

Google fined 220 million euros by French Competition Authority for having abused its dominant position in the online advertising sector

In decision No. n°21-D-11 dated June 7, 2021^[1], the *Autorité de la concurrence* (French Competition Authority or “FCA”) imposed a 220 million euros fine on Google.

The reason: Google had engaged into discriminatory practices aimed at favoring its own advertising technologies to the detriment of the other players of the sector.

The matter was brought before the French Competition Authority by several newspaper publishers (News Corp. Inc.^[2], the Figaro group^[3] and the Rossel La Voix group^[4]).

What market players and what technologies ?

Online advertising operates thanks to the combination of the following technologies and market players:

- **Advertisers** are companies wishing to display their ads and buy advertising space for this purpose.
- On the other side of the chain, there are the **publishers**, i.e., the websites and applications offering advertising space. These include newspaper publishers which, following the decline of the written press, now generate most of their revenue from online advertising.
- In order to buy advertising space, advertisers use **purchasing platforms** (known as DSPs for *Demand Side Platforms*) that allow them to access **programmable auction platforms** (known as SSPs for *Supply Side Platforms*), which are virtual algorithmic marketplaces where supply (publishers) and demand (advertisers) meet and where prices are set.
- **Ad servers** are the tools that allow publishers to choose and display ads on their website or mobile app.

These servers allow publishers to choose whether to transact directly with advertisers or indirectly through supply side platforms.

Although publishers often use several supply side platforms, they usually only access these platforms through a single ad server that carries out automated bidding between these platforms.

The discriminatory practices complained of

The complaint by the newspaper publishers concerned two advertising technologies offered by Google:

- the Doubleclick for publishers ad server (hereinafter “DFP”);
- the platform for the programmatic sale of Doubleclick AdExchange advertising space (hereinafter “AdX”).

Indeed, the complainants argued that these two technologies benefit each other, to the detriment of competing technology providers, through the following mechanisms:

- Firstly, the DFP ad server allegedly organized an unfair competition tending to favor its own AdX platform.

As such, DFP indicated to AdX the price offered by competing platforms, which enables AdX to adapt its prices and, thereby, to maximize its chances to win the bids.

- Secondly, the interoperability between the AdX platform and DFP’s competing ad servers was limited, which prevented these last servers from organizing a competition between the AdX platform and the competing platforms.

The FCA considered that these were serious anti-competitive practices: They caused significant difficulties for Google’s competing servers and platforms. These practices also deprived publishers of the possibility of making full use of the competition between the various supply side platforms.

The implementation of a settlement procedure

Google did not challenge the objections and requested to benefit from the settlement procedure provided for in Article L. 464-2 §3 of the French Commercial Code.

It proposed several commitments to put an end to these practices and the FCA decided to make such commitments binding.

In particular, Google committed to modify the existing configurations of its technologies and to allow interoperability with its competitors.

The FCA also imposed a 220 million euros fine on Google.

The President of the FCA welcomed the decision:

“The decision sanctioning Google has a special significance because it is the first decision in the world to look at the complex algorithmic auction processes by which online “display” advertising operates.”

The investigation, which was carried out particularly quickly, revealed processes by which Google, relying on its considerable dominant position on ad servers for websites and applications, favored itself over its competitors on advertising servers and supply-side platforms.

These very serious practices have penalized competition in the emerging online advertising market, and have enabled Google not only to preserve but also to increase its dominant position. This sanction and these commitments will make it possible to re-establish a level playing field for all actors, and the ability of publishers to make the most of their advertising spaces.”

[1]

<https://www.autoritedelaconcurrence.fr/fr/decision/relative-des-pratiques-mises-en-oeuvre-dans-le-secteur-de-la-publicite-sur-internet-0>

[2] The Wall Street Journal, The Sun, The Daily Telegraph, New York Post ...

[3] Le Figaro, Le Figaro Magazine, Madame Figaro - The Figaro group however withdrew from the action in November 2020 s’est néanmoins désisté en novembre 2020

[4] La Voix du Nord, le Courrier Picard, Le Soir

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