits of the case that will determine whether the lack of objectivity and transparency in the application, but also in the definition of the Google Ads rules on the “Sale of free items”, “Misleading Statements”, “Trademarks” and “Circumventing systems”, actually constitute an abusive practice.

3. ON THE POTENTIALLY DISCRIMINATORY NATURE OF THE IMPLEMENTATION OF THE GOOGLE ADS RULES

Article L. 420-2 of the French Code of Commercial Law (*Code de commerce*) lists “discriminatory selling conditions” as one of the possible cases of abuse of a dominant position. Article 102 TFEU refers to practices which may consist in “applying dissimilar conditions to equivalent services to trading partners, thereby placing them at a competitive disadvantage.”

In case law, the Court of Justice of the European Union recently ruled in a preliminary question concerning second-order discrimination that “it is only if the conduct of the undertaking in a dominant position tends, in the light of all the circumstances of the case, to lead to a distortion of competition between these trading partners, that discrimination against trading partners who are in a competitive relationship can be considered abusive” (European Court of Justice, judgement of 19 April 2018, *MEO Serviços de Comunicações e Multimédia SA v Autoridade da Concorrência*, Case C-104/01) C-525/16, p. 27). The finding of such discrimination must be “based on an analysis of all the relevant circumstances of the case which makes it possible to conclude that the conduct has an influence on the costs, benefits or other relevant interests of one or more of the said partners, so that the conduct is likely to affect the said position” (MEO judgement cited above, p. 37).

In this case, Google affirms that it “did not treat Amadeus differently from other premium rate number operators whose ads created similar risks for Internet users”. It states that Amadeus “is only one of many premium rate number operators whose accounts have been suspended since autumn 2017” and considers that “the fact that Amadeus reports allegedly similar ads that have not been refused does not establish discrimination, since Google can only suspend misleading ads once it has identified them” (classification mark 4009).

In the light of the evidence produced in the debate, the practices reported by Amadeus must, however, be regarded as likely to be discriminatory and to have had, as such, anticompetitive effects.

First, Amadeus competes with, at a minimum, all providers of paid telephone enquiry services.

Secondly, the lack of objectivity and transparency in, at the very least, the application of the Google Ads rules, as established above, does not attest to their implementation in a non-discriminatory manner. In this regard, in an internal Google e-mail dated (confidential), Google employees themselves expressed concern about the conditions under which Amadeus's accounts were suspended (confidential) (classification mark VC 5769).

Thirdly, providers of electronic enquiry services have indeed been able to run ads via Google Ads even though Amadeus was deprived of this possibility. In this respect, Amadeus produced to the debate a bailiff's report made in August 2018, which highlights the presence of ads run by competing services even though ads written in identical terms are refused when it tried to run them via its accounts (classification marks 3393-3424). It also provided numerous examples of ads run by its competitors between April 2018 and January 2019 (classification marks 173-178 and 5985-5987).

Fourthly, internal exchanges produced by Google in response to requests from the Investigation Services indicate that some industry stakeholders have obtained more complete and faster information from Google on the scope of the Google Ads rules applicable to their business, which enabled them to have their Google Ads accounts reactivated on 3 March 2018, several weeks before Amadeus's accounts (classification marks VC 5826-5829).

It will be for the investigation into the merits of the case to determine whether the alleged facts do indeed reveal discriminatory practices against other providers of electronic enquiry services, and whether these practices have led to distortions of competition between these service providers.

4. ON THE POSSIBLE ANTICOMPETITIVE EFFECTS OF THE PRACTICES

At this stage of the investigation, Google's conduct is likely to have led to anticompetitive effects (classification mark VC 3638). On the one hand, the evidence produced in the debate attests to the significant importance of Google Ads in competition between enquiry service providers (in this sense, see in particular classification marks 4549 and 4550). On the other hand, the information provided by Amadeus shows that account suspensions have had a significant impact on its call volume (classification marks 3368 and 3370), turnover and profitability (classification marks 6068 and 6069).

E. THE REQUEST FOR INTERIM MEASURES

According to settled case law, “interim measures may be decided (...) within the limits of what is justified by the emergency, in the event of serious and immediate harm to the Economy as a whole, to that of the concerned industry, the consumers’ interest or the complainant, provided that the reported facts, and covered by the investigation, in the proceedings on the merits, appear likely, in the state of the evidence produced during the debates, to constitute a practice contrary to Articles L. 420-1 or L. 420-2 of the French Code of Commercial Law (*Code de commerce*), a practice at the direct and certain origin of the harm found” (French Supreme Court (*Cour de cassation*), judgement of 8 November 2005, Neuf Télécom, 04-16857).

In order to determine whether the reported practices make it possible to impose interim measures, it is therefore necessary to assess the serious and immediate nature of the harm to the Economy as a whole, that of the concerned industry, the consumers’ interest or the complainant. However, these various infringements do not constitute cumulative, but alternative, conditions: a serious and immediate infringement found in only one of these cases is sufficient to allow the granting of interim measures.

On the other hand, the seriousness of the infringement, its immediacy and the existence of a causal link between the reported facts and the infringement are three cumulative criteria.

1. ON THE SERIOUS AND IMMEDIATE DAMAGE TO THE ECONOMY AS A WHOLE, OR THAT OF THE CONCERNED INDUSTRY, THE CONSUMERS’ INTEREST OR THE COMPLAINANT

The *Autorité* has been able to note in its past decisions that interim measures may be imposed in “cases where one or more companies could be excluded from the market, disappear before the end of the proceedings on the merits or see their chances of development seriously compromised” (*Autorité de la concurrence*, Decision [13-D-16](#) of 27 June 2013, point 178; [12-D-01](#) of 10 January 2012, points 183-185; *Conseil de la concurrence*, Decision [09-D-12](#) of 18 March 2009, points 62 and 69). Interim measures may also be justified in cases where the company in question suffers a massive drop in its turnover, a circumstance which significantly affects its business. In addition, the “conduct of the complainant” may be taken

into account in assessing whether its interests have been harmed (see the *Autorité de la concurrence's* Thematic Study on interim measures, 2007, p. 76; see also *Conseil de la concurrence*, Decision 09-D-12 of 18 March 2009, points 62 and 69; see also *Conseil de la concurrence*, Decision [00-MC-17](#) relating to Wappup's request to prohibit France Télécom and SFR from marketing WAP-type telephone sets locked on the Internet access provider's portal or the gateway of operators or their subsidiary).

However, it appears from the evidence produced in the debate that:

- on the one hand, Amadeus finds itself in a critical situation, has suffered a massive loss of turnover, its main business is very seriously affected and may soon be forced to exit the market on which it is active;
- on the other hand, this situation is a direct result of Google's practices.

First, since at least January 2016, the provision of paid directory enquiry services has been Amadeus's sole business. The latter has no other sources of income likely to counterbalance the impact of Google's practices on its situation.

Second, the volume of calls to 118 001 decreased by more than 90%, from 1,201,495 calls between January and August 2017 to 115,934 calls over the same period in 2018 (classification marks 3368 and 3370). Amadeus also restored 118 333 on 8 March 2018, and the fact that it became the recipient of number 118 512 on 11 October 2018 does not appear to compensate for the drop since the service has been in operation only since January 2019 (classification mark 6063) and the ads that Amadeus is trying to run are refused by Google.

Thirdly, Amadeus's turnover decreased by more than 90%, from €8,381,500 between January and August 2017 to €820,109 over the same period in 2018 (classification marks 6068-6069).

This collapse of the company's business led to a cumulative loss of €392,000 between January and August 2018. In comparison, over the same period in 2017, Amadeus achieved a profit margin of approximately €1.3 million (classification marks 6068-6069) and the changes described above are the direct result of account suspensions and ad refusals since January 2018. First, calls made as a result of viewing ads on Google Ads run by Amadeus were its main, if not only, source of revenue. In this respect, the argument that this circumstance is a deliberate and unconstrained strategic choice must be assessed in the light of the incentives provided by Google's sales department as part of its personalised support for Amadeus. Then, in response to the suspension of its accounts in January 2018, Amadeus effectively sought to diversify its advertising channels (mainly on Bing Ads and Facebook Business between January and May 2018), which had no impact on the deterioration of its business and results.

It results from the foregoing that Google's practices directly affected Amadeus's profitability and made it highly unlikely that it will continue to operate in the short term. The practices must therefore be regarded as causing a serious and immediate harm.

In this context, and in light of the evidence produced by the debate, it does not seem necessary to analyse whether the reported practices have also seriously and immediately affected the interests of consumers or the sector of paid electronic enquiry services.

2. ON THE NECESSARY INTERIM MEASURES

According to the third paragraph of Article L. 464-1 of the French Code of Commercial Law (*Code de commerce*), interim measures “may include the suspension of the practice in question and

an order that the parties return to the ex ante state of affairs. They must remain strictly limited to what is required in order to face the emergency.”

In its request Amadeus lists the interim measures it considers necessary, namely:

- “Provide advertisers, within two months of notification of the *Autorité de la concurrence*'s decision, with objective, transparent and non-discriminatory AdWords procedures, specifying the time limit within which the amended procedures will apply to advertisers, in order to give them sufficient notice;
- Make the suspension of an advertiser's account conditional on the sending of at least one formal warning in a format clearly distinct from ad rejection alerts and with sufficient notice, without calling into question already validated ads. Such information shall be made available to advertisers under objective, transparent and non-discriminatory conditions and shall specify the time limit within which the amended procedures shall apply to advertisers, in order to give them sufficient notice;
- Within 48 hours of notification of this decision, subject to a penalty of €10,000 per day of delay, reinstate Amadeus's AdWords account, as it was before the suspension of 11 January 2018, keeping its full history, so as to allow Amadeus to run its initially approved ads;
- Distinguish clearly and unequivocally between natural search results and AdWords ads.”

According to Google, requests would be “(i) unrelated to the alleged emergency situation, (ii) manifestly disproportionate, and (iii) expose Internet users to a significant risk” (classification mark 4031).

In the light of the evidence produced by the debate, and as they are formulated, these requests do not appear to be strictly necessary or proportionate to the seriousness and urgency of the practices, which have been shown to likely be anticompetitive.

First of all, the *Autorité* has already recognised “Google's freedom to freely define AdWords content policy, including its right to implement requirements stricter than those set by public authorities, in particular in the field of consumer protection.”

Secondly, in the light of the evidence produced in the debate, no practices likely to cause serious and immediate harm to consumer interests could be identified.

Finally, Amadeus still has unsuspended accounts, which Google claims are capable of delivering campaigns that comply with the Google Ads rules, subject to prior manual review by its teams responsible for the proper application of the said rules.

In view of the potentially anticompetitive nature of the reported practices and the serious and immediate harm they cause to Amadeus's interests, the *Autorité* considers it necessary to obtain, pending the decision on the merits, guarantees regarding the objective, transparent and non-discriminatory application of the Google Ads rules to Amadeus, as well as all providers of paid electronic enquiry services with which it has a competitive relationship.

First, Google is instructed to clarify the Google Ads rules applicable to paid electronic enquiry services in order to make them more accurate and understandable.

Secondly, Google is also required to organise training for its sales staff on the content and conditions of application of the Google Ads rules thus clarified. Sales representatives will thus be in a position to identify content that does not comply with Google Ads rules, while avoiding that they themselves contribute to the writing of non-compliant content. This

training should enable Google to meet its pre-contractual and contractual obligations to inform and warn its customers, but also its enhanced advisory obligation.

Finally, the procedure for suspending Google Ads accounts of companies in the event of “misleading or prohibited content” will be reviewed in order to avoid sudden and insufficiently motivated suspensions. Thus, the suspension procedure must in principle include a notice, unless there is a risk to the safety of persons or property or of serious harm to public order, in particular if the ad constitutes a criminal offence. The notice shall set out the reasons for the suspension of the account in clear terms and shall allow sufficient time for companies to (i) request explanations on the identified breaches, (ii) justify the identified breaches (iii) or even remedy them.

DECISION

Article 1: Google LLC, Google Ireland and Google France are required, as an interim measure and pending a decision on the merits of the case, to clarify, within one month of notification of this decision, the Google Ads rules applicable to paid electronic directory enquiry services by clearly defining the general concepts of “misleading statements”, “unreliable conduct or unreliable promotions» and “unacceptable business practices”. These definitions will be accompanied by specific, but not limiting, examples of the most common types of prohibited conduct (keywords, ad text, landing page, etc.) falling into each of these categories.

The Google Ads rules thus clarified shall be made available to advertisers under objective, transparent and non-discriminatory conditions.

Article 2: Google LLC, Google Ireland Limited and Google France are required, as an interim measure and pending a decision on the merits of the case, to provide, within one month of notification of this decision, in Google Ads procedures that may result in the suspension of the account of an advertiser in the field of paid electronic directory enquiry services, a warning referring to the clarified Google Ads rules, which will specify the nature of the alleged breach or breaches and justify the suspension of the Google Ads account in question. 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.

An account may be suspended without warning or delay in the event of a risk to the security of persons or property or a serious breach of public order, in particular if the ad constitutes a criminal offence.

Article 3: Google LLC, Google Ireland Limited and Google France are required, as an interim measure and pending a decision on the merits of the case, to organise, within two months of notification of this decision, face-to-face training for staff responsible for providing personalised support to companies active in the field of paid electronic directory enquiry services. This training should enable these sales teams to inform companies of the content and scope of the Google Ads rules and warn them of the consequences of their violation.

Article 4: Google LLC, Google Ireland Limited and Google France are required, as an interim measure and pending a decision on the merits, to undertake, within one month of notification of this decision, a manual review of the compliance of the campaigns proposed by Amadeus' unsuspended accounts with the rules thus clarified and, if such review reveals that such advertisements are indeed in compliance, to authorise Amadeus to run its advertising under non-discriminatory conditions. If this review reveals that the ads are not compliant, Google will inform Amadeus in clear comprehensible conditions, allowing it to modify its advertising campaigns to comply with the Google Ads rules.

Article 5: Google LLC, Google Ireland Limited and Google France will send the *Autorité de la concurrence*, by registered letter with acknowledgement of receipt, a report on the implementation of the measures imposed in Articles 1 to 4 of this decision within 10 days of their implementation.

Article 6: The investigation into the merits of the case continues into the practices reported by Amadeus.

Deliberation on the oral report by Mr Clément Chazelas, Rapporteur, and the speech by Mr Nicolas Deffieux, Deputy General Rapporteur, by Ms Isabelle de Silva, Chairperson, Ms Pierrette Pinot and Ms Sandra Lagumina, Members.

Hearing Secretary,

Chair,

Caroline Orsel

Isabelle de Silva

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