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**Decision 23-MC-01 of 4 May 2023
on the request by the company Adloox* for interim measures**

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

Having regard to the letter registered on 9 October 2022, under numbers 22/0051 F and 22/0052 M, by which the company Adloox S.A.S. referred to the *Autorité de la concurrence* practices implemented by the companies Facebook France EURL, Meta Platforms Ireland Ltd. and Meta Platforms Inc. in the online advertising sector, and requested, in addition, that interim measures be ordered;

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 102 thereof;

Having regard to Book IV of the French Commercial Code (Code de commerce), and in particular Article L. 420-2;

Having regard to the opinion of 8 December 2022 of the 'Commission nationale de l'informatique et des libertés' issued on the basis of the provisions of Article R. 463-9 of the French Commercial Code (Code de commerce);

Having regard to the observations submitted by the companies Adloox S.A.S., Meta Platforms Inc., Meta Platforms Ireland and Facebook France EURL and by the Representative of the Minister of the Economy;

Having regard to the other evidence in the case file;

The Rapporteurs, the Deputy General Rapporteur, the Representative of the Minister of the Economy, the representatives of the companies Adloox S.A.S., Meta Platforms Inc., Meta Platforms Ireland Ltd and Facebook France EURL heard at the hearing of the *Autorité de la concurrence* on 5 April 2023;

Adopts the following decision:

* public version

Summary¹

In the context of the present decision, the *Autorité de la concurrence* (hereinafter "the *Autorité*") has issued interim measures against the companies Meta Platforms Inc., Meta Platforms Ireland Ltd. and Facebook France EURL (hereinafter "Meta").

On 9 October 2022, Adloox S.A.S. (hereinafter "Adloox"), which provides independent online ad verification services, referred to the *Autorité* practices implemented by Meta in the online advertising sector.

Ad verification refers to the processes in the online advertising sector which are intended to verify the quality of an ad inventory or an ad impression. It allows advertisers and other online advertising stakeholders to verify that their advertising budget has been spent in a meaningful way. These services typically include (i) measuring viewability, which involves checking whether the ad has actually been seen by a user; (ii) fraud detection, which involves detecting invalid traffic from machines or bots; and (iii) brand safety, which consists of verifying that the ad is not displayed in an environment that could harm the interests of the brand, and brand suitability, which consists of verifying that the environment in which the ad is displayed meets the criteria set by the advertiser.

This type of service can be offered by integrated advertising platforms (such as Meta) on their own ad inventories, and by specialised independent operators, such as Adloox, who offer more accurate and granular measurements.

Following criticism from advertisers about the actual audience and context of display ads on certain platforms, including Facebook, Meta set up a viewability partnership in 2015 and a brand safety partnership in 2019. In the context of these partnerships, Meta collects, processes and provides data to its partners *via* an Application Programming Interface (API), so that they can offer their verification services on its inventories (in particular on ads displayed on Facebook and Instagram). Since the end of 2020, Meta has undertaken to restructure these two partnerships and to incorporate them into the "Measurement" sub-specialty of the "*Meta Business Partners*" programme (hereinafter "MBP").

According to Adloox, Meta, which is in a dominant position on the French online advertising market, has discriminated against it by refusing it access to its viewability and brand safety partnerships, even though it is in a similar situation to other companies that have been able to access these partnerships. The complainant also believes that Meta is abusing its dominant position by refusing to allow independent verifiers to collect the information necessary for ad verification directly from the platform, and is limiting itself to supplying data which it collects and processes itself.

As of the date of this decision, only three operators have access to each of these partnerships. Despite numerous requests since 2016, Adloox has been systematically denied access, with its last unanswered request dating from August 2022. In this context, in parallel to its complaint on the merits of the case, Adloox has requested that interim measures be imposed, intended to order Meta to include it in its viewability and brand safety partnerships.

At this stage of the investigation, the *Autorité* considers that Meta was likely to have a dominant position, both on the French market for online advertising on social media, and on the broader market for online non-search advertising. Both of these markets are characterised

¹ This summary is for information purposes only. Only the following numbered reasons for the decision are authentic.

by high barriers to entry and expansion due to the presence of operators such as Meta which have integrated advertising platforms, on which a highly significant share of ad spend is concentrated.

Furthermore, the *Autorité* considered that the reported practices relating to access to the Meta ecosystem, with a view to providing independent ad verification services, are likely to constitute an abuse of a dominant position within the meaning of Article 102 of the Treaty on the Functioning of the European Union ("TFEU") and Article L. 420-2 of the French Commercial Code (Code de commerce).

Firstly, Meta has not defined transparent, objective and non-discriminatory criteria for accessing the viewability and brand safety partnerships, and admitted its current partners to the partnerships following an opaque procedure which it initiated itself. The restructuring of these partnerships into the MBP programme from 2020 onwards has not changed this fact. Although, in the course of the investigation in 2023, Meta finally communicated to the *Autorité* "*eligibility criteria* for its viewability and brand safety partnerships", these "*criteria*" have not been made public and are still intended to be implemented only upon prior invitation from Meta. Moreover, these criteria seem both disproportionate and unjustified at this stage. However, in its capacity as a dominant operator, and since it has decided to open access to its infrastructure to third parties, it is up to Meta to subject such access to objective, transparent, non-discriminatory and proportionate conditions.

Secondly, the contentious refusal to grant Adloox access to the partnerships is likely to be qualified as discriminatory, as Adloox is in a comparable situation to that of certain operators who were able to access these partnerships, with regard to the conditions allegedly applied by Meta.

The *Autorité* notes that these practices result in serious and immediate harm to the independent ad verification sector and to the interests of the complainant.

With regard to the harm to the sector, the practices identified result in access to the independent ad verification market being foreclosed, for the benefit of players who already have access to the Meta ecosystem, thereby reinforcing the oligopolistic structure of this market, at a crucial moment in its development. In this context, access to the ad inventories of Meta platforms is a decisive competitive factor for independent ad verifiers. Indeed, on the one hand, a significant portion of the ad spend of online advertisers on social media are concentrated on Meta's inventories, meaning that having access to these platforms allows independent ad verifiers to meet a significant part of the demand on this market. On the other hand, access to Meta's ecosystem allows ad verifiers to meet the growing demand from their clients for a comprehensive independent ad verification service across all online advertising channels (websites, platforms, etc.).

With regard to the harm to Adloox's interests, the elements analysed show that Adloox's activity has substantially declined since 2017, when its main competitors were incorporated into the viewability partnership, in a context of strong growth in the independent ad verification sector. The elements submitted by Adloox following Meta's latest refusal for it to access the market in August 2022 confirm that the company (Adloox) is in serious financial difficulty, which could lead to its exit from the market in the near future.

The new '*criteria*' adopted in 2023, which have the effect of making the conditions for admission to the viewability and brand safety partnerships more stringent and more complex, only exacerbate the effects of Meta's practices. On the one hand, Meta has kept its invitation system in place, meaning that it has sole discretion as to which partners it admits into its ecosystem. On the other hand, Meta has added a list of so-called '*criteria*', which appear to

be non-transparent, non-objective and disproportionate, to allow a new entrant to access these two partnerships. Independent verifiers wishing to be incorporated into Meta's advertising platforms are therefore faced with additional obstacles to those that existed previously.

The need to provide a rapid and effective response to the competition issues raised, in particular, by access to the services offered by the main digital platforms such as Meta, prompted the European legislator to adopt *ex ante* regulation for this sector, in Regulation 2022/1925 of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act, hereinafter the "DMA"). The DMA also stipulates that there must be full access to the data necessary for independent ad verification within the inventories of the core platforms. Pending the full effectiveness of this new legislative framework, resorting to interim measures to safeguard the conditions of competition in this sector seems particularly relevant.

The *Autorité* has therefore ordered Meta to define and make public new criteria for accessing and maintaining the viewability and brand safety partnerships which are objective, transparent, non-discriminatory and proportionate. In this regard, it will have to implement the criteria according to a transparent access procedure which is not based on its own discretion.

The *Autorité* has also issued interim measures intended to accelerate Adloox's admission into the viewability and brand safety partnerships, in the event that its application for access, proposed on the basis of the new criteria to be adopted by Meta, is accepted.

These interim measures will remain in effect until the *Autorité* issues its decision on the merits of the case. During this period, and in order to ensure their effectiveness, Meta will have to send the *Autorité* regular reports on the implementation of the present decision.

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I. Findings

A. THE PROCEDURE

1. In a letter registered on 9 October 2022, under the number 22/0051 F, the company Adloox S.A.S. (hereinafter '**Adloox**') lodged a complaint with the *Autorité de la concurrence* (hereinafter '**the Autorité**') regarding practices implemented by the companies Meta Platforms Inc., Meta Platforms Ireland Ltd., and Facebook France EURL (hereinafter '**Meta**'), in the online advertising sector.
2. According to the complainant, Meta is in a dominant position on the French online advertising market, and has engaged in abusive practices in breach of Article L. 420-2 of the French Commercial Code (Code de commerce) and Article 102 of the Treaty on the Functioning of the European Union (hereinafter '**TFEU**') by refusing to grant it access to its ad verification data, at least under conditions comparable to those granted to its competitors, and by refusing to allow companies offering ad verification services on Meta's platforms to use their own technology to collect the relevant data independently.
3. In addition to its complaint on the merits of the case, Adloox requested, by letter registered on 9 October 2022, under number 20/0052 M, that interim measures be ordered pursuant to Article L. 464-1 of the French Commercial Code (Code de commerce).

B. THE SECTOR CONCERNED

4. The practices reported in the complaint pertain to online advertising services (**1.**) and, more specifically, ad verification services (**2.**).

1. THE ONLINE ADVERTISING SECTOR

5. Online advertising includes promotional advertisements and messages delivered through a variety of digital media channels and devices such as email, social media, websites, mobile devices and connected TVs.
6. Online advertising is the largest and fastest growing advertising sector². According to data from the 29th 'Observatoire de l'e-pub' (Online Advertising Observatory) set up by the Syndicat des Régies Internet (hereinafter the '**SRI**') and the firm Oliver Wyman³, online advertising revenues reached €6.144 billion in France in 2020 and €8.492 billion in 2022,

²*Autorité de la concurrence* Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector, page 4.

³ https://www.sri-france.org/wp-content/uploads/2022/12/20230130_Observatoire-E-Pub-FY-2022_VF.pdf.

up 38% over 2 years⁴. In 2022, according to the 'France Pub' barometer, the online advertising sector accounted for 51% of media advertising revenues⁵.

7. Within the online advertising sector, a distinction is generally made between search advertising, which corresponds to sponsored links that appear on the search result pages of search engines following a query, and display advertising, which usually refers to forms of online advertising that use visual elements (banners, tiles, skins, etc.), which are sometimes animated or videos⁶.
8. Within the Display advertising space offering, social media platforms, which are multi-sided platforms on which private and professional users themselves produce published content and develop interactions enabling them to communicate with each other, share and discover various content⁷, occupy a special place because of their large audience and their own characteristics.
9. While all social media platforms have common characteristics, namely user interaction and uploading of content by users, they differ in their main objectives. Some platforms specialise, for example, in the type of interaction users are looking for (professional or personal), the medium (text, video, photo, etc.) and format of that interaction or the type of content shared (entertainment, discovery, etc.).
10. Social media therefore includes personal social networking services (Facebook) and professional social networking services (LinkedIn, Xing), online communication services (WhatsApp, Signal, Facebook Messenger), content discovery platforms (Twitter, Pinterest, Reddit), video entertainment platforms (YouTube) and hybrid platforms that offer a mix between the above-mentioned elements (Instagram, Snap, TikTok)⁸.
11. Social media can use a variety of data collected in "logged" (i.e. where the user has to log in)⁹ environments for advertising purposes to maximise advertising revenue, which in turn can be used to invest in new features and services, improve the consumer experience and optimise data collection techniques. These media, and in particular Facebook, produce data that is characterised by its precision and relevance for advertising purposes¹⁰.

⁴ <https://www.sri-france.org/observatoire-epub/29eme-observatoire-de-le-pub/>.

⁵ <https://francepub.fr/pdf/BUMP-annuel2022.pdf>

⁶ *Autorité de la concurrence* Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector, paragraph 14.

⁷ See the Digital advertising market study of the Competition and Markets Authority from 2020, paragraph 2.30.

⁸ [Confidential].

⁹ There are generally two main methods of data collection: the use of cookies (or other tracking tools that safeguard the anonymity of Internet users) and the collection of data in a "logged" context, i.e., following an identification process after a user "logs in", specifically by filling in a form with information such as a username and password. This can be the case following the registration to a service dedicated to Internet users such as Gmail, or a social network such as Facebook.

¹⁰ *Autorité de la concurrence* Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector, paragraph 177.

12. Moreover, advertising on social networks is often considered a specific category within the Display advertising sector and is distinguished these days from Display advertising by certain sectoral trade associations¹¹, including the SRI¹².
13. According to the SRI, in 2022, advertising on social media (excluding YouTube)¹³ amounted to €2.2 billion and accounted for 26% of the total online advertising market. Between the years 2021 and 2022, its growth slowed down for the first time, but still amounted to 10%. Over the same period, display advertising (excluding social networks) generated €1.6 billion in revenue¹⁴.
14. The main social media platforms used in France are Facebook, YouTube, Instagram, Snapchat, Twitter, LinkedIn, Pinterest and TikTok.
15. While social media platforms have vertically integrated the provision of advertising services, the vast majority of website and mobile app publishers sell their ad space through a chain of supply- and demand-side intermediaries¹⁵. This environment is sometimes referred to as Open Display¹⁶, as opposed to selling ad space through vertically integrated platforms (Owned and Operated).
16. The structure of advertising-related services and the progression of transactions on vertically integrated platforms, with the exception of YouTube, differs to a significant extent from Open Display, to the extent that these players have vertically integrated to provide services directly to advertisers, by internalising various ad technology services. As such, social media platforms combine their ad inventory, bidding technology, a buying and campaign optimisation platform, ad server capabilities as well as data mining and analysis services for advertising purposes. Social media platforms also allow certain intermediaries to provide advertisers with advertising and data analytics services within their platforms by connecting to the platform's infrastructure, usually via API systems¹⁷.

¹¹ See, for example, Observatoire de l'e-pub, Bilan 2021, 27th edition, January 2022.

¹² It should be noted that the SRI does not include YouTube's services in the "Social" category. In this regard, see the *Autorité's* Decision 22-D-12 of 16 June 2022 concerning practices implemented in the online advertising sector, footnote on page 341.

¹³ Definition provided in the 19th Observatoire de l'e-pub (SRI): "*Social networks: All of the websites and mobile sites that allow their users to build a network of acquaintances using tools and interfaces designed for interactions, presentations and communication. For the purposes of this study, YouTube is not considered to be a social network*".

¹⁴ The SRI stated (in the 27th Observatoire de l'e-pub, Assessment 2021, 27th edition, January 2022) that Display experienced a strong rebound (+31%) in 2021 following the crisis year 2020. The SRI added that Social (+22%), which was less affected by the crisis, continued its strong growth, driven by ever larger audiences.

¹⁵ *Autorité's* Decision 22-D-12 of 16 June 2022 concerning practices implemented in the online advertising sector, paragraphs 16 et seq.

¹⁶ See for example, Market power and transparency in open display advertising - a case study, Doh-Shin Jeon, Final Report, Expert Group for the Observatory on the Online Platform Economy (<https://www.tse-fr.eu/publications/market-power-and-transparency-open-display-advertising-case-study>).

¹⁷ Application Programming Interfaces. An API is a programming interface that allows two programmes or software to interact with each other, connecting in order to exchange data and use the services and features of different software (*Autorité* Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector, page 115).

2. THE AD VERIFICATION SECTOR

17. In the online advertising sector, ad verification refers to the technical processes which are intended to verify the quality of an ad inventory or an ad impression. Ad verification has three main objectives to ensure the quality of ads displayed online: viewability, fraud detection and brand safety.
18. These services can be described as follows:
 - viewability, which is a check that a displayed ad has actually been seen by an Internet user; For this, ad verification services measure the proportion of the ad that appears in the visible part of the browser for the Internet user and the time period the ad is displayed on the screen (viewability rate);
 - detecting fraud and invalid traffic, which involves assuring the advertiser or media agency that they are buying genuine ad space. These services detect invalid or fraudulent traffic, i.e. ads that are displayed to robots or machines and not to humans. There are two types of invalid traffic, General Invalid Traffic, i.e. traffic automatically generated by machines, which originates in particular from datacenters or bots¹⁸, and Sophisticated Invalid Traffic, i.e. traffic which attempts to appear legitimate, and which is therefore more difficult to detect. This invalid traffic can originate in particular from click farms¹⁹, invalid proxies²⁰, or can also be the result of practices whereby ads are superimposed on the same space of the inventory, or domain names are usurped;
 - Brand safety services are intended to ensure that the ad is not displayed in an environment that is deemed inappropriate for the ad, whatever the brand or ad form (e.g. pornographic or hate sites) and which could damage the image, interests and reputation of the brand²¹. They may also be intended to verify that the ad is displayed in an environment that matches the advertiser's own criteria, usually linked to the brand's values and strategy (brand suitability²²), such as social or environmental criteria. While these services help protect advertisers from damage to their brand image or reputation, it also has the broader objective of stopping the funding of unethical or illegal content, in a context where advertising makes it possible to provide free content and services online²³.
19. Although they have existed since the 2000s, ad verification services, particularly independent services, have developed significantly since 2016, when reports surfaced that

¹⁸ A bot is a software application programmed to perform certain tasks. These applications are automated and run according to their instructions, without the need for a human user to launch them manually each time.

¹⁹ A click farm is a form of click fraud, where a large group of workers on low wages are hired to click on paid advertising links on the fraudster's (click farm owner or click operator) websites, in order to generate advertising revenue for the fraudster.

²⁰ A **proxy** is a computer software component that acts as an intermediary between two hosts to facilitate or monitor their exchanges.

²¹ Competition and Markets Authority, *Online platforms and digital advertising market study*, Appendix O: measurement issues in digital advertising, point 43.

²²https://www.iab.com/wp-content/uploads/2020/12/IAB_Brand_Safety_and_Suitability_Guide_2020-12.pdf.

²³ <https://www.iabuk.com/news-article/quick-qa-brand-safety>.

'watch time' metrics for ads had been over-reported, as well as brand safety concerns on certain platforms, including Facebook²⁴.

20. Ad verification services can be proposed in two different ways:
 - in isolation, independent of any other online advertising sales service, by independent ad verification providers, which are companies specialised in the field. These providers offer a wide variety of verification services with their own technologies. Integral Ad Science (hereinafter 'IAS') and DoubleVerify are generally regarded as the global leaders, followed by Oracle MOAT²⁵. Alongside these three players, Adloox is one of the historical providers of general ad verification services in France;
 - coupled, by vertically integrated platforms, to advertisers or media agencies that advertise within them. The service is presented as an additional feature, which, among other things, makes it possible to measure the viewability of the displayed ad. These platforms are often social networks (Facebook, Instagram, Snapchat, Twitter, LinkedIn, Pinterest or TikTok), but these services are also offered on Amazon and Google platforms (in particular on YouTube). In addition, and to a lesser extent, advertising intermediation players, in particular demand-side platforms and ad servers, may also integrate ad verification features.
21. Vertically integrated platforms only provide these services on their own platforms, unlike third party providers, who can provide their services both on these platforms when the latter give access to them, but also in the Open Display, i.e. to all website publishers.
22. The data in the Open Display is collected by independent providers through different technologies, depending on the format and display environment of the ad. Typically, lines or pieces of code inserted within the displays on websites or mobile apps (such as JavaScript scripts)²⁶ facilitates this data collection. The verification can take place at two different points in the display chain of a programmatic advertisement, namely, (i) prior to the auction, where it focuses on detecting invalid traffic and brand safety, and (ii) after the auction, where it generally focuses on measuring actual ad impressions²⁷.
23. Ad verification services are primarily aimed at advertisers, media agencies and buying platforms called 'trading desks'²⁸ to enable them to monitor their ad campaigns. They are

²⁴ Competition and Markets Authority, *Online platforms and digital advertising market study*, Appendix O: *measurement issues in digital advertising*, points 8, 58 to 62 and 63-64.

See also (in French): <https://www.frenchweb.fr/youtube-et-les-annonceurs-chronique-dune-relation-compliquee/386927>.

²⁵ See for example classification marks 2,745, 2,721, 2,347 and 13,762.

²⁶ <https://www.cesp.org/mesure-de-la-visibilite/>.

²⁷ Competition and Markets Authority, *Online platforms and digital advertising market study*, Appendix O: *measurement issues in digital advertising*, point 44.

²⁸ A trading desk is a centralised service platform specialised in buying up ad space on the Internet, on behalf of advertisers, on Ad Exchanges and *via* the real-time bidding system. It therefore acts as an intermediary between the advertiser or the latter's media agency on the one hand, and the demand-side platform (DSP) on the other. Trading desks can be integrated into a media agency, act independently, or operate internally within certain large advertisers.

also aimed at website and app publishers to enable them to highlight the quality of the environment in which ad impressions are served to advertisers and media agencies²⁹.

24. The contracts between providers of ad verification services and their clients may cover a specific verification service (viewability, fraud detection, brand safety) or all of these. The contract may also limit the scope of the verification to Open Display or social networking platforms. Clients tend to prefer comprehensive offerings, including ad verification on both Open Display and the closed ecosystems, as shown in the responses to the market test from Danone³⁰, Engie³¹, Orange³² and Digital Classifieds, for whom the use of a single supplier (freely translated) "*simplifies the implementation, analysis, follow-up, support, price negotiation and management of the contractual relationship*"³³.
25. Innovation is one of the main parameters of competitiveness for players in the ad verification sector. For example, Axa states that (freely translated) "*the more comprehensive a technology is in its measurement capabilities and in its constant innovation dynamic, the more likely it will be integrated into the digital ecosystem [...]*"³⁴. Similarly, Publicis and Ogilvy explain respectively that (freely translated) "*demand is strongly correlated to measurement-related innovations*"³⁵ and that they forge relationships with players who are "*constantly looking to innovate*"³⁶. DoubleVerify also highlights (freely translated) "*the ability to innovate and adapt product offerings to emerging technologies*"³⁷ as one of the main competitive factors in its market.
26. Having accreditations is also an important competitive factor, in particular the accreditation issued by the Media Rating Council (hereinafter "**MRC**"). MRC is an American trade body, set up in 1964, which defines standards and issues accreditations for measurement and verification tools, in particular for advertising audiences, for all types of online and offline media (digital, radio, television and print)³⁸.
27. In the digital sector, the MRC, in collaboration with the Interactive Advertising Bureau³⁹ (hereinafter "**IAB**"), has published guidelines on measuring the viewability of online ads since 2014⁴⁰. MRC accreditations for providers of ad verification services are considered as

²⁹ <https://www.stateofdigitalpublishing.com/digital-publishing/study-reveals-key-challenges-for-digital-publishers/>.

³⁰ Classification marks 12,517 and 12,518.

³¹ Classification mark VC 11,263 (classification mark VNC 18,194).

³² Classification mark VC 13,887 (classification mark VNC 14,089).

³³ Classification marks VC 12,902 and 12,903.

³⁴ Classification mark 12,780.

³⁵ Classification mark VC 2,748.

³⁶ Classification mark 2,360.

³⁷ Classification mark 10,608.

³⁸ A detailed presentation of this organisation's remit is available on its website: <https://mediaratingcouncil.org/>.

³⁹ The IAB is an association, originally American, which federates the players in the online advertising industry (advertising agencies, advertisers, media buying houses, advertising sales houses, publishers, consulting firms, technical service providers).

⁴⁰ <https://www.iab.com/wp-content/uploads/2015/06/MRC-Viewable-Ad-Impression-Measurement-Guideline.pdf>.

guarantees of reliability and quality by the companies requesting these services⁴¹. These are accreditations relating to sub-categories of ad verification services, such as measuring the number of times an ad has been displayed (viewable ad impression) or identifying sophisticated invalid traffic (see paragraph 18 above). As such, there is no single accreditation that would cover all ad verification services; operators need to obtain several accreditations to cover all their services. These accreditations represent a significant cost, especially for smaller companies.

C. THE COMPANIES INVOLVED

1. ADLOOX

28. Founded in 2009, Adloox is a French company that provides advertising-related services to advertisers and media agencies. It has two subsidiaries, one registered in the UK (Adloox Ltd.) and the other in the US (Adloox Inc.). Between 2017 and 2022, its turnover fell from [confidential] to [confidential] million euros.
29. Adloox offers a wide range of services to clients worldwide⁴², in each of the areas of ad verification (viewability, invalid traffic detection and brand safety).
30. It also offers other services to its clients, which are not directly connected to these domains, related to the optimisation of and compliance with advertising campaigns organised by its clients⁴³.
31. The ad verification services provided by Adloox are partly based on proprietary technology, which consists of JavaScript scripts used to collect ad verification data. Adloox also uses other technologies to process and use the data it collects to produce reports for its clients⁴⁴.
32. To ensure compliance with privacy regulations, Adloox declares that it will not transfer any data outside the European Union and that it will anonymise the data it receives, such as IP addresses.
33. As of March 2023, Adloox has five MRC accreditations for all the services it provides for both desktop and mobile web, certifying the reliability of its solution for the following services:
 - measurement of ad impressions served (visible or not) in Display;
 - measurement of ad impressions served (visible or not) in video;
 - measurement of the viewability of ad impressions in Display;
 - measurement of the viewability of ad impressions in video;
 - detection/filtering of sophisticated invalid traffic.

⁴¹ There are other certification bodies, including the TAG (Trustworthy Accountability Group), which focuses on brand safety and fraud detection.

⁴² Classification mark VC 15,798 (classification mark VNC 16,095).

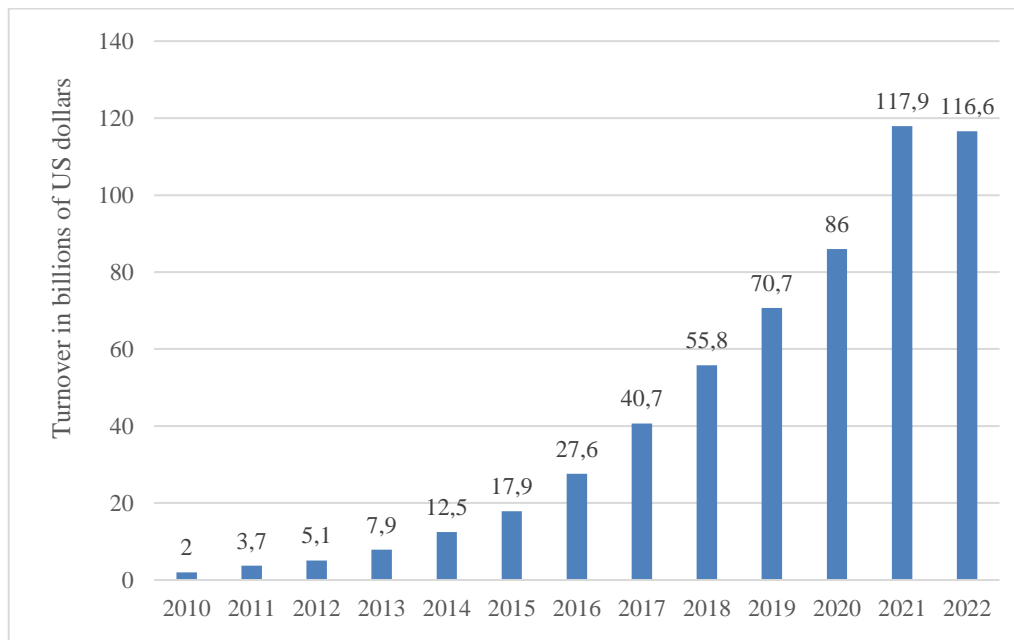
⁴³ Classification mark VC 18 (classification mark VNC 1,467).

⁴⁴ Classification mark VC 15,745 (classification mark VNC 16,042).

2. META

34. Founded in 2004, Meta (formerly Facebook Inc. until October 2021) is an American technology company (with overseas subsidiaries) specialising in Internet-related services and products.
35. Meta operates several multi-sided platforms, on which Internet users, advertisers, content developers and publishers are active. Meta derives most of its revenue from the sale of its proprietary advertising inventory to advertisers, and to a lesser extent, from the sale of third-party publisher inventory using the Meta Audience Network (MAN) service, formerly the Facebook Audience Network, which is an ad network for publishers.
36. In 2022, Meta's global turnover was US\$116.6 billion, down slightly from 2021, a year of strong growth (+37%). Since 2015, Meta's global turnover has grown by 550%. The graph below shows the evolution of Meta's turnover since 2010.

Figure 1 - Evolution of Meta's worldwide turnover



Data source: Statista

<https://www.statista.com/statistics/268604/annual-revenue-of-facebook/>

a) Meta's services to Internet users

37. Meta provides services to users for free *via* the social media platforms Facebook and Instagram, as well as the messaging services Messenger and WhatsApp.
38. In return for providing these services, Meta uses the data of users who connect to its platforms in order to provide advertising services to advertisers. For this, it collects data

about a user's profile as well as information about their activity on Facebook, Instagram or WhatsApp⁴⁵.

39. Meta also collects data from third-party sites and mobile apps. If third parties choose to install certain data collection technologies offered by Meta on their website or mobile app (Facebook social plugins, JavaScript scripts inserted on sites such as Facebook pixel or software development kits), Meta may collect information about users' activity on its websites and apps.

b) Meta's advertising services to advertisers

40. Meta provides services that allow advertisers to create, target and serve ads, as well as manage and evaluate ad campaigns. To this end, Meta sells its proprietary advertising inventory, which consists of Facebook, Instagram and Messenger, and that of the publisher intermediaries network MAN. Meta launched the service in 2014 to allow advertisers to extend their reach beyond Facebook to third-party mobile websites and mobile apps that use MAN, which earn around 70% of the ad spend of advertisers.
41. Meta sells ad space to advertisers or intermediaries almost exclusively *via* its auction mechanism (primarily through the Ads Manager interface), and only to a limited extent via direct sales⁴⁶.
42. Depending on the advertiser's objective and preferences, Meta can be paid according to the number of impressions served (expressed in thousands), the number of clicks or the number of actions (e.g. page likes).
43. With regard to managing and evaluating the effectiveness of an ad campaign, Meta provides advertisers with aggregated metrics on the way in which users interact with ads. The various

⁴⁵ For example, to use Facebook, every user has to create a profile, with basic information: age, gender, residence, language and geographical location. Users also have the option to add other information, such as education, employment, hobbies and favourite movies, books and music. Meta also receives information about a user's level of engagement with the Facebook service. This includes, for example, the Facebook pages a user has liked, the Facebook groups a user has joined, the ads a user has engaged with, the Facebook apps a user has accessed, the financial transactions made through Facebook or Facebook games, and the devices and browser types used. Meta also collects certain location data from users, based on the mobile device permissions the user has granted to the Facebook app. Instagram and WhatsApp collect data similar in nature to that collected by Facebook, including information from a user's account and information about a user's engagement with the service.

⁴⁶ With regard to bidding, campaigns can be implemented via different interfaces: Ads Manager, which is a graphical user interface available through the Facebook website and which allows businesses to create and manage their own Facebook ad campaigns; lightweight interfaces, which allow less sophisticated advertisers to purchase advertising inventory; and the Facebook Marketing API, which recreates the functionality of Ads Manager in computer code. Whereas Facebook Ads Manager is a manual interface, the use of APIs, which are automated interfaces, requires more sophisticated technical expertise and in principle makes it easier to manage multiple campaigns. According to Meta, "[80-90]% of its sales were generated via the Ads Manager interface, around [10-20]% via the Marketing API and the remaining [0-10]% via a number of lighter-version interfaces" (Decision 22-D-12 of 16 June 2022 regarding practices implemented in the online advertising sector).

metrics provided can be grouped into three broad categories: Ads reporting⁴⁷; insights⁴⁸; and conversion⁴⁹.

44. These tools include impression metrics and brand safety monitoring and reporting. Meta has certain accreditations from the MRC to provide these services to advertisers⁵⁰.

D. THE IDENTIFIED PRACTICES

1. THE RELATIONSHIP BETWEEN META AND THE INDEPENDENT PROVIDERS OF AD VERIFICATION SERVICES

45. Meta has created two partnerships relating to independent third-party ad verification services, which it describes as follows⁵¹:
- the viewability partnership allows partners to ensure that the ad has been seen by a human, by taking into account three factors: (i) the ad must be seen by a real person and not be subject to invalid traffic; (ii) a certain proportion of the ad must be visible on the screen of the device; and (iii) the user must spend a defined minimum amount of time viewing the ad;
 - the brand safety partnership allows partners to rely on reports and controls to (i) give advertisers the option to run their ads (or not) next to specific content and/or (ii) to verify the content their ad appears next to. Meta has specified that brand suitability services are included in this category.
46. Meta said that it started entering into viewability partnerships in 2015 and brand safety partnerships in 2019⁵².

⁴⁷ Ad reports are based solely on Meta's own data and reflect the level of engagement between a user and the ad (e.g. number of clicks on an ad).

⁴⁸ Insights provide aggregated information about Meta users who visit the advertiser's site, use the advertiser's mobile app or interact with the advertiser's campaign. The data Meta uses to provide Insights includes: demographic information (age, gender, lifestyle, education, relationship status, job role and household size); page likes (the top pages people like in different categories); location and language; Facebook usage (e.g., How frequently are people logging onto Facebook); and purchase activity (past purchase behaviour and purchase methods).

⁴⁹ The conversion metrics focus on the performance of a campaign according to the objective (e.g.: increase visits to the site, app downloads). For example, if an advertiser wants to increase traffic, Meta will provide metrics identifying the number of users who visited the website after seeing the ad.

⁵⁰ With regard to brand safety reporting and controls, Meta recently obtained the first MRC accreditation for Facebook of its Partner Monetization Policies, Content Monetization Policies and brand safety and brand suitability controls at the content level (including the inventory filter and exclusion controls) for certain inventories and environments. Facebook feeds are excluded from this accreditation. As regards ad impressions metrics, in 2021 Meta had accreditations for display ad impressions for certain inventories and environments. Finally, Meta has been accredited by the MRC for sophisticated invalid traffic detection and filtering for these metrics since 2021

⁵¹ Classification mark VC 13,921 (classification mark VNC 14,451).

⁵² Classification mark VC 2,906 (classification mark VNC 16,932).

47. Since the end of 2020, Meta has undertaken to restructure these two partnerships and to attach them to the "**Meta Business Partners**" programme (hereinafter "MBP"). MBP⁵³ is a programme developed to structure the group's partnerships with third-party companies that provide support and other services to advertisers running ads on Meta's services⁵⁴. Since the beginning of 2021, viewability and brand safety partners must agree to the policies of the MBP programme⁵⁵. In this context, viewability and brand safety partners become badged partners⁵⁶, with benefits such as priority access to technical support services, preparation for Meta's internal certification exams, and inclusion in the Meta Business Partner Directory.
48. The viewability and brand safety partnerships, which are two of the nine specialities of the Measurement services of the MBP programme⁵⁷, allow partners to obtain the data necessary from Meta to provide ad verification services on Meta's platforms⁵⁸.
49. This data is made available to partners free of charge via Meta's APIs⁵⁹:
- With regard to the viewability partnership, Meta provides its partners with raw data, collected by Meta through its own JavaScript-based technology⁶⁰. This data is then expunged of general and sophisticated invalid traffic as identified by Meta and, if applicable, personal data⁶¹. The data is raw, as its format is neither intelligible nor exploitable by an advertiser. The data are standardised, with each viewability partner obtaining the same type of data, with the exception of invalid traffic, which can be adapted according to the preferences of each partner⁶². Meta states that it has MRC accreditation for the pipelines that supply data to viewability partners for several ad spots on Facebook and Instagram for image and video formats⁶³;

⁵³ In 2015, Meta created the Facebook Marketing Partners program, now renamed MBP, (freely translated) "primarily to (i) help advertisers navigate the large number of existing ad management solutions, and (ii) to help ad campaign providers get the most out of the Facebook advertising platform for their clients." See Decision 22-D-12 of 16 June 2022 regarding practices implemented in the sector of online search advertising, paragraph 72.

⁵⁴ References to MBP also refer to former Facebook Marketing Partners.

⁵⁵ Classification mark VC 2,916 (classification mark VNC 11,035).

⁵⁶ Within other specialities of the MBP programme, there are 'badged' partners and 'programme affiliates'. The latter do not have access to the same benefits.

⁵⁷ In addition to the viewability and brand safety programmes, the Measurement category of the MBP programme includes the following partnerships: cross-channel brand lift, impression counting, marketing mix modelling, mobile measurement partners, multi-touch attribution, panel cross-media reach and partner lift.

⁵⁸ Classification mark VC 13,921 (classification mark VNC 14,451).

⁵⁹ Classification mark VC 2,919 (classification mark VNC 11,038).

⁶⁰ Classification mark VC 2,990 (classification mark VNC 10,827).

⁶¹ Classification mark VC 13,931 (classification mark VNC 14,461).

⁶² Classification mark VC 16,846 (classification mark VNC 17,085).

⁶³ Classification mark VC 13,933 (classification mark VNC 14,463). In its summary observations, Meta specifies that this "Third Party Data Feed for Viewability Reporting" accreditation is indicated as "in progress" on the MRC website as the latter is in the process of finalising the second stage, whereby the corresponding accreditation can be definitively obtained, with the relevant partners. Meta indicates that it has no role in this second stage. The accreditation of Meta's pipeline data depends on the successful completion of the audit processes related to the reception, processing and reporting of Meta's pipeline data by the three viewability service providers involved (classification mark VC 13,934 – classification mark VNC 14,464).

- With regard to the data provided to partners for brand safety metrics, Meta states that partners can download via the API the delivery reports relating to the location where the ads appeared and the number of corresponding impressions⁶⁴.
50. Since the partners are dependent on Meta's data, they are limited to the inventories, formats and environments for which Meta collects and transmits data, in providing their ad verification services. While the scope of these inventories, formats and environments has gradually expanded over time⁶⁵, the data does not cover all inventories that Meta markets. For example, Meta is developing an additional integration with one of its partners to monitor ad placement in the Facebook News Feed that is not currently covered by independent third-party brand safety services⁶⁶.
 51. On the other hand, Meta states that its viewability and brand safety partners cannot collect raw data directly through their own technologies "*for reasons of stability, security and data privacy*"⁶⁷. Indeed, according to Meta, JavaScript technology allows the third party to import a large quantity of data without the publisher of the website concerned being able to control the content of this stream (and therefore without the user's consent)⁶⁸. In addition, this technology "*leads to an 'overloading' of the pages and therefore the degradation of the service*"⁶⁹.
 52. To date, three viewability partners and three brand safety partners offer their services on the Meta advertising platform:
 - DoubleVerify, viewability partner since 2017 and brand safety partner since 2019;
 - IAS, viewability partner since 2016 and brand safety partner since 2019;
 - Oracle MOAT (MOAT was acquired by Oracle Data Cloud in 2017), viewability partner since 2015;
 - Zefr, brand safety partner since 2019.
 53. Other ad verification service providers had entered into partnerships with Meta, but have since been acquired by another partner (Meetrics, a viewability partner since 2017, and OpenSlate, a brand safety partner since 2019, were acquired by DoubleVerify in 2021) or ceased providing their services (ComScore, a partner since 2016, no longer offers viewability services as of 2022, after announcing in February 2022 that it had formed a partnership with DoubleVerify to pool their technologies).

⁶⁴ Classification mark VC 13,926 (classification mark VNC 14,456).

⁶⁵ By way of illustration, Oracle Moat states, with regard to its viewability partnership that formats have been added over the years (classification mark VC 10,781, classification mark VNC 10,939): (i) Facebook Display - active from March 2017; (ii) Facebook Video (In-Feed) - active from April 2016; (iii) Facebook Video (In-stream) - active from June 2018; (iv) Instagram Video - active from August 2016; (v) Instagram Video Stories - active from June 2018; (vi) Instagram Display - active from October 2018 (start of data on 17 September 2018); (vii) Instagram Display Stories: active from 1 February 2019; (viii) Facebook Video Stories: active from 2 January 2019.

⁶⁶ Classification mark VC 16,845 (classification mark VNC 17,084).

⁶⁷ Classification mark VC 13,930 (classification mark VNC 14,460).

⁶⁸ Classification marks VC 13,930 and 13,932 (classification marks VNC 14,460 and 14,461).

⁶⁹ Classification mark VC 13,932 (classification mark VNC 14,462).

54. According to Meta, the ad verification services it provides to advertisers (see paragraphs 43 and 44 above) are "*significantly different from the offerings of third party companies*"⁷⁰, in that the level of granularity and applicable standards are not the same for Meta and independent verifiers⁷¹.
55. As such, Meta provides advertisers with aggregate data at either the ad level (all impressions of the same ad), or at the level of a group of ads, or at the level of a campaign (all groups of ads belonging to the same campaign). In contrast, Meta provides independent verifiers with data at the impression level.
56. Furthermore, the viewability metrics for the impression do not meet the same standards: for the drafting of the ad reports made available to its clients and for invoicing its inventories, Meta counts impressions as soon as at least one pixel of the ad has appeared on the screen of the browser or the mobile app. If no pixel of the ad appears on the screen, it is not counted as an ad impression. In contrast, Meta provides its business partners with data that meets the MRC standards as regards viewability. For example, viewability data only have to include ads where more than 50% of the pixels in the video ad or 50% of the pixels in the static image ad (or "display") were displayed on the screen. As a result, the number of impressions reported by Meta and the partner differ depending on the methodology applied, with the MRC standard being more restrictive.
57. Finally, the criteria for measuring invalid traffic are determined by each partner. These criteria, applied by Meta prior to the transmission of raw data, will potentially be stricter than those applied by default by Meta in its ad reports to advertisers.

2. ON META'S REFUSAL TO ALLOW ADLOOX TO PROVIDE AD VERIFICATION SERVICES IN ITS ECOSYSTEM

58. Starting in 2016 and until 2022, Adloox had requested, directly or indirectly through its clients, to be incorporated into Meta's ecosystem in the same manner as its competitors, with the aim of providing its independent ad verification services there.
59. Numerous exchanges on this subject (e-mails, meetings) took place between Meta and Adloox between 4 July 2016 and 24 January 2020:
 - On 4 July 2016⁷², Adloox asked Meta to set up a meeting with a view to obtaining similar access conditions as IAS and Oracle Moat;
 - On 8 March 2017, Adloox sent a reminder to Meta, following the announcement that one of its competitors, Meetrics, had been incorporated on the Meta platform. In this letter, Adloox reminded Meta that it had equivalent accreditations to Meetrics and that, unlike Meetrics, it had clients located in the United States⁷³;

⁷⁰ Classification marks VC 13,918 and 13,919 (classification marks VNC 14,448 and 14,449).

⁷¹ Classification marks VC 16,928 and 16,929 (classification marks VNC 17,263 and 17,264).

⁷² Classification mark VC 15,892 (classification mark VNC 16,189).

⁷³ Classification mark 1,124.

- On 2 May 2017⁷⁴, Adloox informed Meta of the progress of its accreditations, which now covered video and the mobile domain. Meta replied to this email the same day stating that it would get back to Adloox once it had finalised the inclusion of its new partners⁷⁵;
- The exchanges between Adloox and Meta continued, including a meeting on 8 August 2017⁷⁶ and an exchange of emails on 22 and 23 August 2017⁷⁷. In this exchange, Adloox listed its most important clients. Meta replied to Adloox that its request to be included was being analysed internally and that it would receive feedback in a few weeks;
- On 18 and 26 September 2017⁷⁸, Adloox and Meta had two meetings to discuss Adloox's inclusion into Meta's platforms. Following these exchanges, Meta held a meeting with Adloox on 4 October 2017 to announce its refusal to incorporate Adloox into its platforms;
- Despite this refusal, Adloox continued to request admission to Meta's platform, organising a telephone meeting with Meta's teams in France and sending a list of its most important clients by email on 26 October 2017⁷⁹;
- On 31 October 2017⁸⁰, Adloox sent a new email to Facebook France, stating that it had lost several clients due to Meta's refusal and had to lay off staff as a result. Facebook France sent an email to Adloox on 13 November 2017, stating that Meta's position remained unchanged;
- On 22 November 2017⁸¹, Adloox sent a new letter to Facebook France, stating that one of its most important clients (the Seb group) had informed it that it no longer considered using Adloox's services if it was not incorporated into Meta. In this email, Adloox once again requested information on the conditions for inclusion in Meta's platforms.
On 27 November⁸², Facebook France replied to Adloox that it was unable to respond to its request;
- On 2⁸³ and 4 January 2018⁸⁴, Adloox sent two new emails to Meta, complaining about Meta's practice of recommending that Adloox's customers go to its competitors for ad verification services on Meta's platforms;

⁷⁴ Classification mark VNC 15,898 (classification mark VNC 16,195).

⁷⁵ Classification mark 1,123.

⁷⁶ Classification mark VC 15,900 (classification mark VNC 16,197).

⁷⁷ Classification mark VC 15,902 (classification mark VNC 16,199).

⁷⁸ Classification marks VC 15,907 to 15,912 (classification marks VNC 16,204 and 16,205).

⁷⁹ Classification mark VC 7,860 (classification mark VNC 11,077).

⁸⁰ Classification marks VC 15,920 and 15,921 (classification marks VNC 16,217 and 16,217).

⁸¹ Classification marks VC 15,922 and 15,923 (classification marks VNC 16,219 and 16,220).

⁸² Classification mark VC 15,923 (classification mark VNC 16,220).

⁸³ Classification mark VC 15,925 (classification mark VNC 16,222).

⁸⁴ Classification mark VC 15,926 (classification mark VNC 16,223).

- On 19 March⁸⁵ and 9 April 2018⁸⁶, Adloox proposed a new meeting, which Meta agreed to attend, while indicating that it had not changed its position regarding Adloox's inclusion. Meta's teams proposed a meeting with Meta's Director of Partnerships the following day, 10 April 2018⁸⁷. Following this meeting, Adloox and Meta exchanged emails on 16 April 2018, in which Meta stated that a member of its team would contact Adloox, after internally assessing the opportunity to include it⁸⁸;
 - On 1 May 2018⁸⁹, Adloox sent Meta its full client list, stating that all of these clients purchased inventory on Facebook and "Just because not having this integration makes us lose budgets on global clients that want an ad verification solution that covers everything, including social media [...]"⁹⁰. In this email, Adloox indicated that its approach was not related to the desire to increase its revenues, but to the need to keep the clients it had in common with Meta. On the same day, Meta's staff replied that it had no plans to include new players in the near future⁹¹;
 - Adloox sent 15 reminder emails to Meta between May 2018 and January 2020⁹² requesting to be incorporated and asking for a meeting with Meta's teams. Meta declined these requests. Internal exchanges reveal Meta's intention to stop responding to Adloox's requests, in particular in an exchange on 19 July 2019⁹³: "*OK I'm just going to ghost him [Adloox] now. Done. Will forward emails for your awareness but not responding anymore*"⁹⁴.
60. In addition to the direct requests made by Adloox, several advertisers asked Meta to incorporate Adloox into its ecosystem, including AMNET (the trading desk of Dentsu Aegis Network)⁹⁵, Tradelab⁹⁶, Mindshare (GroupeM)⁹⁷, Zebestof (Groupe Le Figaro)⁹⁸ in 2017. In addition, Meta received on 7 August 2017 an email from the president of the MRC, supporting Adloox's inclusion⁹⁹.

⁸⁵ Classification mark VC 15,927 (classification mark VNC 16,224).

⁸⁶ Classification mark VC 15,928 (classification mark VNC 16,225).

⁸⁷ Classification mark VC 15,930 (classification mark VNC 16,227).

⁸⁸ Classification marks VC 15,932 and 15,933 (classification marks VNC 16,229 and 16,230).

⁸⁹ Classification marks VC 15,934 to 15,940 (classification marks VNC 16,231 to 16,237).

⁹⁰ Emphasis added. Classification mark VC 15,934 (classification mark VNC 16,231).

⁹¹ Classification mark VC 15,941 (classification mark VNC 16,238).

⁹² See emails from Adloox to Meta on 30 May 2018, 27 August 2018, 4 and 10 September 2018, 19 January 2019, 20 February 2019, 5 March 2019, 22 and 25 April 2019, 6 May 2019, 18 June 2019, 18 July 2019, 5 September 2019, 3 December 2019 and 24 January 2020 (classification marks VC 15,942 to 15,962 - classification marks VNC 16,239 to 16,259)

⁹³ Classification marks VC 8,911 and 8,912 (classification mark VNC 11,077).

⁹⁴ Classification mark VC 8,912 (classification mark VNC 17,708).

⁹⁵ Classification mark VC 13,997 (classification mark VNC 14,510).

⁹⁶ Classification mark VC 14,000 (classification mark VNC 14,512).

⁹⁷ Classification mark VC 14,002 (classification mark VNC 14,514).

⁹⁸ Classification mark VC 14,004 (classification mark VNC 4,516).

⁹⁹ Classification mark VC 10,083 (classification mark VNC 11079).

61. Indeed, internal exchanges within Meta suggest that it received a significant number of emails relating to Adloox, in particular in the autumn of 2017. For example, "*The flurry of emails around Adloox is quite impressive*"¹⁰⁰.
62. Between January 2020 and August 2022, Adloox no longer directly contacted Meta, but continued to indirectly request its integration through its customers.
63. On 7 April 2020, Meta's French teams confirmed they had received a request to integrate Adloox from the 'Union des marques' (hereinafter "**UDM**"), an association representing French companies and brands. In particular, they wrote the following to the Meta partnership teams: "[...] *I am contacting you in the context of the partnership we are building with our Tier 1 trade bodies in France. One of our most strategic trade body, the French Union of Advertisers called UDM, contacted us in order to give support to a French partner called Adloox. Apparently, this partner has been trying to get in contact with Facebook since a long time to integrate Facebook to their solutions. They are based in Paris/London, and NY. I was wondering if someone from you team could support us? The trade body is quite pressuring us so we can give support to Adloox and it would be great to have someone from Facebook to qualify their ask [...]*"¹⁰¹. In a response of the same day, Meta stated: "[...] *Thanks for getting in touch on this ask. My colleague X... looks after the viewability partnership program and may be able to elaborate on where we are with our Adloox considerations - I believe they've come up before as a potential partner but we'd need to assess the incremental value they could provide beyond the global viewability providers we're already working with. Could you share any further context on the UDM ask? Are they aware of the other companies operating in the space, and do they see Adloox as providing something that others can't? [...]*"¹⁰². Meta responded by saying that its teams have had many conversations with Adloox, but that it is not looking for other viewability partners at the moment. It said that it takes a lot of resources to recruit new partners and that Meta already had five partners capable of performing ad verifications at the global level¹⁰³.
64. On 11 May 2020, the media agency Publicis forwarded an email to Adloox which it had received from Meta, which addressed, among other things, the issue of Adloox's integration into Meta's ecosystem¹⁰⁴. In this email, Meta wrote the following to Publicis: "*Hello Y..., I hope you had a good weekend. I made the request internally about onboarding Adloox as a partner and this is the feedback I got: "It takes multiple years and a significant amount of engineering, integrations, and partnership resources to bring on a new viewability partner, and the data that each partner gets is identical, meaning that the added value of an incremental partner to Facebook and to the market is minimal. So we are not looking to onboard new partners at this time. Clients are welcome to use one of the other 5 partners that all have the same equal access to Facebook viewability measurement and are able to measure viewability globally" [...]*"¹⁰⁵.

¹⁰⁰ Classification mark VC 7,772 (classification mark VNC 17,624).

¹⁰¹ Classification mark VC 8,951 (classification mark VNC 11,077).

¹⁰² Classification mark VC 8,951 (classification mark VNC 11,077).

¹⁰³ Classification mark VC 8,952 (classification mark VNC 11,077).

¹⁰⁴ Classification mark VC 1,141 (classification mark VNC 1,602).

¹⁰⁵ Classification mark VC 1,141 (classification mark VNC 1,602).

65. In view of the deterioration of its financial situation during the course of 2022, Adloox sent a new request on 1 August, and then on 9 August 2022 to be included in Meta's Measurement programme. In its letter of 9 August 2022¹⁰⁶, Adloox highlights the fact that its largest clients are shifting an increasing share of their advertising budget to Meta's platforms, so the fact that it cannot operate in Meta's ecosystem is resulting in a significant loss of revenue.
66. In response, Meta offered to discuss with Adloox the update of the status of its viewability programme "*in a few weeks*" (email of 10 August 2022), which Adloox agreed to, stressing the urgency of its request and the fact that inclusion into Meta's platform was critical (email of 18 August 2022). In an internal exchange on 11 August 2022, a Meta employee expressed doubts that Adloox's request would be acted on¹⁰⁷.
67. On 30 August 2022, Adloox sent a letter of formal notice to the trustees of Facebook France, Meta Platforms Ireland Ltd. and Meta Platforms Inc. requesting that it be integrated into Meta's viewability programme within one month, failing which it would refer the matter to the *Autorité de la concurrence*¹⁰⁸.
68. Only Facebook France responded to this formal notice on 7 November 2022, indicating that it was not responsible for managing the viewability partnership. Meta Platforms Ireland Ltd. and Meta Platforms Inc. did not respond, even though the notice was addressed to them.
69. In conclusion, Meta did not provide Adloox with detailed and quantified criteria so the latter would know the requirements for being integrated on Meta's advertising platforms, but only referred to the complex integration processes of its current partners and to internal analyses of the possibility to integrate new partners in the future. In addition, Meta did not respond to requests from the advertisers and media agencies to include Adloox in its ad platforms, and referred some of them to Adloox's competitors which were already integrated on its platforms.

3. ON THE IMPLEMENTATION OF ACCESS CRITERIA FOR VIEWABILITY PARTNERSHIPS AND BRAND SAFETY PARTNERSHIPS IN JANUARY 2023

a) On the absence of a procedure to join the viewability and brand safety partnerships before January 2023

¹⁰⁶ Classification mark 1,186: "[...] Adloox is still operating (we are now the only MRC accredited independent technology outside the US) bringing quality, transparency and increasing the ROI of the digital campaigns. Could you please let me know if the roadmap is now open to integrate the measurement program (like IAS DV or MOAT)? We have been requesting such integration since 2016 and our clients are still asking for it, even more today. Below the 3 main issues for Adloox not being able to operate within your ecosystem - where the US competition can: - We are losing clients - We are in a difficult position to win new business - We see a new trend since after the pandemic, some of our biggest clients are shifting even more budget away from the open web towards your platform resulting in a big loss of revenue. And potential new client/Account loss [...] ».

¹⁰⁷ Classification mark VC 9,296.

¹⁰⁸ Classification marks VC 15,969 and 15 970 (classification marks VNC 16,266 and 16,267).

70. Meta has stated that there is no procedure for independent third parties to request inclusion in the viewability and brand safety partnerships¹⁰⁹, which have existed since 2015 and 2019 respectively.
71. On this point, Meta told the *Autorité* that these partnerships were negotiated exclusively at Meta's invitation, and that it would only consider admitting an independent ad verification service provider when there was "*sufficient demand*"¹¹⁰ from advertisers or their intermediaries, which it said implied receiving "*repeated, consistent and significant market signals [...] regarding that provider*"¹¹¹. These internal assessment factors were never communicated to Adloox.
72. According to Meta, the number of advertisers requesting that their ad verification service provider be included, and the value of their advertising budget, were the key elements in deciding whether the provider concerned was a suitable candidate for a partnership. Whether they had MRC accreditations was only taken into account by Meta in assessing the quality of service of an operator if there was sufficient demand from advertisers to include that operator on the Meta platform¹¹². If a new independent verifier was included on Meta's platforms, there must therefore be strategic interest to Meta, regardless of the quality of service offered by that verifier.
73. Meta stated that, in addition to the demand from the market, it took into account "*the technical and human resources available to Meta at the time of assessing whether to enter into a new partnership, the candidate obviously having to meet certain quality conditions*"¹¹³.
74. Meta explained that it voluntarily limits the number of its partners because these "*viewability and brand safety partnerships [...] are very demanding in terms of technical and human resources*"¹¹⁴, without however quantifying the cost of these resources, despite repeated requests from the investigation services¹¹⁵. While Meta provided general and vague indications at the hearing regarding the number of employees required to incorporate a viewability partner, it was unable to provide precise information in this respect and indicate the amount of time required by the employees in question to incorporate this new partner, as a proportion of their total working time¹¹⁶.

¹⁰⁹ Classification mark VC 2,919 (classification mark VNC 11,038). Meta also stated that all Measurement partnerships are entered into solely on Meta's invitation (classification mark VC 13,922, classification mark VNC 14,452 and classification mark VC 16,837).

¹¹⁰ Classification mark VC 2,906 (VNC 16,932).

¹¹¹ Classification marks VC 13,922 (classification mark VNC 14,452) and VC 16,837 (classification mark VNC 17,076). Underlining added.

¹¹² Classification marks VC 13,922 (classification mark VNC 14,452) and VC 16,837 (classification mark VNC 17,076).

¹¹³ Classification mark VC 16,837 (classification mark VNC 17,076).

¹¹⁴ Classification marks VC 13,922 (classification mark VNC 14,452) and VC 16,836 (classification mark VNC 17,075).

¹¹⁵ Classification marks 2,929 and 2,930, 16,922 to 16,927.

¹¹⁶ As an example, Meta stated in a document produced at the hearing that 3 employees needed to be assigned to the negotiation of contracts and monitoring compliance on the part of the new partner over a period of between 6 and 12 months. Following a question from the Board, Meta clarified that these 3 employees did not

75. Regarding the integration itself, Meta explained¹¹⁷ that "*each partner integration is unique, and tailored*" to the partners' systems, and is organised as follows: (i) a phase lasting 8 to 16 weeks in which Meta and the partner work out how to configure the systems and APIs to match the partner's invalid traffic detection systems, and then, (ii) once the integration is complete, an average of 4 to 8 weeks per ad format¹¹⁸ for testing and fixes. In an internal document from 2017 relating to the integration of DoubleVerify and Meetrics, Meta expects the integration of these two players to take approximately four months, but that this timeframe is subject to change depending on the scope of the integration of these two companies¹¹⁹. Meta's explanations at the hearing did not provide any further clarification.
76. Once the integration is complete, Meta says it also needs to assign "*software and data engineering resources and programming experts to ensure that the APIs are properly used by the partner and to resolve any specific issues or bugs the partner encounters with the technologies. Meta also needs to regularly review the use of the APIs, including ensuring that there are no data breaches, privacy issues and/or other violations to the detriment of Meta's services and users, as well as ensuring that the use of the data is appropriate*"¹²⁰.
77. Finally, in order to decide on the integration of the partnership candidate, Meta "*weighs the benefits (to advertisers) of entering into a new partnership against the strain that the additional partner places on its resources and technical capabilities*"¹²¹.
78. Meta has not communicated any criteria for allowing an independent verifier to remain in its ecosystem, other than compliance with the terms of the MBP programme.

need to be assigned full time to this activity and that they could devote themselves to tasks other than the integration of the new partner.

¹¹⁷ Classification mark VC 16,847 (classification mark VNC 17,086).

¹¹⁸ Classification mark VC 16,847 (classification mark VNC 17,086).

¹¹⁹ Classification mark VC 3,184.

¹²⁰ Classification mark VC 13,929 (classification mark VNC 14,459).

¹²¹ Classification marks VC 13,922 and 13,923 (classification marks VNC 14,452 and 14,453).

b) On the establishment of integration criteria in January 2023

79. During the investigation, Meta stated that it had finalised a process to redefine the criteria for the viewability and brand safety partnerships on 12 January 2023, and that it would be able to admit new partners in the "near future"¹²². Meta initiated this process in order to address the risk of 'unequal or subjective treatment of partners', as stated in an exchange on 17 December 2021: "a historical risk the program has faced is unequal or subjective treatment of partners, [...] we must ensure that there are parameters in place through which we govern that aspect"¹²³.
80. However, Meta stated that the number of partners would remain limited and that the process of admission to these partnerships would remain subject to prior invitation by Meta, without providing any explanation of the factors taken into account in making such an invitation. In an internal exchange in July 2022, a Meta employee stated that "there is no transparency" regarding eligibility for these partnerships and that this was a problem already identified by the *Autorité* with reference to Decision 22-D-12 on commitments made by Meta¹²⁴.
81. The redefined selection process for new partners would be divided into three steps: (i) first, Meta internally identifies potential partners who are invited to participate in the selection process for future partners; then (ii) the potential partners invited by Meta, after signing a confidentiality agreement, are provided with what Meta calls the eligibility criteria, and they fill out an information request to allow Meta to assess them against these criteria, namely their size, the quality of the solution offered to advertisers and the number of advertisers active on Meta's services to whom they provide ad verification services; Finally, (iii) once compliance with these conditions has been confirmed, potential partners are formally invited by Meta to start the so-called on-boarding process, which includes their integration into Meta's systems and a risk assessment conducted by Meta¹²⁵.
82. For the viewability partnership, the criterion of "size", as defined by Meta, will be assessed according to four cumulative criteria:
- (i) the potential partner must have current MRC accreditations in the following categories: "Rendered Ad Impressions" for Display and for Video, "Viewable Ad Impressions and Viewability" for Display and for Video as well as "Sophisticated Invalid Traffic Detection/Filtering" for the following three environments: Desktop, Mobile Web and Mobile In-App"¹²⁶;
 - (ii) its viewability solution should cover the web on desktops, mobile devices and tablets for video and image impressions;
 - (iii) the potential partner must provide services to advertisers who are among the top 200 advertisers on Meta's services;

¹²² Classification mark 13,925.

¹²³ (Classification mark VC 15,646 - classification mark VNC 17,233).

¹²⁴ Email of 19 July 2022: "Because the eligibility criteria is not externalized and measurement is an invite only program, there is no transparency to partners of how measurement partners are invited and eligible to be badged, and this is one of the issues that was found during the FCA settlement ». (Classification mark VC 15,658 - classification mark VNC 17,243).

¹²⁵ In particular, the partner will have to demonstrate in an annual assessment that, among other things, it has not experienced any reported confidentiality problems, breaches or cybersecurity issues in the last 12 months.

¹²⁶ Classification mark 18,207.

- (iv) its solution must support at least two major publishers other than Meta's services or have a significant market footprint (covering at least 30% of the viewability market in the geographic area where the potential partner is located, as defined by advertiser spending on Meta's services)¹²⁷.
83. The "quality" criterion implies that the potential partner must be able to demonstrate, through a detailed methodology, that its viewability solution can measure invalid human traffic, pixels that have appeared in the display area and for how long the ad has been viewed.
84. The "number of active advertisers" criterion on Meta's services assumes that the partner, in order to maintain its status, provides its ad verification services to at least 20 active advertisers on Meta's platforms, via the viewability API. This condition must be met at all times and will be evaluated periodically based on the previous 180 days (on the criteria for the viewability partnership, see also paragraph 212).
85. For the brand suitability/safety partnership, the criterion of "size", as defined by Meta, will be assessed according to 6 cumulative criteria. The potential partner must at least:
- (i) have clients in 30 countries;
 - (ii) have 15 software/data/machine learning engineers;
 - (iii) have 5 data scientists;
 - (iv) have 5 full-time employees or more than 30,000 crowdsourcing partners;
 - (v) support human review raters, artificial intelligence, machine learning, text analysis, natural language processing and audio analysis
 - (vi) support more than 3 types of media (video, images, URL links, etc.).
86. The "quality" criterion implies that the potential partner must:
- (i) prove the accuracy (above 70%) of the main rating models, be a member of one of the following two professional associations: the World Federation of Advertisers or the Global Alliance for Responsible Media;
 - (ii) be a member of the Interactive Advertising Bureau (IAB);
 - (iii) have a badge on at least two of the following platforms: YouTube, Twitter, TikTok, Pinterest, Reddit, Snap, LinkedIn;
 - (iv) provide at least three publicly available case studies, white papers, etc. addressing brand suitability/safety;
 - (v) demonstrate at least 2 certifications (TAG, MRC, etc.).
87. The "number of active advertisers" criterion on Meta's services assumes that the partner, in order to maintain its status, provides its ad verification services to at least 30 active advertisers on Meta's platforms, via block lists, content permission lists, publisher lists, ad serving reports and the Facebook Feed verification function. This condition must be met at all times and will be evaluated periodically based on the previous 180 days (on the criteria for the brand safety partnership, see also paragraph 214).
88. Meta may establish an order of priority between candidates who meet the above criteria, taking into account the size of the independent service provider (in terms of advertiser coverage), other initiatives undertaken within the viewability and brand suitability/safety

¹²⁷ Classification mark VC 15,507.

sub-specialities (e.g. maintaining data pipelines), how complete the potential partner's response to the request for information was, and the accuracy of its solution and measurement methodologies.

c) Conclusion

89. The viewability and brand safety partnerships have existed since 2015 and 2019 respectively. Meta stated that there is no procedure for third parties to request inclusion in these partnerships, this is by invitation only. Meta did not provide any specific and quantifiable criteria that must be met in order to receive such an invitation. Incorporating the viewability and brand safety partnerships in the MBP programme in 2020 did not change this situation, as the independent verifiers still did not know how they could join these partnerships.
90. The new selection process for viewability and brand safety partners introduced by Meta in January 2023 consists of two stages. In the first stage, Meta uses an invitation system to pre-select a potential partner, but the factors taken into account when such an invitation is made are confidential. In the second stage, Meta evaluates the invited partner on the basis of various cumulative eligibility criteria. Finally, it should be noted that Meta did not intend to make these new criteria public, and had in fact filed a request for business secrecy protection to this effect.

II. Assessment

A. ON THE APPLICABILITY OF EU LAW

91. Article 102 TFEU prohibits abuses of a dominant position "*in so far as it may affect trade between Member States*".
92. In light of the European Commission (hereinafter the "**Commission**") Notice - Guidelines on the effect on trade concept contained in Articles 81 and 82 of the EC Treaty (now Articles 101 and 102 TFEU) (OJ C 101, 27.4.2004, p. 81) and European and national jurisprudence¹²⁸, the *Autorité* consistently considers that three elements must be present in order for practices to appreciably affect trade between Member States: the existence of trade, or at least potential trade, between Member States in the products or services in question, the existence of practices that are capable of affecting such trade, and the appreciable nature of that possible effect.
93. In this case, the applicability of Article 102 results from the size of the company complained against, the services involved in the complaint and the scale of the reported practices.
94. Meta is a global actor, active throughout the European Union. Adloox also offers its services internationally, with clients in different EU Member States. Furthermore, the ad verification services concerned by the complaint are generally provided uniformly online, irrespective of the location of the client. Finally, the practices reported in the complaint concern, in particular, the partnerships proposed by Meta to obtain the data necessary to provide ad verification services on the Meta platforms at the global level.
95. Therefore, the reported practices, if they are proven, are likely to significantly affect trade between Member States and be qualified under Article 102 TFEU.

B. ON THE RELEVANT MARKETS

1. ON THE DEFINITION OF THE MARKET

96. The application of Articles L. 420-2 of the French Commercial Code (Code de commerce) and 102 TFEU, which prohibit abusive practices, requires, first of all, that the relevant markets be precisely defined. Indeed, in matters of abuse of a dominant position, "*the proper definition of the relevant market is a necessary precondition for any judgment as to allegedly anticompetitive behaviour, since, before an abuse of a dominant position is ascertained, it is necessary to establish the existence of a dominant position in a given market, which presupposes that such a market has already been defined*"¹²⁹.

¹²⁸ Judgment of the Court of Justice of 25 October 2001, *Ambulanz Glöckner*, C-475/99, EU:C:2001:577, point 48. See also the judgment of 15 December 1994, *DLG*, C-250/92, EU:C:1994:413, point 54. At the national level, judgment of the Paris Court of Appeal (Cour d'appel de Paris) of 4 July 2013, *Orange Caraïbe* e. a., n° 2012/5160, in particular p. 11.

¹²⁹ Judgment of the Court of First Instance of 6 July 2000, *Volkswagen AG/Commission*, T-62/98, point 230.

97. In its Notice on the definition of the relevant market for the purposes of Community competition law of 9 December 1997, the Commission stresses that "*a relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use*". *The assessment of substitutability is usually made on the demand side, "the most immediate and effective disciplinary force on the suppliers of a given product", but it may also take into account supply-side substitutability*".
98. In the same document, the Commission also defines the market from a geographical perspective, stating that "*The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those area[s]*".
99. In France, the *Autorité* continuously reiterates that "*a relevant market is defined as the area where the supply and demand of a specific product or service meet. [...] Full substitutability between products or services rarely occurs. The Conseil therefore considers as substitutable and on the same market any products or services that can reasonably be considered by consumers as alternatives that they can choose between to meet the same demand*"¹³⁰.

2. THE MARKETS FOR ONLINE ADVERTISING

100. Meta asserts that advertising on social networks belongs to the same market as other forms of advertising and believes that the segmentation between Search advertising and Display advertising made by the decision-making practice is no longer justified.

a) The market for online advertising on social media

101. The following discussion focuses on the distinction between search and non-search advertising (i) and between the various forms of non-search advertising (ii).

¹³⁰ See in particular Decision of the *Autorité* 10-D-19 of 24 June 2010 on practices implemented in the markets for the supply of gas, heating installations and the management of heating networks and collective boiler rooms, paragraphs 158 and 159 (French only); Decision of the *Autorité* 10-D-13 of 15 April 2010 on the practices implemented in the handling sector for the transport of containers in the harbour of Le Havre, paragraph 220 (French only); ruling of the Cour d'appel de Paris (Paris Court of Appeal) of 20 January 2011, Perrigault, No. 2010/08165.

On non-search advertising

102. In its Google/AdSense decision of 20 March 2019, the Commission considered that search advertising belongs to a separate market from online non-search advertising¹³¹. In its Decision of 19 December 2019¹³² regarding practices implemented in the online search advertising sector, the *Autorité* also found that search advertising belonged to a separate market from online advertising, for the following reasons:
- Online search advertising is distinct from other forms of online advertising. It is based on an active search by the internet user;
 - Online search advertising has particular features in terms of format;
 - The degree of substitutability between search advertising and other forms of online advertising is also limited from the point of view of the suppliers.
103. In particular, the *Autorité* considered that "*although other forms of online advertising offer better targeting features, particularly through contextual or behavioural ads and ads on social networks, they cannot target ads as precisely as online search advertising. Regarding contextual and behavioural advertising, and advertising targeted to an internet user's social networking profile, analysing the content of the pages they have viewed, their browsing history, and social media reveals the focus of the internet user's interests, but not an immediate need revealed by an active search with a keyword. There is no demand expressed by the internet user at a specific moment, and the ad content may not correspond to the internet user's true current interests when they view a website. These advertisements are therefore less likely to be converted into purchases*"¹³³.
104. The information compiled at the investigation stage does not call this market definition into question.

On the various forms of non-search advertising

105. The question of whether advertising on social media platforms constitutes a separate market from other forms of online non-search advertising was left open by the Commission¹³⁴.
106. However, in its most recent decision on the subject, in which it cleared the acquisition of Kustomer by Meta¹³⁵, the Commission found strong indications that there is a market for online advertising on social media which is distinct from other markets for online non-search advertising, without definitively settling this issue. In this decision, the Commission highlights significant differences in targeting capabilities, user engagement, ad format,

¹³¹ Commission Decision of 20 March 2019 relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement, AT.40411 - Google Search (AdSense).

¹³² Decision 19-D-26 of 19 December 2019 regarding practices implemented in the online search advertising sector, upheld by the judgment of the Paris Court of Appeal (Cour d'appel de Paris) of 7 April 2022, No. 20/03811.

¹³³ Decision 19-D-26 of 19 December 2019 regarding practices implemented in the sector of online search advertising sector, paragraph 293.

¹³⁴ Commission decisions of 3 October 2014, Facebook / WhatsApp, COMP/M.7217, 6 December 2016, Microsoft / LinkedIn, COMP/M.8124, 6 December 2016, paragraph 163, Google / Fitbit, COMP/M.9660, 17 December 2020, paragraph 240.

¹³⁵ Commission decision, Facebook /Kustomer, COMP/M.10262, 27 January 2021, paragraphs 150 and 151.

design, content and ad tech services in social media advertising compared to display ads. The decision also states that while advertisers may technically be able to shift their demand for online social media advertising to other forms of display advertising in the event of a price increase, this would be difficult for the majority of advertisers from a commercial perspective¹³⁶.

107. [Confidential]¹³⁷.
108. The *Autorité* believes at this stage that there is no reason to deviate from this market definition.
109. [Confidential].
110. However, it should be highlighted that in a complaint against Meta, the US Federal Trade Commission (hereinafter "**FTC**") defined a market for personal social networking services to users, which consist of online services that enable and are used by people to maintain personal relationships and share experiences with friends, family, and other personal connections in a shared social space. According to the FTC, this market is distinct from other social media, including professional social networks, online messaging services, content discovery platforms (Twitter, Pinterest, Reddit), video entertainment platforms (YouTube) and any hybrid mix of the above (Instagram, Snap, TikTok)¹³⁸. [Confidential]¹³⁹.
111. The delimitation of a market for services to users of personal social networks could justify the existence of a related market for online advertising limited to these personal social networks.
112. In effect, in its Opinion 18-A-03 on data processing in the online advertising sector, the *Autorité* recalled that "*analysis must take into account the two-sided nature of many markets and any connections between these markets*". The *Autorité*'s Merger Control Guidelines also state that "*[i]n the case of two-sided markets, the economic equilibrium in one market cannot be assessed independently of the conditions prevailing in another market. The two markets, although distinct, operate in an interdependent manner, a specificity that can be taken into account both at the market delineation stage and in the analysis of the effects of the transaction on competition and efficiency gains*"¹⁴⁰. In its Decision clearing the acquisition of the Logic-Immo real estate advertising platform by the Axel Springer group (SeLoger), the *Autorité* reiterated that the examination of a two-sided market can therefore be made by defining a single market with two inseparable sides, or by analysing the two separate sides as two related markets¹⁴¹.
113. Given the multi-sided nature of the markets in which Meta operates, and subject to an investigation into the merits of the case, it is therefore not ruled out that a narrower definition

¹³⁶ Commission decision, Facebook /Kustomer, cas. M.10262, 27 January 2021, paragraph 152.

¹³⁷ [Confidential].

¹³⁸ See paragraphs 165 et seq. of the redacted version of the FTC's complaint of 8 September 2021: https://www.ftc.gov/system/files/documents/cases/2021-09-08_redacted_substitute_amended_complaint_ecf_no._82.pdf

¹³⁹ Classification marks VC 18,599 to 18,629.

¹⁴⁰ *Autorité de la concurrence* Merger Control Guidelines.

¹⁴¹ Decision 18-DCC-18 of 1 February 2018 relating to the acquisition of sole control of the company Concept Multimedia by the Axel Springer Group, paragraph 23.

of the online advertising market limited to personal social networks could be applied. However, this question can be left open at the stage of the interim measure procedure.

114. With regard to the geographical dimension of the market, the decision-making practice generally defines the markets for online advertising as national in scope¹⁴² due to the importance of language in the campaigns and the scope of purchases of advertising space by advertisers.
115. In conclusion, the French market for online advertising on social media is likely, at this stage of the investigation, to constitute a relevant market. However, even on a hypothetical wider market for online non-search advertising, the analysis would remain unchanged, as Meta is likely to hold a dominant position on this market (see paragraphs 141 et seq. below).

b) The markets for ad verification services

116. In Opinion 18-A-03 on data processing in the online advertising sector, the *Autorité* defined ad verification services as the various tools used to verify that ads are served in an environment that does not damage the advertiser's image, which is essential for brand safety. It also verifies that ads are actually viewed by users (viewability), that they are served to the chosen target (scope, context and country, audience profile, etc.) and that they have not been targeted by fraud¹⁴³. These services are different from other types of services provided in the context of online advertising.

Services distinct from the sale of online advertising

117. In the first instance, ad verification services are complementary to, but distinct from, the sale of online advertising. Indeed, in the context of online advertising, the aim is to offer visibility and develop the brand image of the advertiser, whereas ad verification services aim to ensure that online advertising purchases are seen by Internet users in an environment which is compatible with the brand image of the advertiser.
118. Several respondents to the market test confirmed that non-search ad verification services were separate markets from online non-search advertising, emphasising the related nature of the two markets. According to Solocal (freely translated), "*online non-search ad verification services and online non-search advertising appear to be related markets. These markets are related but not substitutable, the ad verification market cannot exist without the online advertising market*"¹⁴⁴. According to Crédit Agricole (freely translated), "*these are two distinct markets but in the same sector*"¹⁴⁵. According to Engie (freely translated), "*ad verification services for online non-search advertising and online search advertising are linked to each other in that they are complementary*"¹⁴⁶. The SNCF stated that ad verification represented: "*a complementary service that makes it possible to guarantee to brands that*

¹⁴² Commission decision of 6 September 2018, case M.8788 – Apple/Shazam, points 138-140; Commission decision of 6 December 2016, case M.8124 – Microsoft/LinkedIn points 163-164; Commission decision of 3 October 2014, case M.7217 – Facebook/WhatsApp, points 44 and 83.

¹⁴³ *Autorité de la concurrence* Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector, paragraph 56.

¹⁴⁴ Classification mark 12,855.

¹⁴⁵ Classification mark VC 12,797 (classification mark VNC 13,116).

¹⁴⁶ Classification mark VC 11,271 (classification mark VNC 11,291).

messages are seen, that they are served in a context that preserves the "Brand Safety" of brands and to avoid advertising fraud. Ad verification would therefore be a separate market from the rest of online advertising, with its own definitions and standards. More specifically, according to SNCF Connect, which shares this viewpoint, ad verification services for online non-search advertising are related to the online non-search advertising market, in that they are not essential although they present an additional guarantee in optimising ad spend"¹⁴⁷.

Services separate from other forms of advertising-related services

119. Secondly, competition authorities generally distinguish the markets for advertising-related services with regard to the nature of the services provided¹⁴⁸. Indeed, within ad tech services, the decision-making practice tends to delimit the relevant markets with regard to the features offered by each category of actor.
120. However, as Adloox highlights, ad verification services are distinct from other types of advertising services, whether provided to publishers or advertisers, in terms of the features offered and the technology used.
121. Ad verification services are distinct from the ad attribution function, which looks at the effects of advertising on user behaviour, determining a causal link between a given event and exposure to an ad, to determine the terms and levels of remuneration for the various actors in the ecosystem. Verification takes place upstream, in relation to the conditions of display of the ad, regardless of what the user does with it¹⁴⁹.
122. Similarly, as the *Autorité* noted in its opinion on online advertising, ad verification services are distinct from advertising measurement services, which include user-centric, site-centric and ad-centric measurement tools. User-centric tools provide the reference audience of a publisher site, measured *via* a representative panel of Internet users, in order to have a better knowledge of the profiles and uses of the site¹⁵⁰. Site-centric tools provide data on traffic and conversion on the site¹⁵¹, while ad-centric tools make it possible to characterise the audience and the quality of exposure during the campaign¹⁵².
123. Ad measurement tools have different objectives from those of ad verification. Ad measurement tools are performance indicators that make it possible to analyse, to varying

¹⁴⁷ Classification mark VC 12,843 (classification mark VNC 13,289).

¹⁴⁸ See the *Autorité's* Decision 21-D-11 of 7 June 2021, paragraphs 263 et seq., in which the *Autorité* defined a European market for ad server services segmented between the provision of services to advertisers and the provision of services to publishers, as well as a market for the provision of SSP services. See also the Commission's decision of 17 December 2020 in Case M. 9660 - Google/Fitbit, paragraphs 165 and 166, in which the Commission distinguished several markets for the provision of technologies related to online advertising other than search (the supply of SSP services, the supply of DSP services, the supply of ad network services, distinguishing between publisher ad server services and advertiser ad server services, data analysis services).

¹⁴⁹ Decision 22-D-12 of 16 June 2022 concerning practices implemented in the online advertising sector, paragraph 22.

¹⁵⁰ *Autorité de la concurrence* Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector, paragraph 53.

¹⁵¹ A conversion can be defined as the fact that an internet user or the addressee of a campaign performs the desired action. This action may be a purchase, filling out a form, downloading a document or a visit behaviour model. Conversion can also take the form of an action performed outside the Internet.

¹⁵² *Autorité de la concurrence* Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector, paragraph 54.

degrees, user behaviour on a given site, in particular the interaction of the user with the ad and the identification of pages that facilitate conversions. Ad verification services are essentially control tools, intended to protect the advertiser's brand image and ensure that the ad billed to the advertiser has actually been seen by an Internet user and is not subject to fraud.

124. Due to their specific nature, ad verification services are likely to constitute a separate market for services at this stage of the procedure.

Independent ad verification services distinct from integrated ad verification services

125. Thirdly, within the ad verification market, a further segmentation could be made between the services offered by integrated platforms and those provided by independent verifiers.
126. Several respondents to the market test stated that the ad verification services offered by integrated platforms were not in competition with those offered by independent third parties.
127. With regard to independent ad verification providers, IAS stated that (freely translated): "*the vertically integrated players such as Meta or YouTube offer internal tools to control quality on their platforms, but these tools are not external or neutral measurement solutions. It is therefore not a competitive market, these are optimisation tools offered by these platforms but in no way trusted third parties. We believe that the advertising market now clearly sees the difference between neutral ad verification solutions such as IAS or Adloox and the internal tools offered by the major platforms*"¹⁵³. DoubleVerify¹⁵⁴ and Moat¹⁵⁵ indicated that integrated platforms, including Meta, offer ad verification services in competition with their own, while underlining the fact that advertisers value independent third-party ad verification services.
128. With regard to integrated platforms, Meta stated that it "*does not provide ad verification services*"¹⁵⁶. Indeed, according to Meta, "*in essence, ad verification services are necessarily provided by independent third parties who provide services to confirm whether the provider of the ad service has acted in accordance with the terms and conditions stipulated by the advertiser or agency and agreed to as part of the terms of the ad campaign*"¹⁵⁷. Google highlights the fact that "*verification services offered by third-party partners complement rather than compete with the ad verification tools offered by Google on its own platforms*"¹⁵⁸. Similarly, Pinterest regards independent verifiers "*as partners rather than competitors*"¹⁵⁹. [Confidential]¹⁶⁰, [Confidential]¹⁶¹ and [Confidential]¹⁶² also indicated that they do not

¹⁵³ Classification mark 2,638.

¹⁵⁴ Classification mark 10,609 (classification mark VNC 10,694).

¹⁵⁵ Classification mark 10,768.

¹⁵⁶ Classification mark VC 2,908 (classification mark VNC 11,027).

¹⁵⁷ Classification mark VC 2,908 (classification mark VNC 11,027).

¹⁵⁸ Classification mark VC 11,118 (classification mark VNC 11,160).

¹⁵⁹ Classification mark VC 12,085 (classification mark VNC 12,109).

¹⁶⁰ [Confidential].

¹⁶¹ [Confidential].

¹⁶² [Confidential].

compete with independent ad verification service providers, while stressing the complementary nature of their respective activities.

On the geographical dimension

129. With regard to the geographical dimension of the market, Adloox stated that it was a global market.
130. Adloox notes in this regard that the main actors are active worldwide and provide their services without geographical restriction. Ad verification service providers may have multiple servers around the world. Adloox, for example, has servers in Europe, the US and Asia. In addition, the technology used to measure the viewability of the ad, combat fraud, or provide brand safety services can be used regardless of the language of the advertising campaigns or their scope. Finally, the relationships with clients are almost systematically at the supranational level. The information compiled during the investigation confirms this analysis.

Conclusion

131. In conclusion, the global market for independent online ad verification services is likely, at this stage of the investigation, to constitute a relevant market. The question of a further segmentation of the independent ad verification market between viewability and brand safety services can be left open at this stage of the procedure.

c) On the possible existence of a market for the supply of ad verification data from Meta platforms

132. Adloox maintains that there is a market for the supply of data by Meta for ad verification. This question can be left open at this stage as it does not affect the outcome of this procedure.

C. ON META'S POSITION ON THE RELEVANT MARKETS

1. REMINDER OF THE PRINCIPLES

133. Dominance is defined as "*a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, customers and ultimately of its consumers*"¹⁶³.

¹⁶³ Judgement of the Court of 14 February 1978, United Brands and United Brands Continentaal BV/Commission, 27/76, point 65.

134. A dominant position may result from a combination of several factors which, taken separately, are not necessarily determinative¹⁶⁴. Among these factors, the existence of large market shares is highly significant¹⁶⁵.
135. According to the case law of the Court of Justice of the European Union, a market share of more than 50% constitutes in itself evidence, save in exceptional circumstances, of the existence of a dominant position¹⁶⁶.
136. In addition to the absolute level of market shares of the undertaking concerned, the ratio of these market shares to those held by its competitors must also be taken into account.
137. The General Court of the European Union has held that, in the case of recent fast-growing sectors characterised by short innovation cycles in a dynamic context, high market shares are not necessarily indicative of market power¹⁶⁷. On the other hand, this criterion remains relevant in the case of a fast-growing market that does not show signs of instability during the period at issue and where a stable hierarchy was established¹⁶⁸.
138. Additional indicators may be taken into account to determine whether a player can be considered dominant. In particular, the existence of barriers to entry or barriers to expansion and the countervailing buyer power of customers should be mentioned¹⁶⁹.
139. In the present case, on the basis of the evidence presented, Meta is likely to have a dominant position in the French market for online advertising on social media, as well as in the online non-search advertising market.
140. Its market share is very high, while those of its competitors remain very limited (2). Meta's dominant position is also bolstered by the high barriers to entry in the market for online advertising on social media or the hypothetical market for online non-search advertising (3).

2. META'S MARKET SHARES

141. Meta's market share in the market for online advertising on social media was well over 50% in France between 2019 and 2022, which is a strong indication of dominance.
142. Meta's estimated market share in the market for online advertising on social media, calculated on the basis of data published by the SRI¹⁷⁰, remained above [60 - 70]% between 2019 and 2022, while that of its main competitor (Google with YouTube) did not exceed [20 - 30]%.

	2019	2020	2021	2022

¹⁶⁴ Ibid, point 72.

¹⁶⁵ Judgments of the Court of First Instance of 12 December 1991, Hilti/Commission, T-30/89, point 90; and of 25 June 2010, Imperial Chemical Industries/Commission, T-66/01, points 255 and 256.

¹⁶⁶ Judgement of the Court of 3 July 1991, AKZO v. Commission, C-62/86, REc. P. I-3359, point 60.

¹⁶⁷ Judgment of the General Court of 11 December 2013, Cisco Systems, Inc. and Messagenet SpA v European Commission, T-79/12, paragraph 69.

¹⁶⁸ Judgment of the Court of First Instance of 30 January 2007, France Telecom v Commission, T-340/03, points 107 and 108.

¹⁶⁹ Judgment of the Court of First Instance of 7 October 1999, Irish Sugar v Commission, T-228/97, points 97 to 104.

¹⁷⁰ Classification mark VC 19,050.

Meta	[...]	[70-80]%	[...]	[70-80]%	[...]	[70-80]%	[...]	[60-70]%
Google	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Others	[...]	[0-10]%	[...]	[0-10]%	[...]	[0-10]%	[...]	[10-20]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

* Market share calculated by value (million euros)

143. [Confidential]

144. Meta's estimated market share in the wider market for online non-search advertising, calculated on the basis of data published by the SRI, remained above [40 - 50]% between 2019 and 2022, while that of its main competitor (Google with YouTube) did not exceed [10 - 20]%.

	2019		2020		2021		2022	
Meta	[...]	[40-50]%	[...]	[50-60]%	[...]	[50-60]%	[...]	[40-50]%
Google	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%	[...]	[10-20]%
Others	[...]	[40-50]%	[...]	[30-40]%	[...]	[30-40]%	[...]	[40-50]%
Total	[...]	100%	[...]	100%	[...]	100%	[...]	100%

* Market share calculated by value (million euros)

145. [Confidential].

146. In addition to its strong market shares, Meta is also seen as an essential business partner in the market for online advertising on social media, but also in the online non-search advertising market¹⁷¹ (see paragraph 289 below), in particular because of its unrivalled leadership position in personal social networking services¹⁷². In its Decision 22-D-12 cited above, the *Autorité* highlighted on this last point that Facebook is an "essential" platform for users as it has a larger consumer network than other platforms and can meet a wider range of needs. Meta is therefore likely to have significant market power in the market for social networking services¹⁷³.

3. SIGNIFICANT BARRIERS TO ENTRY

147. In its opinion on online advertising, the *Autorité* stated that "*The user services markets on which Google and Facebook are active appear to present many types of significant barriers to entry and expansion, which will now need to be taken into consideration for analysis of the competitive situation of the overall online advertising market and legal qualification of the stakeholders' positions. Barriers to entry and expansion on the user services markets are likely to impact the capacity of stakeholders to increase their advertising revenue and market shares*"¹⁷⁴.

¹⁷¹ [Confidential].

¹⁷² [Confidential].

¹⁷³ Decision 22-D-12 of 16 June 2022 on practices implemented in the online advertising sector, paragraph 252.

¹⁷⁴ *Autorité de la concurrence* Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector, paragraphs 226 et seq.

148. In this regard, the market for online non-search advertising on social media, but also the market for online non-search advertising, are characterised by significant barriers to entry and expansion, which result primarily from the substantial network effects enjoyed by Meta¹⁷⁵.
149. Firstly, given its audience, Meta is likely to benefit from direct and indirect network effects¹⁷⁶ that are larger than those of some of its competitors, allowing it to attract new users, advertisers, developers and content providers. These effects are likely to significantly increase the barriers to entry and expansion in the social networking and advertising markets¹⁷⁷. In this regard, Meta's combined audience, the data collected and the extent of the services it provides allow it to benefit from more advertising revenue than its competitors. According to LinkedIn (freely translated), "*the volume of customer engagement and the ability to reach the target audience with greater frequency [...] is Facebook's key advantage in display advertising. Facebook, Instagram and WhatsApp have much higher user engagement compared to other social media platforms, as their combined users represented around 1,800 minutes on average spent on their platforms in July 2019, while LinkedIn users represent less than 2% of that on average (32 minutes) on LinkedIn*"¹⁷⁸.
150. In order to compete with Meta in a meaningful way, it is necessary to offer improvements and relevant content to keep consumers' attention and produce relevant data. Yet this requirement is all the more difficult to fulfil as Meta can take advantage of the complementarity between Facebook, Instagram and its Messenger and WhatsApp services and the large number of services available on Facebook (ads, games, messaging, videos, news). Its offering allows it to meet a wide range of consumer needs in a market where Meta's competitors all offer more specialised products. For example, TikTok is mainly used to create and share short music clips and appears to be in competition with Facebook Watch. LinkedIn's offering seems to compete with Facebook Jobs. Twitter appears to be the closest competitor to Facebook's features that allow its users to consume news and other media, such as Newsfeed¹⁷⁹.
151. Second, the investment and fixed costs required to develop and maintain an advertising platform are likely to entail significant economies of scale, thereby creating a cost advantage for Meta compared to its competitors.

¹⁷⁵ See in this regard the decision of the Competition Market Authority, "completed acquisition by Facebook, Inc. (Now Meta Platforms, Inc.) of Giphy, Inc, 30 November 2021", point 5.192.

¹⁷⁶ A product market exhibits network effects when the overall utility of the product to the customers who use it depends not only on their personal use of it, but also on the number of other customers who use the product. Such a network effect is a direct network effect. The existence of network effects, if positive (i.e., if the utility of the product rises with the number of other customers who use it), can be a difficult barrier for a new entrant to overcome. An indirect network effect occurs when the value of a good to a user rises as the number and variety of complementary products or the number of other types of users increases (*Autorité de la concurrence Merger Control Guidelines*).

¹⁷⁷ Decision 22-D-12 of 16 June 2022 on practices implemented in the online advertising sector, paragraph 249.

¹⁷⁸ Classification mark 11,087.

¹⁷⁹ Decision 22-D-12 of 16 June 2022 on practices implemented in the online advertising sector, paragraph 250.

152. Thirdly, Meta's large audience also allows it to exploit more user data. The platforms with larger quantities of data can target the advertising more effectively and can better monetise their services¹⁸⁰.
153. Fourth, the transaction costs faced by advertisers when using multiple advertising platforms are likely to benefit Meta and create a barrier to entry for smaller players, to the extent that using Meta's self-service Ads Manager interface makes it possible to reach the largest audience along with that of Google¹⁸¹.

4. CONCLUSION

154. In conclusion, at this stage of the investigation, Meta is likely to have a dominant position, both on the market for online advertising on social media in France, as well as on the broader market for online non-search advertising in France.

D. ON THE SCOPE OF ADLOOX'S COMPLAINT

155. Meta claims that, before referring the matter to the *Autorité*, Adloox limited its requests for access to the viewability partnership only, meaning that it would not be entitled to request access to the brand safety partnership in the context of its demand for interim measures.
156. As a preliminary point, it should be recalled that, in accordance with settled case law, the *Autorité* is referred to *in rem* of all facts and practices affecting the functioning of a market and is not bound by the claims and legal classification given to them by the parties¹⁸². In this case, the practices implemented by Meta, which among other things consist of devising access criteria for brand safety and brand viewability partnerships in January 2023, are aimed at all operators in the ad verification sector, both for their viewability metrics and fraud detection activities and for brand safety. Therefore, regardless of the content of the exchanges between Adloox and Meta, the *Autorité* is entitled to examine this new practice in the context of the present procedure.
157. Furthermore, Meta's argument that Adloox never asked to be included in Meta's partner programme in order to perform brand suitability/safety activities is unfounded.
158. Firstly, it is not disputed by Meta that Adloox's request for interim measures concerns both viewability and brand safety activities.
159. Second, in a letter dated 22 August 2017, Adloox told Meta that several of its clients wanted it to be integrated into its ecosystem for viewability, fraud detection, but also brand safety: "*Following up on our conversation regarding how our client requests to FB are getting lost in the "Mid-Atlantic Ridge." There are a bunch that would love to see Adloox integrate with*

¹⁸⁰ Decision 22-D-12 of 16 June 2022 on practices implemented in the online advertising sector, paragraph 251.

¹⁸¹ *Autorité de la concurrence* Opinion 18-A-03 of 6 March 2018 on data processing in the online advertising sector, paragraphs 117 et seq.

¹⁸² See in this sense the judgment of the Paris Court of Appeal (Cour d'appel de Paris) of 26 January 2012, *Beauté Prestige International*, n° 2010/23945, page 16.

Facebook for viewability, brand safety and fraud measurement. [...] Please let me know how we can best proceed to move to next step in integration process" 183.

160. The fact that Adloox limited its request to viewability in an exchange of 31 October 2017¹⁸⁴ cannot be interpreted as meaning that this operator did not want to be integrated on Meta's platforms to perform brand safety verification, insofar as the brand safety partnership did not exist at that time. Indeed, Meta indicated that this category of partnership was only set up during the course of 2019, which explains why Adloox only requested viewability. In a subsequent exchange, Adloox again expressed its interest in being integrated into the brand safety partnership, in order to provide its clients with what they wanted¹⁸⁵. In addition, the subsequent requests made by Adloox on 18 June and 18 July 2019 were not limited to the viewability programme, but were aimed at the broader category "*Facebook marketing partner*"¹⁸⁶.
161. In an internal exchange on 7 May 2020, Meta also asked about the possibility of integrating Adloox for both the viewability and brand safety partnerships, attesting to the interest of this player in being integrated for these two activities: "*Quick questions: Is it possible to certified Adloox as Visibility / Brand Safety partner such as IAS, MOAT, DoubleVerify etc..?*"¹⁸⁷. Following this question, a Meta employee replied that: "*As such, we are pausing on adding any more brand safety partners for now*"¹⁸⁸, which shows that Meta was aware of Adloox's wish to be integrated for this activity.
162. Finally, in its letter of 9 August 2022, Adloox asked to be included in Meta's Measurement programme, which covers the two partnerships viewability and brand safety since 2020. Meta's response on 18 August 2022 referred only to the viewability partnership, without specifying to Adloox that the brand safety activity on its ecosystem was the subject of a separate partnership. While the subject of Adloox's letter refers to the viewability programme mentioned in Meta's response of 18 August 2022, the letter nevertheless emphasises that it is crucial for Adloox to provide its ad verification services on Meta's ecosystem.
163. It should be noted that even the partners integrated into the Meta ecosystem were not aware of the fact that the viewability programme was handled separately within the Meta

¹⁸³ Emphasis added. Classification mark 1,106 .

¹⁸⁴ "[...] *our clients now do 70% of their spend through you guys. Since our last chat in August (below) and after meeting Dave Jacobowski in person telling us we were very close now to integration) we have lost clients, and had to let staff go. It's been horrible, trust me. I don't know what to do. This is not about brand safety nor IVT, both of which are not an issue with FB/Instagram. This is just a feed of your viewability numbers into our report, so that our mutual clients can have it. Nothing more. We were so proud to be one of the only tools that achieved Native Atlas integration with you guys in 2015. And one of only 3 companies in the world to have Google DBM integration. We have the resource/ENG team to ensure your Science Research team do not have to do much here. It's so business critical for our company Fred, and I'm sorry I sound so desperate here. But we would do anything to make this happen. Please can you help?* [...]" Emphasis added. Classification mark 1,104

¹⁸⁵ Adloox's email to Meta dated 30 May 2018: "*I was with a very large UK based client few minutes ago, Gamesys [...] We are their exclusive partner for brand safety, Viewability and IVT filtration [...] They also would love to see us integrated as approved vendor...*". Classification mark VC 15,942 (classification mark VNC 16,239).

¹⁸⁶ Classification marks 9,213 to 9,215.

¹⁸⁷ . Classification mark VC 9,172 (classification mark VNC 17,720).

¹⁸⁸ . Classification mark VC 9,170 (classification mark VNC 17,718).

ecosystem, nor of the exact scope of this programme¹⁸⁹. Adloox cannot therefore be expected to have known the exact organisation and name of the various partnerships set up internally by Meta from 2020 onwards to organise its ad verification activity.

164. In these circumstances, Meta cannot rely on the opacity and lack of transparency surrounding the existence and content of these two partnerships to argue that Adloox would never have asked to be integrated into Meta's platforms in order to perform its brand safety verification. On the contrary, it appears from the above elements that Adloox had the firm intention to access all ad verification services, including viewability, fraud detection, but also brand safety.

E. ON THE POTENTIALLY ANTICOMPETITIVE NATURE OF THE PRACTICES

165. According to the case law of the French Supreme Court (Cour de Cassation), *"interim measures may be decided when the reported practices might be considered, on the basis of the evidence presented during the proceedings, to constitute a practice in breach of Articles L. 420-1 or L. 420-2 of the French Commercial Code (Code de commerce), directly and clearly causing serious and immediate harm to the interests protected by Article L. 464-1 of the French Commercial Code (Code de commerce); (...) the characterisation of such a practice is not required at this stage of the proceedings"*¹⁹⁰
166. The complainant believes that Meta is abusing its dominant position in two respects:
- on the one hand, Meta is said to have discriminated against Adloox, by refusing it access to data which would allow it to provide ad verification services in its ecosystem, compared to what it provided to its viewability and brand safety partners, and imposed unfair conditions of access to its ecosystem;
 - secondly, Meta has apparently imposed unfair conditions on its ad verification partners by providing only partial access to its ecosystem, as Meta only supplies data it has collected itself, via an API, instead of allowing its partners to collect the data necessary for ad verification within the Meta platforms themselves.
167. In order to analyse Adloox's request for interim measures, the *Autorité* will confine itself to analysing the first alleged abuse.

1. REMINDER OF THE APPLICABLE PRINCIPLES

168. Articles 102 TFEU and 420-2 of the French Commercial Code (Code de commerce) state that any abuse by one or more undertakings of a dominant position within the internal market

¹⁸⁹ DoubleVerify's response: "DoubleVerify is not aware of any "Viewability Program" with Meta" (classification mark VC 10,617 – classification mark VNC 10,702). Oracle/Moat's response: "Oracle is not aware of a separate Viewability Programme. Viewability is part of the capabilities of the partners in the MBP specialised in measurement" (classification mark VC 10,777 – classification mark VNC 10,935). IAS's response: "We are not familiar with this programme. As far as we know, IAS is on the list of third-party viewability measurers on Meta" (classification mark 2,646).

¹⁹⁰ Judgement of the French Supreme Court (Cour de Cassation) of 4 October 2016, Orange, No. 15-14158, emphasis added.

or in a substantial part of it shall be prohibited. In effect, an undertaking in a dominant position has a special responsibility not to allow its conduct to impair genuine undistorted competition on the common market.¹⁹¹

169. According to the settled case law of the Court of Justice, "[...]the concept of "abusive exploitation of a dominant position" is an objective concept relating to the behaviour of an undertaking in a dominant position which, on a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition"¹⁹².
170. The Court of Justice has also consistently held that "the examination of the abusive nature of a dominant undertaking's practice pursuant to Article 102 TFEU must be carried out by taking into consideration all the specific circumstances of the case"¹⁹³.
171. The practices covered in Article 102 TFEU and Article L. 420-2 of the French Commercial Code (Code de commerce) do not constitute an exhaustive list of practices that may be qualified as abuse of a dominant position¹⁹⁴.
172. With regard to a situation in which an undertaking in a dominant position refuses to contract with a third party, the Court of Justice recently held in its *Slovak Telecom* judgment of 25 March 2021 that a distinction must be made between situations where:
- a dominant undertaking refuses to give access [to a competitor] to an infrastructure that it has developed for the needs of its own business, to the exclusion of any other conduct; and
 - a dominant undertaking gives access to its infrastructure but makes that access, provision of services or sale of products subject to unfair conditions¹⁹⁵.
173. In the first case, in accordance with the *Bronner* case law of the Court of Justice on essential facilities¹⁹⁶, a dominant undertaking may be obliged to provide access to a competitor only "where such access is indispensable to the business of such a competitor, namely where there is no actual or potential substitute for that infrastructure."
174. On the other hand, in the second scenario, where the undertaking provides access to its infrastructure but subjects it to unfair conditions, it is not necessary, for the purposes of characterising it as an abuse of a dominant position, to demonstrate the essential nature of

¹⁹¹ Judgments of the Court of Justice of 9 November 1983, *Nederlandsche Banden-Industrie-Michelin/Commission*, 322/81, point 57; of 27 March 2012, *Post Danmark*, C-209/10, point 23; and of 25 March 2021, *Slovak Telecom*, C-165/19 P, point 40.

¹⁹² Judgments of the Court of Justice of 13 February 1979, *Hoffmann-La Roche/Commission*, 85/76, point 91; of 19 April 2012, *Tomra Systems e.a./Commission*, C-549/10 P, point 17; and of 25 March 2021, *Slovak Telecom*, C-165/19 P, point 41.

¹⁹³ Judgment of the Court of Justice of 25 March 2021, *Slovak Telecom*, C-165/19 P, point 42.

¹⁹⁴ See in this sense the judgments of the Court of Justice of 18 April 1975, *Europemballage and Continental Can/Commission*, 6/72, point 26; of 14 October 2010, *Deutsche Telekom / Commission*, C-280/08 P, point 173 ; and of 16 February 2011, *Konkurrensverket / TeliaSonera Sverige AB*, C-52/09, point 26.

¹⁹⁵ Judgment of the Court of Justice of 25 March 2021, *Slovak Telecom*, C-165/19 P, points 48 to 50.

¹⁹⁶ Judgment of the Court of Justice of 26 November 1998, *Bronner*, C-7/97, points 38 to 41.

that infrastructure, although, "where access to such an infrastructure - or service or input - is indispensable in order to allow competitors of the dominant undertaking to operate profitably in a downstream market, this increases the likelihood that unfair practices on that market will have at least potentially anticompetitive effects"¹⁹⁷.

175. In its Communication of 31 March 2023 on Amendments to the Communication from the Commission - Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty [now 102 TFEU]¹⁹⁸, the Commission stated that "*it is important to distinguish situations of outright refusal to supply from situations where the dominant company makes access subject to unfair conditions* ('constructive refusal to supply'). *In situations of constructive refusal to supply, it is not appropriate to pursue as a matter of priority only cases concerning the provision of an indispensable input or the access to an essential facility. This is in line with the case law of the Union Courts, which has clarified that such cases cannot be equated to an outright refusal to supply and therefore the criterion of indispensability of the product or service in question does not apply*"¹⁹⁹.
176. At the national level, the French Supreme Court (Cour de Cassation) upheld Decision 14-D-06 issued in the Cegedim case, in which the *Autorité* considered that (freely translated) "*even in the absence of an essential facility, a discriminatory refusal of access by an undertaking in a dominant position may constitute an abuse of a dominant position, where it significantly distorts competition*"²⁰⁰. In particular, the French Supreme Court (Cour de Cassation) considered "*that having noted [.....] that it was established that Cegedim refused to sell its Onekey database only to current and potential users of software solutions marketed by Euris, while agreeing to sell it to users of competing software, the judgment held that this discriminatory refusal had an anticompetitive effect by creating a dominant position, to the detriment of Euris, without any economic or legal justification, a disadvantage in terms of costs and image compared to all of its competitors on the market for customer relationship management software (CRM software) in the health sector, thereby distorting competition on this market*"²⁰¹.
177. In its judgment of 7 April 2022 in the Gibmedia case, the Paris Court of Appeal (Cour d'appel de Paris) recalled that, in assessing conduct under Articles 102 TFEU and L. 420-2 of the French Commercial Code (Code de commerce) (freely translated), "*whatever the nature of the exploitative practice committed, the standard of proof remains identical. It involves assessing whether the dominant undertaking's conduct was carried out by taking 'reasonable steps' (CJEU, above-mentioned judgment United Brands, paragraph 189 and Kanal 5 and TV 4, paragraph 26), and based on 'objective justification' (CJEU, judgment of 16 September 2008, C-468/06, Sot. Lélos kai Sia, paragraph 34) by ascertaining whether*

¹⁹⁷ Judgment of the Court of Justice of 25 March 2021, Slovak Telecom, C-165/19 P, point 50.

¹⁹⁸ Communication from the Commission Amendments to the Communication from the Commission – Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings 2023/C 116/01

¹⁹⁹ Annex to the Communication from the Commission Amendments to the Communication from the Commission – Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings 2023/C 116/01, point 4, emphasis added.

²⁰⁰ *Autorité de la concurrence* Decision 14-D-06 of 8 July 2014 on practices implemented by the company Cegedim in the sector of medical information databases, paragraph 192 (French only).

²⁰¹ Supreme Court, 21 June 2017, counter appeal n° H 15-25.941, emphasis added.

the conduct is both necessary and proportionate to achieve the objective pursued by the dominant undertaking."²⁰².

178. In Decision 19-D-26 of 19 December 2019, which gave rise to this judgment, the *Autorité* examined whether, by issuing a series of rules for online advertising services, Google had abused its dominant position "*by first determining whether they are reasonable measures to achieve the goal of protecting consumers, in particular by determining whether they are transparent, objective and non-discriminatory*"²⁰³. The *Autorité* then considered that rules for which the wording was "*ambiguous, complex and difficult to understand*" did not meet these criteria, given, in particular "*their large number, the opacity of their formulation and the absence, at times, of a clear distinction between them*" allowing Google to make a discretionary assessment²⁰⁴. It concluded that "*The non-objective and non-transparent definition of the Rules makes it possible for Google to apply the Rules in an unfair and discriminatory manner. Such a practice is likely to disrupt the functioning of the market for online search advertising, as well as that of the downstream markets for the provision of digital services where Google Ads customers operate*"²⁰⁵.
179. In Decision 22-D-12 of 16 June 2022 concerning commitments given by Meta following a referral from Criteo, the *Autorité* considered that the fact that "*the conditions of access and the requirements imposed by Meta on FMPs [Facebook Marketing Partners] in order to benefit from the status and the services associated with it are characterised by a lack of stability, transparency, objectivity and by the fact that different parties are treated differently*"²⁰⁶ could constitute a competition concern on the basis of Article 102 TFEU.
180. Therefore, in order for a refusal of access to the infrastructure of a dominant operator to be qualified as abusive, in the event that the dominant operator already grants access to its infrastructure to other operators, it is necessary to analyse (i) whether this refusal is based on objective, transparent and non-discriminatory conditions and (ii) whether it is likely to have anticompetitive effects.
181. With regard to the criterion relating to the existence of a competitive disadvantage, the Court of Justice stated in its *MEO* judgment that: "*A finding of such a 'competitive disadvantage' does not require proof of actual quantifiable deterioration in the competitive situation, but must be based on an analysis of all the relevant circumstances of the case leading to the conclusion that behaviour has an effect on the costs, profits or any other relevant interest of one or more of those partners, so that that conduct is such as to affect that situation*"²⁰⁷. In the same sense, the Paris Court of Appeal (Cour d'appel de Paris) recalled

²⁰² Paris Court of Appeal (Cour d'appel de Paris), 7 April 2022, Gibmedia, RG n° 20/03811, paragraphs 129 and 130, emphasis added.

²⁰³ Decision 19-D-26 of 19 December 2019 on practices implemented in the sector of online search advertising sector, paragraph 366.

²⁰⁴ Decision 19-D-26 of 19 December 2019 on practices implemented in the sector of online search advertising sector, paragraphs 378 and 386.

²⁰⁵ Decision 19-D-26 of 19 December 2019 on practices implemented in the sector of online search advertising sector, paragraph 511.

²⁰⁶ Decision 22-D-12 of 16 June 2022 on practices implemented in the online advertising sector, paragraph 298, emphasis added.

²⁰⁷ Judgment of the Court, 19 April 2018, *MEO/Serviços de Comunicações e Multimédia*, C-525/16. See also, in this sense, the judgment of the Court of Justice of 19 April 2012, *Tomra Systems e.a./Commission*, C-549/10 P, point 68.

that (freely translated) "*the Autorité must only demonstrate the existence of an anticompetitive effect, at least potential, without having to prove an actual quantifiable deterioration of the competitive position of the other operators on the market*"²⁰⁸.

182. Finally, an undertaking in a dominant position may justify conduct which may fall within the restrictions of Article 102 TFEU. In particular, it can demonstrate that its conduct is either objectively necessary or that the exclusionary effect produced may be counterbalanced, outweighed even, by advantages in terms of efficiency that also benefit consumers²⁰⁹. In this respect, in its Guidelines on priorities for the application of Article 82 of the EC Treaty (now Article 102 TFEU) of 24 February 2009, the Commission states that it will assess "*whether the conduct in question is indispensable and proportionate to the goal allegedly pursued by the dominant undertaking*"²¹⁰.

2. APPLICATION TO THE CASE AT HAND

183. Meta considers in its observations that, unless it can be proven that access to the data necessary for the supply of ad verification services in its ecosystem is an essential facility for ad verifiers, it cannot be accused of abuse by denying access.
184. However, as is clear from the European and national case law referred to in paragraphs 172 to 176 above, such a condition is not necessary since Meta did not reserve access to the data on its platform for the needs of its own business but, on the contrary, developed this technology to give third parties access to its ecosystem. It is clear from the findings in paragraphs 45 to 53 above, that Meta created two partnerships in 2015 and 2019 (viewability and brand safety, respectively) which allow third parties to offer independent ad verification services on Meta's platforms. In the context of these partnerships, Meta provides the data necessary to offer ad verification services free of charge. Since 2015, Meta has entered into several such partnerships with different operators; to date it has three viewability partners and three brand safety partners.
185. Nor can Meta claim that, in order to qualify as an abusive refusal of access within the meaning of Articles 102 TFEU and L. 420-2 of the French Commercial Code (Code de commerce), a contractual relationship must exist between the operators concerned. Indeed, the case law referred to in paragraphs 172 to 176 pertains to refusals to contract and concerns, by hypothesis, undertakings that are not yet in a commercial relationship. Moreover, when the abuse is based on the conditions to which access to the dominant operator's infrastructure is subject, whereby qualifying such a practice would depend on commercial relations already existing, would mean that this type of practice would be systematically unpunished.
186. In addition, it should be noted that Meta has a particular responsibility not only with regard to its dominant position but also because it controls infrastructure to which access is essential for the growth of downstream operators. As will be detailed below in paragraphs 244 to 248 Meta's control over the integration of ad verifiers into platforms with a significant share of

²⁰⁸ Judgment of the Paris Court of Appeal (Cour d'appel de Paris) of 21 May 2015, Solaire Direct, RG n° 2014/02694, page 16.

²⁰⁹ Judgments of the Court of Justice of 27 March 2012, Post Danmark, C-209/10, points 40-41 and of 30 January 2020, Generics (UK) Ltd e.a. / Competition and Markets Authority, C-307/18, point 165.

²¹⁰ Communication from the Commission — Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, OJ 29.02.2009 2009/C 45/02.

ad spend (as is the case with Meta's inventories) constitutes a barrier to entry and expansion in the independent ad verification market. Verifiers without access can only compete in sub-areas of the market, through narrow service offerings, unlike general operators who do have access. In this respect, Meta acts as a regulator of the independent ad verification market.

187. It should therefore be verified whether Meta has applied unfair and discriminatory conditions for access to its viewability and brand safety partnerships, and whether such a practice is likely to have anticompetitive effects. Finally, it will have to be verified whether the potentially anticompetitive practices identified are justified, as the case may be.

a) On the conditions of access to the Meta platforms

On the conditions of access to the viewability and brand safety partnerships before January 2023

188. Firstly, it is clear from the findings in paragraphs 70 to 77 that Meta did not put in place any procedure for integrating into its viewability and brand safety partnerships based on objective, transparent and non-discriminatory criteria. The only way to be integrated was by invitation from Meta. Furthermore, up until January 2023, Meta had not defined the criteria that had to be met for an operator to join these partnerships. At most, Meta had identified, internally, broad and vague considerations for selecting operators who wished to be included, but never communicated these to potential candidates who contacted it.
189. However, by ensuring that joining its partnerships was only possible by prior [and arbitrary] invitation from Meta, Meta thereby excluded any possibility of a transparent and objective application procedure, and *de facto* locked access to its ecosystem. Thanks to this set-up, Meta had complete control over the competition between its current and potential ad verification partners, as it was able to decide arbitrarily and randomly when and how to integrate a new partner, and whether to bring in an innovative or disruptive player. Furthermore, a system of invitations has the effect of deterring potentially interested players from providing ad verification services in general, and on the Meta platforms in particular, since regardless of the efforts they would be willing to make to become a serious competitor in the ad verification market (e.g. in terms of accreditation, technological expertise or business development), they would have no guarantee of being selected by Meta (see, below, paragraphs 221 et seq.).
190. The fact there are no objective, transparent and non-discriminatory criteria further strengthens Meta's control over the current and potential competition between ad verification players in its ecosystem. In effect, this allows Meta to choose its partners in an opaque and arbitrary manner, and potentially not to take into consideration players which merit being incorporated as much as existing partners.
191. In this respect, Meta cannot claim *a posteriori* that it was applying objective criteria that had not been previously defined and were not known to the market. In any event, the categories referred to by Meta in its observations, namely (i) advertiser demand based on repeated, consistent and significant market signals (primarily from its advertiser clients) regarding the ad verification service provider and (ii) the resources that would have to be deployed by Meta to integrate a new partner cannot²¹¹, in the absence of any specific definition, be qualified as objective criteria, and are no more than considerations borne in mind by Meta.
192. Indeed, neither of these two categories has quantitative elements that would make their implementation objective and considered as criteria. Moreover, Meta did not provide any documents showing that analyses were made based on these parameters when its partners joined the partnerships. Furthermore, from January 2023 onwards, Meta sought to refine these categories in the form of numerous criteria, thereby demonstrating, *a contrario*, the vague and artificial nature of these two categories.
193. With regard in particular to the criterion of advertiser demand, since it was not known to the market in advance, potentially interested operators could not take steps to meet this demand, for example by asking their clients to send requests to Meta. Furthermore, since access to the Meta ecosystem is a decisive competitive factor in the ad verification market (see below,

²¹¹ Classification mark 16,837.

paragraph 221), this criterion tends to favour incumbents who already have a partnership with Meta or at least a very large customer base, to the detriment of smaller operators or potentially innovative new entrants. Moreover, it relies on the intervention of third parties - the clients of the candidates for the partnerships - who may have different interests from the operators who are candidates for the partnerships and do not necessarily have access to the relevant contact persons within Meta.

194. With regard to the criterion linked to Meta's resources, apart from the fact that Meta did not provide any evidence of the resources needed to set up these partnerships, in order to justify limiting the number of partnerships, and that this criterion was not supported by any objective element, Meta's implementation was discretionary. Indeed, Meta did not analyse or indicate in advance how many partnerships it could offer, nor the criteria according to which possible requests would be prioritised according to the resources available (for example, by organising a call for applications *ab initio*), so that it could freely decide *a posteriori* and without any objection when it stopped admitting new partners.
195. Various elements in the case show that Meta only granted new viewability and brand-safety partnerships when these agreements were in its strategic interest, i.e. when it could satisfy more broadly the independent ad verification requests of advertisers on its platform. As such, for example:
- In an email dated 7 April 2020, in response to an enquiry from Meta's French teams regarding the 'Union des marques's endorsement of Adloox's request for inclusion, Meta said: "*I believe they've come up before as a potential partner but we'd need to assess the incremental value they could provide beyond the global viewability providers we're already working with. Could you share any further context on the UDM ask? Are they aware of the other companies operating in the space, and do they see Adloox as providing something that others can't?"²¹²;*
 - In an email from Meta dated 11 May 2020 in response to the request by Publicis for Adloox to join the partnerships, Meta stated "*that the added value of an incremental partner to Facebook and the market is minimal. So we are not looking to onboard new partners at this time*"²¹³;
 - In its observations in response, Meta explained that the demand criterion referred to above was intended to verify that "*the scale of advertisers involved, in terms of advertising budget on Meta's services, as well as the number of advertisers requesting that their ad verification service provider be included, are the key elements of assessment for Meta insofar as this allows it to ensure that the concluded partnership will satisfy a large number of advertisers running their ad campaigns on its services, thereby ensuring optimal coverage, or at least covering a significant volume of ads*"²¹⁴.
196. Nevertheless, Meta's approach is incompatible with its specific responsibility as the dominant operator and regulator of a platform, access to which is a key factor for the expansion of downstream operators. It is clear from the principles set out in paragraphs 172 to 180 that, once an undertaking is in a dominant position and has decided to open up its

²¹² Emphasis added. Classification mark VC 8,951 (classification mark VNC 11,077)

²¹³ Meta's response to the request of Publicis to integrate Adloox, classification mark VC 1,141 (classification mark VNC 1,602).

²¹⁴ Classification mark 16,837, emphasis added.

infrastructure to third parties, it must subject this access to objective, transparent, non-discriminatory and proportionate conditions.

197. Indeed, it was in application of this arbitrary process that Meta discriminatorily denied Adloox access to its ecosystem.

On Meta's discriminatory refusal of Adloox

198. The findings in paragraphs 58 to 68 show that despite repeated requests from Adloox between 2016 and 2022, Meta refused to include Adloox in its Measurement partnerships for ads, even though Adloox was in a similar position to Meta's partners as regards Meta's purported criteria for processing requests for inclusion (see paragraph 191).
199. On the one hand, it can be seen from the exchanges mentioned in paragraphs 60 to 64 that several advertisers have asked for Adloox to be admitted to the Meta platforms. Internal Meta exchanges even mention that "*the flurry of emails around Adloox is quite impressive...*"²¹⁵. In particular, Adloox's inclusion was requested by major operators in the online advertising sector in France, including the UDM, a trade body that assists companies in building and enhancing their brand and constitutes, in Meta's own words, one of "*our most strategic trade bodies*"²¹⁶, Publicis, but also the companies AMNET (the trading desk of the Dentsu Aegis Network)²¹⁷, Tradelab²¹⁸, Mindshare²¹⁹ and Zebestof²²⁰.
200. On the other hand, Meta never relied on its technical inability to integrate Adloox into the Meta platforms. On the contrary, Meta incorporated three partners in a short space of time, between 19 April 2016 and 17 January 2017 - i.e. at the same time as Adloox's requests - and then two others during the 4th quarter of the same year²²¹. Following its refusals of Adloox, Meta continued to integrate new brand safety partners, including DoubleVerify, IAS and Zefr (the latter had not previously concluded a viewability partnership with Meta, unlike the first two) in 2019.
201. Moreover, Adloox was a particularly credible candidate, as it had much better MRC accreditations than some integrated partners, such as Zefr - brand safety partner since 2019 - which had none, or Meta itself which, until the end of October 2022, was not accredited for viewability (see paragraph 33).
202. Finally, Adloox was in a generally similar situation to Meetrics, a German ad verification services operator which was acquired in 2021 by DoubleVerify, and which was integrated into Meta's viewability programme in 2017. Meetrics, like Adloox, was a European operator with a strong local footprint, particularly in the German market, which at the time of its

²¹⁵ (classification mark VC 7,772 - classification mark VNC 17,624).

²¹⁶ Emphasis added. Classification mark VC 8,951 (classification mark VNC 11,077) (full text): "*One of our most strategic trade Body, the french Union of Advertisers called UDM, contacted us in order to give support to a french partner called Adloox ..[...]*".

²¹⁷ Classification mark VC 13,997 (classification mark VNC 14,510).

²¹⁸ Classification mark VC 14,000 (classification mark VNC 14,512).

²¹⁹ Classification mark VC 14,002 (classification mark VNC 14,514).

²²⁰ Classification mark VC 14,004 (classification mark VNC 4,516).

²²¹ Classification marks 46 and 1,040.

integration had very similar revenues to Adloox (around €4 million). Moreover, in 2017, Adloox had more MRC accreditations than Meetrics²²².

203. In this respect, Meta cannot validly argue that the situation of Meetrics was substantially different from that of Adloox due to the significant pressure on Meta from German advertisers, via the trade associations of the main German advertisers²²³. As recalled above in paragraphs 63 to 64 and 199, major players in the French online advertising industry had requested that Adloox be integrated.
204. In fact, the exchanges between Meta and Adloox referred to in paragraphs 59 to 64 above, reveal that Meta never intended to integrate Adloox. As indicated in paragraph 195 above, Meta would only enter into new partnerships if it the agreement was in its own interest. In the case of Adloox, Meta considered that *"the added value of an incremental partner to Facebook and the market is minimal. So we are not looking to onboard new partners at this time"*²²⁴.
205. In this respect, many of Meta's responses in its exchanges with Adloox appear to be purely stalling tactics, since Meta never considered granting Adloox access to its ecosystem. For example, while Adloox's first request dates back to 4 July 2016, Meta waited until 4 October 2017 before telling Adloox, after numerous exchanges, that it was refusing to integrate it into its platform (see above, paragraph 59). Some exchanges show that Meta continued to maintain links with Adloox without any intention of looking into its requests:
- For example, in an internal exchange on 25 February 2019, an employee of Facebook France said *"And the one dude [Romain Bellion –founder of Adloox] has been straight begging for an in person meeting. I keep saying no thank, no thanks, no thanks because I don't want to be a jerk. What would you do if you were me? Keep saying no thanks? Or would you ever actually entertain a meeting just to be nice?"*²²⁵;
 - In an internal exchange of 18 July 2019, an employee of the French teams of Facebook France, who mentioned Adloox's insistent requests, was told *"no bc you are leaving, if you want to respond with another "no" in your own words, id think that would be ok and buy us some time until he asks again in a few months"*²²⁶.

On the conditions of access to the viewability and brand safety partnerships after January 2023

206. In January 2023, Meta informed the investigation services of the *Autorité* that it had adopted new "eligibility criteria for viewability and brand safety partnerships" with a view to including new players in these partnerships in the near future. Nevertheless, the conditions of access to the Measurement partnerships communicated by Meta and described in paragraphs 79 to 88 do not seem to meet the requirements of objectivity and transparency to which a dominant operator is bound in its relations with its current or potential partners.

²²² Classification mark 12,682.

²²³ Classification mark 16,843.

²²⁴ Meta's response to the request of Publicis to integrate Adloox, classification mark VC 1,141 (classification mark VNC 1,602).

²²⁵ Classification mark VC 8,439 (classification mark VNC 17,696).

²²⁶ Classification mark VC 8,911 (classification mark VNC 17,707). .

207. It should be noted from the outset that the process of admission to the partnerships in question is still based on prior invitation from Meta, using internal evaluation parameters that are confidential and unknown to the market. Indeed, the "*eligibility criteria*" communicated in January 2023 by Meta are only intended to be communicated to potential partners invited by Meta to participate in the admission process, after having signed a confidentiality agreement relating to these criteria. However, as indicated in paragraph 189 above, access which depends on the invitation of a dominant operator, which itself is based on confidential parameters, allows the dominant operator to organise access to its infrastructure in a discretionary and discriminatory manner.
208. The lack of transparency in this invitation procedure suggests that the new criteria for accessing the viewability and brand safety partnerships from January 2023 do not meet the requirements of objectivity, transparency and proportionality that are necessary with regard to access to the Meta platforms within the meaning of the principles set out above in paragraphs 172 to 180.
209. Moreover, Meta is perfectly aware of the lack of transparency in this admission process, since it states in an internal e-mail exchange of 19 July 2022 that: "*Because the eligibility criteria is not externalized and measurement is an invite only program, **there is no transparency** to partners of how measurement partners are invited and eligible to be badged, and this is one of the issues that was found during the FCA [French Competition Authority] settlement*"²²⁷.
210. Furthermore, despite the requests made by the investigation services, Meta did not provide any internal documents detailing the objectives it pursued in laying down the eligibility criteria in January 2023 and, in particular, the concerns that guided the choice of these parameters²²⁸.
211. Moreover, the numerous eligibility criteria (21 cumulative conditions) proposed by Meta for both the viewability and brand safety partnerships may, after a preliminary analysis, be qualified as subjective, discriminatory and disproportionate.
212. Firstly, with regard to the criteria for the viewability partnership, Meta presents these as follows²²⁹:

²²⁷ (Classification mark 17,243). Emphasis added.

²²⁸ Classification marks 15,509 to 15,510.

²²⁹ Classification marks 15,507 and 15,508.

META'S ELIGIBILITY CRITERIA FOR THE VIEWABILITY PARTNERSHIP – JANUARY 2023	
SIZE	(i) the potential partner must have MRC accreditations for the categories: <ul style="list-style-type: none"> – Rendered Ad Impressions for Display and video; – Viewable Ad Impressions and Viewability for Display and video; – Sophisticated Invalid Traffic Detection/Filtration for Desktop, Mobile Web and Mobile In-App.
	(ii) the viewability solution should cover the web on desktops, mobile devices and tablets for video and image impressions
	(iii) the potential partner must provide services to advertisers who are among the top 200 advertisers on Meta's services
	(iv) its solution must support at least two major publishers other than Meta's services or have a significant market footprint (covering at least 30% of the viewability market in the geographic area where the potential partner is located, as defined by advertiser spending on Meta's services).
QUALITY	The potential partner must demonstrate, via a detailed methodology, that its viewability solution can measure: <ul style="list-style-type: none"> (i) invalid human traffic, (ii) the pixels that have appeared in the viewport, and (iii) the length of time the ad is viewed;
MAINTAINING THE PARTNERSHIP	In order to maintain its status, the partner must provide its ad verification services to at least 20 active advertisers on Meta's services , via the viewability application programming interface ("API"). This requirement must be met at all times and will be evaluated periodically based on the previous 180 days.

213. These criteria appear to be open to criticism, particularly in light of the following elements:

- the size criteria (iii) and (iv) as well as the criterion for maintaining the partnership mean that operators which already have a large footprint on the independent ad verification market are preferred. These criteria are all the more restrictive given that access to the Meta ecosystem constitutes a significant competitive advantage with a view to developing a customer base and gaining access to other inventories (see, in this respect, paragraph 221 below). These criteria automatically mean that new market entrants, with innovative technologies or approaches, who have not yet been able to build up a substantial customer base, or access significant inventories, are excluded. These criteria therefore result in existing barriers to entry and expansion being reinforced, and even new barriers arising, on the independent ad verification market;
- the size criteria (iv) are vague: the terms "*major publishers*", "*market viewability*" or "*geographical area where the potential partner is located*" are not defined. This last aspect is all the more unclear and surprising as ad verification services can be provided remotely without a local presence being necessary. Similarly, in order to be implemented, the size criterion (iii) should be accompanied by an updated list of the top 200 Meta advertisers;
- the quality criterion as well as size criterion (i) (having certain MRC accreditations) go beyond what is necessary given the nature of the partnership proposed by Meta, which consists of supplying data already processed by Meta, not requiring the implementation of the technology covered by these criteria.

214. Next, the eligibility criteria for the brand safety partnership are laid down by Meta as follows:

META'S ELIGIBILITY CRITERIA FOR THE BRAND SAFETY PARTNERSHIP – JANUARY 2023	
SIZE	<p>The potential partner must have:</p> <ul style="list-style-type: none"> (i) clients in 30 countries (ii) 15 software/data/machine learning engineers (iii) 5 data scientists; (iv) 5 full-time employees or more than 30,000 crowdsourcing partners (v) support human review raters, artificial intelligence, machine learning, text analysis, natural language processing and audio analysis (vi) support more than 3 types of media (video, images, URL links, etc.).
QUALITY	<p>The potential partner must:</p> <ul style="list-style-type: none"> (i) prove the accuracy (> 70%) of the main classification models, (ii) be a member of the World Federation of Advertisers or the Global Alliance for Responsible Media; (iii) be a member of the Interactive Advertising Bureau (IAB); (iv) have a badge on at least two of the following platforms: YouTube, Twitter, TikTok, Pinterest, Reddit, SNAP, LinkedIn; (v) provide at least three publicly available case studies, white papers, etc. addressing brand suitability/safety, and (vi) have at least 2 certifications (TAG, MRC, etc.).
MAINTAINING THE PARTNERSHIP	<p>In order to maintain its status, the partner must provide its ad verification services to at least 30 active advertisers on Meta's platforms, via block lists, content permission lists, publisher lists, ad serving reports and the Facebook Feed verification function. This requirement must be met at all times and will be evaluated periodically based on the previous 180 days.</p>

215. These criteria can be qualified as discriminatory and disproportionate, after a preliminary analysis, in particular, with regard to the fact that:

- as is the case for the viewability partnership, they result in operators who already have a solid foothold in the independent ad verification sector being preferred, and access to Meta's ecosystem being blocked for the smallest operators and new entrants in this sector. This risk is all the greater in this partnership, as the requirements laid down are even stricter than those for the viewability partnership, as can be seen from the criteria for the number of clients (size criterion (i) and maintaining the partnership criterion), available human resources (size criteria (ii) to (iv)) and partnerships with other advertising publishers active on the markets for social media (quality criterion (iv));
- the size criteria regarding the human resources of the potential partner ((ii) to (iv)) could be qualified as disproportionate to the nature of the partnership proposed by Meta, which involves supplying already processed data and does not involve the implementation of sophisticated technology to collect the data necessary for providing the brand safety verification service;
- With regard to the quality criterion, the required membership of the various professional bodies stipulated in (ii) and (iii) may, in the absence of any justification,

appear disproportionate and excessive since they relate to sectoral trade bodies, such as the Global Alliance for Responsible Media and the World Federation of Advertisers which - apart from being complementary, the first association is part of the second - do not provide any guarantees as to the quality of their members since they do not issue accreditations or certifications;

- the quality criterion (iv) concerning the fact that the candidate has to be on other platforms seems difficult to justify in that, apart from giving an advantage to operators who already have a significant presence on the market, as mentioned, it does not mention the presence of the potential partner on other major platforms (such as Amazon, which is one of the main players in online advertising worldwide) or in Open Display. However, the provision of ad verification services in Open Display requires much more sophisticated technology to collect the relevant data than is required to provide these services on closed environments, such as platforms, which typically share the data with the independent verifier;
- the quality criterion (vi) requiring at least two accreditations seems disproportionate with regard to current market standards. Indeed, the "Centre d'Etudes des Supports de Publicité" (hereinafter "**CESP**") indicates in its responses to the investigation services that (freely translated) the "*MRC guidelines on Brand Safety were published in September 2018. However, none of the major players in ad verification are currently accredited to these standards and the benchmark still remains the guidelines published by the IAB in 2012*".

216. Finally, the two sets of criteria proposed for each partnership highlight several discrepancies. Indeed, while the second partnership is conditional on significant human resources, the first partnership has no such requirement.
217. As such, as the investigation stands, the conditions of access to the viewability and brand safety partnerships applied by Meta since they were created are non-transparent, arbitrary and discriminatory. Furthermore, the eligibility criteria communicated by Meta to the *Autorité* in January 2023, which are intended to be applied only after Meta has invited a candidate to participate in its admission process, on the basis of a purely internal analysis, the parameters of which have not been communicated to the market, appear disproportionate and discriminatory.

b) On the effects of the practice

218. According to the settled case law referred to in paragraph 181, in order to confirm that a practice is contrary to Articles 102 TFEU and L. 420-2 of the French Commercial Code (Code de commerce), the *Autorité* does not have to demonstrate an actual distortion of competition, but merely the possibility of such an effect, linked to the facts of which the undertaking in a dominant position is accused.
219. Based on the information collected at this stage of the investigation, the practices identified are likely to have three sets of effects.
220. Firstly, the discriminatory and non-transparent conditions of access to Meta's Measurement partnerships are likely to foreclose access to the ad verification market, to the benefit of players who already have access to Meta's ecosystem, thereby reinforcing the oligopolistic structure of this market.
221. First, as will be detailed in paragraphs 245 et seq. below, access to the Meta ecosystem is a key competitive factor. On the one hand, Meta concentrates a significant part of advertisers'

spend online (for non-search advertising) and, more particularly, on social media. Therefore, access to the Meta ecosystem makes it possible to handle requests for ad verification on the inventories on which advertisers concentrate most of their ad spend. On the other hand, access to the Meta ecosystem allows ad verifiers to offer complete coverage of the different inventories on which advertisers spend, thereby satisfying their demand for a single operator to measure and verify their advertising campaigns on the most important inventories.

222. Second, the elements in this case show that Meta redirects advertisers, who are looking for an ad verifier to have access to its ecosystem, to existing partners (see in particular paragraphs 63 and 64). In this way, Meta directs the demand for ad verification to the operators which already have access to its ecosystem, to the detriment of other existing operators and new entrants, thereby reinforcing the competitive constraints of the latter, due to their lack of access to the Meta ecosystem.
223. Secondly, the practices identified are likely to strengthen Meta's dominant position in the market for online advertising on social media. Limiting the number of independent operators with access to Meta's ecosystem is likely to limit the thoroughness of verifications within this ecosystem, with the result that Meta's advertising offering would likely not be criticised or questioned in the course of these verifications.
224. Third, as will be discussed in more detail below in paragraphs 256 et seq., discriminatorily denying access to Adloox is likely to result in the latter's foreclosure from the market in the near future, further reinforcing the oligopolistic nature of the market. Indeed, in addition to the fact that Adloox is unable to satisfy its customers' demand for ad verification in the Meta ecosystem, its current offering of other services is made less attractive by the fact that it cannot offer a comprehensive verification service for the main inventories where its customers spend, including Meta (on this point, see paragraph 263 below).
225. Meta is fully aware of this. For example, as early as 2017, one of its employees wrote in an internal mail that "*I don't think integrating with Adloox is strategically required for us, but it will likely kill their business [...]*"²³⁰. In another internal exchange on 25 February 2019, Meta stated, referring to the founder of Adloox "*His business will die soon*"²³¹.
226. The identified practices are therefore likely to have an anticompetitive effect and to distort competition.

c) On the lack of justification for the practices

227. Meta believes that all the conditions of access to its Measurement partnerships are justified by technical and regulatory considerations, in that they ensure the stability of its ecosystem and data sharing system, in compliance with regulations on the protection of personal data.
228. With regard, first of all, to the constraints relating to compliance with the regulations on the protection of personal data, apart from the fact that Meta does not substantiate the constraints it alleges, it should be noted from the outset that these assertions are refuted by the opinion of the CNIL of 8 December 2022, issued in the context of this complaint. Indeed, the CNIL stresses that in the context of the current Measurement partnerships proposed by Meta, the

²³⁰ Emphasis added. Classification mark VC 7,870 (classification mark VNC 11,077): "*We've told Adloox that we are not looking to integrate further viewability partners at this time. Marco and his team have continued to leverage their relationships to pressure us and we've continued to deliver the same message back. I don't think integrating with Adloox is strategically required for us, but it will likely kill their business*".

²³¹ Classification mark VC 8,439 (VNC 17,696).

supply of data by Meta, which are already processed by the latter, does not entail any responsibility on the part of its partners with regard to the applicable regulations on the protection of personal data. The CNIL also states that (freely translated) "*since they do not intervene in the definition of the essential means of trackers installed by Meta, it does not seem possible, at this stage of the investigation, to qualify third-party companies as responsible for installing trackers operated by the platform. In this respect, in the current situation, the Commission considers that Meta is solely responsible for reading and writing operations, which make it possible to collect these verification data, and then for transmitting the data to third-party verifiers who will, on the other hand, be responsible for the use of the data collected in this way*"²³².

229. With regard to technical considerations, it should be noted that Meta did not provide any quantitative element that would allow a concrete assessment of the constraints relating to the implementation of the viewability and brand safety partnerships, despite the repeated requests of the investigation services²³³ and the questions of the Board during the hearing. Furthermore, the various explanations provided by Meta at this stage of the procedure seem, in some respects, contradictory. For example, with regard to the implementation of the partnership, Meta's statement in its written observations that these partnerships "*require significant resources to be deployed by Meta, in particular with regard to the data supplied to the viewability partners*"²³⁴ seems to contradict the statement that "*each viewability partner obtains the same type of data signals, except for invalid traffic, which can be adapted according to the wishes of each partner*"²³⁵.
230. In any event, Meta's justifications only pertain to its capacity to take on new partners, and not to its capacity to put in place an objective, transparent and non-discriminatory procedure and criteria for candidates to access these partnerships. The potentially abusive practice identified in this decision is not Meta's refusal to integrate new partners into its ecosystem as such, but the conditions under which Meta refused Adloox and the conditions governing access to its viewability and brand safety partnerships.
231. The lack of objective, transparent, non-discriminatory and proportionate criteria, and of a procedure whereby any operator who considers that it meets Meta's criteria can approach the latter appears all the more unjustified since Meta, in the context of Decision 22-D-12 of 16 June 2022, made commitments to the *Autorité de la concurrence* to respond to a similar competition issue related to "*a lack of objectivity, transparency, predictability and stability of the access criteria*" of its former "Facebook Marketing Partner" programme.
232. It follows that the potentially anticompetitive practices identified do not appear to be justified at this stage of the investigation.

3. CONCLUSION

233. At this stage of the investigation, the conditions for accessing Meta's viewability and brand safety partnerships are likely to be qualified as abusive given their discriminatory and non-

²³² Classification mark 2,151, paragraph 30, emphasis added.

²³³ In this regard, see Meta's replies to the questionnaire of the investigation services dated 23 December 2022 (classification marks 2,929 to 2,930) and 24 February 2023 (classification marks 16,922 to 16,929).

²³⁴ Classification mark 16,848.

²³⁵ Classification mark 16,846.

transparent nature, and the fact that Meta is able to apply them at its own discretion. Indeed, while the viewability and brand safety partnerships have existed since 2015 and 2019 respectively, Meta has neither defined nor communicated the criteria for accessing them, and has reserved such access for a limited number of operators chosen in a discretionary and opaque manner, and in line with its own strategic interests. Incorporating these two partnerships in the MBP programme in 2020 did not change this situation, as the independent verifiers still did not know how they could join these partnerships, and the number of partners remained unchanged. Based on a preliminary analysis, the new eligibility criteria for these partnerships communicated to the *Autorité* in January 2023 appear to be disproportionate, and to favour partners who already have access to Meta's ecosystem, to the detriment of new, innovative entrants. Furthermore, Meta has kept in place an admission process which is based on an invitation it sends to candidates, and which uses internal evaluation parameters that are confidential and have not been communicated to the market.

234. Furthermore, denying Adloox access to the Meta ecosystem under these conditions is likely to be discriminatory.
235. Finally, Meta has not provided any evidence to justify these practices.
236. On the basis of the evidence presented, these practices are likely to have detrimental effects on competition, in particular by foreclosing the market for independent ad verification, and by strengthening Meta's dominant position on the market for online advertising on social media and, more generally, on the market for online non-search advertising.

F. ON THE REQUESTS FOR INTERIM MEASURES

237. Article L. 464-1 of the French Commercial Code (Code de commerce) provides that (freely translated) "*the Competition Authority may, at the request of the Minister of the Economy, the persons referred to in the last paragraph of Article L. 462-1 or companies, or on its own initiative and after hearing the parties involved and the representative of the Minister of the Economy, take any interim measures that are requested of it or that appear necessary. Such measures may be taken only if the practice in question causes serious and immediate harm to the general economy, to the sector concerned, to the interests of consumers or, as the case may be, to the complainant company. They may include the suspension of the practice concerned and an injunction to the parties to return to the status quo ante. They must remain strictly limited to what is necessary to deal with the emergency pending the decision on the merits*".
238. In order to determine whether the reported practices warrant interim measures being ordered, it is necessary to assess the serious and immediate nature of the harm caused to the general economy, the sector concerned, the interests of consumers or the complainant company. However, these various instances of harm are not cumulative conditions, but substitutes: serious and immediate harm identified in only one of these cases is sufficient to warrant interim measures to be ordered.
239. On the other hand, the seriousness of the harm, its immediacy, and whether there is a causal link between the reported practices and the harm are three cumulative criteria²³⁶.

²³⁶ Decision 20-MC-01 of 9 April 2020 on requests for interim measures by the Syndicat des éditeurs de la presse magazine, the Alliance de la presse d'information générale and others and Agence France-Presse, paragraph 271.

1. ON THE SERIOUS AND IMMEDIATE HARM TO THE GENERAL ECONOMY, THE SECTOR CONCERNED, INTERESTS OF CONSUMERS, OR THE COMPLAINANT COMPANY

a) On the seriousness of the harm

As regards the ad verification sector

240. Meta argues that it has not been established that there has been harm to the ad verification sector. The independent ad verification sector does not have the characteristics of an oligopoly, since there are numerous smaller companies in addition to the three main players (IAS, Oracle Moat, DoubleVerify), and digital markets such as ad verification are highly dynamic and allow an innovative new entrant to quickly gain market share.
241. However, the evidence collected during the investigation shows that the independent ad verification sector is already a highly concentrated market, structured around three main players, IAS, DoubleVerify and Oracle Moat.
242. According to IAS, while there is no data available to calculate the market shares of the ad verification players, only a few players currently offer the full range of ad verification services (viewability, fraud detection and brand safety), namely IAS, Moat, DoubleVerify and Adloox²³⁷. While DoubleVerify believes that the market in which it operates is a broader competitive market than ad verification, it estimates IAS's market share to be over 50% at European level in the ad verification business²³⁸. Based on the turnover of its clients, the media agency Dentsu estimates that IAS's market share ranges from 65% worldwide to 80% in France, while DoubleVerify's market share is around 30% worldwide²³⁹. Based on the total turnover of its client base, the media agency Publicis estimates that IAS's market share has ranged from 65% to 95% since 2016, while DoubleVerify's market share has ranged from 15% to 22% since 2020²⁴⁰.
243. DoubleVerify has also made acquisitions, taking over two competitors who were integrated on Meta's platforms, namely Meetrics in August 2021 and OpenSlate in November 2021. Furthermore, ComScore, which was integrated on Meta's platforms for viewability, stated that it has exited the ad verification market (except in the US). This consolidation reinforces the oligopolistic nature of the independent ad verification sector.
244. Besides its high level of concentration, the ad verification sector involves time and capital investments to enter and stay in the market, which may constitute barriers to entry for smaller companies.
245. But above all, the obstacles to the integration of independent verifiers by the platforms constitute a second source of barriers to entry. Indeed, in order to access the inventories of vertically integrated platforms, ad verifiers must first be integrated into their ecosystem. The refusal of a platform is therefore likely to have serious consequences on a rejected candidate's competitiveness, [Confidential]²⁴¹.

²³⁷ Classification marks VC 2,876 and 2,877.

²³⁸ Classification mark VC 10,601.

²³⁹ Classification mark VC 13,762.

²⁴⁰ Classification mark VC 2,743.

²⁴¹ [Confidential].

246. This second barrier to entry creates different degrees of competition in the market. In particular, players without access to the most important platforms, such as Meta, can only compete in subsets of the market, often niche markets, unlike players with access to the main platforms, which are able to compete in the broader ad verification market. The result is a segmented market, made up of a small number of non-specialist players who generally benefit from multiple integration on the various platforms, and a number of specialist players who compete asymmetrically with one another.
247. While independent verifiers, such as Adloox, are still able to operate in the open display sector, this segment alone does not appear to be enough to stay competitive in the ad verification sector in the short term.
248. In a context where advertising on social media is becoming increasingly important for advertisers, access to Meta's ecosystem, which has a largely dominant position as regards online advertising on social media, appears to be essential in order for a company to remain competitive. This is all the more so given that an increasing number of advertisers, mindful of cutting costs, tend to use only one independent verifier for all their needs, and therefore stipulate that the provider must have access to the Meta ecosystem (see paragraphs 24 above and 263 below).
249. Meta's practices are therefore likely to reinforce an oligopolistic market structure, with a reduced number of players chosen by Meta to compete for a significant share of advertisers' verification spend. Owing to the fact that this is an emerging market and that innovation is crucial (see paragraph 25 above), the ad verifiers excluded by Meta, such as Adloox, are likely to be hamstrung in their development without an effective opportunity to provide competitive multi-channel offerings to advertisers. As such, as long as Meta continues this practice, the future possibility of these players to compete effectively in the ad verification market is likely to diminish. The agency GroupeM has already noted that a French independent verification company (Adledge) went into receivership in 2019, as it was unable to offer its services on the Meta and YouTube platforms²⁴².
250. Meta's practices also come at a time when the public authorities have expressed serious concerns about the conduct of advertising platforms, which find themselves in a "*judge and jury*" situation, by offering their own ad verification services to advertisers²⁴³.
251. In a 2020 report on online advertising, a mission by the General Inspectorate of Finance and the Court of Auditors (Cour des Comptes) recommended (freely translated) "*a solution to "challenge" the results presented by Google and Facebook in terms of measurement [which] would consist of imposing the interoperability of their tools with third-party tools*"²⁴⁴.
252. This was the objective of the European legislator in Regulation 2022/1925 of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act, hereinafter "**DMA**"), which aims to combat certain anticompetitive practices of structural digital platforms, and the obligations of which will be enforceable against "*gatekeepers*" designated by the Commission, for activities that it will have identified as

²⁴² Classification mark VC 2,346.

²⁴³ Classification mark 15,821.

²⁴⁴ Classification mark 15,821.

constituting "*core platform services*" as of March 2024²⁴⁵. In its Recital 58, the DMA highlights the fact that "*The conditions under which gatekeepers provide online advertising services to business users, including both advertisers and publishers, are often non-transparent and opaque. This often leads to a lack of information for advertisers and publishers about the effect of a given advertisement*". To remedy this problem, Article 6(8) of the DMA provides that "*The gatekeeper shall provide advertisers and publishers, as well as third parties authorised by advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data. Such data shall be provided in a manner that enables advertisers and publishers to run their own verification and measurement tools to assess the performance of the core platform services provided for by the gatekeepers*".

253. However, far from contributing to this objective of opening up the ad verification market, Meta's practices, on the contrary, have the effect of restricting the number of independent verifiers active on its platforms. By creating artificial barriers to entry and expansion, such practices are likely to significantly hinder the development of the ad verification sector and the incentives to innovate, given how important access to Meta's advertising inventories is for the players in this sector.
254. These practices, which are clearly inconsistent with the objectives pursued by the European legislator in the DMA, are likely to ultimately harm the interests of advertisers, by unjustifiably reducing the number of independent actors they can solicit to verify the quality of the ads invoiced by Meta. On this point, it should be noted that the viewability reports provided by Meta to advertisers include ads that do not correspond to the common market standard defined by the MRC. Indeed, as Meta itself acknowledges, its advertising reports made available to advertisers, used for the billing of its inventories, count impressions as soon as at least one pixel of the ad has appeared on the screen of the browser or the mobile app. But according to the standards of the MRC, the viewability data only have to include ads where more than 50% of the pixels in the video ad or 50% of the pixels in the static image ad (or "display") were displayed on the screen. Therefore, a portion of the impressions counted for billing to advertisers²⁴⁶ by Meta are impressions, which should not be counted as viewable ad impressions according to the MRC standards.
255. For all these reasons, the harm caused to the ad verification sector by the reported practices must be regarded as serious.

As regards the interests of the complainant

²⁴⁵ In accordance with Article 3(10) of the DMA, the obligations will be enforceable within six months after the Commission's decision designating the "*gatekeeper*" and listing the activities of that undertaking which may be qualified as "*core platform services*" and therefore subject to the DMA. The first designation decisions are expected between August and September 2023. Nevertheless, under Article 3(5), an undertaking that presents sufficiently substantiated arguments to contest its designation may, in certain circumstances, request the Commission to launch the market investigation provided for in Article 17(3) of the DMA, thereby postponing the date from which the obligations of the DMA are enforceable.

²⁴⁶ Classification mark 16,929.

256. Adloox has stated that the fact that it cannot provide verification services for advertising campaigns organised within Meta's ecosystem has severely impacted its business²⁴⁷. It asserts that Meta's conduct has impaired its ability to contract with new clients and that many clients have stopped using its services due to the lack of access to Meta's ecosystem, both advertisers and agencies²⁴⁸. According to Adloox, its impaired competitive and financial situation mean that its exit from the market is inevitable in the short term.
257. Meta maintains that the fall in Adloox's turnover (around 30% since 2017) is insufficient to claim that there has been serious harm to its interests, in the absence of an imminent threat to the company or a risk of exit from the market. Meta argues that Adloox does not provide any evidence that it will soon exit the market and disputes the reliability of its cash flow forecasts.
258. The *Autorité* has noted in its decision-making practice that interim measures may be ordered 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*"²⁴⁹. The Paris Court of Appeal (Cour d'appel de Paris) has previously held that (freely translated) "*the fact that a company has positive results does not prevent it from incurring serious and immediate harm as a result of the practices*"²⁵⁰, provided that the practices in question hinder its development and risk preventing it from remaining on the market in the long term if there is no intervention by the *Autorité*. As such, it is not necessary to identify a decline in the complainant's market share, or a risk of imminent exit from the market, in order to confirm that there is serious harm to the interests of the complainant, as long as the practice in question is likely to undermine its expansion and jeopardise its competitive survival on the market²⁵¹.
259. In this case, the fact that Adloox cannot offer its ad verification services on Meta not only deprives it of an important growth driver, but is also likely to cause it to lose its current clients. As such, contrary to what Meta maintains, the practices at issue do not simply constitute a loss of profit for Adloox, but entail financial losses for this company, and its viability appears to be in jeopardy before the end of an investigation on the merits of the case, if interim measures are not ordered.
260. In this regard, it should be noted that Adloox's turnover grew strongly from 2013 to 2017 (600% increase between 2013 and 2017), before declining substantially (33% decrease between 2017 and 2022), in tandem with Meta's refusal to allow Adloox access to its ecosystem and the gradual expansion of Meta's partnerships with Adloox's competitors.
261. At a time when the market for ad verification was growing (see paragraph 283 below), this general decline in Adloox's business from 2017 onwards pushed it into a difficult situation.

²⁴⁷ Classification mark 47.

²⁴⁸ Classification mark 48.

²⁴⁹ Decisions of the *Autorité* 19-MC-01 of 31 January 2019 on the request by Amadeus for interim measures, paragraph 168; 13-D-16 of 27 June 2013, paragraph 178; 12-D-01 of 10 January 2012, paragraphs 183 to 185; of the French Competition Council (*Conseil de la concurrence*) 09-D-12 of 18 March 2009, paragraphs 62 and 69.

²⁵⁰ Paris Court of Appeal (Cour d'appel de Paris), 31 October 2014, 2014/19335, page 15.

²⁵¹ See Decision 14-MC-01 of 30 July 2014 on the request for interim measures by BeIN Sports France in the pay-TV sector, paragraphs 252 to 255, and the judgment of the Paris Court of Appeal (Cour d'appel de Paris), 9 October 2014, 14/16759, page 16.

The company's financial results, available up to November 2022, show that the company made losses in the first five months of the 2022/2023 financial year. The financial forecasts provided by Adloox show that the company anticipates financial losses that would reduce its available cash by approximately half, by October 2023²⁵². These forecasts, which are based on a 10% decline in Adloox's turnover compared to the 2021-2022 financial year²⁵³, are backed up by a certificate from a firm of chartered accountants²⁵⁴.

262. In this respect, it should be noted that several of Adloox's major clients have recently stopped using its services or have reduced their business with it, as it is not integrated on Meta's platforms²⁵⁵.
263. Furthermore, some of Adloox's largest clients use Adloox for ad verification on open display and its competitors for ad verification in the Meta ecosystem. But any decision by these clients to simplify their organisation by using only one provider would necessarily be to Adloox's disadvantage and could immediately impact its turnover²⁵⁶. Contrary to what Meta maintains, this concern communicated by Adloox is not based on mere hypotheses, but is confirmed by the responses to the market test. Indeed, advertisers are increasingly likely to use only one ad verifier which covers all their needs. BNP-Paribas, for example, raises the possibility of pooling costs and contact persons, by using a single ad verifier²⁵⁷. This trend among advertisers to group their expenditure with a single ad verifier which covers both their needs on open display and on social networks, is confirmed by the media agency Dentsu, which stated that (freely translated) "*the demand for measurement has evolved, given that measurement services on social networks did not exist in 2010. Advertisers generally want to have a harmonised measurement overview of all their media activities (Display, Social, etc.) and will be more interested in a tool which can measure both environments (Open Display and social networks)*"²⁵⁸. For example, Publicis explained that (freely translated) "*given the large sums invested on social networks, sometimes greater than what is spent on the open web, ad verification is essential for companies. In the vast majority of cases, the calls for tender to select a verifier relate to these two levers*"²⁵⁹. This phenomenon has undeniably helped accelerate the decline in Adloox's economic situation, by depriving it not only of spending by companies on Meta but also of spending on open display by companies that also use Meta and only want to use one ad verifier.
264. The decline in Adloox's turnover and the deterioration of its financial situation appear all the more serious as they occur in a market context where investment is a major competitive factor.
265. In this respect, the leading market actors have highlighted the importance of innovation-related investments in the market. DoubleVerify, for example, identifies the ability to

²⁵² Classification marks 18,305 and 18,306.

²⁵³ Classification marks VC 120-121 (classification marks VNC 1,569 and 1,570).

²⁵⁴ Classification mark 18,305.

²⁵⁵ Classification marks VC 14,615 and 14,616 (classification mark VNC 16,430 and 16,431).

²⁵⁶ Classification marks 132 and 133.

²⁵⁷ Classification mark VC 11,319 (classification mark VNC 17,443).

²⁵⁸ Classification mark VC 13,764 (classification mark VNC 13,820).

²⁵⁹ Classification mark 2,748.

innovate as one of the key competitive factors in the market²⁶⁰. Similarly, IAS highlights the importance of innovation and the sensitivity of its business to its investment decisions²⁶¹. Over the last three years, Adloox and its main competitors have invested around 20% of their annual turnover in research and development (R&D)²⁶². Furthermore, MRC accreditations represent a significant financial burden for Adloox (between 5 and 10% of its annual turnover), and losing these would significantly affect its competitiveness. However, given its cash flow forecasts, Adloox may not be able to pay the costs of the MRC audit, nor invest in new R&D expenditure, which would irreparably impair its competitiveness.

266. Finally, Adloox has been obliged to reduce its payroll by more than half since the 2016/2017 financial year²⁶³ and to significantly reduce its ancillary expenses (such as marketing and advertising expenses, which were scaled back by 87% between 2019 and 2022, or rent costs for Adloox's various offices, which were scaled back by 65% over the same period.²⁶⁴). The fact that Adloox has already made significant expenditure cuts limits its future flexibility should its business continue to deteriorate.
267. Meta's arguments, which relativised the drop in Adloox's turnover and downplayed the risk of this operator leaving the market, to conclude that there was no serious harm to the company, must therefore be rejected.

b) On the immediate nature of the harm

268. Meta believes that the condition of immediacy of the harm has not been established, given the long-standing nature of the practices in question. It argues that its refusal to allow Adloox access dates back to 2016 and that no new facts have arisen since then to justify the ordering of interim measures. Meta points out that Adloox claimed that it was at risk of exiting the market as early as 2017, and this has nothing to do with any recent practice on the part of Meta. Meta believes that Adloox's new request in August 2022 does not constitute a new fact and was submitted for the sole purpose of backing up its request for interim measures, without any possibility for Meta to analyse the request and to take a decision.
269. However, contrary to what Meta maintains, the lack of a response to Adloox's new request in August 2022 is likely to be interpreted as a new refusal by Meta to allow Adloox to enter the market and is more recent.
270. Indeed, Adloox's email to Meta on 9 August 2022, which stressed that its request was urgent, was met with a particularly vague reply, with Meta merely referring to "*a discussion on updating the status of the viewability program in a few weeks*", followed by an internal exchange within Meta's teams showing that Meta had no real intention to respond to Adloox's request: "*I'll let you know if there are any follow-ups (but I doubt there will be)*"²⁶⁵. Furthermore, the formal notice sent to Meta Platforms Ireland Ltd. and Meta Platforms Inc. was not answered by these two companies, even though they are directly responsible for

²⁶⁰ Classification marks 10,608 and 10,609.

²⁶¹ Classification mark 16,577.

²⁶² Over the period 2019 to 2022, IAS invested between 18.7 and 20.7% of its turnover, and DoubleVerify invested between 17.3 and 21% of its turnover. Sources: <https://stockanalysis.com/stocks/ias/financials/> and <https://stockanalysis.com/stocks/dv/financials/>.

²⁶³ Classification mark 119.

²⁶⁴ Classification marks 555 and 15,117.

²⁶⁵ Classification mark VC 17,728.

managing the viewability and brand safety programmes. Only Facebook France responded to Adloox's formal notice, more than a month after the one-month deadline stated in the letter, and merely referred Adloox to Meta Platforms Ireland Limited and Meta Platforms, Inc., which had already received the letter and never responded. In this context, Meta's argument that Adloox did not give it a reasonable period of time to consider its new request for access does not appear to be serious and must therefore be interpreted as a new, recent, refusal of access to its ecosystem.

271. Moreover, as explained above, Adloox finds itself in a critical situation, insofar as it faces the risk of exiting the market if no interim measures are ordered. However, the *Autorité's* standard practice states that (freely translated) "*only immediate harm can justify urgent intervention by the Autorité, aimed at preventing the occurrence of harm that a decision on the merits of the case would be powerless to halt or remedy*"²⁶⁶. Thus, immediate harm implies that the *Autorité* must intervene urgently, before its decision on the merits, to prevent the occurrence of harm, in this case the foreclosure of Adloox, regardless of the date of implementation of the anticompetitive practices. The fact that the company's situation began to deteriorate in 2017 does not make it any less urgent for the *Autorité* to intervene to prevent its exit from the market.
272. In any event, the introduction of access criteria for the viewability and brand safety partnerships in January 2023 constitutes a new practice, separate from refusing access to Adloox, insofar as these criteria are likely to affect all players operating in the independent ad verification sector. If these criteria were put in place after Adloox's complaint, the *Autorité*, which was referred to *in rem* of all facts and practices affecting the functioning of a market, may take these into account in order to assess the immediacy of the harm caused by Meta's practices to the interests of Adloox, as well as those of the independent ad verification sector.
273. Finally, the immediacy of the harm caused by Adloox's practices must also be assessed in light of the characteristics of the markets related to the services provided by digital platforms. In recitals 2 and 3 of the DMA, the European legislator observed that the platform services it defines as "core" are characterised "*by very strong network effects, an ability to connect many business users with many end users through the multisidedness of these services, a significant degree of dependence of both business users and end users, lock-in effects, a lack of multi-homing for the same purpose by end users, vertical integration, and data driven-advantages*". It also states that "*Some of those undertakings exercise control over whole platform ecosystems in the digital economy and are structurally extremely difficult to challenge or contest by existing or new market operators, irrespective of how innovative and efficient those market operators may be*". The European legislator therefore considers that "*All these characteristics, combined with unfair practices by undertakings providing the core platform services, can have the effect of substantially undermining the contestability of the core platform services, as well as impacting the fairness of the commercial relationship between undertakings providing such services and their business users and end users. In practice, this leads to rapid and potentially far-reaching decreases in business users' and end users' choice*"²⁶⁷.
274. In the ad verification sector, restrictions on access to the major advertising platforms such as Meta are likely to have potentially irreversible effects on smaller players (such as Adloox)

²⁶⁶ Decision 13-D-04 of 4 February 2013 on the request for interim measures concerning practices implemented by the EDF group in the photovoltaic electricity sector, paragraph 180 (French only).

²⁶⁷ Regulation. Underlining added.

or new entrants, in terms of building up a customer base and the capacity to invest, which would enable them to compete with players already integrated on Meta's platforms. As Oracle Moat highlighted (freely translated): "*This capacity of platforms to control the parameters of competition between verification services exacerbates the barriers to entry, due to the high levels of investment in research and development and the resources required to enable new integrations and adapt to change* »²⁶⁸.

275. These considerations prompted the European legislator to adopt *ex ante* regulation for this sector, considering that *ex post* control on the basis of Articles 101 and 102 TFEU was insufficient to provide a rapid and comprehensive response to the problems raised by the conduct of these core platform service providers. Resorting to interim measures therefore appears particularly relevant to ensure the effective implementation of competition law in these markets, which are characterised by short development and innovation cycles.
276. This is all the more so, given that the implementation of the DMA will lead to the opening of the market for ad verification on the gatekeepers' platforms (see paragraph 252 above). Meta's practices, which are intended to restrict the conditions of access to its advertising platforms, come at a particularly crucial moment for actors in the verification sector. Indeed, they are likely to artificially reinforce the barriers to entry in a sector that is already largely concentrated, which justifies urgent intervention by the *Autorité* all the more, at a time when the legislator wanted to encourage the development of this sector to remedy the issues relating to a lack of transparency, and the opaque conditions under which the core platforms provide their online advertising services.

c) On the causal link between the identified harms and Meta's practices

277. The practice implemented by Meta on 12 January 2023 has had the effect of making the conditions for admission to Meta's viewability and brand safety partnerships even more stringent. On the one hand, Meta has kept its invitation system in place, which means it can choose the partners it wishes to integrate into its ecosystem at its own discretion. On the other hand, Meta has added a list of so-called 'criteria', which appear to be non-transparent, non-objective and disproportionate, to allow a new entrant to access these two partnerships. Independent verifiers wishing to be incorporated into Meta's advertising platforms are therefore faced with additional obstacles to those that existed previously.
278. Given the importance of Meta's advertising inventories for an independent verifier, this practice is likely to reinforce the barriers to entry in the ad verification market, which already appears to be highly concentrated. This practice, which affects not only Adloox, but all independent verifiers, causes immediate and undeniable serious harm to the interests of the ad verification sector.
279. The restrictions on access to the viewability and brand safety partnerships introduced in January 2023 are also likely to exacerbate the effects of Meta's practices on Adloox's economic situation, which is attributable to the successive refusals by Meta to allow access to Adloox between 2016 and 2022.
280. Meta disputes that there is a clear and direct causal link between its practices and Adloox's financial and commercial difficulties. According to Meta, Adloox's difficulties are primarily

²⁶⁸ Classification mark VC 10,773 (classification mark VNC 18,286).

due to its lack of competitiveness, regardless of whether or not it is integrated into Meta, which was apparently highlighted by several of its former partners.

281. Meta argues that the deterioration of Adloox's situation is due to its choice to focus on open display and its failure to diversify into Meta's main competing platforms. On the latter point, Meta points out that the ongoing development of new social media platforms is a major source of potential revenue, which Adloox has not requested to be part of, and which is more likely to explain the company's poor performance.
282. Meta also argues that Adloox's innovations, in particular its proprietary technology based on the use of JavaScript, is not in line with market expectations, nor with the requirements for the protection of personal data, which was apparently highlighted in the opinion of the CNIL in its deliberation of 8 December 2022. Finally, Meta contests the relevance of Adloox's counterfactual scenario, arguing that the gradual decline in Adloox's turnover is primarily due to an ineffectual business strategy, and not the fact it is not integrated on Meta's platforms.
283. However, in the first instance, Adloox's growth in turnover fell significantly following the actual integration of its main competitors by Meta, at a time when the market was growing. Since 2018, the ad verification sector has continued to grow significantly (+40%)²⁶⁹, while Adloox's revenue has declined by over 30%. Conversely, IAS and DoubleVerify, the only two actors with viewability and brand safety partnerships, saw their revenues grow substantially during this period.
284. The fact that Adloox's turnover decreased gradually, and not suddenly, means that the causal link between Meta's practices and Adloox's current situation cannot be called into question, contrary to Meta's claims²⁷⁰. Indeed, to the extent that the share of advertising on social media compared to other forms of display advertising has also grown gradually, it is normal that not all of Adloox's clients have suddenly stopped using its services. Moreover, the inclusion of Adloox's competitors into the Meta ecosystem and the range of ad verification services offered on its platforms were also staggered over several years, between 2015 and 2019 (see paragraphs 46 et seq. above), meaning that these operators only gained a full competitive advantage over Adloox from 2019 onwards.
285. The main reason for the decrease in Adloox's turnover is therefore the increasing share of advertisers' spend on social media, where Meta is the clear leader, and the consequent need for independent verifiers to offer their services on these ecosystems. According to data from the SRI, the share of ad spend on social media (excluding YouTube) rose from 19% of all non-search ad spend in 2013 to 57% in 2022. The media agency Publicis confirms this increase (freely translated): "*there was a fairly large increase from 2016 to around 2020, during which time more and more services opened up, more and more metrics were made available, and more and more investment was being made on social media by advertisers*"²⁷¹. This trend is also confirmed by the advertisers themselves. L'Oréal, for example, states that it has [Confidential] its investments on social networks over the last six years²⁷². Similarly, the share of advertising investment made on social networks by the

²⁶⁹ The growth of the sector has been calculated on the basis of data provided by the main operators in the sector, namely IAS, DoubleVerify, Moat, Meetrics and Adloox.

²⁷⁰ Classification marks 16,906 and 16,907.

²⁷¹ Classification mark VC 2,748 (classification mark VNC 2,804).

²⁷² Classification mark VC 12,319.

SNCF has [Confidential] between 2015 and 2022²⁷³. Crédit Agricole confirms that advertising inventory on social networks currently represents (freely translated) "*the media enjoying the most investment and growth for advertisers*"²⁷⁴.

286. Nevertheless, Meta's advertising inventory on social media is very attractive, far ahead of competing platforms, meaning that the integration of an independent verifier on this platform is essential in order to remain fully competitive.
287. Adloox has provided various documentary evidence, which confirm the adverse effects of its lack of access to Meta's platforms on its economic situation. Adloox has lost existing customers, or has seen their business fall significantly as a result of Meta's refusal to allow them access. This was the case for the SEB group, whose contract included a termination clause if it was not integrated into Meta²⁷⁵, for the operators Amnet, Tradelab and Publicis who had asked Meta to integrate Adloox²⁷⁶, and for the UK-based agencies M/Six and All Responses Media²⁷⁷.
288. Internal exchanges at Meta show that Meta is well aware of the risks that Adloox's lack of integration poses to the viability of the latter's business (see paragraph 225 above).
289. Advertisers and media agencies have also expressed the need for independent verifiers to have access to the Meta ecosystem, given the importance of this operator on social media. Solocal states that it is (freely translated) "*essential for an ad verification player on social media to have access to Meta*"²⁷⁸. In the same sense, Orange indicates that it would appear to be (freely translated) "*important and vital*"²⁷⁹ for their independent verification provider to be integrated on Meta's platforms. Digital Classifieds underlines that, for an advertiser, "*Meta is a key player for it to reach its targets currently*", which makes it de facto a must for ad verification players²⁸⁰. Dentsu states that (freely translated) "*it is indeed essential today for third party companies providing ad verification services to have access to Meta's ad inventory, as Meta is becoming more and more important in the media mix, and it is therefore essential for advertisers to have a consolidated overview of ad verification performance, which includes Meta's*"²⁸¹. Advertisers' demand for independent verification services on Meta appears all the more critical, given the incorrect measurements on its platforms reported in the press in 2016, as confirmed by various media agencies²⁸².

²⁷³ Classification mark VC 12,828.

²⁷⁴ Classification mark 12,791.

²⁷⁵ Classification mark VC 1,210.

²⁷⁶ Classification marks VC 14,615 and 14,616 (classification marks VNC 16,430 and 16,431).

²⁷⁷ Classification mark VC 1,160 (classification mark VNC 16,508).

²⁷⁸ Classification mark 12,851.

²⁷⁹ Classification mark VC 13,888 (classification mark VNC 14,090).

²⁸⁰ Classification mark VC 12,904 (classification mark VNC 12,969).

²⁸¹ Classification mark VC 13,765 (classification mark VNC 13,822).

²⁸² Havas Media Group therefore explains that (freely translated) "*Due to the errors in audience metrics targeted by Facebook (Meta) and revealed in 2016, advertisers became aware of the fact that these measurements were not entirely reliable, and wanted to use services and/or tools that were as independent as possible from the sellers of ad space, so independent solutions such as MOAT, IAS, DV have only been able to measure ad verification on social networks for a few years (IAS 2019 for Brand Safety).*" (classification mark 2,725) Publicis also confirms that the demand for verification on social networks is (freely translated) "(...)

290. The evidence gathered by the investigation also reveals a preference on the part of advertisers to use a single verifier for all their needs. This trend is explained by the wish to simplify management of these aspects, and by the need to have comparable measurements on the various advertising levers in order to optimise campaigns²⁸³. This trend may prove to be a serious handicap for a player that is not in a position to offer a complete range of services, in particular on social networks, given the growing importance of advertising on this medium. In its complaint, Adloox therefore documents the loss of former clients who decided to use only one verifier for all their needs, thereby illustrating the consequences of this phenomenon²⁸⁴.
291. Secondly, several elements in the case show that Adloox is a serious competitor with the necessary expertise to operate in the ad verification market. Adloox has several MRC accreditations and has been integrated into the leading platforms such as Google's DV 360 and Amazon Ads, the world's largest and third largest player in online advertising respectively.
292. The quality of Adloox's ad verification service offering is competitive with that of the major players in the market. While some players have pointed out that Adloox is technologically behind in certain services²⁸⁵, others have stated that this is not the case and that Adloox's solution is technically comparable to that of its competitors. IAS, a leader in the ad verification sector, stated that (freely translated) "*Integral Ad Science (IAS), DoubleVerify (DV), Moat and Adloox operate in the same market segments [...] Ultimately, the range of offerings of these four players is generally similar*"²⁸⁶. The CESP, the reference organisation for the online advertising market in France, stated that (freely translated): "*Adloox's solution is comparable to that of its competitors in the web environment*"²⁸⁷. The MRC also took a position in favour of this company, sending a letter to Meta on 31 August 2017 attesting to the fact it was a serious player²⁸⁸.

strongly correlated to innovations in measurement, but also to current events (elections, data breach scandals, health crises, etc.)..." (classification mark VC 2,748 – classification mark VNC 2,804).

²⁸³ See, for example BNP Paribas (classification mark 11,319), Danone (classification marks 12,571 and 12,572), the media agency Dentsu (classification mark 13,764), Digital Classifieds (classification marks 12,902 and 12,903), McDonald's (classification mark 12,244), Orange (classification mark 13,887), the media agency Publicis (classification mark 2,748), and Renault (classification mark 12,256).

²⁸⁴ See, for example, classification marks 118 et seq. and classification marks 993 et seq. for the case of Dr. Pierre Ricaud.

²⁸⁵ Air France (classification mark 13,613), Orange (classification marks 1,604 – 1,606), Dentsu (classification marks 13,825 and 13,826), Digital Classifieds France (classification mark 12,972).

²⁸⁶ Classification mark 2,639.

²⁸⁷ Classification mark 12,998.

²⁸⁸ Classification mark VC 10,083 (classification mark VNC 11,079): "[...] *I know that Facebook has been actively looking at 3rd party measurement partners and I wanted to make you aware that an additional vendor, Adloox, has been accredited by MRC [...]. Adloox is a global measurement organization with particular emphasis on the European region [...]*".

293. In addition, several customers expressed their satisfaction with Adloox's services (Solocal²⁸⁹, LeBonCoin²⁹⁰, SNCF Connect²⁹¹, La Poste²⁹²) and noted other advantages of the solution offered by this company, such as its local roots and competitive pricing²⁹³, which is a decisive criterion in making a sector more competitive. The fact that several of Adloox's customers have asked Meta to integrate this operator on its platforms also testifies to their satisfaction.
294. Thirdly, Meta's criticism of Adloox's technology is unfounded. Indeed, Adloox's competitors in the open display sector, such as IAS²⁹⁴, the leader in the ad verification sector, also use technologies based on JavaScript, and even rely on Adloox's technology²⁹⁵. The integration of Adloox within Meta is not likely to raise regulatory issues either, as the CNIL underscores in its deliberation (freely translated): "*compliance with European data protection regulations could not be invoked by Meta to deny Adloox access to its ad verification data*"²⁹⁶, even if Adloox's technology were used to collect ad verification data²⁹⁷.
295. Finally, the fact that Adloox could have adopted a different business strategy, by diversifying its activity on other social media platforms, has no bearing on the causal link between its financial difficulty and the reported practices. Indeed, the platforms competing with Meta account for only a limited share of advertisers' spend on social media, with Meta enjoying a dominant position in the market for online advertising on social media, with a market share in value terms of around 70%. As mentioned above, several advertisers and media agencies have highlighted the need for an independent ad verifier to have access to Meta's ecosystem in order to offer its services in the social media market. Given its specific responsibility as a dominant operator, Meta cannot rely on alternative solutions to contest the causal link

²⁸⁹ Classification mark 12,853: "*We have had a commercial relationship with Adloox since 2016. Solocal's clients are satisfied with the level of their ad verification service*".

²⁹⁰ Classification mark 12,816: "*The quality of services provided by AdLoox is good and is comparable to the services provided by IAS, with whom we have been working since 2022*".

²⁹¹ Classification marks VC 12,840 and 12,841 / Classification mark VNC 17,428: "*Adloox represents the best solution for the ad verification needs of SNCF Connect, with regard to the following three main criteria: its cost (lower than its competitors); its local team (available and responsive) and its proactive approach (...)*".

²⁹² Classification mark 11,398: "*the reasons for selecting Adloox are: cost, service, the product itself and the fact that Adloox is French*".

²⁹³ LeBonCoin therefore states: "*We have been using AdLoox's ad verification services since 2017. We chose AdLoox because of their prices (the cheapest in the market) and their flexible pricing model with pay-per-use pricing. In the context of our DAT certification, we worked with AdLoox between 2019 and 2021 because of their attractive prices*" (classification mark 12,815). Similarly, La Poste considers that "*The opinion is already positive in terms of positioning because Adloox is French (and La Poste aimed to favour the French ecosystem). The service offering is also fairly competitive in terms of price compared to other players*" (classification marks VC 11,397 and 11,398, classification marks VNC 12,183 and 12,184). Solocal states: "*We have had a commercial relationship with Adloox since 2016. Solocal's clients are satisfied with the level of their ad verification service*" (classification mark 12,853).

²⁹⁴ Classification mark 2,881.

²⁹⁵ Classification mark VC 10,765 (classification mark VNC 18,284).

²⁹⁶ Classification mark 2,146.

²⁹⁷ The CNIL has indicated that the data collection architecture proposed by Adloox implies that free and informed consent is collected from Internet users on the fact that Adloox will, in this configuration, be responsible for processing personal data. This position cannot be interpreted, in itself, as a challenge to Adloox's technological solutions (classification mark 2,153).

between the reported practices and the deterioration of Adloox's financial situation, which has been established²⁹⁸.

2. ON THE NECESSARY INTERIM MEASURES

296. In addition to its complaint on the merits of the case, Adloox has requested, pursuant to Article L. 464-1 of the French Commercial Code (Code de commerce), that the *Autorité de la concurrence* order Meta to allow it access which is at least comparable to that offered to IAS, DoubleVerify and Oracle Moat, within three months of the forthcoming decision, and that:
- Meta provides Adloox with a working plan for the latter's integration within 2 weeks of the interim measures being ordered;
 - Meta provides Adloox with the technical methodology for the latter's integration within 3 weeks of the interim measures being ordered;
 - from the 4th week, Meta organises a weekly meeting with Adloox to present the progress of the work.
297. Adloox also proposes that an independent trustee be appointed, who is remunerated by Meta and assisted by the CESP in order to monitor the implementation of the interim measures it has requested.
298. Meta is of the opinion that Adloox's requests are manifestly vague and disproportionate. In particular, Adloox apparently does not specify the data to which access is requested. Furthermore, the proposed time frame is allegedly disproportionate with regard to the resources needed to integrate a new partner. Meta considers that the requested measures would result in new criteria being imposed for access to a partner programme, which would represent a disproportionate intervention in the decision-making process of a company.
299. During the hearing, the investigation services proposed adopting interim measures which consisted, on the one hand, of granting access to Adloox to the viewability and brand safety partnerships under the same conditions to those of Adloox's competitors and, on the other hand, involved Meta defining new objective, transparent and non-discriminatory access criteria to the partnerships in question.
300. In view of the potentially anticompetitive nature of the reported practices and the harm they entail for the ad verification sector, the *Autorité* considers it necessary, pending the decision on the merits of the case, to obtain guarantees that objective, transparent, non-discriminatory and proportionate conditions of access and maintenance of ad verifiers to the Meta ecosystem are put in place. Furthermore, in view of the harm caused to Adloox's interests by the reported practices, the *Autorité* considers it necessary to guarantee Adloox rapid access to Meta's ecosystem, if Adloox satisfies Meta's newly-defined conditions of access.

a) On the injunction to define objective, transparent and non-discriminatory criteria for accessing and maintaining viewability and brand safety partnerships

²⁹⁸ See in this sense the judgment of the Paris Court of Appeal (Cour d'appel de Paris) of 4 April 2019, No. 19/03274, paragraph 61.

301. With a view to addressing the harm caused to the ad verification sector and the interests of the complainant, the *Autorité* considers it necessary to order Meta to suspend the application of the criteria from January 2023 (**Injunction 1**). Furthermore, Meta should be ordered to publish, at least on the website of the MBP "*Measurement*" Programme (<https://www.facebook.com/fbp/measurement>), within two months, objective, transparent, non-discriminatory and proportionate criteria for accessing and maintaining viewability and brand safety partnerships. Meta will have to implement these new criteria in the context of a transparent and non-discriminatory procedure for examining candidacies and making selections for the viewability and brand safety partnerships. This procedure should envisage an appeal mechanism, whereby a candidate who has received a reasoned rejection from Meta may request that their request be re-examined (**Injunction 2**).
302. These injunctions are necessary in light of the identified harm to the sector. Meta makes access for ad verifiers to its ecosystem conditional on non-transparent, subjective and disproportionate conditions which it assesses at its own discretion in a process which is based on its own prior invitation. In this context, Meta has not authorised any new access since 2017, as regards viewability, nor since 2019, as regards brand safety. However, as noted in paragraphs 249 to 255, these practices are likely to keep the oligopolistic structure of the ad verification market in place, and hinder the ability of excluded ad verifiers to compete effectively on this market.
303. In this context, only the putting in place of objective, transparent, non-discriminatory and proportionate access and maintenance conditions for Meta's viewability and brand safety partnerships can restore healthy competition between ad verifiers wishing to access Meta's ecosystem.
304. This injunction is proportionate, as it does not go beyond what is necessary to limit the identified harm to the sector. It appears all the more appropriate given that:
- Meta indicated that it would be able to admit new partners in the "*near future*"²⁹⁹: in this context, defining transparent and proportionate access criteria will allow it to choose its new partners objectively and fairly;
 - As detailed in paragraph 252 above, as the obligations under the DMA will become enforceable from the first quarter of 2024 (see paragraph 252), and in particular Article 6(8), Meta will therefore likely be obliged to provide the data necessary for the independent verification of its advertising inventories to advertisers and their authorised third parties free of charge. As such, the issued injunction is less binding than the European legal framework that will be imposed on Meta in the coming months; and that
 - In Decision 22-D-12, Meta proposed commitments with a view to ensuring the objectivity, clarity and non-discriminatory application of criteria related to Adtech partnerships, which, together with viewability and brand safety, are part of the *Meta Business Partner* Programme. The fact that Meta readily proposed a similar measure in a recent case demonstrates that it is capable of implementing it. Indeed, Meta has not submitted any evidence that the viewability and brand safety partnerships differ to a significant extent from the other categories of the MBP programme.
305. In this respect, with regard to Meta's argument concerning the disproportionate nature of the intervention of such an injunction in the decision-making process of a company, it should be

²⁹⁹ Classification mark 13,925.

emphasised that the Paris Court of Appeal (Cour d'appel de Paris) considered, with regard to an injunction concerning the clarification of the rules applicable to services related to online advertising (Google Ads) that (freely translated) "*the general scope of the measure, which applies to all relations entered into by Google with Google Ads account holders, does not reveal any disproportionality in itself. Indeed, since the obligation to clarify the Google Ads rules is necessary, the benefit of such a measure cannot be reserved for certain operators only, without there being unjustified discrimination*"³⁰⁰.

306. Finally, with regard to the envisaged timeframe, which is justified by the urgency of the harm to the ad verification sector, it appears to be more than adequate to allow Meta to publish these new criteria, particularly in view of the internal discussions already underway to define the criteria from January 2023, and the implementation of the commitments given in Decision 22-D-12.

b) On the injunctions relating to the supply of a technical integration plan to Adloox

307. With a view to addressing the harm to the complainant's interests, the *Autorité* considers it necessary to order Meta to provide Adloox, within two weeks of the notification of this decision, with:

- the technical methodology necessary for the possible integration of Adloox into the viewability and brand safety partnerships on the advertising formats specified in paragraph 310 below. Meta will have to provide a response to Adloox's requests for clarification of this technical methodology within 4 working days of receipt of the request;
- a working plan for the possible integration of Adloox into these partnerships under the conditions set out in Injunction 4 (**Injunction 3**).

308. In addition, Meta should be ordered to provide a response in the affirmative or negative within two weeks to any request from Adloox to be included in viewability and/or brand safety partnerships on the basis of the new criteria published by Meta pursuant to Injunction 2. In case of refusal, Meta must give reasons for its decision (**Injunction 4**).

309. Finally, in the event that Meta grants Adloox's request for integration into the viewability and/or brand safety partnerships pursuant to Injunction 4, Meta shall integrate Adloox into the granted partnership(s) within 3 months of Meta providing its response to Injunction 4. This period excludes the testing phase of such integration. It may be extended by one month upon a reasoned request from Meta (**Injunction 5**).

310. The methodology to be provided by Meta in implementation of Injunction 3 must cover the following formats:

Platform	Where placed
<i>Viewability partnership</i>	
Facebook	News Feed
	Pages
	Embedded videos
	Stories
	Facebook Watch

³⁰⁰ Paris Court of Appeal (Cour d'appel de Paris), 4 April 2019, RG n° 19/03274, point 79.

Instagram	News Feed
	Reels
	Stories
	Explore
<i>Brand safety partnership</i>	
Facebook	Instant Articles
	Embedded videos
Audience Network	Display
	Video

311. These injunctions appear necessary in view of the sharp deterioration of Adloox's financial situation following Meta's refusal to grant it access to its ecosystem, as noted in paragraphs 261 to 268. In this context, rapid access to the ecosystem appears essential in order for Adloox to continue its business in the long term.
312. These injunctions are proportionate insofar as they are intended to remedy Meta's potentially discriminatory refusal of Adloox. They make it possible to establish a framework for accelerated negotiations which will benefit Adloox, in application of the objective, transparent and non-discriminatory criteria to be adopted by Meta in accordance with Injunction 2, without requiring Meta to enter into a partnership with Adloox.
313. Finally, the timeframe appears proportionate in view of the explanations submitted by Meta concerning the integration of new partners, where it indicated that this process could last between 8 and 16 weeks, excluding the test phase (see paragraph 75).

c) On the injunction relating to the follow-up of the injunctions

314. In order to ensure effective follow-up of the injunctions issued, Meta should be ordered to provide the *Autorité* directly or, if Meta so wishes, through a representative of its choice whose identity and mandate the *Autorité* will have validated, within three weeks of the notification of this decision, with a first report on the way in which it is complying with the injunctions issued. The subsequent reports shall be communicated to the *Autorité* on the 5th of each month until the complete implementation of the injunctions, or until publication of the decision of the *Autorité* on the merits of the case (**Injunction 6**).

DECISION

Article 1: The companies Meta Platforms Inc., Meta Platforms Ireland Ltd and Facebook France EURL are ordered, as an interim measure and pending a decision on the merits of the case, to suspend the application of their eligibility criteria for the viewability and brand safety partnerships from January 2023.

Article 2: Meta Platforms Inc., Meta Platforms Ireland Ltd. and Facebook France EURL are ordered, as an interim measure and pending a decision on the merits of the case, to publish, at the very least on the website of the MBP "*Measurement*" Programme (<https://www.facebook.com/fbp/measurement>), within two months of notification of this decision, new criteria concerning access to and maintenance of the viewability and brand safety partnerships that are objective, proportionate and non-discriminatory.

The above-mentioned companies must implement these new criteria in the context of a transparent and non-discriminatory procedure for examining candidacies and making selections in the viewability and brand safety partnerships, which must envisage an appeal mechanism giving, as the case may be, the possibility for a candidate who has been rejected by Meta to request a re-examination of their request.

Article 3: The companies Meta Platforms Inc., Meta Platforms Ireland Ltd and Facebook France EURL are ordered, as an interim measure and pending a decision on the merits of the case, to provide the company Adloox S.A.S. with the following information within two weeks of notification of this decision:

- the technical methodology necessary for the possible integration of the company Adloox S.A.S. into the viewability and brand safety partnerships on the advertising formats specified in paragraph 310 above. The companies Meta Platforms Inc., Meta Platforms Ireland Ltd., and Facebook France EURL will have to provide a response to Adloox's requests for clarification of this technical methodology within 4 working days of receipt of the request;
- a working plan for the possible integration of Adloox into these partnerships under the conditions set out in Article 5.

Article 4: The companies Meta Platforms Inc., Meta Platforms Ireland Ltd. and Facebook France EURL are ordered, as an interim measure and pending a decision on the merits of the case, to provide a response in the affirmative or negative within two weeks to any request for integration into the viewability and/or brand safety partnerships that Adloox S.A.S. may make on the basis of the new criteria published by Meta pursuant to Article 2. In the event of refusal, Meta Platforms Inc., Meta Platforms Ireland Ltd. and Facebook France EURL must give reasons for their decision.

Article 5: If a favourable response is given to the request submitted in accordance with Article 4, the companies Meta Platforms Inc., Meta Platforms Ireland Ltd. and Facebook France EURL are ordered, as an interim measure and pending a decision on the merits of the case, to integrate Adloox S.A.S. within three months of Meta's response pursuant to Article 4. This period does not include the test and improvement phase of such integration as laid down in paragraph 75.

This period may be extended by one month at the reasoned request of Meta Platforms Inc., Meta Platforms Ireland Ltd. and Facebook France EURL.

Article 6: The companies Meta Platforms Inc., Meta Platforms Ireland Ltd. and Facebook France EURL shall send to the *Autorité*, directly or, if they so wish, through a trustee of their

choice, whose identity and mandate will have been validated by the *Autorité*, within three weeks of the notification of this decision, an initial report on the way in which they are complying with Articles 1 to 5 of this decision. The subsequent reports shall be communicated to the *Autorité* on the 5th of each month until the complete implementation of the injunctions, or until publication of the decision of the *Autorité* on the merits of the case.

Article 7: Articles 1 to 6 of this Decision shall remain in force until the publication of the *Autorité*'s decision on the merits of the case.

Deliberated on the oral report of Mrs Martina Isola, Mrs Corinne Aaron, Mr. Mathieu Guennec, Rapporteurs, and of Mrs Pascale Déchamps, Deputy General Rapporteur, by Mr. Henri Piffaut, Vice-President, Chairman, Mrs Béatrice Bourgeois-Machureau, Mr. Savinien Grignon-Dumoulin and Mr. Jérôme Pouyet, members.

Head of the hearing,

The Chairman,

Caroline Orsel

Henri Piffaut

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