EUROPEAN COMMISSION
Competition DG

CASE AT.40670 – Google – Adtech & Data-related practices

(Only the English text is authentic)

ANTITRUST PROCEDURE

Council Regulation (EC) No 1/2003

Article 7 Regulation (EC) 1/2003

Date: 05/09/2025

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EUROPEAN
COMMISSION

Brussels, 5.9.2025
C(2025) 5965 final

COMMISSION DECISION

of 5.9.2025

relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (the Treaty) and Article 54 of the EEA Agreement

(AT.40670 - Google - Adtech and Data-related practices)

(Only the English text is authentic)

(Text with EEA relevance)

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COMMISSION DECISION

of 5.9.2025

relating to a proceeding under Article 102 of the Treaty on the Functioning of the European Union (the Treaty) and Article 54 of the EEA Agreement

(AT.40670 - Google - Adtech and Data-related practices)

(Only the English text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ("TFEU"),[1]

Having regard to the Agreement on the European Economic Area,[2]

Having regard to Council Regulation (EC) No 1/2003, of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the TFEU[3], and in particular Article 7 and Article 23(2) thereof,

Having regard to the complaints lodged by the Movement for an Open Web Limited ("MOW") on 23 September 2021, the European Publishers Council ("EPC") on 11 February 2022 and Equativ on 3 August 2023 alleging infringements of Article 102 of the Treaty and Article 54 of the EEA Agreement by Google and requesting the Commission to put an end to those infringements,

Having regard to the Commission decisions of 4 June 2021 and 14 June 2023 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission pursuant to Article 27(1) of Regulation 1/2003 and Article 12 of the Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the Treaty,[4]

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the hearing officer in this case,

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1 OJ, C 115, 9.5.2008, page. 47.

2 OJ L, 3.1.1994, page 1 ("the EEA Agreement").

3 OJ L 1, 4.1.2003, page 1 ("Regulation 1/2003"). With effect from 1 December 2009, Articles 81 and 82 of the TFEU have become Articles 101 and 102, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82, respectively, of the TFEU when where appropriate. The TFEU also introduced certain changes in terminology, such as the replacement of "Community" by "Union" and "common market" by "internal market". Where the meaning remains unchanged, the terminology of the TFEU will be used throughout this Decision.

4 OJ L 123, 27.4.2004, page 18 ("Regulation 773/2004").

Whereas:

1. INTRODUCTION

(1) This Decision is addressed to Google LLC (formerly Google Inc.) and to Alphabet Inc. ("Alphabet"), both incorporated in the United States of America ("USA"), (together referred to as "Google"). It concerns a series of practices by Google related to online display advertising intermediation services.

(2) This Decision establishes that a series of business practices of Google in the online display advertising intermediation markets constitute a single and continuous infringement of Article 102 of the TFEU and of Article 54 of the EEA Agreement ("the Infringement").[5]

(3) This Decision also establishes that Google's buy-side conduct, on the one hand, and sell-side conduct, on the other hand, as described below, constitute, each by themselves, an infringement of Article 102 TFEU and of Article 54 of the EEA Agreement.

(4) In particular, the Commission considers that Google is or has been:

(1) abusing its dominant position in the EEA-wide market for programmatic ad buying tools for the open web within the meaning of Article 102 TFEU and Article 54 of the EEA Agreement by engaging in a variety of practices aimed at favouring its supply-side platform ("SSP") which results in the potential exclusion of rivals and in the strengthening of its position in the EEA-wide market for SSPs for online display advertising ("Buy-side Conduct"), and

(2) abusing its dominant position in the EEA-wide market for publisher ad servers for online display advertising within the meaning of Article 102 TFEU and Article 54 of the EEA Agreement by engaging in a variety of practices aimed at favouring its SSP which results in the potential exclusion of rivals and in the strengthening of its position in the EEA-wide market for SSPs for online display advertising ("Sell-side Conduct").

(5) This Decision is structured as follows. Section 2 provides an overview of Google's and the complainants' activities. Section 3 summarises the procedure relating to the proceedings in this case. Section 4 describes the main elements of the adtech industry and Google's activities in that industry. Sections 5 to 7 explain the Commission's conclusions regarding the relevant product and geographic markets and Google's dominant position in those markets. Section 8 contains the Commission's analysis of Google's abuses of that dominant position. Section 9 sets out the Commission's jurisdiction. Section 10 describes the effect of the infringements on trade between Member States. Section 11 identifies the addressees of this Decision. Finally, Section 12 outlines the remedies imposed by this Decision, explains the method for calculating the fine and sets the amount of the fine imposed.

[5] References in the Decision to Article 102 TFEU, to effect on trade between Member States or to competition within the internal market are to be taken to include Article 54 of the EEA Agreement, effect on trade between Contracting Parties to the EEA Agreement, and competition within the territory covered by the EEA Agreement.

2. THE PARTIES TO THE PROCEEDINGS

2.1. The addressee of the decision: Google

(6) Google LLC is a multinational technology company based in the USA, specialising in internet-related services and products that include online advertising technologies, search, cloud computing, software, hardware and artificial intelligence. It offers various services in the territories of all the Contracting Parties to the EEA Agreement.

(7) Google Ireland is the contracting entity for all publishers and advertisers, as regards online advertising technologies provided by Google, in the territories of all the Contracting Parties to the EEA Agreement, with the limited exceptions of France and Italy.

(8) Google LLC (at the time Google Inc., before its conversion to a limited liability company on 30 September 2017) was the ultimate parent company, through Google Ireland Holding, of Google Ireland from 1 January 2014 to 2 October 2015.

(9) In August 2015, Google LLC announced its intention to create a new holding company, Alphabet. The reorganisation was completed on 2 October 2015 and Google LLC became a wholly owned subsidiary of Alphabet. Alphabet has been the parent company of both Google LLC and Google Ireland (through Google Ireland Holdings) since 2 October 2015.

(10) On 30 September 2017, a new holding company (XXVI Holdings Inc.) was established and is now the sole shareholder of Google LLC. XXVI Holdings Inc. is itself a wholly owned subsidiary of Alphabet.

(11) For the fiscal year running from 1 January 2024 to 31 December 2024, the consolidated turnover of Alphabet was USD 350 018 million (approximately EUR 323 382 million).[6] In 2024, Alphabet generated 76% of its total revenues through online advertising.[7]

(12) Google's flagship online service is its search engine, Google Search, which is accessible either through Google's main website (www.google.com), or through localised websites. Google Search generates revenues through search advertising.

(13) As a publisher itself, Google additionally sells its own ad inventory, for instance on YouTube, Gmail and Google Maps, to advertisers for the placement of search and non-search ads.

(14) Google also generates revenues through online display advertising intermediation, which consists in serving ads on third-party publishers' inventories such as websites and apps. This Decision relates to online display advertising intermediation.

2.2. The complainants: MOW

(15) MOW is a not-for-profit company, incorporated in the United Kingdom. The company object of MOW is to promote the development of an open and competitive

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[6] Amount converted from USD into EUR using the average annual reference exchange rate published by the European Central Bank for the year 2024, i.e. 1 USD = 0.9239 EUR, available at https://www.ecb.europa.eu/stats/policy_and_exchange_rates/html/index.en.html.

[7] Alphabet annual report 2024, available at: https://abc.xyz/assets/77/51/9841ad5c4fbe85b4440c47a4df8d/goog-10-k-2024.pdf, page 36, downloaded on 22 August 2025.

internet. Its members include a number of large and small online businesses, including analytics companies, digital advertisers, publishers, and broadcasters.

2.3. The complainants: EPC

(16) EPC is a high-level group of Chairmen and CEOs of Europe's leading news media groups, representing companies active in the media sector (news, magazines, television, radio, digital marketplaces, journals, eLearning, databases, and books).[8] EPC includes executives from leading news media groups among its members, such as Schibsted, Axel Springer, JPPOL, DMG Media, The New York Times, Holtzbrinck, DPG Media, Mediahuis and Impresa.

2.4. The complainants: Equativ

(17) Equativ (formerly Smart Ad Server) is a French simplified joint-stock company that was created in 2001 by the French online magazine aufeminin.com to manage advertisements on its websites. It is ultimately owned by Bridgepoint Group PLC, a British private investment company listed on the London Stock Exchange. Equativ operates an ad server, and an SSP. It also offers a variety of solutions for Connected TVs and premium publishers.[9]

3. PROCEDURE

3.1. Timeline of the procedure

(18) On 22 June 2021, the Commission initiated proceedings against Google in Case AT.40670 "Google AdTech and Data-related practices"[10] pursuant to Article 2(1) of the Regulation 773/2004 and Article 11(6) of Regulation 1/2003 in relation to a number of Google's practices.

(19) On 23 September 2021, MOW submitted a complaint against Google pursuant to Article 7 of Regulation 1/2003. Google received a non-confidential version of MOW's complaint on 9 November 2021 and sent its observations on this complaint to the Commission on 3 December 2021.

(20) On 11 February 2022, EPC, submitted a complaint against Google pursuant to Article 7 of Regulation 1/2003. Google received a non-confidential version of EPC's complaint on 16 February 2022 and sent its observations on this complaint to the Commission on 25 April 2022. EPC received a non-confidential version of Google's observations on 10 June 2022 and submitted a reply on 15 July 2022.

(21) On 3 August 2023, Equativ submitted a complaint against Google pursuant to Article 7 of Regulation 1/2003. Google received a non-confidential version of Equativ's complaint on 7 August 2023.

(22) On 24 January 2022, nine associations of undertakings submitted an application to the Hearing Officer for admission as interested third parties pursuant to Article 27(3) of Regulation 1/2003. On 4 March 2022, the Hearing Officer recognised these nine associations as interested third parties.[11]

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8 See https://www.epceurope.eu/.

9 See https://equativ.com/.

10 Decision C(2021)4726 to initiate proceedings in case AT.40670 Google AdTech and Data-related practices. In this decision, the Commission also merged the cases AT.40660 and AT.40670 under the case number AT.40670.

11 These associations are Arbeitsgemeinschaft ("AGOF"), Organisation der Mediaagenturen ("OMG"), Verband Deutscher Zeitschriftenverleger ("VDZ") (since 2022 formally known as

(23) On 25 April 2023, ProSiebenSat.1 Media SE ("ProSiebenSat.1") submitted an application to the Hearing Officer for admission as interested third-party pursuant to Article 27(3) of Regulation 1/2003. On 11 May 2023, the Hearing Officer recognised ProSiebenSat.1 as interested third-party.

(24) On 13 June 2023, MediaForEurope N.V. ("MFE") submitted an application to the Hearing Officer for admission as interested third-party pursuant to Article 27(3) of Regulation 1/2003. On 28 June 2023, the Hearing Officer recognised MFE as interested third-party.

(25) On 30 June 2023, News Media Europe ("NME") submitted an application to the Hearing Officer for admission as interested third-party pursuant to Article 27(3) of Regulation 1/2003. On 14 July 2023, the Hearing Officer recognised NME as interested third-party.

(26) Prior to and after the decision to initiate proceedings, the Commission sent requests for information ("RFI") to Google and to third parties.

(27) In particular, the Commission sent the following RFIs pursuant to Article 18(2) of Regulation 1/2003 to Google:

(1) RFI to […] sent on 5 November 2019, to which […] replied on 18 December 2019;

(2) RFI to […] sent on 21 January 2021, to which […] replied on 5 February 2021;

(3) RFI to […] sent on 28 January 2021, to which […] replied on 19 February 2021;

(4) RFI to […] sent on 7 June 2021, to which […] replied on 14 June 2021;

(5) RFI to […] sent on 27 July 2022 to which […] replied in two tranches, on 26 August 2022 and on 24 November 2022;

(6) RFI to […] sent on 21 September 2022, to which […] replied on 26 October 2022;

(7) RFI to […] sent on 31 October 2022, to which […] replied in four tranches, on 12 December 2022, on 16 December 2022, on 6 January 2023 and on 18 January 2023;

(8) RFI to […] sent on 14 November 2022, to which […] replied on 7 December 2022 (as updated on 13 December 2022);

(9) RFI to […] sent on 12 December 2022, to which […] replied on 23 December 2022;

(10) RFI to […] sent on 15 February 2023, to which […] replied on 10 March 2023;

(11) RFI to […] sent on 12 April 2023, to which […] replied on 19 April 2023;

(12) RFI to […] sent on 28 April 2023, to which […] replied on 19 May 2023;

MEDIENVERBAND DER FREIEN PRESSE ("MVFP")) Feststellung der Verbreitung von Werbeträgern ("IVW"), Organisation Werbungtreibende im Markenverband ("OWM"), Zentralverband der deutschen Werbewirtschaft ZAW ("ZAW"), Markenverband, Bundesverband Digital publisher und Zeitungsverleger ("BDZV"). One association of undertakings requested to remain anonymous and the Hearing Officer has accepted this request.

(13) RFI to […] sent on 17 October 2023, to which […] replied in seven tranches, on 30 November 2023, on 5 December 2023, on 19 December 2023 (two tranches), on 3 January 2024, on 24 January 2024 and on 15 February 2024;

(14) RFI to […] sent on 20 December 2023, to which […] replied in two tranches, on 5 January 2024 and on 19 January 2024;

(15) RFI to […] sent on 5 February 2024, to which […] replied in two tranches, on 16 February 2024 and on 26 February 2024;

(16) RFI to […] sent on 9 February 2024, to which […] replied in three tranches, on 11 March 2024, on 18 March 2023 and on 25 March 2024;

(17) RFI to […] sent on 9 February 2024, to which […] replied on 16 February 2024;

(18) RFI to […] sent on 19 April 2024, to which […] replied in two tranches on 29 April 2024 and on 10 May 2024;

(19) RFI to […] sent on 8 October 2024, to which […] replied on 15 October 2024;

(20) RFI to […] sent on 18 October 2024, to which […] replied on 13 November 2024; and

(21) RFI to […] sent on 6 January 2025, to which […] replied on 4 February 2025.

(28) The Commission also sent the following RFIs pursuant to Article 18(3) of Regulation 1/2003 to […]:

(1) RFI to […] sent on 26 August 2020, to which […] replied in two tranches, on 20 October 2020 and on 28 October 2020;

(2) RFI to […] sent on 26 March 2021, to which […] replied in four tranches, on 30 April 2021, on 17 May 2021, on 28 May 2021 and on 20 August 2021; and

(3) RFI to […] sent on 12 July 2021, to which […] replied in five tranches, between 20 and 25 August 2021, on 20 September 2021, on 2 October 2021, on 8 October 2021 and between 10 and 17 December 2021.

(29) In addition, the Commission sent RFIs to several third parties pursuant to Article 18(2) of Regulation 1/2003. In particular, the Commission sent the following RFIs to third parties:

(1) RFI to general search service providers sent on 19 November 2019 and to which they replied by February 2020;

(2) RFI to specialised search service providers sent on 19 November 2019 and to which they replied by February 2020;

(3) RFI to web browser providers sent on 22 and 26 November 2019 and to which they replied by February 2020;

(4) RFI to Original Equipment Manufacturers ("OEMs") and Mobile Network Operators ("MNOs") sent on 22 November 2019 and to which they replied by February 2020;

(5) RFI to data brokers sent on 22 November 2019 and to which they replied by February 2020;

(6) RFI to business intelligence and analytics providers sent on 29 November 2019 and to which they replied by February 2020;

(7) RFI to online advertising intermediaries sent on 6 December 2019 and to which they replied by February 2020;

(8) RFI to online advertising tool providers sent on 6 December 2019 and to which they replied by February 2020;

(9) RFI to web publishers sent on 6 December 2019 and to which they replied by February 2020;

(10) RFI to application ("app") and website providers sent on 13 December 2019 and to which they replied by February 2020;

(11) RFI to advertisers sent between 18 and 21 December 2020 and to which they replied by March 2021;

(12) RFI to media agencies sent between 18 and 21 December 2020 and to which they replied by March 2021;

(13) RFI to publishers sent between 18 and 21 December 2020 and to which they replied by March 2021;

(14) RFI to publisher ad servers sent between 18 and 21 December 2020 and to which they replied by March 2021;

(15) RFI to demand-side platforms ("DSPs") sent between 18 and 21 December 2020 and to which they replied by March 2021;

(16) RFI to SSPs sent between 18 and 21 December 2020 and to which they replied by March 2021;

(17) RFI to DSPs and SSPs sent on 20 July 2022 and to which they replied by September 2022;

(18) RFI to EPC sent on 1 July 2022 and to which it replied on 19 August 2022;

(19) RFI to DSPs sent on 27 October 2022 and to which they replied by January 2023;

(20) RFI to SSPs sent on 28 October 2022 and to which they replied by January 2023;

(21) RFI to publisher ad servers sent on 28 October 2022 and to which they replied by January 2023;

(22) RFI to advertisers and media agencies sent on 17 November 2022 and to which they replied by January 2023;

(23) RFI to publishers sent on 18 November 2022 and to which they replied by January 2023;

(24) RFI to ad networks sent on 7 December 2022 and to which they replied by January 2023;

(25) RFI to ad buying tools sent on 7 February 2024 and to which they replied by April 2024;

(26) RFI to advertisers and media agencies sent on 15 February 2024 and to which they replied by April 2024;

(27) RFI to in-house publisher ad servers dated 20 February 2024 and to which they replied by March 2024;

(28) RFI to publisher ad servers dated 7 February 2024 and to which they replied by April 2024;

(29) RFI to publishers dated 7 February 2024 and to which they replied by March 2024; and

(30) RFI to SSPs dated 6 February 2024 and to which they replied by April 2024.

(30) The Commission also sent RFIs to SSPs pursuant to Article 18(3) of Regulation 1/2003 on 6 February 2023 to which they replied by March 2023.

(31) On 3 August 2021, Google agreed to waive confidentiality provisions to permit the Department of Justice of the USA ("DOJ") to disclose to the Commission confidential information obtained from Google and related to the antitrust investigation that the DOJ was conducting into similar conduct by Google concerning its adtech business. On 31 January 2023, Google revoked this waiver while stating, in its letter of revocation, that this did not impact formerly exchanged information between the DOJ and the Commission, nor did it require the return or destruction of such information.

(32) The Commission also received evidence from the Italian and French National Competition Authorities ("NCAs") related to their antitrust investigations into Google's practices concerning its display advertising business in the framework of an information exchange pursuant to Article 12 of Regulation 1/2003.

(33) […].

(34) On 14 June 2023, the Commission initiated proceedings against Google in respect of additional practices by Google.

(35) On 14 June 2023, the Commission adopted a Statement of Objections ("the SO") addressed to Google.

(36) Following the adoption of the SO, the Commission granted Google access to its file. To this end, on 22 June 2023, the Commission provided Google with an electronic device containing the non-confidential version of all accessible documents in the file registered until the date of adoption of the SO. […].[12]

(37) Between 1 December 2023 and 19 December 2023, the Commission sent a non-confidential version of the SO to the three complainants and twelve interested third parties[13]. Between 19 January 2024 and 14 March 2024, the Commission received comments on the SO from complainants and interested third parties.

(38) On 1 December 2023, Google submitted a preliminary response to the SO ("SO Response"). On 27 February 2024, Google submitted a supplemental response to the SO ("SO Supplemental Response").

(39) Google did not request the opportunity to develop its arguments at an oral hearing pursuant to Article 12(1) of Regulation 773/2004.

(40) […].

(41) On 31 May 2024 the Commission held a state-of-play meeting with Google.

(42) On 3 June 2024, the Commission sent Google a letter (the "Letter of Facts") informing it about pre-existing evidence to which Google already had access but

[12] […]. The report drafted by the External Advisers of Google constitutes a "Second SO Supplemental Response".

[13] Including the nine associations referred to in recital (22).

which was not expressly relied upon in the SO and which, on further analysis of the Commission's file, could be relevant to support the preliminary conclusions reached in the SO. The Commission also informed Google in the Letter of Facts about additional evidence obtained by the Commission after the adoption of the SO.

(43) Following the adoption of the Letter of Facts, the Commission granted access to the file to Google. To this end, on 4 June 2024, the Commission provided Google with an electronic device containing the non-confidential version of all accessible documents in the file registered between the adoption of the SO and the sending of the Letter of Facts. […].

(44) On 19 August 2024, Google submitted comments on the Letter of Facts ("Comments on the Letter of Facts").

(45) […][14], after the dispatch of the Letter of Facts on 3 June 2024.

(46) […].

(47) […].

(48) On 18 October 2024, Google submitted supplemental comments on the Letter of Facts ("Supplemental Comments on the Letter of Facts").

3.2. Google's allegations that the commission's investigation suffers from procedural errors

(49) Google claims that the Commission's investigation suffers from a number of procedural errors.

3.2.1. The French NCA Decision of 7 June 2021

(50) In 2019, the Autorité de la Concurrence, the NCA of France (hereinafter the "French NCA") started investigating certain aspects of Google's practices involving the 'sell-side' of its ad tech business. In the context of that investigation, on 30 September 2020, the French NCA issued a statement of objections with preliminary findings against Google.

(51) Google applied to benefit from a settlement procedure as provided for in the French Commercial Code.[15] This procedure allows for a settlement, fixing the minimum and maximum amount of the financial penalty that could be imposed in a final decision, if the undertaking does not contest the reality of the objections brought against it. The undertaking may, in addition, choose to undertake to change its behaviour to put an end to the authority's competition concerns, which can be taken into consideration in relation to the fine to be imposed. Google thus undertook not to dispute the findings of the French NCA and proposed commitments to improve the interoperability of its publisher ad server and SSP with third-party publisher ad servers and SSPs. The French NCA granted Google's request to benefit from this settlement procedure.

(52) On 7 June 2021, the French NCA issued a decision (hereinafter the "French NCA Adtech Decision"), which fined Google EUR 220 million. The French NCA Adtech Decision found that from 1 January 2014 until 30 September 2020 (the date of adoption of the French NCA's statement of objections), Google had abused its dominant position in the market for ad servers for publishers of websites and mobile apps, in violation of Articles L. 420-2 of the French Commercial Code (Code de

[14] […].

[15] Article L. 464-2 III of the French Commercial Code.

commerce) and 102 TFEU by granting preferential treatment to its proprietary technologies, both with regard to the operation of its publisher ad server and its SSP, to the detriment of its competitors and of publishers. The territorial scope of the French NCA Adtech Decision is limited to France.[16]

(53) The French NCA Adtech Decision also made the commitments proposed by Google ("the French Commitments"[17]) mandatory in France, for a period of three years from varying starting dates, with a final end date of June 2025. These include:

(1) to offer third-party SSPs an interoperability modality with Google's publisher ad server allowing competition on the merits between Google's SSP and third-party SSPs. This commitment involves the following:

(a) to allow fair access to information on the DoubleClick for Publishers ('DFP') auction for publisher inventory outcomes for third-party SSPs and buyers (commitment n°1);

(b) to preserve the full contractual freedom of publishers so that they can negotiate specific terms or pricing rules with third-party SSPs, and the ability to manage competition between buyers (commitment n° 2);

(c) to ensure that Google's SSP no longer uses the price of its competitors in order to optimise its bids in a way that cannot be reproduced by third-party SSPs (commitment n° 3); and

(d) to provide Google's customers with at least 3 months' notice (prior to the required adoption deadline) of any major changes to its publisher ad server functionality that publishers must adopt and which requires significant adoption effort (commitment n° 4).

(2) to make changes to existing configurations that allow publishers using third-party ad servers to access demand from Google's SSP in "real-time" (commitment n° 5).

(54) The French NCA AdTech Decision does not cover the Buy-side conduct. Whilst the French NCA AdTech Decision covers the sell-side practices of Google's conduct, it is limited to practices implemented until 30 September 2020 and its territorial scope is restricted to the French territory. In this context, the Commission exerts its discretion not to reach any conclusion in this Decision regarding the sell-side practices in France,[18] for the period before 30 September 2020.

(55) Notwithstanding this consideration, Google argues that the adoption of the French NCA Adtech Decision precludes any Commission prohibition decision in respect of the same conduct, also with regards to other EEA countries besides France. Google asserts that both the French NCA investigation and the commitments that it made in that context covered the whole of the EEA, or at least, Google had legitimate expectations that it did so, and that, consequently, any decision and new remedies from the Commission would breach, first, the principle of *ne bis in idem*, second, frustrate Google's legitimate expectations, third, infringe the principle of good administration, fourth, infringe the principle of sincere cooperation and, fifth cause

16 See recitals (56) to **Error! Reference source not found.**.

17 Commitments offered by Google under Article L.464-2, III of the French Commercial Code, in the context of the cases No 19/0030 F, 19/0056 F and 19/0057 F ([…]).

18 See, in this respect, Case T-350/17, *Singapore Airlines Ltd and Singapore Airlines Cargo Pte Ltd*, EU:T:2022:186, paragraph 531 and the case-law cited.

an irremediable breach of Google's rights of defence.[19] These arguments must be dismissed for the reasons outlined below.

(56) First, as regards the principle of *ne bis in idem*, the French NCA Adtech Decision does not cover Google's sell-side practices across the EEA.[20] The territorial scope of the French NCA Adtech Decision is limited to France.

(57) In the first place, for the purpose of determining whether there is a *ne bis in idem* issue, the territorial coverage of the investigative steps taken by the French NCA has limited relevance, if any. The French NCA is entitled to ask questions about the scope and effect of Google's business practices outside France, as those may help it to understand the way those practices affected businesses in France. What matters, however, to determine whether Google might be sanctioned twice for the same practice, is the territorial scope of the French NCA Adtech Decision, as this is the legal act that sets out the scope of the practice sanctioned by the French NCA.

(58) In the second place, Google's claims that the French NCA's investigation and Adtech Decision purport to cover Google's sell-side practices across the EEA are unsubstantiated. Google simply states that this is the case and, at most, argues that this is evidenced by the fact that the practices in the French NCA Adtech Decision are described or addressed in pan-EEA terms.[21] Google fails to refer to any specific wording from the French NCA Adtech Decision evidencing that it indeed purported to cover Google's sell-side practices across the EEA.

(59) Firstly, contrary to Google's claims,[22] the fact that the French NCA Adtech Decision finds that the market of publisher ad servers has an EEA-wide geographical scope, and that the effects of the conducts are felt in that EEA-wide market does not imply that the territorial scope of the French NCA Adtech Decision is broader than France. Those are merely factual findings that relate to the geographical delineation of the relevant market for publisher ad servers, which the French NCA found to be broader than national (which Google does not contest, even in the context of the current proceedings). The same applies to the geographical extent of the effects of the conducts investigated by the French NCA. Such findings are not an assertion of jurisdiction.

(60) Secondly, the fact that the territorial scope of the French NCA decision is not EEA wide is further evidenced, contrary to Google's claims,[23] by the fact that the value of sales taken into account by the French NCA for the determination of the fine imposed on Google was Google's pre-tax turnover in France.[24] As the ECJ noted in the *Nordzucker* judgment: "*It is also relevant whether, in order to calculate the fine on the basis of the turnover achieved in the market affected by the infringement, the German authority took as the basis for its calculation only the turnover achieved in Germany"*.[25]

(61) […][262728]

19 […].
20 […].
21 […].
22 […].
23 […].
24 […].
25 Case C-151/20 *Nordzucker and Others*, EU:C:2022:203, paragraph 46.
26 […].

(62) Google further asserts that[29] "from a legal standpoint, the only purpose of the […] was to help – without being binding on – the FCA Collège in determining the potential financial penalty in the event the conduct was deemed abusive. As such, the […] could not (and did not) entail any legal consequences as to the scope of the FCA Decision (as the […] itself clearly records)".[30] Google also states that: "As a matter of law, the FCA's methodology on fine calculation does not apply to settlement proceedings".[31]

(63) It is correct that, in the event of a settlement, the Board of the French NCA determines an appropriate absolute amount for the fine.[32] That appropriate amount for the fine does not legally have to be based on the calculation method set out in the French fining guidelines.[33] This enables the Board of the French NCA to take account of the different aspects of the settlement, and to reduce the fine as a recognition of the value of the settlement. However, the fact that the Board of the French NCA is not legally bound to follow the calculation method of the French fining guidelines does not mean that it cannot take that method into account as a basis for the determination of its fine. […][34], […]. In addition, […][35] [36]. […].[37]

(64) Thirdly, as regards Google's assertion[38] in relation to […], that: "*it is well established in case law that an administrative authority cannot ex post supplement the statement of reasons in its decision*", the relevant issue here is not whether the French NCA Adtech Decision was properly motivated or not. In reality, Google was well aware that, in the absence of a settlement, the fine would have been determined

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27 See recital 443 of the French NCA Adtech Decision: "*Under the terms of the fourth paragraph of Article L. 464-2(I) of the French Commercial Code (Code de commerce) (translated), "the maximum amount of the fine is, for a company, 10% of the highest worldwide turnover, excluding tax, during one of the financial years closed since the financial year preceding that in which the practices occurred. If the accounts of the company in question have been consolidated or combined under the laws applicable to its corporate form, the turnover taken into account is that shown in the consolidated or combined accounts of the consolidating or combining company"".*

28 French NCA's notice of 16 May 2011 on the method for the determination of financial penalties, paragraph 33 (see also the French NCA's fine notice of 30 July 2021, paragraph 22): "*La référence prise par l'Autorité est la valeur de l'ensemble des catégories de produits ou de services en relation directe ou indirecte avec l'infraction, ou s'il y a lieu avec les infractions, vendues par l'entreprise ou l'association d'entreprises concernée durant son dernier exercice comptable complet de participation*".

29 […].

30 […].

31 […].

32 See Article L464-2 of the French Commercial Code.

33 Recital 445 of the French NCA Adtech Decision notes that: "*Moreover, the particular circumstances resulting from the implementation, in this case, of the settlement procedure based on the above-mentioned provisions of Article L. 464-2(III) of the French Commercial Code (Code de commerce) justify that the fines imposed are not motivated by reference to the method for determining financial penalties set out in the press release of the Autorité of 16 May 2011 (see Decision 17-D-20 of 18 October 2017 regarding practices implemented in the hard-wearing floor covering sector, paragraph 452, the Procedural Notice of 21 December 2018 on the settlement procedure, paragraph 37 and the judgment of the Cour d'Appel de Paris (Paris Court of Appeal) of 13 June 2019, Alcyon SA, No. 18/20229).*" The relevant fining guidelines for a non-settlement decision at the time of the French Adtech Decision were the French NCA's notice of 16 May 2011 on the method for the determination of financial penalties.

34 […].

35 […].

36 Pursuant to Article L464-2 of the French Commercial Code, a maximum and minimum level for the fine is established in the context of a settlement procedure.

37 […].

38 Google letter of 26 September 2024, commenting on […].

on the basis of the French fining guidelines of 16 May 2011 and that the actual fine imposed in the settlement procedure, taking into account the French commitments, would be lower than the level determined by the guidelines.

(65) Fourthly, whatever Google's intentions regarding the scope of the commitments made in the context of the French NCA investigation and the French Adtech Decision[39], they explicitly read that they are legally binding only in France: "*Territoire - Les engagements sont obligatoires pour Google en France*" ("Territory – the commitments are binding on Google in France").[40] Moreover, the territorial scope of the French NCA's jurisdiction does not depend on how Google outlined its commitments and the fact that Google allegedly decided to design them so that they covered the EEA and were implemented across the EEA[41] cannot result in the expansion of the French NCA's jurisdiction.

(66) Finally, the legal territorial scope of the French NCA Adtech Decision and commitments is confirmed […].[42] As noted in recital (63), […]. Therefore, there cannot be an issue of *ne bis in idem*, either for the pre-September 2020 conduct or for the post-September 2020 conduct.[43]

(67) […].

(68) Second, as regards the principle of protection of legitimate expectations, the Commission recalls that as noted in the judgment of 26 January 2017 by the Court of Justice: "*"it is apparent from the settled case-law of the Court that the right to claim the protection of legitimate expectations presupposes that three cumulative conditions are satisfied, including the condition that precise, unconditional and consistent assurances must have been given by the EU administration"*[44] Google has provided no evidence that any such precise, unconditional and consistent assurances were given to it, either by the French NCA or the Commission.

(69) In absence of any evidence of precise and unconditional assurances, Google relies on a sequence of unsubstantiated assertions. First, Google argues that*: "Under Regulation 1/2003, NCAs are empowered to enforce Article 102 and there is no limit on a single NCA being tasked with terminating a breach of Article 102 across, at least, the EU".*[45]

(70) Second, Google claims that the Commission approved the French NCA's handling of the sell-side practices under Article 102 and that: "*at no point did the EC raise any objection regarding the FCA's competence to (i) investigate the case, (ii) punish Google for the alleged infringement for the entire EEA territory and (iii) impose remedies covering the EEA*".[46] Finally, Google asserts that "*since the [French NCA] issued an SO and decision that purported to find and terminate a pan-EEA infringement, Google could therefore reasonably rely on the fact that (i) the [French NCA] was deemed able to effectively bring an end to the entire infringement*[47]*…and*

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39 See recital (55).

40 Google commitments attached to the French NCA Adtech Decision, paragraph 4.2. Translation from the French NCA. See also […].

41 […].

42 […].

43 […].

44 Case C-611/13P *Hansa Metallwerkde AG and others v Commission*, EU:C:2017:47.

45 […].

46 […].

47 Google cites Commission Notice on cooperation within the Network of Competition Authorities (OJ C 101, 27.4.2004, page 43) ("ECN Notice"), paragraph 8.

that (ii) in future, its obligations in respect of the sell-side practices would relate to the [French NCA] Decision and Commitments. The legitimate expectation here, clearly, is directly derived from authorised and reliable sources".[48]

(71) In the first place, as regards Google's first claim concerning the French NCA's competence, the General Court has held that: "*Neither Regulation No 1/2003 nor the Commission Notice on cooperation within the Network of Competition Authorities (OJ 2004 C101 p43) lays down a rule on the allocation of competencies as between the Commission and the competition authorities of the Member States*".[49] The fact that the French NCA issued a decision under Article 102 TFEU relating to sell-side practices that was applicable to the French territory does not prevent the Commission from subsequently bringing the sell-side into the scope of its investigation.

(72) In the second place, concerning Google's assertion that the Commission approved the French NCA's handling of the sell-side practices, nothing in the ECN Notice precludes the right of the Commission to undertake an EEA-wide investigation following a Member State's NCA decision that is applicable in the territory of that Member State. The fact that the Commission raised no objection to the French NCA Adtech Decision did not mean that it regarded the French NCA as being the "*only*" competition authority competent to investigate the sell-side practices throughout the EEA.[50] Rather, if anything, it meant that, in view of the circumstances, such as the advancement of the investigation by the French NCA, the Commission took the view that the French NCA was well placed to deal with the relevant practices in respect of the territory of France, without prejudice of which authority would be well placed to deal with such practices in other parts of the EEA.

(73) In the third place and as noted in recitals (56) to (60) above, the French NCA did not purport to address the sell-side practices at EEA level, and to sanction Google for its infringement at EEA level. The fine imposed on Google was based solely on the value of sales in France. In the same vein, the commitments are binding on Google solely in France. Google's assertion that the French NCA issued an SO and decision that purported to find and terminate an EEA-wide infringement is not correct.

(74) Third, as regards Google's claim that the Commission's investigation of the sell-side practices breaches the principle of good administration,[51] Google claims that the fact that the Commission opened proceedings in respect of the Sell-side Conduct two years after the French NCA issued its decision[52] when "*the* [French NCA] *was in possession, and the* [Commission] *ought to have been aware of all the factual elements"* means that the Commission ought to have either cooperated with the French NCA "*to reach a final decision that it was satisfied with*" or have invoked Article 11(6) of Regulation 1/2003 to relieve the French NCA of its competence to apply Article 102. Google objects to the fact that, instead, of cooperating with the French NCA, the Commission "*seeks to open its own proceedings and impose new remedies on Google"*.[53]

(75) In the first place, as already noted, the French NCA Adtech Decision and the French commitments are binding on Google only in France and nothing precluded the

48 […].

49 Order of the General Court of 14 October 2021 in Case T-19/21 *Amazon.com and Others v Commission*, EU:T:2021:730, paragraph 46.

50 […].

51 […].

52 The Commission initiated proceedings in respect of the sell-side conduct on 14 June 2023.

53 […].

Commission from including the sell-side practices outside the French territory within the scope of its EEA-wide investigation and proceedings.

(76) In the second place, the Commission's decision to open proceedings in relation to the Sell-side Conduct was based on extensive evidence of which that provided by the French NCA under Article 12 of Regulation 1/2003 formed only a small part.

(77) In the third place, Google does not explain why the principle of good administration would imply that the Commission would be precluded from conducting an investigation for the rest of the EEA in instances where an NCA conducted an investigation for its own territory.

(78) Fourth, regarding the claim that the Commission breached the principle of sincere cooperation, Google cites Chapter IV of Regulation 1/2003 and quotes from certain Court judgments relating to cooperation between the Commission and Member State NCAs, noting, for example, that: "*the scheme of Regulation No 1/2003 is based on close cooperation between them*" and that the principle of sincere cooperation "*imposes on the EU institutions mutual duties to cooperate in good faith with the Member States*" [54] to justify its claim that: "*By trying to rerun the* [French NCA]'s *case two years after the* [French NCA] *and impose different remedies, the* [Commission] *is therefore also in breach of the principle of sincere cooperation*".[55] Google does not explain how any of the legal principles cited support this assertion.

(79) In the first place, the Commission's decision to open proceedings in respect of the Sell-side conduct was the result of its own investigation. Nothing in Chapter IV of Regulation 1/2003 or in the case law of the Court precludes the Commission's investigation. Contrary to Google's allegations, the Commission's actions do not disregard the system of close cooperation between competent authorities, disrespect the principles of mutual recognition and trust.

(80) In the second place, Google does not demonstrate how the provisions of this Decision concerning the Sell-side Conduct do not conflict in any manner with the French NCA Adtech Decision.[56]

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54 […]. In particular, Google quotes the General Court judgment in *Vivendi v Commission* that: "*under Articles 4 and 5 of Regulation No 1/2003, the Commission and the competition authorities of Member States have parallel powers for the application of Articles 101 and 102 TFEU, while the scheme of Regulation No 1/2003 is based on close cooperation between them*" (Case T-432/10 *Vivendi v Commission*, EU:T:2013:538, paragraph 26), the General Courts determination in *Sped-Pro S.A. v Commission*: "*recitals 15, 21 and 28, Article 11(1) and Article 15 of Regulation No 1/2003, as well as the end of paragraph 2 of the* [ECN Notice] *establish a system of close cooperation between the competent authorities based on the principles of mutual recognition, mutual trust and sincere cooperation"* and *"for the purposes of application of Articles 101 and 102 TFEU, cooperation between the Commission, the competition authorities of the Member States and the national courts is based on the principles of mutual recognition, mutual trust and loyal cooperation, which oblige each of those authorities and courts to consider, except in exceptional circumstances, that all the other authorities and courts respect EU law and, in particular, the fundamental rights recognised by that law"* (Case T-791/19 *Sped-Pro SA v Commission*, EU:T:2022:67, paragraphs 85 and 88) and the Court of Justice's ruling in *Amoena* that: *"the principle of sincere cooperation not only obliges the Member States to take all the measures necessary to guarantee the application and effectiveness of EU law but also imposes on the EU institutions mutual duties to cooperate in good faith with the Member States"* (Case C-677/18 *Amoena*, EU:C:2019:1142, paragraph 55).

55 […].

56 See Regulation 1/2003, recital (22). "*In order to ensure compliance with the principles of legal certainty and the uniform application of the Community competition rules in a system of parallel powers, conflicting decisions must be avoided".*

(81) In the third place, and in any event, there was cooperation in good faith between the Commission and the French NCA and the Commission built its case (a) for the broader EEA level- with the exception of France for the period and practices covered by the French NCA Adtech Decision, and (b) taking into account a wider scope of practices, benefitting from the experience acquired by the French NCA. For instance, […], and, as noted by Google itself,[57] included in the case team as a seconded national expert a member of the team that had worked in the French NCA case. The Commission's investigation demonstrated a system of close cooperation between the competent authorities.

(82) In the fourth place, the substantive scope of this Decision is broader than that of the French NCA Adtech Decision, not the least because it covers not only practices related to the favouring of Google's SSP AdX by Google's publisher ad served DFP (Sell-side Conduct), but also practices related to the favouring of Google's SSP AdX by Google's programmatic ad buying tools for the open web DV360 and Google Ads (Buy-side Conduct).

(83) Fifth, Google argues that its decision to waive its rights to challenge the French NCA statement of objections of September 2020, including the right to challenge the French NCA's jurisdiction, was based on the premise that the Commission would not subsequently investigate the sell-side practices and impose new remedies, and that the Commission's decision to pursue the Sell-side Conduct "*therefore breaches Google's rights of defence to have it waive those rights on a false premise.*"[58]

(84) In the first place, as set out in recitals (68) to (73), Google had no legitimate expectation that the French NCA Adtech Decision precluded any Commission investigation of the sell-side practices at EEA-level.

(85) In the second place, any decision made by Google in the context of the French NCA investigation and with regard to the French NCA statement of objections was made of Google's own volition. The same goes for Google's decision to propose commitments and the design thereof. Under the terms of Article 464-2(III) of the French Commercial Code, a company wishing to use the settlement procedure may undertake not to contest the statement of objections and to change its conduct and any commitments may be taken into account, where appropriate, in determining the minimum and maximum amount of the fine. None of the benefits of engaging in the French settlement procedure, however, promise immunity at EU level.

(86) In the third place, the Commission's investigation is a separate legal procedure in the course of which Google's rights of defence have been fully respected.

3.2.2. […]

(87) […].

(88) […].[59]

(89) […].[60]

(90) […].[61]

(91) […].[62]

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57 […].
58 […].
59 […].
60 […].
61 […].

(92) […].[63]

(93) […].[64] [65]

(94) […].

(95) […].[66] [67]

(96) […].[68]

(97) […].

(98) […].[69]

(99) […].[70] [71]

(100) […].

(101) […].[72]

(102) […].[73] [74]

(103) […].[75] [76]

(104) […].

(105) […].

(106) […].

(107) […].

(108) […][77][78][79][80]

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62 With a few limited exceptions concerning confidential information, that are not related to any quotes in the SO.

63 Case C-693/20 P *Intermarché Casino Achats v Commission*, EU:C:2023:172, paragraph 106 (see also paragraph 112). See also Case T-604/18 *Google Android*, EU:T:2022:541, paragraph 911.

64 […].

65 Replies to Q3 of the Commission's RFI to DSPs and SSPs of July 2022 and replies to Q4.1 of the Commission's RFI to SSPs of October 2022.

66 […].

67 […].

68 […].

69 Case T-136/19 *Bulgarian Energy Holding and Others v Commission*, EU:T:2023:669, paragraphs 1182 and 1183.

70 […].

71 Case T-136/19 *Bulgarian Energy Holding and Others v Commission*, EU:T:2023:669, paragraph 1171.

72 […].

73 […].

74 […].

75 Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ C 325, 22.12.2005, page 7) ("Notice on the rules for access to the Commission file"), paragraph 23.

76 Notice on the rules for access to the Commission file, paragraphs 19 and 43.

77 […].

78 Data Room Best Practices, point 9.

79 Here Google cites Data Room Best Practices, point 16, which actually states: "*…exceptionally, qualitative confidential documents may also be disclosed to the External Advisors of the addressees of a Statement of Objections through a data room procedure. A qualitative data room may be organised where it is not possible or it is very burdensome for the Data Provider to provide meaningful non-confidential versions of such qualitative documents (for instance internal strategy documents) with sufficient evidentiary value and in a timely manner. The organisation of a data room in these circumstances enables the addressees of the Statement of Objections, through their External Advisors,*

(109) […].

(110) […].[81]

(111) […].[82]

(112) […].

(113) […].[83]

(114) […].

(115) […].

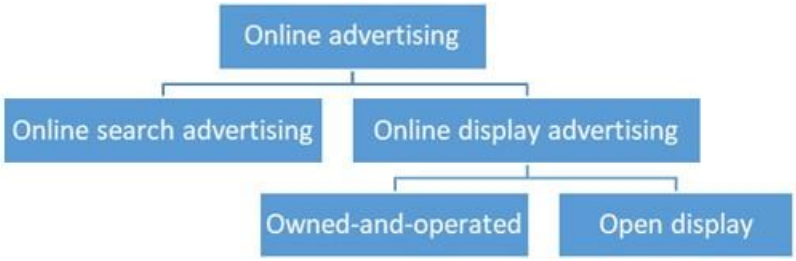
(116) […].

4. THE PRODUCTS AND SERVICES CONCERNED BY THE DECISION

4.1. Description of the industry

(117) This Decision concerns online display advertising intermediation. Online advertising comprises two broad categories: online search advertising and online display advertising.[84] As regards online display advertising, ads can be purchased either through open display channels, in which ad inventory is sold through intermediaries that offer inventory from multiple websites and apps (also referred to as "open web"), or through closed channels, in which inventory is sold directly by the owner of the website or app to individual advertisers using a proprietary tool (also referred to as "walled gardens", "owned and operated" or "O&O" channels). Google is an O&O platform as regards the inventory on its proprietary services such as Gmail, Google Finance, and YouTube. Other players active in the O&O channel include Meta with its social networks and Amazon with its marketplace.[85]

Figure 1: Online advertising segments[86]



to verify the evidence in the Commission's file where the disclosure of such confidential information may be necessary for the effective exercise of the rights of defence, in particular insofar as such confidential information is relied upon in the Statement of Objections".

80 […].

81 Data Room Best Practices, point 16.

82 Article 8(1) of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the functioning and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, page 29).

83 […].

84 Advertising spaces can primarily be distinguished according to whether they are linked to a search performed by the Internet user or not. The advertising spaces linked to a search query are those displayed on the results pages of general or specialised search engines and are generally referred to as "search advertising". When the ad is not linked to a search query, it is generally referred to as "display advertising" by the industry. Only display advertising is concerned by the practices which are the subject of this Decision. For more see section 5.3 below.

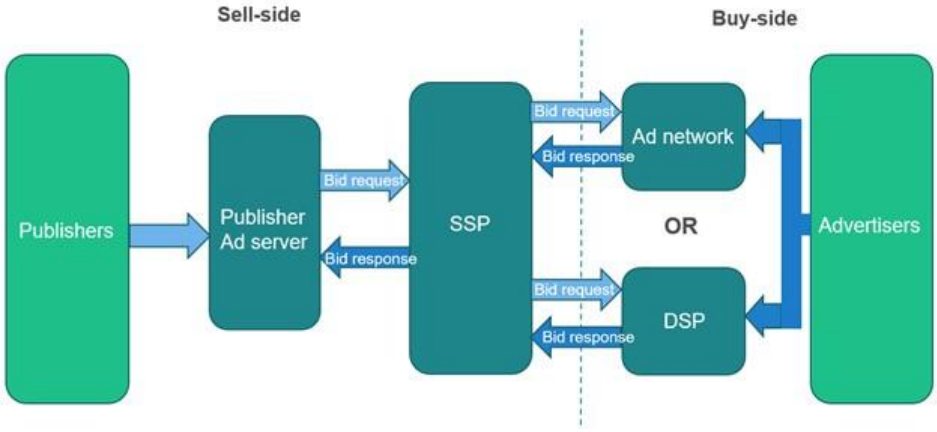
85 For more, see section 5.4.2 below.

86 Commission's own elaboration.

(118) In the case of ads purchased through the open display channel, when a user opens a website or an app, a complex series of transactions - nearly instantaneous and invisible to the user - determines which ad will be shown to that user in each available ad space on the webpage/app. The set of technological tools that connect website/app publishers selling advertising opportunities to the advertisers wishing to buy those advertising opportunities is referred to as the "adtech stack".

(119) Each website/app can be programmed by its publisher to create slots where ads can be displayed. A non-search related ad displayed on a website/app is called a (online) display ad. A display ad may contain images, text, or multimedia. A single display ad shown to a single user on a single occasion is called an impression.

Figure 2: Adtech stack[87]



(120) An adtech transaction begins when a user opens a website/app. While the website/app's content loads, the website/app typically sends a request to a publisher ad server to select which ads will fill each ad slot on the page. The publisher ad server evaluates potential ads from different advertising sources and applies a decision-making logic to determine which ad will be displayed to the user opening the website/app.

(121) Publisher ad servers are thus the first technological layer involved in the selection and distribution of online display advertising.

(122) For a typical website/app, the publisher ad server first determines whether the ad spaces on the webpage/app opened by the user have already been sold to a specific advertiser directly by the publisher. Such direct sales result from one-on-one negotiations between publishers and advertisers and typically involve premium ad placements (e.g., ads at the top of a webpage) that command the highest prices from advertisers.[88] For any ad space not filled through direct sales, the publisher ad server then tries to sell the ad space through indirect sales channels ("programmatic sales via the open web").[89] Programmatic sales via the open web allow publishers to sell remaining or "remnant" ad space (i.e., space not sold through direct sales). Many publishers, especially smaller ones, only sell ad space through this channel.

87 Commission's own elaboration.

88 Direct deals entail that a publisher agrees to display a given value of ads of an advertiser at a fixed price. For each impression, it remains in the power of the publisher to decide whether to fill it by means of a direct deal or by programmatic sales.

89 For clarification, the Commission uses in the present Decision the term "programmatic" as meaning indirect sales. It should be noted however that in the industry, sales that are transacted "programmatically" may also include some forms of direct deals, such as programmatic guaranteed. […].

(123) Publisher ad servers have four main features, namely (i) they allow the implementation, delivery and follow-up of ad campaigns sold directly to advertisers; (ii) they enable programmatic sales via the open web; (iii) they make it possible to decide on the most profitable ad to display, taking into account both direct and indirect sales, for each impression; and (iv) they enable monitoring of sales performance. Publisher ad servers generally charge the publisher a fee based on the number of impressions served. The publisher ad server fee typically does not vary according to the price paid for each impression.

(124) In the case of programmatic sales via the open web, a series of interactions between different adtech tools follows. These technologies allow publishers and advertisers to transact through instantaneous automated processes, known as programmatic buying. The importance of programmatic buying has increased significantly in recent years. The defining feature of programmatic buying is that the decision on whether to buy a particular impression is made in real time, making use of information about the environment (for example the webpage) in which the ad will appear and often about the internet user to whom the ad will be shown.

(125) Historically, the first programmatic intermediaries were the publisher-facing ad networks ("publisher ad networks"), whose model consisted of grouping together the spaces available on the websites of multiple publishers, often according to criteria such as their exposure or the theme of the websites, and marketing them to advertisers, paying the publishers a fixed price. For smaller publishers, i.e. primarily those who do not have a direct relationship with advertisers (and are often not equipped with an ad server), publisher ad networks have represented an ideal solution.

(126) Today, most open web programmatic transactions take place on an ad exchange (also called a supply-side platform or SSP)[90] and publisher ad networks have become gradually less relevant. On the one hand, since SSPs offer more extensive control options (in particular with regard to the content of the campaigns displayed), they became the preferred option especially of larger publishers.[91] On the other hand, publishers ad servers, unlike publisher ad networks, have offered publishers the possibility to call multiple SSPs when accessing advertiser demand.[92] As a result, most publisher ad networks have now changed their model or no longer exist. However, there is no consensus on the definition of publisher ad networks and the term is still sometimes used to designate certain actors, in particular those offering limited control to publishers over their inventories.[93]

(127) An SSP is a platform used by publishers, typically through requests received from their publisher ad server to auction ad impressions on a particular webpage/app. The SSP solicits bids on the impression from ad buying tools, chooses the winning bid,

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90 SSPs were initially connected to advertisers via ad exchanges, which were themselves connected to a demand side platform (DSP). However, the development of direct relationships between DSP and SSPs, and the organisation of auctions by the SSPs themselves, have called into question the distinction between the two types of actors, meaning that today, for publishers, there are no practical differences between SSPs and the ad exchanges. Hereinafter, the term SSP will be used to refer to both SSP and ad exchanges.

91 More information on the differences between SSPs and publisher ad networks is provided below at recitals (265) to (268).

92 More information on the differences between publisher ad servers and publisher ad networks is provided below at recitals (278) and (279).

93 As such, Google's AdSense and AdMob services are generally referred to as publisher ad networks.

and transmits information on the clearing price back to the publisher ad server.[94] SSPs also offer publishers additional services directly, including greater control over the content of the campaigns they run, for example allowing them to better protect their own brand image.

(128) In general, the SSP business model is based on charging the publisher a percentage of the transaction amount, i.e. of the price received by the publisher in exchange for the impression. This percentage is determined in the context of a commercial negotiation between the publisher and the SSP.

(129) When a publisher ad server sends an auction request to an SSP, the publisher ad server provides certain information about the impression for sale. This can include information about the website/app itself, the ad space on the webpage/app (e.g., where the ad is placed) and the user who will view the impression. The data about the user may include the demographic characteristics of the user (e.g. location, age, gender) and insights as to a user's interests, based on past browsing behaviour.

(130) After receiving this information from the publisher ad server, the SSP may supplement the information with any additional information the SSP might independently have about the user viewing the ad. For this to happen the SSP needs to be able to match the user identity (User ID) received from the publisher ad server with its own identifier of that user.

(131) The SSP then transmits the bid request, along with any information gathered about the user and the website/app, to various ad buying tools. The detailed information concerning the user's location and browsing history is highly valuable to advertisers because it helps them to assess the value of a particular impression to its advertising campaign. For example, if the information tells an advertiser running a retail business that the user had previously browsed its website/app but did not complete a purchase, then that retailer may be willing to pay a premium for the particular impression.

(132) Advertisers receive and respond to bid requests using programmatic ad buying tools (also referred to as "ad buying tools" or "buy-side tools"). These programmatic ad buying tools, which include DSPs or advertiser-facing ad networks ("ad networks"), assist advertisers with connecting to SSPs, selecting impressions to bid on, submitting bids, and tracking the purchased impressions against the advertiser's advertising campaign goals. The programmatic ad buying tools also try to identify the user by matching their own identifier for that user and the one received from the SSP. Advertisers also use advertiser ad servers, which are used notably to store the "creative" (i.e. the video or text content that is shown to the user) and track the performance of the ad campaigns.[95] Advertiser ad servers are not relevant for any of the conducts assessed in this Decision.

(133) DSPs provide sophisticated and customizable services that allow advertisers to manage their advertising purchases. The modalities for managing DSP bidding vary across a broad spectrum, with, at one end, services that optimise bidding strategies using advanced algorithms but are totally opaque to the advertiser, and, at the other,

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94 The clearing price is the price that clears the auction and with which the SSP will then compete in the publisher selection process.

95 Advertiser ad servers host the creative content and provide other functionalities to advertisers such as targeting, reporting, and media management. The main difference with a DSP is that advertiser ad servers are not used for media buying. More information about the differences between advertiser ad servers and DPSs is provided below at recital (215).

almost total control by the advertiser over the value of the bids. DSPs are also likely to offer advertisers a variety of targeting methods, for example of a category of users based on socio-demographic characteristics, but also on interests or similarities with a given group. They can also offer advertisers the option of choosing an objective for their advertising campaign, such as maximising website visits or product sales, with the DSP pursuing that objective through advanced statistical techniques. DSPs typically charge advertisers and media agencies a percentage of the media spend.

(134) Advertisers often also rely on ad networks which are a type of programmatic ad buying tool, typically with fewer and simpler options. In the past, many ad networks often worked directly with publisher ad servers. Today, more and more ad networks bid for and buy advertising space on an impression-by-impression basis, submitting bids to SSPs alongside other ad networks and DSPs. Ad networks offer a self-service, easy-to-use technology.

(135) Irrespective of whether the advertiser uses a DSP or an ad network as its programmatic ad buying tool, the tool evaluates the bid request received from the SSP and, if the impression meets the advertiser's criteria (e.g., targeted audience, website/app category), the tool determines an amount to bid for the impression. Because each impression is filled within fractions of a second while the website/app loads for the user, an advertiser could never evaluate each impression individually. Instead, advertisers rely on these automated ad buying tools to evaluate impressions and bid on their behalf based on parameters pre-configured by the advertiser ahead of time. After determining the highest bid for the impression among its advertisers, the programmatic ad buying tool then sends it back to the SSP for consideration.

(136) After receiving bids from multiple ad buying tools, the SSP holds an auction to determine the winning bidder. Historically, most SSPs ran a second-price auction in which the highest bidder won the auction and paid a price one cent higher than the bid of the second highest bidder. Today, however, most SSPs run first-price auctions where the highest bidder simply pays the price of its winning bid. The SSP sends the information about its winning bid back to the publisher ad server, which evaluates the SSP's bid under a set of rules defined by the publisher ad server.

(137) The publisher ad server then makes the final decision regarding which ad to "serve" to the user. For each impression, a publisher ad server usually sends a request for a bid to multiple SSPs and selects the best bid that these different SSPs are able to submit, often in an auction. After making its selection, the publisher ad server sends a message to the programmatic ad buying tool representing the winning advertiser. The advertiser ad server then provides the content of the ad to be displayed.

(138) In sum, publishers use SSPs and publisher ad servers, also referred to as "sell-side" services, to sell ad inventory, while advertisers use DSPs and ad networks, also referred to as "buy-side" services, to buy ad inventory. The adtech transaction process for programmatic sales explained above is represented in Figure 2 above.

(139) The total percentage of advertiser spend extracted by adtech intermediaries can have a substantial impact on the revenue publishers earn from advertising and on the return on investment that advertisers receive from their advertising campaigns. Figure 2 above illustrates the flow of bids in terms of requests and responses from both sides of the ad tech stack and across the services from the buy-side and sell side.

4.2. Google's presence in the adtech stack

(140) Google offers a range of technologies that enable it to provide services across the various levels of the adtech stack, including a full range of services for both

publishers and advertisers. These services were partly built up through a number of acquisitions, namely of DoubleClick in 2008, AdMob in 2009, Invite Media in 2010 and AdMeld in 2011.

(141) The main online display advertising technologies sold by Google to publishers are the leading publisher ad server - DFP[96] - and the leading SSP - DoubleClick Ad Exchange ("AdX")[97]. In June 2018, Google integrated DFP and AdX into Google Ad Manager ("GAM"), which is the server and platform offering for publishers (i.e., Google's sell-side offering), but still allows these services to be purchased separately. Google also markets the AdSense[98] and AdMob[99] publisher ad network platforms[100].

(142) Google also offers a range of advertising technologies for advertisers (i.e., Google's buy-side offering), including the leading DSP - Display & Video 360 ("DV360" or "DV3") (formerly DoubleClick Bid Manager, "DBM") - and the leading advertiser ad network - Google Ads (sometimes referred to as Google Display Network, "GDN") (formerly Google AdWords). It also offers the leading advertiser ad server - DoubleClick Campaign Manager (now Campaign Manager). Whilst Google Ads remains a standalone product, DV360 and Campaign Manager are now integrated into the Google Marketing Platform ("GMP"), but as with Google's sell-side offering, advertisers are still able to purchase and use the server and platform features separately. The GMP umbrella also includes Google Analytics, a widely used service that provides advertisers with data and analytical tools to evaluate user interaction with their websites and feed the results of this evaluation into their ad campaigns.[101]

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96 DFP is a multi-format, multi-media publisher ad server with a business model split between DFP Small business and DFP Premium. The first one is free, but limited both in its features and in the number of ads served each month. The second is invoiced to publishers at rates that are generally regressive according to the number of ads displayed and that vary according to the format of the ads (e.g., videos, banners, rich media ads).

97 DoubleClick AdExchange was part of DoubleClick and Google added some functionalities to it after the acquisition of the SSP AdMeld in 2011.

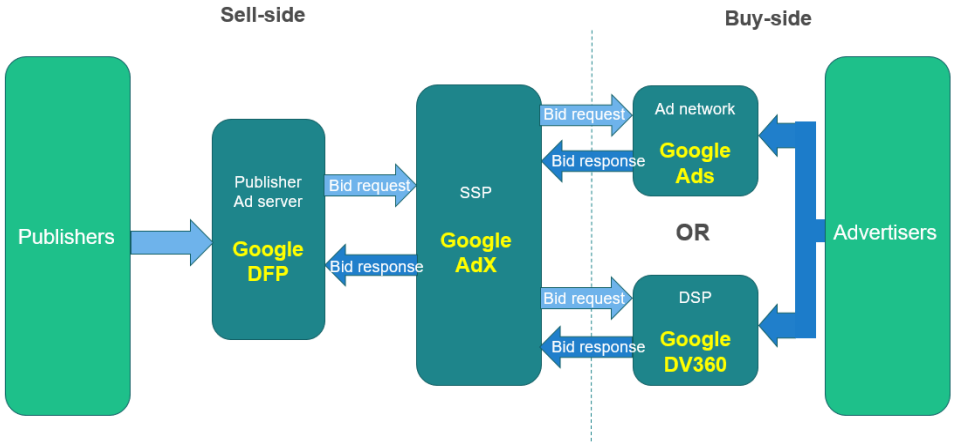
98 AdSense is made up of two services, AdSense for Content (AFC) and AdSense for Search (AFS). AFC allows publishers to serve ads on the content pages of their websites, while AFS allows them to use a search engine on their site that also sends the keywords to Google to display relevant ads on the publisher's results pages.

99 AdMob offers publisher ad network services for app environments.

100 This Decision covers practices put in place by DFP, AdX, Google Ads and DV360. It takes no view on business practices related strictly to AdSense or AdMob.

101 See […] reply to Q46 of the Commission's RFI to […] of August 2020 (ID[…]) for a list of services included under the GMP umbrella. Google Analytics is available in either a free version or in a premium, paid version known as Analytics 360. Google Analytics allows advertisers to create audiences based on users' interaction with their websites that they can export directly for use in campaigns on Google's buy-side tools. See, e.g. "Product Linking: Link Google Analytics properties and Google Ad", https://support.google.com/google-ads/answer/7519537?hl=en, downloaded on 22 May 2023 (ID[…]) and "Link Analytics 360 and Display & Video 360", https://support.google.com/analytics/answer/6318719?hl=en#zippy=%2Cin-this-article, downloaded on 22 May 2023 (ID[…]).

Figure 3: Google's presence in the adtech stack[102]



(143) According to a Google internal document reproduced in Figure 4 below, when a transaction passes through all of its adtech tools, Google estimates that it gets to keep […] of every dollar spent on online display advertising ("take rate"), most of it at the level of its SSP, AdX (20%).

Figure 4: […][103]

5. RELEVANT PRODUCT MARKETS

5.1. Principles relating to product market definition

(144) In the context of the application of Article 102 TFEU, the definition of the relevant product and geographic market is essential to assess whether the undertaking concerned has a dominant position and whether this enables it to prevent effective competition from being maintained on the relevant market by giving it the power to behave to an appreciable extent independently of its competitors, its customers and, ultimately, consumers.[104]

(145) The concept of the relevant market implies that there can be effective competition between the products or services which form part of it and this presupposes that there is a sufficient degree of interchangeability between all the products or services forming part of the same market in so far as a specific use of such products or services is concerned.[105]

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102 Commission's own elaboration.

103 Internal untitled document, […].

104 Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraphs 10 and 11; Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraphs 38 and 39; Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 37; Case T-83/91 *Tetra Pak II*, EU:T:1994:246, paragraph 63.

105 Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 28; Case C-179/16 *F. Hoffmann-La Roche and Others*, EU:C:2018:25, paragraph 51. See also Commission Notice on the definition of the relevant market for the purposes of Union competition law (OJ C/2024/1645, 22.2.2024) (the "Market Definition Notice"), paragraph 6.

(146) An examination to that end cannot be limited solely to the objective characteristics of the relevant products and services, but the competitive conditions and the structure of supply and demand on the market must also be taken into consideration.[106]

(147) The identification of relevant product markets by the Commission derives from the existence of competitive constraints.[107] Undertakings are subject to three main sources of competitive constraints: demand substitution, supply substitution and potential competition. From an economic point of view, for the definition of the relevant market, demand substitution constitutes the most immediate and effective disciplinary force on the suppliers of a given product and is therefore the main consideration when defining the relevant product market.[108] Factors to be taken into account in that respect include the nature and technical features of the products or services concerned, the facts observed on the market, the history of the development of the products or services concerned and the undertaking's commercial practice.[109]

(148) In particular, while assessing the relevant market, the Commission determines the range of products that customers of the undertaking(s) involved regard as effective and immediate substitutes, as well as the degree of substitutability with the products of the undertaking(s) involved by examining a variety of evidence. Such evidence includes, depending on the requirements and particularities of each case, indicators for the reasons why customers would or would not substitute one product with another, such as customer preferences relating to product characteristics, prices, functionalities, intended use, barriers to switching and switching costs.[110]

(149) In case of multi-sided platforms which supply a product to a user group at a zero monetary price, for the assessment of substitution the Commission will take into account different non-price parameters, including: product functionalities[111], intended use[112], evidence of past or hypothetical substitution, barriers or costs of switching, such as, for example, data portability.[113]

(150) Supply substitution can also be relevant for the definition of the relevant market in some cases, namely when it is as effective and immediate as demand substitution and when it leads to similar competitive conditions across the products concerned.[114] This may be the case when suppliers use the same assets and processes to produce related products or services that are not substitutes for customers and where this leads to similar conditions of competition across the range of such related products.[115] Supply substitution is, however, not taken into account at the stage of defining the relevant market when it would entail the need to adjust significantly

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106 Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 37; Case T-556/08 *Slovenská pošta v Commission*, EU:T:2015:189, paragraph 112; Case C-179/16 *F. Hoffmann-La Roche and Others*, EU:C:2018:25, paragraph 51.

107 Market Definition Notice, paragraph 6.

108 Market Definition Notice, paragraph 23 a).

109 Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 925.

110 Market Definition Notice, paragraphs 26 and 48 to 50.

111 See for instance the market definition of consumer communication services and social networking services in Commission decision of 3 October 2024 in case M.7217 *Facebook/Whatsapp*, paragraphs 24 to 33 and 51 to 61.

112 See for instance the market definition of general search services in Commission decision of 27 June 2017 in case AT.39740 – *Google Search (Shopping)*, paragraphs 163 to 183.

113 Market Definition Notice, paragraph 98.

114 Market Definition Notice, paragraph 23(b).

115 Market Definition Notice, paragraph 32.

existing tangible and intangible assets, additional investments, strategic decisions or time delays.[116]

(151) The relevant market is an autonomous concept of Union competition law and it might differ from the term "market" used in other contexts. To define the relevant market, the Commission may rely on various sources of information and types of evidence.[117] The Commission does not apply a strict hierarchy of evidence in this respect. The value of different types of evidence is assessed in the context of each specific case.[118]

5.2. Application to this case

(152) The Commission reaches the conclusion that the relevant product markets for the purpose of the present Decision are:

(1) the market for programmatic ad buying tools for the open web, comprising both DSPs and ad networks;

(2) the market for SSPs for online display advertising; and

(3) the market for publisher ad servers for online display advertising.

(153) In the following sections, the Commission will first analyse the distinction between online search advertising services and online display advertising services, including the related distinction between the intermediation services for online search and display advertising (section 5.3). As the present Decision concerns Google's conduct on the supply of online display advertising intermediation services, the Commission will further focus its analysis on those services in subsequent sections. First, in section 5.4, the Commission analyses the market for programmatic ad buying tools for the open web. Second, in section 5.5, the Commission analyses the market for SSPs for online display advertising (also referred simply as the market for SSPs). And third, in section 5.6, the Commission analyses the market for publisher ad servers for online display advertising (also referred simply as the market for publisher ad servers).

5.3. Online search vs. online display advertising services and the related distinction between intermediation services for online search and online display advertising

(154) Online search ads are ads displayed on the basis of search queries entered by users into internet search engines. Advertisers can specify the keywords for which they want their ads to be triggered or the queries for which they are most likely to be relevant. Search ads are typically presented next to the search results on the search engine's own pages or other search results pages. Online display ads are not displayed on the basis of a search query and can be either contextual ads, displayed according to the content of the page on which they appear, or non-contextual ads.

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116 Market Definition Notice, paragraph 37.

117 Market Definition Notice, paragraph 76, which states: *"The Commission uses various sources of information and types of evidence to define the relevant market and it may rely on both qualitative and quantitative information. Certain types of evidence may be decisive in one case, but of limited or no importance in other cases involving a different industry, a different product or different circumstances.* […] *The Commission adopts an open approach to empirical evidence, aimed at making effective use of all available information which may be relevant in individual cases, and makes an overall assessment based on that evidence*".

118 Market Definition Notice, paragraph 67, which points out that the Commission "*does not apply a rigid hierarchy of different sources of information or types of evidence*" and "*Certain types of evidence may be decisive in one case, but of limited or no importance in other cases involving a different industry, a different product or different circumstances*".

Since no query-keyword is usually available to trigger online display ads, advertisers will rely on data collected about the user accessing the pages, which is thus relatively more important for display ads than for search ads.

(155) In its previous decisional practice, the Commission found that there were separate relevant product markets for the supply of online search advertising services on the one hand, and the supply of online display advertising services, on the other hand.[119] In a recent merger decision,[120] the Commission maintained its view that within the online advertising services market, a distinction should be made between online search and online display advertising services.[121]

(156) In addition, the Commission previously considered online search and online display advertising intermediation services as separate relevant markets, despite leaving open the exact segmentation of online advertising intermediation services.[122]

(157) In its *Google AdSense* decision, the Commission found that there is limited substitutability between intermediation services for online search ads and for online display ads.[123] First, in order to provide intermediation services for online search ads, an intermediary must establish a fully-fledged online search advertising platform, which requires significant technological investments in order to develop a viable search engine. Second, an intermediary needs to invest in the development of an ad-matching technology and a real-time auction mechanism. Even for existing providers of online display advertising intermediation services, which can, to a certain extent, rely on their pre-existing technology, these investments remain significant. Third, intermediation services for online search ads rest much more on scale advantages than intermediation services for online display ads. Intermediaries offering online search advertising services must develop a sufficiently large search advertising portfolio in order to deliver relevant online search ads in response to a broad range of keywords. By comparison, a large online advertising portfolio is less important for intermediaries offering online display ads. This is because online display advertising is more targeted to and efficient at creating brand-awareness and new demand rather than satisfying the immediate needs of users. The market investigation in the *Google AdSense* case also indicated that there are important technological differences between intermediation services for online search ads and intermediation services for online display ads.

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119 Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*, paragraphs 121 to 183 and Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraph 155.

120 Commission decision of 27 January 2022 in case M.10262 - *Facebook/Kustomer*, paragraphs 147 and 149.

121 The results of the market investigation showed that search and display advertising services are based on different use cases and purposes: search advertising is focused on the bottom of the funnel (intent and conversion), while display advertising can serve the entire funnel (awareness, consideration, intent, and conversion). Moreover, the Commission's market investigation showed that there are differences between search and display advertising in terms of targeting capabilities, user engagement, return on investment, reach, price/cost, planning/marketing objectives, ad format, design and content and adtech services required.

122 Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraph 166; Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*, paragraph 194.

123 Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*, paragraphs 195 to 197.

(158) The French NCA also confirmed that intermediation services for online display advertising constitute a separate market from intermediation services for online search advertising.[124]

(159) Moreover, in the *Google/Fitbit* case, the Commission concluded that in view of the technical differences regarding the serving of online search ads as opposed to online display ads, not all the "ad tech" services are relevant for search advertising intermediation.[125]

(160) The Commission's investigation in the present case has confirmed these findings.

(161) In the first place, from a demand-side perspective (i.e., the advertisers' perspective), there is very limited substitutability between online search and online display advertising. […] advertisers that replied to the Commission's RFI consider online search advertising and online display advertising as complementary, rather than substitutes.[126] Respondents pointed to significant differences between online search advertising and online display advertising, which include in particular the underlying strategy, the user engagement, the targeting capabilities, the level of the marketing funnel each cater for and the campaign objectives (conversion for search advertising, awareness and consideration for display advertising).[127] These differences are illustrated by the statements of the following advertisers:

(1) According to […]: search and display advertising […].[128]

(2) According to […]: search and display advertising […].[129]

(3) According to […].[130]

(162) Moreover, based on replies from media agencies to the Commission's RFI of December 2020, advertisers have separate budgets for search and display ad campaigns. For example, according to […].[131]

(163) Google internal documents support the above findings. For example, an internal document reflecting the feedback of three media agencies […] on DV360 shows that […].[132] […].[133]

(164) In the second place, there is also limited supply-side substitutability between online display advertising and online search advertising. On the one hand, in *Google AdSense*, the Commission found that it would be difficult for a provider of online display advertising services to switch to the provision of online search advertising

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124 For illustration, in French NCA Adtech Decision, the French NCA confirmed that the intermediation platforms for online non-search advertising and intermediation platforms for online search advertising constitute separate markets. Firstly, the key principle of search intermediation involves targeting the user's search terms, which reflect an intention on their part. It is not possible to use the same technologies for intermediation if there is no search by the user. Secondly, display ads currently have a variety of formats (simple banner, enriched, native, video, audio, etc.), while search ads are primarily text-based.

125 Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraph 166.

126 Replies to Q3 of the Commission's RFI to advertisers of December 2020.

127 Similar views were expressed by most of the media agencies which replied to Q3 of the Commission's RFI to media agencies of December 2020.

128 […] reply to Q3 of the Commission's RFI to advertisers of December 2020 (ID[…]).

129 […] reply to Q3 of the Commission's RFI to advertisers of December 2020 (ID[…]).

130 […] reply to Q3 of the Commission's RFI to advertisers of December 2020 (ID[…]).

131 […] reply to Q2b) of the Commission's RFI to media agencies of December 2020 (ID[…]).

132 […].

133 […].

services, mainly due to significant investments and the need for specific technical know-how regarding search technology and auction systems that would be required to enter into the online search advertising market. On the other hand, it would also be difficult for a provider of online search advertising services to switch to the provision of online display advertising services. In order to attract clients at a significant scale in the market for online display advertising services, it is necessary to provide interesting content or specific functionalities to users generating large amounts of traffic and data.[134] Providers of online search advertising do not necessarily produce specific content since they are focussed on providing a search engine to internet users. The creation of interesting content, like a news website, or even a social media platform which would allow for a non-marginal online display advertising service cannot be considered as easily possible in the short term.

(165) In the third place, while in online search advertising services it is common for the provider of the intermediation services and the provider of the search inventory to be integrated, in the case of online display advertising services, the providers of the inventory (i.e., publishers) tend to differ from the providers of the intermediation services (i.e., adtech players). These different business models, together with the limited supply-side substitutability between the two categories of advertising services (see previous recital), help explain why the undertakings active in the provision of online search advertising services, on the one hand, and in the provision of online display advertising services, on the other hand, also tend to be differentiated, including at the intermediation level (with the notable exception of Google Ads, that serves both search and display ads, using different technologies for each type of ad).

(166) The Commission's conclusion that intermediation services for online search advertising and intermediation services for online display advertising are in separate markets is not contradicted by Google's arguments described below.

(167) First, Google argues that the differences in characteristics between search ads and display ads are insufficient to show lack of substitutability, pursuant to the Market Definition Notice, […].[135] Google further argues that the fact that advertisers have separate budgets for search ads and display ads does not show a lack of substitutability because this 'internal allocation' does not mean that budgets do not shift between or within time periods in response to relative ROI (Return on Investment) performance.[136]

(168) The Commission does not base itself only on differences in characteristics between search ads and display ads. It also relied on reasoned views by customers, as set out in recitals (161) to (163), which describe the different campaign objectives for which these services are used (conversion for search advertising, awareness and consideration for display advertising) and explain that, because of these differences, customers see search ads and display ads as complementary and not as substitutes.

(169) In addition, the fact that advertisers have separate budgets for search and display ads confirms the complementarity between these two services. When services are substitutes it is more likely that customers have a common budget that can be interchangeably used among them. This is consistent with paragraphs 26 and 48 to 50 of the Market Definition Notice, as described in recital (148). This is reinforced by the fact that, as evidenced in recitals (502) and (503) below, ROI is unlikely to be

134 Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*, paragraphs 150 to 154.
135 […].
136 […].

the only metric considered by advertisers when deciding which channels to use because the complexity of ROI measuring makes it impossible for most advertisers to measure actual ROI.

(170) Second, Google argues that the credibility of the Commission's exclusion of search ads from relevant markets is weakened by the fact that the Commission did not consider the perspective of publishers.[137]

(171) In that respect, the Commission notes that substitutability must generally be examined from the demand side. The demand side for online advertising is represented by advertisers and media agencies who are the buyers of search and display ads. In any event, the Commission does in fact take into account in its assessment also the supply side perspective (recital (164)). Search ads can only be presented in reply to a search. This means, first, that contrary to display ads which can be displayed in any space of the inventory of publishers, publishers need to have a search functionality within their properties in order to be able to display search results at all, which most of them do not have. And second, that publishers can only show search ads when users make a search, which limits their ability to resort to search ads: if there is no user search no search ad can be shown.

5.4. Programmatic ad buying tools for the open web

5.4.1. Tools for the purchase of online display advertising space

(172) As explained above in section 4.1, in order to perform and manage programmatic buying of ad inventory in the open web, advertisers and media agencies rely on different tools provided by third-party intermediaries. The ad buying tools that enable advertisers and media agencies to buy ad inventory from a variety of publishers are DSPs and ad networks.

(173) First, DSPs are technological platforms that allow advertisers and media agencies to run advertising campaigns and buy inventory from various SSPs through one user interface. DSPs are a key component of the real-time bidding ("RTB") process, which allows advertisers and media agencies to buy media inventory on an impression-by-impression basis. A DSP bids on impressions based on the advertiser's objectives and on data about the user.

(174) DSPs provide services to the buy-side, i.e., advertisers and media agencies. Advertisers and media agencies play the central role in selecting DSPs. As indicated by […].[138]

(175) Advertisers and media agencies that replied to the Commission's RFI indicated the following as features and functionalities characterizing a DSP:[139]

(1) automated bidding – DSPs determine the optimal bid for each advertiser to be submitted in real-time in the context of auctions for digital ad inventory launched by SSPs;

(2) access to inventory – DSPs offer the possibility to buy media inventory across multiple channels (i.e., from multiple sources at the same time, like SSPs and publisher ad networks) and publishers, including preferred/exclusive access to specific ad inventory;

137 […].

138 […] reply to Q14 of Commission's RFI to publishers of December 2020 (ID[…]).

139 Replies to Q1 of the Commission's RFI to advertisers and media agencies of November 2022.

(3) access to data (audience data integration[140]) – DSPs allow more effective use of first[141] and third-party data[142] for targeting specific audiences in real time based on behavioural or contextual signals (either directly into the platform or through other third-party pieces of technology plugged into the DSP);

(4) set up, tracking and optimization of digital ad campaigns, via a self-service interface;

(5) measurement and reporting functionalities – some DSPs offer managed services to consult on campaign setup, optimization, bidding strategies; reporting of campaign metrics such as impressions, Cost per Mille ("CPM"[143]), wining/losing bids;

(6) audience creation[144] using contextual and behavioural attributes; and

(7) definition of targeting options (such as frequency).

(176) Several respondents to the Commission's investigation also noted the ability of most DSPs to allow advertisers and media agencies to display ads within different environments (e.g. web, apps)[145], to support different formats (namely banners, video, audio, native advertising[146], TV)[147] and their ability to manage branding or performance communication objectives.[148] As indicated by […].[149] While DSPs may differentiate themselves by different levels of specialisation, supported formats and channels, as highlighted by […].[150]

(177) The Commission's findings regarding the main features and functionalities of DSPs are confirmed by the Online platforms and digital advertising market study published by the Competition and Markets Authority ("CMA") in July 2020 (the "CMA Online Advertising Market Study"), according to which DSPs (i) provide advertisers and media agencies with the ability to target users in real time; (ii) determine the optimal

140 Often this integration is concretely achieved via data pipelines originating in tags placed on relevant inventory and flowing towards a DSP.

141 First-party data is information that a business collects directly from its users on its own inventory, rather than via a third-party. From the perspective of a DSP, therefore – data would be considered "first-party" if it was gathered by: (i) the DSP itself; or (ii) a different service, with which the DSP is vertically integrated. In a scenario where an advertiser opts to provide data that the advertiser gathered on its own inventory to a DSP, this would constitute a provision of data which is: (i) "third-party" from the ingesting DSP's perspective; and (ii) "first-party" from the advertiser's own perspective.

142 Third-party data is information that is not collected directly by a business (or by a party that is vertically integrated with this business/with the recipient of the relevant data) from its users on its own inventory.

143 CPM is the cost that an advertiser pays for every 1000 impressions of its advertisement on an inventory.

144 Creating and managing audiences is one of the main value-adds that DSPs bring. Through audience creation, people who are sharing similar identifiers are put into one category. Advertisers can build custom audiences and activate these audiences for use in campaigns. The key feature of DSPs is that instead of buying inventory on publishers, advertisers buy the ability to reach specific audience segments based on the DSP targeting capabilities, across a range of publisher sites. DSPs (or services with which DSPs are vertically integrated) build and manage tags for placement on relevant inventory.

145 Replies of advertisers and media agencies to Q1.1 of the Commission's RFI to advertisers and media agencies of November 2022. For example, […].

146 Native advertising is a form of paid advertising in which the ads aim to match the look, feel and function of the media format where they appear (i.e., to fit "natively" on the web page).

147 Replies of advertisers and media agencies to Q1.1 of the Commission's RFI to advertisers and media agencies of November 2022. For example, […].

148 Replies of advertisers and media agencies to Q1.1 of the Commission's RFI to advertisers and media agencies of November 2022. For example, […] reply to Q1.1. of the Commission's RFI to advertisers and media agencies of November 2022 (ID[…]).

149 […] reply to Q2a) of the Commission's RFI to DSPs of December 2020 (ID[…]).

150 […] reply to Q2 of the Commission's RFI to DSPs of December 2020 (ID[…]).

bid for each advertiser in response to each ad opportunity, by ranking the bids generated based on priority level and price; (iii) decide which bids to submit and into which SSPs; and (iv) monitor the quality of supply, by applying quality filters to all incoming inventory to remove traffic that may not be brand safe or fit for its customer base, or that shows signs of malware or suspicious behaviour.[151]

(178) Second, ad networks are another tool that may be used by advertisers and media agencies to buy display ad inventory from publishers programmatically. Based on publishers' replies to the Commission's RFI, ad networks are technology platforms that mediate the sales of ad inventory between publishers and advertisers and media agencies, acting as brokers or resellers of ad impressions.[152] They serve the same purpose as DSPs, in so far as they allow advertisers and media agencies to buy display ad inventory on the open web in an automated fashion across multiple publishers.

(179) Despite originally having more limited capabilities compared to DSPs, ad networks increasingly offer similar functionalities to DSPs. Some ad networks have introduced RTB features and may bid directly for publisher ad inventory through header bidding,[153] while some other ad networks may also buy ad inventory from SSPs.[154] This makes the distinction between ad networks and DSPs more blurred, since ad networks are nowadays incorporating many of the features that previously set DSPs apart.

(180) In the following sections, the Commission will demonstrate that (i) O&O ad buying tools and direct deals (see section 5.4.2), (ii) SSPs (see section 5.4.3), and (iii) publisher/advertiser ad servers (see section 5.4.4), are not substitutes to programmatic ad buying tools for the open web. Section 5.4.5 explains that a potential further distinction between DSPs and ad networks is unwarranted. For the reasons set out in sections 5.4.2 to 5.4.5, the Commission finds that the relevant product market for the purposes of this Decision is the market for programmatic ad buying tools for the open web, comprising both DSPs and ad networks.

5.4.2. O&O ad buying tools and direct deals are not substitutes to programmatic ad buying tools for the open web

(181) O&O ad buying tools are tools made available by vertically integrated platforms that run integrated sales functions for the sale of their own advertising inventory directly to advertisers and media agencies. Therefore, O&O ad buying tools are typically tools owned by vertically integrated platforms and mostly provide access to the latter's proprietary ad inventory. O&O ad buying tools mostly comprise ad buying tools of vertically integrated social media platforms (e.g., Meta) and vertically integrated marketplace platforms (e.g., Amazon).

(182) Direct sales/deals are instances in which ad inventory is bought and sold via a directly negotiated agreement between an advertiser and a publisher regarding, in particular, the price, inventory covered and terms of the purchase, without an intermediary having a decisive influence on such purchase parameters.

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151 CMA Online Advertising Market Study, Appendix M, paragraph 77 (ID[…]).

152 Replies to Q6 of the Commission's RFI to publishers of November 2022.

153 Header bidding solutions allow publishers to send ad requests to, and receive bids from, multiple SSPs simultaneously, making SSPs compete against each other for each impression.

154 Australian Competition and Consumer Commission ("ACCC"), Digital Advertising Services inquiry – final report, August 2021 ("ACCC Digital Advertising Report"), page 33 (ID[…]).

(183) In the present case, the Commission finds that the market for programmatic ad buying tools for the open web does not include O&O ad buying tools, nor direct deals. O&O ad buying tools only allow advertisers to place ads with a single publisher and with direct deals, advertisers can reach only a limited number of publishers. Advertisers and media agencies cannot turn to O&O ad buying tools, or direct deals to fulfil the need of matching demand from a vast range of advertisers and media agencies with the supply from a vast range of publishers. Since they do not provide for intermediation services, they are distinct from ad buying tools for the open web.

(184) The Commission also concludes that, for the purposes of this Decision, programmatic guaranteed deals[155] and preferred deals[156] should be considered direct deals and are therefore not part of the relevant product market. Such deals allow for the automation of specific elements of the deals only, while other parameters (most notably the price and covered inventory) are still subject to negotiation and agreement between the advertiser and the publisher, without the intervention of any intermediary service in the definition of these parameters.

(185) The Commission further finds that private auctions (also known as private marketplaces)[157] are most akin to programmatic ad buying in the open web: advertisers engage into competitive bidding on the available inventory via intermediaries, much like in open web auctions, with the difference that only selected buyers are allowed to participate in the purchase of the publishers' selected inventory. On that basis, the Commission considers that private auctions are part of the relevant market for programmatic ad buying tools for the open web.

(186) This is illustrated, for example, in a Google internal document indicating that […].[158]

(187) The Commission's conclusion that the market for programmatic ad buying tools for the open web does not include O&O ad buying tools, nor direct deals is not contradicted by Google's arguments described below.

(188) First, Google argues that the Commission failed to duly assess economic substitutability as required by *Servier*[159] and to provide evidence supporting its finding that the relevant market does not include O&O ad buying tools nor direct deals,[160] and that it did not attempt to apply available evidence about demand substitution in the context of the market definition assessment.[161] Google argues that the Commission did not assess the interchangeability between these services based

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155 Programmatic guaranteed deals are deals where the buyer and seller negotiate a price and terms for inventory that is reserved (i.e. guaranteed) for that buyer, and inventory is designated only for that buyer at that price. See https://support.google.com/admanager/answer/7637485?hl=en.

156 Preferred deals are deals where the buyer and seller negotiate a price and terms for inventory that the buyer can optionally buy. The buyer therefore has a preferred opportunity to bid at the negotiated price when there is an ad request for the inventory. See https://support.google.com/admanager/answer/7637485?hl=en.

157 Private auctions (also known as private marketplaces) are deals where a seller invites a set of buyers to bid on a portion of its inventory via an auction. The seller specifies a minimum CPM floor price on a per-buyer basis, which the buyer must exceed to be eligible for the auction. The winner of the auction is determined using the same auction model that applies to the open auction. See https://support.google.com/admanager/answer/2987915?hl=en.

158 […].

159 […]. Case C-176/19 P *Servier*, EU:C:2024:549, paragraph 384.

160 […].

161 […].

on specific use and that consideration of substitutability cannot be deferred until after markets have been defined.[162]

(189) In the first place, programmatic ad buying tools for the open web, on the one hand, and O&O ad buying tools and direct deals, on the other hand, lack functional interchangeability. Programmatic ad buying tools for the open web, while also typically providing additional and complementary functionalities, first and foremost provide advertisers and media agencies with intermediation services. These services facilitate the matching of demand and supply, allowing a vast number of advertisers and media agencies to programmatically acquire ad inventory across a vast number of publishers by bidding on impressions in real time.

(190) Neither O&O ad buying tools nor direct deals can substitute programmatic ad buying tools for the open web in the provision of these intermediation services to advertisers and media agencies. They do not facilitate the matching of a vast number of advertisers and media agencies' demand with the supply offered by a vast range of publishers. The fundamental functions and use of O&O ad buying tools and direct deals therefore differ from those of programmatic ad buying tools for the open web.

(191) In the second place, as noted in section 5.1 above, only effective and immediate competitive constraints are to be included in the relevant market, whereas more remote and contingent constraints that do not meet the criteria of effectiveness and immediacy are to be considered out-of-market constraints to be taken into account in the competitive assessment.[163]

(192) While it may be considered whether O&O ad buying tools and/or direct deals exercise a degree of constraint on Google's position in the market for programmatic ad buying tools for the open web, it cannot be concluded that any competitive constraint of O&O ad buying tools and/or direct deals is sufficiently effective and immediate to consider any of them as part of the same market as programmatic ad buying tools for the open web.

(193) This is why the Commission assesses the competitive constraints posed by O&O ad buying tools and direct deals in sections 7.3.7.1 and 7.3.7.2, in the context of determining Google's dominance, and concludes from the evidence in the file that O&O ad buying tools and direct deals do not exercise a significant indirect competitive constraint on Google's programmatic ad buying tools for the open web. The reasons explained in those sections include an assessment of the economic substitutability between programmatic ad buying tools for the open web and O&O buying tools and direct deals based on specific use and the market conduct of advertisers, media agencies, publishers and Google itself. If O&O ad buying tools and direct deals do not exercise even a (sufficient) indirect constraint on programmatic ad buying tools, they also do not exercise a (sufficient) direct constraint that would allow the Commission to include them in the relevant market for programmatic ad buying tools for the open web.

(194) Second, Google argues that the Commission fails to assess evidence on the file showing that the […] advertisers and media agencies that responded to the Commission's RFI would switch part of their online display advertising spend to

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162 […].

163 Market Definition Notice, paragraph 17. See also Commission decision of 4 April 2012 in case M.6439 – *Agrana / RWA / JV*, paragraph 115; Commission decision of 5 September 2007 in case M.4533 – *SCA / P&G (European tissue business)*, paragraph 169; and Commission decision of 18 July 2018 in case AT.40099 – *Google Android*, paragraph 246.

O&O ad buying tools and/or direct deals in the event of a 5-10% increase in the fees charged by DSPs and that the Commission dismisses this evidence based on flawed reasons.[164]

(195) In the first place, after assessing the advertisers' and media agencies' responses to the RFI of November 2022,[165] the Commission concluded on valid grounds that the responses to those questions did not allow it to reach a conclusion on the boundaries of the relevant market and that such evidence was therefore of limited value. This is because:

(1) Advertisers and media agencies' responses to whether they would or not switch to O&O ad buying tools and/or direct deals show nearly a draw. In other words, around half of the advertisers and media agencies[166] that replied to the Commission's RFI indicated that they would not shift some of their online display advertising spend to O&O ad buying tools or to direct deals in the event the fee charged by DSPs increased permanently by 5 to 10%.[167] These results fail to provide determinant evidence on whether O&O ad buying tools and/or direct deals are considered by advertisers and media agencies as an alternative to programmatic ad buying tools for the open web.

(2) As the SSNIP test's main objective is to shed light on whether substitution in response to a hypothetical small but significant and non-transitory increase in price would be enough to make the price increase unprofitable because of the resulting loss of sales,[168] the Commission also assessed whether those advertisers and media agencies that replied that they would switch some of their online display advertising spend, would switch a large or only a small amount of their spend. However, those respondents were largely unable to provide information on the share of their demand that they would switch, failing to provide determinant evidence on this element of the SSNIP test. In particular:

(a) Among those advertisers and media agencies that stated they would likely shift some of their online display advertising spend to O&O ad buying tools, more than half were unable to estimate the share of the ad spend that they would likely switch from DSPs.[169]

(b) Among those advertisers and media agencies that stated they would likely shift some of their online display advertising spend to direct deals, more than half were unable to estimate the share of the ad spend that they would likely shift.[170]

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164 […].

165 See Q2, Q3, Q4, Q5, Q6 and Q7 of the Commission's RFI to advertisers and media agencies of November 2022.

166 This includes respondents that indicated that they would not shift online display advertising spend to any channel in their response to Q3 of the Commission's RFI to advertisers and media agencies of November 2022 and those that indicated that they would not shift some of their online display advertising spend to O&O ad buying tools, on the one hand, and direct deals, on the other hand, in their response to Q4 of the Commission's RFI to advertisers and media agencies of November 2022.

167 Replies to Q2, Q3, Q4, Q5, Q6 and Q7 of the Commission's RFI to advertisers and media agencies of November 2022.

168 Case T-334/19, *Google AdSense for Search*, EU:T:2024:634, paragraph 155.

169 Replies of advertisers and media agencies to Q5 of the Commission's RFI to advertisers and media agencies of November 2022.

170 Replies to Q5 of the Commission's RFI to advertisers and media agencies of November 2022.

(3) In addition, for many respondents that stated they would switch some of their online display advertising spend to O&O ad buying tools and/or to direct deals, their replies to the narrative question asking them to explain their previous answer were not consistent with or call for nuancing greatly their assertion that they would switch some of their online display advertising spend to O&O ad buying tools and/or direct deals. Such respondents may have overestimated the likelihood of switching and/or underestimated barriers, costs and timing of switching.[171] This is illustrated by the fact that several advertisers and media agencies that stated they would switch some of their online display advertising spend to O&O ad buying tools and/or to direct deals still pointed to strong limitations to switch ad spend from DSPs in general or from DV360 specifically to alternative channels, including O&O ad buying tools and direct deals. For instance:

(a) According to […].[172]

(b) According to […].[173]

(c) According to […].[174]

(d) According to […].[175]

(196) For the reasons outlined above, the Commission considered that, contrary to Google's claim,[176] the replies to Q2, Q3, Q4, Q5, Q6 and Q7 of the Commission's RFI to advertisers and media agencies of November 2022 do not provide conclusive evidence on the significance of user switching.

(197) On this basis, the Commission concluded that the results and evidence resulting from the abovementioned RFI responses are inconclusive and that such evidence is therefore of limited value.

(198) In these circumstances, the Commission turned to alternative evidence to assess the degree of substitutability between programmatic ad buying tools for the open web and O&O ad buying tools/direct deals.

(199) In this regard, and in the second place, while the SSNIP test can be a useful and effective tool when defining relevant markets, it is not the only method available to

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171 In the context of candidate markets in which there is an undertaking which is an actual monopolist or comes close to an actual monopolist, the replies to the SSNIP question are likely to be misleading as they are subject to the "cellophane fallacy" (Market Definition Notice, paragraph 30 and footnote 55; also confirmed by the General Court in Case T-699/14 *Topps Europe v Commission*, EU:T:2017:2, paragraph 82). As a profit maximising firm will set its price (or other competitive parameters) at a level which already maximises profit, any further increase in price or degradation of supply conditions must be unprofitable for such a firm due to the too high switching it would cause. Therefore, where there is already a dominant firm in the market, a finding that a 5-10% increase in price would result in some customers switching, thus making it unprofitable for a hypothetical monopolist, should not lead to the conclusion that the candidate market is broader. In fact, this factor may also explain some of the replies of advertisers and media agencies regarding their switching behaviour, as Google's total take rate for the full intermediation service it provides is likely to reflect its dominant position.

172 […] reply to Q5 of the Commission's RFI to advertisers and media agencies of November 2022 (ID[…]).

173 […] reply to Q6 of the Commission's RFI to advertisers and media agencies of November 2022 (ID[…]).

174 […] reply to Q7 of the Commission's RFI to advertisers and media agencies of November 2022 (ID[…]).

175 […] replies to Q5 and Q6 of the Commission's RFI to advertisers and media agencies of November 2022 (ID[…]).

176 […].

the Commission when assessing substitutability between products and defining the relevant product market,[177] and the Commission is not obliged to systematically carry out a SSNIP test when it defines the market in a decision applying competition law rules.[178] Non-SSNIP evidence is equally valid to inform the market definition.[179] The Commission is therefore required to make an overall assessment of all the evidence, and there is no hierarchy between the different types of evidence.[180] It is possible, in that regard, for certain items of evidence to be prioritised and other evidence to be discounted.[181] As described above, the Commission has done precisely that and provided the reasons for such prioritisation.

(200) In this context, the replies to the Commission's RFI to advertisers and media agencies of February 2024 provide additional evidence that complements the evidence above indicating that advertisers and media agencies do not consider O&O ad buying tools, nor direct deals, as a substitute to programmatic ad buying tools for the open web. In particular:

(1) As evidenced below (see recitals (539) to (544) and (550) to (555)), the […] advertisers and media agencies (including many of the advertisers and media agencies that said that they would switch some of their ad spend to O&O ad buying tools in the context of the Commission's RFI to advertisers and media agencies of November 2022) provided evidence showing that (i) the display advertising inventory on the open web is a complement, not a substitute, to the display advertising inventory on social media and on marketplaces,[182] for instance because of the differences in terms of the marketing objectives (in the case of marketplaces) or the effectiveness in reaching the same/similar broad marketing objectives (in the case of social media), the differences in terms of targeting and audiences reached, and data collection and control over user data; (ii) it would not be sustainable to shift a major share of budget from display advertising on the open web to display advertising on social media or advertising on marketplaces; and (iii) there were only very limited instances of actual shifting of budget from display advertising on the open web to display advertising on social media or advertising on marketplaces. This evidences the lack of economic substitutability between programmatic ad buying tools for the open web and O&O ad buying tools.

(2) As also evidenced below (see recitals (487) to (491)) direct deals have several important limitations (e.g. less scale, more costly, more limited inventory) and more limited capabilities (e.g. frequency capping, audience targeting) as compared to programmatic ad buying tools for the open web, which make them less efficient. In addition, as described in recitals (492) to (494), the […] respondents to the Commission's RFI to advertisers and media agencies of February 2024 confirmed that the possibility to carry out direct deals is

177 Case T-699/14 *Topps Europe v Commission*, EU:T:2017:2, paragraph 82.

178 Case T-334/19, *Google AdSense for Search*, EU:T:2024:634, paragraph 157.

179 Market Definition Notice, paragraph 31. Case T-334/19, *Google AdSense for Search*, EU:T:2024:634, paragraphs 157 to 161, 269 and 339. Case T-671/19, *Qualcomm v Commission*, EU:T:2024:626, paragraphs 232 to 236.

180 Market Definition Notice, paragraph 76. Case T-342/07 *Ryanair v Commission*, EU:T:2010:280, paragraph 136; Case T-175/12 *Deutsche Börse v Commission*, EU:T:2015:148, paragraph 133.

181 Case T-342/07 *Ryanair v Commission*, EU:T:2010:280, paragraph 136; Case T-175/12 *Deutsche Börse v Commission*, EU:T:2015:148, paragraph 133.

182 As noted in recital (181), O&O ad buying tools mostly comprise ad buying tools of vertically integrated social media platforms (e.g., Meta) and vertically integrated marketplace platforms (e.g., Amazon).

constrained by the resources and time needed to negotiate, implement and manage direct deals, which limit their ability to resort to direct deals. This significantly constrains advertisers and media agencies' ability to enter into direct deals and evidences the lack of economic substitutability between programmatic ad buying tools for the open web and direct deals.

(201) The conclusions reached by the Commission are further confirmed by the Commission's findings in recitals (181) to (186) and several Google contemporaneous internal documents as referred to below (see section 7.3.7).

(202) This evidences that Google itself considers that neither O&O ad buying tools nor direct deals can be considered a substitute to programmatic ad buying tools for the open web. O&O ad buying tools and direct deals do not provide for intermediation services, and therefore lack functional interchangeability with and are distinct from ad buying tools for the open web.

(203) Third, Google argues that the Commission misstates what a direct constraint is and, in paragraph 252 of the SO, acknowledged how direct deals directly (rather than indirectly) constrain programmatic ad buying tools for the open web, implying that they should be in the same relevant market.[183]

(204) However, in paragraph 252 of the SO, the Commission clearly stated, first, that "*[d]irect deals cannot exert a direct competitive constraint on Google Ads and DV360*" and, second, that a direct deal "*could only exert an indirect competitive constraint, in case the commercial conditions for the use of programmatic ad buying tools for the open web would deteriorate to such an extent that advertisers would limit their usage*".[184] This statement precisely points to the indirect nature of any constraint exerted by direct deals on Google's position in the market for programmatic ad buying tools for the open web. This is illustrated in a statement by […].[185]

(205) Accordingly, paragraph 252 of the SO does not imply that direct deals directly constrain programmatic ad buying tools for the open web and should thus be considered at the level of market definition. In fact, for the reasons explained in section 7.3.7.1, the Commission concludes that direct deals exercise an insufficient indirect constraint on Google's dominant position in the EEA-wide market for programmatic ad buying tools for the open web.

5.4.3. SSPs are not substitutes to programmatic ad buying tools for the open web

(206) In its previous decisional practice, the Commission, despite leaving the precise product market definition open, considered the supply of SSP services to be in a different market to the supply of DSP services, to the extent that "*the various services provided in the ad tech value chain, such as DSP, SSP, ad exchange and ad server services, are all based on distinct technologies that pose unique challenges and serve a specific purpose*".[186] The French NCA also concluded that "*DSPs are*

183 […].

184 See also paragraph 260 of the SO.

185 […] reply to Q7 of the Commission's RFI to advertisers and media agencies of November 2022 (ID[…]). Google claims that […] response to QB.D.3 of the Commission's RFI to advertisers and media agencies of February 2024 (where it indicates that it is […] (ID[…])) contradicts this, because […], and therefore supports Google's position that direct deals impose a sufficient constraint on programmatic ad buying tools for the open web […]. This is incorrect, as […] expressly refers […].

186 Commission decision of 17 December 2020 in case M.9660 *Google / Fitbit*, paragraph 165 to 168.

not currently substitutable for platforms for selling online advertising space"[187], inter alia because "*DSPs do not establish direct relationships with publishers, whereas SSPs require significant technological and, above all, commercial investments to develop such relationships with publishers; SSPs integrate specific features for publishers, which allow them to sort or block certain categories of ads so that they are not displayed on their site*".[188]

(207) In the present case, the Commission finds that the market for programmatic ad buying tools for the open web does not include SSPs. SSPs perform in essence a publisher sales function as they send bid requests to multiple DSPs and ad networks, then rank the bids received based on price and on priority levels that may have been set by the publisher and send the winning bid to the publisher ad server. On the other hand, the core functions of a programmatic ad buying tool consist in targeting (targeting ads at particular users or groups of users) and advertiser advisory functions (determining buying and bidding strategies, based on the advertiser's objective and the available information).[189]

(208) Responses to the Commission's RFIs confirm that SSPs are not substitutes to programmatic ad buying tools for the open web.

(209) Thus, […] DSPs that replied to the Commission's RFI indicated that DSPs have different functionalities, serve different purposes and have distinct customers compared to SSPs.[190] Consequently, most providers of DSP services do not view their offering as competing with SSPs. This is illustrated by the following statements[191]:

(1) According to […].[192]

(2) According to […][193][194]

(3) According to […][195]

(210) Most SSPs that replied to the Commission's RFI also view DSPs as partners/customers, rather than competitors.[196] As an illustration, according to the statement of […].[197]

(211) Advertisers' and media agencies' replies to the Commission's RFI confirm the finding that SSPs are complementary to DSPs and ad networks due to the significant differences between them, as illustrated by the following main statements:[198]

(1) According to […].[199] [200]

(2) According to […].[201]

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187 French NCA Adtech Decision, paragraph 294.

188 French NCA Adtech Decision, paragraph 302.

189 CMA Online Advertising Market Study, table 5.1, paragraph 5.209 (ID[…]).

190 Replies to Q1 and Q5 of the Commission's RFI to DSPs of December 2020.

191 Although this evidence speaks only about DSPs, the same differences apply also to ad networks.

192 […].

193 […].

194 […].

195 […].

196 Replies to Q1d) of the Commission's RFI to SSPs of December 2020.

197 […].

198 Replies to Q1.2 ii) and Q1.3 of the Commission's RFI to advertisers and media agencies of November 2022.

199 […].

200 […].

(3) According to […].[202]

(4) According to […].[203]

(5) According to […].[204]

(212) Google has not contested the Commission's conclusion that SSPs are not substitutes to programmatic ad buying tools for the open web.

5.4.4. Ad servers are not substitutes to programmatic ad buying tools for the open web

(213) In its previous decisional practice, the Commission, despite leaving the precise product market definition open, considered the supply of publisher ad server services and the supply of advertiser ad server services to be in different markets to the supply of programmatic ad buying tools for the open web to the extent that "*the various services provided in the ad tech value chain, such as DSP, SSP, ad exchange and ad server services, are all based on distinct technologies that pose unique challenges and serve a specific purpose*."[205]

(214) For the reasons set out below, the Commission finds that the market for programmatic ad buying tools for the open web does not include publisher ad servers or advertiser ad servers.

(215) On the buy-side, *advertiser ad servers* are used by advertisers and media agencies to store the ads, deliver them to publishers, and keep track of this activity. In addition to hosting the creative content, the main activities performed by an advertiser ad server can be divided into reporting[206] and media management[207]. However, they do not perform the main function of programmatic ad buying tools, which is to purchase online display advertising space for advertisers and media agencies. This is also confirmed by the NCA reports.[208]

(216) On the sell-side, *publisher ad servers* manage publishers' inventory and are responsible for the final choice of which ad to serve, based on the bids received from different SSPs and the direct deals agreed between the publisher and advertisers. While programmatic ad buying tools provide services to advertisers on the "buy side" of the adtech stack, publisher ad servers mainly perform the publisher sales function, on the "sell-side" of the adtech stack.[209]

(217) […] DSPs that replied to the Commission's RFI confirmed that they perform different roles and have distinct functionalities as compared to ad servers.[210] This is illustrated by the following statements:

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201 […].

202 […].

203 […].

204 […].

205 Commission decision of 17 December 2020 in case M.9660 *Google / Fitbit*, paragraphs 165 to 168.

206 Reporting activities performed by advertiser ad servers can include data to understand the performance of each campaign and the role that specific channels play in conversions. They may involve generating statistics reports to measure performance of ad campaigns (volumes, dates, effectiveness measures, click-through rates, conversion rates, etc.).

207 Media management functionalities include frequency capping (i.e. ensuring that users are not served the same ad multiple times) and sequential creative rotation (i.e. showing a set of ads to users in a specific sequence).

208 E.g. CMA Online Advertising Market Study, Appendix M, paragraph 72 (ID[…]); CNCM Study on the competitive conditions in the online advertising sector in Spain, page 85 (ID[…]).

209 CMA Online Advertising Market Study, Appendix M, paragraph 19 (ID[…]).

210 Replies to Q1d) of the Commission's RFI to DSPs of December 2020.

(1) According to […].[211]

(2) According to […].[212]

(3) According to […].[213]

(218) Google has not contested the Commission's conclusion that ad servers are not substitutes to programmatic ad buying tools for the open web.

5.4.5. DSPs and ad networks are both in the same relevant product market

(219) As explained above in section 5.4.1, both ad networks and DSPs are programmatic ad buying tools for the open web providing advertisers and media agencies with intermediation services and facilitating the interaction between advertisers and SSPs/publishers. For the reasons outlined below, the Commission finds that a potential further distinction between DSPs and ad networks is unwarranted.

5.4.5.1. Common characteristics between DSPs and ad networks

(220) From the demand side (advertisers and media agencies') perspective, DSPs and ad networks share some common characteristics:

(1) they both allow advertisers and media agencies to buy display ad inventory on the open web through programmatic purchase (in an automated fashion);[214]

(2) they both allow advertisers and media agencies to buy ad inventory across multiple publishers;[215]

(3) they have broadly similar functionalities[216] (e.g. data injection[217], segmentation capabilities[218]) and common features (e.g. reporting tools, audience targeting[219], optimization[220]);

(4) they both offer advertisers and media agencies the opportunity to centralise buying from a single access point while using a consistent set of campaign parameters;[221]

(5) they both use similar technologies to aggregate demand and supply, respectively;[222] and

(6) they both provide advertisers and media agencies with a wide range of ad buying opportunities, often with similar creative solutions.[223]

(221) According to some advertisers and media agencies, DSPs and ad networks are available to all types of advertisers (irrespective of size):

(1) […] indicated not being aware of […];[224]

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211 […].
212 […].
213 […].
214 […].
215 […].
216 […].
217 […].
218 […].
219 […].
220 […].
221 […].
222 […].
223 […].
224 […].

(2) […] also indicated that […];[225]

(3) According to […];[226] and

(4) According to […].[227]

(222) In addition, from the publishers' point of view, ad networks represent an alternative channel to DSPs, through which they can monetize their ad inventory. Accordingly, in their view, DSPs and ad networks compete against each other for the purchase of online display ad inventory. In the context of publishers' strategy of monetization of online display advertising, demand coming from ad networks is similar to demand coming from DSPs. […] indicated that […], and they […].[228] In addition, according to […].[229] […] also noted with regard to the comparison between demand from DSPs and ad networks that […].[230]

(223) Almost half of the DSPs that responded to the Commission's RFI considered ad networks as their competitors, at least to a certain extent.[231] For instance:

(1) According to […].[232]

(2) According to […].[233]

5.4.5.2. Differences between DSPs and ad networks

(224) Several advertisers and media agencies that responded to the Commission's RFI highlighted a number of differences between DSPs and ad networks.[234]

(225) According to these respondents, DSPs enable advertisers and media agencies to access a broader range of ad inventory, audiences and creative formats compared to ad networks. According to […], DSPs usually offer […].[235] […] also indicated that […].[236]

(226) DSPs offer additional or in-depth features/capabilities compared to ad networks which provide more limited or standard features/capabilities. According to […].[237][…].[238] A DSP offers greater choice and flexibility in inventory, audiences and costs compared to an ad network. For example, according to […].[239][…] also stated that […].[240]

(227) Some advertisers also highlighted the distinction between ad buying tools based on the size of the customer group served (large vs. small advertisers).[241]

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225 […].
226 […].
227 […].
228 […].
229 […].
230 […].
231 Replies to Q6 of the Commission's RFI to DSPs of December 2020.
232 […].
233 […].
234 Replies to Q1.2 and Q1.3 of the Commission's RFI to advertisers and media agencies of November 2022.
235 […]. Similar statements were provided by other advertisers – for example, […].
236 […].
237 […].
238 […].
239 […]. Similar statements were made by other advertisers - e.g. […].
240 […].
241 […] reply to Q11 of the Commission's RFI to advertisers and media agencies of November 2022: […].

(228) As mentioned in recital (179) above, some of the differences noted by respondents to the Commission's market investigation between ad networks and DSPs are historical and have disappeared over time (such as the fact that ad networks deal directly with publishers and not with SSPs[242]), which makes the distinction between the two programmatic ad buying tools for the open web less evident. This finding is supported, for instance, […] reply to the Commission's RFI, according to which […].[243]

(229) On balance, the Commission considers that the abovementioned similarities carry a greater weight than the differences, which rather appear to be a matter of the range and sophistication of the services offered by each of the two types of tools. This is especially so in light of the fact that these differences have disappeared over time, and notably throughout the infringement period.

(230) This was confirmed by Google itself: "*There is no justification for [a] segmentation between DSPs and ad networks. The SO itself recognises that the distinction between ad networks and DSPs has recently become "blurred". The SO also recognises that differences in the product characteristics of ad networks and DSPs are "disappearing over time". The SO alleges that there are differences between DSPs and ad networks, including the fact that DSPs offer access to a broader range of ad inventory and some additional control features. This is not probative of whether advertisers and media agencies view ad networks and DSPs as substitutes. In fact, the SO itself quotes evidence which shows the substitutability of ad networks and DSPs.*"[244]

5.4.5.3. The nature of Google's programmatic ad buying tools - DV360 and Google Ads - confirms the blurred distinction between ad networks and DSPs

(231) DV360 is a DSP, whereas Google Ads is a programmatic ad buying tool which mostly resembles an ad network with certain overlapping features with DSPs.

5.4.5.3.1. DV360

(232) The Commission's market investigation confirmed unambiguously that DV360 is a DSP. Google itself confirmed that DV360 is a DSP.[245]

(233) DV360 offers a single tool for planning campaigns, designing and managing creatives, organizing and applying audience data, finding and buying inventory, measuring and optimizing campaigns. It includes features that help advertisers and media agencies (i) to build and manage audiences alongside campaigns, (ii) discover and manage high-quality inventory and (iii) analyse performance across campaigns, including instant reporting that allows advertisers and media agencies to access data within DV360.

(234) Google submits that DV360 is […].[246]

(235) Google's characterization of DV360 as a DSP is confirmed by the replies from advertisers and media agencies to the Commission's RFIs. Almost all advertisers and media agencies consider that DV360 operates as a DSP rather than as an ad

242 […] reply to Q1.2 of the Commission's RFI to advertisers and media agencies of November 2022, […].
243 […].
244 […].
245 […].
246 […].

network.[247] Respondents indicated that DV360 has all core features and offers the functionalities specific to a DSP, in particular it:

(1) enables real time buying based on data across multiple inventory sources, outside Google's network;[248]

(2) buys inventory across multiple SSPs[249], with access to more than 80 ad exchanges including Google's Ad exchange AdX[250];

(3) gives access to a wide range of open web inventory;[251]

(4) offers targeting, optimization, and measurement capabilities and has the capacity to overlay third-party data and client first-party data;[252]

(5) is more advanced, has many more tools and is more transparent compared to an ad network;[253] and

(6) offers access to multiple different formats, including display, video, native, connected television ("CTV"), digital out of home ("DOOH") and audio inventory.[254]

5.4.5.3.2. Google Ads

(236) Google Ads was introduced as the advertiser facing side of Google's AdSense for Content display ad network. It was initially considered purely as an ad network. However, the Commission's investigation shows that Google Ads quickly developed features which resemble those of a typical DSP.

(237) The sources of inventory, functionalities and features of Google Ads have developed over the years and have become more similar to traditional DSPs, such as DV360, so that the differentiation between Google Ads and DV360 has become blurred.

(238) The gradual convergence of Google Ads with DSPs, including DV360, is demonstrated by the following main elements:

(1) overlapping features of Google Ads and DV360;

(2) access to similar ad inventory; and

(3) significant customer overlaps.

(239) Overlapping features: several Google internal documents show the overlap between the features of Google Ads and DV360:

(1) Already in January 2013, a Google internal document […]. The document suggests that […]. According to the document, […][255][256]

(2) A Google internal document from 2019 highlights […][257][258]

247 Replies to Q10.2 of the Commission's RFI to advertisers and media agencies of November 2022.
248 […].
249 […].
250 […].
251 […].
252 […].
253 […].
254 […].
255 Feature that allows to choose how to optimize between the available creatives to fill an impression. when more than one creative is assigned to a line item.
256 […].

(3) An internal document from 2021 - […] - also indicates that […].[259]

(240) The overlap of Google Ads and DV360 features is also supported by an internal document provided by […]. According to this document, […].[260]

(241) The commonality of features is also supported by […]. The following statements illustrate this:

(1) In his deposition of […], Google's […].[261]

(2) In his deposition of […], Google's […] mentioned that Google Ads and DV360 provide: […] functionalities […].[262]

(3) In his deposition of […], Google's […] concludes that DSPs or ad networks […].[263]

(242) The similarity of functionalities and features between (i) ad networks in general and Google Ads in particular and (ii) DSPs in general and DV360 in particular is also confirmed by several respondents to the Commission's RFIs to advertisers and media agencies, as follows:

(1) According to […]. [264]

(2) According to […][265][266]

(243) A few advertisers that replied to the Commission's RFIs consider that Google Ads is more similar to a DSP, as follows:

(1) According to […].[267]

(2) According to […].[268]

(3) According to […].[269]

(244) While some advertisers thus consider that Google Ads is more similar to a DSP, […] advertisers and media agencies that responded to the Commission's RFI consider Google Ads offering more akin to an ad network.[270] According to these advertisers, Google Ads offers more limited functionalities, lacks certain enterprise features to manage large scale advertising campaigns and purchases most of its inventory through AdX. However, as shown in section 8.3.2.1, the fact that Google Ads

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257 Functionality that allocates users into audience categories for targeting purposes. Audiences represent groups of people with specific interests, intents, and demographics, as estimated by Google. When adding an audience to a campaign or ad group, advertisers can select from a wide range of segments and ads will be shown to people who are likely to fit in the selected categories. Users are allocated into audience categories for targeting on third-party websites and apps based primarily on their activity on third-party websites and apps. Users are allocated into audience categories for targeting on Google's own products based primarily on their activity on these products.

258 […].

259 […].

260 […].

261 […].

262 […].

263 […].

264 […].

265 […].

266 […].

267 […].

268 […].

269 […].

270 Replies to Q10.1 of the Commission's RFI to advertisers and media agencies of November 2022.

purchases most of its inventory through AdX as opposed to competing SSPs is not due to a technical or commercial limitation of Google Ads, but to Google's deliberate choice of making Google Ads favour AdX compared to rival SSPs.

(245) Finally, some advertisers indicated that Google Ads combines features of an ad network and DSP, as indicated by the below statements:

(1) According to […], Google Ads merges functionalities of both a DSP and an Ad Network: […].[271]

(2) According to […];[272]

(246) Access to similar ad inventory: both DV360 and Google Ads are integrated with third-party exchanges.[273] They can place bids on AdX and third-party SSPs for open web ad inventory and also enable advertisers and media agencies to buy inventory on Google's O&O, i.e. AdMob, AdSense and YouTube. This is confirmed by the deposition of Google's […]. In the context of discussions about advertisers/media agencies' access to YouTube inventory, he indicated that […] and […].[274]

(247) Significant customer overlaps: according to the following evidence from Google, there is a significant customer overlap between Google Ads and DV360, which shows that there is no particular difference in terms of size of advertiser that would typically use one service or the other.

(1) According to the DOJ deposition by Google's […] of the customers who use DV360 also use Google Ads;[275]

(2) According to the DOJ deposition by Google's […].[276]

(3) According to the DOJ deposition by Google's […] and the […]. He further explained that this is […].[277] According to an internal document: […].[278]

(4) According to an internal document: […][279]

(5) According to an internal document: […][280]

(6) The internal notes accompanying the internal document: […] indicate that: […]. According to the same document, Google itself aims to make its […].[281]

(248) Moreover, some advertisers that responded to the Commission's RFIs indicated that despite the fact that DV360 is geared more towards larger advertisers and Google Ads to smaller, less sophisticated advertisers, this does not lead to a strict customer

271 […].
272 […].
273 Based on Annex 53 to […] reply to Q53 of the Commission's RFI to […] of August 2020 […], Google Ads supports […] third-party SSPs (counting both SSPs directly integrated with Google Ads and SSPs indirectly integrated through an ad exchange called Bidswitch). DV360 supports […] third-party SSPs (both directly and via Bidswitch).
274 […].
275 […].
276 […].
277 […].
278 […].
279 […].
280 […].
281 […].

segmentation and advertisers of all sizes and media agencies may use both interchangeably.[282] For instance:

(1) According to […].[283]

(2) […] mentioned that: […].[284]

(3) […] also indicated that both Google Ads and DV360 offer the added value of their integration in the overall GMP product suite which: […].[285]

(249) The competitive landscape identified by advertisers and media agencies indicates that Google Ads can be primarily characterized as an ad network, while also having certain DSP features. Some advertisers and media agencies mentioned DV360 as Google Ads' main competitor. For example, according to […], Google […] and […] mentioned Google Ads as a […].[286]

5.4.5.4. Conclusion on the substitutability between DSPs and ad networks

(250) While arguments exist supporting both the existence of a single market and of differentiated segments, on balance, the Commission finds that the similarities between DSPs and ad networks described above carry a greater weight than the differences, which rather appear to be a matter of the range and sophistication of the services offered by each of the two types of tools. This is especially so in light of the fact that these differences have disappeared over time, and notably throughout the infringement period.

(251) In light of the above, for the purpose of this Decision, the Commission concludes that a distinction between the market segments for DSPs and for ad networks is unwarranted, and that a broad product market for programmatic ad buying tools for the open web, comprising both DSPs and ad networks, must therefore be retained.

(252) Google has not contested the Commission's conclusion and, as noted above, in fact argues that there is no justification for a narrower segmentation between DSPs and ad networks, and that a single product market comprising both DSPs and ad networks must be retained.[287]

5.5. SSPs for online display advertising

(253) For the reasons set out below, the Commission finds that SSPs constitute a separate relevant product market from other services in the adtech stack for online display advertising.

(254) SSPs are intermediaries which provide the technology to automatize the sale of online ad inventory on behalf of publishers. They allow real-time auctions[288] by connecting to multiple DSPs, collecting bids from them and deciding which bid to submit to the publisher ad server for its final consideration. The publisher ad server ultimately decides which ad is displayed, taking into account the direct deals between the publisher and advertisers and the bids placed by all SSPs to which it is connected.

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282 Replies to Q11 of the Commission's RFI to advertisers and media agencies of November 2022.

283 […].

284 […].

285 […].

286 […].

287 […].

288 Advertising exchanges used to be separate from SSPs. The two functions, however, have largely been merged into the same operators. For example, Google AdX, the largest SSP, includes both the SSP and ad exchange function, the same applies to a number of other SSPs such as […]. In this regard, […].

(255) SSPs are generally comprised of the following components[289]:

(1) backend and infrastructure - the various backend components need to be hosted on an infrastructure (e.g. Amazon Web Services);

(2) interconnections - SSPs interconnect with other adtech services to facilitate the selling of inventory (in particular with publisher ad servers and DSPs);

(3) an ad exchange that organizes the buying of and selling of ad inventory;

(4) trackers that collect data about the publisher's website and its audience; and

(5) a reporting database which receives campaign and audience data from the tracker and allows publishers to generate reports and view campaign analytics.

(256) SSPs also generally provide the following features[290]:

(1) user interface;

(2) analytics and reporting (once reports are sent from the reporting database, publishers can create and view reports about the performance of their inventory on the specific SSP);

(3) real time bidding technology, such as for instance header bidding which allows publishers to obtain bids from multiple demand sources (e.g. DSPs);

(4) yield optimization (aims to increase revenue for publishers by improving fill rates, setting price floors and managing auction mechanics); and

(5) inventory and campaign management for publishers (allows publishers to manage different types of inventory (display, video, native, etc.), blacklist and whitelist advertisers, and block certain types of ads).

(257) In its previous decisional practice, the Commission, despite leaving the precise product market definition open, considered a separate market for the supply of SSP services.[291]

(258) In the present Decision, the Commission finds that, first, the market for SSPs does not include programmatic ad buying tools as explained in section 5.4.3.

(259) Second, the Commission considers that the market for SSPs does not include advertiser ad servers. Firstly, advertiser ad servers have different customers as their services are sold to advertisers whereas SSP services are sold to publishers. Secondly, their function is different, while advertiser ad servers are essentially used by advertisers to manage their ad campaigns, SSPs are used by publishers to actually sell their inventory. Thirdly, SSPs and advertiser ad servers are largely different companies. Various companies only provide SSPs (e.g. Magnite)[292] or advertiser ad servers (e.g. Flashtalking or Sizmek)[293].

(260) Third, the Commission finds that the market for SSPs does not include publisher ad servers. This is based on the following considerations.

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289 Based on https://clearcode.cc/blog/anatomy-of-supply-side-platform/, downloaded on 16 January 2023 (ID[…]).

290 Based on https://clearcode.cc/blog/anatomy-of-supply-side-platform/, downloaded on 16 January 2023 (ID[…]).

291 Commission decision of 17 December 2020 in case M.9660 – Google/Fitbit, paragraph 168.

292 See https://www.magnite.com/company/, downloaded on 13 February 2023 (ID[…]).

293 CMA Online Advertising Market Study, paragraphs 5.215 to 5.217 (ID[…]).

(261) In the first place, publisher ad servers and SSPs occupy different positions in the chain of intermediation; and fulfil different functions. As regards their occupation of different positions in the chain of intermediation, see further section 4.1 above. As regards their distinct functionalities, whereas: the main functions of a publisher ad server include managing a publisher's ad inventory, deciding which ads to serve, and reporting on / measuring campaign effectiveness; in contrast, (ii) the main function of an SSP is to provide a means for publishers to engage in auctions, without any management, decision-making or reporting functionality comparable to that discharged by a publisher ad server. This view is supported by […] SSPs that replied to the Commission's RFI, who considered that a publisher ad server is not an alternative to an SSP.[294] For example:

(1) According to […].[295][296]

(2) According to […].[297]

(262) In the second place, while SSPs are used for programmatic sales, publisher ad servers are essentially also used for direct sales which do not go through SSPs. For example […].[298] Direct sales represent a significant portion of the revenues of the largest publishers.[299]

(263) In the third place, many SSP providers, including some of the largest, do not market a publisher ad server. This is the case for instance for […][300] and Rubicon Project/Magnite[301]. OpenX[302] and […][303] (which used to offer both an SSP and a publisher ad server) have stopped offering publisher ad server services, but still offer SSP services.

(264) In the fourth place, the conditions under which competition occurs in the two markets are different. Publishers generally use one publisher ad server to manage all of their inventory (see section 7.4.4). Publisher ad servers almost always charge fees to their customers on a cost-per-impression basis (see section 7.4.2). It is also difficult for publishers to switch their publisher ad server for another (see section 7.4.4). On the other hand, publishers use a large amount of SSPs at the same time[304], for instance when using Header Bidding, or other similar functions, such as Open Bidding, and it is thus easier for publishers to switch between them. These SSPs are in competition for each impression. The SSPs generate revenue almost systematically by retaining a percentage of the revenues earned by the publisher.[305]

(265) Fourth, the Commission considers that the market for SSPs does not include publisher ad networks. This is based on the following considerations.

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294 Replies to Q7 of the Commission's RFI to SSPs of December 2020.
295 […] reply to Q7 of the Commission's RFI to SSPs of December 2020 (ID[…]).
296 […] reply to Q7 of the Commission's RFI to SSPs of December 2020 (ID[…]).
297 […] reply to Q7 of the Commission's RFI to SSPs of December 2020 (ID[…]).
298 […] reply to Q7 of the Commission's RFI to SSPs of December 2020 (ID[…]).
299 Replies to Q2.1 of the Commission's RFI to Publishers of November 2022.
300 […] reply to Q1 of the Commission's RFI to SSPs of December 2020 (ID[…]).
301 See https://www.magnite.com/company/, downloaded on 13 February 2023 (ID[…]).
302 CMA Online Advertising Market Study, paragraph 5.228 (ID[…]).
303 […] reply to Q1 of the Commission's RFI to publisher ads servers of December 2020 (ID[…]).
304 Replies to Q3 of the Commission's RFI to Publishers of December 2020.
305 Replies to Q18 of the Commission's RFI to SSPs of December 2020.

(266) In the first place, SSPs and publisher ad networks provide different features to publishers. As explained by […].[306]

(267) In the second place, […] publishers that responded to the Commission's RFI consider that, for publishers, a publisher ad network is not an alternative to an SSP.[307] Publishers indicated several reasons in this regard that include *inter alia*: (i) lower revenues per impression, (ii) less control over quality of the ad inventory, and (iii) the rather historical role of publisher ad networks in the industry. For instance:

(1) According to […].[308]

(2) According to […].[309]

(268) In the third place, […] SSPs that responded to the Commission's RFI consider that a publisher ad network is not an alternative to an SSP.[310]

(269) The Commission's conclusion that the relevant product market is the market for SSPs is not contradicted by Google's argument that the market for SSPs should include Direct Deals.[311] Google's argument is essentially the same as the one regarding ad buying tools but is now articulated *mutatis mutandis* for the sell-side (i.e., now with reference to publishers as opposed to advertisers). Google's claim that the market for SSPs should include Direct Deals is unfounded for the same reasons outlined at section 5.4.2 above, and section 7.3.7.1 below – which specifically takes into account the perspective of publishers (see, for example, recitals (488), (489), (494) to (498) and (521)).

5.6. Publisher ad servers for online display advertising

(270) For the reasons set out below, the Commission finds that publisher ad servers constitute a relevant product market separate from other services present in the adtech stack.

(271) As explained in section 4.1, publishers use publisher ad servers to monetize their ad inventory. Publisher ad servers have four main features, that is: (i) they allow the implementation, delivery and follow-up of (online display advertising) campaigns sold directly to advertisers; (ii) they enable programmatic sales, where they call SSPs or ad networks to access advertiser demand; (iii) they ultimately decide the ad selection process determining which ad is shown, taking into account both direct and programmatic sales via SSPs or ad networks; and (iv) they monitor ad inventory sales performance.[312]

(272) The Commission considers that publisher ad servers should be distinguished from other service providers in the adtech stack.

(273) First, the Commission finds that advertiser ad servers and publisher ad servers do not belong to the same relevant product market.

(274) In its previous decisional practice, the Commission found that there is a separate market for ad serving and that this market could be further subdivided between the

306 […] reply to Q6 of the Commission's RFI to SSPs of December 2020 (ID[…]).
307 Replies to Q1 of the Commission's RFI to Publishers of December 2020.
308 […] reply to Q1 of the Commission's RFI to Publishers of December 2020 (ID[…]).
309 […] reply to Q1 of the Commission's RFI to Publishers of December 2020 (ID[…]).
310 Replies to Q1 of the Commission's RFI to SSPs of December 2020.
311 […].
312 Replies to Q1 of the Commission's RFI to publisher ad servers of December 2020.

provision of ad serving services to advertisers and to publishers.[313] The Commission also considered that the supply of publisher ad server services was a distinct market.[314] The French NCA found that there is a market for ad servers for the publishers of websites and mobile apps.[315]

(275) The Commission's investigation in this case confirms the previous decisional practice, namely that advertiser ad servers are not substitutes to publisher ad servers. First, publisher ad servers have different customers as their services are sold to publishers whereas advertiser ad server services are sold to advertisers. Second, the main features of a publisher ad server differ significantly from those of an advertiser ad server. In particular as described above at recital (215), advertiser ad servers' main features include hosting creative content and providing reporting and media management functionalities to advertisers. This differs significantly from the features described in recital (271), which relate mostly to facilitating the sale of ad inventory, and making important decisions relative to ad selection. Third, providers of publisher ad servers and advertiser ad servers are largely distinct. Various companies only provide publisher ad servers (e.g. FreeWheel or Equativ) or advertiser ad servers (e.g. Flashtalking or Sizmek).[316]

(276) Second, as explained in section 5.4.4, the Commission considers that programmatic ad buying tools for the open web are not substitutes to publisher ad servers.

(277) Third, as explained in section 5.5, the Commission finds that SSPs are not substitutes to publisher ad servers.

(278) Fourth, the Commission finds that publisher ad servers and publisher ad networks belong to distinct markets. The example of Google AdSense (which acts primarily as a publisher ad network) illustrates some of the main distinctions between publisher ad networks, on the one hand; and publisher ad servers, on the other. Unlike a publisher ad server, Google AdSense: (i) provides publishers with access to pre-determined advertiser demand without allowing them to call various SSPs; (ii) does not allow publishers to manage web and in-app ad inventory jointly (Google AdSense only manages web inventory); and (iii) does not allow the publisher to manage direct deals.[317]

(279) […] the publisher ad servers that replied to the Commission's RFI consider that publisher ad networks are not competitors to their publisher ad servers.[318] According to […].[319]

(280) Google has not contested the Commission's conclusion that the relevant product market is the market for publisher ad servers. Google's claim as regards the alleged competitive constraint that in-house publisher servers pose upon publisher ad servers[320] is assessed in the Dominance section (see section 7.4.5).

313 Commission decision of 11 March 2008 in case M.4731 – *Google/DoubleClick*, paragraph 81.
314 Commission decision of 17 December 2020 in case M.9660 – *Google/Fitbit*, paragraph 168.
315 French NCA Adtech Decision, paragraph 263.
316 CMA Online Advertising Market Study, paragraphs 5.215 to 5.217 (ID[…]).
317 See https://support.google.com/admob/answer/9234653?hl=en, downloaded on 28 March 2023 (ID[…]).
318 Replies to Q7 of the Commission's RFI to publisher ad servers of December 2020.
319 […].
320 […].

5.7. Conclusion on relevant product markets

(281) For the purpose of this Decision, the Commission concludes that the relevant product markets are: (i) the market for programmatic ad buying tools for the open web, comprising both DSPs and ad networks; (ii) the market for SSPs for online display advertising; and (iii) the market for publisher ad servers for online display advertising.

6. RELEVANT GEOGRAPHIC MARKETS

6.1. Principles relating to geographic market definition

(282) The relevant geographic market comprises an area in which the undertakings concerned are involved in the supply and demand of the relevant products or services, and where the conditions of competition are similar or sufficiently homogeneous and which can be distinguished from neighbouring areas in which the prevailing conditions of competition are appreciably different.[321]

(283) The definition of the geographic market does not require the conditions of competition between providers of services to be perfectly homogeneous. It is sufficient that they are similar or sufficiently homogeneous and, accordingly, only those areas in which the conditions of competition are "*heterogeneous*" may not be considered to constitute a uniform market.[322]

6.2. Application to this case

(284) The Commission reaches the conclusion that the relevant geographic markets for the purpose of the present Decision are:

(1) the EEA-wide market for programmatic ad buying tools for the open web;

(2) the EEA-wide market for SSPs for online display advertising; and

(3) the EEA-wide market for publisher ad servers for online display advertising.

6.3. Programmatic ad buying tools for the open web

(285) The Commission finds that for the purpose of the present Decision, the market for programmatic ad buying tools for the open web is EEA-wide.

(286) In its previous decisional practice, the Commission established that the markets for the supply of DSP services and the supply of ad network services were at least EEA-wide in scope.[323]

(287) The Commission's market investigation in the present case confirms that the relevant market for programmatic ad buying tools for the open web is EEA-wide, for the reasons set out below.[324]

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321 Market Definition Notice, paragraph 38.

322 The Union Courts' case law has consistently referred to 'sufficiently homogeneous' – as opposed to identical – conditions of competition as being the criterion for defining a relevant geographic market. See Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraphs 11 and 53; Case T-374/00 *Verband der freien Rohrwerke and Others v Commission*, EU:T:2003:188, paragraph 141; Joined Cases T-346/02 and T-347/02 *Cableuropa and Others v Commission*, EU:T:2003:256, paragraph 115; Case T-151/05 *NVV and Others v Commission*, EU:T:2009:144, paragraph 52; Case T-380/17 *HeidelbergCement and Schwenk Zement v Commission*, EU:T:2020:471, paragraph 294.

323 Commission decision of 17 December 2020 in case M.9660 - *Google/Fitbit*, paragraphs 172 to 173.

324 To the Commission's best knowledge, the elements mentioned in recitals (288) to (291) apply equally to DSPs and to ad networks.

(288) First, […] the DSPs that responded to the Commission's RFI consider the conditions of competition for the provision of DSP services to be generally homogeneous among EEA countries.[325] According to […].[326] According to […].[327] […][328] and according to […].[329]

(289) Second, […] advertisers and media agencies which replied to the Commission's RFI use the same DSPs across the entire EEA and they do not vary by country or region. For instance:

(1) According to […].[330]

(2) According to […].[331]

(3) According to […].[332]

(4) According to […].[333]

(290) Third, several advertisers indicated that for the purpose of buying programmatic ads, they generally conclude a single contract with DSPs covering the whole EEA.[334] For instance:

(1) According to […].[335]

(2) According to […].[336]

(291) Fourth, DSP fees are typically the same or closely similar for the main DSPs (including DV360) across the different countries in the EEA, with limited variations.[337] For instance:

(1) According to […].[338]

(2) According to […].[339]

(3) According to […].[340]

(292) Google has not contested the Commission's conclusion that the market for programmatic ad buying tools for the open web is EEA-wide.

6.4. SSPs for online display advertising

(293) The Commission finds that, for the purpose of the present Decision, the geographic scope of the market for SSPs is EEA-wide.

(294) In its previous decisional practice, the Commission established that the market for the supply of SSP services was at least EEA-wide.[341] This is consistent with the

325 Replies to Q4 of the Commission's RFI to DSPs of December 2020.
326 […].
327 […].
328 […].
329 […].
330 […].
331 […].
332 […].
333 […].
334 Replies to Q14 of the Commission's RFI to advertisers and media agencies of November 2022.
335 […].
336 […].
337 Replies to Q13 of the Commission's RFI to advertisers and media agencies of November 2022.
338 […].
339 […].
340 […].

finding of the French NCA that the market for SSPs for advertising space is EEA-wide.[342]

(295) The Commission's market investigation in the present case suggests that the relevant market for SSPs is EEA-wide, for the reasons set out below.

(296) First, […] publishers replying to the Commission's RFI indicated that they used the same SSPs across the EEA.[343] For instance:

(1) According to […].[344]

(2) According to […].[345]

(297) Second, […] publishers also indicated that SSP fees were similar across the different countries in the EEA.[346] For instance:

(1) According to […].[347]

(2) According to […].[348]

(298) Third, […] publishers replying to the Commission's RFI also indicated that they use a single contract with SSPs for the whole/most of the EEA.[349] For instance:

(1) According to […].[350]

(2) According to […].[351]

(299) Fourth, about half of SSPs that responded to the Commission's market investigation clearly stated that conditions of competition are largely homogenous across the EEA.[352] For illustration, according to […].[353]

(300) Google has not contested the Commission's conclusion that the market for SSPs for online display advertising is EEA-wide.

6.5. Publisher ad servers for online display advertising

(301) The Commission finds that, for the purpose of the present Decision, the geographic scope of the market for publisher ad servers is EEA-wide.

(302) In its previous decisional practice, the Commission established that the market for the provision of online ad serving technology was at least EEA-wide in scope.[354] The Commission also considered that the supply of publisher ad server services was at least EEA-wide.[355] The French NCA found that the market for publisher ad servers was EEA-wide in scope.[356]

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341 Commission decision of 17 December 2020 in case M.9660 - *Google/Fitbit*, paragraph 173.
342 French NCA Adtech Decision, paragraph 305.
343 Replies to Q7 of the Commission's RFI to publishers of November 2022.
344 […] reply to Q7 of the Commission's RFI to publishers of November 2022 (ID[…]).
345 […] reply to Q7 of the Commission's RFI to publishers of November 2022 (ID[…]).
346 Replies to Q8 of the Commission's RFI to publishers of November 2022.
347 […] reply to Q8 of the Commission's RFI to publishers of November 2022 (ID[…]).
348 […] reply to Q8 of the Commission's RFI to publishers of November 2022 (ID[…]).
349 Replies to Q9 of the Commission's RFI to publishers of November 2022.
350 […] reply to Q9 of the Commission's RFI to publishers of November 2022 (ID[…]).
351 […] reply to Q9 of the Commission's RFI to publishers of November 2022 (ID[…]).
352 Replies to Q4 of the Commission's RFI to SSPs of December 2020.
353 […] reply to Q4 of the Commission's RFI to SSPs of December 2020 (ID[…]).
354 Commission decision of 11 March 2008 in case M.4731 *Google/ DoubleClick*, paragraph 91.
355 Commission decision of 17 December 2020 in case M.9660 - *Google/Fitbit*, paragraph 173.
356 French NCA Adtech Decision, paragraph 286.

(303) The Commission's market investigation in the present case suggests that the relevant market for publisher ad servers is EEA-wide, for the reasons set out below.

(304) First, the Commission asked publisher ad servers whether the conditions of competition for the provision of their services were homogeneous among the countries of the EEA. The responses were mixed, with some of the respondents replying that the conditions of competition were homogeneous among the countries of the EEA, whilst some others responded that they may vary across countries.[357] For illustration, according to […].[358]

(305) Second, […] publishers that replied to the Commission's RFI indicated that they use the same publisher ad server across the EEA.[359] For instance, […] explained that it: […].[360]

(306) Third, […] publishers that replied to the Commission's RFI indicated that they pay the same fees across the EEA for using their publisher ad server.[361] For instance:

(1) According to […]. [362]

(2) According to […].[363]

(307) Fourth, […] publishers that replied to the Commission's RFI indicated that they have a single contract for their publisher ad server across the EEA.[364] For instance:

(1) According to […].[365]

(2) According to […].[366]

(308) Google itself […],[367] […] has not contested the Commission's conclusion that the market for publisher ad servers for online display advertising is EEA-wide.

6.6. Conclusion on relevant geographic markets

(309) For the purpose of this Decision, the Commission concludes that the relevant geographic markets are: (i) the EEA-wide market for programmatic ad buying tools for the open web, comprising both DSPs and ad networks; (ii) the EEA-wide market for SSPs for online display advertising; and (iii) the EEA-wide market for publisher ad servers for online display advertising.

7. DOMINANCE

7.1. Principles

(310) A dominant position, as referred to in Article 102 TFEU, relates to a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to

357 Replies to Q4 of the Commission's RFI to publisher ad servers of December 2020.
358 […].
359 Replies to Q10 of the Commission's RFI to publisher ad servers of November 2022.
360 […].
361 Replies to Q11 of the Commission's RFI to publishers of November 2022.
362 […].
363 […].
364 Replies to Q12 of the Commission's RFI to publishers of November 2022.
365 […].
366 […].
367 […].

behave to an appreciable extent independently of its competitors, its customers and ultimately of its consumers.[368]

(311) A finding of dominance does not require that an undertaking has eliminated all opportunity for competition in the market.[369] Even the existence of lively competition on a particular market does not rule out the possibility that there is a dominant position on that market, since the predominant feature of such a position is the ability of the undertaking concerned to act without having to take account of such competition in its market strategy and without for that reason suffering detrimental effects from such behaviour.[370]

(312) The existence of a dominant position derives in general from a combination of several factors which, taken separately, are not necessarily determinative.[371] One important factor is the existence of very large market shares, which are in themselves, save in exceptional circumstances, evidence of the existence of a dominant position.[372] That is the case where a company has a market share of 50% or above.[373] Likewise, a share of between 70% and 80% is, in itself, a clear indication of the existence of a dominant position in a relevant market.[374]

(313) A comparison between the market shares of the undertaking concerned and of its competitors is also an important indicator of dominance. For example, an undertaking which holds a very large market share for some time, without smaller competitors being able to meet rapidly the demand from those who would like to break away from that undertaking, is by virtue of that share in a position of strength which makes it an unavoidable trading partner and which, already because of this, secures for it, at the very least during relatively long periods, that freedom of action which is the special feature of a dominant position.[375]

(314) While in fast-growing sectors characterised by short innovation cycles, large market shares may sometimes turn out to be ephemeral and not necessarily indicative of a dominant position,[376] the fact that an undertaking may enjoy high market shares in a fast-growing market cannot preclude application of the competition rules, in particular Article 102 TFEU, especially if a fast-growing market does not show signs

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368 Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 65; Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 38; and Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 229.

369 Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 113.

370 Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 70; and Case T-340/03 *France Télécom SA v Commission*, EU:T:2007:22, paragraph 101.

371 Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 66.

372 Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; and Case T-65/98 *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154.

373 Case C-62/86 *Akzo v Commission*, EU:C:1991:286, paragraph 60; Case T-340/03 *France Télécom v Commission*, EU:T:2007:22, paragraph 100; and Case T-336/07 *Telefónica v Commission*, EU:T:2012:172, paragraph 150.

374 Case T-30/89 *Hilti* v *Commission*, EU:T:1991:70, paragraph 92; Joined Cases T-191/98, T-212/98 to T-214/98 *Atlantic Container Line and Others* v *Commission*, EU:T:2003:245, paragraph 907; Case T-66/01 *Imperial Chemical Industries v Commission*, EU:T:2010:255, paragraph 257; and Case T-336/07 *Telefónica v Commission*, EU:T:2012:172, paragraph 150.

375 Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 41; Case T-139/98 *AAMS* v *Commission*, EU:T:2001:272, paragraph 51; Case T-65/98 *Van den Bergh Foods v Commission*, EU:T:2003:281, paragraph 154; and Case T-336/07 *Telefónica v Commission*, EU:T:2012:172, paragraph 149.

376 Case T-79/12 *Cisco Systems and Messagenet v European Commission*, EU:T:2013:635, paragraph 69.

of market instability during the period at issue and, on the contrary, a rather stable hierarchy is established.[377]

(315) Other important factors when assessing dominance are the existence of countervailing buyer power and the existence of barriers to entry or expansion, preventing either potential competitors from having access to the market or actual competitors from expanding their activities on the market.[378] Such barriers may result from a number of factors, including exceptionally large capital investments that competitors would have to match, economies of scale from which newcomers to the market cannot derive any immediate benefit and the actual costs of entry incurred in penetrating the market.[379] The Commission also considers *inter alia* the impact of switching costs[380] and network effects[381] - which constitute further possible types of barriers to entry and expansion.

7.2. Application to this case

(316) For the purpose of this Decision, the Commission reaches the conclusion that Google has held a dominant position in the following relevant markets at least since 2014:

(1) the EEA-wide market for programmatic ad buying tools for the open web; and

(2) the EEA-wide market for publisher ad servers for online display advertising.

7.3. Programmatic ad buying tools for the open web

7.3.1. Introduction

(317) The Commission reaches the conclusion that in the EEA-wide market for programmatic ad buying tools for the open web, encompassing both DSPs and ad networks, in which Google is present with Google Ads and DV360, Google has held a dominant position at least since 2014.

(318) This conclusion is based on the following considerations:

(1) the sustained high market shares of Google in this market (section 7.3.2);

(2) Google's status as an unavoidable trading partner for advertisers and media agencies (section 7.3.3);

(3) Google's programmatic ad buying tools for the open web benefit from integration with other parts of the Google's open web adtech ecosystem, which results in significant user data advantages (section 7.3.4);

(4) the existence of high barriers to entry and expansion (section 7.3.5);

(5) the lack of countervailing buyer power (section 7.3.6); and

(6) the absence of sufficient competitive pressure from direct deals (section 7.3.7.1) and O&O ad buying tools (section 7.3.7.2).

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377 Case T-340/03 *France Télécom v Commission*, EU:T:2007:22, paragraphs 107 and 108.

378 Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraph 122; and Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 48.

379 Case 27/76 *United Brands v Commission*, EU:C:1978:22, paragraphs 91 and 122.

380 Case T-79/12 *Cisco Systems and Messagenet v Commission*, EU:T:2013:635, paragraph 73; Case T-604/18 *Google Android*, EU:T:2022:541, paragraphs 202 et seq.

381 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 171.

7.3.2. The sustained high market shares of Google

(319) The Commission has carried out a market reconstruction to calculate Google's market shares, the results of which are provided in Table 1 below. Table 1 only includes open auction and private marketplaces (also known as private auctions) deals, in line with the relevant product market definition.

(320) All market shares are measured based on total gross value of the impressions intermediated by each DSP or ad network.[382] The Commission considers that this metric is the most representative of market power, compared to other possible metrics.

(321) This is so because the value of impressions is very heterogeneous and depends on many factors, including the available data on the user. Moreover, an advertiser will have more interest in working with a DSP if it can intermediate higher value ads. Therefore, the volume of impressions would not be an appropriate metric in this case as it would not take into account the differences in value. The fees charged by ad buying tools are also not representative of an ad buying tool market position as different players have different business models.

Table 1: […][383,384,385,386,387]

382 The gross value of impressions consists of the gross price that advertisers paid for winning bids, including all buy-side fees related to the purchase of such impressions.

383 Source: […] replies to Q54 of the Commission's RFI to […] of October 2022 (ID[…]) and Q44 of the Commission's RFI to […] of February 2024 (ID[…]). Replies to Q30 of the Commission's RFI to DSPs of December 2020, Q37 of the Commission's RFI to DSPs and SSPs of July 2022, QB15 of the Commission's RFI to Ad Buying Tools of February 2024 and follow up emails.

384 Google provided monthly data on the value of impressions purchased by Google Ads and DV360 starting from June 2014. The Commission estimated the value of impressions purchased by Google Ads and DV360 for January to May 2014 fitting a triple exponential smoothing model with available monthly data for the period from June 2014 to December 2021.

385 A number of DSPs and ad networks were not able to provide data for certain years between 2014 and 2021. Data from the sources listed above were thus complemented with data on the value of impressions served by Google publisher ad server, DFP, and split by purchasing ad buying tool provided by […] in response to Q28 of the Commission's RFI to […] of October 2022 ([…]) (ID[…]). As Google's DFP data are available from 2015, the Commission has used such data to estimate the value of impressions for those DSPs and ad networks that were not able to provide the requested data for certain years between 2015 and 2021. In particular, the Commission used Google's DFP data to calculate the yearly percentage change in the value of impressions purchased in each missing year between 2015 and 2021 by those DSPs and ad networks that were not able to provide data for those years. Such percentage change was then used to estimate the value of impressions purchased in each of the missing years by those DSPs and ad networks. For DSPs or ad networks that have not provided data for certain years between 2015 and 2021 and do not appear in Google's DFP data, the Commission has estimated missing data based on the observed yearly trends in the value of impressions from the available years. Similarly, the value of impressions for 2014, when not available, was estimated based on the observed trends for the 2015-2021 period, as Google's DFP data is available only from 2015 onwards.

386 Others include […].

387 When an ad buying tool could only provide aggregated data covering all deal types intermediated and not just Open Auction and Private Marketplaces, figures including all deal types have been used. Google's market shares figures should thus be considered conservative, as only Open Auction and Private Marketplaces transactions are included in Google's figures. When an ad buying tool could provide data by deal type only for more recent years and aggregated data for previous years, the same split observed for the earliest available year was applied to all previous years to obtain an estimate of the value of their open auction and private marketplace transactions in those years.

(322) The market reconstruction above is based on data from […] DSPs and ad networks, which include Google and its largest competitors.[388] As such, it includes all rivals which have sufficient size to potentially exert some competitive constraint on Google.

(323) The Commission considers that Google's high market shares are an indication of its durable dominant position in the EEA-wide market for programmatic ad buying tools for the open web, and illustrate the lack of significant competition from other programmatic ad buying tools for the open web.

(324) According to Table 1, Google has continuously held high market shares in the EEA-wide market for programmatic ad buying tools for the open web in the period between […]. In most years during that period, Google's market shares exceeded […] and remained over […]. There are no indications that Google's position on the relevant market in 2024 has changed.

(325) Google's largest competitors are […]:

(1) […], Google's […], has a market share of […], and has shown limited growth since 2014.

(2) […] never exceeded a market share of […], and its market share has steadily decreased since 2015, from […] to […].

(3) The next competitors, […] and […], never exceed a market share of […], with neither of them showing a steady, appreciable growth tendency during the infringement period.

(4) […] never exceeded a market share of […].

(326) Platforms like Meta and Amazon offer programmatic ad buying tools, through the Meta Audience Network ("MAN") and the Amazon DSP respectively, which can allow buying inventory on their O&O platform, but also to a limited extent on the open web, contrary to Google's programmatic ad buying tools, which have a vast market presence to buy inventory on the open web.

(327) Compared to Google, Meta has a much smaller presence on the open web through MAN[389], which is the only tool through which Meta is currently present in the intermediation of advertising on the open web. It represents only a very small fraction of advertisers' demand and is typically offered to advertisers in addition to Meta's O&O inventory and not on a standalone basis. […].[390] This is also supported by a Google internal document indicating that […].[391]

(328) Further, upon its launch in 2014, MAN (at the time designated FAN) initially worked only with mobile apps and later added the ability to serve ads on third-party websites, though it ultimately terminated this web service. As of 2020, MAN therefore provides a demand source only for the mobile app format and accordingly is not a participant in the adtech stack for the purposes of advertising in desktop or mobile

388 Through its desk-based research, the Commission has identified the main DSPs and ad networks active in the EEA. DSPs and ad networks identified by the Commission were asked to provide data on the number of ad impressions purchased, the value of ad inventory purchased and the revenues generated by the fees charged.

389 Introduced by Meta in April 2014 and launched broadly in October 2014 to enable advertisers that use Meta's advertising services to extend the delivery of their advertising campaigns off Meta to users on third-party publishers.

390 […] reply to Q1 of the Commission's RFI to SSPs of December 2020 (ID[…]).

391 […].

web formats.[392] This focus, from the beginning, on the mobile app format is reflected in a Google internal document […], according to which […][393]. Conversely, Google's programmatic ad buying tools offer access to a very wide range of third-party inventory and to all formats.

(329) […].[394] Generally, larger advertisers consider Meta's O&O inventory to be in a separate category to advertising opportunities available via adtech services such as those provided by Google.[395] This finding is also supported by several NCA reports.[396]

(330) The […] respondents to the Commission's RFI did not list MAN amongst the competitors of DV360 with respect to programmatic ad buying tools for the open web.[397] As regards Google Ads, only a minority of advertisers and media agencies mentioned MAN amongst Google Ads competitors for buying programmatic ads in the open web.[398] In addition, only a minority of the DSPs which replied to the Commission's RFI listed Meta amongst their competitors.[399]

(331) As regards Amazon, its limited presence in the open web is supported by the replies from media agencies to the Commission's RFI. For instance, […] referred to Amazon as […].[400] […] also indicated that Amazon Advertising Platform: […]. According to […].[401] […] also indicated that Amazon: […][402] These findings are also confirmed by several NCA reports.[403]

(332) Several advertisers and media agencies that responded to the Commission's RFI indicated that, since 2009, […].[404] For example, […] highlighted that since 2009, […].[405] Similarly, […] highlighted that the […].[406] […] also observed that […].[407]

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392 Meta Advertising Network offered until 2020 its service for advertising space on publishers' websites.

393 […].

394 […].

395 ACCC Digital Advertising Report, page 67 (ID[…]).

396 E.g. according to the CNCM Study on the competitive conditions in the online advertising sector in Spain, page 79, "*Facebook stands out for its market share in display thanks to the revenues from its own inventory on Facebook and Instagram, to which it adds a relatively small role (compared to Google's presence in intermediation) in trading third-party inventory (mainly in publishers' mobile applications)*" (ID[…]). According to the CMA Online Advertising Market Study, Appendix M, paragraph 409: "*Facebook has a much smaller presence in open display through Facebook Audience Network (FAN), limited for the vast majority to mobile apps. FAN is typically offered to advertisers in addition to Facebook's owned and operated properties and not on a standalone basis. Conversely, Google's DV360 is one of the largest DSPs and offers access to a very wide range of third-party inventory*" (ID[…]).

397 Replies to Q9.1 of the Commission's RFI to advertisers and media agencies of November 2022.

398 Replies to Q9.2 of the Commission's RFI to advertisers and media agencies of November 2022.

399 Replies to Q7 of the Commission's RFI to DSPs of December 2020.

400 […].

401 […].

402 […].

403 According to the CNCM Study on the competitive conditions in the online advertising sector in Spain, page 80, "*Amazon is also present in intermediation services for third-party inventory, but with lower significance compared to Google*" (ID[…]). According to the CMA Online Advertising Market Study, Appendix M, paragraph 180: "*Amazon is valued for its access to unique inventory and to Amazon's customer data, while it is sometimes considered to be technically inferior to other DSPs and to lack integrations with third-party technologies and the wider industry. As Amazon's inventory and data is of particular interest to advertisers in the retail sector, Amazon's DSP is likely to be an attractive solution for these types of advertisers, but less so for those operating in other industries*" (ID[…]).

404 Replies to Q19 of the Commission's RFI to advertisers and media agencies of November 2022.

405 […].

406 […].

According to […], the main change noticed in the programmatic landscape since 2009 was that […].[408]

(333) The Commission's conclusion that Google's sustained high market shares are an indication of Google's durable dominant position in the EEA-wide market for programmatic ad buying tools for the open web and illustrate the lack of significant competition from other programmatic ad buying tools for the open web is not contradicted by Google's arguments described below.

(334) First, Google argues that the Commission erroneously excludes certain revenue from rival ad networks (such as […]) from its market share calculations, even though it included revenue of a similar type for Google's own programmatic ad buying tools (namely those acquired via AdSense).[409] According to Google, this resulted in […] of the relevant annual third-party ad buying tools' spend being excluded from the Commission's market reconstruction in the period between […].[410]

(335) In the first place, when the ad networks mentioned by Google (namely […]) were themselves asked to classify the type of revenues that Google is portraying as wrongly excluded, they classified these revenues as direct deals from publishers and/or publisher ad servers and not as open auction revenues. By contrast, Google classified the impressions purchased from AdSense as open auction revenues. The Commission therefore consistently applied the classification of each respondent when running its market reconstruction.

(336) In the second place, when estimating that "*between* […] *of the relevant annual third-party ad spend is excluded from the updated LoF market shares*", Google is not only considering the ad networks revenues mentioned at recital (335), but also revenues related to programmatic guaranteed deals and preferred deals which, for the reasons mentioned in recital (184), are not part of the relevant market for programmatic ad buying tools. In this sense, including those revenues would result in an underestimation of Google's market position as all programmatic guaranteed deals and preferred deals intermediated by Google's programmatic ad buying tools were excluded from the relevant product market.[411]

(337) In the third place, even using the hypothesis that is the most favourable to Google (and which is erroneous as per the recital above), i.e., assuming that the ad networks listed by Google wrongly classified their own revenues in their replies to the Commission's RFI, and in addition also including revenues generated by programmatic guaranteed deals and preferred deals in the calculations, this would not lead to a material change in the conclusions that can be drawn from the calculations. Indeed, Google would, under that hypothesis, still have significant and sustained market shares in the EEA-wide market for programmatic ad buying tools for the

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407 […].

408 […].

409 […].

410 […].

411 Google estimates that, for 2014 to 2023, […] of the relevant annual third-party revenues are excluded from the Commission's market shares calculations. Google further explains that the estimates for the excluded proportion of third-party revenues "*reflect the combined impact of removing all revenues except open auction and private marketplaces transactions*". […].

open web, above […] in each year in the period between […].[412] The Commission's conclusions are therefore still valid even in that scenario.

(338) Second, Google argues that calculating market shares based on the gross value of impressions (i) is contrary to the Commission's guidance on market definition which, Google claims, indicates that net revenues should be used to calculate market shares, (ii) does not provide a reliable view of Google's market position, (iii) inflates Google's market share, and (iv) does not account for different business models.[413]

(339) In the first place, paragraph 55 of the Market Definition Notice states that "*both volume sales and value sales provide useful information*" and in case of "*differentiated products, sales in value and their associated market share will usually be considered to better reflect the relative position and strength of each supplier*".[414] The Market Definition Notice is silent on whether gross or net values should be used to compute market shares.

(340) In the second place, the gross value of impressions includes the value of the inventory being purchased and the intermediation fees. The value of the purchased inventory is a cost which programmatic ad buying tools need to incur in order to provide intermediation services to advertisers and media agencies. Indeed, it represents the payout to publishers who ultimately own the inventory being sold to advertisers via the programmatic ad buying tools' intermediation. All other such costs (e.g., software or personnel costs) have not been excluded from the revenues considered by the Commission in its market share calculations. The need for the cost of the purchased inventory to be deducted from the revenues generated by programmatic ad buying tools for the open web for these purposes is therefore unfounded and not consistent with the treatment of the other cost items. This is in line with the Commission's previous practice,[415] as well as with the Court of Justice's case-law.[416]

(341) In the third place, Google itself was unable to provide the Commission with yearly revenues generated by Google Ads fees (which would correspond to its net revenues), as only gross revenues are recorded in its internal databases, thus clearly indicating that Google does not consider net revenues to provide a reliable view of Google Ads' market position. Indeed, Google noted that it […].[417] Therefore, Google itself, in the normal course of business, does not consider net revenues as providing meaningful, useful or accurate information for market monitoring.

(342) In the fourth place, contrary to Google's claim, net revenues do not allow to properly account for different business models. In fact, considering net revenues generated by intermediation fees would overestimate the market position of non-vertically

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412 […]. As these figures only include revenues generated by open auction and private marketplaces transactions, while the estimated third parties revenues now include all transactions, Google estimated share is conservative.

413 […].

414 Market Definition Notice, paragraph 55.

415 Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*, paragraph 279: "*market shares based on gross rather than net revenues best reflect Google's competitive strength in the EEA-wide market for online search advertising intermediation. This is because payments made by Google to publishers for the placement of search ads on their websites constitute a cost incurred by Google (see Section 2.2.3). Like any other essential cost to supply a product or a service, it is unnecessary to deduct these payments from the revenue generated by Google in online search advertising intermediation.*"

416 Case C-272/09 P *KME Germany and Others v Commission*, EU:C:2011:810, paragraph 53.

417 […] reply to Q4 of the Commission's RFI to […] of September 2022 (ID[…]).

integrated ad buying tools (e.g., The Trade Desk) compared to DV360 (and potentially other vertically integrated players).

(343) This is because vertically integrated intermediaries take pricing decisions considering all the intermediation layers in which they are active. In the presence of vertically integrated intermediaries, fees at a single level of the intermediation stack are therefore not necessarily informative of the undertaking's market power at that level of the stack. The total gross value of the impressions intermediated by each ad buying tool is a more accurate metric to measure market position on the market for programmatic ad buying tools for the open web, as it is less influenced by pricing decisions at different level of the intermediation stack, given that intermediation fees are only one component of such gross value. Indeed, as evidenced in a Google internal document, […].[418]

(344) […]. This is not possible, for example, for The Trade Desk, which operates on the buy-side of the adtech stack only and can only obtain revenues from advertisers and media agencies. Therefore, using gross revenues instead of net revenues to compute market shares does not inflate DV360's share as claimed by Google, but simply accounts for the fact that Google's pricing decisions at the different levels of the adtech stack are closely interrelated.

(345) Third, Google argues that the Commission's market reconstruction omits a significant number of programmatic ad buying tools for the open web and therefore overstates Google's market share.[419]

(346) In the first place, the Commission's market reconstruction includes all DV360's and Google Ads' largest competitors, with the smallest competitors being included in the market reconstruction already […].

(347) In the second place, the inclusion of the small tail of DSPs and ad networks identified by Google is unlikely to materially change Google's market shares as per Table 1 above. In the same vein, it is equally unlikely that players with such a small scale compared to Google can exert any perceptible competitive constraint on DV360 and/or Google Ads.

(348) Fourth, Google argues that the Commission ignores the "intense" competition that Google faces from rival programmatic ad buying tools for the open web, such as MAN, Amazon DSP, The Trade Desk and Criteo.[420] Google notes that some of the advertisers and media agencies contacted by the Commission confirmed that they consider that Google's programmatic ad buying tools for the open web face competition from other DSPs and ad networks.[421] Google also claims that the Commission understates the competitive constraint imposed by MAN and Amazon.[422]

(349) In the first place, the fact that some advertisers and media agencies that replied to the Commission's RFIs consider other programmatic ad buying tools for the open web to be competitors of DV360 and/or Google Ads does not necessarily mean that Google faces "intense" competition from those operators. It simply means that those

418 […].
419 […].
420 […]. This section of the Decision refers to MAN and Amazon DSP only with regards to their function as programmatic ad buying tools for the open web. Regarding their function as O&O ad buying tools, see section 7.3.7.2.
421 […].
422 […].

programmatic ad buying tools for the open web are active in the same relevant market as DV360 and Google Ads.

(350) In the second place, the information submitted by Google on competing programmatic ad buying tools for the open web's market capitalisation, revenue, revenue growth, partnerships and new initiatives, client retention rate, etc.,[423] is very general and quoted without context. When put into context, it becomes clear that this information does not support Google's argument that these operators are able to exert an "intense" competitive constraint on Google's tools.

(351) For instance, […] states that "*MAN has grown rapidly since its creation in 2014, with around* […] *of mobile apps currently using MAN*".[424] This does not contradict the Commission's conclusion but is in fact in line with the Commission's findings in recitals (327) to (330) above. […] of the market, and now represents only less than […].

(352) The same applies to statements regarding Amazon DSP. For example, while Annex 2.1 notes that "*Amazon's ad buying tools have been extremely successful*"[425], Amazon DSP's presence in the EEA-wide market for programmatic ad buying tools for the open web is limited, […].

(353) […] also notes (albeit without reference to the time period this statement refers to) that The Trade Desk "*is dramatically increasing its presence in Europe*".[426] When put into context, however, it becomes clear that The Trade Desk cannot represent but a limited constraint to DV360 and Google Ads: while it may have increased its presence in Europe, […].

(354) The same can be said regarding the statement in Annex 2.1 that […].[427] […], that is, before the Commission's findings on dominance. And second, this is in any event in line with the Commission's findings: Criteo was indeed […] important programmatic ad buying tool for the open web in the EEA in the period between 2014 and 2018. […].

(355) Fifth, Google claims that, where multi-homing is present, platforms with smaller share exist as alternatives, and transaction shares understate customers' ability to substitute and rivals' ability to expand.[428]

(356) As further evidenced in recitals (440) to (448) below, multi-homing in the market for programmatic ad buying tools for the open web is limited and insufficient to allow competing ad buying tools to exert strong constraints on Google. In particular, small platforms would be unlikely to have the resources and range of services to become the main ad buying tool of use for an advertiser or media agency and would thus not be able to fill Google's role.

(357) Sixth, Google claims that both DV360 and Google Ads are priced competitively when compared to competitors, and that this is inconsistent with the Commission's allegations of market power.[429]

423 […].
424 […].
425 […].
426 […].
427 […].
428 […].
429 […].

(358) In the first place, as noted in recitals (342) to (344) above, vertically integrated intermediaries like Google take pricing decisions considering all the intermediation layers in which they are active. Fees at a single level of the intermediation stack are therefore not necessarily informative of the undertaking's market power at that level of the stack. Google is able to charge lower fees than other non-vertically integrated programmatic ad buying tools for the open web thanks to AdX's sell-side fees charged to publishers, which subsidize Google's programmatic ad buying tools.

(359) In the second place, regarding Google Ads in particular, and notwithstanding the fact that it may have charged a comparatively lower fee than some competing non-vertically integrated programmatic ad buying tools for the open web as expressed in terms of percentage of the total price charged per impression, it nevertheless had the ability to extract high payments from advertisers and media agencies by sending two bids into AdX in a way that inflated the total price paid by advertisers (see section 8.3.4.1.2, […].[430]

7.3.3. Google's status as an unavoidable trading partner for advertisers and media agencies

(360) The Commission reaches the conclusion that Google's programmatic ad buying tools enjoy a status of unavoidable trading partner for advertisers and media agencies. The Commission has no indication that the situation was different at any time in the period covered by the findings of this Decision. This is supported by the following considerations.

(361) First, […] advertisers and media agencies that replied to the Commission's RFI indicated that either Google Ads, DV360 or both are important for their business.[431]

(362) Second, […] advertisers and media agencies which replied to the Commission's RFI and which use Google's programmatic ad buying tools to buy programmatic display ad inventory indicated the significant advantages these tools have over competitors, and highlighted the significant negative impact on their business if they were not able to buy programmatic display ad inventory on Google Ads and/or DV360.[432] The following statements illustrate these findings:

(1) According to […].[433]

(2) According to […].[434]

(3) According to […].[435]

(4) According to […].[436]

(363) Third, the […] to DV360 and Google Ads also to compete for the open web inventory since the […].[437] Because advertisers and media agencies […] for accessing third-party inventory in the open web.[438]

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430 […].

431 Replies to Q16 and Q17 of the Commission's RFI to advertisers and media agencies of November 2022.

432 Replies to Q16.2 and Q17.2 of the Commission's RFI to advertisers and media agencies of November 2022.

433 […].

434 […].

435 […].

436 […].

437 Replies to Q8 of the Commission's RFI to advertisers and to Q8 of the Commission's RFI to media agencies of December 2020.

(364) In fact, the […] that replied to the Commission's RFI indicated that […] is a criterion for the selection of a DSP for a campaign which involves video display ads.[439] The following statements by advertisers and media agencies illustrate this conclusion:

(1) According to […].[440]

(2) According to […].[441]

(3) According to […].[442]

(365) The importance of YouTube for advertisers and media agencies wishing to run video ad campaigns was also confirmed by third-party ad buying tools. For instance:

(1) According to […].[443]

(2) According to […].[444]

(3) According to […].[445]

(366) Google internal documents show that […] for the buying of inventory on the open web, and strengthens Google's market power in the market for programmatic ad buying tools for the open web:

(1) A Google internal document indicates that: […].[446]

(2) A Google internal document indicates that: […].[447]

(3) A Google internal document indicates that: […].[448]

(4) A Google internal document indicates that: […].[449]

(5) A Google internal email chain in which a Google employee states: […].[450]

(6) A Google internal document indicates that: […].[451]

(367) In a context in which multi-homing is limited (see recitals (440) to (448)), the importance of access to Google's O&O ad inventory (in particular YouTube, which is the most important one) contributes significantly to strengthen the dominance of Google's programmatic ad buying tools for the open web, as it reduces advertisers and media agencies' incentives to use competing ad buying tools to access third-party inventory in the open web. These findings are illustrated by the below statements:

(1) According to […].[452]

(2) According to […].[453] [454]

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438 Replies to Q17.1 of the Commission's RFI to advertisers and media agencies of November 2022.

439 Replies to Q17 of the Commission's RFI to advertisers and to Q17 of the Commission's RFI to media agencies of December 2020.

440 […].

441 […].

442 […].

443 […].

444 […].

445 […].

446 […].

447 […].

448 […].

449 […].

450 […].

451 […].

452 […].

(3) According to […].[455]

(4) According to […].[456]

(368) This explains why several advertisers stated that […]. For instance:

(1) According to […].[457][458]

(2) According to […].[459]

(3) According to […].[460]

(4) According to […].[461]

(369) Fourth, advertisers and media agencies that replied to the Commission's RFI also indicated that Google's programmatic ad buying tools […]. For instance:

(1) According to […].[462]

(2) According to […].[463]

(3) According to […].[464]

(4) According to […].[465]

(370) This was also confirmed by third-party ad buying tool providers. For instance, according to […]: […].[466]

(371) Fifth, Google internal documents recognise that Google's programmatic ad buying tools for the open web […]:

(1) A Google internal document […].[467]

(2) A Google internal document indicates that […].[468]

(3) A Google internal document indicating that […] (see Figure 5).[469]

Figure 5: Google internal document about […]

(4) A Google internal document indicating that the: […].[470]

(5) A Google internal document indicating that: […].[471]

(6) A Google internal email chain in which a Google employee states: […].[472]

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453 […].
454 […].
455 […].
456 […].
457 […].
458 […].
459 […].
460 […].
461 […].
462 […].
463 […].
464 […].
465 […].
466 […].
467 […].
468 […].
469 […].
470 […].
471 […].

(7) This is further supported by a Google internal document describing the features and functionalities that underline Google's value proposition (see Figure 6).

Figure 6: Google internal document with evidence of Google's […]

(372) Sixth, several Google internal documents show that Google was […]:

(1) A Google internal document states that […].[473]

(2) The internal presentation entitled […], it provides: […][474] […].[475] […].[476]

(3) The internal presentation entitled […] highlights that DV360's scale leads to: […].[477]

(4) A Google internal document indicates that […].[478]

(5) A Google internal email chain in which a Google employee states that, […].[479]

(6) A Google internal document indicates […].[480]

(373) The Commission's conclusion that Google's programmatic ad buying tools enjoy a status of unavoidable trading partner for advertisers and media agencies is not contradicted by Google's arguments described below.

(374) First, Google argues that YouTube is not a […] source of inventory for advertisers and that the Commission overlooked available evidence showing that many advertisers did not identify YouTube as a […] or […] inventory type for their online advertising campaigns.[481]

(375) In the first place, as noted above (see recital (363)), the […] did consider YouTube as a […] or […] inventory type for their online advertising campaigns.

(376) In the second place, as evidenced above (see recital (366)), […] and used it to strengthen its market power in the market for programmatic ad buying tools for the open web.

(377) In this regard, Google's attempts to challenge the interpretation given by the Commission to some of the abovementioned Google documents are without merit:

(1) The Google document referred to in recital (366)(2) above recommends two alternative options, namely […], providing pros and cons for each of them which clearly evidence that […]. The document notes, in particular the following advantages of […] from AdX:

(a) the fact that it […]. In other words, that […]; and

(b) the fact that this would mean […].

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472 […].
473 […].
474 […].
475 Platforms/tools which enable the transfer of collected customer information into digital environment.
476 […].
477 […].
478 […].
479 […].
480 […].
481 […].

(2) The fact that the Google document referred to in recital […] does not mean that such inventory represents an "effective alternative" to YouTube.

(378) Second, Google argues that the Commission overlooked the fact that advertisers had identified other platforms such as TikTok and Instagram/Facebook as […] platforms.[482]

(379) The fact that other platforms may prove to be […] for some advertisers does not affect YouTube's status. These platforms may in fact be complementary in addressing advertisers and media agencies' needs and be considered […] by the same advertisers and media agencies.

(380) Third, Google argues that there are many reasons why an advertiser may choose to use Google Ads and/or DV360, aside from the access to YouTube.[483]

(381) However, this Decision does not claim that exclusive access to YouTube inventory is the sole reason for advertisers to choose to (mainly) use DV360 and/or Google Ads. Rather, this Decision finds that it provides a strong incentive to do so.

(382) Fourth, Google argues that the finding that access to Google's O&O (in particular YouTube) contributes significantly to Google's alleged dominance is undermined by the Commission's erroneous finding that multi-homing is limited and barriers to entry are high.[484] Google further argues that it is not necessary for advertisers to consolidate all spend through a single ad buying tool. Finally, Google claims that some of the evidence relied on by the Commission predates YouTube inventory becoming exclusive to DV360 and Google Ads[485] and that there is no evidence on the advantages accrued to Google after YouTube became exclusive to DV360 and Google Ads because Google's market shares and the presence of competitors demonstrate it did not have an effect on Google's position in the market.[486]

(383) In the first place, as evidenced in recitals (440) to (448) below, multi-homing in the market for programmatic ad buying tools for the open web is limited (involves limited spend and for specific purposes) and therefore cannot meaningfully and effectively constrain Google's dominance. The fact that it is not imperative for advertisers and media agencies to consolidate all spend in a single programmatic ad buying tool for the open web does not alter the fact that there are significant risks and challenges related to multi-homing leading advertisers to rely mostly on a single ad buying tool to purchase the majority of their impressions, while other ad buying tools are used only for residual purchases (as detailed in recitals (441), (442) and (448) below). Indeed, the Commission's investigation indicated that despite the ability of advertisers and media agencies to multi-home, they tend to use a main ad buying tool and […] advertisers and media agencies which replied to the Commission's RFI identified DV360 and/or Google Ads as the main ad buying tool used for the purpose of buying programmatically online display advertising inventory (as further detailed in recital (444) below). YouTube's maintained significant importance for advertisers coupled with Google's tools strong presence in the open web (compared to, for instance, MAN) result in the exclusive access to YouTube providing advertisers with a strong incentive to make Google's programmatic ad buying tools for the open web their main programmatic ad buying tool.

482 […].
483 […].
484 […].
485 […].
486 […].

(384) In the second place, the fact that some of the abovementioned Google internal documents are (allegedly, as some of these documents are undated) from a period prior to YouTube inventory becoming exclusive to DV360 and Google Ads is immaterial. These documents show, precisely, the strategic considerations underpinning such decision.

(385) In the third place, Google's arguments that exclusive access to YouTube inventory did not have an effect on Google's position in the market for programmatic ad buying tools for the open web are without merit. Firstly, the fact that YouTube becoming exclusive to DV360 and Google Ads did not materially increase Google's market shares does not mean that this had no effect on Google's position in the market. This might have, for instance, prevented the erosion of Google's position or the increase of its rivals' market shares, which might have otherwise occurred. Secondly, the presence of competitors is not in conflict with Google holding a dominant position.

(386) Fifth, Google argues that Google Ads does not have any material unique demand, because (i) the vast majority of Google Ads' demand is also available via alternative programmatic tools because of advertisers' multi-homing, (ii) even if small advertisers were unique to Google Ads, these would allegedly only account for a small minority of spend on Google Ads, and (iii) the Commission fails to provide a sound assessment for its claim that Google Ads demand is unique.[487]

(387) In the first place, the Commission's analysis shows that multi-homing in the market for programmatic ad buying tools for the open web is limited (see recitals (440) to (448)). This is especially so for smaller advertisers which likely lack the resources to manage complex adtech set-ups made up of multiple programmatic ad buying tools.

(388) In the second place, the fact that Google Ads has unique demand is not incompatible with the fact that advertisers may use different ad buying tools. This is because advertisers and media agencies often use a single programmatic ad buying tools for a given campaign in order to benefit from the advantages of single-homing[488] or they use only alternative ad buying tools for specific inventory/purposes (see recitals (446) to (447)). This can explain why Google's programmatic ad buying tools have access to advertiser budgets that competitors do not, despite those advertisers multi-homing.

(389) In the third place, the Commission is not alleging that small advertisers constitute a significant part of the spend on Google Ads. What the Commission concludes is, based on Google's own estimation, that the unique demand of Google Ads is substantial. The explanation is that it comprises small advertisers single-homing and advertisers, of all sizes, using one programmatic ad buying tool for a given campaign as explained in the previous recital.

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487 […].

488 Replies to QB.E.2 of the Commission's RFI to advertisers and media agencies of February 2024. According to the CMA Online Advertising Market Study, Appendix M, paragraph 189, these advantages include the ability to manage frequency across the entire campaign, which is not possible when using multiple DSPs due to the lack of a common ID between different technologies; more effective audience management due to the presence of a consistent ID solution allowing for better retargeting and audience suppression; more efficient reporting as a result of using a single interface to pull data from; and reduced cannibalisation where two different DSPs compete for the same impression in the auction, thereby inflating the price (ID[…]).

(390) Sixth, Google argues that the Commission ignores evidence of advertisers which do not consider that Google's programmatic ad buying tools for the open web are important for their business and that, in any event, Google's tools' importance and strong market position is not probative of there being insufficient substitutes.[489]

(391) In the first place, as noted above in recitals (361) and (362) respectively, (i) […] advertisers and media agencies that replied to the Commission's RFI indicated that either Google Ads, DV360 or both are important for their business and (ii) […] advertisers and media agencies that replied to the Commission's RFI and which use Google's programmatic ad buying tools to buy programmatic display ad inventory highlighted the significant negative impact on their business if they were not able to buy programmatic display ad inventory on Google Ads and/or DV360. The fact that some advertisers did not do so is therefore of limited relevance.

(392) In the second place, the responses of advertisers and media agencies (i) indicating that either Google Ads, DV360 or both are important for their business, and (ii) highlighting the significant negative impact on their business if they were not able to buy programmatic display ad inventory on Google Ads and/or DV360 are only one element of the Commission's analysis which, coupled with all others, has led the Commission to conclude that Google holds a dominant position in in the EEA-wide market for programmatic ad buying tools for the open web.

7.3.4. Google's programmatic ad buying tools benefit from integration with other parts of Google's open web adtech ecosystem, which results in significant user data advantages

(393) The Commission reaches the conclusion that Google's programmatic ad buying tools benefit from integration with other parts of Google's ecosystem. This results in several strategic advantages vis-à-vis rival ad buying tools, including significant user data advantages.[490] The Commission has no indication that the situation was different at any time in the period covered by the findings of this Decision. The existence of such strategic advantages is supported by the following considerations.

(394) First, Google's programmatic ad buying tools enjoy a significant advantage over competitors due to their integration with Google Marketing Platform (GMP) services (especially Google Analytics).[491] Several advertisers and media agencies made statements consistent with this conclusion:

(1) According to […].[492]

(2) According to […].[493] [494]

(3) According to […].[495]

(4) According to […].[496]

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489 […].

490 This Decision takes no position on the legality of Google's processing of personal data – pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, page 1).

491 See recital (142) above.

492 […].

493 […].

494 […].

495 […].

(5) According to […].[497]

(395) A Google internal document supports this conclusion by indicating that the features which make […] include the following: […].[498]

(396) Second, Google's programmatic ad buying tools benefit from comprehensive vertical integration with the largest sell-side tools in the adtech stack, namely AdX and DFP. This is particularly important in the context where most programmatic display advertising players relied on third-party cookies for the purpose of identifying unique users thus allowing targeting[499], remarketing[500] and frequency capping[501].

(397) When the process of serving or transacting programmatic online display ads involves a party (e.g. an ad buying tool) that is not vertically integrated with the party that performed the previous step of the process (e.g. an SSP), "cookie matching" or "cookie syncing" becomes necessary such that the two parties achieve a common identification of the user. After Google's decision to encrypt User IDs which flowed outwards from the Google ecosystem (sometimes referred to by the industry shorthand term "DoubleClick IDs")[502] and which previously served as a standard used by different players in the adtech industry, when interacting with a Google service, each player in the adtech stack is now required to use a different cookie domain to attribute the information collected about a user to a given User ID. This implies that when for instance an SSP sends a bid request – which includes a User ID – to ad buying tools, these may not be able determine to which user it refers as they would typically identify the user with another User ID in their database. Each ad buying tool then has to match the User ID received from the SSP with its own User ID.

(398) Cookie matching is subject to inefficiencies and may not always be possible. For example, […] has noted that: […].[503] When players are not able to match User IDs, this results for instance in (i) ad buying tools issuing low bids or abstaining from participating in the auction altogether;[504] and (ii) a market perception that a player which fails to identify users accurately offers lower quality services than a player that succeeds in matching, which may create stickiness benefitting the services of large players with comprehensive vertical integration underpinned by significant scale and scope of user data.[505]

(399) As […] explained: […].[506]

(400) Similarly, […] explained that: […].[507]

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496 […].

497 […].

498 […].

499 "Targeting" refers to the ability to ensure that a given advertisement is seen by the desired "user audience" - that is, users who are likely to be interested in the product or service covered by the relevant campaign.

500 Google defines remarketing as […]. […].

501 "Frequency capping" refers to the practice of limiting the number of times that a given user is exposed to the same advertisement.

502 Google began encrypting User IDs that flowed outwards from the Google ecosystems in 2009. The encryption is implemented on a per-user and per-partner basis, such that different market participants will receive different User IDs for the same user. Google does not encrypt User IDs among its own services. […].

503 […].

504 […].

505 […].

506 […].

(401) When sell-side and buy-side tools are vertically integrated, there is no need to use cookie matching as both levels of the chain share the same User ID domain, that is, when the buy-side tool receives the bid request with the User ID, it can recognise the user 100% of the time.[508] This also implies that the higher the share of bid requests intermediated by the vertically integrated SSP, the greater the advantage that results for the buy-side tool with which it is vertically integrated as it reduces the number of times it needs to engage in cookie matching. Google's programmatic ad buying tools benefit from exactly this since they are vertically integrated with the largest SSP in the market, which is in turn integrated with the dominant publisher ad server.

(402) Google confirmed […]. For example:

(1) In a response to the Commission's RFI, Google stated: […].[509]

(2) A Google internal document, which discusses an industry publication's assessment of DV360 and other ad buying tools, indicates that: […].[510]

(3) A Google internal document indicates that: […].[511]

(403) This is confirmed by other players of the adtech stack. For instance:

(1) According to […].[512]

(2) According to […].[513]

(3) According to […].[514]

(4) According to […].[515]

(5) According to […].[516]

(6) According to […].[517]

(404) Third, several advertisers and media agencies emphasised their perception that Google's programmatic ad buying tools benefit from a significant user data advantage, enabling DV360 in particular to offer better targeting and measurement capabilities compared to competitors.[518] By way of example, in addition to recital (368), some respondents made the following observations:

(1) According to […].[519]

(2) According to […].[520] [521]

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507 […].

508 […].

509 […].

510 […], 7 April 2015, […]. Google cherry picks quotations from this document (a statement that Google […]; a statement that Google was […]; and a statement that Google was given a […] score of […]) to construct a claim that this document does not constitute evidence of Google's dominance ([…]). The same document however includes, for example, Google personnel's contemporaneous belief that *"*[…]*"* See "[…]", 7 April 2015, […].

511 […].

512 […].

513 […].

514 […].

515 […].

516 […].

517 […].

518 […].

519 […].

520 This allows optimized targeting to find more highly relevant audiences who are likely to convert.

(3) According to […].[522]

(4) According to […].[523]

(405) Fourth, Google's data advantage was also highlighted by several ad buying tools providers which responded to the Commission's RFI. For example, according to […].[524]

(406) Fifth, a 2020 industry report supports the view that all of the above considerations apply in a holistic manner across Google's programmatic ad buying tools. It states *inter alia*: […].[525]

(407) The Commission's conclusion that Google's programmatic ad buying tools benefit from integration with other parts of Google's ecosystem is not contradicted by Google's arguments described below.

(408) First, Google argues that the integration of its ad buying tools with other parts of Google's ecosystem is efficiency-enhancing and economically rational; and does not constitute evidence of dominance.[526]

(409) In this regard, even if the integration of Google's programmatic ad buying tools with other parts of Google's ecosystem is efficiency-enhancing and economically rational, such factors would not disprove Google's dominance. Dominance in and of itself is not unlawful, rather, dominance is a measure of status merely reflecting the amount of market power that a given undertaking enjoys in a given market. However, the efficiencies from which Google benefits as a result of being vertically integrated in the adtech stack cannot necessarily be replicated by others. Thus, any such efficiencies contribute to strengthening Google's market power in the market for programmatic ad buying tools for the open web. [527]

(410) Second, Google argues that the integration of its ad buying tools with other parts of Google's ecosystem is indicative of a general industry trend towards vertical integration, as evidenced by players besides Google being active at more than one layer of the ad tech stack.[528]

(411) In the first place, Google's claim is undermined by the fact that only a small number of players are vertically integrated to the same extent as Google (*i.e.*, across the publisher ad server, SSP and ad buying tools levels of the ad tech stack).

(412) In the second place, Google is the only ad buying tool that is vertically integrated with the leading SSP and publisher ad server (see Table 4 and Table 5).

(413) In the third place, even absent the considerations described in recitals (411) and (412), the existence of a general trend towards vertical integration would not disprove Google's dominance.[529]

(414) Third, Google argues that the Commission fails to demonstrate that Google does not need to rely on cookie matching to the same extent as its competitors.[530]

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521 […].
522 […].
523 […].
524 […].
525 […].
526 […].
527 See further the case law cited in section 7.1 above.
528 […].
529 See further the case law cited in section 7.1 above.

(415) In the first place, Google's claim is undermined by its own statements in the reply to the Commission's RFI and the internal documents described at recital (402) above.

(416) In the second place, since Google has had a strong presence at the publisher ad server, SSP and ad buying tools layer of the stack throughout the period 2014 to 2023, Google is more likely than other players to have been able to interact with a vertically integrated service at a neighbouring stage of the process of transacting/serving display ads. Thus, Google's intermediation offerings, including its ad buying tools, are likely to have been insulated from the downsides of cookie matching to a greater extent than their rivals.

(417) Fourth, Google argues that Google's competitors have created, sponsored, or otherwise participated in, initiatives to create alternatives to third-party cookies[531] (including alternative IDs) which enable them to compete effectively with Google.[532]

(418) In the first place, Google internal documents show that […].

(419) The following documents indicate that […].

(1) A Google internal document indicates that whilst […]. A chart (reproduced below in Figure 7: […]) discloses […].[533]

Figure 7: […]

(2) A Google internal document indicates that […] for the adoption of alternatives to third-party cookies (such as alternative IDs) and in particular (i) that […].[534][535][536]

(420) The following documents indicate that Google perceives alternatives to third-party cookies (such as alternative ID solutions) to […].

(1) A Google internal document indicates that: […].[537]

(2) A Google internal document indicates that: […].[538]

(421) The following documents indicate that Google perceives alternatives to third-party cookies (such as alternative ID solutions) […].

(1) A Google internal document indicates that […].[539]

(2) A Google internal document discussing the […]. [540]

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530 […].

531 Google documents separate alternatives to third-party cookies into two main categories. First, […]. See for instance […] 7 April 2022, […] and […] 29 March 2023, […]. Second, […]. Alternative IDs are developed by inter alia dedicated alternative ID providers and the largest media agencies. See for instance […], 7 April 2022, […] to […], and […], 29 March 2023, […].

532 […].

533 […].

534 […].

535 […].

536 […].

537 […].

538 […].

539 […].

540 […].

(422) In the second place, statements from intermediaries confirm the drawbacks of using alternatives to third-party cookies (such as alternative ID solutions), including cost, uncertainty and limited interoperability. For instance:

(1) According to […].[541]

(2) According to […].[542]

(423) Fifth, Google argues that its ad buying tools do not benefit from access to material first-party data advantages, enabling better targeting than Google's competitors can replicate.[543]

(424) In the first place, advertisers and media agencies expressed their perception that the strength of Google's first-party data is a source of market power for Google's programmatic ad buying tools, which competitors would struggle to replicate. For instance:

(1) According to […].[544]

(2) According to […].[545]

(3) According to […].[546]

(425) In the second place, statements in Google internal documents demonstrate the […].

(1) […] demonstrates the following.

(a) Google itself portrays its […].[547]

(b) Google emphasises in particular Google's […].[548][549][550] Google also states: […].[551]

(c) Google itself considers, overall, that […].[552]

(2) […] under the heading […] the following: […]. The […] listed beneath are […] and […].[553]

(3) A Google internal document from 2017, which […], states that: […].[554]

(426) In the third place, the reports of other competition authorities have reached similar conclusions. For instance, according to the Australian Competition and Consumer Commission (ACCC):

(1) Google's strong position in DSPs is underpinned by its *"data advantage, the integration between Google's services and its access to exclusive inventory. In particular, Google's access to a broad range of first and third-party data*

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541 […].
542 […].
543 […].
544 […].
545 […].
546 […].
547 […]. See for instance the standard responses to questions 41, 268 and 275.
548 […]. See for instance the standard responses to questions 55, 322 and 444.
549 […]. See for instance the standard responses to questions 49, 63, 187 and 202, in addition to those already cited at footnotes 547 and 548 above.
550 […]. See for instance the standard response to question 375.
551 […].
552 […].
553 […].
554 […].

provides it with an advantage in the supply of DSP services. This data likely allows it to provide more focused targeting and attribution services than its competitors."[555]

(2) *"there is a perception in the ad tech industry that Google uses its first-party data more extensively than Google claims. The ACCC considers Google benefits from this perception."*[556]

(3) *"there is also a perception among many stakeholders, including advertisers, publishers and other ad tech providers, that Google is using data from its consumer-facing services (i.e. first-party data) to target non-Google inventory, such as to offer targeting to 'in market' audiences. We consider that this perception has likely contributed to its competitive advantage in providing DSP services. A number of advertisers have said that audience targeting features are one of the key factors that influences their decision to use Google's DSPs, in addition to other factors (such as access to inventory)."*[557]

(427) Sixth, Google argues that, […], the Commission's conclusion that Google's programmatic ad buying tools allow or facilitate access to Google Analytics data is undermined.[558]

(428) However, Google's trackers that feed Google Analytics are present on a very significant proportion of worldwide inventory […],[559] such that, […],[560] […]. In any event, it remains the case that advertisers and media agencies perceive the integration between DV360 and Google Ads on the one hand; and services within the Google Marketing Platform (including Google Analytics), on the other, to be a source of advantage for Google's programmatic ad buying tools – […]. Moreover, the Google internal document cited at recital (395) supports this conclusion.

7.3.5. High barriers to entry and expansion on the relevant market

(429) The Commission reaches the conclusion that the EEA-wide market for programmatic ad buying tools for the open web is characterised by the existence of a number of barriers to entry and expansion.

(430) First, in order to be competitive, an ad buying tool must operate at a sufficiently large scale. Scale benefits ad buying tools as it can allow them to get better prices from their partners (for example, data partners and other technology and media vendors, such as DMPs) and to sustain the significant research and development investments needed to offer sophisticated and constantly improving artificial intelligence and data science capabilities.[561] In addition, the presence in other parts of the intermediation value chain is an important source of cost economies, as the investments made into the ad buying tool can benefit other parts of the business.[562] Google's programmatic ad buying tools benefit […], especially since the […].[563] […] highlighted that as regards the conditions of competition for the provision of ad buying tool services,

555 See ACCC Digital Advertising Services Inquiry, August 2016, page 51 (ID[…]).
556 See ACCC Digital Advertising Services Inquiry, August 2016, page 51 (ID[…]).
557 See ACCC Digital Advertising Services Inquiry, August 2016, page 70 (ID[…]).
558 […].
559 CMA Online Advertising Market Study, Appendix G, paragraphs 299 to 308 (ID[…]).
560 See […] reply to Q17 of the Commission's RFI to […] of August 2020 (ID[…]); and replies to Q29 of the Commission's RFI to publishers of December 2020.
561 CMA Online Advertising Market Study, Appendix M, paragraph 199 (ID[…]).
562 CMA Online Advertising Market Study, Appendix M, paragraph 200 (ID[…]).
563 […].

[…].[564] All these market features reinforce and favour the entrenched dominance of Google's programmatic ad buying tools.

(431) Second, the existence of indirect network effects[565] in the market for programmatic ad buying tools for the open web creates an additional barrier to entry and makes it more difficult for smaller competitors to challenge an established provider like Google. […] advertisers and media agencies that replied to the Commission's RFI indicated that when choosing to work with an ad buying tool, its ability to connect with several SSPs or its direct integration to SSPs is highly important or critical.[566]

(432) The Commission's market investigation indicates that advertisers and media agencies are more willing to select an ad buying tool which has a sufficiently large scale and offers the largest audience reach, access to a broad, diversified and unique ad inventory, to exclusive and/or unique data sets, and that offers seamless connection with other services in the adtech stack.[567]

(433) As for publishers, although they do not generally select which DSP to sell inventory to, but which SSP to use in order to monetize their inventory, when asked about the key factors that impact their decision to sell their ad inventory to a particular ad buying tool, they mentioned amongst the factors to consider in relation to an ad buying tool the […][568], […][569], the access to […][570], the ability to offer the […][571] From an SSP perspective, SSPs seek to integrate with ad buying tools that grant access to a large, diversified and possibly unique source of demand, as confirmed by responses to the Commission's RFI (see section 8.3.4.2.1).

(434) All of the above characteristics are to be found in Google's programmatic ad buying tools (see section 7.3.3) and are some of the main reasons why advertisers and media agencies, as well as publishers and SSPs, prefer using Google's programmatic ad buying tools instead of competing services. In particular, and as indicated in section 7.3.3, Google's programmatic ad buying tools represent by far the largest source of demand for programmatic online display advertising. This significantly increases the relevance of Google's programmatic ad buying tools vis-à-vis publishers and SSPs as compared with other ad buying tools. Publishers are then more willing to make their ad inventory accessible to Google's programmatic ad buying tools, and SSPs are incentivised to interact with Google's programmatic ad buying tools when selling online ad inventory on behalf of publishers. As detailed in recital (371) above, there is ample evidence, including Google's internal documents, which show the importance for publishers to connect with Google's programmatic ad buying tools

564 […].

565 Indirect network effects occur when a platform depends on two or more user groups. As more users from one group join the platform, the other group receives a greater value from using that platform. More specifically, programmatic ad buying tools need to attract two distinct groups of users: advertisers interested in bidding for ad inventory and SSPs seeking to access demand to monetize publishers' ad inventory. As more advertisers use a DSP/ad network, the breadth of demand it gives access to increases, thus making it more attractive for SSPs. In turn, as more SSPs expand the inventory the DSP/ad network gives access to, this further incentivizes advertisers to work with that DSP/ad network.

566 Replies to Q20 of the Commission's RFI to advertisers and media agencies of November 2022.

567 Replies to Q10a) and Q11 of the Commission's RFI to advertisers and to Q10a) and Q11 of the Commission's RFI to media agencies of December 2020; replies to Q16.1, Q16.3, Q17.1 of the Commission's RFI to advertisers and media agencies of November 2022.

568 […].

569 […].

570 […].

571 […].

due to the access to unique source of demand not matched by any other market player and in particular the access to Google Ads' demand which is exclusive. Concurrently, advertisers and media agencies prefer to connect with Google's programmatic ad buying tools due to the access to diversified, unique and exclusive inventory they are able to offer (as evidenced in recitals (369) and (371). These factors increase the value of Google's programmatic ad buying tools to advertisers and media agencies (indirect network effects).

(435) Third, the costs for advertisers and media agencies of switching programmatic ad buying tools for the open web are high.[572] This is illustrated by the following statements:

(1) According to […].[573]

(2) According to […].[574]

(3) According to […].[575]

(4) According to […].[576]

(5) According to […].[577]

(436) Moreover, advertisers and media agencies that responded to the Commission's RFI also highlighted the important risks and losses associated with switching from one ad buying tool to another.[578] These are best illustrated by […] as follows: […].[579] […] also explained that […].[580]

(437) Given all the above constraints, switching ad buying tools is impractical and particularly burdensome. As explained by […].[581] Similarly, […] indicated that changing ad buying tools would not happen […].[582]

(438) In addition, several respondents to the Commission's RFI highlighted the difficulties to switch from Google. For instance:

(1) According to […].[583]

(2) According to […].[584] [585]

(439) […]:

(1) […].[586]

(2) […].[587]

(3) […].[588]

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572 Replies to Q15 of the Commission's RFI to advertisers and media agencies of November 2022.
573 […].
574 […].
575 […].
576 […].
577 […].
578 Replies to Q15 of the Commission's RFI to advertisers and media agencies of November 2022.
579 […].
580 […].
581 […].
582 […].
583 […].
584 […].
585 […].
586 […].
587 […].

(440) Fourth, although […] advertisers and media agencies which responded to the Commission's RFIs indicated that they are using more than one ad buying tool for running ad campaigns or buying programmatic display ad inventory,[589] the Commission's market investigation revealed that the extent of multi-homing is limited and cannot meaningfully and effectively constrain Google's dominance.

(441) In the first place, the Commission's analysis of data on advertisers' programmatic spending on the open web[590] which contain advertising spending broken down by intermediating ad buying tool shows that advertisers tend to rely mostly on a single ad buying tool to purchase the majority of their impressions, while other ad buying tools are used only for residual purchases. […].

Figure 8: […]

(442) The Commission has also considered data submitted by Google on all impressions intermediated by AdX and served on DFP or third-party publisher ad servers in the period between 2014 and 2022, broken down by ad buying tools (the "AdX Engineering Data"). The Commission's analysis of the data confirms the findings that advertisers tend to rely mostly on a single ad buying tool to purchase the majority of their impressions, while other ad buying tools are used only for residual purchases.[591] In particular, the analysis shows that, on average and weighting by advertisers' spend, during the period from 2014 and 2022:

(1) […].[592]

(2) […].[593]

(3) […].[594]

(443) Small advertisers, which lack the necessary expertise and resources to use more than one ad buying tool, are even more likely to single-home. According to Google's analysis of the […], in 2022, close to […].[595] This is also confirmed by […] reply to the Commission's RFI, according to which […].[596] This finding is also supported by reports and studies from several competition authorities.[597]

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588 […].

589 Replies to Q10 of the Commission's RFI to advertisers and to Q10 of the Commission's RFI to media agencies of December 2020 and replies to Q.B.E.1 and B.E.2 of the Commission's RFI to advertisers and media agencies of February 2024.

590 Commission's analysis of data provided in response to Q37 of the Commission's RFI to advertisers of December 2020.

591 Commission's analysis based on data submitted by […] in response to Q43 of the Commission's RFI to […] of February 2024 (ID[…]). The analysis is restricted to Open Auction transactions only.

592 […].

593 […].

594 […].

595 […].

596 […].

597 E.g. ACCC Digital Advertising Report, page 73 (ID[…]): "*Smaller advertisers are likely to single home on Google Ads, which can be simpler and may be cheaper to use for smaller advertisers because there are no minimum spend requirements*."; and CMA Online Advertising Market Study, paragraphs 5.219 and 5.220 (ID[…]) : "*smaller advertisers, especially those which mainly advertise on Google Search, are likely to single-home on Google Ads for display advertising, as Google Ads includes both Search and Display Network by default when an advertiser sets up a campaign on Google Ads. The main reasons given for single-homing on Google were: access to inventory, and in particular unique access to YouTube inventory; the possibility of cross-channel optimisation across search, display and YouTube*

(444) […] advertisers and media agencies that replied to the Commission's RFI confirmed the use of a primary ad buying tool for the purpose of buying programmatically online display advertising inventory and identified DV360 and/or Google Ads as their main ad buying tool.[598] This is also supported by the reports of several competition authorities.[599]

(445) In addition, […] advertisers and media agencies that replied to the Commission's RFI and that use DV360 and/or Google Ads as main ad buying tool indicated not having switched (or switched very rarely) their main ad buying tool in the last 5 to 10 years.[600]

(446) In the second place, the information obtained by the Commission in its market investigation indicate that the use of other ad buying tools besides the main one is very limited, accounts for a small proportion of advertisers' ad spend and is not necessarily a deliberate choice of advertisers and media agencies, but rather the result of limitations to access unique data and/or inventory which is exclusive to certain ad buying tools. This is illustrated by the statements below:[601]

(1) According to […], multi-homing is limited to the cases where: […]; otherwise they expressed a preference to: […].[602]

(2) According to […], it does not have a choice but to use several DSPs, […].[603]

(3) According to […].[604]

(4) According to […].[605]

(5) According to […].[606]

(6) According to […].[607] and […].[608]

(7) According to […], it uses DV360 and Google Ads as main ad buying tools for most campaigns[609] and only for a […].[610]

(447) Similarly to advertisers, media agencies indicated that they need to multi-home for reasons of accessing unique inventory, ad format and/or data. For instance, […].[611]

(448) In the third place, the advantages of using a single ad buying tool typically outweigh those of using multiple ad buying tools. Several advertisers pointed out that, despite their ability to multi-home on ad buying tools, multi-homing has risks/disadvantages which render it cumbersome and make single-homing or the consolidation of the ad

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advertising; and holistic data integration with Google Analytics and the ability to de-duplicate data from across the Google stack, allowing a more accurate picture of effectiveness.".

598 Replies to QB.E.3 of the Commission's RFI to advertisers and media agencies of February 2024.

599 E.g. CMA Online Advertising Market Study, paragraph 5.219 (ID[…]): "*Some of the large advertisers we engaged with during this study told us that they used a single main DSP across all their campaigns – typically Google's DV360*."

600 Replies to QB.E.4 of the Commission's RFI to advertisers and media agencies of February 2024.

601 See further: […].

602 […].

603 […].

604 […].

605 […].

606 […].

607 […].

608 […].

609 […].

610 […].

611 […].

spend on a limited number of ad buying tools more appealing, as illustrated by the statements and documents below:[612]

(1) […] expressed a preference for "single-homing" on DSP as this allows to […].[613]

(2) […] (which used DV360 for buying ads in the open web until February 2020) explained that: […].[614]

(3) […] indicated that they: […].[615]

(4) […] explained that it prefers single-homing because […].[616]

(5) […] indicated that […].[617] […] as it meets all its campaign requirements in terms of reach, targeting and functionality. It also justified its decision to single-home on the grounds that integrating new DSPs into their internal reporting infrastructure and cross channel attribution: […].[618][…] also indicated that […].[619]

(6) According to […]: […].[620] [621] [622] [623]

(7) According to […]: […].[624]

(8) According to an internal presentation submitted by […] named […][625] which summarizes the benefits of a single DSP approach: […].[626][627]

(449) Fifth, the market is characterised by a lack of successful new entrants, including by large players. For instance, […].[628]

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612 This is also confirmed by reports and studies from competition authorities. For instance, according to the ACCC Digital Advertising Report, page 73 (ID[…]): "*there are clear advantages to using a single DSP. Advertisers that multi-home across DSPs are likely to face challenges in viewing their ad campaigns holistically, measuring performance across platforms, and frequency capping across ad inventory. Smaller advertisers are likely to single home on Google Ads, which can be simpler and may be cheaper to use for smaller advertisers because there are no minimum spend requirements. Agencies may recommend that advertisers use more than one DSP for a campaign, however, there may be budgetary and inventory constraints that prevent the use of more than one DSP for an advertiser's campaign. For example, a single DSP might be used if an advertiser needs a limited cost per completed view, or needs to access exclusive inventory. Even for larger advertisers there are risks in multi-homing. For example, advertisers may avoid multi-homing because of the risk that an advertiser could end up bidding against themselves. Other benefits of single-homing include better frequency management, and ensuring that an advertiser is not repeatedly reaching the same consumer/group of consumers*".

613 […].

614 […].

615 […].

616 […].

617 […].

618 […].

619 […].

620 […].

621 […].

622 […].

623 […].

624 […].

625 […].

626 This is in contrast with the fact that the ability to manage frequency across the entire campaign is not possible when using multiple DSPs due to the lack of a common ID between different technologies.

627 Cross channel optimisation means that, with a single DSP, the ad buyer can ensure consistent targeting strategies across different types of inventory.

(450) The Commission's conclusion that the market for programmatic ad buying tools for the open web is characterised by high barriers to entry and expansion is not contradicted by Google's arguments described below.

(451) First, Google argues that other ad buying tools (namely […]) have achieved significant growth in recent years, demonstrating that barriers to expansion are not high.[629]

(452) The evidence relied upon by Google merely shows the growth of ad revenues of a few operators over specific periods, without distinction between the different categories of ad revenues (for instance open web vs. O&O). Accordingly, it cannot support Google's argument that these operators are able to exert a significant competitive constraint on the market for programmatic ad buying tools for the open web. In addition, contrary to Google's claim, none of these companies showed a significant and sustained growth of market share, whereas Google enjoyed consistently high market shares over the entire period under investigation (as shown in Table 1 above).

(453) Second, Google argues that the scale that any rival ad buying tools must achieve in order to be competitive does not need to match that of Google. In particular, Google argues that there are a significant number of companies "competing closely" with DV360 including The Trade Desk, Amazon DSP, MediaMath, Xandr, Adform, Adobe, and Yahoo DSP whose market shares have grown, even though they are smaller in scale compared to Google.[630]

(454) In the first place, the presence of barriers to entry and expansion does not mean that no other company can be present in the market. It only implies that others have difficulties in becoming a significant competitive constraint for the dominant company.

(455) In the second place, this is precisely confirmed by the fact that, as explained in section 7.3.2 above, Google's market share is currently […]. Other ad buying tools have remained significantly smaller and many of them have lost market share.

(456) In the third place, the main exception in terms of rivals' growth is […] but this growth reflects […]. However, even after that growth, […] recent market share remains insufficient to constrain Google's dominance, given that it is still significantly lower compared to Google's. This is well illustrated by the fact that […] was not included by Google in the list of DSPs which compete with Google Ads and DV360 in the EEA when replying to the Commission's RFI of March 2021.[631] It was also not mentioned in the SO Response amongst the ad buying tools which compete with Google's programmatic ad buying tools for the open web.

(457) As regards other competitors, […] and, in any event, remained […] during the entire period of the investigation. Similarly, the growth of […] market share has not allowed it to reach a market share of […]. Overall, the limited evolution in competitors' market shares does not create sufficient grounds to claim that Google has been subject to strong competitive constraints.

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628 […] reply to Q8 of the Commission's RFI to DSPs of December 2020 […], 18 November 2016, available at https://www.adexchanger.com/platforms/facebook-shutters-atlas-ad-server-ending-assault-doubleclick-atlas-live-measurement-pixel/, downloaded on 8 July 2024 (ID[…]).

629 […].

630 […].

631 […].

(458) Third, Google argues that the Commission's findings on high switching costs and indirect network effects are inconsistent with the substantial evidence of multi-homing and switching by advertisers.[632] In particular, Google claims that:

(1) the majority of advertisers and media agencies multi-home across ad buying tools for at least some campaigns which makes smaller ad buying tools also attractive;[633] the Commission's file demonstrates that multi-homing is prevalent amongst advertisers of all spend sizes which contradicts its conclusion that small advertisers are more likely to single-home;[634] and even if advertisers use a main ad buying tool, they still purchase inventory via a significant number of different intermediaries;[635]

(2) single-homing is an active choice by advertisers based on their goals and not an inability to multi-home;[636]

(3) advertisers and media agencies recognise the presence of significant benefits of multi-homing across ad buying tools;[637] advertisers noted both the advantages of multi-homing and that they regularly evaluate their portfolio of multiple programmatic ad buying tools to test and maximise performance;[638] it is inconsistent to argue that advertisers cannot multi-home on average, and simultaneously realise the alleged advantages from using a single buy-side tool;[639]

(4) even if advertisers have a main ad buying tool, they can still reallocate spend across the other ad buying tools they use; by integrating with multiple programmatic ad buying tools, it is easy for advertisers to redirect demand to an alternative intermediary if the use of their main platform becomes less profitable;[640] the Commission ignores evidence on the file showing the extent to which advertisers can readily switch spend across their buying tools;[641]

(5) the Commission's interpretation of advertisers' responses is misleading, as the costs identified in response to the Commission's question are about an estimation of the switching costs related to a switch to a DSP with which the advertiser does not yet have a relationship and most advertisers are already integrated with multiple programmatic ad buying tools which can therefore compete for each impression or campaign; the relevant competitive constraint is therefore satisfied by the ease of switching between ad buying tools with which the advertiser is already integrated on a per campaign basis and does not

632 […].
633 […].
634 […].
635 […]. In particular, Google claims that (i) where advertisers used Google Ads as their main ad buying tool, advertisers used […] ad buying tools annually on average (weighted by ad spend); (ii) where advertisers used DV360 as their main ad buying tool, advertisers used […] ad buying tools annually on average (weighted by ad spend); and (iii) where advertisers used a third-party ad buying tool as their main ad buying tool, advertisers used […] ad buying tools annually on average (weighted by ad spend).
636 […].
637 […].
638 […].
639 […].
640 […].
641 […]. Replies of advertisers and media agencies to QB.E.3 and B.E.4 of the Commission's RFI of February 2024.

necessarily require switching an advertiser's entire demand from one ad buying tool to another;[642] and

(6) the Commission mischaracterised the Google internal documents it relied on to support its claim that costs of switching ad buying tools are high; attempts by Google to improve product features which may increase incentives not to switch away from a product that has […] switching costs is normal competitive behaviour.[643]

(459) In the first place, Google's argument regarding the prevalence of multi-homing is undermined by the fact that advertisers tend to rely mostly on a single ad buying tool to purchase the majority of their impressions, while other ad buying tools are used only for residual purchases (as indicated in recitals (441) and (442) above). While advertisers might use several intermediaries, on average, the large majority of their budget is allocated to a single platform, with additional ad buying tools only intermediating a limited share of advertisers' budget. As shown in recital (442) […].

(460) In particular, Google's argument on multi-homing by advertisers of all sizes (including small advertisers) is not supported by the data in the Commission's file. For an advertiser to be categorised as multi-homer in Google's analysis, it is sufficient for it to have spent just USD 50 on each of at least two ad buying tools in a given year.[644] This threshold is too low to account in a meaningful way for the degree of multi-homing in the market, and results in Google's analysis conflating the actual degree of multi-homing, as illustrated by the following stylised example. Assuming an advertiser spends USD 10000 per year in programmatic advertising and concentrates all but USD 50 on a single ad buying tool and the remaining USD 50 on a second ad buying tool, this advertiser would be considered a multi-homer by Google. In addition, Google would consider the entire USD 10000 as "*spending associated with multi-homing advertisers*" when computing the proportion of total spending associated with multi-homers, although 99,5% of spending for the advertiser in this example is concentrated on a single ad buying tool. As a result, Google's estimation of the proportion of spend associated with multi-homing advertisers is likely to be overstated. Properly accounting for the intensity of spending when assessing multi-homing, as opposed to relying on an arbitrarily low threshold, is all the more important considering evidence that advertisers tend to concentrate the large majority of their programmatic spend on a single ad buying tool, as explained in recitals (441) and (442).

(461) Google's conclusion that multi-homing advertisers use on average around […] ad buying tools is also vitiated by Google's flawed approach to measuring multi-homing.[645] Google computes the average using a weighting by advertisers' total spend. However, this method merely gives more weight in the calculations to large advertisers, while it does not in any way consider whether an advertiser spend is concentrated on a single platform, and whether the other platforms used capture a meaningful proportion of such advertiser's spending. In addition, Google's own analysis confirms that a significant proportion of small advertisers single-home, at least on Google Ads. Indeed, […].[646]

642 […].
643 […].
644 […].
645 […].
646 […].

(462) Contrary to Google's allegation, the use of other ad buying tools by advertisers and media agencies is not evidence of intense competition on the relevant market. It is rather an indication of complementarity of ad buying tools, in line with the diversity of needs of advertisers and media agencies. As shown in recitals (441) to (447) above, despite the use of multiple ad buying tools, advertisers (including large advertisers) only use additional ad buying tools for specific and limited purposes/ use cases, such as to access exclusive inventory or unique data. Smaller advertisers/advertisers with smaller budgets tend to use a single platform, both for operational (need to only manage one tool) and performance reasons (the more a tool is used the better its performance). Media agencies largely confirmed these findings (e.g. […] and […] statements referred to in recital (446) above and […] statement referred to in recital (447) above). […].[647]

(463) As indicated in recital (444) above, […] advertisers and media agencies which replied to the Commission's RFI indicated using a main ad buying tool for the purpose of buying display ad inventory programmatically and mentioned using Google Ads and/or DV360 as their main ad buying tool, regardless of the use of alternative ad buying tools in limited instances.[648] For example, amongst the advertisers mentioned by Google as multi-homing, […] indicated that despite using a range of ad buying tools, […][649] and […] also mentioned using Google Ads and DV360 as main ad buying tools and highlighted that a further consolidation of spend into major DSPs like DV360 is likely to happen in the future.[650] In addition, contrary to Google's claim, the use of smaller ad buying tools is for limited purposes/use cases. For instance, […] which is using Google Ads for search, non-video display and video display due to its broad reach mentioned using a set of smaller DSPs for […].[651] Amongst the media agencies mentioned by Google, […] statement does not show a clear preference for multi-homing. Contrary to Google's claim, […] acknowledged the advantages of single-homing for operational efficiency and exposure frequency management and concluded that […].[652]

(464) In the second place, as regards Google's claim that single-homing is an active choice by advertisers, the existence of a mere ability to multi-home cannot as such imply that there is no barrier to entry and expansion, let alone that there are substantial competitive constraints on Google Ads and DV360. Indeed, if advertisers have an incentive to single-home, for instance because single-homing allows them to achieve certain goals more easily, then this implies that other ad buying tools will in practice exert limited constraints on the ad buying tool that those advertisers principally use. Google's argument is also contradicted by the evidence in the file which shows that multi-homing is a necessity driven by advertisers' and media agencies' need to access different ad inventories, different campaign types fulfilling different objectives. For example, as noted by […] (recital (446)(2) above), there is no choice but to use several ad buying tools, […]. […] (see recital (448)(2)) also noted that […].

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647 […].

648 Replies to QB.E.3 and B.E.4 of the Commission's RFI to advertisers and media agencies of February 2024. Replies to questions 10b) and 12 of the Commission's RFI to advertisers and media agencies of December 2020.

649 […].

650 […].

651 […].

652 […].

(465) In the third place, Google's claim on the alleged benefits of multi-homing pointed out by some advertisers and media agencies does not invalidate the Commission's conclusion regarding the risks and challenges of multi-homing and the high barriers to entry and switching costs. Firstly, what matters to assess concrete competitive constraints is not whether advertisers and media agencies recognise some benefits in multi-homing, but whether, in practice, advertisers and media agencies multi-home to a significant degree. Secondly, there is ample evidence in the file that shows there are clear benefits of single-homing that should outweigh the benefits of multi-homing. This explains an overall trend amongst advertisers to consolidate/concentrate the ad spend on a fewer number of programmatic ad buying tools (as detailed in recital (448)). Thirdly, the fact that some advertisers and media agencies may use several ad buying tools has limited relevance to the extent […] relies on a main ad buying tool, a finding which Google does not even challenge, and […] identified DV360 or Google Ads as the main ad buying tool (see recital (444) above). Amongst the advertisers mentioned by Google, this is the case of […] which despite using different specialised ad buying tools for specific campaign models in the app space indicated usually relying on a single ad buying tool for display campaigns.[653] Fourthly, some of the replies on which Google relies are not relevant. For instance, one of the advertisers quoted by Google, […], is not particularly representative given that […] indicated it only works to a limited extent with DSPs in the EEA.[654]

(466) In the fourth place, Google's argument regarding the ease of reallocation of ad spend is not borne out by its own analysis, which indicates […] changed their primary ad buying tools between 2018 and 2020 […] and […] reallocated more than 25% of their ad spend between their ad buying tools while retaining the same primary intermediary.[655] In addition, the Commission's investigation on a larger sample of advertisers and media agencies showed that they rarely (if ever) change their main ad buying tool (as indicated in recital (445)). This shows a tendency amongst advertisers and media agencies to stick to a default/preferred main ad buying tool, which in most cases is one of Google's programmatic ad buying tools. Instead of changing their main ad buying tool, several respondents rather indicated a tendency to explore the possibility to add new ad buying tools, to complement their digital strategy in order to respond to evolving needs, in particular the need to access exclusive inventories, to adapt to the different industry changes such as the emergence of new advertising channels, the rise of header bidding, first price auctions, the deprecation of third-party cookies and to adapt to changing requirements, such as GDPR.[656]

(467) In the fifth place, Google's claim regarding an alleged misinterpretation of advertisers' replies to the Commission's RFI is not correct and does not undermine the Commission's findings that switching ad buying tools is accompanied by high direct and indirect costs, involves significant risks and losses, which makes switching ad buying tools, including mid-campaign, particularly burdensome (as detailed in recitals (435) to (438) above). The qualitative evidence relied on by the Commission concerns the costs incurred with switching DSPs, as well as the risks and losses associated with a switch amongst DSPs, without necessarily requiring, contrary to Google's claim, a shift of advertisers' entire demand from their current DSP to a new

653 […].
654 […].
655 […].
656 […].

one. The question asked by the Commission simply referred to the costs likely to be incurred in case advertisers had to switch from the DSP they currently use to buy programmatic online display ad inventory to another DSP.[657] Moreover, it did not mention the change to a new DSP and indeed some of the replies make clear that the costs described are not only relevant to a switch to a new DSP. For instance:

(1) According to […].[658];

(2) According to […].[659];

(3) According to […].[660];

(4) According to […].[661]

(468) In addition, and as explained in recitals (445) and (466), advertisers have rarely changed their main ad buying tool, even to ad buying tools they already use for residual campaigns.

(469) In the sixth place, Google's claim regarding the mischaracterisation of Google's internal documents is also unfounded. While attempts by an undertaking to improve the product features is part of rational business behaviour, this does not undermine the Commission's finding that those improvements contribute to Google's dominance in the market for programmatic ad buying tools for the open web. The fact that the improvements introduced by Google increased switching costs is the result of Google's own deliberate action, part of its own business strategy to constantly customize its offering and try to differentiate amongst other ad buying tools. Contrary to Google's allegations, […].

(470) Fourth, Google claims that there is successful entry in the market. Google gives the example of a number of ad buying tool start-ups mentioned in an industry publication, Welp Magazine, in 2020, the launch by FoxPush and AD Tech solutions of a new ad buying tool in November 2022 and the plans announced by Apple in August 2022 to build a new DSP.[662]

(471) In the first place, the ad buying tools mentioned by Google as new entrants on the market do not represent a material competitive threat to Google as most of them have a marginal presence on the EEA […].[663] In addition, none of the start-up players listed by Google have been identified by advertisers and media agencies as (close) competitors to Google Ads and DV360, which suggests that they have not meaningfully increased the competitive constraints on Google.[664]

(472) In the second place, contrary to Google's claims, there have not been significant successful entries in the market in the last 10 years. Instead, there has been a significant amount of consolidation in the industry in the last years through a number of acquisitions and a concentration of the market around a few key players which dominate the market. The only possible exception to the lack of successful entries in

657 Q15 of the Commission's RFI to advertisers and media agencies of November 2022.

658 […].

659 […].

660 […].

661 […].

662 […].

663 […].

664 Replies of advertisers and media agencies to Question 11.a of the Commission's RFI of December 2020; replies of advertisers and media agencies to Question 9 of the Commission's RFI of November 2022.

the market is an alleged project by Apple to build an ad buying tool, which, according to publicly available information, will likely take three years to materialise.[665] In addition, according to information publicly available, this ad buying tool is expected to "*sell advertising placements across Apple's owned entities and properties*"[666] and therefore unlikely to compete with Google's programmatic ad buying tools for the open web.

(473) In the third place, some of the examples listed by Google in fact show that market entry does not guarantee a successful expansion. As described in recital (384) above, Meta, the only operator presenting a credible growth tendency, dropped its plans to build an ad buying tool in 2016 and, […].[667] In addition, the bankruptcy in July 2023 of MediaMath, an independent ad buying tool, with 15 years presence in the market shows that even well-established market players may struggle to compete effectively in a programmatic ad buying tools market.[668]

7.3.6. Lack of countervailing buyer power

(474) The Commission reaches the conclusion that the EEA-wide market for programmatic ad buying tools for the open web is characterised by a lack of countervailing buyer power on the part of users, i.e. advertisers and media agencies.

(475) First, no single advertiser […] Google's programmatic ad buying tools. Data provided by […] show that, in 2021, the largest customer of each of Google Ads and DV360 in the EEA accounted for around […] of their revenues.[669]

(476) Second, […] the advertisers and media agencies that replied to the Commission's RFI indicated either that there was no room for negotiation for the buying of programmatic online display ad inventory via Google Ads, or that only very limited negotiation was possible. In addition, several advertisers and media agencies highlighted the lack of transparency of Google Ads fees.[670] The following statements illustrate these findings:

(1) According to […].[671]

(2) According to […].[672]

(3) According to […].[673]

(477) Third, […] advertisers and media agencies that replied to the Commission's RFI[674] indicated that no negotiation or very limited negotiation is possible with Google in

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665 For example: "*Apple's expanding ad ambitions: A closer look at its journey toward a comprehensive ad tech stack*", 18 September 2023, available at https://digiday.com/media-buying/apples-expanding-ad-ambitions-a-closer-look-at-its-journey-toward-a-comprehensive-ad-tech-stack/, downloaded on 8 July 2024 (ID[…]).

666 For example: "*The Pros and Cons of Apple's Rumored DSP: Privacy & Marketing*", 29 August 2022, available at https://kortx.io/news/pros-and-cons-apples-rumored-dsp/, downloaded on 8 July 2024 (ID[…]).

667 […].

668 "*MediaMath's bankruptcy demonstrates difficulties of DSP model*" (10 July 2023), available at https://www.marketingdive.com/news/mediamath-files-bankruptcy-dsp-programmatic/686006/#:~:text=Once%20valued%20at%20over%20%241,leading%20to%20the%20bankruptcy%20filing, downloaded on 8 July 2024 (ID[…]).

669 […].

670 Replies to Q18.1 of the Commission's RFI to advertisers and media agencies of November 2022.

671 […].

672 […].

673 […].

674 Replies to Q18.2 of the Commission's RFI to advertisers and media agencies of November 2022.

general[675] and the terms of use of DV360 in particular are not negotiable or can only be marginally negotiated.[676] For example, according to […].[677]

(478) The Commission's conclusion regarding the lack of countervailing buyer power on the part of media buyers is not contradicted by Google's arguments described below.

(479) First, Google argues that the majority of Google's advertiser customers are sophisticated and regularly switch between ad buying tools. Google argues that the Commission's focus on the portion of spend represented by a single advertiser is misconceived as individual advertisers do not require scale to constrain Google's programmatic ad buying tools.[678]

(480) Google's claim that advertisers regularly switch between ad buying tools is undermined by evidence in the file which shows that advertisers use a main ad buying tool and use others only for specific and limited purposes (as illustrated by the evidence in recitals (446) and (447) and as shown in recitals (444) and (445) above, […] the media buyers use Google Ads and/or DV360 and have not switched or switched very rarely to a different ad buying tool for the purpose of buying ad inventory in the open web in the last 5 to 10 years.

(481) Second, Google argues that the fact that multi-homing is prevalent across advertisers of all sizes on Google Ads and DV360 shows that advertisers can exert countervailing power on Google's programmatic ad buying tools by credibly threatening to switch entirely (or shift spend) to another ad buying tool.[679]

(482) Google's claim regarding multi-homing does not undermine the Commission's conclusion regarding the lack of countervailing buyer power to the extent multi-homing remains limited and despite using several ad buying tools, advertisers and media agencies concentrate their ad spending on a single main ad buying tool, as detailed at recitals (441) to (443) above.

(483) Third, Google argues that the Commission ignores evidence from advertisers that they do negotiate with Google's programmatic ad buying tools.[680]

(484) Google's claims are not supported by the evidence gathered by the Commission. As mentioned at recital (476) above, […] advertisers and media agencies indicated being generally bound by Google's terms of use of Google Ads services, with no ability to negotiate or influence the terms for buying inventory through Google Ads, a process which is auction based and in which prices are dictated by the auction. Contrary to Google's claim, the market investigation indicates that the ability to negotiate with Google is limited, including for large media agencies[681] and that the terms of use of Google's programmatic ad buying tools are not negotiable or are hard to negotiate.[682] The same applies to DV360, as […] the advertisers and media agencies indicated that no negotiation or very limited negotiation is possible with Google (see recital (477) above).

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675 […].

676 […].

677 […].

678 […].

679 According to Google ([…]), over 2014 to 2022 in the EEA, for identifiable advertisers purchasing inventory on AdX, […] of advertising spend on Google Ads was associated with multi-homers; the equivalent figure for DV360 was […].

680 […].

681 […].

682 […].

7.3.7. The absence of sufficient indirect competitive constraints from direct deals and O&O ad buying tools

7.3.7.1. The absence of sufficient indirect competitive constraint from direct deals

(485) As noted in section 5.4.2 above, direct deals do not exert a direct competitive constraint on Google Ads and DV360. Programmatic ad buying tools for the open web provide advertisers and media agencies with intermediation services, facilitating the matching of demand and supply and allowing a vast number of advertisers and media agencies to programmatically acquire advertising space across a vast number of publishers. Direct deals lack functional interchangeability with programmatic ad buying tools for the open web as they cannot fulfil intermediation functions. As pointed out in recital (204) above, direct deals could only exert an indirect competitive constraint in case the commercial conditions for the use of programmatic ad buying tools for the open web would deteriorate to such an extent that advertisers and media agencies would limit their usage, resorting instead to direct deals without any intermediation.

(486) The Commission finds that direct deals exercise an insufficient indirect constraint on Google's dominant position in the EEA-wide market for programmatic ad buying tools for the open web.

(487) First, evidence shows that the ad inventory purchased via direct deals is different in terms of type, reach, format, price and purpose as compared to the ad inventory purchased via programmatic ad buying tools. There are also significant differences as regards the resource intensity and costs or scalability as well as efficiency of buying directly or via programmatic ad buying tools. This is illustrated in recitals (488) to (491) below.

(488) […] publishers[683] and of advertisers and media agencies[684] that replied to the Commission's RFIs confirmed the differences existing between ad inventory purchased via direct deals and ad inventory purchased via programmatic ad buying tools in the open web, in particular in terms of the type, reach and format of inventory as well as its price. Publishers, advertisers and media agencies also indicated significant differences regarding resource intensity and costs or scalability. These findings are illustrated by the below statements:

(1) According to […].[685]

(2) According to […].[686]

(3) According to […].[687]

(489) In addition, the ad inventory purchased via direct deals and programmatic sales via the open web do not have the same purpose, as indicated by several publishers which replied to the Commission's RFI.[688] […] indicated that […][689] According to […].[690] According to […].[691] Other publishers indicated that programmatic sales via the open

683 Replies to QB.A.8 of the Commission's RFI to publishers of February 2024.
684 Replies to QB.D.1 of the Commission's RFI to advertisers and media agencies of February 2024.
685 […].
686 […].
687 […].
688 Replies to Q2.3 of the Commission's RFI to publishers of November 2022.
689 […].
690 […].
691 […].

web are generally used to generate an immediate response from users, while direct deals are generally used to build brand image.[692] Advertisers also highlighted that direct deals and the programmatic purchase of ad inventory via the open web may not cater for the same needs. For instance, […] indicated that […].[693][…] indicated that […].[694] […] mentioned doing direct deals for less scalable brand campaigns that have a specific purpose and objective.[695]

(490) Since direct deals typically cover premium inventory, the average price of ad inventory purchased via direct deals is also significantly higher than the price of ad inventory purchased via programmatic ad buying tools for the open web, as indicated by several publishers which replied to the Commission's RFI.[696] For instance, […][697]; […][698] […] and it is easier for publisher's sales teams to put into focus the benefit of their brands to increase the prices when selling via direct deals.[699] This was also confirmed by NCA reports[700] and the French NCA Adtech Decision[701].

(491) Finally, as indicated by advertisers and media agencies that replied to the Commission's RFI, compared to programmatic purchasing via the open web, direct deals have several important limitations (e.g. less scale, more costly, more limited inventory) and more limited capabilities (e.g. frequency capping, audience targeting), which make them less efficient. These findings are illustrated by the below statements:

(1) According to […].[702]

(2) According to […].[703]

(3) According to […].[704]

(4) According to […].[705]

(5) According to […].[706]

(6) According to […].[707]

(492) Second, for an advertiser to be able to switch from programmatic purchases in the open web to direct deals it must be able to find publishers interested, willing and able

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692 French NCA AdTech Decision, paragraph 362 and […].

693 […].

694 […].

695 […].

696 Replies to Q2.2 of the Commission's RFI to publishers of November 2022.

697 […].

698 […].

699 […].

700 E.g. according to the CNMC Study on the competition conditions in the online advertising sector in Spain, page 41, and footnote 77, "*direct agreements (known as IOs, insertion orders) are used by large advertisers, media agencies and publishers for high visibility inventory (with higher demand). Therefore, direct trading generally results in higher revenue per impression than programmatic selling*" (ID[…]).

701 French NCA Adtech Decision, paragraph 270: "*for the same inventory, the revenue that a publisher earns from a direct sale is on average much higher than the revenue earned from a programmatic sale*".

702 […].

703 […].

704 […].

705 […].

706 […].

707 […].

to conclude and implement a direct deal with that advertiser, and vice-versa. This is however unlikely to be possible for many advertisers and publishers, as direct deals involve significant transaction costs[708] and are resource- and time-intensive. Publishers are thus unlikely to engage in these deals for low volumes and/or smaller advertisers, which may be altogether unable to face the costs derived from the negotiation, implementation, and management of direct deals. For the same reasons, smaller publishers are unlikely to enter into direct deals, even with large advertisers.

(493) […] advertisers and media agencies that replied to the Commission's RFI confirmed that the possibility to carry out direct deals in-house is constrained by the resources and time needed to negotiate, implement and manage direct deals, which limit their ability to resort to direct deals at scale and, therefore, the competitive constraint these represent on Google's dominant position in the market for programmatic ad buying tools for the open web.[709] These findings are illustrated by the below statements:

(1) According to […].[710]

(2) According to […].[711]

(3) According to […].[712]

(4) According to […].[713]

(5) According to […].[714]

(494) […] publishers that replied to the Commission's RFI also considered that the resources and time needed to negotiate, implement and manage direct deals limit the number of direct deals.[715]

(495) The finding that the resources needed for the negotiation of direct deals limit the degree of constraint that direct deals represent for programmatic ad buying tools for the open web is also supported by the ACCC Digital Advertising Report: "*For many small advertisers and publishers that currently buy and sell ads and inventory in the ad tech supply chain, the costs involved in relying on direct negotiation for a large proportion of their display advertising may be prohibitive. Many publishers are unlikely to have the time, resources or expertise to sell all ad inventory on their websites via direct deals and programmatic direct. As such, publishers may lose potential revenue if they do not also sell inventory through the ad tech supply chain.*"[716]

(496) In addition, […] publishers, advertisers and media agencies that replied to the Commission's RFI indicated that direct deals typically have a duration of between a

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708 French NCA Adtech Decision, paragraph 360: "*direct sales involve significant transaction costs, since they require large-scale sales departments to be set up. Many publishers do not have the means to make direct sales.*"

709 Replies to QB.D.1, QB.D.3 and QB.D.A.2 of the Commission's RFI to advertisers and media agencies of February 2024. This is particularly true if excluding media agencies which, unlike the majority of advertisers, may be able to conclude direct deals with publishers in their own name which can then be used for multiple of their advertiser clients. […].

710 […].

711 […].

712 […].

713 […].

714 […].

715 Replies to QB.A.2, QB.A.3, QB.A.8 and QB.A.9 of the Commission's RFI to publishers of February 2024.

716 ACCC Digital Advertising Report, page 74 ([…]).

few days and a year.[717] This means that, in many instances, negotiation and implementation efforts would need to be repeatedly undertaken every few weeks or months, sometimes for local, regional and national markets. This further limits advertisers' and publishers' ability to resort to direct deals and, therefore, the competitive constrain that these represent on Google's dominant position in the market for programmatic ad buying tools for the open web.

(497) Google internal documents support the above findings. For example, […].[718]

(498) Third, publishers are fragmented, and no publisher represents a significant proportion of Google's revenues (as further detailed in section 7.4.5 below), which limits their ability to exert a significant competitive pressure on programmatic ad buying tools for the open web.

(499) The Commission's conclusion that direct deals exercise an insufficient indirect constraint on Google's dominant position in the EEA-wide market for programmatic ad buying tools for the open web is not contradicted by Google's arguments described below.

(500) First, Google argues that programmatic ad buying tools for the open web and direct deals address the same advertiser need/objective (i.e., maximising ROI/performance), and that advertisers use them interchangeably to achieve this goal.[719]

(501) In the first place, this claim by Google is contradicted by advertisers and media agencies that explained that ad inventory purchased via programmatic ad buying tools for the open web and direct deals address different needs (see recital (489)).

(502) In the second place, evidence suggests that ROI/performance is unlikely to be the only metric to be considered by advertisers and media agencies when deciding which ad inventory to purchase and which channels to use, due to the complexity of ROI/performance measuring. According to a Kantar report "*90% of marketers consider measuring and proving ROI an important challenge*". This implies that "*[n]early all marketers measure marketing performance, but to fluctuating degrees. Many are doing it only annually or less, likely because the data collection is painful and time-consuming*". This makes it difficult to compare ROI between different ad inventories and channels, for instance, between direct channel and intermediation: "*A lack of consistent use of similar metrics within channels and platforms further impacts the ability to measure cross-channel and cross-device performance*".[720]

(503) This is confirmed by a Google internal document indicating that […]. The same document notes that the […].[721]

(504) Second, Google argues that the Commission failed to consider tools and/or features which put direct deals and programmatic ad buying tools in direct competition. In particular, Google argues that:

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717 Replies to QB.D.A.4 and Q.B.D.A.5 of the Commission's RFI to advertisers and media agencies of February 2024 and to QB.A.4 and QB.A.5 of the Commission's RFI to publishers of February 2024.

718 […].

719 […].

720 Kantar Report "*Getting Media Right, Marketing in Motion*", 2019, pages 15-20, available at https://www.amic.media/media/files/file_352_2092.pdf, downloaded on 26 July 2024 (ID[…]). Kantar is a market research company. See https://www.kantar.com/.

721 […].

(1) Tools like Enhanced Dynamic Allocation ("EDA") put direct deals and programmatic buying in real-time, direct price competition on an impression-by-impression basis, so that significant advertiser demand would be diverted to direct deals in the event of an increase in programmatic ad buying tools for the open web fees.[722]

(2) Supply-Path Optimisation ("SPO") is a "middle ground" between direct and indirect deals which allows to optimise ad buying either through intermediated channels or direct deals, and which puts direct deals and programmatic buying via the open web in direct competition.[723] Google also notes that the Commission's RFIs on hypothetical responses to a SSNIP did not directly ask advertisers and media agencies about SPO.[724]

(3) Programmatic direct, which includes both programmatic guaranteed and preferred deals, is a "middle ground" between direct and indirect deals which puts direct deals and programmatic buying in direct and real-time competition for advertiser spend.[725] Google also notes that the Commission's RFIs on hypothetical responses to a SSNIP did not directly ask advertisers and media agencies about programmatic direct deals.[726]

(505) Google maintains that the inability to buy direct programmatically, which the Commission considered as one of the primary alleged differences between direct and intermediated deals, does not exist for these types of deals, and that this undermines the Commission's finding that direct deals and programmatic buying do not have the same purpose.[727]

(506) In the first place, Google's statement that the inability to "*buy direct programmatical*ly", understood as buying in an automated manner, is "*one of the primary alleged differences between direct and indirect deals*" is incorrect. As noted in recitals (487) to (491) above, direct deals are markedly different from programmatic ad buying tool for the open web in many ways.

(507) In the second place, tools like EDA do not provoke advertiser demand to be diverted to direct deals in the event of an increase in the programmatic ad buying tools for the open web fees, as these tools do not have an impact on the number of direct deals that are/can be concluded between advertisers and publishers. As noted in recitals (492) to (494) above, transaction, implementation and management costs limit the number of direct deals that advertisers and publishers can enter into. The number of direct deals is fixed in advance by the outcome of such transactions. Direct deals are concluded for a certain number of impressions. That agreed specific number of impressions (not more, not less)[728] will always go to direct deals. Tools like EDA may therefore affect the interaction between direct and indirect deals on an impression-by-impression basis by determining whether a specific impression is allocated to an existing direct deal or to the winner in an open web auction but cannot affect the total demand for the purchase of inventory via open web auctions.

722 […].
723 […].
724 […].
725 […].
726 […].
727 […].
728 Preferred deals allow more flexibility, which remains limited.

(508) In the third place, Google does not provide any reasoned explanation on how SPO puts direct deals and programmatic ad buying tools for the open web in direct competition.

(509) SPO is a broad umbrella term which comprises many types of initiatives whose objective is to simplify and maximize the efficiency of the adtech supply chain, without necessarily substituting the functions of programmatic ad buying tools for the open web. This is illustrated in Google internal documents:

(1) A […].[729]

(2) An […] presentation states that […].[730]

(3) A […]:[731]

Figure 9: […]

(510) Many SPO-labelled solutions take the form of efficiency-enhancing adtech chain setups which do not affect the adtech supply chain structure but rather concentrate on auction streamlining and de-duplication, particularly via the prioritization of some partners over others. This is illustrated, for instance, by Google internal documents […]:

(1) […].[732]

(2) […].[733]

(511) SPO initiatives leading to changes in the setup of the adtech supply chain are limited. This is illustrated by […].[734] This is even likely to overestimate the impact of SPO on programmatic ad buying tools for the open web, as this percentage should comprise changes coming from all types of tools, not only those entailing the substitution of ad buying tools' functions.

(512) As regards the specific initiatives mentioned by Google (i.e. […]), it is clear from the evidence provided by […] that these are both recent solutions ([…], respectively). In addition, they focus on online video and CTV inventory only, the rest of display inventory therefore not being impacted by these initiatives.[735]

(513) Google internal documents evidence that […].[736]

(514) In the fourth place, Google does not provide any reasoned explanation on how programmatic direct deals put direct deals and programmatic ad buying tools for open web in direct competition.

(515) Google internal documents show that […]. This suggests that these types of programmatic direct deals provide access to inventory previously generally only sold via non-real-time-bidding direct deals ahead of the open auction, without cannibalising the open auction. This is illustrated by the following:

(1) A Google internal document indicates that […].[737]

729 […].
730 […].
731 […].
732 […].
733 […].
734 […].
735 […].
736 […].
737 […].

(2) A Google internal document indicates (i) that […]; (ii) that programmatic direct allows to […]; and (iii) that […] versus the open web.[738]

(3) A Google internal document indicates that […].[739,740]

Figure 10: […]

Figure 11: […]

(4) A Google internal document indicates that […].[741]

(5) A Google internal document indicates that […].[742]

Figure 12: […]

(516) The above suggests that programmatic guaranteed and preferred deals are largely a substitute for traditional direct deals rather than a "middle ground" between direct deals and programmatic ad buying tools for the open web putting them in direct competition.

(517) In the fifth place, the Commission considered that it was not necessary to ask advertisers and media agencies specifically about SPO or programmatic direct deals in the context of the SSNIP test, in view of the available evidence, discussed in the recitals above.

(518) Third, Google argues that (i) advertisers having shifted ad spend from programmatic ad buying tools for the open web to direct deals in recent years,[743] (ii) Google documents indicating the rise and growth of direct deals,[744] and (iii) the fact that around […] of DFP's 2022 EEA impressions were represented by publishers that use direct deals (including programmatic guaranteed and preferred deals)[745] reflect the intense competition between direct deals and programmatic ad buying tools for the open web.

(519) Google's claim that "*advertisers have shifted ad spend from open web ad buying tools to direct deals*" is unsupported by evidence. Neither the AdExchanger article[746], nor the document Google refers to[747] show any shifting from open web to direct deals, nor cannibalisation on programmatic ad buying tools for the open web from direct deals.

738 […].

739 […].

740 The term "traditional reservation" refers to direct deals. See "*Publishers save 57% more time with Programmatic Guaranteed deals*", available at https://admanager.google.com/home/resources/publishers-save-time-with-programmatic-guaranteed/, downloaded on 23 July 2024 (ID[…]): "*In an industry moving increasingly towards automation and efficiency, traditional reservations (the one-to-one selling and management of direct media buys) represented $26 billion in global display and video spend in 2017.*"

741 […].

742 […].

743 […].

744 […].

745 […].

746 […].

747 […].

(520) In addition:

(1) The statement in the AdExchanger article that *"[p]ublishers are experiencing this trend with a 25% YOY* [Year-over-Year] *drop in OMP* [Open Marketplace] *revenue in Q4 2022*" refers to a Digiday article, which also notes that "*several publishers' direct-sold advertising businesses were experiencing a slow start to 2023, with their first quarter ad revenues pacing as much as 10-25% behind forecasts*" and "*Not all publishers' open marketplace experiences are created equally because unlike the rest of the publishers profiled for this piece, the third media exec said that their open marketplace revenue is doing "pretty well" despite the circumstances, and is considered to be the business that is "as predictable as we can get."*"[748]

(2) The information provided in the AdExchanger article seems to refer to the USA market only.

(3) The cited Google internal document's statements that […]. Indeed, it is rather the largest, most sophisticated publishers and advertisers that can resort to direct deals. In addition, the fact that large publishers enter into direct deals does not mean that they can carry all their sales via direct deals, as this would entail entering into direct deals for low value impressions, which is unlikely, and conclude deals with many more advertisers.

(521) Finally, even if it was correct, the fact that allegedly around […] of DFP's 2022 EEA impressions were represented by publishers that use direct deals would not reflect an intense competition between direct deals and programmatic ad buying tools for the open web. It could simply be a consequence of the largest, most sophisticated publishers, who are precisely those able to resort to direct deals, also being those selling the most impressions as a result of their size.

(522) Fourth, Google argues that the available evidence does not support the Commission's conclusion that direct deals exercise an insufficient indirect constraint on Google but rather the opposite.[749] In particular, Google claims that:

(1) advertisers can and do use both direct deals and programmatic ad buying tools for the open web to both build brand image and generate an immediate response from users;[750]

(2) there are many reasons why an advertiser may choose a direct deal;[751]

(3) price differences between direct deals and programmatic ad buying tools for the open web do not in themselves mean they belong to different markets (Google claims that the profitability of a SSNIP is the relevant question in this regard);[752]

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748 Digiday, "*The programmatic open marketplace is faltering, but publishers see a bright spot in private programmatic deals*", available at https://digiday.com/media/the-programmatic-open-marketplace-is-faltering-but-publishers-see-a-bright-spot-in-private-programmatic-deals/, downloaded on 23 July 2024 (ID[…]).

749 […].

750 […]. Google also claims that concluding that programmatic ad buying via the open web is not used to build brand image would be inconsistent with the Commission's findings in Commission decision of 20 March 2019 in case AT.40411 – *Google AdSense*.

751 […].

752 […].

(4) the Commission's questions to publishers and advertisers on direct deals cannot assess the competitive constraint of direct deals[753] and, in any event, the majority of impressions purchased are associated with large publishers and large advertisers with the resources to negotiate directly, which therefore constrain Google's programmatic ad buying tools for the open web.[754] Regarding smaller advertisers, Google claims that they can outsource direct deals to media agencies, removing the associated challenges. Regarding publishers, Google contends that publishers of all sizes sell inventory directly;[755]

(5) where advertisers are already integrated with publishers, costs and time of brokering a direct deal apply to a much lesser extent;[756] and

(6) the Commission omits evidence on similarities between programmatic ad buying tools for the open web and direct deals, which demonstrates that direct deals are substitutable from an advertiser's perspective.[757]

(523) In the first place, the Commission's conclusion that ad inventory purchased via programmatic ad buying tools for the open web is generally used to generate an immediate response from users while ad inventory purchased via direct deals is generally used to build brand image (see recital (489) above) is not in contradiction with the fact that advertisers and media agencies may use both channels for both objectives. This is not a question of absolutes but of general trends. The same can be said regarding the distinction between search and display online advertising.

(524) In the second place, the fact that there are different reasons why an advertiser may at one point in time choose to buy ad inventory via a direct deal instead of a programmatic ad buying tool for the open web does not contradict the fact that these two channels are markedly different in many ways, including in terms of efficiency and scalability, as shown in recitals (487) to (491).

(525) In the third place, as noted in recital (488) above, […] publishers and of advertisers and media agencies that replied to the Commission's RFIs confirmed the differences existing between direct deals and the sale/purchase of ad inventory in the open web, in particular in terms of the type, reach, format and price of the ad inventory as well as the resource intensity and costs or scalability. The fact that some advertisers did not do so and/or identified similarities is therefore of limited relevance.

(526) In the fourth place, Google's claim that the Commission's questions to advertisers and publishers cannot assess the competitive constraint (or lack thereof) of direct deals is without merit. Having noted the inconclusiveness of the SSNIP test, the Commission's questions were designed to assess economic substitutability in a different manner, as described in recitals (487) to (496) above.[758] The responses to such questions effectively show that neither advertisers nor publishers can extensively resort to direct deals and simply largely forego the programmatic sale

753 In particular, Google claims that the Commission's RFI wrongly focuses on whether direct deals could replace all or almost all of a publisher's or advertiser's use of programmatic ad buying tools for the open web.

754 […].

755 […].

756 […].

757 […].

758 Replies to questions under section B.A of the Commission's RFI to publishers of February 2024 and replies to questions under section B.D of the Commission's RFI to advertisers and media agencies of February 2024.

and purchase of a substantial part of the inventory. And, most importantly, those responses show the reasons behind this (see recitals (492) to (496)).

(527) In addition, the respondents to the Commission's RFIs are, arguably, mainly large publishers and advertisers. As noted above in recitals (493) and (494), […] both these publishers and advertisers and media agencies confirmed that the possibility to carry out direct deals in-house is constrained by the resources and time needed to negotiate, implement and manage direct deals. This invalidates Google's claim that, even if smaller publishers and advertisers were less able to engage in direct deals, Google's tools would still be constrained by larger publishers and advertisers' capacity to resort to direct deals.

(528) Furthermore, the Google internal document quoted in recital (497), in particular where it is held that […] contradicts Google's claim that small advertisers outsource direct deals to media agencies.

(529) In the fifth place, while existing integrations between publishers and advertisers may reduce the costs and time involved in the implementation of direct deals, this is unlikely to be so for the negotiation and management phases: an existing direct technical integration cannot save the parties time and costs when negotiating what inventory is to be covered by the deal, at what price, etc., nor in the (post-technical implementation) management phase.

(530) Fifth, Google argues that all publishers (including small ones) can conclude direct deals and can therefore, cumulatively, constrain Google's programmatic ad buying tools for the open web even if no publisher represents a significant proportion of Google's revenues.[759]

(531) As evidenced in recitals (492) to (497) above, not all publishers (especially smaller ones) are able to engage in direct deals, and the amount of direct deals that can be concluded between advertisers and publishers (including big ones) is limited.

7.3.7.2. The absence of sufficient indirect competitive constraint from O&O ad buying tools

(532) As noted in section 5.4.2 above, O&O ad buying tools, which mostly include ad buying tools of vertically integrated social media platforms and vertically integrated marketplace platforms when they serve display ads on their inventory, do not exert a direct competitive constraint on Google Ads and DV360 when it comes to buying inventory on the open web. With the limited exceptions examined in section 7.3.2, those do not typically allow buying inventory on the open web. They could only exert an indirect competitive constraint in case the commercial conditions for the use of programmatic ad buying tools for the open web would deteriorate to such an extent that advertisers and media agencies would limit their purchase of inventory on the open web, resorting instead to buying inventory on O&O platforms. This is unlikely to happen, as shown for instance by a Google internal document according to which […].[760]

(533) The Commission concludes that O&O ad buying tools exercise an insufficient indirect constraint on Google's dominant position in the EEA-wide market for programmatic ad buying tools for the open web for the reasons outlined below.

759 […].
760 […].

(534) First, the display advertising inventory on the open web is a complement, not a substitute, to the display advertising inventory on social media platforms, such as Meta, and on marketplace platforms, such as Amazon (section 7.3.7.2.1).

(535) Second, advertisers and media agencies typically distinguish between display advertising on the open web and display advertising on social media platforms and advertising on marketplace platforms (section 7.3.7.2.2).

(536) Third, advertisers' budgets are often separate for each type of campaign/channel and managed internally by separate teams (section 7.3.7.2.3).

7.3.7.2.1. The display advertising inventory on the open web is a complement, not a substitute, to the display advertising inventory on social media platforms and on marketplace platforms

(537) O&O ad buying tools mainly enable access to the proprietary ad inventory owned by vertically integrated platforms (most notably Google, Meta and Amazon), which is typically not sufficient for an ad campaign, whereas programmatic ad buying tools for the open web enable access to a wide range of third-party inventory. They can thus be seen as complementary.[761]

(538) The complementarity between the inventory of social media platforms (in particular Meta), the inventory of marketplaces (in particular Amazon) and the inventory of display advertising on the open web is supported by advertisers' and media agencies' views. It is also further confirmed by a number of Google internal documents, as detailed below.

7.3.7.2.1.1. Social media platform inventory

(539) First, […] advertisers and media agencies that replied to the Commission's RFI indicated that display advertising on the open web and display advertising on social media platforms such as Meta are complements rather than substitutes.[762] As detailed in the rest of this section, the main reasons justifying the complementarity between these advertising inventories relate to the differences in terms of (a) the effectiveness in reaching the same/similar broad marketing objectives (i.e. brand awareness, consideration, conversion), (b) targeting and audiences reached, and (c) data collection and control over user data. In addition, advertisers and media agencies indicated that it would not be sustainable to shift a major share of advertisers' budget from one channel to the other and there have been only limited instances of actual shifting of a major share of budget from one channel to the other.

(540) Compared to display advertising on the open web, display advertising on social media platforms (the biggest of which by far are Meta's platforms Facebook and Instagram) is perceived as a different ecosystem, which plays a different role in advertisers' media plan and marketing campaign and has unique capabilities.[763]

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761 French NCA Adtech Decision (paragraph 221) also confirmed that "*from the perspective of DSPs,* […] *the sale of online ad space on social networks could be considered as complementary and not as a substitute for the advertising inventories sold via SSPs in Open Display"*.

762 Replies to Q B.A.11 of the Commission's RFI to advertisers and media agencies of February 2024. The Commission asked advertisers and media agencies to explain whether they consider display advertising on the open web and display advertising on social media platforms as substitutes for each other or complements and for what reasons. For the purpose of the RFI, the Commission defined two products (or services), X and Y as substitutes if a customer would replace all or a significant part of X by Y, if the price of X increased by 5-10%, whereas the price of Y remained stable.

763 Replies to QB.A.3 and QB.A.11 of the Commission's RFI to advertisers and media agencies of February 2024. For instance: […] replies to QB.A.11 of the Commission's RFI to advertisers and media

Several advertisers and media agencies pointed to significant differences between the two channels in terms of audience reach, target groups, user controls/disclosure, creative formats and creative message, inventory, targeting capabilities and formats, pricing, auction dynamics, and content consumption.[764]

(541) […] the advertisers and media agencies that replied to the Commission's RFI indicated that although in principle the two channels may typically be used for the same broad marketing objectives, they differ significantly in their effectiveness to achieve those advertising objectives.[765] Several advertisers and media agencies also highlighted the significant differences between display advertising on social media platforms and display advertising on the open web in terms of targeting and audiences reached.[766] This is illustrated by the following statements:

(1) According to […];[767]

(2) According to […].[768]

(3) According to […].[769]

(4) According to […].[770]

(542) There are also significant differences between the way display advertising on the open web and display advertising on social media platforms leverage the different categories of data, the methods to collect data and the control over user data. This finding is illustrated by the following statement by […].[771]

(543) […] advertisers and media agencies that replied to the Commission's RFI indicated that it would not be sustainable (i.e. without a significant impact on the long-term performance of the advertising campaign) to shift a major share of budget from display advertising on the open web to display advertising on social media platforms.[772] This is mainly because both channels have different strengths and weaknesses which makes each of these channels more or less suitable for an individual campaign.[773] Several advertisers and media agencies stressed the need to combine the channels in order to benefit from the unique advantages of each of them. For instance:[774]

(1) According to […].[775]

(2) According to […].[776]

---

agencies of February 2024; […] replies to QB.A.3 of the Commission's RFI to advertisers and media agencies of February 2024.

764 Replies to QB.A.11 of the Commission's RFI to advertisers and media agencies of February 2024. For instance: […] replies to QB.A.11 of the Commission's RFI to advertisers and media agencies of February 2024.

765 Replies to QB.A.2 and QB.A.3 of the Commission's RFI to advertisers and media agencies of February 2024. For instance: […] replies to QB.A.3 of the Commission's RFI to advertisers and media agencies of February 2024.

766 Replies to QB.A.6 of the Commission's RFI to advertisers and media agencies of February 2024.

767 […].

768 […].

769 […].

770 […].

771 […].

772 Replies to QB.A.7 of the Commission's RFI to advertisers and media agencies of February 2024.

773 […].

774 […].

775 […].

(3) According to […].[777]

(544) […] advertisers and media agencies that replied to the Commission's RFI indicated there have been only limited instances of actual shifting of a major share of budget from open web to display advertising on social media platforms.[778] Where such instances occurred, these were not recent,[779] they do not typically happen often,[780] being rather ad hoc[781] or for very limited periods[782] or specific campaigns.[783]

(545) Second, the complementarity between Meta's O&O ad inventory and the open web ad inventory targeted by Google's programmatic ad buying tools is further supported by a number of Google internal documents, as detailed below.

(546) In the first place, […][784]. In particular, these documents indicate that […]. These findings are illustrated by the documents below:

(1) According to a Google internal document of […].[785]

(2) According to a Google […].[786]

Figure 13: […]

(3) According to a Google internal document of […].[787]

(4) According to […].[788]

(5) According to a Google internal document […].[789]

(6) According to a Google internal email […].[790]

(7) According to Google internal document of […].[791]

(547) In addition, several Google internal documents […]. This is illustrated by the following Google internal documents:

(1) According to a Google internal document […].[792]

(2) According to a Google internal document […].[793]

(3) According to a Google internal email […].[794]

---

776 […].
777 […].
778 […].
779 […].
780 […].
781 […].
782 […].
783 […].
784 Type of ad format introduced by Google in 2019 where brands can target users on Google's Discover App, YouTube, and inside Gmail inboxes.
785 […].
786 […].
787 […].
788 […].
789 […].
790 […].
791 […].
792 […].
793 […].
794 […].

(4) According to a Google internal document […].[795]

(5) According to a Google internal document […].[796]

(548) In the second place, several Google internal documents […]:

(1) According to a Google internal document […]:

Figure 14: […][797]

(2) According to a Google internal document […].[798]

(3) According to a Google internal document […].[799]

(549) In the third place, a recent Google internal document […].[800]

7.3.7.2.1.2. Marketplace inventory

(550) First, […] advertisers and media agencies that replied to the Commission's RFI indicated that display advertising on the open web and display advertising on marketplace platforms such as Amazon are complements rather than substitutes.[801] As detailed in the rest of this section, the main reasons justifying the complementarity between these display advertising inventories relate to (a) the differences in the marketing objectives pursued by each channel since advertising on marketplaces is more focused on performance objectives, (b) the different targeting and creative messages/ad formats, and (c) the different roles played by each channel within advertisers' marketing plans and unique selling proposition. In addition, advertisers and media agencies indicated that it would not be sustainable to shift a major share of advertisers' budget from one channel to the other and there have been only limited instances of actual shifting of a major share of budget from one channel to the other.

(551) […] advertisers and media agencies that replied to the Commission's RFI indicated that despite certain similarities, display advertising on the open web and advertising on marketplaces, such as Amazon, tend to be used for different primary use cases or marketing objectives: advertising on marketplace platforms like Amazon is more intended for lower funnel objectives (i.e. to drive conversions by targeting people who have already shown interest in a product or service) driving product sales through that marketplace, whereas advertising on the open web tends to be used for a broader range of full-funnel objectives in particular for branding and awareness purposes.[802] Several advertisers and media agencies that replied to the Commission's RFI indicated that there are significant differences between display advertising on the

795 […].
796 […].
797 […].
798 […].
799 […].
800 […].
801 Replies to Q B.B.11 of the Commission's RFI to advertisers and media agencies of February 2024. The Commission asked advertisers and media agencies to explain whether they consider display advertising on open web and advertising on marketplace platforms as substitutes for each other or complements and for what reasons. For the purpose of the RFI, the Commission defined two products (or services), X and Y as substitutes if a customer would replace all or a significant part of X by Y, if the price of X increased by 5-10%, whereas the price of Y remained stable.
802 Replies to QB.B.2, QB.B.4 and B.B.11 of the Commission's RFI to advertisers and media agencies of February 2024.

open web and advertising on marketplaces in terms of the effectiveness of reaching the marketing objectives: advertising on marketplaces is more effective to achieve conversion, whereas display advertising on the open web is more effective for branding and awareness purposes. These findings are illustrated by the statements below:[803]

(1) According to […].[804]

(2) According to […].[805]

(3) According to […].[806]

(552) […] advertisers and media agencies that replied to the Commission's RFI indicated that there are significant differences between display advertising on the open web and advertising on marketplace platforms (such as Amazon sites) in terms of the type of advertising audience reached (e.g. audience characteristics, demographics), the reach, the granularity of targeting, reliability of the data underlying the targeting, the control over user data and the possibility to ensure brand reputation/safety.[807] Marketplaces often have more limited opportunity for format type and limited scale across the wider internet, focussing in more depth on their own properties.[808] Display advertising in open web offers a greater reach and superior targeting capabilities at the top of the funnel (awareness, etc.) as it relies on more diverse data signals.[809]

(553) According to the advertisers and media agencies that replied to the Commission's RFI, advertising on marketplaces is also generally viewed as separate offerings[810] with different ad formats[811], which use different processes or strategies and buying platforms[812] handled internally by separate teams.[813] Advertising on marketplace platforms is thus considered as part of the retail media channel, managed from distinct budgets[814] and belonging to a different relevant market than display advertising.[815]

(554) […] advertisers and media agencies that replied to the Commission's RFI indicated that it would not be sustainable (i.e. without a significant impact on the long-term performance of the advertising campaign) to shift a major share of their advertising budget from display advertising on open web to advertising on marketplace platforms such as Amazon.[816] This is mainly because the two channels serve different roles[817] and are typically used for different marketing objectives[818], advertising on marketplace platforms offers a more limited reach, less

803 […].
804 […].
805 […].
806 […].
807 Replies to QB.B.5 and QB.B.6 of the Commission's RFI to advertisers and media agencies of February 2024. For instance: […].
808 […].
809 […].
810 […].
811 […].
812 […].
813 […].
814 […].
815 […].
816 Replies to Questions B.B.7, B.B.8 and B.B.9 of the Commission's RFI to advertisers and media agencies of February 2024.
817 […].
818 […].

scale/inventory and caters for a different customer profile[819], in particular to lower funnel audiences, whereas display advertising on the open web can be used for all stages of the marketing funnel[820]. Therefore, advertising on marketplace platforms could not fully replace display advertising on the open web and respondents indicated favouring the use of both, as complementary channels.[821]

(555) In addition, […] advertisers and media agencies that replied to the Commission's RFI indicated there have been only limited instances of actual shifting of a major share of the advertising budget from display advertising on open web to advertising on marketplace platforms such as Amazon.[822] Where such instances occurred in the past, they were rather exceptional/occasional and shifting budgets in that direction tends to be insignificant.[823]

(556) Second, […] also confirm that the inventory of the vertically integrated platform of Amazon (i.e. Amazon Advertising Platform[824] which operates as a DSP, Amazon Marketing Services,[825] Amazon video ads) does not exert a sufficient competitive constraint on the open web inventory targeted by Google's programmatic ad buying tools, as illustrated below:

(1) According to […].[826] According to […].[827]

(2) According to […], Amazon Sponsored Products are a competitor of Google's online search advertising and […].[828]

(3) According to […].[829]

(4) According to […], Amazon is typically used as a source of retail media due to access to Amazon's retail data.[830] […] further explains that: […].[831]

(557) Several Google internal documents also confirm the Commission's finding that […]. This finding is illustrated by the below documents:

(1) According to a Google internal document […].[832]

(2) According to a Google internal document […].[833]

(3) According to a Google internal document […].[834]

(4) According to a Google internal document of […]. [835]

819 […].
820 […].
821 […].
822 Replies to QB.B.10 of the Commission's RFI to advertisers and media agencies of February 2024.
823 […].
824 Launched by Amazon in 2012 and rebranded in 2018 as Amazon Advertising.
825 […], Amazon DSP is a demand-side platform that enables advertisers to programmatically buy display ads both on Amazon Owned & Operated websites, apps and devices ("O&O") and on third-party sites. Display ads on Amazon O&O can be purchased by Selling Partners and other advertisers.
826 […].
827 […].
828 […].
829 […].
830 […].
831 […].
832 […].
833 […].
834 […].
835 […].

7.3.7.2.2. Advertisers and media agencies typically distinguish between display advertising on the open web, display advertising on social media platforms and advertising on marketplace platforms

(558) […] the advertisers and […] media agencies which replied to the Commission's RFI[836] indicated that they typically distinguish in their business practice between (i) the display advertising on the open web and (ii) display advertising on social media platforms and advertising on marketplace platforms.

(559) Within online ad campaigns, media agencies typically differentiate in terms of categories of ad inventory or channels between (paid) social which comprises most of the O&O inventory, and digital display or programmatic open web.[837] For instance:

(1) […] distinguishes in terms of media planning and media buying/optimatisation, between the following specific channels relating to online ad campaigns […];[838]

(2) […] distinguishes the categories amongst ad inventories between programmatic display and social;[839]

(3) […] identifies the different types of ad inventory as one of the planning considerations with impact on the final budget allocation and distinguishes between social and programmatic open web;[840]

(4) […] categorizes the ad inventories into […].[841]

(5) According to […].[842]

7.3.7.2.3. Advertisers' and media agencies dedicate a separate budget to each advertising channel as well as a separate management team

(560) Advertisers and media agencies typically dedicate a separate budget to each advertising channel as well as a separate management team. This is supported by several Google internal documents, as illustrated below:

(1) According to a Google internal document […].[843]

(2) According to a Google internal document […].[844]

Figure 15: […]

(561) In addition, budgets are not interchangeable between the different channels, but only within the same channel. This is illustrated by a Google internal email chain discussing the […].[845]

836 Replies to QB.A.1 and QB.B.1 of the Commission's RFI to advertisers and media agencies of February 2024.
837 Replies to Q1, Q2, Q5 and Q8 of the Commission's RFI to media agencies of December 2020.
838 […].
839 […].
840 […].
841 […].
842 […].
843 […].
844 […].
845 […].

(562) The fact that advertisers' budgets are dedicated per channel and managed internally by separate teams is also confirmed by the replies from advertisers and media agencies to the Commission's RFI. For instance:

(1) According to […].[846]

(2) According to […].[847]

(3) According to […].[848]

7.3.7.2.4. Google's arguments on the absence of sufficient indirect competitive constraint from O&O ad buying tools

(563) The Commission's conclusion that O&O ad buying tools exercise an insufficient indirect constraint on Google's dominant position in the EEA-wide market for programmatic ad buying tools for the open web is not contradicted by Google's arguments described below.

(564) First, Google argues that programmatic ad buying tools for the open web and O&O ad buying tools fulfil the same need for advertisers (i.e., maximising ROI/performance), and that advertisers see O&O inventory and open web inventory as direct substitutes to achieve their marketing goals.[849]

(565) In the first place, ROI/performance is unlikely to be the only metric used by advertisers and media agencies to decide which ad inventory to purchase and which channel to use, as demonstrated by recitals (502) to (503) above.

(566) In the second place, it is not merely because several services would allegedly aim at achieving the same general goal (maximizing ROI) that they would be substitute. Rather, maximising ROI is achieved by pursuing a mix of different complementary marketing objectives and for each of them, media buyers use a preferred advertising channel. This is why it is not inconsistent that, as a general objective, companies would want to maximise their ROI, while at the same time the evidence in the file shows that different types of ad inventory are complements, not substitutes. The fact that advertisers use either O&O ad buying tools or programmatic ad buying tools for the open web depending on their own characteristics or commercial choices, and that some use both tools simultaneously, means they do so on a complementary basis to expand their advertising opportunities, precisely because they serve distinct needs of media buyers.

(567) Second, Google argues that O&O ad buying tools such as those of Meta, Amazon and TikTok have grown significantly in recent years and put intense competitive pressure on open web ad buying tools because they have competitive advantages that are difficult to match, such as the ability of O&O platforms (i) to avoid double marginalisation on their internal auctions and avoid fees from multiple intermediaries; (ii) to control the ad quality experience; (iii) to avoid invalid traffic and spam; and (iv) to maintain low-latency levels.[850]

(568) In the first place, the alleged ad revenue growth of O&O ad buying tools in recent years does not prove that Google's programmatic ad buying tools for the open web face intense competitive pressure from O&O ad buying tools, in the absence of

846 […].
847 […].
848 […].
849 […].
850 […].

evidence that such growth is at the expense of Google's programmatic ad buying tools for the open web. The evidence rather indicates that, on the one hand, display advertising on the open web and, on the other hand, advertising on social media platforms (such as Meta and TikTok) and on marketplace platforms (such as Amazon) are viewed by advertisers and media agencies as complementary, and it is not sustainable to shift a major share of budget from one to the other (as detailed in recital (554) above). Contrary to Google's claims, there is evidence that the revenue growth of O&O ad buying tools happened at the expense of the growth of Google's O&O ad buying tools (e.g. YouTube) instead of Google's ad buying tools for the open web, as detailed at recital (595) below.

(569) In the second place, Google does not submit any evidence to support its claim regarding the alleged competitive advantages of O&O ad buying tools and does not point to any evidence which would indicate these advantages are specific or unique to O&O ad buying tools. In any event, the alleged advantages of O&O buying tools could only be relevant as a competitive constraint if the two types of services were indeed in competition in the first place. As already indicated above, the evidence in the file shows that the O&O inventory (represented mainly by display advertising on social media and on marketplaces) is viewed as complement, not substitute to the display ad inventory on the open web.

(570) Third, Google argues that O&O ad buying tools constrain Google's programmatic ad buying tools, given that, as evidenced by the responses of advertisers and media agencies in the file, advertisers shift their budgets across O&O ad buying tools and open web ad buying tools.[851]

(571) In the first place, the available evidence on how customers would respond to a small but significant increase in price resulting from the replies to the RFI of November 2022 were inconclusive and proved to be of limited value, for the reasons detailed in recitals (195) to (197) above.

(572) In the second place, […] advertisers and media agencies that replied to the Commission's RFI indicated that it would not be sustainable to shift a major share of budget from display advertising on the open web to display advertising on social media platforms or advertising on marketplace platforms (as detailed in recitals (543) and (554)) and there have been only very limited instances when such shift had occurred (as detailed in recitals (544) and (555) above). This is therefore not a shift of a magnitude that would constrain Google's position with respect to programmatic ad buying tools for the open web.

(573) In the third place, the revenue growth of O&O ad buying tools (if any) appears not to have happened at the expense of the Google's open web display ad spend, as detailed at recital (595) below, which further supports the finding that O&O ad buying tools do not constrain Google's programmatic ad buying tools.

(574) Fourth, Google argues that the Commission fundamentally misstates the test for assessing competitive constraints for the purpose of determining dominance. The Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings states that an undertaking does not face sufficient competitive constraints if it is "*capable of profitably increasing prices above the competitive level for a significant period of*

851 […].

time."[852] Google claims that when establishing the presence of competitive constraints, it is not necessary for advertisers to switch a "*major share of budget*" to viable substitutes, nor is it necessary for actual switching to have taken place. Rather, the threat of a minor share of budget switching can be sufficient to constrain the entity in question.[853]

(575) Contrary to Google's claim, products can be deemed reasonably interchangeable only if significant substitution occurs in response to a price increase.[854] In order for O&O ad buying tools to act as a credible competitive constraint to open web ad buying tools, it is necessary that the ability of advertisers and media agencies to switch budgets from open web to social media is not negligeable/insignificant in order to effectively constrain Google's dominance. As to Google's argument based on the Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings, it is important to stress that the Commission's approach is consistent with this Guidance since the profitability of a small but significant price increase for the dominant undertaking would be unlikely to be impacted by the presence of a minor budget shift between channels. In other words, if only an insignificant share of budgets is switched, Google could still be able to profitably increase prices and not lose customers, and not face effective competitive constraints. The evidence in the Commission's file does not point to the likelihood of significant ad spend shift from one channel to the other, nor to actual shifting of significant ad spend between open web to advertising on social media and vice versa.

(576) Fifth, Google claims that […] the media agencies which responded to the Commission's RFI asking media agencies *inter alia* to describe the types of ad campaigns run did not distinguish between O&O and digital display (open web ads).[855] According to Google, this is, in particular, clear from […] response which indicates that while it does not normally purchase inventory within […].[856]

(577) In the first place, Google's claim is based on replies of media agencies to a very broad question from the Commission's RFI regarding in general the types of ad campaigns run by media agencies, their objectives and budget allocation process. The fact that […] the media agencies did not distinguish between O&O and open web ads in their answer does not undermine the Commission's findings that […] media agencies indicated that they do distinguish between O&O and open web ads as regards the different categories of ad inventories and channels between paid social and programmatic display ads (as detailed in section 7.3.7.2.2 above). In fact, based on the replies to a more targeted question in a subsequent Commission's RFI, asking advertisers and media agencies to indicate whether they typically distinguish in their business practice between (i) the display advertising on the open web and (ii) display advertising on social media platforms and advertising on marketplace platforms, and to explain on which basis or in what context they make such distinction,[857] […] advertisers and […] media agencies that replied to the Commission's RFI (including

852 Guidance on the Commission's enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings (OJ C 45, 24.2.2009, page 7), paragraph 11.

853 […].

854 See Case C-179/16 *F. Hoffmann-La Roche Ltd and Others*, EU:C:2018:25, paragraph 51; Case T-604/18 *Google Android*, EU:T:2022:541, paragraph 186.

855 […].

856 […].

857 Replies to QB.A.1 and B.B.1 of the Commission's RFI to advertisers and media agencies of February 2024.

[…]) indicated that they typically distinguish in their business practice between (i) the display advertising on the open web and (ii) display advertising on social media platforms and advertising on marketplace platforms (as detailed in recitals (558) and (559) above). […].[858]

(578) In the second place, as regards […].[859]

(579) Sixth, Google argues that the evidence of market participants distinguishing between O&O ad buying tools and open web ad buying tools for internal purposes (e.g. budget or resourcing) is not probative of lack of competitive constraints. Google claims that even if separate budgets are set, spend can still be switched between budgets for O&O ad buying tools and for open web ad buying tools depending on performance or price.[860] […].[861]

(580) In the first place, […].[862][863]

(581) In the second place, the shift of some spending from the display advertising on the open web to advertising on social media or marketplaces at the planning level does not serve as evidence of a significant competitive constraint, as this is usually justified by adjustment at the level of the marketing objectives (e.g. brand awareness/consideration, conversion) and not based on changes in relative prices.

(582) Seventh, Google claims that the Commission misapplies the economic concept of "complementarity" whereby the increase in price of one product is associated with the decrease in demand for the other product.[864] According to Google, the advertisers' responses to the Commission's RFIs demonstrate that advertisers consider open web ad buying tools and O&O ad buying tools to be substitutable, rather than complementary (in the economic sense).[865] More specifically, based on some replies by advertisers and media agencies to different questions of the Commission's RFI,[866] Google claims that several respondents citing "complementarity" between open web ad buying tools and O&O ad buying tools either simultaneously describe them as economic substitutes, as being predominantly substitutes or in terms that strongly imply substitutability. Further, Google claims that several advertisers noted that, when focusing on common advertising objectives across each channel, open web ad buying tools and O&O ad buying tools were substitutable. Google further claims that the Commission's reliance on evidence from advertisers about using both channels to benefit from the advantages of each of them demonstrates a misapplication of economic complementarity.[867] More specifically, Google claims that while advertisers will often use both channels simultaneously, the evidence shows that they will substitute budget between both channels to optimise performance. To support its claim, Google points in particular to the replies of two

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863 […].
864 […].
865 […].
866 In relation to social media, Google relies […] advertisers and media agencies to QB.A.11, B.A.2, B.A.9 and B.A10 and in relation to marketplaces, Google relies on […] to Q.B.B1, B.B.3, B.B.4, B.B.5 B.B.6, and B.B.9 of the Commission's RFI of February 2024.
867 […].

advertisers to the Commission's RFI which indicate shifting budget between channels either regularly or in a few instances.[868]

(583) In the first place, the Commission's questions in the RFI addressed to advertisers and media agencies defined substitutability in economic terms as referring to the situation whereby the customer would replace all or a significant part of product X by product Y, if the price of X increased by 5-10%, whereas the price of Y remained stable, and complementarity as the alternative scenario.[869] Therefore, if based on this definition of substitutability, an advertiser and media agency did not indicate that open web ad buying tools and O&O ad buying tools are substitutes, it does not matter how it has interpreted the concept of complementarity. For the purpose of market definition, what matters is they do not consider those two products as substitutes.

(584) In the second place, even under the most conservative interpretation/counting of the replies of advertisers and media agencies to the Commission's question regarding the substitutability or complementarity between channels, […] respondents indicated that display advertising in the open web is complementary to display advertising on social media platforms and marketplaces. The Commission's finding cannot be undermined by the few replies selectively used by Google to indicate that social media and open web can be substitutes or whose reply allegedly would suggest substitutability, although they use the word "complementary". These replies remain […].[870]

(585) In the third place, Google cannot simply assume that advertisers misinterpreted the Commission's RFI. In fact, the narrative responses of several respondents mentioned by Google indicate the opposite. […] indicated that it considers display advertising on open web and display advertising on social media and marketplaces to be complements and […].[871] […] indicated that social media and open web […].[872] […].[873]

(586) In the fourth place, Google relies selectively on replies to different questions of the Commission's RFI in an attempt to undermine the value of the replies to the question on complementarity between channels. Contrary to Google's claims, the fact that several respondents indicated that the channels could also be used to achieve the same overall marketing objectives or that certain of both channels' characteristics (e.g. granularity of targeting) and audiences may be similar or not significantly different is not sufficient to prove that the channels are substitutable. In fact, products may share some characteristics or overall purposes without being substitutable from an economic perspective.

(587) In the fifth place, the fact that, in the context of the replies to other questions of the Commission's RFI, a minority of advertisers and media agencies indicated having shifted budgets or ad spend from display advertising on the open web to advertising on social media or marketplaces to achieve varying marketing objectives does not contradict the Commission's finding on complementarity and does not mean that advertising on social media platforms or marketplaces exercise a sufficient indirect competitive constraint on display advertising on the open web. This is all the more so

868 […].

869 Commission's RFI to advertisers and media agencies of February 2024, QB.A.11 and QB.B.11.

870 Google relies on nine out of forty-six replies of advertisers and media agencies to QB.A.11 of the Commission's RFI to advertisers and media agencies of February 2024 (see […]).

871 […].

872 […].

873 […].

given that the reallocation of budgets/ad spend between channels can be due to a variety of different factors which are not related to a price increase by the dominant company. As evidenced by several respondents, this can be the result of factors such as legal and regulatory constraints related to programmatic advertising on the open web, the objectives of campaign, nature of the brand, and characteristics of the target audience.[874] Therefore, under these circumstances, the reallocation of some spending between the display advertising on the open web to advertising on social media or marketplaces cannot on its own reflect a significant competitive constraint. Moreover, Google's argument regarding advertisers' shifting budgets between channels is further undermined by the fact that advertisers and media agencies dedicate a separate budget to each advertising channel and budgets are not interchangeable between the different channels (as evidenced in section 7.3.7.2.3 above).

(588) Eighth, Google claims that the Commission wrongly focuses on differences in product characteristics and fails to acknowledge the features of O&O ad buying tools that constrain Google's programmatic ad buying tools.[875] It claims that the differences between O&O ad buying tools and open web ad buying tools are not a good indicator of whether O&O ad buying tools exert a strong competitive constraint because they do not reflect how customers would react to changes in relative supply conditions. In addition, Google points to evidence on the Commission's file that would also confirm the substitutability of the two channels by relying on replies from advertisers and media agencies which noted similarities of the targeting capabilities, demographics and audiences between display advertising on the open web and advertising on social media platforms.

(589) The differences in the features of display advertising on the open web and advertising on social media or marketplaces are just one piece of evidence amongst others which supports the lack of substitutability between display advertising on the open web and advertising on social media and marketplaces. Contrary to Google's claims, the analysis of the competitive constraint exercised by O&O ad buying tools over ad buying tools for the open web is based on a consistent and robust body of evidence such as Google internal documents and replies from advertisers and media agencies to the Commission's RFI pointing in particular to the complementarity between display advertising on open web and display advertising on social media platforms and on marketplaces, which serve distinct roles in the marketing plan of advertisers and media agencies (as detailed in section 7.3.7.2.1 of this Decision).

(590) To the extent that Google argues that O&O ad buying tools and programmatic ad buying tools exhibit certain similarities, Google's argument is based on a few replies of advertisers and media agencies[876] which pointed to certain similarities between channels with respect to specific characteristics (e.g. demographics, targeting capabilities) or which indicated that the differences in product characteristics are not significant and cannot be considered sufficient substitutability evidence. The Commission's body of evidence does not support Google's claim since the same respondents on whose replies Google relies on indicated that they distinguish between channels in their communication to clients and in their internal organisation, that it would not be sustainable to shift a major share of budget from one to the other and they view them as complementary rather than substitutes.

874 […].
875 […].
876 […].

(591) Ninth, Google argues that its internal documents confirm that […].[877] Googles argues that the growing competitive constraint of O&O ad buying tools is an important theme in Google internal documents as […].[878]

(592) In the first place, the internal documents relied on by Google do not demonstrate that O&O ad buying tools exert a sufficiently strong competitive constraint on Google's programmatic ad buying tools on the open web as they concern the global digital ads landscape, including search, display and social advertising or the overall display advertising field, including both O&O and open web. Given the very broad scope of these documents, they are not probative of the strength of the competitive constraint exercised by O&O ad buying tools on Google's programmatic ad buying tools for the open web. For example, the Google internal document named […].[879]

(593) In the second place, the alleged growth of the digital ads revenues of specific players including Meta, Amazon, Microsoft is not relevant as such growth can originate from various sources (like search), not necessarily display advertising. For instance, the Google internal document mentioned in recital (592) above […].[880] […].[881] [882]

(594) In the second place, all internal documents relied on by Google which indicate that Google competes with companies which also have O&O ad buying tools (like Meta, Amazon, Yahoo!, Microsoft) do not specify whether those companies compete with Google's programmatic ad buying tools for the open web, or if they compete with Google's O&O display advertising inventory. As Google has a strong market presence in both (with Google Ads and DV360 for the former and YouTube for the latter), the documents are therefore inconclusive as to which service of Google those competitors put pressure on. […][883]. In view of their generic wording, those documents can therefore not in themselves rebut the more specific evidence relied upon in this Decision. Rather, they are the reflection of the fact that, as a "digital giant", Google is present in many markets, and that, in some of them, it competes with other "giants" such as Amazon or Meta.

(595) Likewise, none of the internal documents quoted by Google[884] indicate that the alleged shift of ad spend/budgets from Google towards Amazon or Meta is from Google's share of programmatic ad buying tools for the open web, as opposed to Google's share of inventory on social media platforms like YouTube. Therefore, these documents cannot be informative of the degree of competitive constraint faced by Google's programmatic ad buying for the open web from O&O ad buying tools. In fact, some of the internal documents quoted by Google do indicate that, if anything, the shift of ad spend/budgets to competing O&O ad buying tools was from Google's O&O ad buying tools instead of Google's ad buying tools for the open web. For instance, the Google internal document […] mentions that amongst social media

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878 […].
879 […].
880 […].
881 […].
882 […].
883 […].
884 […].

competitors, […][885] The same document also notes that […].[886] Similarly, the document notes that […].[887][888][889] […].[890][891]

(596) Tenth, according to Google, the Commission's argument that the launch of Discovery Ads shows that O&O exerts an insufficient constraint on Google's programmatic ad buying tools is without merit. Google claims that the documents relied on by the Commission in recitals (546) to (548) do not support that Google's programmatic ad buying tools do not compete for social media spend from customers in the absence of Discovery Ads.[892] Google refers in particular to the document cited at recital (546)(2) which indicates that although […].[893] In addition, Google claims that the evidence cited in recital (548) to claim that there is no evidence of cannibalisation by Discovery Ads of existing search and display ads is based on assessments which come with significant accompanying caveats and which do not establish whether cannibalisation actually occurred or not. According to Google, the internal documents relied on by the Commission merely reflect a series of revenue trends accompanied by qualitative observations and therefore hold no value in terms of establishing causality between Discovery Ads adoption and cannibalisation of Search/Display spend.[894] […][895] [896].

(597) In the first place, Google's claim based on the document cited at recital (546)(2) is unfounded. The mere fact that media buyers may decide to reallocate part of their budget from one channel to the other based on performance and to fulfil varying marketing objectives does not in its own reflect significant substitution nor a strong direct competitive constraint. This is all the more so as the Commission's investigation showed that for […] advertiser and media agencies that replied to the Commission's RFI, it would not be sustainable to shift a major share of budget from display advertising on the open web to display advertising on social media platforms (such as Meta) or advertising on marketplace platforms (such as Amazon) and there were only very limited instances of actual shifting of budget from display advertising on the open web to display advertising on social media platforms (such as Meta) or advertising on marketplace platforms (such as Amazon) (see recitals (543), (544), (554), (555)). The document cited by Google reflects a mere […].[897] […].

(598) In the second place, the document on which Google relies to allege that Discovery Ads cannibalizes display ads revenues (mentioned in recital (596) above) has limited evidentiary value. Indeed, it is based on […], who does not exclude that the potential cannibalisation of display ads revenues by Discovery Ads may have changed. That evidence is contradicted by the evidence relied upon by the Commission, which has higher evidentiary value, since it consists in several internal empirical studies which followed the launch of Discovery Ads (June 2020, September 2021 and March 2022)

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897 […].

analysing the impact of the adoption of Discovery Ads on spend (see recital (548)). Whilst such empirical studies have, like any such studies, possible limitations, […]. Those are more reliable than a […] statement.

(599) Eleventh, Google argues that a wide range of advertisers and media agencies replying to the Commission's RFIs identified Meta's O&O ad buying tool as a competitor to Google Ads, while others identified Amazon as a key competitor.[898]

(600) In the first place, the fact that Meta, Amazon and other O&O ad buying tools such as Microsoft Advertising or Verizon Media have been identified as competitors to Google Ads and DV360 by certain respondents to the Commission's RFI could, in certain instances, merely reflect that Google Ads and DV360 offer access to O&O ad inventory and in particular allow buying YouTube inventory. This is supported by the replies of certain advertisers to the Commission's RFI which expressly indicated that O&O ad buying tools such as Meta compete with Google's O&O ad buying tools (e.g. YouTube). For instance, […];[899]

(601) In fact, taking into account the general scope of the question addressed to advertisers (i.e. to identify Google Ads and DV360 competitors in general), several advertisers did not specify whether they consider Facebook and/or Amazon as competing with Google Ads and/or DV360 as regards their O&O ad inventory (e.g. YouTube) or their open web ad display inventory. Instead, they referred broadly to competition at the level of display advertising in general. For example, amongst the advertisers quoted by Google, […],[900] […]. In addition, several respondents only listed the names of companies which operate as O&O ad buying tools as competitors of Google Ads and/or DV360 without further indicating on which basis/parameter they compete. Amongst the advertisers quoted by Google, this is the case of […].[901] Therefore, these replies are of limited value as regards the competitive constraint exerted by O&O ad buying tools on Google's programmatic ad buying tools for the open web.

(602) In the second place, in some cases, the advertisers have specified which tools of O&O players compete with Google's programmatic ad buying tools for the open web. This is the case of […].[902] However, this is consistent with the Commission's own findings which included Amazon DSP and Yahoo (formerly Verizon Media) when computing the market shares of Google's programmatic ad buying tools for the open web (see Table 1 above).

(603) Twelfth, Google argues that competing DSPs' replies to the Commission's RFIs have also confirmed that they face competition from a wide range of O&O ad buying tools in the EEA.[903]

(604) The fact that certain DSPs that replied to the Commission's RFIs have identified as competitors for their services players which also operate as O&O ad buying tools (such as Meta, Amazon, Verizon Media), is hardly conclusive as to whether Google's programmatic ad buying tools for the open web are sufficiently constrained by O&O ad buying tools.

898 […].
899 […].
900 […].
901 […].
902 […].
903 […].

(605) Part of the evidence quoted by Google is based on the replies to the Commission's RFI of December 2019, which asked online advertising tool providers to describe their main competitors in the online advertising value chain, including their strengths and weaknesses (in particular from the perspective of their competitors' access to data).[904] This initial RFI from an early stage of the investigation concerned broadly the entire online advertising inventory, without distinguishing between the type of digital advertising (e.g. search, display) or within display advertising between O&O and open web inventory. Answers to such a very general question in the Commission's RFI are of limited value for the assessment of the magnitude of the competitive constraint faced specifically by Google's programmatic ad buying tools for the open web from O&O ad buying tools. Indeed, that Commission's RFI was concerned with the identification by online advertising tool providers of competitors present at any level of the advertising value chain and considering any Google products and services (i.e. including consumer-facing products and services such as Google Search, Gmail, YouTube and third-party-facing products and services such as Google Ads, Google AdSense, Google Ad Manager, and Google Marketing Platform).

(606) In addition, the replies of DSPs to the Commission's RFI of December 2020 relied on by Google are also of limited value, considering that they concern the identification of any companies and/or products that compete with the respondent DSPs in the EEA, based on any possible parameter of competition or functionality, not being limited to display advertising.[905] In addition, the RFI in question was addressed to a wide variety of DSPs with different levels of specialisation and different levels of access to inventory, encompassing a very broad scope of advertising services, ranging from search to display. Consequently, the mere identification as competitors of companies which operate both as O&O ad buying tools and ad buying tools in the open web such as Google, Facebook and Amazon may refer to competition between other parts of their business (not necessarily display advertising in the open web) such as the search advertising business of those competitors and of the respective DSP. For instance, […].[906]

7.3.7.3. Google's claim that there are intense competitive constraints on Google's programmatic ad buying tools because of the multi-sidedness of adtech intermediation is unfounded.

(607) Google argues that in the presence of multi-sided products such as Google Ads, the Commission should consider competitive constraints from the different sides of the market. According to Google, it is incentivised to keep the buy-side take rate low and its publishers' revenue high in order to attract spend (and users) to its programmatic products for the open web. Google argues that several internal documents illustrate that serving the interests of users, advertisers and publishers constrains the conduct of Google's programmatic ad buying tools. Google argues that if the Commission had properly considered the competitive constraints on Google from the multiple sides of the market, it would be evident that Google's programmatic ad buying tools are not capable of exercising any degree of market power.[907]

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904 Replies to Q3 of the Commission's RFI to online advertising tool providers of December 2019.

905 Replies to Q7 of the Commission's RFI to DSPs of December 2020.

906 […].

907 […].

(608) Google's claim is unfounded in view of its strong market position also on the remaining layers of the adtech stack. In fact, Google is also dominant in the adtech market directly dealing with publishers (i.e. the market for publisher ad servers), as evidenced in section 7.4. Google has also a very high share in the market for SSPs, as evidenced in section 8.5.7. This means, that, in line with the indirect network effects at play in the adtech stack in general and in the market for programmatic ad buying tools for the open web in particular (see recitals (431) to (434)), the position of Google in the other markets reinforces its market power in the market for programmatic ad buying tools for the open web.

7.3.8. Conclusion

(609) The Commission reaches the conclusion that Google has held a dominant position at least since 2014 on the EEA-wide market for programmatic ad buying tools for the open web.

7.4. Publisher ad servers for online display advertising

7.4.1. Introduction

(610) The Commission reaches the conclusion that Google, via DFP, has been dominant on the EEA-wide market for publisher ad servers for online display advertising since at least 2014.

(611) This conclusion is based on the following considerations:

(1) the sustained high market shares of Google in that market (section 7.4.2);

(2) Google's publisher ad server enjoys the status of an unavoidable trading partner for publishers (section 7.4.3)

(3) the existence of high barriers to entry and expansion (section 7.4.4); and

(4) the lack of countervailing buyer power (section 7.4.5).

7.4.2. The sustained high market shares of Google

(612) The Commission reaches the conclusion that Google has had a high market share in the EEA-wide market for publisher ad servers since at least 2014. Google's market share even increased during the period under investigation, while the market shares of almost all of its competitors were shrinking. Some competitors exited the market.

(613) Market shares are measured based on the total volume of the impressions served by a publisher ad server.[908] The Commission considers that this metric is the most representative of market power for publisher ad servers.

(614) Google states that it does not know the value of all the impressions that DFP serves: […].[909] This means that Google does not know with certainty the value of ads intermediated by rival SSPs participating in Header Bidding (and of direct deals). Moreover, while Google applies a fee calculated as a percentage of the value of impressions it serves for its ad buying tools and SSP, Google applies a fixed amount per impression for DFP, irrespective of the value of impressions.[910] Rival publisher ad servers also usually apply a fixed amount per impression, irrespective of the value

908 Through its desk-based research, the Commission has identified all the relevant publisher ad servers active in the EEA. Publisher ad servers identified by the Commission were asked to provide data on the number and value of ad impressions handled, as well as on the revenues generated by the fees charged.

909 […] reply to Q62 of the Commission's RFI to […] of August 2020 (ID[…]).

910 […] reply to Q75 of the Commission's RFI to […] of August 2020 (ID[…]).

of the impression.[911] Therefore, it appears that, due to the lack of comprehensive data, and to the specific fee structure of publisher ad servers (which is notably different from the fee structure of ad buying tools and SSPs), calculating market shares based on the value of impressions would not provide an accurate indication of the actual market power enjoyed by DFP in this case.

(615) Google applies no fee for the version of DFP for small publishers (Ad Manager Small Business). Google also applies no fee for the version of DFP for large publishers in certain cases: below a given number of impressions; where according to the contract with the publisher DFP fees do not apply to impressions sold through AdX; or for certain types of impressions (Programmatic Deals and Preferred Deals).[912] For example, Google states that, between 2016 and 2019, it did not apply a fee to between […]% and […]% of impressions served by DFP in the EEA.[913] Google internal documents also show that […].[914] Also for this reason, the total fees charged by DFP are not representative of DFP's actual market power.

(616) Table 2 below illustrates the market shares of the main publisher ad servers in the EEA from 2014 to 2023, based on the total volume of the impressions served by them.

Table 2: […][915,916]

(617) The Commission considers that Google's high market shares are an indication of Google's dominant position on the EEA-wide market for publisher ad servers since (at least) 2014.

(618) According to Table 2, Google's DFP has had a market share on the EEA-wide market for publisher ad servers of […]. Moreover, the individual market shares of Google's main competitors have never been […] during the relevant period. There are no indications that Google's position on the relevant market in 2024 has changed.

(619) As of 2023, only one competitor, […], had a share of […]. As explained in recital (628) below, Google itself, in internal documents, casts doubt on the long-term sustainability of […] business model and does not consider […] to be a substantial threat to its services, not the least because […] is active only in a specific segment of the market, namely in-app advertising via mediation.[917]

(620) None of DFP's other competitors has been able to reach a comparable scale over the same period. In fact, in 2023, the market share of […] (which was Google's largest competitor in 2014) was […]. Similarly, the market share of […] significantly from its peak in 2016. […]. […] share experienced […] growth during the period, but its size remained less than a […] of DFP as at 2023. None of the other publisher ad

911 Replies to Q21 of the Commission's RFI to publisher ad servers of December 2020.

912 […].

913 […].

914 […].

915 Source: […]. Replies to Q1 of the Commission's RFI to publisher ad servers of October 2022 and February 2024. Given that most of the publisher ad servers, including […], were not able to provide data for the earlier years, […]. Impressions are allocated to the EEA based on user's location, with the exception of […], where impressions are allocated to the EEA based on the publisher's address.

916 […].

917 Mediation allows publishers to sell their inventory by creating a 'chain' of intermediaries, which are called sequentially in descending order of CPM to sell the publisher's impression. Since September 2017, mediation is only used to sell app inventory. […].

servers ever had a market share above […] in the period considered and many exited the market. This was the case, for example, for […].[918]

(621) A Google internal document […] when assessing its breadth (number of web domains with at least one DFP query divided by number of web domains) and depth (number of DFP total queries divided by estimated available queries, based on Google's internal model and assumptions). According to this document from 2018, […].[919]

(622) The Commission's conclusion that Google has had a high market share in the EEA-wide market for publisher ad servers for online display advertising since at least 2014 is not contradicted by Google's arguments described below.

(623) First, Google claims that the Commission wrongly bases market share calculations on impressions, rather than on fees, which is a more appropriate metric having regard to the facts of the case and the 1997 Market Definition Notice.[920]

(624) In the first place, as recitals (613) to (615) above explain, there are sound reasons why the facts of this case strengthen the view that using the volume of impressions as the metric upon which to base market share calculations is appropriate.

(625) In the second place, Google misrepresents the content of the Market Definition Notice. In fact, the Market Definition Notice states that: *"Generally, both the value of sales or purchases and the volume of sales or purchases provide useful information"* and it adds that in the case of differentiated products "*sales volumes can complement sales value and may in some instances be better suited to assess the effects of the conduct or concentration under investigation. For example, in the case of a concentration involving two undertakings offering a product at a much lower price than other undertakings, but capturing a significant share of customers, sales value alone may underestimate the competitive importance and interactions of those undertakings".*[921] The latter is particularly relevant in this case, given that Google does not charge publishers for a significant part of the impressions.

(626) Second, Google claims that the Commission failed to capture relevant third-party publisher ad servers such as Kevel, Adhese, AppLovin and Magnite.[922] In addition, Google argues that several third-party publisher ad servers (Adform, Adhese, AdSpirit, AppLovin, Equativ, FreeWheel, Kevel, Magnite, Xandr) exert a significant competitive constraint on DFP.[923]

(627) In the first place, the Commission's market reconstruction includes all of DFP's largest competitors, including Kevel, Magnite and Applovin. […] provides a list of third-party ad servers which according to Google are competing with DFP. With the sole exception of Adhese, all such players are included in the Commission's market reconstruction. The smallest competitors included in the market reconstruction have a market share below […]. The inclusion of additional players with immaterial dimensions is unlikely to materially change Google's market share, which, as per Table 2, is well above […], and in most years even above […]. In the same vein, it is

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918 Replies to Q9 of the Commission's RFI to publisher ad servers of December 2020.
919 […].
920 […].
921 Market Definition Notice, paragraphs 107 and 111.
922 […].
923 […].

equally unlikely that players with such a small scale compared to Google can in any way exert any perceptible competitive constraint on DFP.

(628) In the second place, of all the publisher ad servers to which Google refers, only […] has shown […] market share growth in recent years, while remaining […] Google (see Table 2). Furthermore, there is evidence that […] is unlikely to have constrained DFP's market power.

(1) […] is active in a specific segment, namely in-app advertising via mediation. Google also operates […], a service for app publishers similar to […], which is also active only in the specific segment of apps and is not fully included in Table 2. This means that the market shares in Table 2 […].

(2) Google internal documents indicate that Google considers that […].[924] […].[925]

7.4.3. Google's publisher ad server enjoys the status of an unavoidable trading partner for publishers

(629) The Commission reaches the conclusion that Google's publisher ad server DFP enjoys the status of an unavoidable trading partner for publishers. The Commission has no indication that the situation was different at any time in the period covered by the findings of this Decision.

(630) This is supported by the fact that Google benefits from the perception by publishers that they need to use DFP in order to effectively access demand that flows through AdX, including in particular Google Ads and DV360 demand (see more details in section 8.6.1). Publishers' statements corroborate this finding:

(1) According to […].[926]

(2) According to […].[927] [928]

(3) According to […].[929]

(4) According to […].[930] [931]

(5) According to […].[932] [933] [934]

(6) According to […].[935]

(631) In addition, recital (1933) below quotes statements by several publishers to the effect that they consider that using DFP is either the only way to access AdX demand at all, or is the only way to avoid sub-optimal (whether in terms of technical inefficiencies, or worse monetary outcomes) access to AdX demand. This constitutes further evidence of publisher perceptions that using DFP is the only way to access AdX demand in an efficient manner.

924 […].
925 […].
926 […].
927 […].
928 […].
929 […].
930 […].
931 […].
932 […].
933 […].
934 […].
935 […].

(632) The Commission's conclusion that DFP enjoys the status of an unavoidable trading partner for publishers is not contradicted by Google's arguments described below.

(633) First, Google argues that DFP's prices have remained low (significantly lower than those of DFP's competitors) since it acquired DoubleClick, which is evidence of an effective response to competition.[936]

(634) In the first place, it should be recalled that the Google/DoubleClick merger occurred in 2007, *i.e.* seven years prior to the start of the period during which the present Decision finds that Google has held a dominant position in the market for publisher ad servers for online display advertising.

(635) In the second place, low (even potentially loss-making) pricing for DFP ad serving fees may in fact have been a significant factor in Google's attainment of a dominant position in the market for publisher ad servers for online display advertising (see further recital (615) above). Moreover, in support of its claim, Google selectively quotes the final report of the CMA Online Advertising Market Study. Google refers only to the statement therein that Google's practice of *"charging significantly less than its direct competitors* [led] *to an overall reduction in fees in those markets"*;[937] and omits to mention the following statements within the same paragraph:

(1) The statement that Google's pricing of DFP *"is indeed one of the reasons why Google managed to achieve very high shares of supply in ad serving"*;

(2) The statement that, whilst *"Google's pricing strategy may have benefited publishers and advertisers"*, at least in the short term, it also *"led to a significant reduction in the number of competitors, especially in publisher ad serving."*[938]

(636) Second, Google argues that publishers that perceive that they must use DFP in order to access AdX demand in an efficient manner are factually mistaken in that perception.[939]

(637) However, the question of whether a publisher's perception is right or wrong is irrelevant. Indeed, it is a customer's perception of a product's characteristics that determines whether or not a given customer will use that product. Furthermore, it is notable that, as shown in recitals (1931) and (1944) below, Google's marketing teams actively seek to reinforce that perception.

(638) Third, Google claims that publishers can access other advertiser demand in particular via other publisher ad servers, third-party ad buying tools (in respect of which, Google claims, advertisers multi-home extensively), and direct deals.[940]

(639) In the first place, it does not matter that other advertiser demand is available via other publisher ad servers in addition to DFP. What publishers confirmed is that to have access to Google's programmatic ad buying tools' demand they need to use DFP. This is particularly significant given that this demand is […] and […] and […] as recognised in Google's internal documents listed in recital (371) above.

(640) In the second place, as regards access to other ad buying tools' demand, Google's argument is based on the flawed premise that advertisers multi-home extensively on

936 […].
937 CMA Online Advertising Market Study, paragraph 5.298 (ID[…]).
938 CMA Online Advertising Market Study, paragraph 5.298 (ID[…]).
939 […].
940 […].

ad buying tools. This premise is flawed, because it is not supported by relevant data as explained above at recitals (440) to (448).

(641) In the third place, as recitals (494) to (498) above demonstrate, engaging in direct deals is impracticable for many publishers.

(642) Fourth, Google claims that […] is a credible competitor, an […] to DFP, based on a statement by […].[941]

(643) However, Google's claim is misleading. The statement by […] simply refers to a choice […]. Nowhere does […] state or imply that this choice is […], […]. For example, the remainder of the statement by […] makes clear that […] perceives: […];[942] Moreover, Google's claim is undermined by the fact that after its peak in 2016, […] share of the EEA wide market for publisher ad servers […] (see recital (620) above).

7.4.4. High barriers to entry and expansion

(644) The Commission reaches the conclusion that there are significant barriers to entry and expansion in the EEA-wide market for publisher ad servers, which limit potential competition.

(645) First, developing a publisher ad server requires significant investments, notably in research and development. Developing and maintaining a publisher ad server entails fixed costs, which do not depend on the number of publishers that are served. The cost of running a publisher ad server is significant.[943]

(646) Second, switching a publisher ad server is expensive and risky for a publisher.[944] Depending on the size and complexity of the ad inventory, switching may take between several months and one year.[945] Switching would require project resources and the re-training of teams as regards the new publisher ad server.[946] In addition to the intrinsic costs associated with changing publisher ad servers, publishers risk losing impressions and therefore revenue.[947] Loss of historical data, which cannot be transferred to the new publisher ad server, means that inventory forecasting, an important feature for publisher ad servers, would be impossible for the new publisher ad server during a transition period.[948]

(647) Google internal documents corroborate this risk: […].[949] [950]

(648) Several statements from competing publisher ad servers also corroborate this risk:

(1) According to […];[951] and

(2) According to […].[952]

(3) According to […].[953]

941 […].
942 […].
943 […].
944 […].
945 Replies to Q3.2 of the Commission's RFI to publisher ad servers of October 2022. […].
946 […].
947 […].
948 […].
949 […].
950 […].
951 […].
952 […].

(4) According to […].[954]

(649) Third, […] publisher ad servers indicated that publishers tend to use a single publisher ad server, the exception being when a publisher ad server cannot handle certain types of ad inventory or ad formats.[955] As explained by […]: […].[956]

(650) Likewise, […] publishers that replied to the Commission's RFI indicated that they used a single publisher ad server.[957] Single homing appears easier and less costly, the exception being where the main publisher ad server does not support certain ad formats. According to […]: […].[958]

(651) Fourth, there is a trend towards […].[959] Publisher ad servers do not compete with each other often, typically only every few years. For example, in 2020, two publishers, […] and […], stated that […].[960] […] the publishers that replied to the Commission's RFI have not switched their publisher ad server within the last 5 to 10 years.[961]

(652) Fifth, some potential competitors have failed to enter the market for publisher ad servers or to stay on it, even though they had significant resources. This was the case, for example, […] (see recital (620)).

(653) The Commission's conclusion that that there are significant barriers to entry and expansion in the EEA-wide market for publisher ad servers for online display advertising, which limit potential competition, is not contradicted by Google's arguments described below.

(654) First, Google argues that there are no switching costs for publishers, when contemplating a switch of publisher ad server provider, as evidenced by the fact that […] publishers stated that they had switched publisher ad server provider in the 5 to 10 year period preceding their response.[962]

(655) In the first place, Google's claim is contradicted by publishers' statements. See recital (646) above, which lists publisher testimony that switching publisher ad server provider is expensive and risky.

(656) In the second place, the fact that some publishers have indicated in reply to the Commission's RFI that they have switched provider in the 10 years preceding their response does not negate the presence of high switching costs. In several cases, the switch by those publishers was limited in scope[963] or only occurred very rarely during those 10 years.[964]

(657) Second, Google argues that many of Google's rivals operate successful publisher ad servers and continue to expand.[965]

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953 […].
954 […].
955 Replies to Q3.1 of the Commission's RFI to publisher ad servers of October 2022.
956 […].
957 Replies to Q6 of the Commission's RFI to publishers of December 2020.
958 […].
959 […].
960 […].
961 Replies to Q7 of the Commission's RFI to publishers of December 2020.
962 […].
963 The scope of switching was limited in the sense that it related to a limited category of impressions only. E.g. […].
964 E.g. […].
965 […].

(658) In the first place, the presence of barriers to entry and expansion does not imply that a dominant company must be the only player that is active in the market. It merely implies that in case the dominant company exerts its market power, others are subject to limitations in the means available to them to constrain the dominant company's behaviour. There is thus no contradiction between the presence of other players in the market and the presence of high barriers to entry and expansion.

(659) In the second place, of the nine publisher ad servers which, in Google's claim, exert a significant competitive constraint on DFP (Adform, Adhese, AdSpirit, AppLovin, Equativ, FreeWheel, Kevel, Magnite, Xandr): (i) […], showed significant growth in the period 2018 to 2023 (see further Table 2 above); and (ii) there is evidence that […] is unlikely to have constrained DFP's market power. See further recitals (619) and (628) above.

7.4.5. Lack of countervailing buyer power

(660) The Commission reaches the conclusion that publishers are not in a position to counterbalance Google's market power in the EEA-wide market for publisher ad servers.

(661) First, […]. Data provided by […] show that, in 2019, DFP's largest customer in the EEA […] of DFP revenues; […] accounted for […] of DFP revenues.[966]

(662) Second, most publishers are not in a position to develop their own publisher ad server.[967] A publisher may in principle choose to develop its own publisher ad server. This was the case, for example, for […]; however, the latter indicated that […].[968] Other publishers with significant resources indicated that it was not feasible for them to develop in-house technology which was capable of meeting their needs.[969] In fact, only the largest publishers, such as Facebook, are currently able to effectively operate a publisher ad server developed in-house.

(663) Third, Google is able to unilaterally impose changes to DFP against the wishes and interests of its customers. This was the case, in particular, with the Unified Pricing Rules, which publishers were strongly opposed to (see recitals (1447) to (1459)). As a publisher, […] summarises the situation: […].[970]

(664) The Commission's conclusion that publishers are not in a position to counterbalance Google's market power in the EEA-wide market for publisher ad servers is not contradicted by Google's arguments described below.

(665) First, Google argues that the *Google/Doubleclick* Decision demonstrates that in-house publisher ad servers constrain DFP's market power.[971]

(666) However, the Google/DoubleClick Decision reflects a point in time that was seven years prior to the time period during which the present Decision finds Google dominant in the market for publisher ad servers. Moreover, as recitals (668) and

966 […].

967 Publishers need publisher ad servers not only to interact with SSPs, but also to manage direct deals. An important functionality of the publisher ad servers is indeed to manage the implementation, delivery and follow-up of (online display advertising) campaigns sold directly to advertisers. For instance, publisher ad servers ensure that publishers sell a given number of impressions in a given period according to the contractual agreement with a given advertiser.

968 […].

969 […].

970 […].

971 […].

(672) below demonstrate, most publishers are not in a position to develop their own publisher ad server.

(667) Second, Google claims that publishers of all sizes can (and many do) develop their own in-house publisher ad servers based on several documents described in more detail in the rebuttals below.[972]

(668) In the first place, […] publishers that replied to the Commission's RFI indicated that they do not currently operate, and nor have they previously operated, an in-house publisher ad server.[973] Within the subset of publishers that indicated that they do not currently operate, and nor have they previously operated, an in-house publisher ad server, […] also indicated that developing and maintaining an in-house publisher ad server would demand excessive resources.[974] In addition, within the subset of publishers that indicated that they do not currently operate, and nor have they previously operated, an in-house publisher ad server, several publishers indicated that the risk of limited interoperability between a prospective in-house publisher ad server and AdX dissuaded them from developing an in-house publisher ad server. For instance:[975]

(1) According to […].[976]

(2) According to […].[977]

(669) In the second place, Google's claim that public webpages suggest that several publishers operate, or are contemplating developing, an in-house publisher ad server that could constrain DFP,[978] is contradicted by the evidence described at recitals (668), (672) and (676) according to which only […] publishers develop their own publisher ad server; and in-house publisher ad servers are in most cases not available to third-party publishers or may only be used by limited categories of publishers.

(670) In the third place, Google's claim that its internal document identifies that […],[979] is flawed, for the same reasons as described in recitals (668) and (672) below. In addition, the document upon which Google bases itself to make this claim seems to indicate that, in reality, Google perceives […] to operate an in-house publisher ad server (as opposed to using a third-party ad server).[980] Further, among the in-house publisher ad servers identified as representing some of the largest monetary opportunities (per the value inserted in the […] column) are […].[981]

(671) In the fourth place, Google's claim that the majority of web impressions are served by in-house publisher ad servers, as evidenced by eMarketer data,[982] is flawed given that the eMarketer data counts a significant number of impressions on vertically integrated platforms. Notably, the eMarketer data includes impressions on the platforms of Meta, which are entirely vertically integrated. It appears that, using the

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972 […].

973 Replies to Q.B.B.1 of the Commission's RFI to publishers of February 2024 and replies to QB.1 of the Commission's RFI to in-house publisher ad servers of February 2024.

974 Replies to QB.B.B.1 of the Commission's RFI to publishers of February 2024 and replies to QB.B.1 of the Commission's RFI to in-house publisher ad servers.

975 See further […].

976 […].

977 […].

978 […].

979 […].

980 […].

981 […].

982 […].

same assumptions that Google employs in relation to this data,[983] Meta alone accounts for over […] all impressions counted.[984] As explained in section 7.3.2 above, Meta's O&O inventory is comprised exclusively of social media advertising inventory, which is not a substitute to the inventory of the open web.

(672) In the fifth place, Google's claim that DFP customers are large and sophisticated, and thus can exert countervailing buyer power on Google (including by developing, or credibly threatening to develop, an in-house publisher ad server), as evidenced by the fact that over […]% of DFP impressions in the EEA in 2022 came from publishers generating over […] annually from AdX, [985] is contradicted by the fact that several large publishers stated that they were dissuaded from developing an in-house publisher ad server because doing so would demand excessive resources. For example:

(1) According to […].[986]

(2) According to […].[987]

(3) According to […].[988]

(4) According to […].[989]

(673) Moreover, an annual revenue of […] from AdX is insufficient to affect the imbalance of negotiating power that exists vis-à-vis Google. Indeed, in 2021, in the EEA Google generated over […] from DFP alone, while Google's net revenues from fees charged to publishers and advertisers across the entire adtech stack were […].[990] The revenue threshold indicated by Google therefore corresponded to approximately […] in 2021, and around […] in the EEA in the same year.

(674) Third, Google claims that in-house publisher ad servers fulfil the same publisher need as third-party publisher ad servers.[991]

(675) In the first place, and as explained in recital (668), only a minority of publishers currently operate, or have previously operated, an in-house publisher ad server. This would already hardly constitute a significant constraint on DFP.

(676) In the second place, for an in-house publisher ad server to constitute a competitive constraint, it must provide a service that is a substitute of DFP vis-à-vis publishers. However, […] publishers that currently operate an in-house publisher ad server stated that their in-house publisher ad server cannot be used by third-party publishers at all,[992] or may only be used by limited categories of third-party publishers. [993] In

983 […].

984 The eMarketer data state that the "*US Display Ad Spending*" figure in 2022 was USD 141.1 billion. Such figure includes USD 48.7 billion corresponding to Meta "*display ad revenues*", which amounts to […] of the total USA Display Ad Spending. Google uses the USD 141.1 billion USA Display Ad Spending figure, inclusive of Meta display ad revenues, to extrapolate a proxy for worldwide display ad spending, which is the denominator used to compute DFP's market share.

985 […].

986 […].

987 […].

988 […].

989 […].

990 […].

991 […].

992 Replies to QB.B.A.10 of the Commission's RFI to publishers of February 2024 and replies to QB.A.5 of the Commission's RFI to in-house publisher ad servers of February 2024. See also […].

993 […].

addition, […] such publishers also stated that their in-house publisher ad server is not used to serve ads in open auctions, that is, in particular, most of the ads intermediated by AdX.[994]

(677) In the third place, […] publishers that currently operate an in-house publisher ad server stated that they use DFP alongside their in-house publisher ad server, for instance because DFP is needed to have access to open auctions or to AdX demand.[995]

(678) Fourth, Google argues that several publishers stated that developing an in-house publisher ad server has brought them benefits; and claims that the fact that the same publishers developed an in-house publisher ad server proves that such benefits outweigh any associated costs.[996]

(679) However, this Decision does not claim that developing an in-house publisher ad server is incapable of bringing any benefits. Nor does it claim that, for some publishers, the potential benefits of developing an in-house publisher ad server may outweigh both the risks of inaction (which include the risk of continued dependence on a third-party publisher ad server) and the costs of taking action to develop one. If it were the case that developing an in-house publisher ad server was a strategy incapable of bringing benefits (which outweigh applicable risks and costs), there would be no examples of any publishers developing their own publisher ad server. Rather, this Decision concludes that developing an in-house publisher ad server is not a strategy accessible to most publishers and that even those developing their own publisher ad server are often still dependent on DFP for some impressions. This is illustrated by the following examples:

(1) Whilst […] stated, for example, that: […].[997]

(2) […].[998] [999] [1000] [1001]

(680) Fifth, Google argues that the Commission overstates the opposition of publishers to the Unified Pricing Rules. According to Google, the Unified Pricing Rules apply on a non-discriminatory basis and benefit publishers by increasing buyer trust in open display auctions. Furthermore, Google states that an independent third-party survey found that the majority of publishers were neutral, or supported, the introduction of Unified Pricing Rules.[1002]

(681) In the first place, recitals (1454) to (1457) show that many publishers were opposed to Google's Unified Pricing Rules. Google internal documents show that the opposition was of sufficient magnitude to be a concern for Google.

(682) In the second place, what Google characterises as an 'independent third-party survey' is in fact merely a webpage. The webpage in question does not allow the

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994 Replies to QB.B.A.5 of the Commission's RFI of February 2024 to publishers and replies to Q.B.A.8 of the Commission's RFI to in-house publisher ad servers of February 2024. See also […].

995 Replies to QB.B.A.8 of the Commission's RFI to publishers of February 2024 and replies to Q.B.A.11 of the Commission's RFI to in-house publisher ad servers of February 2024.

996 […].

997 […].

998 […].

999 […].

1000 […].

1001 […].

1002 […].

reader to understand the context of the report, nor the questions that were asked and answered.

(683) In the third place, even if the number of publishers that opposed the Unified Pricing Rules were in a minority, this would not change the fact that those did not manage to obtain a change to the Unified Pricing Rules for the purpose of their agreement with Google. It remains therefore relevant evidence of publishers' lack of countervailing buyer power vis-à-vis Google.

7.4.6. Conclusion

(684) In light of the above, the Commission reaches the conclusion that Google has held a dominant position in the EEA-wide market for publisher ad servers for online display advertising since at least 2014.

7.5. Conclusion on dominance

(685) In light of the analysis contained in the sections above, the Commission concludes that Google has held a dominant position in the following relevant markets since at least 2014: (i) the EEA-wide market for Programmatic ad buying tools for the open web; and (ii) the EEA-wide market for publisher ad servers for online display advertising.

8. THE ABUSES

8.1. Principles

(686) The function of Union competition rules is to prevent competition from being distorted to the detriment of the public interest, individual undertakings and consumers, thereby ensuring the well-being of the Union.[1003]

(687) A system of undistorted competition can be guaranteed only if equality of opportunity is secured as between the various economic operators.[1004]

(688) In that respect, Article 102 TFEU prohibits as incompatible with the internal market "[a]ny abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it […] in so far as it may affect trade between Member States".

(689) The concept of abuse is an objective one relating to the behaviour of an undertaking in a dominant position which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.[1005]

(690) The Court of Justice recently clarified that conduct by a dominant company which is legal under other areas of law can be considered abusive where it is capable of exclusionary effects and where it does not constitute competition on the merits.[1006]

1003 Case C-52/09 *Konkurrensverket v TeliaSonera Sverige*, EU:C:2011:83, paragraph 22.

1004 Case C-280/08 P *Deutsche Telecom v Commission*, EU:C:2010:603, paragraph 230; Case T-336/07, *Telefónica v Commission*, EU:T:2012:172, paragraph 204.

1005 Case C-549/10 P *Tomra v Commission*, EU:C:2012:221, paragraph 17; Case C-457/10 P *AstraZeneca v Commission*, EU:C:2012:770, paragraph 74.

1006 Case C-377/20 *Servizio Elettrico Nazionale*, EU:C:2022:379, paragraph 103.

(691) Competition on the merits may, by definition, lead to the departure from the market or the marginalisation of competitors that are less efficient and so less attractive to consumers from the point of view of, among other things, price, choice, quality or innovation.[1007] On the other hand, Article 102 TFEU prohibits a dominant undertaking from eliminating or marginalising a competitor[1008] and thereby strengthening its position by using methods other than those which come within the scope of competition on the merits.[1009] As a rule, a dominant undertaking has a special responsibility not to allow its behaviour to impair genuine, undistorted competition on the internal market.[1010]

(692) It follows from the nature of the obligations imposed by Article 102 TFEU that, in specific circumstances, an undertaking in a dominant position may be deprived of the right to adopt a course of conduct or take measures which are not in themselves abuses and which would even be unobjectionable if adopted or taken by non-dominant undertakings.[1011]

(693) An abuse of a dominant position does not necessarily have to consist in the use of the economic power conferred by a dominant position.[1012] Moreover, Article 102 TFEU gives no explicit guidance as to the requirements relating to where on the internal market the abuse took place.[1013] Article 102 TFEU does not only prohibit practices by an undertaking in a dominant position which tend to strengthen that position,[1014] but also the conduct of an undertaking with a dominant position in a given market that aims at extending or leveraging that position to a neighbouring but separate market thereby distorting competition in an adjacent market.[1015] Therefore, the fact that a dominant undertaking's abusive conduct has its adverse effects on a market distinct from the one where it has a dominant position does not preclude the application of Article 102 TFEU.[1016] It is not necessary that the dominance, the abuse and the effects of the abuse be all in the same market.

1007 Case C-209/10 *Post Danmark*, EU:C:2012:172, paragraph 22.

1008 See reference to the elimination and marginalisation of competitors in Case C-209/10 *Post Danmark*, EU:C:2012:172, paragraph 22. The presence of less efficient competitors on the market can also play a role in maintaining genuine competition: see Case C-23/14 *Post Danmark II*, EU:C:2015:651, paragraph 60.

1009 Case C-62/86 *AKZO v Commission*, EU:C:1991:286, paragraph 70 and Case C-202/07 P *France Télécom v Commission*, EU:C:2009:214, paragraph 106 and Case C-457/10 P *AstraZeneca v Commission*, EU:C:2012:770, paragraph 75; and Case C-377/20 *Servizio Elettrico Nazionale*, EU:C:2022:379, paragraphs 75 and 76.

1010 Case C-413/14 P *Intel Corporation v Commission*, EU:C:2017:632, paragraphs 134 to 135; Case C-322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 57; Case C-209/10 *Post Danmark*, EU:C:2012:172, paragraph 23.

1011 Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 57; Case T-111/96 *ITT Promedia v Commission*, EU:T:1998:183, paragraph 139.

1012 Case 6/72 *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 27; Case 85/76 *Hoffmann-La Roche v Commission*, EU:C:1979:36, paragraph 91; and Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 354.

1013 Case T-83/91 *Tetra Pak v Commission*, EU:T:1994:246, paragraphs 114 to 116.

1014 Case C-6/72 *Europemballage Corporation and Continental Can Company v Commission*, EU:C:1973:22, paragraph 26; Case C-85/76 *Hoffmann-La Roche & Co. v Commission*, EU:C:1979:36, paragraph 91; Case C-322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 57.

1015 Case C-311/84 *CBEM v CLT and IPB*, EU:C:1985:394, paragraph 27; Case C-333/94 P *Tetra Pak v Commission*, EU:C:1996:436, paragraph 25; Case T-228/97 *Irish Sugar v Commission*, EU:T:1999:246, paragraph 166; Case T-201/04 *Microsoft v Commission*, EU:T:2007:289, paragraph 1344.

1016 Case C-333/94 P, *Tetra Pak v Commission*, EU:C:1996:436, paragraph 25; Case C-52/09, *Konkurrensverket v TeliaSonera Sverige*, EU:C:2011:83, paragraph 85.

(694) While there is no requirement to establish that the dominant undertaking has an anticompetitive intent, evidence of such an intent constitutes a fact that may be taken into account in order to determine that a dominant position has been abused.[1017] Whether the dominant undertaking has such intent can be concluded from internal documents. Conversely, as the EU Courts have held, the existence of an intention to compete on the merits, even if it were established, could not prove the absence of abuse.[1018]

(695) Article 102 TFEU lists a number of abusive practices. These are merely examples, not an exhaustive enumeration of the type of abuses of dominant position that are prohibited by Union competition law.[1019]

(696) Concerning the effects of the dominant undertaking's conduct, Article 102 TFEU prohibits behaviour that tends to restrict competition or is capable of having that effect,[1020] regardless of its success.[1021] The Court of Justice has held that "*conduct is capable of constituting an abuse of a dominant position if it is demonstrated that it has – at least potential – anticompetitive effects that hinder the maintenance of the degree of competition existing on the market as a whole or the growth of that competition*".[1022] That assessment must be undertaken having regard to all the relevant facts surrounding that conduct.[1023]

(697) In order for the conduct of a dominant company to be considered abusive, it is not necessary to show that the result of a practice of such an undertaking, intended to drive its competitors from the market concerned, has been achieved and, accordingly, to prove an actual exclusionary effect on the market. The purpose of Article 102 TFEU is to penalise abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it, irrespective of whether such practice has proved successful.[1024]

(698) Article 102 TFEU prohibits both abusive practices which may cause damage to consumers directly but also those which cause consumers harm through their impact on competition.[1025] Article 102 TFEU is designed to protect not only the immediate interests of individual competitors or consumers but also to protect the structure of the market and thus competition as such.[1026]

1017 Case C-307/18 *Generics (UK)*, EU:C:2020:52, paragraph 162; Case C-549/10 P *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraphs 20, 21 and 24.

1018 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 257.

1019 Case 6/72 *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 26; Case C-280/08 P *Deutsche Telekom* v *Commission*, EU:C:2010:603, paragraph 173; Case C-52/09 *TeliaSonera Sverige*, EU:C:2011:83, paragraph 26.

1020 Case C-549/10 P *Tomra and Others v Commission*, EU:C:2012:221, paragraph 68. See also Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 50 and Case C-52/09 *TeliaSonera Sverige*, EU:C:2011:83, paragraph 77.

1021 Case T-321/05, *AstraZeneca*, EU:T:2010:266, paragraph 347, confirmed on appeal in Case C-457/10 P, *AstraZeneca v Commission*, EU:C:2012:770, paragraphs 109 and 111. See also Case T-219/99 *British Airways* v *Commission* EU:T:2003:343, paragraphs 297 and 298.

1022 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 504.

1023 Case C-307/18 *Generics (UK)*, EU:C:2020:52, paragraph 154.

1024 Case C-377/20 *Servizio Elettrico Nazionale and Others*, ELCI:EU:C:2022:379, paragraph 53; Case C-52/09 *TeliaSonera Sverige*, EU:C:2011:83, paragraph 65.

1025 Case 6/72 *Europemballage and Continental Can v Commission*, EU:C:1973:22, paragraph 26.

1026 Case C-8/08 *T-Mobile Netherlands and Others*, EU:C:2009:343, paragraph 38; Case C-286/13 P *Dole Food and Dole Fresh Fruit Europe v Commission*, EU:C:2015:184, paragraph 125. See in the same

(699) Customers should have the opportunity to benefit from whatever degree of competition is possible on the market and competitors should be able to compete on the merits for the entire market and not just for a part of it.[1027] An undertaking in a dominant position may not therefore justify abusive conduct in a certain segment of a market by the fact that its competitors remain free to compete in other segments. Also, it is not the role of the dominant undertaking to dictate how many viable competitors will be allowed to compete for demand.[1028]

(700) Finally, the dominant undertaking may provide justification for its conduct in order to escape the prohibition under Article 102 TFEU. For that purpose, the undertaking may demonstrate either that its conduct is objectively necessary or that the exclusionary effect produced may be counterbalanced, outweighed even, by advantages in terms of efficiency that also benefit consumers.[1029]

8.2. Application to this case

(701) The Commission reaches the conclusion that Google has infringed Article 102 TFEU by (i) using its ad buying tools (Google Ads and DV360) to favour its SSP (AdX) and by (ii) using its publisher ad server (DFP), on the sell-side, to favour its SSP (AdX).

(702) In the former case (i), the Commission reaches the conclusion that Google abused its dominant position in the EEA-wide market for programmatic ad buying tools for the open web by favouring, through its ad buying tools Google Ads and DV360, its SSP AdX to the detriment of competitors in the EEA-wide market for SSPs ("the Buy-side Conduct"), from January 2014 until the date of this Decision.

(703) The following sections set out the reasons for this conclusion. Section 8.3 shows that Google departed from competition on the merits by engaging in the Buy-side conduct. Sections 8.5.3 and 8.5.5 establish that the Buy-side Conduct is capable of producing exclusionary effects (or, in other words, has potential exclusionary effects) in the EEA-wide market for SSPs. Whilst not necessary for the finding that the Buy-side Conduct is an abuse, section 8.6 also establishes that it is capable of producing exclusionary effects in the EEA-wide market for publisher ad servers. Section 8.7.1 addresses whether there are any objective justifications for Google's conduct. The Commission concludes on the duration of the infringement in section 8.9.

(704) In the latter case (ii), the Commission reaches the conclusion that Google has abused its dominant position in the EEA-wide market for publisher ad servers by favouring AdX, through its publisher ad server DFP, to the detriment of competitors in the EEA-wide market for SSPs ("the Sell-side Conduct"), from January 2014 until the date of this Decision.

(705) The following sections set out the reasons for this conclusion. Section 8.4 shows that Google has departed from competition on the merits by engaging in the Sell-side Conduct. Sections 8.5.4 and 8.5.5 establish that the Sell-side Conduct is capable of producing exclusionary effects (or, in other words, has potential exclusionary effects)

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vein Case C-202/07 P *France Télécom v Commission*, EU:C:2009:214, paragraph 105; Joined cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P *GlaxoSmithKline Services and Others v Commission and Others*, EU:C:2009:610, paragraph 63; Case C-52/09 *Konkurrensverket v TeliaSonera Sverige*, EU:C:2011:83, paragraph 24; Case T-336/07 *Telefónica v Commission*, EU:T:2012:172, paragraph 171.

1027 Case C-549/10 P *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraph 42.

1028 Case C-549/10 P *Tomra Systems and Others v Commission*, EU:C:2012:221, paragraph 42; Case C-307/18 *Generics (UK)*, EU:C:2020:52, paragraph 161.

1029 Case C-209/10 *Post Danmark v Konkurrencerådet*, EU:C:2012:172, paragraph 41.

in the EEA-wide market for SSPs. Section 8.7.2 addresses whether there are any objective justifications for Google's conduct. The Commission concludes on the duration of the infringement in section 8.9.

(706) With regard to the assessment of the potential effects, the Commission first explains how each practice that constitutes the Buy-side Conduct and the Sell-Side Conduct, respectively, has the capability to increase the number of successful bids intermediated by AdX as opposed to rival SSPs. Then the Commission explains how in aggregate, the practices that constitute together the Buy-side Conduct and the Sell-Side Conduct, respectively, have the capability to steer publishers towards AdX. The Commission then explains how the Buy-side and Sell-side Conducts could lead to higher SSP fees, limited incentives to multi-home for publishers and ad buying tools and reduced innovation and transparency in the EEA-wide market for SSPs. The Commission also considers relevant circumstances in the EEA-wide market for SSPs, namely the importance of scale for SSPs, which are capable of amplifying the potential effects of both the Buy and Sell-side Conducts.

(707) As noted in section 3.2.1 above, on 7 June 2021, the French NCA issued the French NCA Adtech Decision, fining Google EUR 220 million for having abused its dominant position in the market for publisher ad servers for online display advertising. The French NCA found that Google granted preferential treatment to its proprietary technologies offered under GAM, both with regard to the operation of DFP and AdX, to the detriment of its competitors and of publishers. Those findings are consistent with the findings on the Sell-side Conduct.

(708) The French NCA AdTech Decision does not cover the Buy-side Conduct. Whilst the French NCA AdTech Decision covers the Sell-side Conduct, its findings only cover the period until 30 September 2020 (the date on which the French NCA's relevant statement of objections was sent) and its territorial scope is restricted to the French territory (see section 3.2.1).

(709) As noted in recital (54), the Commission exercises its discretion[1030] not to reach any conclusion in this Decision regarding the Sell-side Conduct in France, for the period before 30 September 2020.

(710) Finally, the Commission reaches the conclusion that the two abuses, i.e. the Buy-side Conduct and the Sell-side Conduct also constitute a single and continuous infringement of Article 102 TFEU (section 8.8).

8.3. The Buy-side Conduct departs from competition on the merits

(711) The Commission reaches the conclusion that Google's favouring of AdX via Google Ads and DV360 through the adoption of the Buy-side Conduct departs from competition on the merits. This conclusion is based on findings that take into account specific circumstances related to the conduct itself, the markets in question and the functioning of competition on those markets.[1031]

(712) In summary, the conclusion that the Buy-side Conduct departs from competition on the merits is based on the following circumstances:

1030 See, in this respect, Case T-350/17, *Singapore Airlines Ltd and Singapore Airlines Cargo Pte Ltd*, EU:T:2022:186, paragraph 531 and the case-law cited.

1031 See Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 166.

(1) Google Ads and DV360 have been favouring AdX by engaging in the Buy-side Conduct, treating AdX more favourably than they treat third-party SSPs (section 8.3.2);

(2) The Buy-side Conduct consists of practices that Google's competitors are unable to adopt because such practices rely on the use of resources or means inherent to Google's dominant position on certain markets[1032], i.e. the EEA-wide market for programmatic ad buying tools (section 8.3.3.1), and Google leverages that dominance into the EEA-wide market for SSPs[1033] (section 8.3.3.2); and

(3) Additionally, there are relevant circumstances specific to this case[1034] that further reinforce the conclusion that the Buy-side Conduct departs from competition on the merits, namely:

(a) By engaging in the Buy-side Conduct, Google acts against the interest of Google Ads and DV360 as well as its customers, advertisers and media agencies (section 8.3.4.1); and

(b) Google Ads and DV360 demand is important for rival SSPs and cannot be effectively replaced (section 8.3.4.2).[1035]

(713) In particular, the Commission considers that the presence of the first and second circumstances set out in recitals (712)(1) and (712)(2) is sufficient to establish that the Buy-side Conduct departs from competition on the merits, in that it establishes that Google leverages its dominance in one market onto a neighbouring market in order to engage in conduct which is different from normal competition (i.e. favouring AdX).[1036] The specific circumstances set out in recital (712)(3), while not necessary to characterise the Buy-side Conduct as a departure from competition on the merits, are nonetheless relevant for the Commission's assessment as they reinforce and strengthen the Commission's conclusion in that regard.

(714) Further, in the following assessment of the practices constitutive of the Buy-side Conduct, the Commission establishes that at least some of the practices were intentional, meaning that Google pursued the conduct for the specific purpose of, and knowingly in furtherance of, conferring on AdX an objective competitive advantage that hindered the ability of third-party SSPs to effectively compete. As noted above in recital (694), intent is not necessary to establish an abuse of dominance, but evidence of intent is a fact that can be taken into account in order to establish that a given conduct is abusive.

(715) The Commission's conclusion that the Buy-side Conduct departs from competition on the merits is not contradicted by the arguments made by Google as described in

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1032 Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 78.

1033 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 167. The General Court's findings were upheld by the ECJ on appeal in Case C-48/22 P, EU:C:2024:726, paragraph 172.

1034 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraphs 169 to 175. The General Court's findings were upheld by the ECJ on appeal in Case C-48/22 P, EU:C:2024:726, paragraph 172.

1035 The analysis of these circumstances follows the line of reasoning established in Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763 upheld by the ECJ on appeal in Case C-48/22 P, EU:C:2024:726.

1036 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 143; Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraphs 76 and 78.

the following paragraphs. Google advances several arguments alleging that the Commission misapplies the circumstances identified above and the relevant case law.

(716) First, Google argues that, in order for the Commission to properly find an abuse, it must apply a legal test "akin to" the cumulative criteria set out in *Bronner* as the appropriate legal test for identifying an abusive refusal to deal.[1037]

(717) Contrary to Google's argument, it is evident from the judgments of the Court of Justice and the General Court in *Google Shopping* that the *Bronner* criteria do not apply to abusive conduct in the form of favouring.[1038] As clarified by the Court of Justice, the *Bronner* criteria apply to the specific circumstances of that case, which consisted in a refusal by a dominant undertaking to give a competitor access to infrastructure that it had developed for the needs of its own business, to the exclusion of any other conduct.[1039] Conversely, when the conduct at stake consists of unfair or discriminatory conditions of access to an infrastructure, the *Bronner* criteria do not apply.[1040] In this respect, the Buy-side conduct does not consist of a refusal by Google to grant access to competitors to its infrastructure, but of favouring in the form of a difference in treatment by Google's ad buying tools between Google's own product AdX and the products of its competitors.

(718) There is thus no need for the Commission to have considered a hypothetical alternative test, with cumulative criteria, that would be "akin" to the *Bronner* criteria.

(719) Second, Google argues that the Commission conflates dominance and abuse[1041] and fails to acknowledge that leveraging is only abusive if it departs from competition on the merits, hence misapplying the second circumstance in concluding that Google unlawfully leveraged its dominance. In particular, Google argues that in order to show whether its conduct departed from competition on the merits, the Commission should have determined whether any difference in treatment was based on objective criteria. Google argues that such different treatment cannot be considered discriminatory unless it appears to be arbitrary or unless it has no rationale other than to exclude rivals. Google further maintains that the Commission is required to show intention to foreclose, not simply intention to treat third parties less favourably.[1042]

(720) In the first place, the Commission has not conflated dominance and abuse in reaching its conclusions. Instead, the Commission has first identified a dominant position held by Google on the EEA market for programmatic ad buying tools for the open web (section 7.3 of this Decision), and then identified three distinct practices (collectively, the Buy-side Conduct) by means of which Google has leveraged this dominance into the market for SSPs, in particular by treating its own SSP AdX more favourably than any other SSP. In so doing, the Commission relied on circumstances specific to the markets and conduct at hand. In particular, the Commission has found that Google's competitors are unable to replicate the Buy-side Conduct without the resources or means inherent to Google's dominant position, and has identified additional relevant circumstances specific to this case. It is on this basis that the

1037 […].

1038 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 240; upheld by the ECJ on appeal in Case C-48/22 P, EU:C:2024:726, paragraph 113.

1039 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 90.

1040 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraphs 110 to 113.

1041 […].

1042 […].

Commission has found that the Buy-side Conduct departs from competition on the merits.

(721) In the second place, in doing so, the Commission has considered whether there was a valid justification for any of the favouring practices, including those put forward by Google, and has concluded that there was none. In all instances, the favouring of AdX was based not on objective criteria applied to all SSPs in the same way, but on an intention to leverage the dominance of Google's ad buying tools to give a competitive advantage to AdX. In light of these elements, and in view of the circumstances specific to this case, the Commission has concluded that the Buy-side Conduct departs from competition on the merits. There is no support in the case law for Google's proposition that the Commission must additionally show that the different treatment appears to be arbitrary or has no rationale other than to exclude rivals.

(722) In the third place, it follows from established case-law that the Commission is not required to show intent to exclude to establish an abuse of dominance.[1043] However, evidence of intent may nevertheless be relevant for the purposes of the competitive assessment, as it constitutes a factor that may be taken into account in order to determine that a dominant position has been abused.[1044] In this case, the Commission has shown that Google implemented the Buy-side Conduct with the intention to provide AdX with a competitive advantage compared to rival SSPs. This intent is not necessary to establish a departure from competition on the merits but is a relevant circumstance to be taken into account in that assessment.

(723) Third, Google argues that the Commission errs in considering that the Buy-side Conduct went against the interests of Google Ads and DV360 as well as advertisers and media agencies. Google argues that such a finding is tantamount to characterising this conduct as irrational and maintains that such a conclusion is only appropriate when the conduct is arbitrary or lacks any economic interest other than foreclosing competitors. Beyond these circumstances, there is no support in the case law for the Commission's approach, according to Google. Google further claims that the Commission's approach treats as illegal any departure from what the Commission considers with hindsight to be the optimal commercial strategy.[1045]

(724) In the first place, in reaching its conclusion that the Buy-side Conduct went against the interests of Google's ad buying tools as well as advertisers and media agencies (section 8.3.4.1), the Commission has relied not on its own *ex post* judgment, but principally on the evidence in the file, […].

(725) In the second place, the fact that an abusive conduct may have been found to be arbitrary or lacking any rationale other than to exclude rivals in other cases, with

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1043 As the concept of abuse is objective, it is not necessary to show that an undertaking had the intent to impair effective competition, see Case C-549/10 P *Tomra and Others v Commission*, EU:C:2012:221, paragraph 21; Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraphs 60-62, and the case law cited therein; Case C-680/20 *Unilever Italia Mkt. Operations*, EU:C:2023:33, paragraph 45; Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraphs 254-257; Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 359.

1044 Case C-307/18 *Generics (UK) and Others*, EU:C:2020:52, paragraph 162 and the case-law cited therein; Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 63; Case C-680/20 *Unilever Italia Mkt. Operations*, EU:C:2023:33, paragraph 45; Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 359; Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 254.

1045 […].

very different factual circumstances from those found in the present case, does not in any way imply that those circumstances constitute a legal test that the Commission must meet in order to find the existence of an abuse.[1046]

(726) Fourth, Google argues that the second circumstance specific to this case (that Google Ads and DV360 demand is important for rival SSPs and cannot be effectively replaced) is flawed, because it relates to the effects of the conduct and not its merits. Google maintains that legal certainty is undermined if dominant firms cannot assess the merits of their conduct in and of themselves, without reference to their effects.[1047]

(727) In the first place, the Commission's approach in the present case is fully consistent with the approach taken by the General Court in the *Google Shopping* decision as upheld by the Court of Justice. In that case, the importance of Google traffic from its general search pages and the nature of that traffic as being not effectively replaceable were treated by the Union Courts as relevant circumstances capable of characterising the existence of practices falling outside the scope of competition on the merits.[1048]

(728) In upholding this finding, the Court of Justice noted that *"those circumstances do not relate solely to the effects of the practices at issue or to the elements merely surrounding those practices, but are […] capable of characterising the existence of practices falling outside the scope of competition on the merits"*.[1049] Accordingly, such circumstances may be relevant both for the assessment of whether a certain conduct departs from competition on the merits and of whether it is capable of producing exclusionary effects. The Court of Justice also noted that "the relevant factual circumstances include not only those that concern the conduct itself, but also those that concern the market or markets in question or the functioning of competition on that or those market(s). Thus, circumstances relating to the context in which the conduct of the dominant undertaking is implemented, such as the characteristics of the sector concerned, must be regarded as relevant."[1050] Therefore, Google's claim that legal certainty is undermined unless a dominant company is able to judge whether its conduct falls outside of competition on the merits without any reference to such factual circumstances, cannot stand.

(729) Fifth, Google argues that, following the *Google Shopping* case, the Commission should have investigated whether the conduct could have influenced advertiser behaviour.[1051]

(730) The criterion of user behaviour was recognised as an important circumstance relevant to the assessment of the conduct at issue in *Google Shopping* because the effects of the conduct depended to a significant extent on user behaviour and, more precisely, on the impact Google's presentation of comparison-shopping search results would have on user behaviour. The occurrence of traffic on a particular website depended

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1046 The Court of Justice has rejected this argument in its judgment of 10 September 2024 in *Google and Alphabet v Commission (Google Shopping)*, Case C-48/22 P, EU:C:2024:726, paragraphs 182-187.

1047 […].

1048 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraphs 159 and 161.

1049 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 170, and paragraphs 171-172.

1050 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 168.

1051 […].

on a user taking a specific action, i.e. clicking on a link on a search results page.[1052] It was therefore appropriate, in that case, to assess how users would react to Google's conduct.

(731) This is clearly distinguishable from the present case, in which the conduct of Google directly favours AdX and does not depend on the actions of any other entity, be it end users, advertisers or another third-party. The Buy-side Conduct consists of Google's ad buying tools bidding in ways that favour AdX compared to competitors, without there being a need for any behaviour by advertisers to click on a link or act on the favouring in any manner. User behaviour is therefore not a relevant circumstance specific to this case and hence required no assessment. Google's argument that the Commission should have investigated how advertisers reacted or would react to the conduct is unfounded, not least because it presupposes that advertisers would have known the specifics of the three practices, while the evidence on the file shows that Google did not disclose these.[1053] By contrast, in *Google Shopping* the circumstance found to affect user behaviour was the display of search results on a user's screen, which was visible to all.

8.3.1. Introduction to the buy side of Google adtech stack

(732) This section introduces the evolution of the adtech industry on the buy-side and of the Google services active therein. The features and practices introduced in this section are described in more detail in subsequent sections.

(733) Historically, advertisers bought offline ad inventory, sometimes with the help of media agencies, in direct negotiations with publishers. With the rise of the internet and the growth of digital display advertising, an ecosystem of intermediaries arose on the buy-side as well as the sell-side.

(734) Ad networks developed to serve as brokers between groups of advertisers and groups of publishers. They helped publishers sell available ad inventory that could not be sold through direct deals, and helped advertisers scale their digital campaigns across many different websites without having to conclude deals with each publisher directly. Ad networks would typically aggregate unsold inventory of publishers and offer it to advertisers as a consolidated pool of impressions at lower prices than direct deals.

(735) As the online advertising industry became increasingly automated and moved from such aggregation of inventory towards RTB for each available ad impression, these early ad networks were increasingly replaced by SSPs and/or ad exchanges on the publisher-facing (sell-)side, and DSPs on the advertiser-facing (buy-)side. Ad networks have not disappeared, however, and continue to service advertisers, including sometimes by connecting with SSPs. Thus, both DSPs and ad networks offer advertisers the ability to participate in auctions for ad impressions on a per-impression basis via RTB.

(736) Programmatic ad buying tools for the open web, including both ad networks and DSPs, receive bid requests from SSPs to place ads on inventory on webpages and

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[1052] Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 160.

[1053] See, for instance, recitals (826) and (1106), (1112) below. Moreover, Google informed the Commission that no announcement was made in relation to the expansion of AwBid in 2018. […]. Therefore, third parties are unlikely to have been aware of important aspects of the abusive conduct related to AwBid, such as the much higher take rates Google used when bidding on third-party SSPs.

apps visited by users. These tools place bids on ad inventory based on the campaign objectives of their advertiser or media agency clients and use bidding algorithms to determine which ad to use when bidding for an impression and at what price, depending on the context in which the ad would appear and any available information about the user. Google's suite of products on the buy-side of open web display advertising notably includes two ad buying tools: (i) Google Ads and (ii) DV360.[1054]

(737) Google Ads is a buy-side tool which was initially considered a pure ad network. Through Google Ads, advertisers can access ad inventory both on Google's O&O properties, including Google search results pages, and on inventory of third-party publishers. Outside of search advertising, the collection of inventory (including the relevant O&O properties) to which Google Ads gives advertisers access is known by the marketing name of Google Display Network (or GDN).[1055] This includes Google's O&O properties such as YouTube and Gmail, as well as "*a group of more than 2 million websites, videos, and apps where your ads can appear*" on the open web.

(738) […].[1056] […].[1057] […].[1058] Via the AwBid programme, as explained in detail below, Google Ads began bidding on third-party SSPs in June 2015 for one specific targeting type known as remarketing, and expanded to other targeting types from November 2018.

(739) Although Google Ads offers varied campaign types and sophisticated targeting capabilities,[1059] its interface and functionality are designed to be simpler and easier to use than other buy-side tools, such as DV360, that primarily service large advertisers and media agencies. Accordingly, although large advertisers and media agencies do use Google Ads for display advertising in many instances, Google Ads occupies a crucial position in open display advertising in that it attracts a vast number of small and medium-sized advertisers which may not otherwise have the resources to advertise effectively on the open web.

(740) […][1060] […]. DV360 and Google Ads are the only buy-side tools that advertisers and media agencies can use to run campaigns on YouTube. Unlike Google Ads, however, DV360 plays no role in search advertising.

(741) As explained in section 5.4.5.3, the Commission's market investigation has shown that the distinction between the functionalities offered by Google Ads and DV360 have become somewhat blurred. Many respondents submitted that currently Google Ads combines many of the features associated with both DSPs and ad networks and that both tools can be used by many market participants almost interchangeably.

1054 Google offers additional tools to advertisers. This includes Campaign Manager, the leading advertiser ad server (see recital (142)), and […] (see recital (438)), which enables advertisers to benefit from Google's own audience data but only via Google's buying tools. These additional tools are not buying tools and are not directly concerned by the conduct described in this Decision as abusive, but they serve to increase the attractiveness of Google's offering on the buy-side.

1055 […].

1056 For the sake of simplicity, this Decision will refer to Google Ads even for the period in which it was known as AdWords.

1057 Commission decision of 11 March 2008 in case M.4731 – Google/DoubleClick.

1058 […].

1059 See […] for a list of campaign and targeting types offered by Google Ads.

1060 See https://allthingsd.com/20100602/exclusive-google-buys-invite-media/, downloaded on 11 April 2023 […].

8.3.2. Google Ads and DV360 have been favouring AdX by engaging in the Buy-side Conduct

(742) The Commission reaches the conclusion that Google Ads and DV360 have been favouring AdX by the following series of practices:

(1) channelling Google Ads demand preferentially through AdX […] until the date of this Decision (section 8.3.2.1),

(2) inflating the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself from […] to September 2019 (section 8.3.2.2), and

(3) placing lower bids by DV360 on rival SSPs running first price auctions and modified second price auctions from July 2017 to September 2019 with the aims of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX ("project Poirot") (section 8.3.2.3).

8.3.2.1. Google has been channelling Google Ads demand preferentially through AdX

(743) The Commission reaches the conclusion that Google has been channelling Google Ads demand preferentially through AdX […] until the date of this Decision.

(744) In a first period, […] until June 2015, AdX was the only SSP on which Google Ads was placing bids (section 8.3.2.1.1). In a second period, from June 2015 to October 2018, Google Ads started placing bids also on rival SSPs, but only for a single type of user targeting, which represented a small fraction of Google Ads' total bids and impressions on SSPs (section 8.3.2.1.2), leaving the vast majority of bids placed on SSPs still only on AdX. In a third period, from October 2018 until the date of this Decision, Google Ads progressively started to place bids on rival SSPs for additional targeting types, although not all of them. However, Google Ads continued to buy almost all of its impressions via AdX (section 8.3.2.1.3).

8.3.2.1.1. September 2009 to June 2015: Google Ads bids on no SSPs other than AdX

(745) As explained in section 8.3.1, Google Ads was launched in October 2000, under the brand name AdWords, to enable advertisers to place ads on Google Search results pages. It started to offer display advertising services when Google's AdSense tool was launched in June 2003 and then, following the acquisitions of DoubleClick (2009) and AdMob (2010), it expanded its display ad services to websites and apps using AdX.[1061]

(746) From AdX's launch in September 2009 until June 2015, Google Ads placed bids on no SSP other than AdX. This is confirmed by Google's response to the Commission's RFI.[1062]

(747) Google […].

(748) This project, known as AdWords Bidder or "AwBid," whereby Google Ads would begin placing bids on third-party SSPs that competed with AdX in order to provide its advertisers with additional inventory, was intended to cover multiple ad 'exchanges' (SSPs). A document from January 2011 entitled: […] According to that document, […].[1063]

1061 […].
1062 […].
1063 […].

(749) Despite that progress, […]. Employees observed that […][1064] A takeaway of the analysis was that […][1065][1066]

(750) In an […].[1067]

(751) On 13 June 2011, Google announced that it had acquired AdMeld, which at the time operated: "*one of the largest SSPs in the display advertising industry*" according to the DOJ and, as noted above, would have otherwise likely been one of the first SSPs to integrate with AwBid.[1068] […].[1069]

(752) Also on 15 June 2011, however, in an […], employees identified certain issues as causing […]. Later in the document, AwBid is termed a […][1070] Notes from a […] similarly highlight that […][1071]

(753) By the end of June 2011, Google […].[1072]

(754) The decision was communicated among relevant Google employees by email on 28 June 2011, […].[1073]

(755) […].[1074] [1075]

(756) At the next meeting of the AwBid commercialization team on 6 July 2011, it was confirmed that Google had decided to […].[1076]

(757) In light of […]. Instead, Google Ads continued to bid exclusively on AdX, totally excluding all rival SSPs from Google Ads demand until 2015, while also still placing ads via Google AdMob and AdSense, without the possibility of intermediation by any third-party SSP. […].

8.3.2.1.2. June 2015-October 2018: Google Ads places bids on other SSPs besides AdX, but only for remarketing campaigns

(758) […].[10771078]

(759) Yet, some Google employees were concerned about the implications that even a remarketing-only launch of AwBid, which only concerned a single targeting type, would have on the sell-side business (AdX). […].[1079]

(760) […].[1080]

(761) […]. According to this 2016 document, […]. The primary concern of one employee was […].[1081]

1064 […].
1065 […].
1066 […].
1067 […].
1068 Statement of the Department of Justice's Antitrust Division on Its Decision to Close Its Investigation of Google Inc.'s Acquisition of Admeld Inc., 2 December 2011.
1069 […].
1070 […].
1071 […].
1072 […].
1073 […].
1074 […].
1075 […].
1076 […].
1077 For a definition of remarketing, see footnote 500.
1078 […].
1079 […].
1080 […]. See also documents cited in recitals (851), (853) and (860) below.

(762) Ultimately, […].[1082]

(763) After a process of beta testing, experimentation and negotiations with SSPs, Google Ads launched a pilot project in January 2015, and then launched AwBid to start bidding on third-party SSPs for remarketing in June 2015,[1083] with no public announcement around the launch. Google publicly announced the introduction of (this limited version of) AwBid only months later, via a blog post dated 24 May 2016 and at the Google Performance Summit, an annual launch event for Google Ads that was also held in May 2016.[1084]

(764) […].

(765) In […], a Google employee states: […].[1085] […].[1086]

(766) Google perceived that it was in its interest to allow Google Ads to bid on third-party exchanges, in a limited way and only in relation to remarketing, based on certain factors that distinguished remarketing from other types of targeting and in the recognition that the risk to AdX was minimised if only remarketing was concerned. […][1087] […].

(767) […].[1088] [1089]

(768) […].[1090]

(769) Hence, from the launch of AwBid in mid-2015, the vast majority of ad spend handled by Google Ads would still remain accessible only to AdX and other Google sell-side tools such as AdMob (for app inventory) or AdSense for Content (for smaller publishers), but not to any rival SSP. This was a key selling point of the proposal within Google's display ads business in order to overcome […].

8.3.2.1.3. October 2018-Present: Google Ads extends the categories of ad campaigns for which it places bids on rival SSPs, but continues to purchase almost all of its impressions from AdX

(770) Following the launch of AwBid for remarketing only, a further proposal was made within Google to expand AwBid to other targeting types in August 2016. Design and experimentation work started in Q4 of 2016, and a review of the selected targeting types was made in August 2018. Thereafter, the launch of AwBid for non-remarketing demand took place initially in October 2018, involving *inter alia* the targeting types known as Affinity segments, InMarket, and Topic.[1091]

1081 […].
1082 […].
1083 […].
1084 […].
1085 […].
1086 […].
1087 […] provided reasons it limited AwBid to remarketing in its reply to Q31 of the Commission's RFI to […] of July 2021 […]. Targeting is more efficient on remarketing because it depends on matching a user to a remarketing list, a relatively quicker process compared to other targeting types. […] reply also states that for remarketing, it is important to increase the ability to reach users at the right time to improve conversion volume. Hence, bidding on third-party SSPs helps […] advertisers reconnect with the user quicker by extending reach across more sites and apps.
1088 […].
1089 […].
1090 […].
1091 […].

(771) […][10921093]

(772) In view of the above, even after the expansion of AwBid in October 2018, the single largest targeting category (keyword), representing more than […] of Google Ads' display revenue was kept out of AwBid for more than 15 additional months, until February 2020.

(773) At present, some campaign and targeting types offered by Google Ads remain ineligible for AwBid.[1094] […].[1095]

(774) Moreover, within the campaign types that are eligible for AwBid, there are still limitations in place in respect of the targeting types on which Google Ads can bid on third-party SSPs. In particular, the targeting types known as Demographics, Detailed Demographics, Life events and Display expansion for search[1096] remain ineligible for AwBid.

(775) In any event, regardless of the amount of Google Ads' demand which is eligible for AwBid, Google Ads continues to engage in an intentional strategy of favouring AdX, which leads to Google Ads effectively buying almost all of its impressions from AdX as opposed to rival SSPs.

(776) […], in 2017, when the vast majority of Google Ads demand was not yet available on AwBid, Google Ads media spend on all third-party SSPs combined […] of the media spend that flowed through AdX via Google Ads […].[1097] In 2022, despite the expansion of AwBid in 2018 to significant new categories of Google Ads demand, spend on third-party SSPs […] of the amount of media spend that flowed from Google Ads through AdX […].[1098]

(777) Regarding win-rates, an internal Google estimate […].[1099] More recent data concerning an approximately one-month period in […] submitted to the Commission by Google[1100] confirm that Google Ads […]. In the EEA[1101] during the period concerned by the data provided, Google Ads placed […] of all its bids for display ads on third-party SSPs or other non-Google intermediaries but purchased only […] of its impressions through them. A number of third-party SSPs receive substantial amounts of bids from Google Ads, but these bids rarely convert to transactions. […].[1102] Therefore, based on the sample submitted by Google, Google Ads still purchases ad inventory almost exclusively on AdX among SSPs.

(778) Google provided additional data to the Commission[1103] indicating that impressions bought from third party SSPs via AwBid accounted for an average of only […] of

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1092 […].

1093 […].

1094 […].

1095 […]. The period concerned by the data (6 August to 3 September 2021) predates the launch of Performance Max in November of that year.

1096 Display expansion for search is a feature for search campaigns whereby advertisers can extend the campaign into display ads. It is distinct from display campaigns.

1097 […].

1098 […].

1099 […].

1100 Google was requested to provide the relevant data from the period from 2010 to 2020. Google did not provide any data from that timespan, instead providing data only for the period from […], with the exception of 19 August, which it was unable to provide. […].

1101 […].

1102 […].

1103 […].

impressions bought by Google Ads via an SSP (i.e. via AdX or a third-party SSP via AwBid) in the EEA on an annual basis between 2018 and 2023, and […] in the same period on a global basis (taken as an average of the respective annual percentages). This calculation moreover only includes campaign and targeting types which are eligible for AwBid. In no year since AwBid expanded beyond remarketing has Google Ads bought more than […] by volume of its impressions, in categories eligible for AwBid, via that channel as a percentage of the sum of impressions bought by Google Ads on SSPs (AdX, and third party SSPs via AwBid).

Table 3: […][1104]

(779) At least part of the discrepancy between the performance of Google Ads on AdX compared with its performance on third-party SSPs can be explained by Google's strategy of submitting weaker bids on third-party SSPs by demanding a […][1105] for bids placed on third-party SSPs as compared with the average of the variable take rate used for bids placed on AdX and other Google sell-side tools. The […] demanded by Google Ads on AwBid results in […] to third-party SSPs for a given inventory than the bids Google Ads would submit for equivalent inventory on AdX. This significantly impedes the ability of third-party SSPs to compete profitably with AdX for bids from Google Ads advertisers.

(780) […].[1106] [1107]

(781) […] [1108] [1109]

(782) […] [1110]

(783) […].[1111] [1112] [1113] […].

(784) Google employees were aware that a higher, fixed take rate on AwBid would hamper the ability of Google Ads to win impressions via AwBid, particularly if those impressions were also available via AdX. […][1114]

(785) […].[1115]

8.3.2.2. Google inflated the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself

(786) In addition to channelling Google Ads demand preferentially through AdX, between […] and 2019 Google also inflated the value of the associated impressions channelled through AdX by deliberately second pricing itself on a substantial number

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1104 […].

1105 Take rate corresponds to the revenue share subtracted by the buy-side tool from the bid of an advertiser before being submitted to an SSP auction. It is calculated as the difference between the price paid by the advertiser and the price received by the SSP, in case the bid wins the impression. The SSP also charges a take rate, which in this case corresponds to the difference between the price received from the DSP (or ad network) and the price paid to the publisher, in case the bid wins the impression. The sum of the two take-rates is hereafter referred to as combined take rate.

1106 […].

1107 […].

1108 […].

1109 […].

1110 […].

1111 […].

1112 […].

1113 […].

1114 […].

1115 […].

of AdX auctions. By contrast, Google Ads did not do so in the instances where it was bidding on rival SSPs. This behaviour was adjusted over the years, notably with project Bernanke (see recital (798)).

(787) Until September 2019, AdX was running a second price auction which selected the buy-side tool with the highest bid, but charged the winning bidder (with the highest bid) only the second highest bid (plus one cent) submitted to the auction.

(788) With such an auction system, if a buy-side tool places two or more bids in the SSP auction for the same impression (so called 'double-bidding'), it may end up placing both the first and second highest bid. In such a case, the buy-side tool ends up paying the value of the second bid placed by itself. The ad buying tool in question then pays a higher price than if it had submitted only one bid. In fact, if the buy-side tool would have only placed its highest bid, the clearing price would have been a lower bid submitted by one of another buy-side tools or the price floor. This situation is known as the buy-side tool 'second pricing itself'. This leads to no additional wins for the buy-side tool, as it would have won even if it had only submitted the highest bid. It instead leads to an increase of the price that the winning ad buying tool has to pay on average for the same impressions.

(789) […].[1116] [1117]

(790) […].[1118]

(791) […].[1119]

(792) […].[1120] [1121]

(793) This practice was favourable to Google's sell-side tool, AdX. In fact, by increasing the clearing price of the AdX auction but not of third-party SSPs, Google Ads enabled AdX to offer publishers a higher payment per impression, and therefore increased AdX's attractiveness to publishers as compared to other SSPs.

(794) […][1122] […].*[1123]*

(795) This was particularly relevant given that Google Ads represented a large part of AdX demand. […][1124] [1125]

(796) In […].

(797) […].[1126]

(798) […].[1127] [1128]

(799) […].[1129]

1116 […].

1117 Google confirmed that Google Ads was submitting two bids since AdX inception: […].

1118 […].

1119 […].

1120 Given that in first price-auctions the price is determined by the highest bid, double bidding does not have an effect on the clearing price.

1121 […].

1122 […]

1123 […].

1124 […].

1125 […].

1126 […].

1127 As determined by Google's algorithms.

1128 […].

(800) Project Bernanke in essence modified Google Ads' bidding into AdX by strategically shifting money from less competitive auctions (where Google Ads would be more likely to win the impression via AdX because it submitted the highest valuation) to more competitive auctions (where Google Ads would be less likely to win the auction because other ad buying tools or SSPs might had higher valuations). By strategically inflating its first bid to AdX on competitive auctions (in many cases beyond the true valuation[1130] of the advertiser), Google Ads distorted the allocation of impressions in favour of AdX and to the detriment of other SSPs.

(801) More specifically, under project Bernanke, Google Ads reduced/removed second bid in many auctions where Google Ads would second-price itself (i.e. in non-competitive auctions). At the same time, Google Ads still charged advertisers as if it submitted two bids into AdX (i.e. the price of Google Ads' second bid). This implied that Google Ads earned significant margins on many non-competitive auctions. Google Ads then used this pool of money from non-competitive auctions to strategically place higher bids in the competitive auctions of AdX, frequently exceeding the true valuation of the Google Ads' advertiser. This increased Google Ads' probability of success in those AdX auctions as well as the clearing price of those AdX auctions. AdX then competed with this inflated price from Google Ads against other SSPs in the selection process implemented by the publisher ad server, thereby increasing AdX probability of winning the impression.

(802) Project Bernanke also increased revenues for AdX and for its publishers. According to one internal simulation, project Bernanke […].[1131] Project Bernanke therefore further reinforced AdX advantages against third-party SSPs.

(803) […]. In an email exchange from November 2015 between Google's buy-side and sell-side discussing […] working for the buy-side replied the following in the email thread in order to address […].[1132]

(804) Another internal document shows that, with the application of project Bernanke, […],[1133], […].[1134] This effect may thus have been quite important.

(805) Even after the implementation of project Bernanke, […].[1135] [1136] [1137]

(806) […].[1138] In other words, while Google Ads' advertisers won some additional impressions in the competitive auctions, they did not receive the full benefit of the lower prices Google Ads paid in the non competitive ones.

(807) Indeed, in the non-competitive auctions, advertisers were still charged as if Google Ads' second bid had not been eliminated or reduced. Furthermore, instead of being collected as Google Ads profit or refunded to the advertisers, these Google Ads' additional revenues from the auctions where the second bid was lowered or eliminated […] (see recital (813)). The system was set up in such a way that the impressions purchased from AdX and its publishers would pay the same average fee

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1129 […].
1130 The value advertisers attribute to the impression.
1131 […].
1132 […].
1133 […].
1134 […].
1135 […].
1136 […].
1137 […].
1138 […].

to Google Ads as before project Bernanke[1139]: […].[1140] By inflating bids on "competitive auctions" (by […]), project Bernanke distorted the allocation of impressions in favour of AdX and DFP publishers to the detriment of rival SSPs.

(808) […].[1141]

(809) […].[1142] […].

(810) […][1143]), […].[1144] […].

Figure 16: […]

(811) […].

(812) […].

(813) […].[1145] […].

Figure 17: […]

(814) In 2015, Google launched another iteration of project Bernanke, referred to as Global Bernanke.[1146] While project Bernanke aimed at […].[1147] […].

(815) Google Ads stopped double bidding on AdX when AdX switched to a first price auction system in September 2019.[1148] While Project Bernanke continued to exist in name, it appears that its functioning was substantially modified. This Decision does not address project Bernanke after AdX switched to a first price auction.

8.3.2.3. Google placed lower bids by DV360 on rival SSPs running first price auctions and modified second price auctions with the aims of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX.

(816) In addition to favouring AdX through Google Ads as described in sections 8.3.2.1 and 8.3.2.2, between 2017 and 2019 Google also implemented a bidding adjustment mechanism on its other ad buying tool, DV360, to lower the bids sent to third party SSPs running first price auctions and modified second price auctions, with the aims of hindering the adoption of Header Bidding and shifting DV360 spend towards AdX.

(817) Contrary to Google Ads, DV360 has historically placed a significant number of bids on multiple SSPs, including AdX. Nevertheless, AdX has always represented a substantial share of the impressions purchased by DV360.[1149]

(818) In the period starting in 2016, SSPs moved away from second price auctions to first price auctions. For many SSPs, the transition started between 2016 and 2017. Already in the first quarter of 2018, almost half of the SSPs in the industry completed the switch.[1150] First price auctions then became an industry standard.[1151]

1139 In practice, […], see recital (896).
1140 […].
1141 […].
1142 […].
1143 […].
1144 […].
1145 In fact, until April 2017, by virtue of the First Look and Last Look advantages (see sections 8.4.2.1.2 and 8.4.2.2.2.1 respectively), […].
1146 […].
1147 […].
1148 […].
1149 See Figure 18 below.
1150 On this point, see recital (1303) below.

AdX transitioned to running a fully-fledged first price auction only as of September 2019.

(819) Bidders may adjust their bids depending on whether they are participating in a first price or second price auction. As already explained above under section 8.3.2.2, in a first price auction, the winning bidder pays its own (i.e. highest) bid, whereas, in a second price auction, the winner instead pays only the second-highest bid plus one cent.[1152] In a first price auction, since the price ultimately paid by the winner of the auction is equal to the value of its bid (and not a lower value, as in a second price auction), an advertiser may have an incentive to send bids that are lower than the maximum value it attributes to the impression (the "true valuation"). Practically, an advertiser seeking to contain its costs even at the risk of losing some impressions has an incentive to bid just above what it thinks would be the highest bid of its competitors (which will thus be the second-highest bid). The practice of lowering the bids in first price auctions is also referred to in the industry as '*bid shading'*.[1153] In a second price auction, instead, the advertiser pays the second-highest bid regardless of how much above it originally bid and thus it often bids its true valuation. In some instances, however, second price auctions are modified with certain features. Such modification features may bring the second price auction closer to a first price auction and thus provide also an incentive for buyers to shade their bids.

(820) Two examples of such features are the Reserve Price Optimisation (RPO) and Dynamic Revenue Share (DRS). RPO is a sell-side optimisation feature designed to dynamically calculate the floor price, i.e. the minimum value that a bid must have to win the auction. In instances where the RPO is set based on bid data, this may constitute an incentive for buyers to lower their bids.[1154] DRS is a system that allows an SSP to modulate its fee and consequently the net value of the bids submitted.[1155]

(821) In the Q2 2017,[1156] Google's gTrade team launched project "*Poirot"*, which Google described in an internal presentation as […].[1157]

(822) […].[1158] […].

(823) […]. Under project Poirot, DV360 applied a bid multiplier of 1 to bids it sent to AdX (i.e. the project Poirot optimisation did not change the bid). At the same time, DV360 applied bid multipliers (often significantly) lower than 1 to advertiser bids it sent to third-party SSPs when Google considered these ran a first price auction or a modified second price auction. Project Poirot thus lowered DV360 bids on third-party SSPs that were considered as running non-second price auctions (i.e. first price auctions or modified second price auctions) while keeping those sent to AdX unaltered.

1151 Third-party SSPs running second-price auctions represented a very small percentage of impressions transacted via DV360 in 2022 (see footnote 2000).

1152 Or, if higher, the advertiser pays the price floor. The auction will not clear unless there is at least one bid above the price floor.

1153 See […].

1154 The RPO used by AdX, for instance, was designed to dynamically increase the AdX reserve price using historical bid data.

1155 By lowering the AdX fee, for instance, Google effectively increased the net value of the bids, thus providing buyers with an incentive to submit shaded bids. For more information on how the DRS was system implemented in AdX, see recitals (1309) and following.

1156 […].

1157 […].

1158 […].

(824) DV360 offers advertisers two types of bidding strategies: automated bidding and fixed bidding. Automated bidding uses an optimization algorithm that takes multiple signals into account to dynamically determine the optimal bid price for a given impression for an advertiser. On the other hand, fixed bidding lets advertisers decide a fixed CPM and places the same bid on every impression based on the fixed CPM inputted by the advertiser, regardless of the impression value.

(825) Since its launch, Google applied project Poirot to bids of DV360 advertisers which were using fixed CPM bid strategies.[1159] In fact, […].[1160]

(826) Google applied project Poirot for the entirety of the advertisers' fixed CPM bid campaigns without notifying them of the scope and consequences thereof for their buys on third-party SSP auctions. Indeed, project Poirot was introduced in DV360 via the feature Optimized Fixed CPM bidding (i.e. bid shading), which was set as a default in DV360.[1161] Advertisers would have had to opt-out of it manually but this would mean risking "*negative impact on the performance of all*" of their fixed bidding on DV360 and "*overpaying for inventory*", as the DV360 Help Page warned them (indeed, Google reported internally that […]). Equally, third-party SSPs were not informed of project Poirot applying to them.

(827) As a result of project Poirot's mechanism, Google lowered DV360's bids when bidding on third-party SSPs running first price auctions or what it considered to be a modified second price auction, whilst it ensured that full bids, not lowered, were sent to AdX. As Google internally observed,[1162] […],[1163] […]. More generally, lower bids resulted in lower win rates, lower revenues from the ads when won, and an overall reduced appeal of the affected SSPs vis-à-vis publishers.

(828) There were various modifications to project Poirot over time, which Google's engineers kept making more […]. Indeed, project Poirot, throughout its iterations, lowered DV360's bids on third-party SSPs that it identified as running first price auctions, or modified second price auctions, by […]% to […]% and up to as much as […]%. […][1164]

(829) Throughout its application, the models underlying project Poirot were also […]. The key modifications to project Poirot were: […].[1165]

(830) Although nominally […], project Poirot *de facto* disadvantaged most of AdX's competitors, which were running first-price auctions, or modified second-price auctions considered as such by Google, and largely benefitted AdX, at least until September 2019 when AdX transitioned to running a fully-fledged first price auction. In fact, even where DV360 bids on the same impression on both a rival SSP and AdX, project Poirot decreased significantly the bid submitted on the third-party SSP while leaving unaltered the bid sent to AdX. This was despite AdX having certain

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1159 […].

1160 […].

1161 DV360's webpage on Optimized Fixed CPM Bidding says: "*By default, Display & Video 360 optimizes your fixed CPM bids so that you'll win impressions for the lowest price possible*." It further says that *"Note: Opting out of Optimized Fixed Bidding can have a negative impact on the performance of all your fixed bidding line Items and result in overpaying for inventory*.", available at https://support.google.com/displayvideo/answer/7440660?hl=en, downloaded on 29 March 2023 […].

1162 See below in section 8.3.3.2.3.

1163 For a definition of Header Bidding, please see footnote 153.

1164 […].

1165 […].

features, such as DRS and […], that made it a modified second-price auction.[1166] However, Google established a close cooperation between its sell-side and buy-side teams in charge of AdX and DV360 respectively that allowed them to closely monitor the interaction between their respective tools and adjust the design so as to eliminate the risk that project Poirot would result in shading the bids placed by DV360 on AdX.

(831) Shaded bids are less likely to be ultimately selected by the publisher ad server. According to data submitted by Google, the ratio of the volume of impressions won by DV360 on AdX […].

Figure 18: […][1167]

(832) A number of Google internal documents assess specifically the impact of project Poirot on DV360 demand channelled to AdX as opposed to rival SSPs. As Google itself explains […][1168] According to these documents, […].[1169]

(833) Despite project Poirot technically consisting only of lowering DV360 bids submitted to third-party SSPs, […][1170] Accordingly, project Poirot favoured AdX by channelling most of DV360's demand to AdX at the expense of third-party SSPs.

(834) Google submitted to the Commission that, whilst project Poirot continued to apply to third-party SSPs once AdX also transitioned to a first price auction in September 2019, when project Poirot also started applying to AdX, […].[1171] This Decision does not take a view on the lawfulness of project Poirot in the period following the transition of AdX to a first price auction in September 2019.

8.3.3. When engaging in the Buy-side Conduct, Google uses resources inherent to its dominant position on certain markets, leveraging that dominance into the EEA-wide market for SSPs

(835) In the present section, the Commission reaches the conclusion that:

(1) Google's Buy-side Conduct consists of practices that Google's competitors are unable to adopt because such practices rely on the use of resources or means inherent to the holding of a dominant position (section 8.3.3.1); and

(2) Google leverages the dominance of Google Ads and DV360 to provide a competitive advantage to AdX over rival SSPs (section 8.3.3.2).

8.3.3.1. The Buy-side Conduct consists of practices that Google's competitors are unable to adopt because such practices rely on the use of resources or means inherent to the holding of a dominant position

(836) The Commission finds that, by engaging in the Buy-side Conduct, Google relies on the use of resources or means, which are inherent to its dominant position in the EEA-wide market for programmatic ad buying tools. Accordingly, these practices cannot be replicated (at least to the same extent) by its competitors.

1166 This was well known within Google, as appears from several internal documents. For instance, in an internal email chain from January 2019, Google recognises that: […].

1167 Source: […].

1168 […].

1169 […].

1170 […].

1171 […].

(837) As described in section 8.3.2, the Buy-side Conduct consists in Google Ads and DV360 placing bids in a way that favours AdX compared to rival SSPs. This favourable behaviour concerns the placing of all or more bids on AdX than on rival SSPs and the placing of higher value bids on AdX, by increasing their value as opposed to bids submitted by Google on rival SSPs, or by lowering the bids submitted by Google on rival SSPs. These practices rely on the control of the bidding strategy for the majority of advertiser demand (that is available to Google's ad buying tools), which is a resource inherent to Google's dominance in the relevant market.

(838) Google has been dominant with Google Ads and DV360 on the EEA-wide market for programmatic ad buying tools for the open web since 2014. This market is characterized by high barriers to entry and expansion, notably due to advertisers' preference for single homing and high costs and risks for advertisers to switch to another ad buying tool (see section 7.3). In fact, taken together, Google Ads and DV360 placed […] of the value of winning bids by ad buying tools in the period ranging from 2014 to 2023 (see Table 1).

(839) Google's high share of demand from advertisers constitutes a resource which is inherent to the holding of Google Ads' and DV360's dominance on the EEA-wide market for programmatic ad buying tools for the open web. Google engages in the Buy-side Conduct based on the usage of this resource.

(840) SSPs competing with Google could not replicate the conduct because they lack such resource. First, not all SSPs are vertically integrated as they do not operate a buy-side tool in addition to their SSP, thus they do not have the ability to use an integrated ad buying tool to replicate Google's conduct. Second, […]. Indeed, throughout the relevant period of the Buy-side Conduct, the largest vertically integrated competitor in that market never exceeded [[…]]% of the value of the winning bids by ad buying tools in a single year. In most years, its share was around or below […]%. Most competitors never exceeded […]% of the value of the winning bids (see Table 1). In addition, competitors cannot acquire a market position that is comparable to Google's on that market in the light of the high barriers to entry and expansion. Therefore, even SSPs integrated with an ad buying tool are unable to use their ad buying tool to replicate the scale of Google's Buy-side Conduct.

8.3.3.2. Google leverages the dominance of Google Ads and DV360 to provide a competitive advantage to AdX over rival SSPs

(841) The Commission finds that through the Buy-side Conduct Google leverages the dominance of Google Ads and DV360 to provide a competitive advantage to AdX as compared to other rival SSPs.

(842) The reasons for this finding are set out in the following sections. In section 8.3.3.2.1, the Commission assesses the channelling of Google Ads demand preferentially through AdX. In section 8.3.3.2.2, the Commission assesses the inflation of the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself Finally, in section 8.3.3.2.3, the Commission assesses the placing of lower bids by DV360 on rival SSPs running first price auctions and modified second price auctions via project Poirot, with the aims of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX.

(843) In those subsections, the Commission will demonstrate that through the Buy-side Conduct, Google leveraged the large share of advertiser demand obtained through its dominant position on the relevant market for programmatic ad-buying tools for the

open web in the EEA. In addition, as explained in recital (714) above, the Commission also shows that the Buy-side Conduct was intentionally designed by Google, with at least as one of its objectives, to provide AdX a substantial competitive advantage over rival SSPs in the EEA-wide market for SSPs.

8.3.3.2.1. Channelling Google Ads demand preferentially through AdX

(844) As detailed above in section 8.3.2.1, […], through the date of this Decision. […] until June 2015, AdX was the only SSP on which Google Ads was placing bids (section 8.3.2.1.1). In a second period, from June 2015 to October 2018, Google Ads started placing bids also on rival SSPs, but only for a single type of audience targeting (section 8.3.2.1.2), leaving the vast majority of such bids still only on AdX. In a third period, from October 2018 until the date of this Decision, Google Ads progressively started to place bids on rival SSPs for additional types of targeting and campaigns, although not all of them. However, Google Ads continued to buy almost all of its impressions via AdX (section 8.3.2.1.3).

(845) By engaging in this favouring practice, Google has leveraged the dominance of Google Ads to provide an objective competitive advantage to AdX over rival SSPs. In the first and second periods, Google ensured this competitive advantage by reserving first all, and then the vast majority, of Google Ads' important demand[1172] for use by AdX and no other SSP, thus making it more difficult for rival SSPs to win impressions in selection processes organised by publisher ad servers. In the third period, Google has continued to provide AdX with a competitive advantage even as it has progressively increased the proportion of Google Ads demand that is eligible to bid on third-party SSPs. It has achieved this by […], making rival SSPs unable to compete effectively for impressions with bids placed by Google Ads advertisers. This effectively still reserves the vast majority of Google Ads demand for AdX to the exclusion of third-party SSPs. As a result, Google Ads continues to win very few impressions via rival SSPs, despite submitting a significant amount of bids on third-party SSPs, and it continues to be more difficult for rival SSPs to win an auction against AdX.[1173]

(846) Although the precise means by which Google Ads has favoured AdX throughout the aforementioned period have undergone changes, Google has thus consistently favoured AdX by giving it preferential access to Google Ads' demand and resisting any initiative that risked significantly undoing or weakening the advantage conferred on AdX, notably by […].

(847) The evidence on the Commission' file indicates that Google's favouring of AdX was intentional as a means of leveraging Google Ads' dominance by providing a competitive advantage to AdX. Google internal documents show that […]. A working document of 2012 summarises […].[1174]

(848) This […], as detailed above in section 8.3.2.1. […]. As explained further below in section 8.3.4.1.1, […].

1172 See section 7.3.3 for an explanation of why Google's ad buying tools are of central importance for advertisers; and Section 7.4.3, and in particular paragraphs (630) and (631), for an explanation of how access to Google Ads and DV360 demand via AdX is one reason why DFP is of central importance to publishers.

1173 See recital (777).

1174 […].

(849) Numerous contemporaneous documents throughout the period since mid-2011 confirm this ongoing tension within Google between the interests of the buy-side (Google Ads and DV360) and the sell-side (AdX). As explained above in recitals (750) to (755), […]. A note dating from February 2011 […].[11751176]

(850) […].[11771178] […].

(851) […].[1179]

(852) An email chain from November 2015, a few months after AwBid was launched for remarketing, […].[1180]

(853) A […] replied a few hours later: […] A different […] addressed the […].[1181]

(854) This exchange shows that […].[1182]

(855) Having managed to preserve the aforementioned […] given by Google Ads to AdX even after the introduction of the AwBid programme for remarketing in 2015, […].

(856) An […] titled […] features a slide titled […][1183]

(857) In an email exchange from January 2016, […].[1184]

(858) A slide deck from the same period (February 2016), further highlighted how important exclusive bidding from Google Ads' demand had been for AdX's market position: […][1185] [1186]

(859) The privileged access to Google Ads demand was considered important not only to preserve AdX's competitive advantage against rival SSPs, but also for its ability to command a […] revenue share on the sell-side regardless of whether rival SSPs could offer services with a lower revenue share. As one […] put it in an email dated May 2016: […][1187]

(860) In an email chain from April 2016, an […] described the […]. The […] explained the conflicts of interest between Google Ads and AdX as follows: […][1188]

(861) […]. Fixing a […] for Awbid compared to the take rate of Google Ads on AdX was part of the way in which those conflicts of interest were addressed. […].[1189] [1190]

(862) An email from July 2019 between two Google employees characterised the internal negotiations in the preceding years as follows: […].[1191]

1175 […].
1176 […].
1177 […].
1178 […].
1179 […].
1180 […].
1181 […].
1182 […].
1183 […].
1184 […].
1185 […] [emphasis original].
1186 […].
1187 […].
1188 […].
1189 […]. Note that this document predates the expansion of AwBid with a […] fixed take rate on non-remarketing ads, which is significantly higher even than the […] mentioned in the document.
1190 […].
1191 […].

(863) A document dated July 2019 further illustrates how […].[1192]

(864) Indeed, as detailed above in recitals (781) to (783), despite increasingly starting to bid on third-party SSPs, Google continued to intentionally provide AdX a competitive advantage over rival SSPs when setting […]. As a result of this, Google Ads would win an impression with a bid on a third-party SSP only when the relevant auction attracted few, if any, other bidders.

(865) As noted above in recitals (784) and (785), Google employees understood that […].[1193] […].

(866) For example, in an internal document dated October 2013, a Google employee states: […]. This document supports the conclusion that AwBid was deliberately structured in a way that would favour Google's own sell-side tools, including by […] by subtracting the full […] margin taken by Google Ads and AdX on bids submitted to rival third-party SSPs via AwBid.[1194]

(867) Another internal document dated June 2015 and authored by Google's gTrade team, which optimised Google Ads' bidding strategy, presented […]. The document presents options involving a final buy-side take rate of […], stating that doing so means that […].[1195]

(868) The document also discusses the […]. It states that in this scenario there is a […].[1196]

(869) In an internal email dated January 2016, an employee contemplates that, as […].[1197]

(870) A slide in the document […] reproduced below as Figure 19, presents a […].[1198]

Figure 19: […][1199]

(871) Another internal document from the early period in which AwBid only related to remarketing also reveals Google's view on the impact of such strategy on publishers: […].[1200]

(872) Consistent with all of the above, an internal document from August 2020 titled […] observes that Google historically took a […].[1201]

(873) With this conduct that its own employees recognised as severely hindering Google Ads' ability to buy inventory on third-party SSPs, Google leveraged its position controlling the vast pool of Google Ads demand to advantage AdX, by channelling most of its demand through AdX. As shown above in recital (777), in the sample period of data for a one-month period in 2021 provided by Google, Google Ads placed […] of its bids for impressions to EEA users on third-party SSPs, but less than […] of the bids for impressions it won, were won with one of those SSPs. This is in stark contrast with Google Ads' bidding activity on AdX, which accounted for […] of Google Ads' won impressions on only […] of its bids. Third-party SSPs were far less likely (ranging from […] to […]) to win impressions with bids from Google

1192 […].
1193 See footnote 1105.
1194 […].
1195 […]. Recall that from the expansion of AwBid beyond remarketing, the demand-side revenue share (take rate) taken by Google Ads on AwBid was […] on remarketing and […] on other targeting types.
1196 […].
1197 […].
1198 […].
1199 […].
1200 […].
1201 […].

Ads than was AdX, which won more than […] of the impressions on which it submitted a bid from Google Ads.

8.3.3.2.2. Inflating the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself

(874) As detailed above in section 8.3.2.2, […] and 2019, Google inflated the value of the associated impressions channelled through AdX by deliberately second pricing itself on a substantial number of AdX auctions. In contrast, Google Ads either did not send bids to rival SSPs or, when it did, it sent only one, with the result that it could in no circumstances end up second pricing itself on rival SSPs. This behaviour evolved over time. Notably, […], project Bernanke was applied in certain auctions.

(875) This practice was favourable to Google's sell-side tool, AdX. In fact, by increasing the clearing price of the AdX auction (as a result of second pricing itself) and thus giving publishers a higher payment per impression, Google increased AdX's attractiveness to publishers as compared to other SSPs on which, in contrast, Google Ads did not bid at all or, in the limited instances in which it bid on them, did not send two bids. This preferential treatment is not consistent with the incentives of an ad buying tool that is not integrated with an SSP, or that acts taking account of its own interest (and that of its advertising customers), as opposed to those of an SSP. In addition, under project Bernanke, using the rents collected in non-competitive auctions, Google strategically increased the price AdX brought to competitive auctions (by setting a lower and sometimes negative take rate by Google Ads), thus increasing the likelihood of AdX winning these auctions. By engaging in this favouring practice, Google has provided a competitive advantage to AdX over rival SSPs, thus leveraging its dominant position. The available evidence indicates that this was intentional.

(876) […].[1202] Giving more revenue to AdX publishers made AdX more attractive to publishers than other SSPs (it also allowed AdX to obtain more revenues as AdX is remunerated based on a revenue share). A Google internal document quantifies that, […].[1203]

(877) Google thought that, […].[1204]

(878) This is confirmed also by a Google […] in an internal email exchange from November 2014: […].[1205] If bids are higher on AdX than on other SSPs (due to Google Ads submitting second bid), this benefits AdX competitiveness and makes AdX more attractive to publishers.

(879) Similar statements are contained in another Google internal document indicating that: […].[1206]

(880) It was also clear to Google that sending two bids was favouring inventory of publishers sold through AdX as compared to the inventory of publishers sold by other SSPs: […].[1207]

(881) In fact, while Google Ads was taking into account the interest of AdX publishers (and thus of the AdX business) when bidding on AdX, this was the opposite of what

1202 […].
1203 […].
1204 […].
1205 […].
1206 […].
1207 […].

happened when Google Ads was bidding on third-party SSPs (which, as explained above, was done through the AwBid programme), where it did not take account of the publishers' interest. As explained in a Google internal document dated February 2014, which discussed different projects of the buy-side gTrade team: […].[1208]

(882) Another Google internal document explains the differences in the interests of Google Ads regarding sending only one bid to third-party SSPs, while sending two bids to AdX: […].[1209]

(883) Another Google internal email chain puts an even cruder light on the lack of interest of Google Ads for publishers using rival SSPs: Google Ads had […].[1210]

(884) Evidence in the file shows that Google was actively using the increased revenue for publishers, obtained at the expense of Google Ads and its advertisers, in its marketing communication with publishers. A presentation […] from June 2016 indicates that […].[1211]

(885) Further internal documents from Google show that […]. For example, an internal document from February 2014 notes the following: […].[1212]

(886) Another internal document which appears to be from April 2014 further sets out how […].[1213]

(887) An incident spotted by Google engineers shows […]. Indeed, at one point in 2015, […]. In the email chain that follows the discovery, […]. The correspondence also confirms […].[1214]

(888) Later, a Google executive wrote: […].[1215]

(889) Google internal documents also show that, with the launch of project Bernanke, Google Ads continued to provide a competitive advantage to AdX, thus continuing to leverage its dominant position. For example, an internal email exchange from November 2015 makes it clear that […] (see recital (803)).

(890) In the same vein, an internal presentation from August […]. It identifies […].[1216]

(891) And later on in the same document: […].[1217]

(892) The presentation goes on to set out […][12181219]

(893) Another Google internal document indicates that […].*[1220]*

(894) Another Google internal email chain makes it clear that project Bernanke was designed with a primary goal to benefit publishers using AdX as opposed to Google Ads. The document shows that […].[1221]

1208 […].
1209 […].
1210 […].
1211 […].
1212 […].
1213 […].
1214 […].
1215 […].
1216 […].
1217 […].
1218 […].
1219 […].
1220 […].
1221 […].

(895) This document further shows that […], which reinforces the idea that the objective with project Bernanke is to favour AdX publishers. […][1222]

(896) With project Bernanke, […]. According to one internal simulation, […].[1223] An internal presentation for […].[1224] This is also confirmed by other internal documents. For instance, a Google employee involved in the development of project Bernanke […].[1225] Those benefits for AdX resulted from AdX winning more impressions as a result of project Bernanke, to the detriment of rival SSPs.

8.3.3.2.3. Placing lower bids by DV360 on rival SSPs running first price auctions and modified second price auctions with the aims of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX

(897) As explained above in section 8.3.2.3, project Poirot resulted in the lowering of bids by DV360 on rival SSPs, but not on AdX. Google claims that the objective of project Poirot was to […]. As Google explained: […].[1226]

(898) Nevertheless, Google internal documents show that […]. By doing so, Google provided a competitive advantage to AdX over rival SSPs, thus leveraging its dominant position.

(899) As Google noted internally, rival SSPs using Header Bidding were generally running first price auctions: […][1227] and […].[1228]

(900) There was a multitude of reasons why Google disliked the fact that DV360 submitted bids to, and won impressions from, third-party SSPs participating in Header Bidding (see also section 8.4.2.2.1 below).

(901) First, Header Bidding threatened to disintermediate AdX. Google internal documents show that […].[1229]

(902) Second, as is also visible from internal documents, […].[1230]

(903) Third, […]. This was set out in an internal email of March 2018: […].[1231]

(904) Fourth, buying on third-party SSPs (i.e. in Header Bidding) was particularly an issue for DV360, because it had to contractually disclose its margin (fee) to advertisers when it bought outside of AdX (unlike Google Ads whose margin was not transparent): […][1232] The same document explains this further: […].[1233]

(905) For those reasons, already in early November 2016, Google […]. The result, reported on […] by a senior Google engineer […].[12341235]

(906) An internal presentation of March 2017 actually showed that […].[1236]

1222 […].
1223 […].
1224 […].
1225 […].
1226 […].
1227 […].
1228 […].
1229 […].
1230 […].
1231 […].
1232 […].
1233 […].
1234 […].
1235 […].

(907) Moreover, Google internally recognised the […]. In an internal document of 2018, Google recognises that its buy-side strategy to: […].[1237] Given that all media agencies' spend accounted for […]% of DV360's revenues,[1238] […]. Another internal document of June 2018 recognised that […].[1239]

(908) Nonetheless, in an e-mail of November 2016, Google […]. This was to […], a goal which Google labelled euphemistically as […].[1240] This shows that the intention of Google was not, or at least not mainly, to increase the surplus of advertisers but to hinder the adoption of Header Bidding. [1241]

(909) In an email of November 2016, […]. In fact, as all SSPs using Header Bidding deployed a first price auction, this was seen as a proxy for identifying Header Bidding transactions: […].[1242]

(910) Google internal documents show that […] was considered a […] by Google and that project Poirot, also referred to as first price […] was […].[1243]

(911) An internal email of November 2016 articulates that Google should: […]. [1244]

(912) An internal email of March 2017 gives a good illustration of how, in Google's own internal view, […] because of its forthcoming adoption of Header Bidding: […].[1245]

(913) An internal document evaluating potential Header Bidding responses confirmed that […] had been implemented internally: […].[1246]

(914) Another Google internal document confirms project Poirot's […].[1247]

(915) […].[124812491250] […].

(916) Project Poirot's […].[1251]

(917) Another Google internal document similarly confirms: […]. [1252]

(918) Google was aware that project Poirot, as shown in its internal experiment results, […].

(919) As shown in Figure 20, for example, based on the experiment that Google ran, […]

Figure 20: […][1253]

(920) Notably, in the internal document above, when internally reporting on […].

1236 […].
1237 […].
1238 […].
1239 […].
1240 […].
1241 In this context, the term '*surplus*' refers to the difference between the valuation of a given impression by an advertiser and the price actually paid.
1242 […].
1243 […].
1244 […].
1245 […].
1246 […].
1247 […].
1248 […].
1249 […].
1250 […].
1251 […].
1252 […].
1253 […].

(921) In order to increase the revenues from AdX, […].[1254] This further proves that project Poirot was primarily launched to leverage DV360's demand and transfer a part of the revenues that would have resulted from it to AdX.

(922) In an email of February 2019, a Google employee comments on […].[1255]

(923) On the other hand, some of the rival SSPs suffered significantly from project Poirot. Confirming […], another e-mail of November 2018 details […].[1256] [1257] [1258]

(924) Consequently, by the end of 2018, DV360's spend on third-party SSPs […].[1259] [1260] Even more revealing about the purpose of project Poirot is the fact that […].[1261] [1262]

(925) The immediate and long term impact of project Poirot is further clearly visible in an internally shared graph from October 2019 (see Figure 21), […].[1263] and […].[1264] It further quantifies its effect: […].[1265]

Figure 21: […][1266]

(926) Google knew that project Poirot […]. As Google put it: […].[1267] […].[1268] As illustrated in recital (1899), […].

(927) Initially (shortly post-launch), project Poirot had […]. In July 2017, a Google executive wrote: […]. [1269]

(928) However, […]. By 2018, […].[1270] On open auction,[1271] DV360 spend on third-party SSPs reduced to as little as […]% (the remaining […]% of DV360 spend being on AdX), […].[1272]

(929) Further documents illustrate […]. An internal document of Q4 2018 states: […][1273] and: […][1274] Similarly, a document from March 2020 confirms: […].[1275]

(930) Google internally […].[1276] Such results were in line with Google's expectations: […].[1277]

1254 […].
1255 […].
1256 […].
1257 […].
1258 […].
1259 […].
1260 […].
1261 […].
1262 […].
1263 […].
1264 […].
1265 […].
1266 […].
1267 […].
1268 […].
1269 […].
1270 […].
1271 Open auction transactions are auction-based transactions for inventory available to all buyers. Open auction transactions are cleared via Real Time Bidding (RTB) based auctions. […].
1272 […].
1273 […].
1274 […].
1275 […].
1276 […].
1277 […].

(931) The evidence above shows how Google leveraged its dominant position in the ad buying tools market through project Poirot, providing AdX a competitive advantage at the expense of third-party SSPs. […]. A Google internal document explicitly articulates that, […].[1278] Similar considerations were also made with respect to DRS: […].[1279]

(932) Another Google internal document analyses the results of experiments conducted to establish the type of auction run by each SSP. With regard to AdX, the document shows […]. These data led Google to the conclusion that AdX had become […].[1280]

(933) The following internal documents show that […].

(934) The buy-side team responsible for the launch and application of project Poirot, the gTrade team, played a key role in the context of this cooperation, having among its […] that of […], and with particular reference to the […] and […]. The gTrade team […].[1281]

(935) On several occasions, Google's representatives discussed and ran experiments to verify that a certain version of the AdX RPO would not be captured by project Poirot. For instance, […].[1282]

(936) In an email of October 2017, a Google employee proposed to run an experiment to […].[1283]

(937) In an email of June 2018, Google employees […]. This further demonstrates that project Poirot's primary objective was to favour AdX rather than maximising advertisers' surplus.[1284]

(938) In an email of August 2018, Google admitted that, […].[1285]

(939) An internal email chain of July 2018 further shows […] project. Google employees […]. It is particularly notable that the email states that […], considering that Google presents bid shading in project Poirot as being in the interest of maximising the surplus of advertisers.[1286]

(940) Following this concerned email, […].[1287]

(941) Another Google internal document shows the results of the experiments […].[1288] The experiments indicated that this version detected the new AdX RPO launch candidate and that there was […].[1289] […]. Those documents show how the application of project Poirot on AdX could have led to […].[1290]

(942) In some instances, the cooperation in place between Google's buy-side and sell-side teams went so far as to involve the designing of project Poirot and certain features of AdX to eliminate the risk of bid shading. This result has been achieved, for instance,

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1278 […].
1279 […].
1280 […].
1281 […].
1282 […].
1283 […].
1284 […].
1285 […].
1286 […].
1287 […].
1288 […]. On this point, see also recital (829) above.
1289 […].
1290 […].

by exempting DV360 from the application of AdX's DRS algorithm and by coordinating the design of AdX's RPO algorithm and project Poirot, as shown in the following recitals.

(943) Several notes of internal meetings in which the AdX team discusses […] mention the initiatives undertaken to […] project Poirot, including upon input of the gTrade team. […].[1291]

(944) In an internal document detailing […] between April 2017 and June 2018 […], a Google's employee explained that […].[1292]

(945) […].[1293] [1294]

(946) […].[1295]

(947) If with AdX RPO the current bid could be used in future auctions […] the buyer to set the price floor, […].[1296] In an email of April 2015, […] expressed serious concerns from a buy-side perspective on these features of AdX that moved it […] (despite the email referring to […].[1297]

(948) Unlike the approach adopted for AdX's RPO, whose interaction with project Poirot Google managed to keep under control with customised experiments and tweaks in the design of the algorithms where needed, the concerns related to AdX's DRS prompted Google to opt for a more drastic approach. […].[1298]

(949) But in the end, Google decided to cancel the launch of […] on AdX and to replace it with a new launch aimed at exempting only DV360 from the application of the AdX DRS as agreed between DRX and gTrade teams: […].[1299] A Google internal document indicates the launch of the new project […].[1300] This is further confirmed by […].[1301]

(950) In an email of October 2016, a Google employee explains that the reason behind the exemption of DV360 from AdX DRS was that […].[1302]

(951) The above-mentioned evidence shows how AdX had been benefiting from an extensive two-way cooperation with the team in charge of DV360 to ensure that project Poirot never hurt AdX. By contrast, rival SSPs and their advertisers did not benefit from the possibility to test the application of project Poirot's different versions and to adapt their features to avoid bid shading by project Poirot, let alone the setting of *ad hoc* experiments involving the gTrade team.

(952) In fact, they were not even informed of project Poirot's application, often not even of its existence. Originally, when launching project Poirot, […].[1303] However, based on a later internal communications document as well as e-mails […].[1304] [1305]

1291 […].
1292 […].
1293 […].
1294 […].
1295 […].
1296 […].
1297 […].
1298 […].
1299 […].
1300 […].
1301 […].
1302 […].
1303 […].

(953) As explained in recital (923), […]. Despite several requests for clarification as to the reasons for this decrease in revenue derived from DV360, […].[1306]

8.3.4. Relevant circumstances specific to this case capable of characterising the Buy-side Conduct as falling outside the scope of competition on the merits

(954) In the present section, the Commission reaches the conclusion that there are relevant circumstances specific to this case capable of characterising the Buy-side Conduct as falling outside the scope of competition on the merits, namely that:

(1) By engaging in the Buy-side Conduct, Google acts against the interest of Google Ads and DV360 as well as its customers, advertisers and media agencies (section 8.3.4.1); and

(2) Google Ads and DV360 demand is important for rival SSPs and cannot be effectively replaced (section 8.3.4.2).

8.3.4.1. By engaging in the Buy-side Conduct, Google acts against the interest of Google Ads and DV360 as well as advertisers and media agencies

(955) The Commission finds that, by engaging in the Buy-side Conduct, Google acts against the interest of Google Ads and DV360 as well as their customers, the advertisers and media agencies.

(956) The basis for the Commission's finding is set out in the following subsections. In section 8.3.4.1.1, the Commission assesses how the channelling of Google Ads demand preferentially through AdX was against the interest of Google Ads and its customers. In section 8.3.4.1.2**,** the Commission assesses the same in relation to the inflation of the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself. Finally, in section 8.3.4.1.3, the Commission assesses how the placing of lower bids by AdX on rival SSPs running first price auctions via project Poirot was against the interest of DV360 and its customers.

8.3.4.1.1. Channelling Google Ads demand preferentially through AdX

(957) In channelling Google Ads demand preferentially through AdX, Google induced Google Ads to act against its own interest as a buy-side tool in order to confer a significant competitive advantage on AdX.

(958) Channelling Google Ads' demand only, or almost only, through AdX, was not in the commercial interest of Google Ads. Indeed, under normal circumstances, Google Ads should not have the interest of limiting its bids to only one SSP, AdX. Instead, by placing bids on several SSPs, including rivals of AdX, Google Ads would have been able to reach even more ad inventory. It would therefore be in Google Ads' individual commercial and business interest to reach out substantially to more than one SSP and not just AdX.

(959) The commercial interest of Google Ads to bid on multiple SSPs would also align with the interests of its advertisers, who would thereby have access to more inventory than what is offered by a single SSP. Consequently, channelling Google Ads demand preferentially through AdX did not only induce Google Ads to act

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1304 […].

1305 […].

1306 […]. On the effects of project Poirot on […]., see also recitals (828), (923), and (952) above and footnote 1258.

against its own interests, but also against the interests of its customers, the advertisers.

(960) As detailed above in recitals (750) to (755), (847) to (863), (867) and (871), through every iteration of AwBid, […].

(961) Internal documents show that […]. This is at least in part because this would have been in the interest of its advertiser customers, implying that such a change would attract even more business from advertisers.

(962) The Executive Summary of an internal document […].[1307]

(963) This view is affirmed in additional documents pre-dating the mid-2011 decision to hold off on the initial proposal to enable Google Ads to bid on third-party SSPs. […].[1308]

(964) […].[1309]

(965) Additionally, a compilation of notes from meetings of […] includes the following quotes, […]. [1310]

(966) Internal documents show, in addition, that […].[1311] [1312]

(967) Another email chain from April 2016 spells out […].[1313]

(968) Furthermore, there is evidence indicating that Google […]. In the internal document authored by the gTrade team and cited above in recitals (867) and (868), […][1314] This option is contrasted with options that involve higher fixed take rates to be used on AwBid, which are said to result in […].

(969) A Google document from September 2020 arguing for […] outlines a view that […] in certain areas including by enabling video and other inventory still excluded. The document also acknowledges that the effect of the […].[1315] [1316]

(970) The evidence on the Commission's file confirms that normally it is not in an ad buying tool's commercial interest to buy all of its impressions from only one SSP.

(971) The majority of the ad buying tools that replied to the Commission's RFI stated that in principle, […].[1317] […], replied that it would only bid on a single SSP in connection with specific inventories in relation to which it knows that that SSP has exclusive access.[1318] DSPs such as those offered by […] and […], who, like Google, are vertically integrated with SSP services, likewise do not limit their bidding to one SSP.[1319] […].[1320] […].[1321] […] replied that it is SSP-agnostic, never buying on only

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1307 […].
1308 […].
1309 […].
1310 […].
1311 […].
1312 […]..
1313 […].
1314 […].
1315 […].
1316 See also […] reply to Q63 of the Commission's RFI to […].. Google has not informed the Commission of any subsequent change to the AwBid take rates.
1317 Replies to Q6 of the Commission's RFI to DSPs of October 2022. […].
1318 […].
1319 […].
1320 […].
1321 […].

one SSP for open market buying.[1322] […] noted that it works with over 20 SSPs globally.[1323] […] mentioned that it currently works with multiple SSPs and ad exchanges, and does not have any record of ever having an arrangement to bid exclusively with a single SSP.[1324]

(972) Similarly, […] advertisers and media agencies that replied to the Commission's RFI confirmed that it is important for their choice of DSP that it connects with multiple SSPs when buying programmatic display ad inventory.[1325] […] noted that it is: […].[1326] […] confirmed that is important because in general: […].[1327] […] stated the same and added that, for companies that are vertically integrated and offer both DSP and SSP services, it is still important that the DSP connects with multiple SSPs, hence offering sufficient diversity.[1328]

8.3.4.1.2. Inflating the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself

(973) Google Ads' practice of deliberately second pricing itself on a substantial number of AdX impressions, designed for the benefit of AdX, was sacrificing the interests of Google Ads as perceived by Google Ads own executives. In addition, advertisers were worse off compared to some of the scenarios preferred by Google Ads' executives. […].

(974) Indeed, when Google Ads second prices itself, it sets a price to be paid to AdX by Google Ads at a level that is higher than the price it would have had to pay if Google Ads had only sent its highest bid (unless Google Ads' second bid is lower than the highest bid of other ad buying tools). […].[1329] A Google internal document quantifies that, […].[1330] This is confirmed by Google internal documents in e.g. recitals (987) and (990), which indicate that Google Ads' margin would […] if Google Ads submitted just one bid to AdX.

(975) Another Google document confirms […].*[1331]*

(976) […].[1332]

(977) Even with project Bernanke, […].[1333]

(978) In the same vein, another Google internal email indicates that […][1334] (by overbidding on the AdX auctions where Google Ads was not second pricing itself via project Bernanke).

(979) […].[1335]

(980) […].[1336] [1337]

1322 […].
1323 […].
1324 […].
1325 Replies to Q20 of the Commission's RFI to advertisers and agencies of November 2022.
1326 […].
1327 […].
1328 […].
1329 Google Ads remunerates itself on the difference between the amount paid to Google Ads by advertisers and the amount that Google Ads in turn pays to AdX.
1330 […].
1331 […].
1332 […].
1333 […].
1334 […].
1335 […].

(981) A Google internal document explains […]. The document also explains the operation of project Bernanke. It then goes on to explain […].[1338] [1339]

(982) In fact, in the context of a discussion of […], Google clearly indicates that […].[1340] This is also confirmed by an internal email exchange concerning […] from March 2014: […].[1341]

(983) Another internal document which appears to be from April 2014 further explains […].[1342]

(984) A Google internal email shows that […].[1343] [1344]

(985) The […] is perhaps best summarized in an internal email from October 2013: […].[1345] [1346]

(986) In fact, a Google Ads executive noted in June 2014 in an internal email exchange with the Google sell-side that […].[1347]

(987) Google internal documents also show that, even after the launch of project Bernanke, which reduced to a certain degree the share of AdX auctions on which Google Ads was deliberately second pricing itself, […].[1348]

(988) As from the launch of project Bernanke, […].[13491350]

(989) A Google internal email explains that […].[1351]

(990) Another Google internal document indicates […].[1352]

(991) The business practices applied by competitors also show a very different pattern from that of Google Ads, which confirms that second pricing itself is not in the interest of a buy-side tool, nor of its customers, the advertisers.

(992) First, Google internal documents make it clear that […].[1353] The same is stated in another internal document from May 2013: […].[1354] Other Google internal documents contain similar statements:

(1) A Google presentation indicating that: […].[1355]

(2) A Google internal email in which a Google employee states: […].[1356]

1336 […].
1337 […].
1338 […].
1339 […].
1340 […].
1341 […].
1342 […].
1343 […].
1344 […].
1345 […].
1346 […].
1347 […].
1348 […].
1349 […].
1350 […].
1351 […].
1352 […].
1353 […].
1354 […].
1355 […].
1356 […].

(3) A Google presentation indicating that: […].[1357]

(4) A Google internal email in which a Google employee states: […].[1358]

(993) Second, Google internal documents […].[1359]

(994) Third, […] ad buying tools that replied to the Commission's RFI on this subject indicated that they either only submit one bid in SSPs running second price auctions or when they do submit two bids this was not with the goal of second pricing themselves.[1360] Some DSPs even specifically indicated that they tried avoiding the risk of second pricing themselves when submitting bids to SSPs in a second price auction:

(1) According to […]: […];[1361] and

(2) According to […].[1362]

(995) Fourth, […] ad buying tools that replied to the Commission's RFI indicated that they do not set the level of their bid in a way that would ensure that publishers get more revenue at the cost of their advertising clients.[1363] This includes […] the respondents to the same Commission's RFI that operate an integrated publisher-facing (sell-side) tool (SSP or ad exchange).[1364]

(996) Fifth, in the limited circumstances in which Google Ads places bids on SSPs competing with AdX (see section 8.3.2.1), Google Ads does not place two bids into the auctions of those competitors.[1365] When such second pricing by Google buy-side tools on third-party SSPs might have happened (i.e. when DV360 sent two bids and AWbid sent one bid), Google considered […]. This is further supported by the following evidence, which show that in the limited instances […]:

(1) A Google internal email in which a Google employee states: *"*[…].[1366]

(2) A Google internal email in which a Google employee states in the context of AWBid: […].[1367]

(3) A Google internal email in which a Google employee states:

[…].*[1368]*

(4) A Google internal email in which a Google employee states: […].[1369]

(5) A Google internal document indicates that while […].[1370]

1357 […].
1358 […].
1359 […].
1360 Replies to Q3.1 of the Commission's RFI to DSPs of October 2022.
1361 […].
1362 […].
1363 Replies to Q B.8 of the Commission's RFI to Ad Buying Tools of February 2024.
1364 Replies to Q B.8 of the Commission's RFI to Ad Buying Tools of February 2024.
1365 […].
1366 […].
1367 […].
1368 […].
1369 […].
1370 […].

8.3.4.1.3. Placing lower bids by DV360 on rival SSPs running first price auctions and modified second price auctions with the aims of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX

(997) DV360's practice of lowering bids on third-party SSPs, designed for the benefit of AdX, was also to some extent going against the interests of DV360 and its advertisers.

(998) First, Google rolled out project Poirot […].[1371]

(999) Second, an internal presentation of March 2017 actually showed that […].[1372]

(1000) Third, Google knew that advertisers had a commercial interest in DV360 winning bids on third-party SSPs. […].[1373]

(1001) Fourth, if the commercial strategy behind project Poirot had been driven by the interests of advertisers, Google would have had no concern about the possibility of project Poirot lowering the bids sent by DV360 to AdX and would not have established the above-described cooperation between the buy-side and sell-side teams precisely in order to prevent that from happening. Instead, Google would have welcomed bid shading by DV360 on AdX as it would have benefitted advertisers on an even larger amount of bids, […]. Yet, in an internal email from 2018, […].[1374] In another email of June 2018, Google considers a […].[1375]

(1002) Furthermore, project Poirot […] DV360's spend on third-party SSPs. As a result of the […] lowered bids, the advertisers lost out on the affected SSPs whilst such buys accrued to AdX.

(1003) Moreover, despite the above […] impact on advertisers' buys on third-party SSPs through DV360, the advertisers were automatically opted into it since its launch without being informed of its full scope and impact. As a result, […]% of advertisers were opted into project Poirot […]. As a Google employee internally remarked: […].[1376] At the same time, as discussed above in section 8.3.2.3, Google was […].

8.3.4.2. Google Ads and DV360 demand is important for rival SSPs and cannot be effectively replaced

(1004) The Commission reaches the conclusion that the demand from Google Ads and DV360 is important for an SSP to compete in the EEA-wide market for SSPs (section 8.3.4.2.1) and that an SSP competing with Google cannot effectively replace that demand (section 8.3.4.2.2).

8.3.4.2.1. Google Ads and DV360 demand is important for rival SSPs

(1005) SSPs solicit bids from advertisers, via ad buying tools, for the sale of ad inventory on the websites and apps of their customers, i.e. the publishers. The ability to reach as many advertisers as possible which may be interested in particular ad inventory is therefore important for the competitiveness of an SSP vis-à-vis the publishers. Such competitiveness will be further reinforced if an SSP obtains bids from a source that has exclusive contacts with certain advertisers. Indeed, the majority of publishers that replied to the Commission's RFI confirmed that the volume of demand made

1371 […].
1372 […].
1373 […].
1374 […].
1375 […].
1376 […].

accessible by an SSP is an important factor (and for around half of the publishers the most important factor) driving their choice of which SSP to use (see recital (1750) below).

(1006) Consequently, as confirmed by responses to the Commission's RFI, SSPs seek to integrate with ad buying tools that grant access to a large, diversified and possibly unique source of demand. For example:

(1) According to […].[1377]

(2) According to […].[1378]

(3) According to […].[1379]

(1007) Google Ads is the largest tool to buy online display advertising on the open web (see Table 1). It accounts for around or more than […]% of the value of Open Auction ads purchased by ad buying tools in each year since 2014. DV360 is […] in the market, accounting for slightly less than […]% of the value of Open Auction ads purchased by ad buying tools since 2017. Google Ads and DV360 collectively account for approximately […]% of the value of Open Auction ads purchased by ad buying tools each year since 2014. In terms of volume, out of all impressions offered and sold via AdX between July 2015 and December 2021, Google Ads and DV360 represented together approximately […]%, worldwide, and even […]% in the EEA.[1380] Google itself in an internal document described Google Ads demand as […].[1381]

(1008) Obtaining bids from Google Ads and DV360 is thus important for publishers' ability to monetize their inventory. This is confirmed by data in the file, which shows that demand from Google Ads and DV360 indeed often represents the largest source of display advertising revenues for publishers (see Figure 22 below). For this reason, it is crucial for SSPs to be able to offer publishers (i.e. their customers) competitive access to such demand. […].[1382]

Figure 22: […][1383]

(1009) As can be seen from Figure 22, demand from Google Ads and DV360 accounts for at least […]% of revenues for the majority of the publishers that replied to the Commission's investigation. For […]% of respondents, demand from Google Ads and DV360 represents more than half of the revenues.

(1010) According to an internal document from Google, DV360 represents […].[1384] This is further corroborated by another Google internal document from early 2018 […]. As can be seen from an extract from such document in Figure 23, […]. [1385]

1377 […].
1378 […].
1379 […].
1380 […].
1381 […].
1382 […].
1383 Source: replies to Q17 of the Commission's RFI to publishers of November 2022.
1384 […].
1385 […].

Figure 23: […][1386]

(1011) In another internal document, Google discussed […] and stated that: […]. As such: […].[1387]

(1012) Google internal documents also show that Google considers […]. For instance:

(1) An internal email discussing […] suggests that […].[1388]

(2) An internal document titled […] states that […].[1389]

(3) Another internal document titled […] lists […].[1390]

(4) In another internal document, […].[1391]

(5) A presentation titled […] invites publishers to […].[1392]

(1013) In addition, as explained in section 7.3.5, there are a number of benefits for advertisers associated to single-homing and risks related to multi-homing. Advertisers thus often prefer to concentrate most of their spend on a single ad buying tool. This makes integrating with large ad buying tools all the more important for SSPs, as such intermediaries are likely to be the source of "unique" and "exclusive" demand, offering access to advertisers that concentrate most of their spend on their platform.

(1014) […] indeed explained how large DSPs, in particular DV360, are likely to be the source of unique demand: […].[1393] This is in line with the findings of certain NCAs, which note that there is a significant group of advertisers who run all their campaigns using only DV360.[1394]

(1015) As noted by certain NCAs, smaller advertisers are even more likely to single-home than large advertisers, given the costs and technical complexities associated with using multiple ad buying tools.[1395] In this case, Google Ads is likely to be their intermediary of choice to purchase display ads on the open web, as it allows advertisers to purchase both search and open display inventory using a single intermediary.

8.3.4.2.2. Demand from Google Ads and DV360 cannot be effectively replaced

(1016) The importance of receiving bids from Google Ads and DV360 is also evidenced by the significant difficulties faced by publishers when trying to replace the demand from Google Ads and DV360 by alternative sources. Such challenges show that SSPs cannot effectively replace the bids coming from Google's demand by alternative

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1386 […].
1387 […].
1388 […].
1389 […].
1390 […].
1391 […].
1392 […].
1393 […].
1394 CMA Online Advertising Market Study, Appendix M, page M49 ([…]). The CMA finds that: "*Of the 17 advertisers that provided us with information about the DSPs they use, six use a single (main) DSP across all their campaigns. In all such cases, the chosen DSP is Google's DV360. Four other advertisers told us they use two DSPs. In these cases, different DSPs can be used for different types of inventory, and in all cases one of the two DSPs is Google's. The other seven advertisers use multiple DSPs, although in at least two cases DV360 account for the majority of advertising expenditure.*"
1395 CMA Online Advertising Market Study, paragraph 5.272 ([…]) and ACCC Digital Advertising Report of August, page 73 ([…]).

sources of demand that offer publishers the same monetisation opportunities as demand from Google Ads and DV360. It is hence important for an SSPs' attractiveness vis-à-vis publishers to be able to offer them competitive access to Google's demand.

(1017) First, not all competitors are vertically integrated as they do not operate an ad buying tool in addition to their SSP. Those that are not vertically integrated depend fully on third party ad buying tools to direct some of their demand to their SSP.

(1018) Second, other ad buying tools are significantly smaller than Google Ads and DV360. Google's largest competitor […] had a market share of […]% as of 2023, i.e. approximately a […] of Google Ads and DV360 combined. Google's second largest competitor […] accounted for at most […]% of the value of ads purchased by ad buying tools at its peak in between 2015 and 2017. This declined to […]% in 2023 (that is around a […] of Google Ads and DV360 together). All other competitors represented […].[1396]

(1019) Indeed, […] stated that Google's demand used to account for a very large proportion of their revenues from open auction online display advertising. In more recent years, they have been actively trying to reduce their dependency on Google's demand. However, they explained that: […] and estimated that as of 2021, Google Ads and DV360 still accounted for […]% each of their revenues from open auction online display advertising.[1397]

(1020) This is in line with the following responses to the Commission's RFI to publishers:

(1) According to […].[1398]

(2) According to an […].[1399]

(3) According to […].[1400]

(1021) In addition, the EEA-wide market for programmatic ad buying tools is characterised by high barriers to entry and expansion, notably due to the presence of scale economies and indirect network effects, as well as high switching costs and potential inefficiencies associated with multi-homing for advertisers (see section 7.3.5). The importance of access to Google's O&O inventory, and in particular YouTube, which currently can only be accessed through Google Ads or DV360, further reduces the incentives of advertisers to multi-home or switch to a competing ad buying tool, as explained in section 7.3.3.

(1022) This makes it challenging for an existing ad buying tool or a new entrant to expand and to eventually offer SSPs and publishers a comparably sized source of demand as Google Ads and DV360. As such, SSPs (either vertically integrated or not) cannot effectively replace the bids coming from Google's demand with alternative sources of demand.

1396 See Table 1 above.
1397 […].
1398 […].
1399 […].
1400 […].

8.3.5. Google's arguments on the Commission's findings regarding the Buy-side Conduct

8.3.5.1. Google's arguments on the Commission's findings in relation to Google channelling Google Ads demand preferentially through AdX

8.3.5.1.1. Google's arguments on the findings in sections 8.3.2.1 and 8.3.3.2.1

(1023) The Commission's findings in sections 8.3.2.1 and 8.3.3.2.1 in relation to Google channelling Google Ads demand preferentially through AdX are not contradicted by Google's arguments described below.

(1024) First, Google argues that the practice of channelling Google Ads demand preferentially through AdX was not aimed at favouring AdX but at providing advertisers a service they find valuable, i.e. risk-free, performance-based buying, in line with Google Ads' business model as an ad network. Google argues that advertisers have many options in relation to the ad buying tools they can use to purchase ad inventory, with varying business models, and those that use Google Ads do so in the expectation that they will buy inventory primarily from Google's own sell-side tools (i.e. via publishers having a direct relationship with Google).[1401]

(1025) In the first place, as explained in detail above in recitals (962) to (967), contemporaneous documents reveal that […]. This is not consistent with the argument that advertisers have always expected Google Ads to buy almost exclusively via those sell-side tools and have chosen to use Google Ads for this reason.

(1026) In the second place, the evidence cited above in recitals (749) to (769), as well as recitals (849) to (863), […]. This was marketed by AdX as a […] giving it a competitive advantage over all other SSPs.

(1027) In particular, the documents cited in recitals (749), (750), (752) and (754) […].

(1028) As demonstrated by the evidence cited above in recitals (759) to (762), […]. As detailed in the document cited above in recital (853), […].

(1029) Other documents, such as those cited above in recitals (765) and (856), […].

(1030) In the third place, Google cites statements from third parties in reply to the Commission's RFIs in support of its claim that advertisers and media agencies use Google Ads […].[1402] However, closer examination of these replies reveals that they do not support Google's claims.[1403] For instance, […] hence emphasising the importance of the scale of inventory available through Google's publisher network rather than the fact that Google Ads primarily buys via Google's own sell-side tools.[1404] […] also stated that, to the extent it uses Google Ads for display advertising, […].[1405]

(1031) Google cites additional statements by advertisers which indicate that they use Google Ads for display advertising for reasons including […].[1406] However, firstly, this only shows that some advertisers were content with the way Google Ads was operating. As already indicated in recital (1025) and detailed above in Section 8.3.4.1.1, numerous Google internal documents show that […].

1401 […].
1402 […].
1403 […].
1404 […].
1405 […].
1406 […].

(1032) Further, Google could easily have designed AwBid by offering additional inventory via (competitively) bidding on third-party SSPs, while also offering individual advertisers a simple opt-out of AwBid based on the perceived costs and benefits of the programme for each advertiser. Instead, Google has consistently choked off this potential innovation by […] AwBid to ensure AdX never lost its […] vis-à-vis Google Ads demand.

(1033) Second, Google argues that Google Ads' offer of risk-free, performance-based advertising using a cost-per-click (CPC) model, wherein the advertiser pays only when the user seeing an ad takes the desired action, such as clicking on it, constrains its ability to buy inventory from third-party SSPs.[1407] The transaction risk arises from the fact that a publisher charges per ad impression while an ad buying tool using CPC pricing charges the advertiser only for ads on which a user clicked. Google's argument is essentially that the transaction risk arising from this model is more effectively managed by Google Ads on AdX than on any third-party SSP because using Google's own publisher network ensures high-quality inventory and sufficient information about the user to accurately predict the rate at which users will click, while also ensuring the publisher is not sending fraudulent information on views or clicks.[1408]

(1034) Google thus argues that it needs to buy primarily from its own publisher network in order to effectively manage the transaction risk arising from this pricing model, and because the allegedly high incidence of invalid traffic[1409] on third-party SSPs increases transaction risk and gives rise to additional costs and challenges, such as reputational risk.[1410]

(1035) Google also argues that other ad buying tools that primarily use such performance-based pricing models (such as CPC pricing), also buy to a significant extent from their own integrated sell-side tools, precisely because of the increased transaction risk that comes from buying from third-party SSPs.[1411]

(1036) This argument must be rejected for the following reasons.

(1037) In the first place, other ad buying tools are able to profitably operate using CPC pricing even as they buy most, or even all, of their inventory from SSPs with which they are not vertically integrated. In reply to a Commission RFI, […] provided data concerning […].[1412] The data provided indicate that, on an EEA-wide basis, the percentage of impressions bought by […] ad buying tool via both its sell-side tool […] and other direct purchases from publishers and/or publisher ad servers ranged from less than […]% in 2014 to a high of […]% in 2021. At global level, the percentage ranged from less than […]% in 2014 to […]% in 2021. The remainder was bought via […] and intermediated by other SSPs.[1413] This is confirmed also by a statement by […].[1414]

1407 […].

1408 […].

1409 Invalid traffic refers to any interaction with an ad that does not come from a real user with a genuine interest in an ad, such as clicks generated by botnets and other fraudulent actors. Such interactions have no benefit for the advertiser.

1410 […].

1411 […].

1412 […].

1413 […].

1414 […]. Google claims that the Commission erred in its calculation by not including direct purchases using […] retail media activities, which would raise the relevant percentages to […]% in the EEA and […]%

(1038) Another ad tech provider operating both an ad buying tool and an SSP provided data to the Commission in reply to an RFI, indicating that on an EEA-wide basis, the percentage of impressions bought by that ad tech provider's ad buying tool via its affiliated sell-side tool ranged from approximately […]% to […]% on an annual basis in the EEA in the years from 2020 through 2023. The remainder was bought via […] and intermediated by other SSPs.[1415] A third ad tech provider, […], does not operate a sell-side tool, so it buys […]% of its inventory through third-party SSPs while mostly using the CPC model.[1416]

(1039) […].[1417]

(1040) All of the above ad buying tools stand in contrast to the practice of Google Ads. As detailed above in recital (778), in the years since AwBid expanded beyond remarketing, […].[1418]

(1041) The existence of ad buying tools (such as […]) that buy inventory almost exclusively from their integrated sell-side tool and/or, as Google argues, replicate Google Ads' business model before it launched AwBid,[1419] does not detract from the conclusion that it is possible to profitably operate an ad buying tool offering CPC pricing that buys across different sources of inventory, as the example of […] demonstrates. It also does not show that those specific ad buying tools buy inventory almost exclusively from their integrated sell-side tool because of the alleged increased transaction or reputation risk that comes from buying from third-party SSPs. Moreover, those ad buying tools cited by Google are not dominant and, in particular, do not maintain a very large and important source of advertiser demand that they could leverage for the benefit of a single SSP, as Google does. Further, these non-dominant ad buying tools are not subject to the special responsibility under Article 102 TFEU not to allow their behaviour to impair genuine, undistorted competition on the internal market.

(1042) In the second place, other ad buying tools that use CPC pricing while buying significant amounts of their inventory from third-party SSPs informed the Commission that the transaction risk associated with offering CPC pricing to advertisers while being charged on a CPM basis by SSPs or publishers for the impressions they buy is limited and can in any case be effectively managed.

(1043) […] has explained in detail how it manages the transaction risk: […].[1420]

(1044) Furthermore, […] indicated that the transaction risk is manageable: […].[1421]

(1045) This is confirmed by the statements of other ad buying tools:

(1) […] explained that […].[1422]

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globally. […]. However, even including these retail media purchases, […] purchased at most just over […] of its inventory via an integrated sell-side tool, compared to a minimum of […]% of Google Ads impressions bought via an SSP being purchased from AdX, excluding all the campaign and targeting types which are not even eligible for AwBid.

1415 Commission's calculations based on […] reply to Q B.15 of the Commission's RFI to ad buying tools of February 2024.

1416 […].

1417 […].

1418 […].

1419 […].

1420 […].

1421 […].

1422 […].

(2) […] explained that it uses […] and that the transaction risk mentioned above […].[1423]

(3) […] explained that although its performance-based pricing model […].[1424]

(1046) In the third place, Google's claims in respect of the prevalence of invalid traffic on third-party SSPs, which allegedly justified Google Ads buying nearly exclusively on AdX, are exaggerated or misleading. […].[1425] […].

(1047) These contemporaneous documents include, for example, a Google internal document from September 2014 concluding that […].[1426]

(1048) Similarly, another Google internal document from September 2016 indicated that […].[1427]

(1049) Google further cites the "3ve" incident in […]. This was the name given to a cybercrime campaign which peaked in 2017, involving the programming of computers to load advertisements on fabricated webpages to fraudulently obtain advertising revenue. Google claims that […][1428] […]. Several other SSPs that appear in the Commission's market reconstruction or that provided information to the Commission, […].[1429] Hence, this data can in no way justify the fact that Google uniformly placed all third-party SSPs at a significant competitive disadvantage, via its conduct related to AwBid.

(1050) Accordingly, Google's proposed justification with regard to invalid traffic must be dismissed. A monolithic approach, whereby all third-party SSPs are considered as posing the same level of (high) risk, is not justified by the evidence available to the Commission.

(1051) Third, Google claims that its pricing policy on AwBid is rational and reflects the additional costs and challenges associated with AwBid. In particular, Google argues that the […].[1430] Google also claims that AwBid pricing is consistent with the practices of other ad networks.[1431]

(1052) In the first place, the only contemporaneous document Google offers in support of its argument is […].[1432] [1433]

(1053) Google's […], however, fails to demonstrate that […]. By contrast, the Commission has cited numerous documents, […].

(1054) Other documents demonstrate Google's awareness that the […]. In the document cited above in recital (872), […].

(1055) In the document cited above in recital (863), a number of factors are listed which Google took into account in setting the AwBid take rate, including the […]. The same document mentions machine costs, […].[1434]

1423 […].
1424 […].
1425 […].
1426 […].
1427 […].
1428 […].
1429 […].
1430 […].
1431 […].
1432 […].
1433 […].

(1056) In the second place, the mere observation that the pricing practices of other ad networks are consistent with AwBid pricing cannot in and of itself lead to the conclusion that those pricing practices are caused by costs differences. Indeed, rival ad networks which are vertically integrated are placed in the same situation of conflict of interests between their different adtech intermediation services as Google. They may therefore also decide to charge a lower rate when bidding on their vertically integrated SSP than on rival SSPs for the purpose of giving a competitive benefit to their SSP. Contrary to Google, however, competing ad buying tools (including competing ad networks) are not in a dominant position. They are therefore under no special responsibility not to impair competition on the merits.

(1057) Fourth, Google argues that its development of AwBid over time reflects the need to effectively address the additional costs and challenges, rather than the Commission's conclusion that AwBid was delayed and deliberately shaped in a way that enabled Google Ads to continue favouring AdX.[1435] In particular, Google cites significant costs and technical difficulties associated with building AwBid and claims that these factors were decisive in relation to the amount of time it took to introduce AwBid for remarketing and then expand it to other targeting types.[1436] Google further argues that it was rational and pro-competitive to launch AwBid first for remarketing before adding other targeting types.[1437]

(1058) In the first place, as explained above in recitals (1025) to (1029), the Commission has adduced numerous Google internal documents evidencing that […].

(1059) The email chain cited above in recital (750), […].[1438]

(1060) […].[1439]

(1061) In particular, […].[1440] This is not consistent with the fact that […] was one of the two partners (along with […]) who […].[1441] In any event, these documents say nothing about the contractual negotiations Google would have had to conduct with other SSPs, which were […].[1442]

(1062) By contrast, other evidence shows that Google's decision to stop plans to integrate third-party SSPs in mid-2011 was not due to the difficulty of contractual negotiations generally. As late as 25 May 2011, one month before the announcement that third-party SSPs had been dropped, […].[1443]

(1063) […].[1444] [1445] [1446]

(1064) Further, Google's attempts to challenge the interpretation given by the Commission to several internal documents evidencing the aim to favour AdX when making strategic decisions on AwBid, are without merit. For instance, Google argues that the

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1435 […].
1436 […].
1437 […].
1438 […].
1439 See, e.g […].
1440 […].
1441 See recital (753).
1442 […].
1443 […].
1444 […].
1445 […].
1446 […]. See above, recital (752).

quote cited in recital (1059) above should be disregarded, […].[1447] Google further claims that a reference in the same internal document to […].[1448]

(1065) […].[1449] [1450]

(1066) The Commission has further identified additional documents, dated at various times, which indicate that […]. Accordingly, those challenges do not explain the decisions to delay the introduction of AwBid, nor to limit its scope, nor to weaken bids placed on third-party SSPs via AwBid. Nor are […] in the documents. These include, for example:

(1) […].[1451]

(2) […].[1452]

(3) […].[1453]

(4) […].[1454]

(5) […].[1455]

(1067) Another internal document indicates a perception that the […], showing that the limits Google imposed on AwBid cannot be attributed to a lack of such resources: […].[1456]

(1068) In the second place, as regards Google's claim that it was rational to introduce AwBid first for remarketing, the Commission does not take the position that Google should have launched AwBid for all targeting types at the same time, nor that it should have done so on a specific date. The Commission finds, however, that the launch of AwBid for remarketing did not effectively remove the favouring of AdX by Google Ads, notably because it concerned […] of Google Ads demand.

(1069) In the third place, the Commission's conclusion that the infringing conduct with respect to AwBid continued past the point in time where AwBid expanded into other categories aside from remarketing, is based on the fact that […], preventing third-party SSPs from effectively competing for even that part of Google Ads demand that was eligible for AwBid. At the same time, some campaign and targeting types or sub-types remained ineligible for AwBid entirely. Hence, even this expansion did not effectively end the favouring of AdX and the question whether Google may have otherwise had legitimate reasons to launch AwBid for remarketing first is irrelevant.

(1070) Fifth, Google argues that, by alleging that the conduct described in this decision in relation to AwBid is abusive, the Commission would effectively impose on Google (i) a duty to redesign AwBid in a way that accommodates rivals and diverts the ad spend of its customers against their will by obliging Google to buy, or buy more, inventory on third-party SSPs,[1457] and (ii) a duty to invest additional resources to

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1449 […].
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1457 […].

reduce spam on AwBid, against Google's rational business judgment.[1458] According to Google, such duties to redesign products are not recognised in the case law absent exceptional circumstances such as those indicated in the *Bronner* criteria, which are not met in the present case. Moreover, Google argues that these obligations effectively interfere with Google Ads' business model and with a firm's incentives to invest, rights to property and freedom to conduct a business.

(1071) In the first place, in line with its special responsibility as a dominant undertaking not to allow its conduct to restrict or distort competition, the obligation incumbent on Google is not to accommodate rivals but to compete on the merits. Google has failed to do this in relation to AwBid. Had Google not taken the decision in mid-2011 […]. This would have been the case had Google been acting in the interest of Google Ads as a standalone buying tool, and in the interests of advertisers as explained above in Section 8.3.4.1.1.

(1072) The Commission has further shown that […], Google continued to pursue, and eventually launched AwBid, but was always careful to shape it in a way that maximised the competitive advantage conferred on AdX by its quasi-exclusive access to Google Ads demand, including by knowingly weakening the bids Google Ads would place on third-party SSPs. […].

(1073) Google Ads began bidding on AdX in September 2009, and did not systematically bid on other SSPs (by fully launching AwBid for remarketing) until June 2015. Google correctly notes that the conduct hence predates the beginning of the infringement in January 2014. The Commission takes no view on whether Google was dominant on the market for programmatic ad buying tools prior to 2014, but has concluded that it was by the beginning of that year. By that point in time, Google had a special responsibility to cease giving AdX an anticompetitive advantage over every other SSP. Competing on the merits would have meant enabling Google Ads to bid on third-party SSPs on fair terms and without favouring AdX, to enable SSPs to compete effectively. Google could have catered to advertisers who did not wish to bid on third-party SSPs by allowing them to opt out.

(1074) Accordingly, the Commission's conclusion does not imply that Google is obligated to shift advertisers' ad spend against their will and against Google Ads' business model, or to ensure that a certain percentage of inventory bought by Google Ads is bought from third-parties. Google Ads was only obliged to maintain a level playing field in its relations with third-party SSPs.

(1075) In the second place, Google's accusation that the Commission improperly questions Google on the allocation of its resources and investments is unfounded. Every business decision involves making choices related to the allocation and re-allocation of the resources of an undertaking. In this respect, compliance with legal requirements, including those related to competition, is part of the constraints any company has to take into account when deciding on those resource allocations.

(1076) In this respect, the Commission's findings of preferential channelling are based on an extensive body of evidence documenting the rationale underlying Google's business decisions regarding the allocation of resources and investments relating to AwBid. The evidence in the file shows that Google was in fact already working on investments necessary to enable AwBid, of its own motion and partly as a response

1458 […].

to feedback from advertisers. Google limited and delayed these or refrained from finalising them, in order to continue favouring AdX.

(1077) In the third place, for the reasons mentioned above, the assessment of Google's practice in relation to AwBid, as described in this Decision, should not be subjected to the *Bronner* criteria, despite the fact that Google initially reserved Google Ads for its own use. Google has been found to have engaged in an infringement of self-favouring, not of refusal to supply an input.

(1078) Firstly, as explained above, the Commission has demonstrated that, by 2011 at the latest, Google had begun investing in and developing the capability to enable Google Ads to bid on third-party SSPs […]. However, […].

(1079) Hence, the primary rationale for the use of the *Bronner* test does not apply in the present case, as the launch of AwBid would not have served as a disincentive on Google to invest.[1459] Consequently, any exceptional circumstances that informed the *Bronner* case are not present in the case at hand.

8.3.5.1.2. Google's arguments on the findings in section 8.3.4.1.1

(1080) The Commission's conclusion that by channelling Google Ads demand preferentially through AdX, Google acts against the interest of Google Ads as well as advertisers and media agencies is not contradicted by Google's arguments described below.

(1081) First, Google argues that Google Ads' business model benefited customers and ensured Google Ads' success, as advertisers use Google Ads because it offers risk-free, performance-based bidding and because it enables purchases of mainly in-network inventory.[1460]

(1082) In the first place, as explained above at recitals (1025) and (961) to (967), Google's internal documents show that […]. This was largely due to the perception that advertisers would welcome such a development. However, this was repeatedly held up due to the strategic decision to favour AdX by preserving its nearly exclusive access to Google Ads demand.[1461]

(1083) In the second place, as explained above in recitals (1037) to (1045), it is possible for an ad buying tool to operate profitably while buying significant amounts (or even all) of inventory on third-party SSPs and manage the accompanying transaction risk, even if it primarily offers advertisers risk-free buying via CPC pricing. Other ad buying tools, […], are able to do so and have informed the Commission that the transaction risk is limited and can be effectively managed.

(1084) In the third place, as explained at recital (1030), the statements of third parties cited by Google in support of this argument do not support its claim.

(1085) Second, Google argues that if Google Ads' practice of buying almost exclusively in-network inventory was not in the interest of advertisers they could readily switch to other DSPs (including to DV360).[1462]

(1086) In the first place, as explained above in section 7.3, Google's ad buying tools are dominant. In sections 7.3.3 through 7.3.6 in particular, the Commission explains that

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1459 See Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 217. In any event, it is not the case that Google Ads was reserved for Google's own use until mid-2015. […].

1460 […].

1461 […].

1462 […].

Google's ad buying tools enjoy unparallelled advantages (such as links with Google's O&O properties like Search and YouTube) and are of central importance for advertisers; they benefit from integration with other parts of Google's open web adtech ecosystem, which results in significant user data advantages; they operate in a market characterised by the existence of a number of barriers to entry and expansion; and advertisers and media agencies do not benefit from significant countervailing buyer power.

(1087) Accordingly, many advertisers are unlikely to switch away from Google Ads to alternative ad buying tools for the bulk of their campaigns. In particular, as detailed in recitals (440) to (448), Google's own analysis […]. Further, as detailed in recitals (369)(1) and (369)(2) and (370) and (371), both (i) other market participants and (ii) Google's own internal documents […]. Due to its different pricing model, user interface and other functionalities, smaller advertisers in particular may not see DV360 as a viable alternative to Google Ads, let alone another DSP.

(1088) In the second place, even if advertisers could find switching to DV360 a viable alternative to Google Ads, advertisers that switch would still have to forego the advantages that Google Ads was bringing to them for the advertisement campaigns for which they had chosen Google Ads. Such advantages could include the pricing model of Google Ads as mentioned above in recital (1033), in which advertisers pay only when a user performs a desired action instead of per impression, compared to that of DV360. Advertisers should not be faced between the choice of suffering from the consequences of an anticompetitive practice or using a less advantageous alternative to escape it.

(1089) Third, Google argues that as a multi-sided platform, it is rational for Google Ads to take into account the quality of offerings on the publisher side, when considering the interests of advertisers.[1463] Google argues that it was rational to take AdX and the publishers who use it into account in its product decisions in order to serve advertisers effectively. Google further claims that, in this regard, the Commission has misinterpreted, or taken out of context, documents it has relied on to conclude that Google knowingly favoured AdX even if this went against the interests of advertisers using Google Ads.

(1090) In the first place, whether the conduct is rational or not is irrelevant if it constitutes favouring that departs from competition on the merits, as is the case here. Google did not merely "take into account" AdX when deciding how best to serve advertisers. Instead, Google understood that there was a conflict of interest between the buy-side (Google Ads, in this case) and the sell-side of its adtech business. Google's conduct of channelling Google Ads demand preferentially through AdX, to the exclusion of other SSPs, aimed principally not at serving advertisers effectively but at resolving this conflict of interest by insulating AdX from competition from other SSPs via the leveraging of Google Ads' vast pool of demand.[1464] This strategy also aimed at preserving AdX's ability to command a […] that benefited neither advertisers nor publishers, but did benefit Google.[1465]

(1091) In the second place, Google's criticism of the Commission's interpretation of certain internal documents must be rejected. Google argues, for example, that the Google

1463 […].

1464 See, e.g., recitals (749), (759)-(762), (765), (847), (850), (853), (860) and (862).

1465 See, e.g., recitals (859) and (861).

employee who authored the quote cited in recital (857) above was concerned about how to […].[1466] [1467] [1468]

(1092) Similarly, Google claims that the "sell-side issues" referred to in the document cited in recital (967) of this Decision relate to considerations around matching with publishers.[1469] Such a consideration is […] in the six-page email chain from which this quote is taken.[1470] Virtually the entire exchange concerns the problem laid out near the beginning of the chain: […].[1471]

(1093) Directly after the excerpt cited in recital (967) […].[1472] It is therefore clear that the "sellside issues" mentioned in this document refer to the risk of AwBid undermining the competitive advantage conferred on AdX via its favouring by Google Ads.

(1094) Secondly, in any event, as from the launch of AwBid for remarketing in June 2015, Google Ads did send bids on third-party SSPs (albeit, deliberately in a limited manner) and Google Ads demand was no longer reserved for Google's own use.

8.3.5.2. Google's arguments on the Commission's findings in relation to Google inflating the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself

8.3.5.2.1. Google's arguments on the findings in sections 8.3.2.2 and 8.3.3.2.2

(1095) The Commission's findings in sections 8.3.2.2 and 8.3.3.2.2 in relation to Google inflating the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself are not contradicted by Google's arguments described below.

(1096) First, Google argues that its practice of second pricing itself is justified by Google Ads' business model. Google claims that the practice aimed at ensuring a low take rate for advertisers. According to Google, even if publishers might have benefited from the practice, that does not mean that this did not also benefit advertisers. In a multi-sided ad network, advertisers benefit from having access to high-quality inventory that generates attractive ROI.[1473]

(1097) In the first place, Google's claim that advertisers benefited from the practice of double bidding is contradicted by Google contemporaneous documents which indicate that double-bidding was negative for advertisers (see recitals (980) to (986)). This is perhaps best summarized in an internal email from October 2013: […].[1474]

(1098) In the second place, Google internal documents contradict the claim that the aim of the practice was to ensure that Google Ads keeps a low take rate for advertisers. On the contrary, the evidence quoted, for instance, at recitals (877), **Error! Reference source not found.** and (981) makes it clear that the aim of the practice was to implement a […] business. The evidence also shows that this subsidisation was aimed at ensuring that publishers stay with AdX rather than move to rival SSPs. In

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1467 […].
1468 […].
1469 […].
1470 […].
1471 […].
1472 […].
1473 […].
1474 […].

contrast, in that period, Google Ads was either not bidding on rival SSPs, or, in the limited instances where it was bidding on them, was placing only one bid.

(1099) This is further supported by the observation that, […].[1475]

(1100) In the third place, this Decision does not deny that some publishers benefitted from the practice. Such benefits, as well as any other benefits deriving from the practice, would need to be assessed in the legal framework of objective justifications or efficiencies. Those are analysed in section 8.7.1.

(1101) Second, Google alleges that the SO indicated two alternative courses of action that Google Ads could have implemented instead of submitting two bids to AdX:[1476]

(1) […].[1477] [1478] [1479]

(2) […],[1480] […].[1481] [1482] [1483]

(1102) Google argues that those two alternative courses of action would therefore both have been inconsistent with the business model of Google Ads, either by departing from the objective to maintain an auction where bidding true valuations is optimal or by departing from the objective of keeping a low take rate.

(1103) In the first place, even assuming that the two alleged objectives for the practices (keeping the take rate low for advertisers and preserving the incentive compatibility of the Google Ads auction) are valid and that there was no other alternative course of action than the two described above (see recital (1101)), Google's argument fails because the two alternative courses of action do not imply the consequences alleged by Google as described in recital (1101).

(1104) Google's argument that the first alternative course of action would raise the risk of advertisers bidding above their willingness to pay is entirely theoretical and not substantiated by any calculations. Google merely provides a single document[1484] in support of its allegation that such course of action would raise the risk of advertisers bidding above their willingness to pay.[1485] […][1486] […].

(1105) […].[1487] […].

(1106) In any event, the risk alleged by Google that Google Ads advertisers could end up bidding above their true valuation could only arise if those advertisers were sufficiently informed of the clearing price of the auction, the margin taken by Google Ads in each auction and of the actual value of their bids. However, in reality the advertisers had very limited knowledge of those matters (see also recital (1112)). The eCPM bids were calculated by Google Ads based on the pCTR[1488] (pCTR was estimated by Google Ads and was used to convert CPC bids into eCPM bids).

1475 See recitals (779) to (783), […].

1476 […].

1477 […].

1478 […].

1479 […].

1480 […].

1481 […].

1482 […].

1483 […].

1484 […].

1485 For the explanation of Google's allegation see recital (1101).

1486 […].

1487 […].

1488 eCPM means estimated Cost Per Mille, pCTR means predicted Click Through Rate.

Therefore, advertisers did not decide on the final level of bids as this was decided by Google Ads.[1489]

(1107) Furthermore, Google's argument that the second alternative course of action would have resulted in a higher take rate for the Google Ads service is misleading. Google alleged that […].[1490] […].

(1108) Finally, the example of […] does not support Google's argument. On the contrary, it confirms that at least one of the two alternative courses of action discussed in Google's contemporaneous documents (the second alternative course of action) was entirely realistic, since it was actually implemented by […].

(1109) In the second place, the main tenet of Google's reasoning is incorrect. Indeed, as explained above in recitals (1097) to (1099), […]. The same flaw applies to the allegation that the practice had as an objective to maintain an auction where bidding true valuation is optimal. By contrast, Google internal documents show that […].

(1110) In the third place, Google's reasoning also rests on the incorrect assumption that the two alternative courses of action that it describes were the only possible ones or that the Commission pointed those two options as the only alternatives. In fact, the SO only described the two alternatives above considered by Google, in which Google employees […]. Moreover, the fact that those two alternative courses of action were discussed in a Google internal document does not mean that those were the only ones. To the contrary, […].[1491]

(1111) Third, Google argues that the majority of spend on Google Ads is done by sophisticated advertisers that understood exactly what they were paying and that they would quickly realise if they were being overcharged.[1492]

(1112) This argument is not substantiated. It appears from the evidence gathered by the Commission that Google Ads gave little information about its take rate, such that advertisers, even larger ones, were able to assess it in any detail. In this regard, […].[1493] […].[1494] This is also consistent with a statement by […] indicating that […].[1495]

(1113) Fourth, Google argues that Google Ads' double bidding was not relevant to any third-party SSPs in the pre-AwBid period as pre-AwBid, Google did not bid on third-party SSPs at all so there would be no differential treatment at that time.[1496]

(1114) This is misleading. The situation prior to AwBid was even worse. By not bidding on third-party SSPs, Google was even exacerbating the benefits of second pricing itself. In fact, in those cases, Google was favouring AdX compared to rival SSPs in a more extreme way by not even submitting one bid on rival SSPs auctions. Rivals would thus have to compete with (i) an inflated price coming from AdX and (ii) not having the valuable demand coming from Google Ads.

(1115) If anything, Google Ads could have attenuated the benefit provided via second pricing to AdX if Google Ads had bid on rival SSPs in a substantial number of times,

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1489 […].
1490 […].
1491 […].
1492 […].
1493 See Google's blog post from June 2020 as referred to […].
1494 […].
1495 […].
1496 […].

and, while doing so, had adopted the same principle of subsidising publishers using those rival SSPs to the detriment of its own margin (for instance by also placing two bids in rival SSPs running a second price auction). But Google did not do so.

(1116) Fifth, Google argues that there were reasons for submitting two bids into AdX, but not into third-party SSPs:

(1) Google Ads would not need to submit a second bid to keep a low average take rate on third-party SSPs as, when AwBid was first introduced, Google Ads was only bidding into third-party SSPs for remarketing campaigns. A remarketing impression is typically highly valued by the highest-bidding advertiser in Google Ads, but generally much less valued by the second highest bidding advertiser. Therefore, Google Ads' second bid for remarketing campaigns was […].[1497] This implies that Google Ads submitting a second bid would generally not have influenced the clearing price of the second price auction of the third-party SSP and thus also not impacted the margin retained by Google Ads. Google claims that this statement is confirmed by an internal document, describing the situation after the launch of AwBid, which shows that Google Ads was largely able to achieve its target take rate of […]% on AwBid without submitting two bids on rival SSPs.[1498]

(2) during the relevant period between 2015 and 2019, third-party SSPs integrated with AwBid would already have begun switching to first-price auctions.[1499]

(1117) In the first place, Google's allegation that it did not need to submit a second bid to keep a low average take rate on third-party SSPs is fundamentally undermined by […] (see recitals (780) to (783)). Google essentially admits this when it claims that AwBid was largely able to achieve its target take rate of […]% (as compared to the target margin of […]% when Google Ads was placing bids on AdX) without submitting two bids on rival SSPs (see recital (1116)).

(1118) In the second place, if Google's objective had indeed been to achieve a low take rate for remarketing campaigns on rival SSPs running a second price auction, then Google would have had an interest to place two bids on those auctions in any event. Indeed, even in Google's own view, […].[1500] Therefore, Google Ads would still have had an interest to send two bids in order to contribute to achieving the alleged goal of a low average take rate. This is because in the subset of auctions where the second bid of Google Ads was higher than the price floor and the highest bid from any other ad buying tool, double bidding by Google Ads would still contribute to reduce the take rate (as double bidding on the subset of auctions where this would reduce the take rate would contribute to reduce the average take rate of all auctions). This would have been at no cost for Google as, in the worst-case scenario, the second bid would have been discarded.

(1119) In the third place, Google's claim that it was able to achieve its target take rate of […]% on AwBid without submitting second bids on rival SSPs is beside the point. […][1501], […] (thereby transferring the rest of the high price incurred by the advertisers to AdX). This difference in Google Ads' target margin between bidding on AdX and on other SSPs illustrates that while Google had an objective of

1497 […].
1498 […].
1499 […].
1500 […].
1501 […]. See also recitals (878) and (879).

favouring AdX (and its publishers), it did not have such objective when bidding on third-party SSPs (and for their publishers). As explained in recital (883), Google had […] for third-party publishers […].

(1120) In the fourth place, the internal documents discussed in recital (996) show that […].

(1121) In the fifth place, all the examples provided by Google concern SSPs switching to first price auctions for (part of) their SSP business at the earliest in 2017 (and some only in 2018 or 2019). This therefore does not address at all the period before 2017. In addition, not all SSPs have switched during that period. […].[1502] Google's claim is therefore without merit.

(1122) Sixth, Google argues that the Commission did not ask the third-party ad buying tools whether they were in a position to submit the two highest bids on an SSP (like Google Ads was when it was bidding into AdX) […].[1503] Google further argues that third-party ad buying tools adopted comparable approaches (to Google Ads) when they were bidding on their own integrated sell-side tools (for example, […]).[1504] Google also alleges that the Commission's file shows that Google Ads' competitors also submitted two bids into SSPs running second-price auctions, including […].[1505]

(1123) In the first place, the Commission has asked third-party ad buying tools about their bidding behaviour. As explained in recital (994), the majority of ad buying tools that replied to the Commission's RFI on this subject indicated that […].[1506] Some ad buying tools even specifically indicated that they tried avoiding the risk of second pricing themselves when submitting bids to SSPs in a second price auction. For example, […] indicated that: […][1507]. The truth of the matter is that other ad buying tools were trying to avoid to second price themselves and not the other way around, which is not surprising considering that second pricing themselves would only make them (and/or their advertisers) paying more for impressions that they would have won anyway. This was also recognised by Google in a contemporaneous internal document: […].[1508] As to the specific case of the ad buying tools listed by Google, i.e. […], those companies made it clear that they […]:

(1) According to […].[1509]

(2) According to […].[1510]

(3) According to […].[1511]

(4) According to […].[1512]

(5) As regards […], from its RFI reply it is apparent that it actually understood the question […]. This also appears to have been the reason for […] reply that it

1502 […].
1503 […].
1504 […].
1505 […].
1506 Replies to Q3.1 of the Commission's RFI to DSPs of October 2022.
1507 […].
1508 […].
1509 […].
1510 […].
1511 […].
1512 […].

[…].[1513] Therefore […] reply is not relevant for assessing whether competing ad buying tools would also second price themselves.

(1124) In the second place, it is irrelevant whether third party ad buying tools adopted comparable approaches. It is, however, relevant whether they sent two bids with the aim of second pricing themselves. Google does not argue that […] is submitting two bids when it has a direct integration with publishers. In addition, the majority of ad buying tools that replied to the Commission's RFI indicated that they do not set the level of their bid in a way that would ensure that publishers get more revenue at the cost of their advertising clients.[1514] This includes the majority of the respondents to the same Commission's RFI that operate an integrated publisher-facing (sell-side) tool (SSP or ad exchange).[1515]

(1125) In third place, dominant companies are under a special responsibility not to impair competition on the merits under Article 102 TFEU. No third-party ad buying tool held a dominant position on the EEA market for programmatic ad buying tools for the open web during the relevant period.

(1126) Seventh, Google argues that Google Ads was using project Bernanke or equivalent DRS systems also when bidding on rival SSPs until November 2018. Google states that […].[1516]

(1127) However, this does not imply that rival SSPs enjoyed the same benefit as the one project Bernanke provided to AdX.

(1128) In the first place, between November 2018 and September 2019, of Google's own admission, […] (see recital (1126)).

(1129) In the second place, even in the period until November 2018, for a significant number of impressions (see recitals (767) and (768)), […]. In particular, until October 2018, that is, one month before November 2018, […] (see recital (767)). As a result, for all other categories, AdX was the sole SSP enjoying the benefits of project Bernanke.

(1130) In the third place, even in the period until November 2018, and even for minority of impressions for which Google Ads was bidding also on rival SSPs, the application of project Bernanke, or equivalent DRS systems, provided on average a higher benefit to AdX than to rival SSPs. As indicated in an internal Google document of November 2015, […]. In that email exchange between Google's buy-side and sell-side discussing the impact of the planned launch of DRS for AwBid, […].[1517]

8.3.5.2.2. Google's arguments on the findings in section 8.3.4.1.2

(1131) The Commission's conclusion that Google Ads' practice of deliberately second pricing itself, designed for the benefit of AdX, was sacrificing the interests of Google Ads' advertisers and of Google Ads itself is not contradicted by Google's arguments described below.

1513 […].

1514 Replies to QB.8 of the Commission's RFI to Ad Buying Tools of February 2024. For instance, see […]..

1515 Replies to QB.8 of the Commission's RFI to Ad Buying Tools of February 2024. For instance, see […]..

1516 […].

1517 […].

(1132) First, Google claims that the practice had an objective of keeping a low take rate for advertisers and also to maintain an auction where it was optimal for advertisers to bid their true valuations.[1518] According to Google, even if publishers might have benefited from the practice, that does not mean that this did not also benefit advertisers. In a multi-sided ad network, advertisers benefit from having access to high-quality inventory.[1519]

(1133) This argument is without merit and was addressed at recitals (1096) to (1110).

(1134) Second, Google argues that project Bernanke's launch was positive for Google Ads and its advertisers.[1520]

(1135) However, this ignores that although project Bernanke may have allowed Google Ads advertisers to buy more impressions (in particular in the cases where Google Ads was overbidding), this was at the expense of a higher price that mostly benefit AdX publishers (see recitals (986) to (990)). Those impressions would normally have been purchased via other ad buying tools at a lower price, reflecting more accurately advertisers' willingness to pay.

8.3.5.3. Google's arguments on the Commission's findings in relation to Google placing lower bids by DV360 on rival SSPs with the aims of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX

8.3.5.3.1. Google's arguments on the findings in sections 8.3.2.3 and 8.3.3.2.3

(1136) The Commission's findings in sections 8.3.2.3 and 8.3.3.2.3 in relation to Google placing lower bids by DV360 on rival SSPs with the aims of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX are not contradicted by Google's arguments described below.

(1137) First, Google argues that project Poirot was developed as an "objective" methodology to identify non-second-price auctions, when around 40% of auctions were improperly claiming to be second price auctions while actually operating with features of a first price auction. Google claims that project Poirot was rational and pro-competitive as it prevented advertisers from overpaying on SSPs running non-second-price auctions. Google argues that project Poirot was designed to apply in a rational and indiscriminatory way and to compute the optimal bid multipliers maximising advertiser surplus and thus averting the risks of '*shading too little*' or '*shading too much*'. According to Google, since project Poirot had been designed to maximise advertiser's surplus, its application could not favour AdX or harm SSPs participating in Header Bidding.[1521]

(1138) In the first place, the fact that the methodology to calculate bid multipliers applied by project Poirot was the same for all SSPs, including AdX, does not imply that it was pro-competitive. Indeed, project Poirot had been designed in the first place with the purpose of favouring AdX and hindering the adoption of Header Bidding, as explained in section 8.3.2.3 above. In other words, the methodology followed by project Poirot might have been applied indistinctively and equally to all SSPs, including AdX, but that methodology was selected from the outset with the objective to favour AdX by penalising rival SSPs that were using Header Bidding. In fact, buyers can implement different bid shading strategies and design their optimization

1518 […].
1519 […].
1520 […].
1521 […].

algorithms in ways that may lead to different results. As acknowledged by a Google employee, […].[1522]

(1139) In the second place, the evidence in the file shows that the methodology followed by project Poirot was based on mutable and subjective considerations, which evolved over time affecting the design of both AdX features and project Poirot. Even within Google, there were substantial discussions about […]. This is evidenced by all the discussions reported in recitals (932) to (950) […]. As explained in recital (829), Google itself has made several changes to project Poirot with significant consequences for the resulting bid shading strategies. The Google internal document cited at recital (941), for instance, indicates that […]. This shows that Project Poirot cannot be considered as an "objective" methodology and that alternative ways to design and implement project Poirot were possible.[1523]

(1140) In the third place, the impact of the subjectiveness of the methodology followed by project Poirot was further compounded by an asymmetry of the information provided to AdX and rivals. Contrary to its rivals, AdX had privileged information about project Poirot's existence and workings and Google ensured that, while all bids sent by DV360 were processed by project Poirot, the methodology was designed in such a manner that project Poirot would lower only bids sent to third-party SSP and not those sent to AdX. […], as set out in recitals from (933) to (941). They […], as shown, for instance, in recitals (943) and (944) above, and […], as illustrated in recitals (947) to (950) above. They could even influence the interpretation of project Poirot, be it at least by advocating their own position.[1524] This ensured that project Poirot's anticompetitive design would remain effective despite the several tweaks made to AdX and project Poirot over the years. In contrast, even to the extent that rival SSPs could infer that some method was applied to bid shade on certain non-second price auctions (a point which was not even explicitly acknowledged by Google), they did not know to which non-second price auctions project Poirot actually applied.

(1141) In the fourth place, the Commission does not deny that project Poirot somewhat improved the position of advertisers, compared to the situation prior to project Poirot, where DV360 was sending unshaded bids to all SSPs, including those running a first price auction. However, as explained in recital (898) above, […]. The appropriate legal framework to assess such benefits is that of objective justifications and efficiency gains. In this respect, in the *Google Shopping* case, the General Court ruled that improvements brought by a conduct with anticompetitive effects can be considered only at the stage when objective justifications and possible efficiency gains are being assessed.[1525] The reasons why the Buy-side Conduct cannot be considered objectively justified are explained in section 8.7.1 below.

(1142) Second, Google argues that SSPs were aware of project Poirot and, even if they had not been, they would have been aware of DSPs' incentives to shade bids in non-second-price auctions because that is the optimal bidding strategy. In support to such claim, Google cites an article from the web from March 2019, in which it was reported that "[a] *handful of DSPs and exchanges offer bid shading, including all the*

1522 […].

1523 Some of these alternative ways are explored in section 8.7.1.3 below.

1524 On this point, see for instance recitals (945) and (946) above.

1525 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 188.

leading players. Google's DV360 rolled out optimized fixed CPM bidding last year, a free bid shading tool".[1526]

(1143) In the first place, it cannot be assumed that rival SSPs expected the fixed CPM bidding programme of DV360 to implement bid shading strategies. As explained in recitals (824) and (825), this programme was designed to allow advertisers to autonomously determine their bidding strategies by manually inputting the value to be attributed to the bids.

(1144) In the second place, even if third-party SSPs were to expect DV360 to implement bid shading strategies, they would certainly not expect such strategies to be conceived and realised by Google in a way that would favour AdX at their expense, as described in section 8.3.2.3 above.

(1145) In the third place, it is not possible to infer from a mere article found on the web that all or most SSPs were aware of project Poirot. Besides, the article is from March 2019, i.e. a few months before the end of the period of the infringement assessed in the present Decision with regard to project Poirot, while it had already been introduced since Q2 2017.

(1146) In the fourth place, even assuming that competing SSPs had seen the article mentioned by Google, this would not be sufficient to remedy the information asymmetry that allowed AdX to enjoy a competitive advantage over its rivals. The article, in fact, does not contain any information on the functioning of project Poirot and certainly does not allow competitors to enjoy the same possibility as AdX to test in advance the interaction of their auctions with DV360.

(1147) In the fifth place, even if third party SSPs would have known of the existence of project Poirot, they would not have been able to predict its effects on bid shading strategies. When it comes to modified second price auctions, it could not for instance always be predicted whether the implemented modifications would trigger more defensive bidding from DSPs (bid shading strategies), as this is dependent, amongst others, on the specific design of both the SSP auction and the optimisation algorithm of the DSP. For instance, the changes made to project Poirot over time that led to more […] bid shading, as described in recitals (828) and (829), show how the instances and the extent to which the DV360 bids were lowered depended on the design of project Poirot and its interaction with the SSP-specific auction features in force at a given time. This uncertainty is one of the reasons why the sell-side and buy-side teams within Google had to test in advance the interaction between their respective tools, not knowing from the outset how the new features of AdX and project Poirot would have impacted on each other. As explained in recital (951) above, third-party SSPs could not benefit from the same opportunity to coordinate with the team in charge of DV360. Moreover, it is difficult for third party SSPs implementing modified second price auctions to recognise retrospectively whether and for what reason the bids received had been lowered. This exercise may be easier only in cases where bids are lowered to a very large extent. This was the case for […], as explained in recital (953) above.

(1148) In the sixth place, even assuming that third party SSPs were able to recognise if the bids coming from DV360 were shaded, they would still be at a competitive disadvantage compared to AdX for several reasons. Firstly, they would be able to conduct such assessment only *ex post.* This would inevitably result in a loss of

[1526] […].

revenues and impressions during the time required to conduct the assessment and implement eventual countermeasures. Secondly, the assessment by a third-party SSP on the methodology followed by a DSP optimisation algorithm may not lead to conclusive results, making it almost impossible to implement effective countermeasures. In fact, for the SSPs adopting multiple features that may induce advertisers to shade their bids, the assessment should aim at isolating each of these features and evaluating their incidence on bidding strategies. The AdX team, on the contrary, had the opportunity to set up customised experiments to test in advance the interaction between project Poirot and each of the candidate versions of the specific features it was planning to implement in the AdX auction and to select the version that matched better with project Poirot. As shown in recitals (943) and (944), for instance, […]. Third party SSPs did not have the same opportunity nor any information on what changes Google made to project Poirot over time and when they were implemented[1527]. For this reason, they could have only been able to speculate on when and to what extent bids were lowered, not knowing what the starting value of the bids was. Being aware of the existence of bid shading would not allow third party SSPs to make informed decisions and eventually adopt effective countermeasures. In other words, true knowledge of project Poirot would mean to know which types of modified features of second price auction were captured by project Poirot and which were not, and when. Such information had not been made available by Google to third-party SSPs. All these circumstances taken together show how difficult it would have been for SSPs to balance the pros and cons associated with the introduction of each of their auction features and adjust them accordingly, as Google did.

(1149) Third, Google argues that, as further proof of the fact that project Poirot involved no favouring of AdX and that it applied the same methodology to all SSPs, other SSPs running second price auctions, […], benefitted from project Poirot, in addition to AdX.[1528]

(1150) In the first place, the circumstance that certain other SSPs might have benefitted from project Poirot is not relevant for the purposes of establishing whether project Poirot was competition on the merits.

(1151) In the second place, this Decision does not claim that project Poirot aimed at penalising each and every rival SSP. Rather, this Decision claims that project Poirot aimed at penalising rival SSPs that were placing bids in Header Bidding, and that, due to technical limitations making it difficult to directly identify rival SSPs placing bids in Header Bidding, project Poirot was, as a proxy, targeting rival SSPs that were using first price auctions or second price auctions that had features that made them closer to a first price auction. The fact that, in addition to AdX, some rival SSPs (which were all small as explained below) might have benefited from project Poirot is therefore consistent with the findings of this Decision.

(1152) In the third place, as explained in recital (818) above, in the period between 2017 and 2019, only a limited number of rival SSPs ran second price auctions that did not have modified features caught by project Poirot. […].[1529] […].

(1153) Fourth, Google argues that project Poirot was not intended to target header bidders as it applied to non-second-price auctions irrespective of the SSPs' participation in

1527 The main changes applied to project Poirot are described at recital (829).

1528 […].

1529 […].

Header Bidding. This would be supported by the fact that the transition in the industry from second price to first price auctions was gradual, […]. According to Google, these data are inconsistent with the fact that all SSPs using Header Bidding deployed a first price auction.[1530]

(1154) However, the fact that project Poirot was applying to all SSPs running first price auctions (or modified second price auctions considered as such by Google), and not only to SSPs using Header Bidding, is not relevant for the purposes of establishing whether project Poirot favoured AdX and, in any case, does not contradict the findings of this Decision. Indeed, as explained in recitals from (904) to (907), […]. By targeting those, Google was therefore sure to at least capture those SSPs that were engaged in Header Bidding, which was its objective.

(1155) This is well identified in Google contemporaneous internal documents cited at recitals (915) and (916), which flatly contradict Google's argument. In those documents, […][1531] […].[1532] [1533]

(1156) The internal documents cited at recitals from (909) to (917) further explain how, […].[1534]

(1157) Fifth, Google argues that […].[1535]

(1158) In the first place, Google's claim is contradicted by its own internal documents cited at recital (931) above. Those documents show that […]. As set out in recital (932), for certain buyers, […]. The same document concludes that AdX was becoming […]. As admitted by Google itself in the internal email exchange cited at recital (947) above, […]. Furthermore, as explained in recital (1138), […]. For these reasons, Google set up the experiments mentioned at recitals (933) to (946) above to […]. As explained in recital (935) above, […]. Significantly, as described at recitals (943) to (945) above, several adjustments to the online RPO algorithm were needed to […].

(1159) In the second place, the discussions within Google mentioned in recital (1159) above show that the delineation between a "[…]" and "[…]" […]. Being able to design its tools according to its own interpretation of what a modified second price auction should be and what features project Poirot should have been able to capture is an advantage that only Google enjoyed.

(1160) In the third place, in any event, it would be circular to claim, as Google does, that the fact that project Poirot never shaded bids on AdX when AdX was using RPO is a proof that AdX with RPO remained a sufficient "clean" second price auction. Indeed, as discussed above, project Poirot incurred periodic revisions in order to ensure that it captured certain types of modified features of second price auctions (or rival SSPs, carefully avoiding those of AdX). […] (see recital (938)).

(1161) Sixth, Google argues that the buy-side and sell-side cooperation […] so that it would not lead project Poirot to shade the bids sent by DV360 is a rational commercial behaviour for a vertically integrated firm serving publishers and advertisers that other SSPs could also replicate and it is not anticompetitive.[1536] Google argues that the

1530 […].
1531 […].
1532 […].
1533 […].
1534 […].
1535 […].
1536 […].

Commission did not ask vertically integrated SSPs whether they had tested how their ad buying tool's bid shading algorithm responded to their SSP's auction.[1537]

(1162) In the first place, the present Decision does not find that the cooperation between the teams in charge of AdX and project Poirot constitutes an anticompetitive practice. Rather it takes the view that Google designed and used project Poirot at least in part as a tool to hinder the adoption of Header Bidding and to divert DV360 spend towards AdX, thus giving AdX a competitive advantage and departing from competition on the merits. In this context, the abovementioned cooperation proves that the justifications alleged by Google […] to sustain that project Poirot consisted in applying an objective criterion to all SSPs are unfounded.

(1163) In the second place, the mere fact that a form of cooperation within a vertically integrated firm is commercially rational does not suffice in itself to exclude that it may be anticompetitive.

(1164) In the third place, the argument according to which SSPs could replicate the same behaviours of Google is irrelevant. The behaviour of non-dominant undertakings has no relevance for the purpose of assessing whether Google's conduct is anticompetitive given Google's special responsibility as a dominant company. Moreover, Google's argument is unfounded and unsubstantiated. In addition, the issue at stake in the present Decision is not that of cooperating with any DSP, but specifically with DV360, as the ad buying tool of the dominant player in the market. In this regard, as explained at recital (952), rival SSPs didn't even know that project Poirot existed and, even if they did, they had no access to any information about its design, let alone the possibility of testing in advance the interaction between project Poirot and their auctions' features. The case of […] is particularly illustrative: […].

(1165) Seventh, […]. According to Google, as regards […]. In any case, Google argues, even if a third-party SSP had conducted experiments with DV360 to see whether their SSP would trigger project Poirot to apply bid shading, […],[1538] and that […].[1539]

(1166) In the first place, the set of evidence contained in this Decision demonstrates that SSPs were not in the position to conduct any tests since they did not even know project Poirot existed and, even if they managed to guess its existence, they did not have access to the same real time information about its design, let alone the possibility of testing in advance and through customised experiments the interaction between their tools and DV360.

(1167) In the second place, this decision does not object to the mere information asymmetry between AdX and […] as regards the way project Poirot operated. Rather, it objects to the fact that project Poirot was put in place with the view, at least in part, to divert DV360 traffic and spend away from rival SSPs using Header Bidding towards AdX. The information asymmetry described in recitals (952) and (953) between rival SSPs and AdX played a role in enabling that practice, if only by making it harder for rival SSPs to adapt their commercial strategy to the practice.

(1168) In the third place, as explained in recital (953), […] tried to reach out to Google asking for an explanation for the lowered bids sent by DV360 and Google refused to provide any help in this regard. […]. In any event, even if rivals might in the end have in practice decided not to change their operations, the very fact that they were

1537 […].
1538 […].
1539 […].

denied the possibility to make an informed choice should be considered enough of a potential impact of the information asymmetry.

(1169) In the fourth place, the claim according to which the Commission has not demonstrated that the information on project Poirot was able to influence the strategy of the third-party SSP regarding the choice between running a first-price or a second-price auction must be dismissed. No SSPs acting in a rational manner would choose to receive lower bids, since they irremediably lead to sharp decreases in revenue as demonstrated by Google internal reports.[1540] This is particularly true for those SSPs running second price auctions with features that can in some cases prompt buyers to shade their bids. It is not a coincidence that, as explained in recitals (937) and (939), […]. This is all the more true considering that third-party SSPs could, for instance, also decide to exempt DV360 from some specific features, as AdX did by exempting DV360 from its DRS, without necessarily modifying the entire setting or type of their auctions for the rest of the buyers that may implement different bid shading strategies.

(1170) Eighth, Google argues that none of the internal documents cited at recitals (938) to (940) and (943) […].[1541]

(1171) Google's argument does not contradict the findings of this Decision. […].

(1172) If anything, this further demonstrates the fallacy of Google's claim that project Poirot was not anticompetitive because it applied the same criteria to all SSPs including AdX. Indeed, whilst it is true that project Poirot formally applied the same methodology to shade bids on all SSPs, including AdX, that methodology in fact had been chosen and designed by Google in such a way as to capture rival SSPs using Header Bidding, and not to capture AdX, as explained in recital (823) above. Google also ensured that, despite its many evolutions, the facially objective methodology continued to catch rival SSPs, not AdX.

(1173) Ninth, Google argues that the real intent behind project Poirot was to benefit advertisers and not to favour AdX nor to harm header bidders. Google argues that the Commission misinterpreted some internal documents cited in the SO[1542] and provides further evidence supporting its own interpretation.[1543] Google argues that project Poirot applied equally to all SSPs and that it shaded bids on non-second-price auctions only as needed to maximise advertiser surplus. Google argues that project Poirot's objective of preventing advertisers from overpaying is demonstrated by the adoption by other SSPs of bid shading algorithms.[1544]

(1174) In the first place, as illustrated in recital (916) above, despite the objective of […] being mentioned in some internal documents, such intent was only a window dressing exercise aimed at facilitating the marketing of project Poirot internally and externally. In contrast, the evidence mentioned at recitals (898) to (917) above shows that the real intent behind project Poirot was […]. The modalities of implementation of project Poirot further confirm such intent, considering the advantages granted to AdX compared to rival SSPs in terms of information provided on the design and operation of project Poirot, possibilities of testing the interactions between certain

1540 On this point, see recitals (918) to (930).
1541 […].
1542 In particular, Google refers to the following documents: […].
1543 […].
1544 […].

versions of AdX and certain versions of project Poirot and tweaking the algorithms accordingly.

(1175) In the second place, while advertisers could have benefitted from shading the bids sent to AdX by DV360, as explained in recital (937) and (939) above, […], a feature […] could have prompted advertisers to shade their bids. This shows that the main objective of project Poirot was not […].

(1176) In the third place, the fact that other DSPs also shaded bids on certain auctions does not in itself imply that project Poirot was not anticompetitive. Indeed, this Decision does not take the view that bid shading is anticompetitive as such. As noted in recital (819) above, it is normal for bidders in a first price auctions to engage in some bid shading. Rather, this Decision takes the view that bid shading can be anticompetitive when performed by a dominant undertaking with the aim of penalising rivals and benefiting the dominant undertaking's own vertically integrated SSP.

(1177) In the fourth place, the alleged efficiencies for advertisers and their correlation with the anticompetitive effects produced towards third-party SSPs will be duly examined in section 8.7.1 below.

(1178) Tenth, Google argues that the harm suffered by […] as a result of the application of project Poirot is counterbalanced by the ROI improvement for advertisers. According to Google, […].[1545] According to Google, […].'[1546]

(1179) In the first place, the ROI improvements for advertisers resulting from shaded bids sent by DV360 to third-party SSPs, and in this particular case to […], cannot exclude in themselves that the conduct was abusive. The reasons why the Buy-side Conduct cannot be considered objectively justified is explained in section 8.7.1.

(1180) In the second place, as explained at recital (923), […].

8.3.5.3.2. Google's arguments on the findings in section 8.3.4.1.3

(1181) The Commission's conclusion that project Poirot acted against the interest of DV360 and its advertisers is not contradicted by Google's arguments described below.

(1182) First, Google argues that project Poirot was commercially rational for DV360 since, […], this would have resulted in an increase of advertisers' ROI and, in the medium to long term, in an increase of value and competitiveness of DV360 and in advertisers allocating more of their ad budgets to DV360 as opposed to other ad buying tools.[1547]

(1183) In the first place, Google did not provide any evidence in support of this argument, which therefore remains merely theoretical. In particular, Google has not demonstrated the existence of the alleged increase of value and competitiveness of DV360 with advertisers due to project Poirot and the fact that such increase in value compensated the […]. On the contrary, the quantitative internal analyses carried out by Google in order to assess the effects of project Poirot […].[1548] Some of these internal analyses on the effects of project Poirot are cited at recitals (832) and (833) and from (918) to (930) above. Recital (922) above shows that the economic rationale behind project Poirot was […].

1545 […].

1546 […].

1547 […].

1548 See, for instance, the following Google's internal documents: […].

(1184) In the second place, Google's arguments conflict with the lack of information for advertisers that characterised the launch and the following implementation of project Poirot, as illustrated at recitals (826) and (951) above. If Google had wanted to focus on the alleged added value brought by project Poirot to attract more customers, it would have been more prone to advertise its existence and provide more information about its functioning.

(1185) In the third place, as explained in recitals (824) to (826) above, while automated bidding relies on an optimization algorithm to dynamically determine the optimal bid price for a given impression, fixed bidding - on which project Poirot was active – is a service offered by DV360 that provides advertisers with the possibility to autonomously determine their bidding strategies. […], Google distorted the nature of the service offered, going against the explicit will of the advertisers, without giving them the relevant information.

(1186) Second, Google argues that project Poirot was in the interests of and benefitted advertisers, as it prevented them from overpaying for inventory in non-second-price auctions. To this end, Google quotes several internal documents and replies to Commission's RFI allegedly supporting this conclusion and showing that also other DSPs implemented similar bid shading algorithms with the same goal as project Poirot.[1549] According to Google, […].[1550] In addition, Google argues that advertisers were able to make an informed decision about implementing project Poirot and chose to use it rationally, to maximise their ROI. Google challenges the Commission's finding according to which advertisers were automatically opted into project Poirot since its launch without being informed of its full scope and impact, claiming that Google sent impacted advertisers an update email to inform them of the possibility to opt out and explaining how to disable the feature. In addition, Google argues that the DV360 HelpCenter webpage contained […] and […] and that the warning that opting out of project Poirot could […] simply reflected the consequences of employing a less-than-optimal bidding strategy for non-second price auctions.

(1187) In the first place, Google has not provided any copy of […]. In this regard, Google's argument remains unsubstantiated. Moreover, contrary to what Google claims, the DV360 HelpCenter webpage – which advertisers would in any case have had to search on their own initiative to gather more information – did not provide sufficient information on the impact of project Poirot on the bids sent by DV360 for the advertisers to make informed decisions. For instance, the relevant webpage does not contain any reference to the fact that project Poirot allegedly aimed at implementing bid shading strategies based on the type of auction run by the different SSPs nor information on the criteria on the basis of which such types of auctions were identified.[1551] The lack of information regarding project Poirot together with the fact that all advertisers were automatically opted in prevented advertisers from making an informed decision about the use of the service.

(1188) In the second place, the possibility for advertisers to make an informed decision regarding the use of project Poirot was all the more necessary since, as explained above, there were several reasons why advertisers could have preferred not to use project Poirot. Among those are the need to prioritise the volume of impressions won

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1549 […].

1550 […].

1551 See: https://support.google.com/displayvideo/answer/7440660?hl=en, downloaded on 29 March 2023 ([…]).

over ROI, as explained in recital (1003), and the fact that advertisers had an interest in DV360 winning bids on third-party SSPs since the related impressions would often have been cheaper for the reasons explained in recital (1000).

(1189) In the third place, as stated in recital (916) above, the fact that some internal documents refer to the ability of project Poirot to save advertisers' money does not change the fact that the main objective of project Poirot was different, namely favouring AdX to the detriment of competing SSPs, and in particular of those participating in Header Bidding. For obvious reasons, Google did not publicly emphasise such objective but […], as shown in the internal documents cited at recitals (898) to (917).

(1190) In the fifth place, if it is true, as Google argues, that advertisers benefitted from a surplus increase as a result of the application of project Poirot, they would have benefitted even more if project Poirot had been implemented in an equal way towards all SSPs, including AdX. In contrast, Google implemented project Poirot mainly, if not only, with the objective of hindering Header Bidding and diverting DV360 spend towards AdX and in addition gave only the AdX team the possibility to test in advance the interaction with project Poirot and tweak the algorithms accordingly, while keeping third-party SSPs in the dark.

(1191) In the sixth place, whether or not project Poirot really benefitted advertisers to the point of counterbalancing the negative impact on third-party SSPs is a matter that will be addressed in section 8.7.1 about objective justifications.

(1192) Third, Google argues that advertisers could have used a third-party DSP or chosen a different campaign setting or opted out of project Poirot if they wanted to use DV360.[1552]

(1193) In the first place, this argument does not address the lack of transparency that characterised the launch and implementation of project Poirot. In order to opt for one of the alternatives listed by Google, advertisers would have equally required a certain level of information, even if only to assess whether project Poirot met their needs. In addition, each of the alternative options postulated by Google presents shortcomings. With regard to the option of using a third-party DSP, advertisers should not be forced to switch from a product of the dominant company in order to offset the anticompetitive effects connected to the use of such product. This is particularly true in this case since, for the reason already detailed in sections 7.3.3 and 7.3.6, Google's ad buying tools were of central importance for advertisers and media agencies, which also had very little countervailing buying power vis-à-vis Google. Besides, switching to Google Ads, another ad buying tool of Google, would have been of little relief for advertisers since Google Ads was itself subject to Google practices aimed at curtailing its purchases on rival SSPs. With regard to the option of choosing different campaign settings, Google does not specify which campaign settings of DV360 advertisers should have chosen in order to be able to set a fixed CPM value for their bids. With regard to the option of opting out of project Poirot, even assuming that advertisers were informed of its existence and the possibility of opting out, they were strongly disincentivised to do so by the DV360 Help Page that dedicated extensive space to stress the risks for advertisers of "*negative impact on the performance of all*" of their fixed bidding on DV360 and "*overpaying for inventory*" in case of opt-out, rather than providing basic information on the service, as explained in recital (826).

1552 […].

(1194) In addition, the alternatives proposed by Google to the use of project Poirot seem merely theoretical and are not backed by any factual evidence. In *Google Android* the General Court made a clear distinction between "*theoretical competition assumptions and the practical reality where the competitive alternatives to which Google refers appear to have little credibility or real impact due to the 'status quo bias'*".[1553] The "*irrational behaviour that explains the aversion to change*"[1554] and that *de facto* reduces the choices available to consumers can also arise in this case since advertisers had been automatically opted into the use of project Poirot and this influenced their choice to use the service, as demonstrated by the fact that only 1-2% of advertisers opted out.

(1195) In the second place, the undertakings that suffered from the anticompetitive effects of the Buy-side Conduct were rival SSPs. Rival SSPs were not in a position to out opt of project Poirot on behalf of the advertisers, so the opt out possibility would not have been an option for them to mitigate the anticompetitive effects of project Poirot, even if it had been more than merely theoretical.

8.3.5.4. Google's arguments on Commission's findings in relation to Google's competitors being unable to adopt Google's Buy-side Conduct because such practices rely on Google's use of resources or means inherent to its holding of a dominant position

(1196) The Commission's findings in section 8.3.3.1 relating to Google's competitors being unable to adopt Google's Buy-side Conduct because such practices rely on Google's use of resources or means inherent to its holding of a dominant position are not contradicted by Google's arguments described below.

(1197) First, Google argues that the Commission's assessment in that section conflates dominance and abuse and would render unlawful almost any behaviour by a dominant company.[1555]

(1198) In the first place, the assessment by the Commission in section 8.3.3.1 is fully in line with the applicable case law in *SEN*.[1556]

(1199) In the second place, as explained in recital (720) above, the Commission has not conflated dominance and abuse, but instead has engaged in separately identifying (i) Google's dominant position on the market for programmatic ad buying tools for the open web; (ii) specific conduct whereby Google has favoured its SSP AdX, by using resources or means inherent to its dominant position and leveraged that dominance into the market for SSPs by methods that depart from competition on the merits, based on specific circumstances of the case. Below, the Commission will further establish that (iii) Google's conduct is capable of having exclusionary effects and that (iv) there are no objective justifications for Google's conduct.

(1200) In the third place, in any event, Google conflates the possession of a resource inherent to the holding of a dominant position with the reliance on that resource to carry out a specific conduct that is anticompetitive. Whilst the former is fulfilled by any company that holds a dominant position in a relevant product market, the latter is not.

1553 Case T-604/18 *Google Android,* EU:T2022:541, paragraph 428.

1554 Case T-604/18 *Google Android,* EU:T2022:541, paragraph 88.

1555 […].

1556 See the ECJ's judgment in Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 78.

(1201) Second, Google argues that other players (of any size) could have replicated, or did replicate, Google's Buy-side Conduct. In the case of the practice of channelling Google Ads demand preferentially through AdX, Google claims that other ad buying tools purchase significant amounts of inventory from their vertically integrated SSPs, and that some ad buying tools charge a higher take rate when bidding on third-party SSPs. In the case of the practice of inflating the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself, Google claims that Google Ads' competitors submitted two bids into SSPs running second-price auctions. In the case of the practice of placing lower bids by DV360 on rival SSPs running first price or modified second-price auctions, Google provides examples of ad buying tools either providing bid shading optimisations, or anyway adapting their bidding strategies according to the type of auction run by the SSP.[1557] Google further argues that the Commission has committed an error of assessment by not considering whether an as efficient competitor could replicate the practice.[1558]

(1202) In the first place, even if competing players had put in place practices equivalent to those of Google with their ad buying tools, those would not be with the breadth of scale of demand equivalent to that controlled by Google's ad buying tools. Therefore, the practice could not be considered as equivalent in terms of potential effect on competition.

(1203) In fact, the nature of the Buy-side Conduct involved the unilateral manipulation by Google of the way its ad buying tools bid on AdX. Google engaged in practices which gave AdX a competitive advantage over every other SSP on the market, due to Google's reliance on control over advertiser demand via Google Ads and DV360, which is inherent to its dominant position. The Buy-side Conduct would have operated in the same way regardless of whether a particular SSP were as efficient as AdX or not because, being unable to replicate such a resource, even an efficient rival SSP could not adopt the same practice.[1559]

(1204) In the second place, to the extent Google may imply the need to rely on an As Efficient Competitor test, the General Court and Court of Justice have clarified in their respective judgments in the *Google Shopping* case that the as-efficient competitor test is not required in every case but is in fact only relevant where appropriate. In order to determine whether the conduct of the dominant undertaking constitutes competition on the merits, it is likely to be appropriate in cases involving pricing practices, such as predatory pricing or margin squeeze. In particular, in such cases, the test can be applied in order to determine whether a competitor as efficient as the dominant undertaking would be able to charge the same prices to their users as the dominant undertaking in the long term without operating at a loss or having to exit the market. As in *Google Shopping*, the use of this test does not make sense in the present case, as the abusive conduct does not consist in pricing practices, but in self-preferencing through leveraging using resources that even an As-Efficient Competitor in the market for SSPs would not have access to.[1560]

1557 […].

1558 […].

1559 See the ECJ's judgment in Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 77 to 79 and 101.

1560 Judgment in Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraphs 538 to 541; upheld on appeal in Case C-48/22 P, EU:C:2024:726, paragraph 269.

8.3.5.5. Google's arguments on the Commission's findings in relation to the importance of DV360 and Google Ads' demand and whether they can be replaced

(1205) The Commission's conclusion that demand from Google Ads and DV360 is important for SSPs and cannot be effectively replaced is not contradicted by Google's arguments described below.

(1206) First, Google argues that the Commission should have focused only on the importance of the portion of demand diverted as a result of the Buy-side Conduct, instead of considering all demand from Google's ad buying tools. According to Google, considering all demand, as opposed to diverted demand, implies that it is not possible to distinguish between a shift in traffic as a result of competition on the merits (for example as a result of improved quality of the product offered) and diversion resulting from a difference in treatment that deviates from competition on the merits.[1561]

(1207) In the first place, the assessment of the importance of demand from Google's ad buying tools and whether they can be replaced should focus on the entire demand rather than the portion of demand diverted as a result of the Buy-side Conduct given that all demand from Google's ad buying tools was potentially impacted by the Buy-side Conduct and was thus susceptible of having been taken away from rival SSPs. The fact that SSPs were still transacting some demand originated from Google's ad buying tools is not in contradiction with this.

(1208) In the second place, given that the market for SSPs is characterised by the presence of network effects (see section 8.5.2.1 below), even if the effect of the Buy-side Conduct was only on a portion of the demand, this would have a feedback loop effect on the remaining demand as more demand directed to one SSP attracts even more demand to that SSP.

(1209) In the third place, such approach is consistent with the assessment performed in the *Google Shopping* decision, where the Commission concluded that the traffic impacted by the anticompetitive conduct accounted for a large proportion of the total traffic to competing comparison shopping services and could not be effectively replaced. While in that context the decision refers to diverted traffic, it identifies the traffic that could be diverted as "*generic search traffic from Google's general search results pages*", i.e. all users' traffic that could be impacted by the conduct.[1562] In other words, the *Google Shopping* decision does not assess only the traffic actually and directly diverted as a result from a difference in treatment, but more broadly the traffic that potentially could be diverted by the practice, either directly or, indirectly, as a result of the long term network effects. The General Court (whose judgment was upheld by the Court of Justice) confirmed this approach by stating "*The importance of Google traffic from its general search pages and the nature of that traffic as being not effectively replaceable were, in view of the background recalled in paragraphs 168 to 173 above and without any error of law being committed, treated by the Commission as relevant circumstances capable of characterising the existence of practices falling outside the scope of competition on the merits*".[1563]

(1210) Second, Google argues that advertisers multi-homing behaviour means that such advertisers' demand is not a resource controlled by Google or irreplicable by rivals.

1561 […].

1562 Commission decision of 27 June 2017 in Case AT.39740 – *Google Search (Shopping)*, Section 7.2.4.

1563 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 174, upheld on appeal in Case C-48/22 P, EU:C:2024:726.

According to Google, multi-homing is widespread across advertisers of all size, and this implies that Google needs to compete impression-by-impression for advertisers demand with other ad buying tools.[1564]

(1211) In the first place, Google internal documents contradict this claim. As the internal documents listed in recital (371) indicate, Google's ad buying tools have access to […] and […] demand, […]. According to these internal documents this demand […] or as stated in another internal document Google Ads […].

(1212) In the second place, data submitted by Google in response to the Commission's RFI indicate that advertisers using Google's ad buying tools tend to concentrate the majority of their programmatic spend on a single platform. Indeed, the Commission's analysis of the data shows that advertisers using Google Ads as their main ad buying tool spent […]% of their annual ad spend on Google Ads, while advertisers using DV360 as their main ad buying tool spent […]% of their annual ad spend on DV360.[1565] Thus, while the same advertiser's demand might be available on multiple ad buying tools, the large proportion of that demand remains concentrated on Google's ad buying tools.

(1213) In the third place, as explained in section 7.3.5, there are a number of benefits for advertisers associated to single-homing and risks related to multi-homing. Advertisers thus often prefer to concentrate most of their spend on a single ad buying tool.

(1214) Third, Google argues that scale is of limited importance for SSPs. Similarly, the size of demand of a single ad buying tool is of limited importance for an SSP, given that SSPs generally integrate with multiple ad buying tools.[1566]

(1215) In the first place, section 8.5.2 provides ample evidence of why scale is important for SSPs. In particular, see recital (1750), the Commission quotes statements of several by publishers which confirm that the volume of demand made accessible by an SSP is one of the most important factor driving their choice of which SSP to use.[1567]

(1216) In the second place, even if an SSP integrates with all the other ad buying tools, it will never be able to achieve the scale AdX achieves as those represent a smaller part of the EEA-wide market for programmatic ad buying tools. Indeed, if one excludes Google's ad buying tools, the proportion of the value of impressions bought by all the other tools is only around […]% of the total size of the market.

(1217) Fourth, Google argues that the Commission's argument on the impossibility to effectively replace demand from Google Ads and DV360 is based on the same factors supporting the Commission's conclusion on the dominance of Google's ad buying tools, including the flawed calculation of market shares. Google maintains that such conclusion is flawed.[1568]

(1218) The Commission has explained in section 7.3 why Google's claim that Google Ads and DV360 are not dominant are unfounded.

1564 […].

1565 Commission's analysis based on data submitted by Google in response to Q 43 of the Commission's RFI to Google of February 2024 ([…]). The analysis is restricted to Open Auction transactions only.

1566 […].

1567 Replies to QB.D.6 of the Commission's RFI to publishers of February 2024.

1568 […].

(1219) Fifth, Google argues that after the implementation of AwBid, other SSPs also have access to Google Ads demand, while DV360 bids across almost 70 third-party SSPs in the EEA between 2016 and 2020.[1569]

(1220) In the first place, despite the launch and gradual expansion of AwBid, Google Ads continues to purchase the large majority of its impression from AdX. As explained in recital (776), in 2022, spend on third-party SSPs ([…]) still produced only about […] of the amount of media spend that flowed from Google Ads through AdX ([…]).

(1221) In the second place, even after the launch of AwBid, SSPs' access to Google Ads demand was still limited to specific campaigns only (e.g., until October 2018, it was limited to remarketing campaigns only). Moreover, as explained in recital (779), the […] demanded by Google Ads on AwBid results in […] to third-party SSPs for a given inventory than the bids Google Ads would submit for equivalent inventory on AdX.

(1222) In the third place, while DV360 does indeed send bids to multiple SSPs, it concentrated around […] of its spend on AdX between 2019 and 2023 (see recital (1761)). Spend on third-party SSPs never exceeded […]% of its total spend, with the remaining share accounted for by spend on the other Google-owned networks (AdSense and AdMob). As such, […]. This acknowledged by Google itself. In an internal presentation titled […], Google's employees write that […]. The document compares DV360 performance on AdX versus third-party exchanges, stating that:

(1) […];

(2) […]; and

(3) […].[1570]

8.3.6. Conclusion on the Buy-side Conduct

(1223) In summary, the Commission reaches the conclusion that Google has infringed Article 102 TFEU by using its ad buying tools (Google Ads and DV360) to favour its SSP (AdX).

(1224) In particular, and for the reasons set out above, the Commission finds that Google's favouring of AdX via Google Ads and DV360 through the adoption of the Buy-side Conduct departs from competition on the merits based on the following circumstances:

(1) Google Ads and DV360 have been favouring AdX by engaging in the Buy-side Conduct, treating AdX more favourably than they treat third-party SSPs (explained in section 8.3.2 above);

(2) The Buy-side Conduct consists of practices that Google's competitors are unable to adopt because such practices rely on the use of resources or means inherent to Google's dominant position on certain markets, i.e. the EEA-wide market for programmatic ad buying tools (section 8.3.3.1), and Google leverages that dominance into the EEA-wide market for SSPs (section 8.3.3.2); and

(3) Additionally, there are relevant circumstances specific to this case that further reinforce the conclusion that the Buy-side Conduct departs from competition on the merits, namely:

1569 […].
1570 […].

(a) By engaging in the Buy-side Conduct, Google acts against the interest of Google Ads and DV360 as well as its customers, advertisers and media agencies (explained in section 8.3.4.1 above); and

(b) Google Ads and DV360 demand is important for rival SSPs and cannot be effectively replaced (explained in section 8.3.4.2 above).

(1225) Further, the Commission has assessed arguments made by Google in the exercise of its rights of defence and concluded that these are unfounded and not of a character to contradict the Commission's conclusion (section 8.3.5 above).

8.4. The Sell-side Conduct departs from competition on the merits

(1226) The Commission reaches the conclusion that Google's favouring of AdX via DFP through the adoption of the Sell-side Conduct departs from competition on the merits. This conclusion is based on findings that take into account the specific circumstances related to the conduct itself, the markets in question and the functioning of competition on those markets.[1571]

(1227) In summary, the conclusion that the Sell-side Conduct departs from competition on the merits is based on the following circumstances:

(1) DFP has been favouring AdX by engaging in the Sell-side Conduct, treating AdX more favourably than it treats third-party SSPs (section 8.4.2);

(2) The Sell-side Conduct consists of practices that Google's competitors are unable to adopt because such practices rely on the use of resources or means inherent to Google's dominant position on certain markets[1572] (section 8.4.3.1), and Google leverages that dominance into the EEA-wide market for SSPs[1573] (section 8.4.3.2); and

(3) Additionally, there are relevant circumstances specific to this case[1574] that further reinforce the conclusion that the Sell-side Conduct departs from competition on the merits, namely:

(a) By engaging in the Sell-side Conduct, Google acts against the interests of DFP and of its customers, the publishers (section 8.4.4.1); and

(b) DFP ad inventory is important for rival SSPs and cannot be effectively replaced (section 8.4.4.2).[1575]

(1228) The fact that several circumstances are present further reinforces the conclusion that Google's favouring of AdX via DFP departs from competition on the merits. In particular, the Commission considers that the presence of the first and second circumstances set out in recitals (1227)(1) and (1227)(2) is sufficient to establish that the Sell-side Conduct departs from competition on the merits, in that it establishes

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1571 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 166.

1572 Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 78.

1573 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 167. The General Court's findings were upheld by the ECJ on appeal in Case C-48/22 P, EU:C:2024:726, paragraph 172.

1574 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraphs 169-175. The General Court's findings were upheld by the ECJ on appeal in Case C-48/22 P, EU:C:2024:726, paragraph 172.

1575 The analysis of these circumstances follows the line of reasoning established in Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763 upheld by the ECJ on appeal in Case C-48/22 P, EU:C:2024:726.

that Google leverages its dominance in one market onto a neighbouring market by means of conduct which is different from normal competition.[1576] The specific circumstances set out in recital (1227)(3), while not necessary to characterise the Sell-side Conduct as a departure from competition on the merits, are both relevant for the Commission's assessment as they reinforce and strengthen the Commission's conclusion in that regard.

(1229) Further, in the following assessment of the practices constitutive of the Sell-side Conduct, the Commission establishes that at least some of the practices were intentional, meaning that Google pursued the conduct for the specific purpose of, and knowingly in furtherance of, conferring on AdX an objective competitive advantage that hindered the ability of all third-party SSPs to effectively compete. As noted above in recital (694), intent is not necessary to establish an abuse of dominance, but evidence of intent is a fact that can be taken into account in order to establish that a given conduct is abusive.

(1230) The Commission's conclusion that the Sell-side Conduct departs from competition on the merits is not contradicted by the arguments made by Google as described in the following paragraphs. Google advances several arguments alleging that the Commission misapplies the circumstances identified above and the relevant case law.

(1231) First, Google argues that, in order for the Commission to properly find an abuse, it must apply a legal test "akin to" the cumulative criteria set out in *Bronner* as the appropriate legal test for identifying an abusive refusal to deal.[1577]

(1232) Contrary to Google's argument, it is evident from the judgments of the Court of Justice and the General Court in *Google Shopping* that the *Bronner* criteria do not apply to abusive conduct in the form of favouring.[1578] As clarified by the Court of Justice, the *Bronner* criteria apply to the specific circumstances of that case, which consisted in a refusal by a dominant undertaking to give a competitor access to infrastructure that it had developed for the needs of its own business, to the exclusion of any other conduct.[1579] Conversely, when the conduct at stake consists of unfair or discriminatory conditions of access to an infrastructure, the *Bronner* criteria do not apply.[1580] In this respect, the Sell-side Conduct does not consist of a refusal by Google to grant access to competitors to its infrastructure, but of favouring in the form of a difference in treatment by Google's publisher ad server between Google's own product AdX and the products of its competitors.

(1233) There is thus no need for the Commission to have considered a hypothetical alternative test, with cumulative criteria, that would be "akin" but not identical to the *Bronner* criteria, to which Google alludes repeatedly in its arguments but does not propose in any coherent form.

(1234) Second, Google argues that the Commission conflates dominance and abuse and fails to acknowledge that leveraging is only abusive if it departs from competition on the

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1576 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 143. See also Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379 paragraphs 76 and 78.

1577 […].

1578 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 240; upheld by the ECJ on appeal in Case C-48/22 P, EU:C:2024:726, paragraph 113.

1579 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 90.

1580 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraphs 110-113.

merits, hence misapplying the second circumstance in concluding that Google unlawfully leveraged its dominance.[1581] In particular, Google argues that in order to show whether its conduct departed from competition on the merits, the Commission should have determined whether any difference in treatment was based on objective criteria. Google argues that such different treatment cannot be considered discriminatory unless it appears to be arbitrary. Google further maintains that the Commission is required to show intention to foreclose, not simply intention to treat third parties less favourably.[1582]

(1235) In the first place, the Commission has not conflated dominance and abuse in reaching its conclusions. Instead, the Commission has first identified a dominant position held by Google on the EEA-wide market for publisher ad servers, then identified distinct practices (collectively, the Sell-side Conduct) by means of which Google has leveraged this dominance into the market for SSPs, in particular by treating its own SSP AdX more favourably than any other SSP. In so doing, the Commission relied on circumstances specific to the markets and conduct at hand. In particular, the Commission has found that Google's competitors are unable to replicate the Sell-side Conduct without the resources or means inherent to Google's dominant position, and has identified additional relevant circumstances specific to this case. It is on this basis that the Commission has found that the Sell-side Conduct departs from competition on the merits.

(1236) In the second place, in doing so, the Commission has considered whether there was a valid justification for any of the favouring practices, including those put forward by Google, and has concluded that there was none. In all instances, the favouring of AdX was based not on objective criteria applied to all SSPs in the same way, but on an intention to leverage the dominance of Google's publisher ad server to give a competitive advantage to AdX. In light of the above, and in view of the circumstances specific to this case identified herein, the Commission has concluded that the Sell-side Conduct departs from competition on the merits. There is no support in the case law for Google's proposition that the Commission must additionally show that the different treatment appears to be arbitrary or have no rationale other than to exclude rivals.

(1237) In the third place, the Commission is not required to show intent to establish an abuse of dominance.[1583] However, evidence of intent may nevertheless be relevant for the purposes of the assessment.[1584] In this case, the Commission has shown that Google implemented the Sell-side Conduct with the intention to provide AdX with a competitive advantage compared to rival SSP. This intent is not necessary to

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1581 […].

1582 […].

1583 As the concept of abuse is objective, it is not necessary to show that an undertaking had the intent to impair effective competition. See Case C-549/10 P *Tomra and Others v Commission*, EU:C:2012:221, paragraph 21; Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraphs 60-62, and the case law cited therein; Case C-680/20 *Unilever Italia Mkt. Operations*, EU:C:2023:33, paragraph 45; Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraphs 254-257; Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 359.

1584 Case C-307/18 *Generics (UK) and Others*, EU:C:2020:52, paragraph 162 and the case-law cited therein; Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 63; Case C-680/20 *Unilever Italia Mkt. Operations*, EU:C:2023:33, paragraph 45; Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 359; Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraph 254.

establish a departure from competition on the merits but is a relevant factor to be taken into account in that assessment.

(1238) Third, Google argues that the Commission errs in considering that the Sell-side Conduct went against the interests of DFP as well as publishers. Google argues that such a finding is tantamount to characterising this conduct as irrational and maintains that such a conclusion is only appropriate when the conduct is arbitrary or lacks any economic interest other than foreclosing competitors. According to Google, beyond these circumstances, there is no support in the case law for the Commission's approach. Google further claims that the Commission's approach treats as illegal any departure from what the Commission considers with hindsight to be the optimal commercial strategy.[1585]

(1239) In the first place, in reaching its conclusions that the Sell-side Conduct went against the interests of Google's publisher ad server as well as publishers, the Commission has relied not on its own ex post judgment, but principally on the evidence in the file, in particular Google's own internal documents in which Google employees themselves (at the time the relevant conduct was occurring) openly acknowledge several of the practices making up the Sell-side Conduct were against the interests of publishers, and were instead implemented in the interest of AdX.[1586]

(1240) In the second place, the fact that an abusive conduct may have been found to be arbitrary or lacking any rationale other than to exclude rivals in other cases, with very different factual circumstances from those found in the present case, does not in any way imply that those circumstances constitute a legal test that the Commission must meet in order to find the existence of an abuse.[1587]

(1241) Fourth, Google argues that the circumstance that DFP ad inventory is important for rival SSPs and cannot be effectively replaced is flawed, because it relates to the effects of the conduct and not its merits. Google maintains that legal certainty is undermined if dominant firms cannot assess the merits of their conduct in and of themselves, without reference to their effects.[1588]

(1242) In the first place, the Commission's approach in the present case is fully consistent with the approach taken in the judgement from the General Court in *Google Shopping*, as upheld by the Court of Justice. In that case, the importance of Google traffic from its general search pages and the nature of that traffic as being not effectively replaceable were treated by the EU Courts as relevant circumstances capable of characterising the existence of practices falling outside the scope of competition on the merits.[1589]

(1243) In upholding this finding, the Court of Justice noted that *"those circumstances do not relate solely to the effects of the practices at issue or to the elements merely surrounding those practices, but are, as the General Court pointed out in paragraph 174 of the judgment under appeal, capable of characterising the existence of*

1585 […].

1586 See, for example, recitals (1284), (1323), (1335), (1339), (1367), (1372), (1373), (1376), (1386), (1392), (1406), (1413), (1432), (1438), (1440), and (1444).

1587 The Court of Justice has rejected this argument in its judgment of 10 September 2024, *Google and Alphabet v Commission (Google Shopping)*, Case C-48/22 P, EU:C:2024:726, paragraphs 182-187.

1588 […].

1589 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraphs 159 and 161.

practices falling outside the scope of competition on the merits".[1590] Accordingly, such circumstances may be relevant both for the assessment of whether a conduct departs from competition on the merits and of whether it is capable of producing exclusionary effects. The Court of Justice also noted that "the relevant factual circumstances include not only those that concern the conduct itself, but also those that concern the market or markets in question or the functioning of competition on that or those market(s). Thus, circumstances relating to the context in which the conduct of the dominant undertaking is implemented, such as the characteristics of the sector concerned, must be regarded as relevant."[1591] Therefore, Google's claim that legal certainty is undermined unless a dominant company is able to judge whether its conduct falls outside of competition on the merits, without any reference to such factual circumstances, cannot stand.

(1244) Fifth, Google argues that, following the *Google Shopping* case, the Commission should have investigated whether the conduct could have influenced publisher behaviour.[1592]

(1245) The criterion of user behaviour was recognised as an important circumstance relevant to the assessment of the conduct at issue in *Google Shopping* because the effects of the conduct depended to a significant extent on user behaviour and, more precisely, on the impact Google's presentation of comparison shopping search results would have on user behaviour, since the occurrence of traffic on a particular website depended on a user taking a specific action, i.e. clicking on a link on a search results page.[1593] It was therefore appropriate, in that case, to assess how users would react to Google's conduct.

(1246) This is clearly distinguishable from the present case, in which the conduct of Google directly favours AdX and is not mediated by the actions of any other entity, be it end users, publishers, advertisers or another third-party. The Sell-side Conduct consists of Google's publisher ad server selling ad inventory in ways that favour AdX compared to competitors, without there being a need for any behaviour by publishers to click on a link or act on the favouring in any manner. The Commission is therefore correct to conclude that it is not a relevant circumstance specific to this case. Google's argument that the Commission should have investigated how publishers or advertisers reacted or would react to the conduct is unfounded, not least because it presupposes that publishers or advertisers would have known the specifics of the practices. By contrast, in *Google Shopping* the circumstance found to affect user behaviour was the visible display of search results on a user's screen.

8.4.1. Introduction to the sell side of Google adtech stack

(1247) This section summarizes the evolution of the adtech industry on the sell-side, in light of the technologies introduced by Google and its competitors. Subsequent sections will describe in more details the features and practices that are briefly introduced in this section.

1590 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 170, and paragraphs 171-172

1591 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 168.

1592 […].

1593 Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 160.

(1248) Medium and large publishers have traditionally sold a proportion of their ad inventory through direct deals with advertisers. However, the volume of available impressions could never be perfectly estimated in an online context, since it depended on the number of users viewing those publishers' websites or apps. Programmatic sales were a means of monetizing ad inventory that was not sold through direct deals. Small publishers primarily sold their ad inventory through programmatic sales.

(1249) To ensure that no inventory was left unfilled, publishers typically used more than one intermediary. In the early days of programmatic sales, publishers configured their publisher ad server to rank their intermediaries, initially publisher ad networks but then increasingly SSPs in a waterfall-like sequence, usually according to a CPM (Cost-Per-Mille) that usually reflected the revenue each publisher ad network or SSP was expected to bring based on their past payments ("static CPM").[1594] This process is generally known in the industry as the "waterfall".[1595] Under this system, the publisher ad server first prioritised the impressions that were sold directly to advertisers, which were referred to as "guaranteed line items" in DFP, so that the publisher met its contractual obligations with advertisers, for instance displaying a given number of ads within a given period. For the remaining inventory or in the absence of an eligible guaranteed line item, the publisher ad server redirected the user's browser to the publisher ad network or SSP ranked first and offered it the ability to sell the impression. If the publisher ad network or SSP sold the impression, the ad selection process would stop at this stage and no other publisher ad network or SSP would be called; if, on the other hand, the impression was not sold, the publisher ad network or SSP ranked second would be called and offered the opportunity to sell the impressions, and so on until the impression was monetised.

(1250) With the emergence of SSPs that could launch auctions in real-time in the mid- to late 2000s,[1596] it became apparent that this setup had two significant drawbacks. First, it prevented publishers from routing their ad inventory to more than one SSP at a time. Instead, ad inventory had to be sequentially routed through one SSP at a time, which resulted in sequential calls and latency. Second, this setup could not capture the benefits of real-time bidding that SSPs introduced. Publishers had to rank SSPs within the publisher ad server, usually according to each SSP's expected revenue, which was estimated based on its historical average revenue. However, SSPs ran their own internal real-time auction each time an impression was available, with the consequence that they could return a price higher or lower than their expected revenue for a given impression. The "static" waterfall-like setup could not capture this "dynamic" aspect, and this disadvantage reduced publishers' potential revenue.

(1251) In July 2007, DoubleClick launched a new feature called Dynamic Allocation.[1597] In 2008, Google acquired DoubleClick and its sell-side products i.e., the SSP services, which would become AdX, and the publisher ad server, which would become DFP. With Dynamic Allocation, DFP solicited AdX first for every eligible impression. In

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1594 The Static CPM could reflect the expected revenue set by the publisher or some negotiated CPM ("agreed CPM"), or it could be computed by DFP based on the rival SSP's historical performance.

1595 See recital (1260) for a definition of the Waterfall channel for the purpose of this Decision.

1596 […].

1597 […].

September 2009, Google launched a new version of AdX, which allowed AdX to bid in real-time for every eligible impression.[1598]

(1252) In 2014, Google introduced the Enhanced Dynamic Allocation feature ("EDA") to allow AdX to sell impressions that would have otherwise been allocated to direct deals.[1599] Under EDA, DFP calculated a temporary price for a publisher's direct deal, based on the price that the publisher had agreed with the advertiser and the advertising campaign's progress. The temporary CPM took into account how much room the publisher had left to meet the agreed volume commitment and reflected the opportunity cost of not allocating the ad space to the guaranteed deal on that basis. The more behind schedule a guaranteed line item was, the higher the temporary CPM.[1600] DFP then called AdX and gave it the opportunity to sell the impression above that temporary CPM. If AdX could place a high enough bid in real-time, it sold the impression ahead of the direct deal.

(1253) In 2014, if not before, in response to Dynamic Allocation and EDA, adtech vendors, notably providers of publisher ad servers and SSPs, had developed a new technology, called Header Bidding. The latter changed the functioning of programmatic sales by allowing non-Google SSPs to compete against each other in a real-time auction, instead of participating in the DFP auction[1601] based on a static CPM. This had the potential to increase publishers' revenues by extending the scope of SSPs invited to bid, at the same time, for a given impression.

(1254) Whilst non-Google SSPs competed against each other in real time in Header Bidding, Google chose not to join this new technology. As a result, the Header Bidding auction happened before the user browser called DFP. Once the Header Bidding auction was over, the clearing price of the Header Bidding auction was inserted into DFP. The latter then executed its usual decision logic, which involved EDA, to determine the ad to be displayed to the user. Until 2019, once a Header Bidding auction was over, DFP communicated the clearing price of the Header Bidding auction to AdX as the "price to beat" in the AdX auction.[1602] If AdX could place a bid just one EUR cent above the price floor, AdX sold the impression.

(1255) While publishers quickly adopted Header Bidding for non-video ads on web ad inventory to increase their revenues, Header Bidding adoption was lower for certain types of ad inventory, such as video, mobile or mobile apps, due to technical limitations and difficulties of making Header Bidding interoperate with DFP. Therefore, rival SSPs still place bids through the Waterfall for a part of the ad inventory of publishers that use DFP ("DFP ad inventory").

(1256) Between 2016 and 2018, Google progressively launched Exchange Bidding, later renamed Open Bidding, as an alternative to Header Bidding. With Open Bidding, DFP launches a real-time auction between AdX and rival SSPs that integrated with

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1598 This Decision relates to the way Dynamic Allocation works after the launch of the new version of AdX in September 2009. Before September 2009, AdX was called for every eligible impression but did not submit real-time bids to DFP. See SO Response, paragraph 5.13. An impression that is eligible for AdX is an impression for which the publisher has configured (in DFP) that DFP should call AdX.

1599 […].

1600 […].

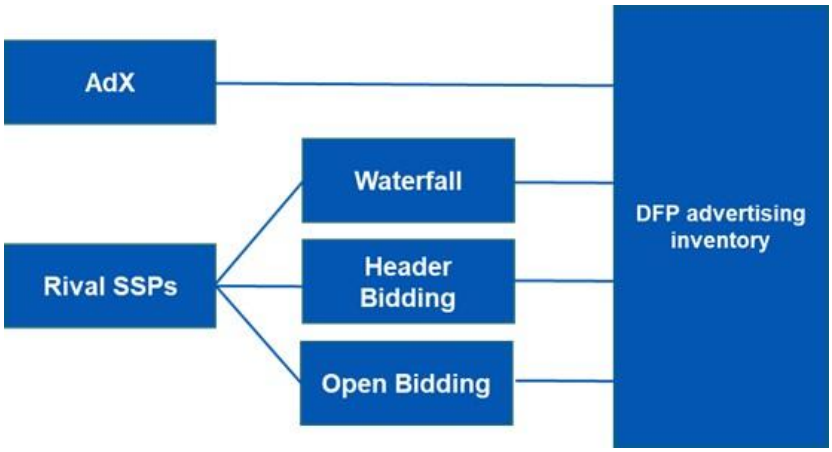
1601 This Decision uses the terms 'DFP auction' to designate the selection mechanism used by Google to determine the ad that serves an impression on the inventory of a publisher using DFP.

1602 If the clearing price of the Header Bidding auction was higher than the other elements that constituted the AdX price floor, see later sections for more details.

DFP. Exchange Bidding and Open Bidding are used interchangeably in this Decision.

(1257) Therefore, rival SSPs have used and still use three ways ("channels") to sell DFP ad inventory during the period under investigation: the Waterfall since at least 2014, the start of the period under investigation; Header Bidding for part of DFP ad inventory since at least 2014; and, progressively, Open Bidding for certain SSPs since 2016. In this Decision, each channel corresponds to a set of terms and conditions, or technical means, to sell DFP ad inventory via third parties and to a specific treatment by DFP's ad selection process, which ultimately decides which SSP wins the impression when comparing to AdX's bid(s) submitted via Dynamic Allocation. In practice, the way publishers configure DFP determines which channel(s) a rival SSP can use to sell DFP ad inventory, and a rival SSP can simultaneously participate in the DFP auction through more than one channel.

Figure 24: Sell-side channels for DFP ad inventory[1603]



(1258) Until 2019, each impression went through two distinct auctions in the case of a publisher using DFP and AdX: a second-price auction run by AdX, in which ad buying tools bidding on AdX ("AdX buyers") competed against each other; and a first-price auction run by DFP, in which AdX competed, on the basis of the clearing price resulting from the first auction, with SSPs participating in Open Bidding ("Open Bidders") and the clearing price of the Header Bidding auction. In September 2019, Google collapsed the two auctions into one. Under the new setup, according to Google, there is a single "unified first-price auction" run by DFP with the following participants: AdX buyers, Open Bidders and Header Bidders (i.e., SSPs bidding through Header Bidding).[1604] While AdX buyers participate directly in the unified first-price auction run by DFP, AdX continues to play a role, for instance verifying the quality of the ad, and applies an AdX fee to the bids of AdX buyers.

8.4.2. DFP has been favouring AdX by engaging in the Sell-side Conduct

(1259) The Commission reaches the conclusion that DFP has been favouring bids placed by AdX compared to bids placed by rival SSPs. Sections 8.4.2.1, 8.4.2.2 and 8.4.2.3 describe how this was implemented for bids placed by rival SSPs through,

1603 Commission's own elaboration.

1604 Technically, the Header Bidding auction still happens before DFP launches the auction for AdX buyers and Open Bidders. However, according to Google, DFP does not communicate the results of the Header Bidding auction to the auction for AdX buyers and Open Bidders. This implies that the sequential two auctions (first for Header Bidders and second for AdX buyers and Open Bidders) ends up being equivalent to a single auction in which Header Bidders, AdX buyers and Open Bidders participate.

respectively, the Waterfall, Header Bidding and Open Bidding channels. These channels are the three ways for rival SSPs to participate in the DFP auction and sell DFP ad inventory.

8.4.2.1. The Waterfall

8.4.2.1.1. Introduction

(1260) The Waterfall channel is the channel for rival SSPs to sell inventory of publishers using DFP based on a static CPM. Google identifies two technical ways for publishers to configure DFP to that effect. First, they can configure them as "remnant line items" in DFP[1605] (see recitals (1266) to (1272) below). Second, they can configure them as "mediation partners" in DFP (see recital (1273) below).[1606]

(1261) In both cases, rival SSPs compete in the DFP auction with a static CPM, i.e., a price that remains identical for all eligible impressions, in contrast to a real-time bid that varies for each impression, depending on the valuation the advertisers participating in the auction attribute to the specific impression being sold (such valuation may vary, for instance, because of the information that advertisers obtain on the specific interest of a specific user for a given product). Publishers may manually configure rival SSPs with a static CPM, usually according to their expected average revenue from that SSP, or let DFP assign it based on the rival SSP's historical average payment per thousand impressions. In some cases, it can also correspond to a negotiated static CPM between the SSP and the publisher.

(1262) Evidence in the file confirms that rival SSPs have used the Waterfall channel to sell DFP ad inventory during the period covered by this Decision. In particular, the evidence shows that publishers have configured rival SSPs as remnant line items or mediation partners since 2014, in particular for DFP ad inventory not available through Header Bidding i.e. typically app and video inventory:

(1) The majority of publishers that replied to the Commission's RFI indicated they have configured at least certain rival SSPs to compete in the DFP auction through the Waterfall channel since 2014.[1607]

(2) The majority of SSPs that replied to the Commission's RFI indicated that they have used the Waterfall channel to compete in the DFP auction, although this channel has progressively become less common with the adoption of Header Bidding.[1608]

(1263) […].[1609] Google acknowledges that rival SSPs are using the Waterfall channel to sell DFP ad inventory. As regards mediation, Google acknowledges that video ad inventory is mostly sold through line items that are configured by publishers to create a chain of demand sources similar to mediation, and that app ad inventory is mostly sold through mediation, all of which are based on static CPMs.[1610] […].[1611]

1605 Others like DSPs, publisher ad networks and advertisers can also be configured as remnant line items.

1606 Mediation was launched in 2012 for web inventory. In June 2013, mediation was launched for app inventory. Mediation for web was deprecated in April 2017. Mediation for video ads was launched around 2015 until it was deprecated in September 2017. Since this deprecation mediation has been only available for app inventory, including video ads in apps. See SO Response, paragraphs 5.51 and 5.67.

1607 Replies to QB.C.A.1 of the Commission's RFI to publishers of February 2024.

1608 Replies to QB.3 of the Commission's RFI to SSPs of February 2024.

1609 […].

1610 Although app inventory is mainly sold through publisher ad networks and not SSPs. […].

1611 […].

(1264) To the extent that, in the recent years, the Waterfall channel has been used less by rival SSPs to participate in auctions for the ad inventory of DFP publishers, this is, in part, likely due to the disadvantages associated with this channel as described below.

8.4.2.1.2. DFP has been favouring bids placed by AdX, compared to bids placed by rival SSPs via the Waterfall channel, through the First Look advantage

(1265) The Commission reaches the conclusion that Google, via DFP, has been favouring bids placed by AdX in DFP's auction, compared to bids placed by rival SSPs in that auction via the Waterfall channel. This conduct was already ongoing at the beginning of 2014, the year since which the Commission has found Google to be dominant on the EEA-wide market for publisher ad servers.

(1266) In simple terms, the practice works as follows: where a publisher has made AdX eligible for a given impression, AdX places bids in the DFP auction through a DFP standalone mechanism called Dynamic Allocation. DFP gives AdX first the possibility to sell each impression (the so called First Look), through Dynamic Allocation, and reaches out to rival SSPs placing bids in the Waterfall channel only if AdX does not win the impression through Dynamic Allocation.

(1267) More precisely, when the original version of Dynamic Allocation was in place, for each eligible impression, DFP first determined whether the ad inventory could be filled with a guaranteed line item i.e., direct deals between publishers and advertisers. If the ad inventory could not be filled with a guaranteed line item, DFP called AdX first, after having determined a price floor for AdX. In its internal bid selection process, AdX used that price floor for the auction it organised between the ad buying tools bidding through AdX. This AdX price floor was calculated by DFP based on whichever was the highest of (i) the price floor configured by the publisher (if available), and (ii) the static CPM of the best eligible remnant line item, which typically corresponded to the highest revenue any rival SSP was expected to bring based on their past payments.[1612]

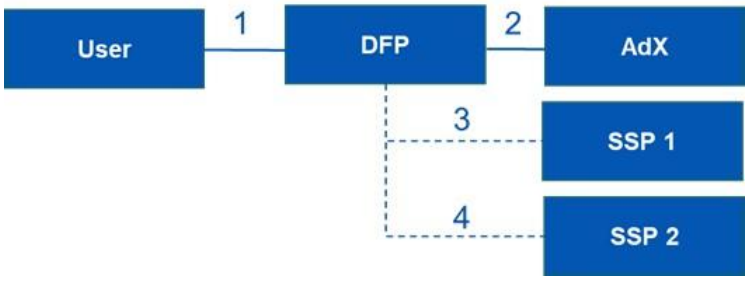
(1268) At that point, AdX could place a bid in real time. For that purpose, it organised its own real-time second-price auction among ad buying tools placing bids through it.[1613] If, as a result, AdX could place a bid above the AdX price floor, AdX won the impression, without rival SSPs getting an opportunity to seek to beat the real time bid of AdX for that specific impression. The ad buying tool that had won the AdX auction, paid the price of the second highest bid submitted to the AdX auction, or the AdX price floor if there was no second bid above it, plus a very small amount, for instance one EUR cent.

(1269) In the instances where AdX did not place a bid above the AdX price floor, DFP then called the rival SSP that was configured as a remnant line item with the highest static CPM and gave it a chance to win the impression.

1612 […].

1613 Starting from September 2009.

Figure 25: Dynamic Allocation and Waterfall[1614]



(1270) In 2014, Google replaced Dynamic Allocation with its successor EDA, which works the same way as Dynamic Allocation but, in addition, it enables publishers to let guaranteed line items compete against remnant line items.[1615] With EDA, DFP determines a temporary CPM for each impression that was contractually guaranteed. This CPM corresponds to an opportunity cost of not serving the impression. By increasing this temporary CPM as the delay in serving the guaranteed campaign increases, EDA makes it possible to avoid serving too few guaranteed impressions and breaching the contract.

(1271) After having determined the temporary CPMs for the guaranteed line items, DFP calls AdX. In this new version, the price floor set for AdX by DFP is equal to the highest of (i) the price floor configured by the publisher (if available), (ii) the static CPM of the best eligible remnant line item, and (iii) the temporary CPM of the best guaranteed line item.[1616] EDA enables AdX to win an impression, even though there is an eligible guaranteed line item, provided that AdX can place a bid higher than the opportunity cost of not serving the contractually guaranteed impression.

(1272) With EDA, as with Dynamic Allocation, AdX remains the only SSP able to place a real-time bid for each impression, being called first, while the rival SSP with the highest static CPM, configured as a remnant line item, is solicited only if AdX has not placed a real-time bid above the AdX price floor. For the purpose of this Decision, Dynamic Allocation and EDA are used interchangeably, as the underlying mechanism favouring AdX, compared to rival SSPs selling DFP ad inventory through the Waterfall channel, remains the same: DFP allows AdX to place a bid in real-time and win the impression provided it can submit a real-time bid that is higher than the static CPM of the best eligible rival SSP (and of the best eligible guaranteed line item with EDA), while rival SSPs participating in the DFP auction via the Waterfall channel do so with a static CPM and are solicited only in case AdX has not won the impression with its real time bid in the first place.

(1273) With mediation, the technical configuration of the Waterfall channel works slightly differently but leads to the same result. DFP creates a chain of mediation partners, which are called sequentially in descending order of the static CPM.[1617] As for remnant line items, publishers manually enter a static CPM, which can reflect the expected revenue of the mediation partner or some agreed CPM, or they allow a static CPM to be computed based on the rival SSP's historical performance. For a particular impression, a chain of mediation partners that are eligible for that

1614 Commission's own elaboration.

1615 […].

1616 Google subsequently allowed publishers to add a price set automatically by Google for the calculation of the AdX price floor through the RPO feature. The AdX price floor became the highest of the three elements specified in the text and this new, automatically calculated price.

1617 […].

impression is created, ordered from highest to lowest static CPM. AdX is slotted into the chain based on the highest real-time bid in the AdX auction.[1618] This means that if AdX can submit a real-time bid (determined by its highest bidder in the AdX internal auction) higher than the highest of the static CPMs in the chain (and the other elements determining the auction price floor), it wins the impression. Otherwise, the SSP with the highest static CPM is called. In that case, if it can place an eligible ad, it wins the impression. If not, the same process continues following the descending order of static CPMs until one SSP is able to sell the impression.

(1274) Even after the introduction of the unified first-price auction in September 2019[1619], SSPs using the Waterfall channel continued to participate in the DFP auction via their static CPM.[1620] Thus, in the same way, AdX can out-perform rival SSPs participating in the Waterfall channel as soon as it can place a real time bid (taking account of the highest bids obtained in real time from its ad buying tools) higher than the static CPM of the best eligible rival SSP.[1621]

(1275) In view of the above, via Dynamic Allocation, AdX has a substantial advantage, to which the adtech industry refers as the "First Look advantage",[1622] compared to rival SSPs participating in the DFP auction through the Waterfall channel. As explained above, this First Look advantage derives from the fact that AdX has the possibility to place bids in real-time while rival SSPs participating in the Waterfall need to compete based on a static CPM. This is irrespective of the technical way in which those SSPs are configured in the Waterfall (for instance as a remnant line item or a mediation partner), as in all instances, rivals participate based on a static CPM. It is also irrespective of the type of internal auction used by AdX to select its real time bid (a second price auction until September 2019, and a first price auction as from September 2019). In all instances, DFP gives AdX the opportunity to place a real-time bid for every eligible impression, and thus to win those impressions, without being placed in real-time competition with rival SSPs participating in the DFP auction through the Waterfall channel, even if those might have placed a higher bid were they given the opportunity to submit bids in real-time. Only if AdX does not place a real-time bid above the static CPM of the best eligible remnant line item or mediation partner, will DFP reach outside of the Google ecosystem and solicit rival SSPs in the Waterfall channel to give them the opportunity to win the impression.

(1276) This has three effects:

1618 Until September 2019, even though AdX organised a second-price auction (and not yet a first-price auction), it was nonetheless the first-price i.e, the highest bid of the AdX auction, that was slotted into the mediation chain.

1619 See recital (1258).

1620 If the publisher configured rival SSPs as remnant line items, before the launch of the unified first price auction, the AdX price floor took into account the CPM of the best eligible remnant line item. If the highest bid of the AdX auction, after deduction of the AdX fees, was higher than the AdX price floor, AdX won the DFP auction. If the publisher configures rival SSPs as remnant line items after the launch of the unified first-price auction, AdX wins the DFP auction if the highest bid of the AdX auction, after deduction of the AdX fees, is higher than the CPM of the best eligible remnant line items. If the publisher configures mediation, AdX is slotted as the first SSP in the mediation chain if the highest bid of the AdX auction, after deduction of the AdX fees, is higher than the CPM of the best eligible mediation partner. The launch of the unified first-price auction has not modified this mechanism when AdX competes against a rival SSP participating in the DFP auction via the Waterfall channel. All these cases are fundamentally the same for the purpose of this Decision.

1621 […].

1622 This advantage was sometimes called "right of first refusal". See complaint submitted by […].

(1) The First Look advantage increases the likelihood that AdX places a winning bid before any rival SSP is called in the Waterfall channel. AdX can seek real-time bids from its ad buying tools for every eligible DFP impression. These bids are highly variable and can depend on the characteristics of the user to whom the ad is to be displayed. For instance, if a user can be identified as actively considering the purchase of a specific product or if the demographic characteristics of a user are well identified, an advertiser may be ready to offer a high bid either because it markets the relevant product or because the user matches its targeted audience segment. Since the AdX price floor is not a function of the characteristics of the user (the latter depends on publisher's manual configuration or rival SSP's historical average revenue), AdX can use that opportunity to place a real-time bid above the price floor for the most valuable impressions.[1623] […].[1624]

(2) The First Look advantage also implies that AdX winning bids are above the static average CPM values of rival SSPs. Therefore, rival SSPs participating in the Waterfall channel, which compete in the DFP auction through a static CPM, can be given the opportunity to win solely a small portion of less valuable impressions, for which AdX has not placed a real-time bid over the AdX price floor.[1625] The fact that most valuable impressions are sold through AdX leads to a decrease in the average revenue of rival SSPs. […].[1626]

(3) This "cherry picking" of more valuable impression also has a knock-on effect. Since the average revenue of a rival SSP is usually taken into account for the determination of the static CPM of this rival SSP, "cherry picking" increases the likelihood that AdX places a bid above the static CPM of the rival SSPs in the future and decreases the share of impressions for which rival SSPs are called to place a bid in the Waterfall channel.

8.4.2.2. Header Bidding

8.4.2.2.1. Introduction

(1277) In 2014, if not before, rival adtech providers, notably providers of publisher ad servers or SSPs, had developed a technology called Header Bidding, to address, at least partially, the First Look advantage that AdX's bids enjoyed through Dynamic Allocation over bids placed in the Waterfall channel. Many of these adtech players rapidly made their products compatible with Header Bidding since this involved relatively limited development work. […].[1627]

(1278) Header Bidding is a technology that allows SSPs other than AdX to place bids in an auction between SSPs in real time. Rival publisher ad servers usually call SSPs through Header Bidding.[1628] By contrast, because DFP and AdX are not compatible with Header Bidding, publishers who use DFP need to first launch a Header Bidding auction, before calling DFP. Initially, that Header Bidding auction took place in the

1623 Moreover, given that the value of an impression depends on the users and their characteristics, and given that the ad buying programmatic tools that value these impressions may be connected to both AdX and rival SSPs, impressions valuable for AdX are likely to be the ones that would have been valuable for rival SSPs.

1624 […].

1625 Or, in the case of mediation, for which AdX has not placed a real-time bid above the highest static CPM of the mediation partners, which is equivalent.

1626 […].

1627 […].

1628 […].

user's browser via a code typically inserted in the header of the webpage, i.e. the user's browser itself called the SSPs (this process is called "client-side Header Bidding").[1629] Later on, some adtech players built solutions where a dedicated server organises the Header Bidding auction on behalf of the user's browser (this process is called "server-side Header Bidding").[1630] Both solutions are currently used by publishers.

(1279) The publishers usually configure their ad inventory so that the result of the Header Bidding auction is sent to DFP, notably in order to compare it with bids from AdX.

(1280) Header Bidding allows all SSPs that interoperate with it to place a bid, in real time, rather than being ranked based on a static CPM and called through the Waterfall only for a limited number of impressions. By allowing all SSPs that interoperate with Header Bidding to place a real-time bid for every eligible impression, Header Bidding allows rival SSPs to circumvent Google's First Look advantage and provides them a better opportunity to compete for the sale of a larger chunk of DFP ad inventory. It allows publishers, including those using DFP, to receive real-time bids from multiple SSPs and thus to increase their revenue since all SSPs can place a real-time bid in the DFP auction for all eligible impressions.

(1281) There are, however, structural limits to the use of Header Bidding, in particular with DFP. Publishers cannot use Header bidding for their entire DFP ad inventory for the following reasons.

(1282) First, Header Bidding has not been compatible with all categories of ad inventory during the whole period covered by this Decision. […].[1631]

(1283) Second, Header Bidding solutions are difficult to set up in DFP, something which is made even more difficult by Google due to the limits it imposes on the number of "line items" in DFP. Line items are the primary element in defining an ad campaign in DFP; they notably define pricing and other delivery details.[1632] The publisher usually enters in DFP remnant line items that represent the Header Bidding clearing price in the DFP auction. To make Header Bidding work with DFP, publishers create thousands of line items. Publishers indeed create one line item per possible value of the Header Bidding clearing price (e.g. EUR 2.01, EUR 2.02, EUR 2.03, etc.) for various types of ad units.[1633] According to publishers, the fact that Google limited the number of line items made it more difficult for publishers to monetize their entire DFP ad inventory through Header Bidding.[1634] In April 2022, Google introduced a feature that allows publishers that use the premium version of DFP ("GAM 360") to configure Header Bidding in DFP without configuring line items.[1635] This feature is not available for the non-premium version of DFP.

(1284) Google […], as illustrated by the following internal documents:

1629 […].

1630 For example, Amazon provides a server-side Header Bidding solution, called Transparent Ad Marketplace (TAM).

1631 […].

1632 See https://support.google.com/admanager/answer/9405477, downloaded on 24 March 2023 ([…]).

1633 Note that the value of the bids is usually expressed in Cost per Mille (CPM) in the adtech industry. A bid of EUR 3 in this Decision means a bid of EUR 3 per one thousand impressions, i.e. a bid of EUR 0.003 per impression.

1634 Complaint submitted by […].

1635 See https://blog.google/products/admanager/improved-header-bidding-support-in-google-ad-manager/, downloaded on 24 March 2023 ([…]).

(1) […][1636]

(2) […][1637]

(3) […].[1638] […].

(1285) Third, the way DFP is designed increases latency when Header Bidding is used in conjunction with AdX, since AdX must be called sequentially after the Header Bidding auction, rather than participating directly in it. Latency increases the likelihood that an ad is not shown to the user.

(1286) In addition to the structural limitations outlined above, the use of Header Bidding is also limited by constraints deriving from Google's anticompetitive conducts. As set out in section 8.3.2.3, with project Poirot, Google has leveraged the market power of DV360 to divert DV360 bids away from SSPs that place bids through Header Bidding, thereby constraining the ability of rival SSPs to place bids in Header Bidding.

(1287) In any case, and despite the constraints above, increasing numbers of publishers have adopted Header Bidding since 2014, if not before. Header Bidding's success derives from the fact that, by enabling a real-time auction between SSPs, Header Bidding increases competition between SSPs. This in turn leads to higher clearing prices for impressions and higher revenues for publishers. Header Bidding is also a channel, in which SSPs, with a higher willingness to pay than AdX, have an increased chance of winning particular impressions, as AdX does not have the First Look advantage over Header Bidding.[1639]

(1288) […].[1640] According to […], implementation of Header Bidding has shown to increase revenue […].[1641]

(1289) Google internal documents also […].[1642] [1643] [1644]

(1290) Google […]. Many Google internal documents […]. These documents also show that […]:

(1) […][1645]

(2) […];[1646]

(3) […];[1647] [original emphasis]

(4) […];[1648]

(5) […];[1649]

(6) […].*[1650]*

1636 […].
1637 […].
1638 […].
1639 See recitals (1275) and (1276).
1640 Replies to Q3.1 of the Commission's RFI to publishers of November 2022.
1641 […].
1642 […].
1643 […].
1644 […].
1645 […].
1646 […].
1647 […].
1648 […].
1649 […].

(1291) […].[1651]

(1292) The Commission's conclusion that Google became increasingly concerned about the expansion of Header Bidding and considered it to pose a number of threats to AdX is not contradicted by Google's argument that Header Bidding had significant risks. According to Google, Header Bidding can harm publishers, advertisers and users because it is prone to issues such as fraud, malware and spam, latency, billing discrepancies and user privacy breaches. Google claims that, by using Header Bidding to seek higher revenues for their ad inventory, publishers, and the non-Google SSPs working for them, ignored such risks, which eventually risked harming users' and advertisers' trust in the whole system of advertising on the open web. Google maintains that, as a consequence, […].[1652]

(1293) In the first place, irrespective of the merits of Google's arguments on the alleged risks associated to Header Bidding, as explained above, […]. Incidentally, the fact that this was Google's main concern is not consistent with the allegation that Header Bidding creates many risks for publishers, as these risks should have cast doubt, in Google's mind, on the credibility of Header Bidding as a competitive threat.

(1294) In the second place, even if it were true that Header Bidding carried so much risk that it could have affected the long-run interests of the publishers, it should not have been Google's role to guard the publishers' long-run interest in their stead – even less so by putting in place mechanisms that benefitted in the first place Google's own services. At the very least, Google should have given publishers the choice between how they balance their short term and -allegedly- long run interests.

(1295) In the third place, as regards the alleged risk of fraud specific to Header Bidding, publisher ad server service providers confirmed in reply to the Commission's RFI that they are not aware of these risks. For instance, […].[1653]

(1296) In the fourth place, with regard to the issue of latency, the impact of Header Bidding seems to be negligible according to Google's own assessment. For instance, […].[1654]

8.4.2.2.2. DFP has been favouring bids placed by AdX compared to bids placed by rival SSPs in the Header Bidding channel

(1297) The Commission reaches the conclusion that DFP has been favouring bids placed by AdX compared to bids placed by rival SSPs in the Header Bidding channel. This competitive advantage has been ongoing since January 2014, when the Header Bidding channel was developed, and took the shape, first, of the "Last Look" advantage, from January 2014 to September 2019, which was aggravated from July 2015 to September 2019 by the sell-side Dynamic Revenue Share (section 8.4.2.2.2.1), and then of the Unified Pricing Rules from September 2019 to this date (section 8.4.2.2.2.2).

8.4.2.2.2.1. Last Look advantage and sell-side Dynamic Revenue Share

(1298) When publishers started to use Header Bidding, AdX lost its First Look advantage vis-à-vis rival SSPs for the part of DFP ad inventory that was made available via Header Bidding. This is because the Header Bidding auction occurs before DFP is

---

1650 […].
1651 […].
1652 […].
1653 […].
1654 […].

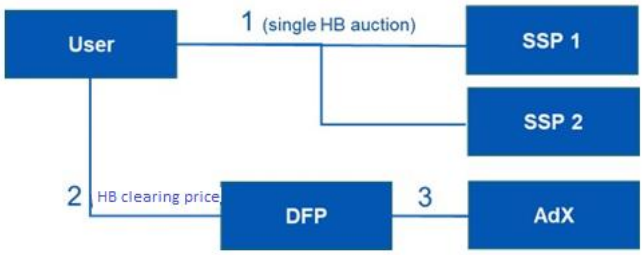
called, and thus AdX's First Look advantage cannot apply to those SSPs that have placed bids in the Header Bidding auction. For the part of DFP ad inventory that could not be made available through Header Bidding, Google kept the First Look advantage compared to rival SSPs participating in the DFP auction via the Waterfall channel.

(1299) However, while the Header Bidding channel improved the situation for rival SSPs as compared with the Waterfall channel, from January 2014, when Header Bidding technology had been developed,[1655] until the time when Google introduced the unified first-price auction, in September 2019, AdX – via DFP – was able to maintain an advantage over rival SSPs, which was known in the industry as the "Last Look" advantage.[1656]

(1300) Indeed, Google intentionally refrained from letting AdX participate in Header Bidding auctions. However, since AdX had favourable access to a very important source of demand (see section 8.3.4.2 and recitals (1480) and (1481)), publishers wanted to collect bids from AdX in addition to Header Bidding. In order to do so, publishers had to configure their ad inventory so that the browser or app called DFP to receive bids from AdX after having received the real time bids of third party SSPs via Header Bidding.

(1301) Once contacted by the browser or app, until September 2019, DFP communicated the clearing price of the Header Bidding auction to AdX, through the AdX price floor. The Header Bidding clearing price was indeed configured as a remnant line item in DFP and was therefore taken into account in the determination of the AdX price floor.[1657] DFP then used its original process of giving AdX an opportunity to bid in real time through Dynamic Allocation. If AdX placed a bid above the AdX price floor, AdX won the DFP auction.

Figure 26: Dynamic Allocation and Header Bidding[1658]



(1302) The Last Look advantage allowed AdX to divert impressions away from rival SSPs that participated in Header Bidding. To the extent that AdX could place a bid above the Header Bidding clearing price that was communicated to it, AdX won the auction with a price that could be only marginally above it. The fact that, based on the demand of the ad buying tools bidding in AdX, AdX could place one bid above the Header Bidding clearing price did not necessarily mean that ad buying tools bidding in AdX had a higher willingness to pay than ad buying tools bidding in rival SSPs

1655 For instance, […].

1656 […].

1657 The AdX price floor is the highest of the price floor configured by the publisher (if any), the estimated revenue of the best eligible remnant line item (which can be the Header Bidding clearing price but also the highest expected revenue from SSPs that bid through the Waterfall channel), the temporary CPM of the best guaranteed line item and the price floor automatically optimised by Google through RPO (if the feature was enabled).

1658 Commission's own elaboration.

that participated in Header Bidding, nor did it necessarily mean that AdX had a lower fee than rival SSPs.

(1303) Historically, SSPs ran second-price auctions and progressively switched to first-price auctions. […].[1659] A Google internal document […].[1660] While ad buying tools submit a bid that amounts to their willingness to pay in second-price auctions, they submit a lower bid in first-price auctions to avoid paying too much if their competitors are expected to submit low bids. SSPs then generally submit the resulting (first-price or second-price) bid to the publisher ad server, after having deducted the SSP fee.

(1304) If a rival SSP participated in a Header Bidding auction and organised a second-price auction between its ad buying tools, AdX could win all auctions, for which it could solicit from its own ad buying tools a bid above the second highest bid of the rival SSP's auction, even if AdX's highest and second highest bids were, respectively, below the highest and second highest bids of the rival SSP's auction.[1661]

(1305) For instance, a rival SSP participated in a Header Bidding auction, organised a second-price auction between its ad buying tools and managed to solicit bids of EUR 2 and EUR 4 (net of SSP fees), respectively. As a result, this SSP submitted a EUR 2.01 bid, i.e. one EUR cent above the second price, in the Header Bidding auction. If this SSP won the (first-price) Header Bidding auction against other SSPs, the Header Bidding clearing price transmitted to DFP amounted to EUR 2.01. Assuming that the Header Bidding clearing price was above the other elements used to set the AdX price floor, DFP transmitted to AdX an AdX price floor of EUR 2.01 before AdX launched its own auction. If AdX solicited bids of EUR 1.8 and EUR 3 from its own auction (net of SSP fees), AdX won the auction against the rival SSP, with a bid of EUR 2.02, i.e. one EUR cent above the AdX price floor. Therefore, in this case, AdX won against the rival SSP even if it solicited lower first and second bids from its own auction (i.e. EUR 3 versus EUR 4 and EUR 1.8 versus EUR 2, respectively), either because ad buying tools bidding in AdX had a lower willingness to pay than ad buying tools bidding in the rival SSP or because AdX fees were higher.

(1306) If a rival SSP participated in a Header Bidding auction and organised a first-price auction between its ad buying tools, AdX could win all auctions for which it could solicit one bid above the highest bid of the Header Bidding auction, taking into account the fact that ad buying tools participating in the rival SSP's auction lowered their bid through the bid shading technique.[1662]

(1307) For instance, a rival SSP participated in a Header Bidding auction and organised a first-price auction between its ad buying tools. While ad buying tools bid an amount corresponding to their willingness to pay in second-price auctions, they bid an amount lower than their willingness to pay in first-price auctions. If ad buying tools participating in the first-price auction of the rival SSP had a willingness to pay of EUR 2 and 3 EUR, net of SSP fees, they bid (2-BS) and EUR (3-BS), where BS is the consequence of the so-called bid shading technique (see recital (819)).[1663] The rival SSP thus submitted a EUR (3-BS) bid in the Header Bidding auction. If this

1659 Replies to QB.1 of the Commission's RFI to SSPs of February 2024 and replies to QB.4 of the Commission's RFI to publisher ad servers of February 2024.

1660 […].

1661 All comparisons between bids submitted by SSPs are made after deduction of SSP fees.

1662 All comparisons between bids submitted by SSPs are made after deduction of SSP fees.

1663 Assuming that both ad buying tools apply the same amount BS, for ease of reading and without loss of generality.

rival SSP won the (first-price) Header Bidding auction against other SSPs, the Header Bidding clearing price transmitted to DFP amounted to (3-BS) EUR. Assuming that the Header Bidding clearing price was above the other elements used to set the AdX price floor, DFP transmitted to AdX an AdX price floor of EUR (3-BS). If AdX solicited bids of EUR 2 and EUR 3 from its own second-price auction (net of SSP fees), AdX won the auction against the rival SSP, with a bid of EUR (3-BS+0.01), i.e. one EUR cent above the AdX price floor. Therefore, in this case, AdX won against the rival SSP even if ad buying tools bidding in the rival SSP had the same willingness to pay than ad buying tools bidding in AdX and both SSPs had the same fees. In fact, AdX could have won against the rival SSP as long as it could have solicited a bid above EUR (3-BS), i.e. either because ad buying tools bidding in AdX had a lower willingness to pay than ad buying tools bidding in the rival SSP or because if AdX fees were higher than the rival SSP's. As explained in section 8.4.3.2.2.1, Google internal documents show […].

(1308) Google acknowledges that the impression could be won by an ad buying tool that did not have the highest willingness to pay.[1664] While these findings apply only where the value of the remnant line item representing the Header Bidding bid was higher than the other components of the AdX price floor and therefore only for a subset of all impressions,[1665] evidence shows that the Last Look advantage was significant (see section 8.4.3.2.2.1).

(1309) Google amplified the Last look advantage, enjoyed by AdX over rival SSPs participating in the Header Bidding auction, through the sell-side Dynamic Revenue Share ("DRS") feature, diverting additional impressions to AdX. Google did so from August 2015 until September 2019, when it launched the unified first-price auction.

(1310) In deciding which ad is served, a publisher ad server compares the bids placed by the SSPs net of SSP fees. SSPs in the Header Bidding channel place bids on the publisher ad server after having conducted their own internal auction among bids placed by ad buying tools in their service. SSPs select the winning bid from that internal auction, and place that clearing price, net of their SSP fees (i.e., after deduction of SSP fees), in the auction run by the publisher ad server. This means that, if two SSPs run internal auctions, which result in winning bids offered by ad buying tools with the same gross value, the impression will eventually be sold via the SSP with the lowest fee.[1666] This is because the latter subtracts a lower fee from the clearing price of the internal auction, and so it ends ups placing a higher bid into the publisher ad server auction.

(1311) […].

Figure 27: […][1667]

(1312) […].[1668] [1669] [1670]

1664 […].

1665 As explained above, until September 2019, the AdX price floor was the highest of the publisher-configured price floor, the CPM of the best eligible (remnant or guaranteed) line item and the price floor determined by optimisation (if enabled by the publisher). If the AdX price floor was not determined by the Header Bidding bid, it means that, with or without the Last Look advantage, the Header Bidder did not win the DFP auction.

1666 This is in the case the two SSPs are the only ones in competition in the publisher ad server.

1667 […].

1668 […].

1669 […].

(1313) […].

Figure 28: […][1671]

(1314) […].[1672] [1673] [1674] [1675]

(1315) […][1676] […].

Figure 29: […][1677]

(1316) AdX was the only SSP participating in the DFP auction that could adjust its fee based on the knowledge of the bids of rival SSPs, which had been provided to it by DFP through the AdX price floor. AdX could use this information to divert impressions from rival SSPs. It was not possible for a rival SSP in the Header Bidding channel to develop a functionality equivalent to DRS, since it had no information on the bid placed by competitors – not least about the bid placed by AdX.

(1317) In July 2018, Google launched the third version of DRS, truthful DRS (tDRS), because DRS v1 and v2 moved AdX away from an unmodified second price auction. tDRS aimed to replicate the "debt recollection" of DRS v2, while reducing the incentives of buyers to bid strategically. […].[1678] [1679]

(1318) […].[16801681]

8.4.2.2.2.2. Unified Pricing Rules

(1319) Until September 2019, AdX was holding a second-price auction internally to select among bids placed in AdX by ad buying tools, which generally included DV360 and Google Ads. AdX would then place the result of this second-price auction, i.e. the maximum of the AdX price floor and the second highest bid in AdX, in DFP. DFP then organised a first-price auction between AdX and rival SSPs. After September 2019, Google merged those two auctions into a unified first-price auction in DFP, which included as participants the buy-side tools bidding through AdX, the SSPs placing bids in the Open Bidding channel and the SSP that won the Header Bidding auction. While AdX buyers participate directly in the unified first-price auction run by DFP, AdX continues to play a role, for instance verifying the quality of the ad, and applies an AdX fee to the bids of AdX buyers.

(1320) According to Google, from then on: […].[1682]

(1321) Google further explains in a reply to a Commission RFI the changes introduced by the unified first-price auction and how they impacted the first-price auction organised by DFP: […].[1683]

1670 […].
1671 […].
1672 […].
1673 […].
1674 […].
1675 […].
1676 […].
1677 […].
1678 […].
1679 […].
1680 […].
1681 […].
1682 […].
1683 […].

Figure 30: […][1684]

(1322) At the same time as Google switched to a unified first-price auction, Google modified the possibilities for publishers to manage price floors for the sale of their ad inventory by introducing the "Unified Pricing Rules" for DFP's unified first-price auction. Before the Unified Pricing Rules were introduced, publishers could set different price floors for different ad buying tools bidding in AdX. They could set a different price floor for each ad buying tool bidding in AdX or impose *de facto* a different price floor for AdX itself by configuring the same (but different from the other SSPs) price floor for all or most ad buying tools bidding through AdX. The main change introduced in the Unified Pricing Rules is that publishers *de facto* no longer have the possibility to set a different price floor for AdX than for rival SSPs. The possibility to do so through AdX was removed, and the Unified Pricing Rules do not allow that possibility within the unified first-price auction of DFP. Instead, the Unified Pricing Rules force publishers to set a price floor that applies equally to all participants in DFP's unified single-price auction, i.e. ad buying tools bidding in AdX, SSPs placing bids in Open Bidding and SSPs placing bids in Header Bidding. This means that, in practice, publishers cannot set a higher price floor for AdX or for ad buying tools bidding in AdX than for other participants to the unified first-price auction, i.e. the SSPs in the Open Bidding channel and the SSPs in the Header Bidding channel.

(1323) An internal Google presentation confirms […].[1685]

(1324) The implementation of the Unified Pricing Rules favoured AdX given that, before those rules were implemented, publishers often used to set higher price floors for AdX or, within AdX, for Google Ads and DV360.[1686] When publishers put higher price floors for AdX, or, within AdX buyers, for Google Ads and DV360, it meant that AdX had to submit a higher bid for each impression in order to win compared to other SSPs for which a publisher would often set a lower price floor. Publishers had several reasons to do this, including to induce AdX, and typically AdX buyers Google Ads and DV360, to place higher bids.

(1325) Besides pushing AdX to submit a higher bid, different price floors were used by publishers to:

(1) Impose a monetary threshold on buyers whose ads are assessed by the publisher to be negative to the user experience.

(2) Prevent some specific formats of ads to be included in the auction.

(3) Diversify their source of revenues and maintain competition in the adtech industry, thereby maintaining some ability to multi-source, by increasing the chances of rival SSPs to win more often.

(4) Comply with contractual obligations between publishers and SSPs. Publishers often consider that they should have the right to decide what price to set in accordance with the agreements concluded with each SSP.[1687] This is desirable, for instance, in the context of negotiated volume discount thresholds.[1688]

1684 […].
1685 […].
1686 Complaint submitted by […].
1687 […].
1688 […].

(1326) For an elaboration of the reasons why publishers wanted to set a higher price floor for AdX, see recitals (1450) to (1456).

(1327) The use of this possibility by publishers would have thus enabled rival SSPs to win DFP auctions in situations where AdX otherwise won because AdX's bid was higher than those of rival SSPs, although not high enough to be above the specific price floor set for AdX. For example, a publisher could have set a price floor of EUR 2 for AdX and EUR 1.80 for SSP A. If SSP A submitted a winning bid of EUR 1.85, and AdX submitted a winning bid of EUR 1.90, the inventory would still have been sold to SSP A's advertiser because AdX would have failed to clear the minimum price set by the publisher for AdX. […].

Figure 31: […][1689]

(1328) By enforcing the Unified Pricing Rules in its unified first-price auction, DFP prevented publishers from setting a higher price floor for AdX and thus increased the chances that AdX and, within AdX, Google Ads and DV360 won the auctions for those impressions where publishers would have wanted to set different price floors and promote another SSP.

(1329) Following the French NCA Adtech Decision, in January 2022, Google changed the Unified Pricing Rules in France, as imposed by the French NCA Adtech Decision, and voluntarily extended those changes on an EEA-wide basis.[1690] As a result, Google allowed publishers using DFP to set differential price floors in DFP's unified first-price auction for Sensitive Ad Categories.[1691] However, with the exception of the Sensitive Ad Categories, these changes did not alter the previous practices as they do not prevent Google from restricting the ability of publishers to set a higher price floor for AdX or ad buying tools bidding in AdX than for other participants to the unified first-price auction, i.e. rival SSPs placing their bids in Header Bidding or Open Bidding.

8.4.2.3. Open Bidding

8.4.2.3.1. Introduction

(1330) As explained in section 8.4.2.2.1 Google considered Header Bidding as a threat to the control of AdX over the ad inventory of publishers using DFP and therefore a threat to its advertising business. […].[1692]

(1331) However, one of the "*cons*" of that option, was the fact that DFP would lose control of the publishers' ad inventory and ad selection process: […].[1693] Google chose not to pursue that path. Instead, in June 2017 – after a testing period which started in April 2016[1694] – Google launched the open Beta testing of a technical server-to-server solution of its own, based on the RTB protocol, which enabled selected rival SSPs to engage in real time bidding for the sale of impressions from DFP (more precisely, from Ad Manager 360, the enterprise version of DFP).[1695] […], Google had therefore decided to […] and allow selected third-party SSPs to compete in real

1689 […].
1690 See section 8.4.2, in particular following commitment n°2 of the set of French Commitments ([…]).
1691 See for a list of Sensitive ad categories https://support.google.com/admob/answer/3150953?hl=en, downloaded on 29 March 2023 ([…]).
1692 […].
1693 […].
1694 […].
1695 […].

time with AdX for DFP ad inventory within the same auction, something it had chosen not to enable until then: […].[1696] In April 2018, this solution was rolled out for general availability; it could therefore also be used to sell impressions from the DFP version for small businesses.

(1332) This technical server-to-server solution, which was implemented by DFP, was initially named Exchange Bidding and in 2019 renamed Open Bidding - hereinafter both are referred to as "Open Bidding", under the internal codename "*Jedi*".

(1333) With the introduction of Open Bidding, Google addressed publishers' demand for more competition in the market for SSPs, by allowing selected rival SSPs to place bids in real time on DFP ad inventory in a way that allows them to compete more head to head with AdX: […].[1697] Therefore, for the first time certain rival SSPs, those connected to Open Bidding, could place bids at the same time as AdX to sell ad inventory of publishers using DFP. Open Bidding also offered selected rival SSPs the possibility to access a new source of ad inventory. For instance, […] emphasises that Open Bidding offered rival SSPs the opportunity to access ad inventory which was previously almost entirely under control of AdX via the First Look advantage: […].[1698] […] also considers Open Bidding as an additional channel through which it could intermediate the purchase of advertising space in an effective manner: […].[1699]

(1334) However, according to Google internal documents, when launching Open Bidding, […].[1700] […],[1701] […][1702], or: […].[1703]

(1335) It was therefore also […].[1704] […].[1705] […].[1706]

8.4.2.3.2. DFP has been favouring bids placed by AdX compared to bids placed by rival SSPs in the Open Bidding channel

(1336) The Commission reaches the conclusion that DFP has been favouring bids placed by AdX compared to bids placed by selected rival SSPs in the Open Bidding channel. This conduct has been ongoing since April 2016.

(1337) Google has ensured that, in the Open Bidding channel, AdX would keep an advantage over rival SSPs in several ways. First, Google limited the participation of competitors in Open Bidding, so as not to undermine AdX's position in the EEA-wide market for SSPs (section 8.4.2.3.2.1). Second, from April 2016 to April 2017, DFP granted AdX a Last Look advantage over bids placed by rival SSPs on Open Bidding. This Last look advantage enjoyed by AdX over rival SSPs was amplified by the sell-side DRS feature (section 8.4.2.3.2.2). Third, since April 2016, DFP has charged a fee for bids placed and won by rival SSPs via Open Bidding, whereas no such fee is charged when bids are placed and won via AdX (section 8.4.2.3.2.3). Fourth, since April 2016, Google has not allowed rival SSPs which participate in Open Bidding to place bids for the demand of those rival SSP's vertically integrated

1696 […].
1697 […].
1698 […].
1699 […].
1700 […].
1701 […].
1702 […].
1703 […].
1704 […].
1705 […].
1706 […].

ad buying tools (section 8.4.2.3.2.4). Fifth, since September 2019, Google has applied the Unified Pricing Rules, removing the possibility for publishers to set price floors differentiated per SSP or per ad buying tools (section 8.4.2.3.2.5).

(1338) For the avoidance of doubt, this Decision does not object to the introduction by Google of Open Bidding as a way for rival SSPs to place bids for inventory of publishers using DFP as such. Instead, it objects to the fact that Google ensured that Open Bidding was introduced in such a way that AdX would keep an advantage over rival SSPs placing bids in Open Bidding in the manner set out in recital (1337).

8.4.2.3.2.1. Google restricts participation in Open Bidding so that AdX's position is not undermined

(1339) From April 2016 until today, Google has limited the participation of SSPs in Open Bidding, […]. In fact, according to a Google internal document, […].[1707]

(1340) For SSPs to be able to send bids via Open Bidding into DFP's auction and therefore to become Open Bidders, SSPs must first apply to DFP to participate in Open Bidding. For their application to be considered by Google, SSPs must satisfy several technical requirements, such as the ability to support server-to-server RTB integration, and must be willing to accept certain contractual restrictions imposed by Google, such as those described in section 8.4.2.3.2.3 and 8.4.2.3.2.4, […].[1708] […].[1709] […].[1710] This directly prevented many rival SSPs from using this channel to submit bids for DFP ad inventory altogether.

8.4.2.3.2.2. Last look and sell-side Dynamic Revenue Share

(1341) From the launch of Open Bidding (then known as Exchange Bidding) in test phase in April 2016, Google implemented a Last Look advantage vis-à-vis bids submitted by rival SSPs via Open Bidding. […].[1711]

(1342) Last Look was maintained in Open Bidding until April 2017, when it was discontinued in the light of complaints from SSPs[1712]. During that one year time period from April 2016 to April 2017, Google exploited the Last Look advantage even further to the detriment of bids submitted by rival SSPs.

8.4.2.3.2.3. Open Bidding fee

(1343) […].[1713] […].[1714] The Open Bidding fee is contractually imposed on and paid by publishers: […].[1715]

(1344) According to Google, the Open Bidding fee is equal to 5% to 10% of the revenue that publishers generate from winning bids for web display ads, and 10% of the revenue that publishers generate from winning bids for app and instream video ads.[1716] […].[1717] Google states that the 5% to 10% fee serves to remunerate the service of running an auction among all the different eligible buyers, including

---

1707 […].
1708 […].
1709 […].
1710 […].
1711 […].
1712 See recital (1393).
1713 […].
1714 […].
1715 […].
1716 […].
1717 […].

Google Ads, DV360, third-party Authorized Buyers and Open Bidders.[1718] The Open Bidding fee is therefore an additional fee paid by publishers, on top of the fees that rival SSPs charge for their intermediation services.

(1345) The Open Bidding fee does not apply to bids from AdX. When a bid is submitted and won via AdX, the publisher only pays a fee to AdX for its intermediation services as SSP. This fee is calculated as a share (of around 20%) of the revenue generated by the sale of the relevant inventory based on the closing auction price. No additional fee is charged. […][1719] and also appears to be known in the industry. […].[1720]

(1346) This implies that the Open Bidding fee is subtracted from the bids placed by the different SSPs before comparing them with the bids placed through AdX to which the fee does not apply, thus creating an unequal treatment.

(1347) This difference in treatment, which is the result of Open Bidding interposing itself between publishers and rival SSPs for the latter to place a real time bid while AdX can place a bid in real time directly in DFP, has the effect of increasing the attractiveness of AdX vis-à-vis publishers, as compared to Open Bidders. This increases the chances of AdX winning the impression. […] illustrates with an example why this is the case: […].[1721]

(1348) Several SSPs connected to Open Bidding that replied to the Commission investigation have confirmed that […].[1722] As a result, and as illustrated by the example in the preceding recital, this fee makes it less likely for them to win the auction against AdX, which, by not having to go through the intermediate layer of Open Bidding, does not pay any fee.

(1349) […] has, for instance, indicated that the […].[1723] […] has reported the same, […].[1724]

(1350) Another SSP, […], presents the impact of the Open Bidding fee in a similar way: […].[1725] In the same vein, an anonymous SSP […].[1726]

(1351) Lastly, […], an SSP which has chosen not to place bids via Open Bidding because of the restrictions Google imposes on Open Bidders (namely, the Open Bidding fee, and the contractual restriction discussed in section 8.4.2.3.2.4), has elaborated further on the effects of the Open Bidding fee.[1727] It clearly spelt out that […].[1728] This gives AdX an advantage over Open Bidders: […].[1729]

1718 […]. There is an additional charge for other services that Open Bidders can opt-in to get from Google. This Decision only covers the 5% to 10% fee, and thus within this Decision, the term "Open Bidding fee" relates to the 5% to 10% fee. This Decision does not take a position on the additional charge for other services provided.

1719 […].

1720 […].

1721 […].

1722 SSPs' replies to Q4 of the Commission's RFI to SSPs of October 2022. […].

1723 […].

1724 […].

1725 […].

1726 […].

1727 […].

1728 […].

1729 […].

8.4.2.3.2.4. Google does not allow SSPs participating in Open Bidding to place bids related to demand from their own vertically integrated ad buying tools

(1352) From April 2016 until today, Google imposes a further contractual restriction on selected rival SSPs placing bids in Open Bidding by preventing them from placing bids from their own ad buying tools when submitting a bid via Open Bidding. This has deprived the vertically integrated SSPs of direct access to the demand generated by their own ad buying tools.

(1353) SSPs willing to integrate with Open Bidding have to become […], which means that they have to accept Google's contractual restrictions.[1730] Namely, SSPs have to enter into a contract – named the "*Google Exchange Bidding Pilot Terms*" – with Google. This contract provides, under Section 2 on Policies, that the SSP signing the contract is subject to the applicable Program guidelines. The Program guidelines specify, at point 9, which are the eligible transactions in Open Bidding and indicate that the Open Bidder's buyers must be third-party ad buying tools: **"*Eligible Transactions in Exchange Bidding* […]** *Your Buyers must be third-party DSPs, trading desks, or ad networks that operate or use a bidding platform to make purchases on behalf of multiple advertisers while assuming principal risk on the transaction.* […] *For clarity, if your business (or any of its affiliates) directly or indirectly owns or operates an entity that is eligible to buy through the Authorized Buyers product (such as a DSP, trading desk, or ad network), then that entity is not eligible to be your Buyer in transactions you make through the Exchange Bidding Program*"[1731] (original emphasis). Google indicated that it has included the relevant provision in its contract with selected rival SSPs since April 2016.[1732]

(1354) In contrast, Google can funnel the demand from its own ad buying tools (Google Ads and DV360) through AdX when placing bids for impressions on DFP, thus benefiting from this valuable source of demand. Indeed, […], AdX has benefited from the fact that Google Ads and DV360 have submitted many of their bids through AdX, to the detriment of third-party SSPs (see section 8.3). Had AdX had to comply as well with the obligation Google has imposed on vertically integrated rival SSPs, it would have had to forego that significant portion of demand, and would have encountered as a result important revenue losses (see, for instance, recital (1007)).

(1355) […] integrated SSPs that have replied to the Commission's RFI have confirmed that this contractual restriction represents a substantial disadvantage for them and has either been a reason not to participate in Open Bidding or has reduced their potential competitiveness within Open Bidding.[1733] According to […], which offers both SSP and DSP services, this restriction affects the competitiveness of every SSP offering both services to a significant extent, by depriving them of direct access to their own demand. In particular, […] has stated that: […].[1734]

(1356) […], has explained that this restriction is the reason why it has decided not to integrate with Open Bidding: […].[1735] […].[1736]

1730 […].

1731 See Exchange Bidding Program Guidelines, available at https://support.google.com/platformspolicy/answer/6348770, downloaded on 28 March 2023 (ID[…]).

1732 […].

1733 Replies to Q20 of the Commission's RFI to DSPs and SSPs of July 2022.

1734 […].

1735 […].

1736 […].

(1357) Finally, […].[1737]

(1358) As a result of this contractual restriction, rival SSPs placing bids in Open Bidding are also prevented from benefiting from the better cookie matching they would have, if they could return bids from their own ad buying tools, as AdX can and actually does (see section 7.3.4).[1738] The reason is that, unless they are vertically integrated, adtech players such as SSPs and ad buying tools use each a different identifier (User IDs) to identify the same user. As a result, in the context of a server-to-server auction like the one which takes place in Open Bidding, an SSP which is interacting with an ad buying tool belonging to a third-party must engage in cookie matching which is prone to failure. In this respect, […] has confirmed that […].[1739]

8.4.2.3.2.5. Unified Pricing Rules

(1359) As explained in section 8.4.2.2.2.2, in September 2019 Google introduced the Unified Pricing Rules. The Unified Pricing Rules force publishers to set a price floor that applies equally to all participants in the unified single-price auction organised by DFP, i.e. ad buying tools bidding in AdX, SSPs placing bids in Open Bidding and SSPs placing bids in Header Bidding. As with Header Bidding, this results in AdX winning more often against bids placed by rival SSPs in Open Bidding.

8.4.3. When engaging in the Sell-side Conduct, Google uses resources inherent to its dominant position on certain markets, leveraging that dominance into the EEA-wide market for SSPs.

(1360) In the present section, the Commission reaches the conclusion that:

(1) Google's Sell-side Conduct consists of practices that Google's competitors are unable to adopt because such practices rely on the use of resources or means inherent to the holding of a dominant position (section 8.4.3.1); and

(2) Google leverages the dominance of DFP to provide a competitive advantage to AdX over rival SSPs (section 8.4.3.2).

8.4.3.1. The Sell-side Conduct consists of practices that Google's competitors are unable to adopt because such practices rely on the use of resources or means inherent to the holding of a dominant position

(1361) The Commission reaches the conclusion that, by engaging in the Sell-side Conduct, Google relies on the use of resources or means, which are inherent to its dominant position in the EEA-wide market for publisher ad servers. Accordingly, these practices cannot be replicated (at least to the same extent) by its competitors.

(1362) As described in section 8.4.2, the Sell-side Conduct consists in DFP artificially giving AdX more chances to win auctions for the ad inventory controlled by DFP, compared to rival SSPs. In particular, the Sell-side Conduct relies on Google controlling the rules of ad selection and the collection of information related to rival SSPs' bids for a significant part of publishers' ad inventory.

(1363) Since 2014, Google has been dominant through DFP on the EEA-wide market for publisher ad servers, which is characterized by high barriers to entry and expansion, notably due to publishers' single homing and high costs and risks for publishers to switch to another publisher ad server (see section 7.4). In the light of this dominance,

1737 […].
1738 See also […].
1739 […].

Google has controlled the ad selection decision process and the flow of information on rival SSPs' bids for a significant part of publishers' ad inventory.

(1364) As a result, Google has had over the entire period under investigation i.e., since 2014, control of the mechanism that determines which SSP wins a given impression in relation to a large part of open web ad inventory. Google has used its control over that mechanism to favour Google's own SSP, AdX, sometimes based on the information on the bids (or static CPMs) submitted by rival SSPs in the DFP auction, which Google used to inform AdX before the latter launched its own auction.

(1365) SSPs competing with Google could not replicate the conduct because they lack such resource, and in particular the control of the ad selection process and of the flow of information related to SSPs' bids (or CPMs) for a significant part of publishers' ad inventory. First, not all SSPs are vertically integrated as they do not operate in addition to their SSP a publisher ad server, thus they do not have the ability to use an integrated publisher ad server to replicate Google's conduct. Second, no SSP is integrated with a publisher ad server with a scale even close to that of Google. Indeed, throughout the relevant period of the Sell-side Conduct, the individual market shares of players in the market for publisher ad servers have never been greater than […]% (see Table 2), and they cannot acquire a market position that is comparable to Google's on that market in the light of the high barriers to entry and expansion. Therefore, even SSPs integrated with a publisher ad server are unable to use their publisher ad server to replicate the scale of Google's Sell-side Conduct.

8.4.3.2. Google leverages the dominance of DFP to provide a competitive advantage to AdX over rival SSPs

(1366) The Commission finds that through the Sell-side Conduct Google leverages the dominance of DFP to provide a competitive advantage to AdX as compared to other rival SSPs.

(1367) […].[1740]

(1368) The Commission sets out the reasons for concluding that Google leverages the dominance of DFP to provide a competitive advantage to AdX over rival SSPs that place bids through respectively (i) the Waterfall (section 8.4.3.2.1), (ii) Header Bidding (section 8.4.3.2.2) and (iii) Open Bidding (section 8.4.3.2.3).

(1369) In those subsections, the Commission will demonstrate that Google's conduct was enabled through the leveraging of the large share of ad inventory obtained through its dominant position on the relevant market for publisher ad servers in the EEA. In addition, as explained in recital (1229) above, the Commission also shows that Google intentionally pursued as one of its objectives, through the Sell-side Conduct, to provide AdX a substantial competitive advantage over rival SSPs in the EEA-wide market for SSPs.

8.4.3.2.1. The Waterfall

(1370) As explained in section 8.4.2.1.2, Google via DFP has been favouring AdX compared to rival SSPs participating in DFP auction via the Waterfall channel. AdX has a substantial advantage, to which the adtech industry refers as the "First Look advantage", compared to rival SSPs that participate in the DFP auction via the Waterfall channel. In essence, as a result of the First Look advantage, AdX can win impressions based on real-time bids as soon as its real-time bid is above the static

[1740] […].

CPMs of rival SSPs, whereas those could in certain instances have beaten AdX's bid had they been offered a chance to submit a real-time bid to DFP. This implies that the volume of business of rival SSPs is artificially reduced.

(1371) Furthermore, […].

(1372) A Google internal document of September 2015 […].[1741] (original emphasis).

(1373) A Google internal email of 2016 […].[1742] It should be noted that, even after Open Bidding, this limitation persisted for SSPs participating in the Waterfall channel. Bids placed by SSPs via Open Bidding did not have that limitation but were subject to other anticompetitive disadvantages designed by Google (see section 8.4.2.3).

(1374) This finding is also summarised in a […].[1743]

(1375) A Google internal document, […].[1744]

(1376) Another Google internal document of 2016 […].[1745]

(1377) A Google internal email […].*[1746]*

(1378) Google internal documents […]:

(1) […];[1747]

(2) […];[1748]

(3) […].[1749]

8.4.3.2.2. Header Bidding

8.4.3.2.2.1. Last Look and sell-side Dynamic Revenue Share

(1379) As explained in section 8.4.2.2.2.1, the Last Look advantage and the sell-side DRS provided bids placed by AdX an advantage over bids placed by rivals SSPs via Header Bidding for the sale of DFP ad inventory. This was, in essence, because Google leveraged the dominant position of DFP, and informed AdX of the highest bid of rival SSPs in Header Bidding, before launching its own auction to place its own bid in DFP.

(1380) Google internal documents show […].[1750] At that time, bids placed by AdX were not only benefitting from the Last Look advantage vis-à-vis bids placed by rival SSPs in Header Bidding, but also, in this starting period of Exchange (Open) Bidding, vis-à-vis rival SSPs in Exchange Bidding.

(1381) Google internal documents regarding […].

(1382) The fact that there are more Google internal documents that discuss the Last Look advantage on Exchange Bidding than on Header Bidding can be explained by the nature of Exchange Bidding, an entirely proprietary Google system, which allowed

1741 […].
1742 […].
1743 […].
1744 […].
1745 […].
1746 […].
1747 […].
1748 […].
1749 […].
1750 […].

Google to easily perform assessments that took into account all parameters (for instance, taking into account the bids of all SSPs in a given auction).

(1383) Moreover, these internal documents show […]. Some of the Google internal documents relate specifically to the Header Bidding channel (see recitals (1390) and (1391)).

(1384) A Google internal document of November 2015 which explored the ad selection process to implement in DFP for Exchange Bidding states that […].[1751]

(1385) In a Google internal email chain of October 2016, […], Google assesses the importance of the Last Look advantage for AdX, including against rival SSPs that were basing their internal selection process on first-price auctions. The document shows that the Last Look advantage could be […], even though it was difficult for Google to quantify the Last Look advantage in complex auction setups:

(1) […].[1752]

(2) […].[1753]

(1386) A Google internal email of February 2017 […][1754]

(1387) Another Google internal email of March 2017 […].[1755]

(1388) The fact that Google recognized the […].[1756]

(1389) […].

(1390) A Google internal document of August 2019 highlights […].[1757]

(1391) A Google internal document of September 2019 […].[1758]

(1392) Various Google internal documents show that […]:

(1) […];[1759]

(2) […];[1760]

(3) […].[1761] [original emphasis]

(1393) Despite being well aware of the nature and extent of the Last Look advantage, Google maintained it, in the beginning vis-à-vis bids placed by rivals in both Exchange Bidding and Header Bidding. In April 2017, […], Google gave up the Last Look advantage vis-à-vis bids placed by SSPs in Exchange Bidding. […].

(1) […];[1762]

(2) […];[1763]

1751 […].
1752 […].
1753 […].
1754 […].
1755 […].
1756 […].
1757 […].
1758 […].
1759 […].
1760 […].
1761 […].
1762 […].
1763 […].

(3) […];[1764]

(4) […].[1765]

(1394) Google could have taken the decision to forego the Last Look advantage for bids placed by AdX over bids placed by rival SSPs in Header Bidding. Google could have done so simply by DFP not taking into account the Header Bidding clearing price in the determination of the price floor that was used in the AdX auction (as it eventually did, as of September 2019). Google could also have, in the first place, implemented means for rivals SSPs to place bids in real time in competition with AdX without AdX getting an advantage over them. However, Google decided not to do so. On the contrary, Google not only decided to keep the Last Look advantage vis-à-vis Header Bidding, but it also decided to exploit and amplify that advantage through the sell-side DRS feature.

(1395) Google internal documents of 2014 show that […].[1766] [1767]

(1396) A Google internal email conversation of 2017 shows that […].[1768]

(1397) Google continued to conceal the mechanics of the sell-side DRS during several years. A Google internal document of 2017 reveals that […].[1769] [1770]

(1398) Ultimately, Google gave up the Last Look advantage (and consequently also the advantage derived from DRS) for bids placed by AdX vis-à-vis bids placed by rival SSPs in Header Bidding in September 2019 to address the perceived unfairness of AdX's advantage by the industry. […]:

(1) As regards the possibility to give up the Last Look advantage, a Google internal document states that it is: […].[1771]

(2) When preparing the communication material to announce the switch to a unified first-price auction in 2019, Google proposes to […].[1772] [original emphasis]

(3) […].[1773]

(4) […].[1774]

8.4.3.2.2.2. Unified Pricing Rules

(1399) As explained in section 8.4.2.2.2.2, before the Unified Pricing Rules were introduced, publishers could set different price floors for different ad buying tools bidding in AdX. They could set a different price floor for each ad buying tool bidding in AdX or impose *de facto* a different price floor for AdX itself by configuring the same (but different from the other SSPs) price floor for all or most ad buying tools bidding through AdX. The main change introduced in the Unified Pricing Rules is that publishers *de facto* have no longer the possibility to set a

1764 […].
1765 […].
1766 […].
1767 […].
1768 […].
1769 […].
1770 […].
1771 […].
1772 […].
1773 […].
1774 […].

different price floor for AdX than for rival SSPs. The possibility to do so through AdX was removed by Google, and the Unified Pricing Rules do not allow that possibility within the unified first-price auction of DFP. Instead, the Unified Pricing Rules force publishers to set a price floor that applies equally to all participants in DFP's unified single-price auction, i.e. ad buying tools bidding in AdX, SSPs placing bids in Open Bidding and SSPs placing bids in Header Bidding.

(1400) When Google launched the Unified Pricing Rules, by withdrawing this possibility from publishers, Google leveraged the dominant position of DFP, providing a competitive advantage to AdX. It departed from publishers' declared interest to set higher price floors for AdX, among other reasons to promote AdX rivals that were marginalised by the way DFP managed the auction.

(1401) Internal evidence from Google shows that the Unified Pricing Rules, implemented by DFP in September 2019, were […].[1775]

(1402) An email exchange of 2018 illustrates the origins of the project within Google. […],[1776] […].[1777]

(1403) Google executives recognised […].[1778]

(1404) The reflection continued within Google, with internal documents further identifying […]. Moreover, it was identified that the […].

Figure 32: […][1779]

(1405) Internal analyses showed that […]. According to an internal Google analysis, the Unified Pricing Rules were […].[1780] Another analysis found that […].[1781] See also recitals (1727) to (1731) for further assessment by Google of the impact of launching the Unified Pricing Rules on AdX and Google's ad buying tools.

(1406) Google leveraged its dominant position in the market for publisher ad servers by implementing the Unified Pricing Rules at the same time as it transformed AdX from a second-price auction to a first-price auction and that auction was merged into DFP's unified first price auction. […]:

(1) […].[1782]

(2) […].[1783]

(3) […].[1784]

(1407) […].[1785][1786][1787][1788][1789][1790]

1775 […].
1776 […].
1777 […].
1778 […].
1779 […].
1780 […].
1781 […].
1782 […].
1783 […].
1784 […].
1785 […].
1786 […].
1787 […].
1788 […].
1789 […].
1790 […].

(1408) By denying publishers the possibility freely to set the price floors within the DFP auction, and notably to set a higher price floor for AdX or specific AdX buyers, Google has leveraged the dominance of DFP to give a competitive advantage to AdX. […]:

(1) […].[1791]

(2) […].[1792]

8.4.3.2.3. Open Bidding

8.4.3.2.3.1. Restrictions on participation in Open Bidding

(1409) As explained in section 8.4.2.3.2.1, Google has restricted participation in Open Bidding so as to keep it to the minimum size necessary in order not to undermine AdX's position in the market for SSPs. By artificially curbing the growth of the Open Bidding channel, Google has provided AdX with an advantage as it has made sure that AdX's fees would not be excessively eroded as a result of bids being placed via Open Bidders.

(1410) Google internal documents show that […].

(1411) This is illustrated by Google internal documents of November 2018, in which Google executives discuss […].[1793]

(1412) Another Google internal email chain, discussing the possibility of onboarding […] suggests that […][1794]

(1413) This concern and the resulting approach taken to the consideration of applications for Open Bidding, is explained in further detail in an internal document of December 2019. At that moment in time, Google executives were discussing the status of the negotiations with […], a rival SSP which had requested to integrate with Open Bidding. In that context, one of the executives […].[1795]

(1414) […] confirmed, in reply to the Commission's RFI, that it had requested to place bids in Open Bidding several times and was systematically denied permission. […] account of the reasons put forward by Google […] (see recital (1413)): […].[1796]

8.4.3.2.3.2. Last Look and sell-side Dynamic Revenue Share

(1415) As explained in section 8.4.2.3.2.2, from April 2016 to April 2017, Google leveraged the dominance of DFP by implementing a Last Look advantage vis-à-vis SSPs in the Open Bidding channel, which is identical to the one implemented vis-à-vis SSPs in the Header Bidding channel in terms of auction's outcomes, thus putting them at a disadvantage compared to AdX. In both cases, this advantage was amplified by the sell-side DRS feature.

(1416) The fact that the Last Look advantage was identical vis-à-vis SSPs both in the Header Bidding and in the Open Bidding channels is corroborated by the following Google internal documents of 2016, […].[1797]

1791 […].
1792 […].
1793 […].
1794 […].
1795 […].
1796 […] reply to Q1 of the Commission's RFI to SSPs of October 2022 (ID[…]).
1797 […].

8.4.3.2.3.3. Open Bidding fee

(1417) As explained in section 8.4.2.3.2.3, Google requires publishers whose inventory is sold via Open Bidders to pay Google a fee for each impression won in the DFP auction. AdX does not incur that fee when it wins an impression in the DFP auction. This provides AdX an advantage vis-à-vis Open Bidders since the Open Bidding fee reduces the value of the bids intermediated by Open Bidders as the latter must adjust their revenue share accordingly if they want to remain competitive vis-à-vis AdX. This negatively impacts Open Bidders' competitiveness and likelihood of winning impressions.

(1418) Internal discussions among Google's executives show that […]. In an internal document from the third quarter of 2016, […][1798] In other words, Google executives believed that, for ad buying tools, bidding through AdX was likely to be cheaper than using SSPs participating in Open Bidding.

(1419) […].

(1420) Although Google knew that the Open Bidding fee could favour AdX over Open Bidders, it kept this feature of Open Bidding unaltered thus leveraging its dominant position in the market for publisher ad servers.

(1421) A Google internal document from 2020, in which […].[1799] [original emphasis]

(1422) A further internal document further clarifies the consequences of this for selected rival SSPs' market position: […][1800] This means that it was more difficult for SSPs placing bids in Open Bidding to attract bids from ad buying tools, whereas that is an important parameter of competition between SSPs.

8.4.3.2.3.4. Restriction on vertically integrated SSPs in Open Bidding

(1423) As explained in section 8.4.2.3.2.4, Google contractually prevents vertically integrated SSPs placing bids in Open Bidding from using the demand of their own ad buying tools when placing bids for DFP impressions via Open Bidding. This provides an advantage to AdX compared to Open Bidders as […], AdX has benefited from the fact that Google Ads and DV360 have submitted many of their bids through AdX (see section 8.3). Had AdX had to comply as well with the obligation Google has imposed on vertically rival SSPs, it would have had to forego that significant portion of demand and would have encountered as a result important revenue losses.

(1424) Google internal documents show that, through this provision, […].[1801]

(1425) […].[1802]

(1426) Google's primary aim remains that of making sure that Open Bidding does not excessively erode AdX's central position in the adtech chain and thus the fees AdX collects. In an internal document of December 2019, in which Google executives were discussing the status of its negotiations with a vertically integrated SSP, […].[1803]

1798 […].
1799 […].
1800 […].
1801 […].
1802 […].
1803 […].

(1427) In internal exchanges from 2020, Google's executives were reporting on discussions Google had with […] concerning its possible integration with Open Bidding. In that context, Google […], which was to not proceed with such integration primarily because of the […] at issue, and qualified it as […]. This further shows that Google was aware of the […] this provision had on selected rival SSPs, […].[1804]

(1428) Further evidence in the file shows that […] (see section 8.4.2.3.2.4). In an internal document from February 2017, Google's executives discussed […][1805] […]. Open Bidding – as a server-to-server solution – continues at the present time to suffer from low cookie matching, […].[1806]

8.4.3.2.3.5. Unified Pricing Rules

(1429) As explained in section 8.4.2.2.2.2, the main change introduced in the Unified Pricing Rules is that publishers *de facto* no longer have the possibility to set a different price floor for AdX than for rival SSPs. The possibility to do so through AdX was removed, and the Unified Pricing Rules do not allow that possibility within the unified first-price auction of DFP. Instead, the Unified Pricing Rules force publishers to set a price floor that applies equally to all participants in DFP's unified single-price auction, i.e. ad buying tools bidding in AdX, SSPs placing bids in Open Bidding and SSPs placing bids in Header Bidding. This means that, in practice, publishers cannot set a higher price floor for AdX or for ad buying tools bidding in AdX than for other participants to the unified first-price auction, i.e. the SSPs in the Open Bidding channel and the SSPs in the Header Bidding channel.

(1430) In doing so, Google departed from market incentives to ensure that AdX win rate increased. This is because publishers often have an incentive to set higher price floors for AdX, or within AdX for AdX buyers, among other reasons to promote AdX rivals. By implementing the Unified Pricing Rules, Google provides AdX a competitive advantage over rival SSPs, thus leveraging the dominance of DFP on the EEA-wide market for publisher ad servers.

(1431) In the particular context of Open Bidding, the impact on […], an Open Bidder, […].[1807]

(1432) Google's intention to give a competitive advantage to AdX is further demonstrated by the following additional evidence discussing the introduction of the Unified Pricing Rules:

(1) First, a Google internal email chain of January 2019 indicates that […].[1808]

(2) Second, a Google internal document of January 2019 indicates that […].[1809]

(3) Third, a Google internal email chain of May 2019 highlights that, […].[1810]

1804 […].
1805 […].
1806 […] reply to Q20 of the Commission's RFI to SSPs of December 2020 (ID[…]).
1807 […].
1808 […].
1809 […].
1810 […].

8.4.4. Relevant circumstances specific to this case capable of characterising the Sell-side Conduct as falling outside the scope of competition on the merits

(1433) In the present section, the Commission reaches the conclusion that there are relevant circumstances specific to this case capable of characterising the Sell-side Conduct as falling outside the scope of competition on the merits, including that:

(1) By engaging in the Sell-side Conduct, Google acts against the interests of DFP and of its customers, the publishers (section 8.4.4.1); and

(2) DFP inventory is important for rival SSPs and cannot be effectively replaced (section 8.4.4.2).

8.4.4.1. By engaging in the Sell-side Conduct, Google acts against the interests of DFP as well as of the publishers

(1434) The Commission reaches the conclusion that, by engaging in the Sell-side Conduct, Google acts against the interests of DFP and of its customers, the publishers.

(1435) The reasons for this conclusion are set out in the following subsections, namely with respect to bids placed by rival SSPs through the Waterfall (section 8.4.4.1.1), Header Bidding (section 8.4.4.1.2) and Open Bidding (section 8.4.4.1.3) channels.

8.4.4.1.1. The Waterfall

(1436) The First Look advantage, which applies to rival SSPs that place bids for DFP ad inventory through the Waterfall channel, is detrimental to DFP's customers, i.e. the publishers, which receive lower revenues than in a situation where rival SSPs place real-time bids in the DFP auction.

(1437) AdX is able to win high-value impressions at a lower price than the price at which rival SSPs are possibly willing to bid. For instance, in the case where the AdX price floor is set by DFP at a value of EUR 3, corresponding to the average expected revenue of the rival SSP that is ranked first in the Waterfall, AdX would win the impression by placing a bid of EUR 4 (or indeed any bid above EUR 3), even if, for that given user profile and type of ad inventory, a rival SSP may have been able to place a bid of EUR 5 if given the chance to submit a bid in real time. This means that the SSP willing to sell the impression at the highest price does not always win the impression. This is detrimental to publishers' revenues, compared to a situation in which AdX and rival SSPs would compete on a level playing field.

(1438) A Google internal email of 2016 shows that […].[1811]

(1439) Google's internal documents assessing the development of Header Bidding also show that […]:

(1) […];[1812]

(2) […];[1813]

(3) […].[1814]

(1440) Another Google internal document […]. This document shows that […].[1815]

1811 […].
1812 […].
1813 […].
1814 […].
1815 […].

8.4.4.1.2. Header Bidding

(1441) During the period covered by this Decision, Google via DFP acted against the interests of DFP and of its customers, the publishers, when handling bids placed by rival SSPs in Header Bidding.

(1442) First, when giving the Last Look advantage to AdX and amplifying it through sell-side DRS, DFP was not acting in the best interest of its customers, the publishers. These would have preferred to select winning bids and ads from a more diversified range of SSPs, among several reasons to guarantee a higher quality of ads or the fulfilment of certain contractual conditions with third-party SSPs (see recital (1453) below).

(1443) Ultimately, Google gave up the Last Look advantage for bids placed by AdX vis-à-vis bids placed by rival SSPs in Header Bidding in September 2019 to address the industry's perception that it was unfair. When preparing the communication material to announce the switch to a unified first-price auction in 2019, […] (see recital (1398)).

(1444) A Google internal document of 2019 […].[1816]

(1445) As regards sell-side DRS, Google internal documents of 2014 show that Google implemented the first version of DRS for all publishers, […][1817] […].[1818]

(1446) Google tried to conceal the mechanics of the sell-side DRS feature to publishers. A Google internal document of 2017 reveals that […].[1819]

(1447) Second, in the context of the Unified Pricing Rules, Google limited the ability of publishers to set price floors differentiated per ad buying tool or SSP.

(1448) Before the switch to DFP's unified first-price auction in September 2019, publishers could set different price floors for different ad buying tools bidding in AdX. They could set a different price floor for each ad buying tool bidding in AdX or impose *de facto* a different price floor for AdX itself by configuring the same (but different from the other SSPs) price floor for all or most ad buying tools bidding through AdX. When Google introduced DFP's unified first price auction in September 2019, publishers no longer had the possibility to set a *de facto* different price floor for AdX than for rival SSPs. The possibility to do so through AdX was removed, and the Unified Pricing Rules do not allow that possibility within the unified first price auction of DFP. Instead, the Unified Pricing Rules force publishers to set a price floor that applies equally to all participants in DFP's unified single-price auction, i.e. ad buying tools bidding in AdX, SSPs placing bids in Open Bidding and SSPs placing bids in Header Bidding.

(1449) This means that, in practice, publishers cannot set a higher price floor for AdX or for ad buying tools bidding in AdX than for other participants to DFP's unified first-price auction, i.e. the SSPs in the Open Bidding channel and the SSPs in the Header Bidding channel.

(1450) Before September 2019, publishers often used to set different price floors for different ad buying tools bidding in AdX and for other SSPs.[1820]

1816 […].
1817 […].
1818 […].
1819 […].
1820 […].

(1451) In general, publishers used to set higher price floors for all or some ad buying tools bidding in AdX, notably for Google Ads and DV360.

(1452) As Google Ads and DV360 represent the bulk of impressions purchased through AdX (see recital (1007)), this meant that AdX often had to pay more for each impression in order to win compared to other SSPs for which a publisher would often set up a lower price floor. Indeed, as AdX was running a second price auction, setting a higher price floor could result in increasing the clearing price paid by AdX in the instance where the higher price floor was between the second and first bid in the AdX auction. In those instances, AdX ended up paying for the impression not the second bid in its auction, but instead the price floor, which was higher than the second bid (provided that higher price floor still remained lower than the first bid, as in such a case, AdX would have lost the auction). This increased the revenues of publishers.

(1453) Besides increasing the revenues of publishers by increasing the price paid by AdX for the impression, there are several other reasons why publishers might want to set different price floors for different SSPs and ad buying tools. For example, different price floors can be used by publishers to:

(1) Impose a monetary threshold on buyers whose ads are assessed by the publisher to be negative to the user experience. […].[1821] […].[1822] […].*[1823]*

(2) […].[1824]

(3) Diversify their source of revenues and maintain competition in the bidding industry, thereby maintaining some ability to multi-source. […].[1825]

(4) Comply with contractual obligations between publishers and SSPs. […].[1826] […].[1827] […].[1828] […].[1829]

(1454) Publishers confirmed in reply to Commission RFIs that they also wish to enjoy the possibility of setting higher floors for certain SSPs, not least AdX, in DFP's unified first-price auction, as this would allow them flexibility for strategical planning of their ad inventory. According to […].[1830]

(1455) A Google internal document from 2019 […].[1831]

(1456) […].[1832] […].[1833]

(1457) […].[1834] […].[1835] But even though the publishers were DFP's customers – the interest of which DFP should have been taking into account – […].[1836] […][1837] In a summary

1821 […].
1822 […] reply to Q19.1 of the Commission's RFI 22 to publishers of November 2022 (ID[…]).
1823 […].
1824 […] reply to QB.C.A.10 of the Commission's RFI to publishers of February 2024 (ID[…]).
1825 […].
1826 […].
1827 Anonymous Party's reply to QB.C.A.10 of the Commission's RFI to publishers of February 2024 (ID[…]).
1828 […] reply to QB.C.A.10 of the Commission's RFI to publishers of February 2024 (ID[…]).
1829 […] reply to Q19.1 of the Commission's RFI 22 to publishers of November 2022 (ID[…]). […].
1830 […] reply to QB.C.A.10 of the Commission's RFI to publishers of February 2024 (ID[…]).
1831 […].
1832 […].
1833 […].
1834 […].
1835 […].

of feedback by […], a publisher, […].[1838] At the time of the adoption of this Decision, Google has not made any changes to the Unified Pricing Rules, despite the strong objections from publishers.

(1458) Since the implementation of the Unified Pricing Rules, publishers have been effectively compelled to apply a low price floor across SSPs and, within AdX, between all ad buying tools, because setting a uniformly high price floor would risk losing demand from third parties. For instance, the average price floor for bids placed by Google Ads on AdX dropped from […].[1839] Consequently, ad buying tools bidding in AdX (which are for the vast majority Google Ads and DV360 – see recital (1007)) can now purchase publisher inventory at lower prices. As Google Ads and DV360 represent the vast majority of impressions going through AdX, this means that AdX can sell ad inventory at a lower price with a lower risk of losing those impressions to rival SSPs, to the detriment of publishers.

(1459) Other publisher ad servers on the other hand continue to offer this valuable functionality to publishers. […].[1840] […].[1841]

8.4.4.1.3. Open Bidding

(1460) As indicated in section 8.4.2.3.2.1, given its objective of not harming AdX by excessively cannibalising its fees, Google has intentionally denied participation in Open Bidding to certain smaller SSPs. Such a restriction is not in the interest of publishers as the latter's interest is to have access to as much demand for their inventory as possible, as this increases competition which leads to higher prices and revenues for them. It is therefore in the publishers' interest to receive bids from the widest range of SSPs.

(1461) Publishers that responded to the Commission's market investigation have referred to their interest in using a number of channels, so as to maximise their revenues, and underlined as sub-optimal Google's discretionary choice as to which SSPs can or cannot integrate with Open Bidding. Indeed, publishers want to decide with which SSPs to interoperate while, when using the Open Bidding channel, such freedom is impaired by the fact that some of the publishers' partners (SSPs) might not support Open Bidding (either because they do not want to participate in Open Bidding because of the various restrictions linked to it, or their integration with Open Bidding has been refused). […].[1842] […].[1843] Concerning Google's restrictions on participants in Open Bidding, […][1844] […].[1845]

(1462) The Commission's market investigation also shows that the Open Bidding fee is against the interests of DFP's customers, the publishers, for several reasons.

1836 […].
1837 […].
1838 […].
1839 […].
1840 Replies to QB.8 of the Commission's RFI to publisher ad servers of February 2024.
1841 For instance, […] replies to QB.9 of the Commission's RFI to publisher ad servers of February 2024.
1842 […] reply to Q4 of the Commission's RFI to publishers of November 2022 (ID[…]).
1843 […] reply to Q3.5 of the Commission's RFI to publishers of November 2022 (ID[…]).
1844 […] reply to Q3.5 of the Commission's RFI to publishers of November 2022 (ID[…]).
1845 […] reply to Q3.5 of the Commission's RFI to publishers of November 2022 (ID[…]).

(1463) First, because of the Open Bidding fee, which is netted from bids by DFP, publishers are deprived of the possibility of receiving bids from some SSPs (potentially with higher quality ads, see recital (1453)) through which to sell their inventory. […].[1846]

(1464) Second, when a rival SSP wins the bid, the Open Bidding fee has to be paid by publishers, which lowers publishers' revenues. In addition, there is no obvious reason why publishers should have to pay a fee to enjoy a level playing field between the bids of their potential suppliers, which a publisher ad server should strive to provide as a matter of course to its clients.

(1465) The contractual restriction against vertically integrated SSP-ad buying tools, described in section 8.4.2.3.2.4, is also against the interests of DFP's customers, the publishers, as it excludes some demand from Open Bidding. Indeed, the publishers' interest is to be able to benefit from the whole range of an SSP's associated demand, not only part of it. Moreover, since such a restriction undermines the competitiveness of Open Bidders that are vertically integrated, this is in turn liable to negatively affect publishers' revenues. As mentioned in section 8.4.2.3.2.4, because of this contractual provision Open Bidders are prevented from monetizing their differentiated demand.

(1466) Furthermore, as emphasized in that section, the rule of Open Bidding that prevents SSPs from selling impressions via their vertically integrated ad buying tools results in lower cookie matching as it increases interactions between non-integrated players. This negatively affects the ability of advertisers using DSPs to identify users and therefore their willingness to bid. […].[1847]

(1467) With respect to Last look and sell-side DRS, at least from April 2016 to April 2017, as well as the Unified Pricing Rules, from September 2019 until now, the conclusions in this section regarding Google acting against the interests of DFP or its customers in the Header Bidding channel equally apply to the Open Bidding channel.

8.4.4.2. DFP ad inventory is important for rival SSPs and cannot be effectively replaced

(1468) The Commission reaches the conclusion that DFP ad inventory is important for the ability of an SSP to compete (section 8.4.4.2.1) and that rival SSPs cannot effectively replaced it (section 8.4.4.2.2).

8.4.4.2.1. DFP ad inventory is important for rival SSPs

(1469) According to the Commission's market investigation, having the opportunity to submit bids (and having a fair chance to succeed) for large sources of ad inventory is important for an SSP's ability to compete for three main reasons.

(1470) First, having the opportunity to submit bids for ad inventory directly influences the number and value of impressions that can potentially be sold by an SSP, and therefore the revenue that an SSP can generate and invest to improve its functionalities and competitive position.

(1471) Second, the relevance of an SSP for its customers (the publishers) is notably related to the breadth of access to advertiser demand, which is accessible through ad buying tools. An SSP must therefore be capable of attracting ad buying tools and integrating with them. In turn, the relevance of an SSP for an ad buying tool is related to the breadth of access to publishers' ad inventory. Therefore, in light of these indirect network effects, it is important for an SSP to have the opportunity to submit bids for

1846 […] reply to Q3 of the Commission's RFI to SSPs of October 2022 (ID[…]).

1847 […] reply to Q20 of the Commission's RFI to SSPs of December 2020 (ID[…]).

sufficient ad inventory to incentivize ad buying tools to integrate with them, as explained section 8.5.2.1 below. […].[1848]

(1472) Third, as explained in more details in section 8.5.2.2, the scale of ad inventory for which an SSP has the opportunity to submit bids is an important determinant of its ability to effectively collect and use bid request, log-level and user data. As explained in recital (1785), these data are important for SSPs to improve the services offered, and thus to increase their attractiveness vis-à-vis their clients.

(1473) As Google's publisher ad server, DFP, represents by far the largest source of online display ad inventory, having the opportunity to submit bids for DFP ad inventory is particularly important for an SSP's overall competitiveness. Publishers tend to use a single publisher ad server (see section 7.4.4) and DFP's market share has been […].

8.4.4.2.2. DFP ad inventory cannot be effectively replaced

(1474) According to the Commission's market investigation, SSPs cannot effectively replace DFP ad inventory with alternative sources for three main reasons.

(1475) First, not all SSPs are vertically integrated as they do not operate in addition to their SSP a publisher ad server. Those that are not vertically integrated depend fully on third party publisher ad servers to set the rules to favour their SSP.

(1476) Second, none of DFP's competitors is of a size comparable to DFP's. The largest of those competitors, […] accounted at most for […] of the EEA-wide market for publisher ad servers (i.e. around a fourth of DFP). However, […] only focuses on a single, specific inventory type, i.e. mobile advertising. Most other publisher ad servers had a share of […] (see Table 2). As such, no other publisher ad server is a plausible alternative source of inventory for SSPs.

(1477) Third, the EEA-wide market for publisher ad servers is characterised by high barriers to entry and expansion, notably due to publishers' single homing and the high costs and risks for publishers to switch to another publisher ad server (see section 7.4.4). Therefore, most inventory available on DFP is unlikely to be accessible through other publisher ad servers. In the light of barriers to entry and high switching costs, it is equally unlikely that an existing player will be able to increase significantly its portion of controlled ad inventory or that the market will see new entry in the short term.

(1478) Fourth, Google's strategy on the buy-side of the market also contributes to strengthening DFP's dominant position in the EEA-wide market for publisher ad servers. Due to the tight integration between AdX and DFP, the potential effects of the favouring of AdX by Google Ads and DV360 also propagate to the publisher ad servers' market and contribute to DFP's commercial success (see section 8.6 below). This makes it all the more difficult for a rival SSP to convince publishers to switch from DFP to another publisher ad server.

8.4.5. Google's arguments on the Commission's findings regarding the Sell-side Conduct

8.4.5.1. Google's general arguments on the findings in section 8.4

(1479) The Commission's findings in section 8.4 are not contradicted by Google's general arguments described below.

[1848] […].

(1480) First, Google argues that, given that publishers can choose whether or not to call AdX for a particular impression, all the alleged advantages for AdX only apply if the publisher chooses to call AdX, and that the Commission does not show that AdX is a "must call" or is dominant. On the contrary, AdX would not have unique demand. Firstly, where advertisers use several ad buying tools in addition to those of Google, their demand is available on third-party SSPs. Secondly, to the extent that there are unique small advertisers on Google Ads, such advertisers would account for a small minority of spend on Google Ads.[1849]

(1481) In the first place, whether DFP can favour AdX only when the publisher chooses to call AdX is not relevant. Google's contention amounts to requiring from the Commission, without any basis in law, that it establishes that DFP users were compelled to choose AdX in the first place before it can object to the fact that AdX is favoured by DFP.

(1482) In the second place, the following evidence shows that publishers have strong incentives to rely on AdX to monetize their ad inventory because AdX has favourable access to a very important source of demand via Google Ads and DV360. […]:[1850]

(1) […].[1851]

(2) […].[1852]

(3) The […] of publishers that replied to the Commission's RFI stated that AdX is a must-have SSP for the purpose of monetizing their inventory (see recital (1866)(2)).[1853]

(4) An anonymous publisher states that: […].[1854]

(5) Section 8.3.1 shows that AdX has favourable access to a very important source of demand via Google Ads and DV360.

(6) Section 8.3.4.2 shows that Google Ads and DV360 demand is important for rival SSPs and cannot be effectively replaced. It further shows the significant difficulties faced by publishers when trying to replace the demand from Google Ads and DV360 with alternative sources.

(7) Section 8.5.2.1 shows that publishers prefer integration with SSPs giving access to a large inventory volume, and that the effective degree of multi-homing is limited because both publishers and ad buying tools tend to concentrate the large majority of their transactions on a main SSP.

(8) Section 8.5.3 further shows that the Buy-side Conduct is capable of allowing AdX to maintain its status as the largest intermediary for publishers (and advertisers) because publishers resort to AdX to be fully integrated with Google Ads and DV360 demand. This is corroborated by Google internal documents that show […].

(9) Recitals (440) to (448) show that the extent of multi-homing in the EEA-wide market for programmatic ad buying tools for the open web is limited because

1849 […].

1850 […] reply to Q13 of the Commission's RFI to publishers of November 2022 (ID[…]). […].

1851 […].

1852 […].

1853 Replies to Q B.D.1 of the Commission's RFI to publishers of February 2024.

1854 Anonymous party's reply to Q16 of the Commission's RFI to publishers of November 2022 (ID[…]).

the advantages of using a single buy-side tool typically outweigh those of using multiple buy-side tools.

(1483) Second, Google also makes a general argument on Header Bidding and Open Bidding by claiming that the Decision is imposing a set of novel obligations for dominant firms to redesign products which would impact a firm's incentives to invest, rights to property and freedom to conduct a business. In the particular case of Header Bidding, Google states that it did not change any product (or take any other action) to give rise to Last Look in Header Bidding. Rather, Last Look was simply the result of how publishers used Header Bidding with pre-existing DFP features when Header Bidding emerged. Google states that it is a legitimate competitive strategy for Google not to immediately redesign its products to interoperate with Header Bidding in a different way.[1855] In the particular case of Open Bidding, Google states that Open Bidding was a pro-competitive innovation, and it cannot be a legal obligation to design alternatives to Open Bidding that would have further accommodated rivals' preferences.[1856]

(1484) In the first place, this Decision creates no novel legal obligations for dominant undertakings. As a dominant undertaking, Google is under a special responsibility not to impair genuine, undistorted competition on the internal market competition, and should not resort to means other than those consistent with competition on the merits. This implies, in this specific case, that Google's dominant publisher ad server DFP should not give Google's SSP AdX an anticompetitive advantage over its rivals. This might indeed have required some redesign of DFP when that service became a dominant publisher ad server, to the extent that, before DFP is dominant, it was already favouring AdX. It is settled case law that Google is under a duty to do so, subject to objective justifications, for which however Google bears the burden of proof.

(1485) In the second place, and with regard to Header Bidding, Google misrepresents the Last Look advantage as being simply the result of how publishers used Header Bidding with pre-existing DFP features. As explained in section 8.4.2.2.1, publishers and rivals of Google introduced Header Bidding in order to mitigate to the extent possible the effects of the First Look advantage that derived from the fact that Google allowed only AdX to place bids in real time in the DFP auction. As one of Google's own internal documents puts it: […].[1857] Since it was not technically possible for publishers and rival SSPs alone to go all the way to entirely restore a level playing field between AdX and rival SSPs, the Last Look advantage is what is left from the First Look advantage.

(1486) Had Google allowed rival SSPs to place bids in the DFP auction in real-time, in a way equal to AdX, there would have been no First Look advantage, hence no remaining Last Look advantage, and thus no need for Google to "*redesign its products to interoperate with Header Bidding in a different way*".

(1487) Even if (quod non) it would have been "a legitimate competitive strategy for Google not to immediately redesign its products to interoperate with Header Bidding in a different way", Google did not eliminate the Last Look advantage until September 2019. Google took therefore more than five years and a half, i.e., at least from

1855 […].
1856 […].
1857 […].

January 2014 to September 2019, to modify that feature. This is by no reasonable standard just "not immediately" redesigning a product.

(1488) Internal documents also show that […].[1858]

(1489) Finally, it would not have been *"cumbersome"* to redesign the DFP auction so that it does not give a Last Look advantage to AdX. It would have sufficed for DFP not to inform AdX of the winning Header Bidding bid and AdX could then not have used that information when bidding in the DFP auction. Not informing AdX of the winning Header Bidding bid cannot plausibly be a cumbersome task (let alone one that would require five years and a half to complete). It only consists in not providing a piece of information to AdX. It is notable that all rival SSPs placing bids in Header Bidding placed those real time bids without being informed of the bids of their competitors.

(1490) In the third place, and with regards to Open Bidding, it is Google that decided to design Open Bidding in such a way that rival SSPs using Open Bidding are at a disadvantage compared to AdX in DFP auctions (through the imposition of a 'Last Look' for AdX over the highest clearing price for a period, the exclusion of certain SSPs, charging the Open Bidding fee to those allowed to participate and preventing those SSPs with integrated DSPs from using their own vertically integrated demand). To comply with its special responsibility, Google would therefore not have had to re-design Open Bidding in any manner. Rather, it would have sufficed for it not to design it from the outset with anticompetitive restrictions attached.

(1491) In any event, this Decision does not mandate Google specifically to implement any change in Open Bidding but, rather, requires that Google refrain from favouring bids placed by AdX in DFP over bids placed by Open Bidders and from providing, in so doing, a competitive advantage to AdX. This could be achieved in many different ways, not solely by ending restrictions in Open Bidding.

8.4.5.2. Google's arguments on the Commission's findings in relation to the Waterfall

8.4.5.2.1. Google's arguments on the findings in sections 8.4.2.1 and 8.4.3.2.1

(1492) The Commission's findings in sections 8.4.2.1 and 8.4.3.2.1 in relation to the Waterfall are not contradicted by Google's arguments as described below.

(1493) First, Google argues that AdX has always had to beat the competition from rival SSPs in the Waterfall since 2014, and that AdX always had to have the highest net bid to win an impression.[1859]

(1494) This Decision does not allege that AdX did not have to beat the competition from rival SSPs, including when those participated in the Waterfall channel. Instead, this Decision finds that, in the context of that competition, AdX had an advantage over rival SSPs participating in the Waterfall channel. As explained in section 8.4.2.1, AdX has always had the opportunity to submit real-time bids to compete in the DFP auction whereas rival SSPs in the Waterfall channel have competed in the DFP auction based on a static CPM, an advantage which the industry called the "First Look".

(1495) The fact that AdX can place one bid above the static CPM of the best eligible rival SSP in the DFP auction does not necessarily mean that ad buying tools bidding in AdX have a higher willingness to pay than ad buying tools bidding in rival SSPs in

1858 […].
1859 […].

the Waterfall channel, nor does it necessarily mean that AdX had a lower fee than rival SSPs. Indeed, a rival SSP in the Waterfall channel may obtain a higher bid from its ad buying tools if it is given the opportunity to organise a real-time auction (see recitals (1437) and (1438)).

(1496) Second, Google argues that, in the context of the Waterfall channel, there were several technical means for publishers to let DFP call rival SSPs ahead of AdX or obtain real-time bids from rival SSPs.[1860]

(1497) However, Google's argument is first and foremost undermined by the examination of Google's contemporaneous internal documents quoted in recitals (1371) to (1378) above. […]. Had there been, as Google alleged, technical means for publishers to effectively undo that advantage, Google would not have repeatedly acknowledged internally the existence and benefits deriving from it, and publishers would not have felt the need to introduce Header Bidding to mitigate the First Look advantage.

(1498) The recitals (1499) to (1515) below address each of Google's claims one by one.

(1499) The first technical means invoked by Google is that, according to Google, remnant line items could be ranked based on other publisher-controlled criteria than price (price priority line items), such as meeting a publisher-specified goal for a percentage of impressions to be served ("network priority line items") or a quantity ("bulk priority line items"). In those cases, according to Google, rival SSPs' offers would not be evaluated solely based on the static CPM in comparison with AdX real-time bid, and thus the First Look advantage would not apply.[1861]

(1500) In the first place, even if the publisher configures a "bulk" or "network" priority line item, this does not affect the findings as described in section 8.4.2.1.2. While price priority remnant line items compete in the DFP auction based on a static CPM for all impressions, network line items are configured with a certain percentage, which determines how often they compete in the DFP auction based on a static CPM. Bulk priority line items are configured with a certain number of impressions to deliver and have a higher probability to compete in the DFP auction based on a static CPM if they are behind schedule.[1862] In both cases, when the rival SSP competes with AdX, DFP compares the real-time bid of AdX with the static CPM of the rival SSP, meaning that the mechanism favouring AdX remains in essence unchanged: in both cases, AdX can still seize the higher value impressions based on a real-time bid, while rival SSPs placing bids in the DFP auction via the Waterfall channel cannot do so.

(1501) In the second place, […] publishers that replied to the Commission's RFI and indicated that they have configured SSPs in the Waterfall channel, stated that they never configured them as network or bulk priority line items.[1863] A Google internal document of December 2015 […].[1864]

(1502) In the third place, even if "bulk" or "network" priority line items did allow publishers to have DFP rank SSPs based on another criterion in addition to price, this would not change the fact that publishers did not have an option to have SSPs ranked in DFP based on their best price without AdX benefiting from the First Look advantage over

1860 […].
1861 […].
1862 […] reply to Q17 and Q18 of the Commission's RFI to […] of February 2024 (ID[…]).
1863 Replies to QB.C.A.2 of the Commission's RFI to publishers of February 2024.
1864 […].

rival SSPs participating in the Waterfall. Publishers should not be under the constraint to either accept a biased ranking based solely on price or choose another ranking parameter.

(1503) The second technical means invoked by Google is that, according to Google, publishers could manually configure for a rival SSP a higher static CPM than the expected revenue (or historical average price) for that rival SSP, to increase the price floor applicable to AdX. According to Google, it was optimal for publishers to do so because it is theoretically optimal for a seller to set the price floor higher than the price it knows it could receive outside the auction. Doing so would increase the publisher's average revenues by forcing AdX and ad buying tools using AdX to pay more to win an impression. Therefore, AdX would not enjoy a First Look advantage.[1865]

(1504) In the first place, Google does not explain how the fact that its allegation that it is theoretically "optimal" for publishers to set the price floor of the auction higher than the price it knows it could receive outside the auction, would lead AdX not to enjoy a First Look advantage. Indeed, increasing the price floor of the auction would not change the basic tenet that AdX would have the opportunity to place a real-time bid to beat that higher price floor, whereas rival SSPs would only compete based on static CPMs.

(1505) In the second place, evidence on the file explained below shows that, in practice, publishers do not usually enter for an SSP a static CPM that is higher than the expected revenue of this SSP, and that doing so would have drawbacks, such as the risk of losing revenue. Indeed, entering an artificially higher static CPM than the expected revenue for an SSP amounts to manipulating the functioning of the Waterfall in a way that is risky for the publisher. This risk materialises in circumstances where AdX is not able to place a bid above the artificially inflated static CPM and the SSP with the artificially inflated static CPM ends up paying a lower price than AdX buyers would have been able to pay.[1866] In addition, the manipulation of the static CPM increases the complexity of the reporting of revenue (see recital (1506)(3) below).

(1506) […] publishers that replied to the Commission's RFI indicated that they have not entered in DFP a static CPM that is higher than the expected CPM or the historical average revenue for non-Google SSPs configured through the Waterfall channel, and that it would not make sense for them to do so.[1867] For instance:

(1) According to […].[1868]

(2) According to […].[1869]

(3) According to […].[1870]

(1507) A Google internal document of February 2017 also states that: […].[1871]

1865 […].

1866 For example, a publisher might configure DFP to assign a EUR 2 EUR to an SSP even though the latter might pay only EUR 1 to the publisher on average, whereas AdX would have paid EUR 1.5 on average.

1867 Replies to QB.C.A.5 of the Commission's RFI to publishers of February 2024.

1868 […] reply to QB.C.A.5 of the Commission's RFI to publishers of February 2024 (ID[…]).

1869 […] reply to QB.C.A.5 of the Commission's RFI to publishers of February 2024 (ID[…]).

1870 […] reply to QB.C.A.5 of the Commission's RFI to publishers of February 2024 (ID[…]).

1871 […].

(1508) The third technical means invoked by Google is that, according to Google, publishers could also obtain a real-time bid from a rival SSP without organising a Header Bidding auction and use the selected value to target a specific remnant line item.[1872] According to Google, after the unified first price auction, DFP compares real-time bids that publishers have obtained via a range of different channels at the same time.[1873]

(1509) In the first place, the possibility for publishers to submit rival SSPs' real-time bids to DFP as remnant line items without the Header Bidding technology does not alter the findings in this Decision. If it is possible for publishers to do so, and a publisher has configured AdX as eligible for these impressions, Google has not provided any evidence that the practices that apply to the Header Bidding channel would not also apply *mutatis mutandis* to this configuration.

(1510) In the second place, as explained above in recital (1274), the introduction of the unified first price auction changed nothing in the way rival SSPs placing bids in the DFP auction via the Waterfall channel are at a competitive disadvantage compared to AdX.

(1511) The fourth technical means invoked by Google is that, according to Google, if a publisher wanted to allow a rival SSP to win the impression ahead of AdX, the publisher could configure this rival SSP as a higher priority line item e.g., a "Sponsorship" line item,[1874] or a remnant line item where the targeting disables AdX (such that AdX demand is not eligible), possibly with a mechanism of passbacks.[1875]

(1512) In the first place, the configuration of a "Sponsorship" or "Standard" line item in DFP is an anecdotical practice that could negatively impact the delivery of ads (see recital (1577)). This is not surprising since these types of line items are typically used for direct deals with advertisers. These line items are handled by DFP in a way that guarantees that the contract terms with the advertisers are met e.g., to make sure that a given volume of ads is displayed in a given amount of time pursuant to the contract. In addition, this mechanism does not allow the selected SSP to be put in some form of competition with other SSPs, including those participating in Header Bidding and Open Bidding.

(1513) In the second place, Google appears to refer to a mechanism where the publisher does not put AdX in competition with a rival SSP for a given impression. It is only in the instance where the SSP cannot fill the impression, that DFP will call another rival SSP or AdX.

(1514) This Decision does not allege that publishers cannot decide not to put AdX in competition with rival SSPs for certain impressions[1876]. Instead, it takes the view that, when AdX is in competition with rival SSPs for a given impression, then AdX is favoured compared to rival SSPs in the auction process.

(1515) In the third place, in any event, Google should not leverage the dominant position of its publisher ad server DFP to impose on publishers a choice between giving up on the important source of demand intermediated by AdX, which is detrimental to their

1872 […].
1873 […].
1874 […].
1875 […].
1876 See also recital (1277) on Header Bidding.

revenue level, or suffering the consequences of AdX getting a favourable treatment compared to rival SSPs.

(1516) Third, Google argues that publishers could ensure that rival SSPs compete with real-time bids through Header Bidding. Similarly, rival SSPs could compete with real-time bids in Open Bidding.[1877]

(1517) This Decision does not find that rival SSPs could not place real time bids in Header Bidding or Open Bidding. To the contrary, this Decision finds that publishers and rival SSPs had to resort to introducing Header Bidding in order to mitigate to some degree the effects of the First Look. This Decision thus does not claim that AdX benefits from a First Look advantage vis-à-vis bids placed by rival SSPs via the Header Bidding and Open Bidding channels. Nevertheless, the Header Bidding and the Open Bidding channels are also the subject of practices from DFP that put SSPs placing bids in the DFP auction via those channels at a competitive disadvantage (within each of those channels) vis-a-vis AdX, as explained in sections 8.4.2.2 and 8.4.2.3. Those practices are also part of the Sell-side Conduct.

(1518) Fourth, Google argues that the Dynamic Allocation feature pre-dated Google's acquisition of DoubleClick and the alleged dominance of DFP and therefore cannot give rise to any leveraging of a dominant position. Google further argues that once real-time bidding became possible, it supported its integration.[1878]

(1519) In the first place, real time bidding became possible with Header Bidding at the latest as from 2014, which is the period covered by this Decision. The Google internal document quoted in recital (1376) shows that […].

(1520) In the second place, the Commission does not conclude that the way the Waterfall channel interacts with Dynamic Allocation is, on its own, an abuse of dominant position. This Decision concludes that it is the full Sell-side Conduct, which includes practices pertaining to all channels (including the Waterfall, Header Bidding and Open Bidding channels), which constitutes an abuse of Article 102 TFEU. In fact, the Commission does not deny that Google has integrated real-time bidding by rival SSPs in the DFP auction, via Header Bidding or Open Bidding. However, the Commission has concluded that it did so subject to rules that still favoured AdX.

(1521) Fifth, Google argues that the Commission claims that Google should have redesigned DFP but at the same time does not identify […].[1879]

(1522) In the first place, this Decision does not argue that Google was under a legal obligation to redesign the way DFP treated rival SSPs in the Waterfall channel. Instead, this Decision argues that Google should have refrained from favouring AdX over rival SSPs and, in so doing, from giving a competitive advantage to the former. This could have been achieved in many different ways, and this Decision does not purport to prescribe in what way.

(1523) In the second place, evidence on the file shows that […].

8.4.5.2.2. Google's arguments on the findings in section 8.4.4.1.1

(1524) The Commission's conclusion that Google acts against the interests of DFP and publishers through the Waterfall channel is not contradicted by Google's argument

1877 […].
1878 […].
1879 […].

that publishers valued Dynamic Allocation and Dynamic Allocation increased publisher revenues.[1880]

(1525) In the first place, this Decision does not contest that Dynamic Allocation may have increased publisher revenue when it was launched in 2007. At the time, there was no real-time bidding, and it is in the context of this mechanism that the possibility of real-time bidding is introduced in 2009, although only by Google's AdX (see recitals (1251) and (1252)).

(1526) In the second place, Dynamic Allocation is an integral piece of an anticompetitive conduct which aimed at reserving the ability to place bids in real-time in the DFP auction to AdX. Publishers did not consider this a beneficial mechanism, and instead sought to escape those constraints that were entirely in Google's favour: this is why Header Bidding was introduced (see recitals (1253) and (1254)).

8.4.5.3. Google's arguments on the Commission's findings in relation to Header Bidding

8.4.5.3.1. Google's arguments on the findings in sections 8.4.2.2.2.1 and 8.4.3.2.2.1

(1527) The Commission's findings in sections 8.4.2.2.2.1 and 8.4.3.2.2.1 in relation to Header Bidding are not contradicted by Google's arguments described below.

(1528) First, Google argues that, in the understanding that the Last Look advantage corresponds to the practice of DFP of passing on the price of the remnant lines to AdX via the price floor, it was not technically feasible for DFP to share that price floor information with Header Bidders.[1881]

(1529) In the first place, the Commission does not conclude that the Last Look advantage consists in DFP not passing on the information about the remnant lines to Header Bidders. Instead, as explained in section 8.4.2.2.2.1 above, the Last Look advantage results from the fact that AdX obtains the information about the Header Bidding clearing price before submitting its bid in the DFP auction. It is therefore irrelevant whether it is or not feasible to share the information on remnant lines with Header Bidders. And indeed, it would make no logical sense to suggest that Header Bidders should receive the information about the winner of the Header Bidding auction even before that auction takes place. On the other hand, it does make sense, and it is possible not to inform AdX of the bids of rivals in Header Bidding before AdX places its bids, in the same way as rivals placing bids in Header Bidding are not informed of AdX or other SSPs' bids.

(1530) In the second place, had Google allowed all SSPs to compete with real time bids to purchase inventory of publishers using DFP, in the same way as AdX does, there would have been no incentives for publishers and SSPs to introduce Header Bidding to mitigate the First Look advantage, and thus the way in which AdX interacts with Header Bidding would not have implications on the level playing field between AdX and rival SSPs.

(1531) Second, Google argues that the Commission's reasoning is based on the wrong assumption that, when entering into DFP the value of the clearing price from Header Bidding to set the price floor of AdX (see recital (1301)), publishers were entering the actual value of the clearing price from Header Bidding. Google alleges that, instead, publishers had an incentive to enter an overreported (or "boosted", or "inflated") value for the clearing price of the Header Bidding auction. According to

1880 […].
1881 […].

Google, publishers had the incentive to do so to increase their revenue. They could technically achieve this by setting the configured CPM of each remnant line item that represented a Header Bidding bid above the actual Header Bidding bid, or by "boosting" the Header Bidding price directly in the end user's browser before passing it on to DFP, thus inducing AdX to bid higher to beat such artificially increased price floor. Therefore, according to Google, as publishers were often adopting this strategy, AdX did not enjoy a Last Look advantage; to the contrary, rival SSPs using Header Bidding were advantaged overall relative to AdX.[1882]

(1532) In the first place, […].

(1533) In the second place, evidence in the file shows that, contrary to what Google argues, only a minority of publishers were overreporting (or "boosting") the value for the winning Header Bidding bid.

(1534) Firstly, only […] of the publishers that replied to the Commission's RFI indicated that they boosted the winning Header Bidding bid.[1883]

(1535) Secondly, a Google internal document of August 2019 shows that […].[1884] Because boosting Header Bidding bids is difficult to implement, as explained in the following recitals, in all likelihood, an even smaller minority of publishers of smaller size, if any, boosted the winning Header Bidding bid.

(1536) As for qualitative evidence, there are also several Google internal documents […]:

(1) A Google internal document of July 2018 stating that: […].[1885]

(2) A Google internal email of February 2019 stating that: […].[1886]

(1537) In the third place, the undertakings that directly suffer from the effects of the Last Look advantage are SSPs that compete with AdX. However, the mechanism described by Google is not under the control of SSPs, but of publishers. Even if the mechanism described by Google could have efficiently countered the Last Look advantage (*quod non*, as explained below), it would not have been actionable by those who directly suffer from the Last Look advantage.

(1538) In the fourth place, to be able to boost the Header Bidding winner bid, the publishers would have needed to know in which instances (and by what amount) they needed to apply the boost. For a given impression, publishers would need to know the willingness to pay of the best ad buying tool of AdX, in order to boost the bid of the Header Bidding winner only if its willingness to pay is above that of the ad buying tool of AdX with the highest willingness to pay. Otherwise, the publisher would risk boosting a winning Header Bidding bid and making AdX lose even though the latter had the ad buying tool with the highest willingness to pay for that impression.[1887] This would have been particularly damaging for the publisher, given that (in view of

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1882 […].

1883 Replies to Qs B.C.A.6 and B.C.A.7 of the Commission's RFI to publishers of February 2024.

1884 […].

1885 […].

1886 […].

1887 This can be illustrated with the following example. A publisher overreported the winning Header Bidding bid as EUR 5 while it was actually only EUR 3. The highest bids of the ad buying tools in the AdX auction were EUR 4 and EUR 3.5. In that case, AdX lost the auction (failing to meet the artificially high price floor of EUR 5). The rival SSP in the Header Bidding channel won the DFP auction and paid its actual bid to the publisher: EUR 3, and not EUR 5. The publisher ended up with only EUR 3 whereas AdX could have paid EUR 3.5 if the publisher had not overreported the Header Bidding clearing price. By overreporting the Header Bidding bid, the publisher lost EUR 0.5.

the importance of demand coming from AdX) it risked losing significant revenues. However, publishers did not have the information on AdX's ad buying tools' willingness to pay for a given impression, as only AdX did. This risk would not be present under an equal playing field real time bidding system, where the ad buying tool with the highest willingness to pay would win and the publishers would have their revenues maximised.

(1539) In the fifth place, further evidence in the file explains that […]:

(1) A Google internal email of May 2019 indicates that […].[1888]

(2) According to the publisher […].[1889]

(3) According to the publisher […].[1890]

(1540) Third, Google argues that prior to Unified Pricing Rules, publishers could, and often did, set for AdX buyers a price floor that was higher than the clearing price of Header Bidding prior to Unified Pricing Rules.[1891] Therefore, according to Google, AdX would not enjoy a Last Look advantage but, to the contrary, this could mean that rival SSPs that used Header Bidding were advantaged overall relative to AdX.[1892]

(1541) In the first place, as recalled above (recital (1532)), […].

(1542) In the second place, as recalled above (recital (1537)), even if the mechanism described by Google could have efficiently countered the Last Look advantage (*quod non*), it would not have been actionable by those who directly suffer from the Last Look advantage, i.e., the SSPs.

(1543) Fourth, Google argues that the Commission has not identified the proportion of inventory that meets the assumptions under which Last Look creates an advantage for AdX, and in particular that […] study quoted by the Commission (see recital (1389)) to that effect has deficiencies.[1893]

(1544) In the first place, […].

(1545) In the second place, […].[1894] […].

(1546) Fifth, […].[1895]

(1547) In the first place, the Commission does not claim […]. Instead, this Decision establishes that Last Look is not compatible with competition on the merits between AdX and rival SSPs.

(1548) In the second place, […], the DFP auction already had allocative inefficiencies (see section 8.4.2.2.2 which explains why, with Last Look, AdX could win even if its buyers did not have the highest willingness to pay). In fact, as acknowledged by Google, the allocative inefficiencies it claims would occur without Last Look are a consequence of the succession of auctions (some being first price and others second

1888 […].
1889 […] reply to Q B.C.A.6 of the Commission's RFI to publishers of February 2024 (ID[…]).
1890 […] reply to Q B.C.A.6 of the Commission's RFI to publishers of February 2024 (ID[…]).
1891 […].
1892 […].
1893 […].
1894 […].
1895 […].

price) and would occur with or without the Last Look Advantage.[1896] However, what the Last Look advantage does is to ensure these inefficiencies are systematically skewed in favour of Google's own SSP.

(1549) In the third place, it is not for the Commission to indicate to Google how AdX should have placed bids in the DFP auction. The Commission can only indicate to Google what it could not do because it is not competition on the merits. Accordingly, this Decision only states that Google should have refrained from implementing the Last Look advantage, without prescribing the precise mechanism by which AdX should have determined and placed its bids in the DFP auction absent that information.

(1550) In the fourth place, […].

(1551) In any event, it is misleading to represent AdX as having no other option than submitting to DFP a clearing price of its internal second price auction. There is no technical or economical limitation in that regard. With the DRS feature (see recitals (1309) to (1318)), AdX was already placing in the DFP auction a bid that departed in certain instances from the plain outcome of its internal auction, thereby demonstrating that no such constraint exists. Moreover, if Google was concerned about allocative inefficiencies, it could have ensured a level playing field between AdX and its rivals.

(1552) In the sixth place, […].

(1553) Sixth, […].[1897]

(1554) […].

(1555) In the second place, the claim that Dynamic Allocation is a pro-competitive innovation that allows publishers to determine in real time whether there were ad buyers willing to pay a price for a particular ad impression ignores the very starting point that Dynamic Allocation allows publishers to do so solely for AdX. With that fundamental point in mind, far from being a *"pro-competitive"* innovation, Dynamic Allocation is an integral piece of an anticompetitive conduct which aimed at reserving the ability to place bids in real-time in the DFP auction to AdX, Google's own SSP. Publishers did not consider this a pro-competitive circumstance, but instead sought to escape those constraints that were entirely in Google's favour, and this is why Header Bidding was introduced.

(1556) It is notable however that Google recognises that publishers benefit from being able to determine in real-time whether there were ad buyers willing to pay a price for a particular ad impression greater than that which the publisher can establish or estimate in static CPMs that can be entered in the Waterfall channel. This corroborates the anticompetitive nature of the Sell-side Conduct, which consists in constraining publishers' capacity to benefit from getting real-time bids from ad buyers, by reserving the benefit of this "innovation" to bids made through AdX.

(1557) Seventh, […].

(1558) The Commission has already addressed this argument in recitals (1292) to (1296).

(1559) Eighth, Google argues that DRS did not exacerbate any anticompetitive effects the Last Look advantage could have had. Google states that a Google internal document

1896 […].
1897 […].

shows that DRS mostly helped AdX sell impressions that would have otherwise gone unsold.[1898] […].[1899]

(1560) In the first place, Google does not substantiate why the first Google internal document shows that DRS mostly helped AdX to sell impressions that would have otherwise gone unsold. […]. This document does not show that, absent DRS, no other SSP would have won the impression, in particular, given the differences in price floors put by publishers between AdX and third-party SSPs.

(1561) In the second place, Google's claim omits to mention that, […].[1900] […]:[1901]

(1) As acknowledged by Google, […];

(2) […];

(3) […].

(1562) Ninth, Google argues that the Commission does not demonstrate that access to the price floor was critical to develop an equivalent feature to DRS, that a dynamic revenue share adjustment feature could be developed based on historical auction information and that other SSPs also implemented features like DRS to reduce their revenue shares to win more impressions.[1902]

(1563) In the first place, the knowledge of the AdX price floor i.e., the price to beat before adjusting the AdX fee, allowed AdX to win the impression without having to invest in an algorithm to predict the bids of competitors. With DRSv1 and DRSv2, it allowed AdX to win the bids with certainty, by reducing its margins in certain cases and recovering it in other cases. With tDRS, it allowed AdX to win with a likelihood that depended on Google's ability to predict the bids of its own AdX Buyers.

(1564) In the second place, the alleged examples of SSPs implementing features like DRS are not convincing. These examples relate to the mere fact that rival SSPs may have also applied variable fees, without showing that the mechanism to modulate the fees was akin to DRS and had the same accuracy as DRS has with the Last Look advantage, which could adjust the AdX fee based on the exact price to beat i.e., based on the knowledge of the bids of the competitors. […].[1903]

8.4.5.3.2. Google's arguments on the findings in sections 8.4.2.2.2.2, 8.4.3.2.2.2, 8.4.2.3.2.5 and 8.4.3.2.3.5

(1565) The Commission's findings in sections 8.4.2.2.2.2, 8.4.3.2.2.2, 8.4.2.3.2.5 and 8.4.3.2.3.5 in relation to the Unified Pricing Rules are not contradicted by Google's arguments as described below.

(1566) First, Google argues that the Unified Pricing Rules cannot favour AdX because all price floors are set to apply uniformly to AdX and third-party SSPs.[1904]

(1567) In the first place, the fact that the same price floors are set to apply uniformly to AdX and other SSPs does not imply that the Unified Pricing Rules do not favour AdX. Indeed, to determine whether the Unified Pricing Rules provide an advantage to AdX

1898 […].
1899 […].
1900 […].
1901 See […] reply to Q28 of the Commission's RFI to […] of February 2024 (ID[…]) for an explanation of the categories mentioned at points (2) and (3) below.
1902 […].
1903 […].
1904 […].

compared to rival SSPs, one should assess the impact of the Unified Pricing Rules on AdX and rivals compared to a market-driven situation in which DFP, as a standalone publisher ad server, would act in its own and its customers' best interest.

(1568) In such a situation, the evidence in the file shows that DFP would allow publishers the flexibility to set different price floors to different SSPs notably to the most important of them, AdX.[1905]

(1569) As explained above in recital (1323), […].

(1570) In the second place, the additional motive of introducing a unified price floor was to enable the Buy-side Conduct and specifically project Poirot to produce its full effect. […].

(1571) Second, Google argues that before the Unified Pricing Rules, DFP did not offer publishers any ability to set pricing floors for different SSPs. Publishers could only set price floors in AdX for specific ad buying tools.[1906]

(1572) As explained above in recital (1322), prior to the introduction of the Unified Pricing Rules, publishers could set a price floor per ad buying tool bidding within AdX. They could *de facto* set a different price floor for AdX itself by configuring the same price floor for all or most ad buying tools bidding through AdX. With the introduction of the Unified Pricing Rules, the publishers lost the opportunity to set different price floors per SSP and were obliged to set a price floor that applies equally to all participants in DFP's unified single-price auction, i.e. ad buying tools bidding in AdX, SSPs placing bids in Open Bidding and SSPs placing bids in Header Bidding.

(1573) Third, Google argues that the publishers can undo the effects of the Unified Pricing Rules and set artificially lower price floors for Header Bidders in DFP's unified first-price auction by using three different mechanisms:

(1) By configuring the publisher's system to serve the winning Header Bidding ad even if the corresponding bid is lower than the single floor price of the unified first-price auction. This means that the ad from the winning Header Bidder may be served even if it does not beat the Unified Pricing Rules floor.

(2) By configuring a "Sponsorship" or "Standard" line item in Ad Manager to represent the Header Bidding price. These types of line items are guaranteed priority (regardless of the price).

(3) By boosting the Header Bidding bid in the remnant line item passed to Ad Manager, to set a higher value above the Unified Pricing Rules floor.[1907]

(1574) In the first place, it is implausible that Google would set up and maintain a specific rule for DFP's unified first-price auction if that rule can be easily undone by publishers using technical workarounds. In all likelihood, if such easy workarounds effectively existed, one would have expected Google to find a way to eliminate them, or to have abandoned the inapplicable rule. In addition, if such easy workarounds effectively existed, it is even more difficult to understand why Google did not offer to the French NCA to eliminate entirely the Unified Pricing Rules in response to the French NCA's concerns in this regard.

1905 Replies to Q B.8 of the Commission's RFI to publisher ad servers of February 2024.

1906 […].

1907 […].

(1575) In the second place, and consistent with the logical observation above, the three mechanisms are largely theoretical options as they have major drawbacks hindering publishers from bypassing the Unified Pricing Rules.

(1576) As regards boosting the Header Bidding bid, as explained in recitals (1533) to (1539), this is only used by […] publishers in view of its significant drawbacks including the risk of decreasing revenues, the risk of distrust among advertisers and demand partners, the difficulty to implement it and the fact that it polluted reporting.[1908] […].[1909] […].

(1577) The configuration of a "Sponsorship" or "Standard" line item in Ad Manager to represent the Header Bidding price is an anecdotical practice that could negatively impact the delivery of ads, as shown below:

(1) Firstly, the […] publishers that replied to the Commission's RFI indicated that they have not set a higher priority to a non-Google SSP (in the Header Bidding or Waterfall channels) in DFP compared to AdX since 2014.[1910]

(2) Secondly, […] of publishers that replied to the Commission's RFI indicated that they have not configured non-Google SSPs (in the Header Bidding or Waterfall channels) as "Sponsorship" or "Standard" line items in DFP since 2014.[1911] "Sponsorship" or "Standard" line items, which are used for guaranteed deals, have a higher priority than AdX.

(3) Thirdly, a Google internal document of end 2015 shows that […].[1912]

(1578) In the specific case that no bid beats the unified price floor, the publisher has a mere theoretical option to configure Header Bidding to serve the clearing price from the Header Bidding auction as a fallback ad. […].[1913] In addition, the fallback is the default mechanism used by the publisher in the extreme case it does not manage to monetize its inventory. It cannot be used by the publisher to strategically select another bid if there is a winning bid.

(1579) Fourth, Google argues that the Unified Pricing Rules eliminate harmful externalities such as "price fishing" tactics of publishers calling bidders on different SSPs with various price floors to prompt unnecessarily high bids of buyers to win the impression. Google also argues that the Unified Pricing Rules lead to improved ad buyer trust and higher levels of spend that ultimately benefit publishers.[1914]

(1580) In the first place, […]. The Commission conducts that analysis in section 8.7.2 below.

(1581) In the second place, […].[1915] […].

(1582) In the third place, if there was a strong reason for a publisher ad server to go against the requests of its main customers to be able to set a higher price floor for certain SSPs, because, as alleged by Google, going against the immediate interest of the customers would overall "*improve ad buyer trust and higher levels of spend that*

1908 Replies to Qs B.C.A.6 and B.C.A.7 of the Commission's RFI to publishers of February 2024.
1909 […].
1910 Replies to Q B.C.A.3 of the Commission's RFI to publishers of February 2024.
1911 Replies to Q B.C.A.4 of the Commission's RFI to publishers of February 2024.
1912 […].
1913 […] reply to Q 37 to the Commission's RFI to […] of February 2024 (ID[…])
1914 […].
1915 […].

*ultimately benefit publisher*s"[1916], then most if not all publisher ad servers on the market should exhibit this behaviour. However, on the contrary, […] of publisher ad servers […].[1917]

(1583) Fifth, Google argues that the Unified Pricing Rules improve allocative efficiency because all auction buyers compete based on the same price floors, which guarantees that the impression goes to the highest bidder.[1918]

(1584) Google's claim is based on the assumption that publishers always wish to sell their inventory at the highest possible value for the slot, with no other consideration in mind at any point in time. Recital (1453) sets out several reasons, as established by the Commission's market investigation, why publishers wish to have the flexibility to depart from that sole criterion at least in certain circumstances. As a tool serving publishers, a publisher ad server such as DFP, should recognise such reasons and enable its customers by giving them the opportunity to do so. And indeed, as explained in recital (1582) above, other publisher ad servers do offer that possibility.

(1585) Sixth, Google argues that DFP cannot favour AdX as the Unified Pricing Rules relate to ad buying tools and AdX is not an ad buying tool.[1919]

(1586) By setting a mandatory uniform price floor for the DFP auction, the Unified Pricing Rules specifically aim at promoting AdX by driving away inventory from third-party SSPs that could win the DFP auction with a lower price than the one set for AdX. As explained in section 8.4.2.2.2.2, before the Unified Pricing Rules were introduced, publishers could set a different price floor for each ad buying tool bidding in AdX or impose *de facto* a different price floor for AdX itself by configuring the same price floor for each ad buying tool bidding in AdX.

8.4.5.3.3. Google's arguments on the findings in section 8.4.4.1.2

(1587) The Commission's conclusion that Google acts against the interests of DFP and the publishers when launching the Unified Pricing Rules is not contradicted by Google's arguments described below.

(1588) First, Google argues that most publishers are neutral or support the Unified Pricing Rules. Only […]% of the publishers would describe the Unified Pricing Rules as having a negative impact according to the third-party survey it quotes. In addition, Google argues that […] of publishers replying to the Commission's RFI either supported or were not able to quantify the impact of the move to unified first price auction.[1920]

(1589) In the first place, recital (1455) above shows that many publishers were opposed to Google's Unified Pricing Rules. Google internal documents show that the […].

(1590) In the second place, Google only submitted a reference to a web page, which refers to a certain "independent third-party survey". The web page in question provides only a short overview of the survey and not an understanding of the context of the survey, including the methodology of the survey, the specific questions asked and the identity of the respondents.

1916 […].
1917 […].
1918 […].
1919 […].
1920 […].

(1591) In the third place, […] of the publishers that replied to the Commission's RFI did not express support for the introduction of the Unified Pricing Rules. Apart from the publishers that replied they could not assess the impact of the introduction of Google's unified first price auction and of the launch of the Unified Pricing Rules, most of the publishers criticized the launch of the Unified Pricing Rules. […] publishers who replied in support of the introduction of the unified first price auction expressed concerns about the Unified Pricing Rules.[1921] […].[1922]

(1592) In the fourth place, even if it were the case that only a minority of publishers would suffer the consequences of the Unified Pricing Rules, it would not mean that those rules bring no benefit to AdX. Indeed, absent the Unified Pricing Rules, at least those publishers would, in certain instances, set a higher price floor for AdX, without being detrimental to other publishers, which would have the possibility to set the same price floor for all SSPs including AdX.

(1593) Second, Google argues that the use by publishers of different floors would be greatly reduced in the context of DFP's unified first-price auction as the ability of publishers to set per buyer floor prices is less useful and impactful in first-price auctions. […].[1923]

(1594) In the first place, the fact that publishers would have fewer reasons to use different price floors in the context of the unified first-price auction does not mean that they would have none. As explained above in recital (1581), the reason for using different price floors, which disappears in the context of DFP's unified first-price auction, is that of increasing the price paid by AdX above its second bid (which Google calls "price fishing"). But recitals (1453) and (1454) above set out several other reasons why a publisher might wish to set up different price floors, all of which remain valid within a unified first-price auction context. […].

(1595) In the second place, this was also confirmed by […][1924] […].

(1596) In the third place, if anything, the fact that the transition to DFP's unified first-price auction eliminated the incentive for publishers to engage in "price fishing" confirms that Google introduced the Unified Pricing Rules mostly for an anticompetitive purpose. Indeed, this incentive being removed, Google cannot claim that the Unified Pricing Rules aimed at preventing "price fishing". This further confirms that the Unified Pricing Rules aim chiefly at ensuring that AdX (and within AdX specifically Google's ad buying tools DV360 and Google Ads which represent the vast majority of impressions going through AdX) wins over rivals even when publishers would wish to attribute the impression to a competitor for a legitimate business reason.

(1597) Third, Google argues that publishers can also still impose a monetary threshold on buyers by setting different floors for specific advertisers, brands, ad sizes, categories.[1925]

(1598) In the first place, such mechanism only allows publishers to set different price floors for advertisers, brands, ad sizes, categories that are the same for all SSPs, including AdX. They can therefore not be used by advertisers to set a higher price floor for AdX than for rival SSPs.

1921 Replies to Q18 of the Commission's RFI of December 2020 to publishers.

1922 […] reply to Q18 of the Commission's RFI of December 2020 to publishers. […] (ID[…]).

1923 […].

1924 […].

1925 […].

(1599) In the second place, those mechanisms do not allow publishers to diversify their sources of revenues nor implement agreements concluded with SSPs by setting a price floor for specific advertisers, brands, ad sizes, categories. Setting a price floor per SSP, on the contrary, would preserve their ability to multi-source through different SSPs.

(1600) In the third place, Google has not explained how setting a price floor for specific advertisers, brands, ad sizes, categories would work in practice, including whether the publisher could indeed easily set a higher price floor with the granularity of targeting a given advertiser, brand, ad size or category.

(1601) Fourth, Google argues that setting different price floors to increase the chances of an SSP to win is not in publishers' interests as it decreases publisher revenue. Publishers can also decide not to call AdX for a part or all of their inventory to achieve the same goal.[1926]

(1602) In the first place, […].[1927]

(1603) In the second place, not calling an SSP (not least AdX, the largest of them all) would not have the same effect as setting a different price floor per SSP. Publishers may be willing to tolerate some risk of revenue loss by setting a higher price floor to a given SSP. However, simply not calling that SSP would risk losing a very high bid that that SSP could submit and even leaving the impression not sold. This goes against the interests of publishers to guarantee the sale of their inventory.

(1604) In the third place, it is not for Google to use the dominant position of its publisher ad server DFP to determine on behalf of publishers what is in their interest, and what is not. This is to be determined by publishers, in light of their own assessment of the market dynamics.

(1605) Fifth, Google argues that publishers using DFP can negotiate specific terms or pricing rules with third-party SSPs, including the possibility to set per-SSP pricing rules directly with each SSP.[1928]

(1606) Whilst it is true that setting higher price floors within SSPs could be a way for publishers to indirectly set a higher price floor for those SSPs in DFP's final auction, this does not alter the findings of this Decision. Indeed, this mechanism can only work to set (indirectly) a higher price floor for SSPs that accept such negotiations with publishers. AdX does not, and thus this mechanism cannot be used by publishers to indirectly set a higher price floor for AdX in DFP's final auction as compared to third-party SSPs. Therefore, by only having the possibility to negotiate specific pricing rules with third-party SSPs, publishers cannot undo the detrimental effects of the Unified Pricing Rules.

8.4.5.4. Google's arguments on the Commission's findings in relation to Open Bidding

8.4.5.4.1. Google's arguments on the findings in sections 8.4.2.3.2.1 and 8.4.3.2.3.1

(1607) The Commission's findings in sections 8.4.2.3.2.1 and 8.4.3.2.3.1 in relation to the restrictions in Open Bidding are not contradicted by Google's arguments described below.

1926 […].
1927 […].
1928 […].

(1608) First, Google argues that all candidate SSPs are assessed against the same criteria to be admitted into Open Bidding[1929] […].[1930]

(1609) In the first place, irrespective of the merits of Google's argument on the equality and legitimacy of the criteria it applies for the onboarding of candidate SSPs in Open Bidding, it is uncontested that AdX is not bound by any criterion in order to be able to compete in real time for the inventory of DFP publishers, without being subject to the disadvantages incurred by SSPs placing bids via the Waterfall channel or via Header Bidding. AdX never had to be onboarded in Open Bidding for that purpose. This, in itself, provides AdX a benefit over all third-party SSPs.

(1610) In the second place, the Commission does not argue that Google applies different criteria for different candidate rival SSPs. What the Commission concludes is that the criteria - which are applicable to all rival SSPs equally - were set up with a view to providing enough traction to Open Bidding to enable it to contain Header Bidding, while at the same time minimising the cannibalisation of AdX revenues, as proven by the internal discussions in recitals (1411) and (1412). The issue therefore does not come from an unequal application of the criteria (between candidate rival SSPs), but from the design of those criteria, which was aimed, in particular, at benefitting AdX.

(1611) In the third place, Google's vague justification that the requirements for participation of candidate rival SSPs in Open Bidding were allegedly intended to "*protect and offer value to publishers*", and which include subjective considerations and assessments, does not contradict the conclusion that Google has restricted participation with the primary aim of controlling the impact on AdX's revenues. Google states that: "*Virtually all of AdX's largest competitors participate in Open Bidding"* and "*There are more than […] SSPs that participate in Open Bidding, representing […] in the EEA. These include AdX's top […] competitors in the EEA and other significant competitors"*.[1931] But those are the '*big fish'*[1932] that are most likely to use Header Bidding and thus avoid the Google ecosystem. […].[1933] […].

(1612) In the fourth place, if what Google calls "[SSPs providing] significant incremental value" is to be measured on top of what AdX provides to publishers, then there is a difference of treatment between AdX and a third party SSP because the implication is that, in order to be added as an Open Bidding participant, the SSP must provide something incremental to what is already available via AdX integration, while AdX is not compared to the other SSPs to determine if it brings incremental value.

(1613) In the fifth place, Google's claims that the purpose of the restriction on participation by SSPs in Open Bidding was to benefit publishers is contradicted by the fact that it also restricted the number of publishers able to access demand from Open Bidders for their inventory. A Google internal email chain […] [1934].

(1614) Second, […].[1935] Google claims that […] publishers have stated, in response to a Commission RFI, that providing incremental demand is one of their priorities when deciding to integrate with SSPs and that a number of publisher ad servers

1929 […].
1930 […].
1931 […].
1932 See recital (1412).
1933 […].
1934 […].
1935 […].

have indicated that the incremental demand on offer for publishers is a key factor in deciding which SSPs to prioritise for acceptance into their own server-side header bidding solutions.[1936]

(1615) In the first place, Google has provided no evidence from the discussions concerning the admission of individual third-party SSPs that the costs, resources and time of integration were a primary influence on the choice of SSPs to admit, in contrast to the internal statements arguing that admitting small SSPs could cannibalise AdX's revenues (see, for example, recitals (1410) to (1413)).

(1616) In the second place, Google's Open Bidding admission criteria that prevent small SSPs from participating in Open Bidding do not appear to be a matter of prioritisation. Indeed, there is no indication that Google has any intention of opening up Open Bidding to a substantial number of those SSPs in a second step (and this despite Open Bidding having been in operation since 2017). Rather, Google's admission criteria appear to be aimed at preventing certain SSPs from participating in Open Bidding. This is fully consistent with this Decision's findings that the rules are meant to prevent Open Bidding from growing so much as to take too many impressions away from AdX, as opposed to Google's depiction of the rules as a means to prioritise SSPs with greater demand.

(1617) In the third place, the comments of the publishers and publisher ad servers referred to by Google reflect a diverse set of characteristics that are sought in SSPs. Of those publishers cited by Google, […], for example, […] [1937] […].[1938]. Amongst the publisher ad servers cited by Google, […] [1939] and […] [1940]. Given the diverse range of criteria of different publishers and publisher ad servers for choosing those SSPs they wish to work with, Google's decision to restrict the numbers of SSPs in Open Bidding does not seem to be for the benefit of publishers. It is true that some of these criteria might be seen as satisfying incremental demand but it is not apparent that this would always be met by larger SSPs. Satisfying niche advertiser interests or meeting specific technological needs, to give two examples, might be also possible with smaller specialist SSPs or even be only possible with those smaller SSPs. […].[1941]

(1618) Third, Google argues that even if the Decision is correct in holding that indirect network effects are relevant at an individual SSP level, it would be large SSPs that exert a strong constraint on AdX. Focusing on the admission of large SSPs is therefore the opposite of a strategy designed to limit competitive pressure on AdX.[1942]

(1619) In the first place, as noted in recital (1611), […]. There was limited cannibalisation of AdX revenues resulting from attracting those SSPs.

(1620) In the second place, denying small SSPs the opportunity to win business based on their participation in Open Bidding was also a means to impede their potential growth and thus avoiding the risk of some of them increasing their ability to put competitive pressure on AdX.

1936 […].

1937 […] reply to Q B.D.2 of the Commission's RFI to publishers of February 2024 (ID […]).

1938 […] reply to Q B.D.2 of the Commission's RFI to publishers of February 2024 (ID[…]).

1939 […] reply to Q B.14 of the Commission's RFI to publisher ad servers of February 2024 (ID[…]).

1940 […] reply to Q B.14 of the Commission's RFI to publisher ad servers of February 2024 (ID[…]).

1941 See recital (1412).

1942 […].

(1621) Fourth, […] [1943] […] [1944] Concerning internal discussions about the participation of […],[1945] Google again argues that it is rational and legitimate to focus on larger SSPs offering better value to publishers, given the costs, resources and time involved in integration. […].[1946]

(1622) In the first place, while Google alleges that the reason for giving a higher priority to larger SSPs are the costs, resources and time involved in integration into open Bidding, […].[1947] […].

(1623) In the second place, Google's reference to an alleged prior history by […] of violating reseller policies needs to be put in the correct context. This allegation arises in the following statement: […] [1948] […].[1949] […] (see also recital (1426)).

8.4.5.4.2. Google's arguments on the findings in sections 8.4.2.3.2.2 and 8.4.3.2.3.2

(1624) The Commission's findings in sections 8.4.2.3.2.2 and 8.4.3.2.3.2 in relation to Last Look, DRS and Open Bidding are not contradicted by Google's argument that the Commission made a factual inaccuracy because, according to Google, the Last Look advantage over Open Bidders relied on a different mechanism to any Last Look advantage over Header Bidders. Google claims that over the course of the investigation the Commission has "*reframed its allegation*" concerning Last Look in the initial phase of Open Bidding, by […] implying that it was the same as in Header Bidding […].[1950] This is because, according to Google: *"the winning Open Bidding bid was not used as a basis to set the AdX price floor.*[as in Header Bidding] *Rather, the winning Open Bidding bid competed in the AdX second-price auction on a first-price basis."*[1951]

(1625) With this argument, Google essentially plays with words, describing two different ways (both referred to by Google as "Last Look") to achieve the same auction outcome. The advantage that it confers to AdX over the rival SSPs in the Open Bidding channel is exactly the same as the one that it confers to AdX over the rival SSPs in the Header Bidding channel. […].[1952] In both the Header Bidding and Open Bidding channels the rules were the same - if an AdX participant bid above the Header Bidding clearing bid or the highest Open Bidding bid, then AdX won the impression.

8.4.5.4.3. Google's arguments on the findings in sections 8.4.2.3.2.3 and 8.4.3.2.3.3

(1626) The Commission's findings in sections 8.4.2.3.2.3 and 8.4.3.2.3.3 in relation to the Open Bidding fee are not contradicted by Google's arguments described below.

(1627) First, Google argues that the Open Bidding fee is reasonable by comparison with the fees charged by Header Bidding, and therefore the fee cannot amount to DFP favouring AdX.[1953]

1943 See recital (1412).
1944 […].
1945 See recital (1413).
1946 […].
1947 See recitals (1412) and (1413).
1948 That is, the restriction on using demand from vertically integrated DSPs discussed in sections 8.4.2.3.2.4 and 8.4.3.2.3.4.
1949 […].
1950 […].
1951 […].
1952 […].
1953 […].

(1628) In the first place, this Decision does not conclude that the Open Bidding fee departs from competition on the merits because it is too high (notably as compared to other fees charged by Header Bidding solutions). Instead, this Decision concludes that the Open Bidding fee contributes to the Sell-side Conduct by subjecting rival SSPs participating in Open Bidding to the payment of a fee that AdX does not have to pay (see recitals (1417) to (1422)).

(1629) In the second place, even accepting Google's position that one should compare the value of the Open Bidding fee to fees charged by Header Bidding solutions (*quod non*), this comparison shows that the value of the Open Bidding fee is set at a value above the price the majority of SSPs currently or recently providing Header Bidding solutions indicated that they charge (i.e. from zero up to 5% for both web and app).[1954]

(1630) In the third place, Google was not able to provide any contemporaneous document establishing a relationship between the value of its fee and the services allegedly provided by Open Bidding. When asked to provide all internal documents discussing the calculation of the Open Bidding fee based on the separate costs of providing services,[1955] Google responded that […].[1956]

(1631) In the fourth place, if anything, the description by Google of the services that are allegedly provided in return for the Open Bidding fee shows that these services in fact relate to "*running an auction among all the different eligible buyers, including Google Ads, DV360, third-party Authorized Buyers and Open Bidders*", which means comparing the bids from ad buying tools using AdX with rival SSPs placing bids in Open Bidding, to determine the who wins an impression on DFP.[1957] As far as running an exchange is concerned, AdX therefore also benefits from that service.

(1632) In the fifth place, even under the scenario argued by Google that the AdX take rate of 20% would already include the Open Bidding fee (*quod non*),[1958] AdX is still given an advantage. In fact, in addition to participating in the Ad Manager auction for which their publishers are charged the Open Bidding fee, other SSPs have to run an auction between their ad buying tools, the costs of which they have to cover with the fee they charge their publishers. On the contrary, AdX can bring its ad buying tools directly to the Ad Manager auction and thus, if anything, it would only need to cover the costs of the Ad Manager auction. This in practice means that DFP publishers using rival SSPs need to pay an extra cost as compared to using AdX. Further, Google provides no evidence that the AdX take rate includes the Open Bidding fee, […].

(1633) Second, Google argues that, with regard to the Open Bidding fee, the Commission is making a pricing allegation that should be assessed against the standard established by the case law for a margin squeeze.[1959]

(1634) The standard applicable for a margin squeeze is not a proper framework for the determination of whether the Open Bidding fee contributes to the Sell-side Conduct not being competition on the merits. Indeed, the standard that Google refers to was established by the case law in order to determine those instances in which a cost-

1954 Replies to Q B.10 of the Commission's RFI to SSPs February 2024. For example, […].
1955 […] reply to Q35 of the Commission's RFI to […] of February 2024 (ID[…]).
1956 […] reply to Q35 of the Commission's RFI to […] of February 2024 (ID[…]).
1957 […].
1958 […].
1959 […].

based inducement in the form of a margin squeeze would be liable, in and of itself, to exclude a competitor as efficient as the dominant company. In the case at issue, the Open Bidding fee is only one of the several constraints imposed on rival SSPs in competition with AdX. Within Open Bidding itself, rival SSPs placing bids within Open Bidding are also faced with (a) the restrictions on participation in Open Bidding, (b) the restrictions on vertically integrated SSPs, and (c) the Unified Pricing Rules.[1960] When they place bids in the other distribution channels (Waterfall and Header Bidding), they face the restrictions applicable to those channels.[1961] Beyond the Sell-side Conduct, rival SSPs are also constrained by the consequences of the Buy-side Conduct.[1962] Applying the standard for margin squeeze referred to by Google would therefore be an inappropriate test as it is the Sell-side Conduct in its entirety, of which the Open Bidding fee is one element, that deviates from competition on the merits.

(1635) It would be neither appropriate nor possible to reformulate the margin squeeze test so as to include within it the other constraints set out above which are more of a qualitative nature. Indeed, most if not all of those constraints are not cost-based. They cannot be accurately quantified in a manner that would enable them to be incorporated within a cost benchmark. It is therefore both legitimate and appropriate, in the context of the current case, for the Commission not to apply a margin squeeze test.[1963]

(1636) Third, […].[1964] […].[1965]

(1637) None of Google's arguments, however, detracts from […].[1966] […].

(1638) Fourth, […].[1967]

(1639) Google's claim is unfounded. What the email quoted at recital (1421) indicates is that […].

8.4.5.4.4. Google's arguments on the findings in sections 8.4.2.3.2.4 and 8.4.3.2.3.4

(1640) The Commission's findings in sections 8.4.2.3.2.4 and 8.4.3.2.3.4 in relation to Open Bidding and vertically integrated ad buying tools are not contradicted by Google's arguments described below.

(1641) First, Google argues that the contractual provision whereby vertically integrated SSPs are prevented from placing bids from their own ad buying tools in Open Bidding[1968] is intended to ensure that Open Bidding is used by SSPs and not ad buying tools, and in particular to prevent ad buying tools that also own an SSP using that SSP as a cover to access Open Bidding. According to Google, no ad buying tools (including Google's own ad buying tools) can participate in Open Bidding.[1969]

1960 See recital (1399).
1961 See, for example, recitals (1275) and (1304).
1962 See section 8.3.
1963 See, in that regard, the ECJ judgment of 10 September 2024 in Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraphs 267 to 269.
1964 […].
1965 […].
1966 See recital (1418).
1967 […].
1968 See recitals (1352) to (1358).
1969 […].

(1642) […].[1970] However, those ad buying tools when integrated with SSPs have those features because as a result of their integrated nature, they also offer SSP services. Furthermore, in any event, should Google really be concerned about the lack of certain features, it could have contractually mandated that such features be implemented by the SSP placing bids in Open Bidding from their own integrated ad buying tool, rather than merely banned such a possibility altogether.

(1643) Second, […].[1971]

(1644) However, this is precisely what this Decision objects to, i.e., Google seeking to protect its own SSP service (AdX) where it collects the highest fee.

(1645) Third, Google argues that this contractual provision has not prevented SSPs that also own ad buying tools from participating in Open Bidding. Google lists […] amongst those SSPs that also own ad buying tools and that do participate in Open Bidding.[1972]

(1646) In the first place, the Commission does not claim that the anticompetitive effect of this contractual provision only materialises by preventing SSPs that also own ad buying tools from participating in Open Bidding. Rather, the Commission's case is that the contractual provision is one further way in which rival SSPs are placed at a disadvantage vis-à-vis AdX when they place bids in Open Bidding. In some instances, this disadvantage (alone or in combination with other Open Bidding restrictions) may be such that a rival SSP may decide not to participate in Open Bidding altogether. In other instances, a rival SSP may still decide to participate in Open Bidding, at least to some degree, while suffering from a disadvantage compared to AdX. This has to be understood against the background that rival SSPs would also be at a disadvantage vis-à-vis AdX when placing bids via the other channels (the Waterfall and Header Bidding).

(1647) In the second place, in any event, the evidence in the file does confirm that, for some SSPs, this contractual provision was effectively the reason for their choice not to participate in Open Bidding. Contrary to Google's claim, this does include […]. Indeed, […].[1973]

8.4.5.4.5. Google's arguments on the findings in section 8.4.4.1.3

(1648) The Commission's conclusion that Google's restriction on participation in Open Bidding is against the interests of publishers is not contradicted by Google's arguments described below.

(1649) First, Google argues that publishers have an interest in maximising the quality of the demand bidding for their inventory (e.g. by reducing fraud, spam etc) as shown by the replies of three publishers during the market investigation.[1974]

(1650) In the first place, Google's assertion that, effectively, Google is best placed to make optimal choices for publishers is not akin to acting in their interests. Allowing more SSPs to participate in Open Bidding would not prevent publishers from being able to choose amongst them.

(1651) In the second place, not all small SSPs are vulnerable to fraud, spam and other negative features. Moreover, as explained above in recitals (1287) to (1290),

1970 […].
1971 […].
1972 […].
1973 […] reply to Q B.8 of the Commission's RFI to SSPs of February 2024 (ID[…]).
1974 […].

Google's criticisms of the alleged risks related to fraud and spam of Header Bidding have not prevented many publishers from using that channel. In reality, Google's aim in restricting participation in Open Bidding was to avoid cannibalisation of AdX revenues.

(1652) In the third place, […].[1975]

(1653) Second, Google argues that charging a fee to customers for a valuable feature that the company has developed is normal competitive behaviour that occurs throughout the economy. According to Google, the Commission is effectively claiming that Google should offer Open Bidding for free while all publisher ad servers and SSPs charge fees to publishers.[1976]

(1654) The Commission's case is not that Google should offer Open Bidding for free. Rather, the Commission's case is that the rival SSPs should be able to bid in real time to purchase impressions of publishers using DFP, as AdX does, without having to incur extra costs (or to buy extra services) as compared to AdX. As explained in recitals (1463) and (1464), the Open Bidding fee deprives publishers of the ability to benefit from a competitive real-time bidding process to sell their inventory.

(1655) Third, Google argues that the contractual provision preventing SSPs to bring their own demand to Open Bidding does not prevent the ad buying tools owned by these SSPs from participating in the AdX auction as an authorised buyer.[1977]

(1656) This argument merely confirms the case made by this Decision. Indeed, Google's argument amounts to stating that, if an undertaking is vertically integrated, with an SSP and an ad buying tool, then the contractual provision prevents its ad buying tool from placing bids via its own vertically SSP (in Open Bidding) but authorises the ad buying tool to place bids via Google's SSP AdX. This is precisely the anticompetitive mechanism that this Decision covers. Vertically integrated rivals of Google are driven to use AdX as the SSP to place their bids in response to the constraints faced by their own SSP in the Open Bidding channel.

(1657) Fourth, Google makes the same arguments on Last Look and the Unified Pricing Rules as in section 8.4.4.1.2 above.[1978] The Commission has addressed those in the same section.

8.4.5.5. Google's arguments on the Commission's findings in relation to Google's competitors being unable to adopt Google's Sell-side Conduct because such practices rely on Google's use of resources or means inherent to its holding of a dominant position

(1658) The Commission's findings in section 8.4.3.1 in relation to Google's competitors being unable to adopt Google's Sell-side Conduct because such practices rely on the use of resources and means inherent to Google's dominant position are not contradicted by Google's arguments described below.

(1659) First, Google argues that some of the practices that constituted the Sell-side Conduct, namely the First Look and Last Look advantages, pre-dated the alleged dominance of

1975 See recital (1611).
1976 […].
1977 […].
1978 […].

DFP and therefore cannot possibly rely on resources or means inherent to the holding of a dominant position.[1979]

(1660) In the first place, the Sell-side Conduct is constituted by a series of practices that all rely on the use by Google of its control over a large part of the inventory on the open web. Having control of such a large part of the inventory is inherent to the holding by Google of a dominant position in the market of publisher ad servers.

(1661) In the second place, the fact that the Commission has found that DFP has been dominant since 2014 […]. It simply shows that the Commission has discharged its burden of proof only for the years 2014 onwards.

(1662) In the third place, to the extent that Google did not hold a dominant position in the market for publisher ad servers during a period before 2014, it only implies that Google acquired control over a resource or means inherent to the holding of a dominant position as from the moment it became dominant, and therefore the practices that pre-existed, and which relied on the control of only a small part of the open web inventory, began to rely on a means inherent to the holding of a dominant position as from the moment Google acquired the control of a large part of that inventory.

(1663) Second Google argues that the Commission's assessment in section 8.4.3.1 conflates dominance and abuse and would render unlawful almost any behaviour by a dominant company.[1980]

(1664) In the first place, the assessment by the Commission is fully in line with the applicable case law in *SEN*.[1981]

(1665) In the second place, the Commission has not conflated dominance and abuse, but instead has engaged in separately identifying (i) Google's dominant position on the market for publisher ad servers; (ii) a specific conduct whereby Google has favoured its SSP AdX, by using resources or means inherent to its dominant position and leveraged that dominance into the market for SSPs by methods that depart from competition on the merits, based on the specific circumstances of the case. Below, the Commission will further establish that (iii) Google's conduct is capable of having exclusionary effects and that (iv) there are no objective justifications for Google's conduct.

(1666) In the third place, in any event, Google conflates the possession of a resource inherent to the holding of a dominant position with the reliance on that resource to carry out a specific conduct. Whilst the former is fulfilled by any company that holds a dominant position in a relevant product market, the latter is not. In the present case, the Commission does not fault Google for controlling, through DFP, a large part of the open web ad inventory but objects to the Sell-Side Conduct, which indeed relies on this particular resource.

(1667) In the fourth place, Google's argument regarding DFP dominance and the effects of the Buy-side Conduct in the publisher ad servers' market are rebutted in section 7.4 and section 8.6.

1979 […].

1980 […].

1981 See the ECJ's judgment in Case C-377/20 *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 78.

(1668) Third, Google argues that the Commission has committed an error of assessment by not considering whether an as efficient competitor could replicate the practice. In Google's view, if this were answered in the affirmative, pursuant to the Court of Justice's judgment in *SEN*, there can be no departure from competition on the merits.[1982]

(1669) In the first place, the nature of the Sell-side Conduct involved the unilateral manipulation by Google of the way its publisher ad server DFP accepts and ranks bids of rival SSPs compared to that of its own SSP AdX. Google engaged in practices which gave AdX a competitive advantage in that auction over every other SSP on the market, due to Google's reliance on its control over ad inventory via DFP, which is a resource that is inherent to its dominant position. The Sell-side Conduct would have operated in the same way and yielded the same competitive advantage, regardless of whether a particular SSP were as efficient as AdX or not. Moreover, the conditions of competition on the market for SSPs having already been distorted by Google's Sell-side Conduct, objective and reliable results concerning rival SSP's "efficiency" would not be available.[1983]

(1670) In the second place, to the extent Google may imply the need to rely on an As Efficient Competitor test, the General Court and Court of Justice have clarified in their respective judgments in the *Google Shopping* case that the as-efficient competitor test is not mandatory in the context of the application of Article 102 TFEU nor is it necessarily always relevant. In particular, it is likely to be appropriate in cases involving pricing practices, such as predatory pricing or margin squeeze, in order to determine whether a competitor as efficient as the dominant undertaking would be able to charge the same prices to its users as the dominant undertaking in the long term without operating at a loss or having to exit the market. On the other hand, as in *Google Shopping*, the use of this test is not appropriate in the present case, as the abusive conduct is not a pricing practice, but consists in self-preferencing through leveraging using resources that even an As-Efficient Competitor in the market for SSPs would not have access to.[1984]

(1671) Fourth, Google argues, in essence, that rival publisher ad servers did, or were capable of, replicating the Sell-side Conduct. Thus, these rival publisher ad servers had similar features to Dynamic Allocation, which underlies the First Look and Last Look advantages. In particular, when publishers chose to use a publisher ad server other than DFP, those other publisher ad servers also passed on a price floor to AdX and the Last Look advantage operated in the same way as when the publisher used DFP.[1985] Google also argues that any publisher ad server could charge fees and apply conditions to SSPs in a similar manner to the conducts related to Open Bidding and could apply uniform rules of ad selection across all demand sources.[1986]

(1672) In the first place, the success of the First Look and Last Look advantages in steering demand in favour of AdX rely on the ad inventory which DFP commands. Practices put in place by rival publisher ad servers for their own vertically integrated SSP and equivalent to those of Google with DFP (*quod non*) would not benefit from a breadth

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1982 […].

1983 See, in that regard, judgment in Case C-48/22 P *Google and Alphabet v Commission (Google Shopping)*, EU:C:2024:726, paragraph 171.

1984 Judgment in Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, EU:T:2021:763, paragraphs 538 to 541; upheld on appeal in Case C-48/22 P, EU:C:2024:726, paragraph 269.

1985 […].

1986 […].

of scale of ad inventory equivalent to that controlled by DFP. Therefore, the same practices by rival publisher ad servers could not be considered as equivalent (in terms of impact on competition) to those adopted by DFP as they would not benefit from Google's expanded breadth of access to publishers' ad inventory.

(1673) In the second place, in the examples given by Google, rival publisher ad servers do not communicate to AdX a price floor (and therefore grant it a last look over bids placed by rival SSPs in the auction of their publisher ad server) of their own volition, but because Google coerced them into doing so (see section 8.6.1). If anything, this demonstrates Google's ability to not only ensure that AdX is favoured by its own publisher ad server, but also to extend the scope of such favourable treatment beyond the GAM environment.

(1674) In the third place, the fact that other publisher ad servers could, technically speaking, apply conditions to SSPs in a manner similar to the conducts relating to Open Bidding and could apply uniform rules of ad selection across all demand sources does not mean that they applied, in practice, such practices nor that they would have the ability to successfully maintain them.

8.4.5.6. Google's arguments on Commission's findings in relation to the importance of DFP inventory and whether it can be replaced

(1675) The Commission's conclusion that DFP ad inventory is important for rival SSPs and cannot be effectively replaced is not contradicted by Google's arguments described below.

(1676) First, Google argues that the Commission should have focused on ad inventory diverted by the Sell-side Conduct instead of considering all DFP ad inventory, when assessing the importance of DFP's inventory.[1987]

(1677) In the first place, the assessment of the importance of DFP inventory and whether it can be replaced should focus on the entire inventory rather than the portion of the inventory diverted as a result of the Sell-side Conduct, given that all the inventory from DFP can be bid on by AdX and is thus potentially impacted by the Sell-side Conduct. In other words, this entire inventory is susceptible to being driven away from rival SSPs. The fact that SSPs were still winning bids on inventory originating from DFP does not make this finding less true.

(1678) In the second place, given that the market for SSPs is characterised by network effects (see section 8.5.2.1 below), even if the effect of the Sell-side Conduct was only on a portion of the inventory, this would have a feedback loop effect on the remaining inventory as more inventory made available to one SSP attracts even more inventory to that SSP. Therefore, due to network effects, the entire inventory of DFP is susceptible to being driven away from rival SSPs. It follows that the entirety of DFP inventory should be considered when assessing its importance for SSPs.

(1679) In the third place, such approach is consistent with the assessment presented in the *Google Shopping* decision, where the Commission concluded that the traffic impacted by the anticompetitive conduct accounted for a large proportion of the total traffic to competing comparison shopping services and could not be effectively replaced. While in that context the decision refers to diverted traffic, it identifies the traffic that could be diverted as "*generic search traffic from Google's general search*

1987 […].

results pages", i.e. all users' traffic that could be impacted by the conduct.[1988] In other words, the *Google Shopping* decision does not distinguish between a shift in traffic as a result of competition on the merits (for example as a result of improved quality of the product offered) and diversion resulting from a difference in treatment that deviates from competition on the merits. The General Court (whose judgment has now been upheld by the Court of Justice) confirmed this approach by stating "*The importance of Google traffic from its general search pages and the nature of that traffic as being not effectively replaceable were, in view of the background recalled in paragraphs 168 to 173 above and without any error of law being committed, treated by the Commission as relevant circumstances capable of characterising the existence of practices falling outside the scope of competition on the merits*".[1989]

(1680) Second, Google argues that the Commission ought to have assessed whether the Sell-side Conduct could have influenced publisher behaviour. Publishers control how they configure DFP, which means it cannot be presumed that demand was shifted regardless of publishers' actions.[1990]

(1681) Google's claim is unfounded. […] publishers that replied to the Commission's RFI indicated that AdX, thanks to its privileged access to demand from Google Ads and DV360, is a very important source of demand which cannot be effectively replaced by other SSPs (see recitals (1812) and (1866)(2)). Hence, publishers have strong incentives to use AdX to monetize their inventory. In order to obtain bids from AdX, and thus the associated demand, publishers that use DFP have had to enable the channel used by AdX to compete in DFP since 2014, i.e. the Dynamic Allocation feature. Moreover, evidence on file indicates that publishers very rarely adopt DFP configuration that could at least partially undo the advantages conferred to AdX by the Sell-side Conduct (see recitals (1499) to (1515)).

(1682) Third, Google argues that the Commission has not demonstrated that any of the practices from the Sell-side Conduct have shifted DFP inventory from third-party SSPs to AdX. In fact, Google argues that evidence on the growth of Header Bidding and Open Bidding is not compatible with shifting inventory away from third-party SSPs participating in Header Bidding and Open Bidding.[1991]

(1683) In the first place, Google's claim about the effects of the Sell-side Conduct is unfounded as explained in section 8.5.6. In particular, despite the introduction of Header Bidding around 2014, which could have allowed other SSPs to compete more aggressively with AdX on an increasing number of impressions, AdX has been by far the largest SSP in the EEA since at least 2018, while no other player managed to reach a significant position. While Header Bidding was initially of great concern to Google's executives, in 2023, AdX two largest competitors were only […] of AdX size, while all other SSPs were […].

(1684) In the second place, […].

(1685) Fourth, Google claims that scale is of limited importance for SSPs.[1992]

1988 Commission decision of 27 June 2017 in Case AT.39740 – *Google Search (Shopping)*, Section 7.2.4.

1989 Case T-612/17 *Google and Alphabet v Commission (Google Shopping)*, paragraph 174, upheld on appeal in Case C-48/22 P, EU:C:2024:726.

1990 […].

1991 […].

1992 […].

(1686) The Commission explains why scale is important for SSPs in section 8.5.2. In particular, in section 8.5.2.2, the Commission shows that Google's claims on the limited importance of scale for SSPs are unfounded.

(1687) Fifth, Google argues that the Commission has overestimated DFP's market share, and thus its importance.[1993]

(1688) Google's claim is unfounded as explained by recitals (622) to (628) above.

(1689) Sixth, Google argues that the Commission's argument on the impossibility to effectively replace DFP's inventory is based on the same factors supporting the Commission's conclusion on the dominance of Google's publisher ad server and on the Buy-side Conduct's effects in the publisher ad servers' market. Google maintains that these conclusions are flawed.[1994]

(1690) Google's argument regarding DFP dominance and the effects of the Buy-side Conduct in the publisher ad servers' market are rebutted in section 7.4 and 8.6.

(1691)

8.4.6. Conclusion on the Sell-side Conduct

(1692) In summary, the Commission reaches the conclusion that Google has infringed Article 102 TFEU by using its publisher ad server (DFP) to favour its SSP (AdX).

(1693) In particular, and for the reasons set out above, the Commission finds that Google's favouring of AdX via DFP through the adoption of the Sell-side Conduct departs from competition on the merits based on the following circumstances:

(1) DFP has been favouring AdX by engaging in the Sell-side Conduct, treating AdX more favourably than it treats third-party SSPs (explained in section 8.4.2 above);

(2) The Sell-side Conduct consists of practices that Google's competitors are unable to adopt because such practices rely on the use of resources or means inherent to Google's dominant position on certain markets (section 8.4.3.1), and Google leverages that dominance into the EEA-wide market for SSPs (section 8.4.3.2); and

(3) Additionally, there are relevant circumstances specific to this case that further reinforce the conclusion that the Sell-side Conduct departs from competition on the merits, namely:

(a) By engaging in the Sell-side Conduct, Google acts against the interests of DFP and of its customers, the publishers (explained in section 8.4.4.1 above); and

(b) DFP ad inventory is important for rival SSPs and cannot be effectively replaced (explained in section 8.4.4.2 above).

(1694) Further, the Commission has assessed arguments made by Google in the exercise of its rights of defence and concluded that these are unfounded and not of a character to contradict the Commission's conclusion (section 8.4.5 above).

1993 […].
1994 […].

8.5. The Buy-side Conduct and the Sell-side Conduct are capable of producing exclusionary effects in the EEA-wide market for SSPs

(1695) The Commission reaches the conclusion that the Buy-side Conduct and the Sell-side Conduct are each capable of having anti-competitive effects in the EEA-wide market for SSPs. Their effects also reinforce each other. This section sets out the reasons for this conclusion.

(1696) First, the Commission recalls how each element of the series of practices that constitute together each of the Buy-side and Sell-side Conducts have the capability to increase the number of successful bids intermediated by AdX as opposed to rival SSPs (section 8.5.1).

(1697) Second, the Commission explains why scale is important for SSPs (section 8.5.2). The Commission addresses Google's arguments regarding the importance of scale in sections 8.5.2.1.5 and 8.5.2.2.

(1698) Third, the Commission explains how the Buy-side Conduct and the Sell-side Conduct, by increasing the number of successful bids intermediated by AdX, have the potential to steer publishers and ad buying tools towards AdX, and in doing so, to exclude competing SSPs (sections 8.5.3 and 8.5.4). In turn, this could lead to higher SSPs' fees, less publishers' and ad buying tools' incentives to multi-home and lower innovation and transparency in the EEA-wide market for SSPs (section 8.5.5). The Commission addresses Google's arguments regarding the potential effects of the Buy-side and Sell-side Conducts in section 8.5.6.

(1699) Fourth, the Commission outlines the actual developments in the EEA-wide market for SSPs in the relevant period, which are consistent with the potential effects described above:

(1) AdX's market position has been reinforced during the period of the abuse. In addition, the abusive conducts allowed Google to hedge against the rise of Header Bidding, preserving AdX's position as a must-have intermediary in the ad-tech stack (section 8.5.7). In the same section, the Commission addresses Google's arguments on the evolution of the value of ads intermediated by AdX, and its link with the potential effects of the Buy-side and Sell-side Conducts.

(2) AdX has been able to […] (section 8.5.8). In section 8.5.8.4, the Commission addresses Google's arguments on AdX's net revenues and fees, and their link with the potential effects of the Buy-side and Sell-side Conducts.

(1700) Fifth, the Commission addresses Google's arguments on the legal requirements to show effects (section 8.5.9).

8.5.1. Each of the elements of the series of practices that constitute together the Buy-side and Sell-side Conducts have the capability to increase the number of successful bids intermediated by AdX as opposed to rival SSPs

(1701) The Commission reaches the view that each element of the series of practices that constitute together the Buy-side Conduct and the Sell-side Conduct have the capability to increase the number of successful bids intermediated by AdX as opposed to rival SSPs (section 8.5.1.1 and 8.5.1.2).

8.5.1.1. Buy-side Conduct

(1702) *Google channelling Google Ads demand preferably through AdX* (sections 8.3.2.1, 8.3.3.2.1 and 8.3.4.1.1): When Google Ads began placing bids exclusively on AdX

and on no other SSP, this practice had the immediate effect of increasing the number of bids intermediated by AdX as opposed to third-party SSPs. Google Ads began bidding on third-party SSPs in 2015, but only in ways that largely preserved the effect of this practice. When Google Ads started to bid on rival SSPs only for remarketing, this still prevented third-party SSPs from accessing an important share of Google Ads demand. From October 2018, Google Ads progressively increased the number of categories of campaigns for which it bid also on rival SSPs, but those categories remained a minority of Google Ads' overall bids for several years. Indeed, the single largest targeting category (keyword), representing […] of Google Ads' display revenue was kept out of AwBid until February 2020. In addition, in any event, since Google Ads began bidding on third-party SSPs for more targeting types than just remarketing, it has placed such bids after deducting a significantly higher take rate than when bidding on AdX. This lowers the value of Google Ads' bids on third-party SSPs, making it more difficult for an SSP to win impressions with bids from Google Ads and ensuring that bids from Google Ads demand are far more likely to win an impression via AdX than via any other SSP. Consistently, in 2022, despite the progressive expansion of AwBid, Google Ads spend on third-party SSPs was only approximately […] of its spend on AdX and most of the wins on Google Ads continued to take place largely on AdX (see recitals (776), (777) and (778)).

(1703) Google inflating the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself (sections 8.3.2.2, 8.3.3.2.2 and 8.3.4.1.2): The effect of this practice was to increase the value of Google Ads demand when intermediated on AdX, as the price paid by Google Ads for this ad inventory was fixed not by the price of the highest bidding rival, but instead by Google Ads' second highest bid in the substantial number of cases where Google Ads second priced itself (i.e. its second highest bid was higher than any bid submitted by a rival and the price floor set by the publisher). This in turn made AdX more attractive to publishers by giving them a higher payment per impression. By contrast, Google Ads did not do so in the instances where it was bidding on rival SSPs. In addition, project Bernanke inflated the first of Google Ads bid in competitive auctions based on revenues collected in non-competitive auctions. As a result, AdX's chances of winning against rival SSPs increased. Project Bernanke in essence modified Google Ads' bidding into AdX by strategically shifting money from less competitive auctions (where Google Ads would be more likely to win the impression via AdX because it submitted the highest valuation) to more competitive auctions (where Google Ads would be less likely to win the auction because other ad buying tools or SSPs might have had higher valuations). By strategically inflating its first bid to AdX on competitive auctions, Google Ads distorted the allocation of impressions in favour of AdX and to the detriment of other SSPs. This increased Google Ads probability of success in those AdX auctions as well as the clearing price of those AdX auctions. AdX then competed with this inflated price from Google Ads against other SSPs in the selection process implemented by the publisher ad server, thereby increasing AdX probability of winning the impression.

(1704) […].[1995] […].[1996]

(1705) With project Bernanke, Google Ads further increased publisher revenues (and consequently the revenues of AdX). […].[1997] […].[1998] […].

[1995] […].
[1996] […].

(1706) Google placing lower bids with DV360 on rival SSPs running first price auctions and modified second price auctions with the aim of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX (project Poirot) (sections 8.3.2.3, 8.3.3.2.3 and 8.3.4.1.3): The effect of this practice was to reduce advertisers' spend on rival SSPs running a first price auction and to channel instead more of this spend to SSPs running a second price auction, which meant mostly AdX. Under this practice, DV360 lowered bids on third-party SSPs, making it more difficult for them to win impressions against AdX with bids from DV360. This deprived third-party SSPs participating in Header Bidding of revenue and made AdX more attractive to publishers. In addition, this benefited Google as DV360's bids on AdX yielded higher margins than on rival SSPs.

(1707) Google internal documents provide […].

(1708) A Google internal document […].[1999]

(1709) Another Google internal document reports […].[2000]

Figure 33: […]

(1710) Consistently with experimental evidence, […].

(1711) In an internal email chain, […].[2001]

(1712) In another internal email chain, […].[2002]

(1713) […].[2003]

Figure 34: […]

8.5.1.2. Sell-side Conduct

(1714) At the outset, the Commission notes that the set of practices that constitute together the Sell-side Conduct and have the capability to increase the number of successful bids intermediated by AdX as opposed to rival SSPs are made possible by Google's presence in the publisher ad server market. […].[2004]

(1715) *First look in the Waterfall* (sections 8.4.2.1.2, 8.4.3.2.1 and 8.4.4.1.1): The effect of this practice is to allow AdX to bid in real-time for every eligible impression on DFP, while rival SSPs in the Waterfall channel have the opportunity to win only low-value impressions for which AdX cannot place a real-time bid above the AdX price floor. This is likely to increase the share of DFP ad inventory sold by AdX as compared to SSPs bidding via the Waterfall.

(1716) As explained in a Google internal email […].[2005]

(1717) Additional Google internal documents in section 8.4.3.2.1 show […] [2006] […].[2007]

1997 […].

1998 […].

1999 […].

2000 […]. According to the Commission's estimation based on the […] data ([…]), of the […] SSPs on which the document states that DV360 spend increased as a result of Project Poirot […].

2001 […].

2002 […].

2003 […].

2004 […].

2005 […].

(1718) *Last Look and DRS in Header Bidding and Open Bidding* (sections 8.4.2.2.2.1, 8.4.2.3.2.2, 8.4.3.2.3.2, 8.4.3.2.2.1 and 8.4.4.1.2*)*: The effect of this practice was to allow AdX to adjust the bid it submitted to DFP based on the bids from rival SSPs thus resulting in AdX winning more auctions against rivals SSPs on DFP. This is likely to have increased the share of DFP ad inventory sold by AdX as compared to SSPs bidding via Header Bidding and Open Bidding.

(1719) […].

(1720) In an internal email from August 2019, […].[2008]

(1721) Other Google internal documents from around the same time provide consistent estimates of the impact of removing Last Look. For example:

(1) A Google internal presentation from September 2019 states […].[2009]

(2) In an email exchange from the same period, a Google employee writes […].[2010]

(3) A Google internal note also from September 2019 states that […].[2011]

(1722) Google also considered how Last Look advantaged AdX vis-à-vis other SSPs placing bids in Open Bidding. […].[2012]

(1723) […]:

(1) […].[2013]

(2) […].[2014]

(1724) A study submitted by […] confirms that […].[2015] [2016] […].

(1725) […]:

(1) […].[2017]

(2) […],[2018] […].[2019]

(3) […].[2020]

(1726) *Unified Pricing Rules in Header Bidding and Open Bidding* (sections 8.4.2.2.2.2, 8.4.2.3.2.5, 8.4.3.2.2.2, 8.4.3.2.3.5 and 8.4.4.1.2): The effect of this practice is to allow AdX to win DFP auctions in situations where otherwise the publisher would have set a higher price floor specific to AdX that AdX could not have met (which would have resulted in a third-party SSP winning). This is likely to increase the share of DFP ad inventory sold by AdX as compared to SSPs bidding via Header Bidding and Open Bidding.

2006 See recital (1374).
2007 See recital (1375).
2008 […].
2009 […].
2010 […].
2011 […].
2012 […].
2013 […].
2014 […].
2015 […].
2016 […].
2017 […].
2018 […].
2019 […].
2020 […].

(1727) Google internal documents from around the time of the introduction of Unified Pricing Rules provide […].

(1728) An email chain of May 2018 reports […].[2021]

(1729) […].[2022]

(1730) In another Google email chain discussing […].[2023]

(1731) A Google internal document of August 2019 providing […].[2024]

(1732) *Restrictions imposed on rival SSPs for joining Open Bidding or using vertically integrated DSP demand* (sections 8.4.2.3.2.1, 8.4.2.3.2.4, 8.4.3.2.3.1, 8.4.3.2.3.4 and 8.4.4.1.3): The effect of this practice is to directly restrict rival SSPs' participation in Open Bidding, by either preventing them to place bids in Open Bidding altogether, or curtailing their ability to bring some of their demand. This is likely to increase the share of DFP ad inventory sold by AdX, as contrary to Open Bidders AdX faces no such restriction, and to allow AdX to continue charging its 20% intermediation fee on Open Auction transactions.

(1733) […].[2025]

(1734) *Open Bidding fee* (sections 8.4.2.3.2.3, 8.4.3.2.3.3 and 8.4.4.1.3): The effect of this practice is to decrease the revenues for publishers associated to bids of rival SSPs submitted via Open Bidding. As a result of the fact that AdX does not have to incur a similar fee, AdX's bids are more competitive than bids from rival SSPs which – even when higher – risk being less competitive because of when in the auction process Google takes the fee. AdX can therefore win more auctions, all other things being equal. This is likely to increase the share of DFP ad inventory sold by AdX as compared to SSPs bidding via Open Bidding.

(1735) […].[2026]

8.5.2. *Importance of scale for SSPs*

(1736) Scale is a key element for an SSP's ability to compete in the EEA-wide market for SSPs. This is due to two main factors.

(1) Indirect network effects strengthen the market position of larger SSPs vis-à-vis smaller rivals (section 8.5.2.1); and

(2) Larger SSPs have access to a wider breadth of data, which in turn increases the value of the services they provide to publishers (section 8.5.2.2).

8.5.2.1. The EEA-wide market for SSPs is characterised by the presence of indirect network effects

(1737) The Commission reaches the conclusion that the EEA-wide market for SSPs is characterised by the presence of indirect network effects. This is because SSPs operate as a two-sided platform, which needs to attract two distinct groups of users, publishers and ad buying tools, and adoption by one group of users is closely linked to adoption by the other group (section 8.5.2.1.1). Indeed, ad buying tools and

2021 […].
2022 […].
2023 […].
2024 […].
2025 See for example recital (1425) and recital (1426).
2026 See for example recital (1418).

publishers prefer to integrate with SSPs that allow them to reach a sufficiently large mass of users on the other side of the platform (sections 8.5.2.1.2 and 8.5.2.1.3). Multi-homing by publishers and ad buying tools is not incompatible with the presence of indirect network effects. This is because publishers, while using multiple SSPs, tend to concentrate the majority of their programmatic transactions on a single main platform. At the same time, Google's ad buying tools, contrary to other demand-side intermediaries, purchase a significant share of their impressions from a single platform, namely AdX (section 8.5.2.1.4).

8.5.2.1.1. SSPs operate as a two-sided platform, with adoption on one side closely linked to adoption on the other side

(1738) SSPs need to attract two distinct groups of users to their platform: publishers interested in monetizing traffic on their websites and apps by selling ad inventory and ad buying tools interested in bidding for such inventory on behalf of their clients. SSPs thus operate as a two-sided platform. As explained by […].[2027]

(1739) As more users from one group integrate with an SSP, the other group receives greater value in using that specific SSP. Indeed, as also explained in sections 8.3.4.2.1 and 8.4.4.2, when more ad buying tools integrate with an SSP, the breadth of demand it gives access to increases, thus making that SSP more attractive for publishers. In turn, drawing more publishers expands the inventory that the SSP can offer to advertisers, hence further incentivizing ad buying tools to work with that SSP. […].[2028]

(1740) In light of these indirect network effects, an SSP must be able to offer both sufficient ad inventory to attract ad buying tools and to offer sufficient advertising demand to incentivize publishers to sell their inventory through the SSP's platform. As explained by […].[2029]

(1741) Consistently with […] statement, Google internal documents […].

(1742) An undated internal presentation […].[2030]

(1743) Similarly, the notes to a June 2013 internal presentation […].[2031]

(1744) The importance for an SSP of attracting a sufficient mass of publishers and ad buying tools is also confirmed […][2032] […].*[2033]*

8.5.2.1.2. Ad buying tools prefer integration with SSPs giving access to a large inventory

(1745) Ad buying tools that replied to the Commission's RFIs indicated that they value both the scale of inventory that an SSP is able to offer as well as whether specific inventory is only available through a particular SSP. Ad buying tools also confirmed that access to inventory matters in their decision to integrate with an SSP.[2034]

(1) According to […].[2035]

(2) According to […] [2036] […].[2037]

2027 […] reply to Q1 of the Commission's RFI to SSPs of February 2023 (ID[…]).
2028 […].
2029 […] reply to Q B15 of the Commission's RFI to SSPs of February 2024 (ID[…]).
2030 […].
2031 […].
2032 […]
2033 […].
2034 […].
2035 […] reply to Q8.2 of the Commission's RFI to DSPs of October 2022 (ID[…]).

(3) According to […], when evaluating whether to work with an SSP, they consider the […].[2038]

(4) According to […].[2039]

(1746) Ad buying tools also listed other factors driving their choice to integrate with a particular SSP. These include, among others, technical support provided by the SSP, infrastructure and operational costs, data provided, pricing, the inventory's geographic coverage, channels served, advertiser preferences or whether an SSP is the preferred intermediary of a certain publisher.[2040] However, access to exclusive inventory remains the most consistently mentioned factor by ad buying tools. Moreover, a number of the additional factors mentioned are likely to be associated with the scale of inventory that an SSP can offer. For example, a larger SSP will be more likely to have an inventory covering multiple geographies and will be able to provide a wider breadth of users' data to ad buying tools.

(1747) Advertisers typically do not directly choose to bid via a specific SSP, but rather delegate such choice to media agencies or ad buying tools. However, the following advertisers have indicated that they take into consideration the scale and quality of an SSP's inventory:

(1) According to […].[2041]

(2) According to […].[2042]

(3) According to […].[2043]

(1748) The findings in recitals (1745) to (1746) are consistent with the following Google internal email of September 2016, […].[2044]

8.5.2.1.3. Publishers prefer integration with SSPs giving access to a large volume of demand

(1749) Publishers' responses to the Commission's RFI indicate that the size, quality and uniqueness of demand an SSP gives access to are considered as key drivers of their decision to use a particular SSP.[2045]

(1) According to […].[2046]

(2) According to […].[2047]

(3) According to […].[2048]

(4) According to […].[2049]

(5) According to […].[2050]

2036 […] reply to Q8.1 of the Commission's RFI to DSPs of October 2022 (ID[…]).
2037 […] reply to Q8.2 of the Commission's RFI to DSPs of October 2022 (ID[…]).
2038 […] reply to Q8.1 of the Commission's RFI to DSPs of October 2022 (ID[…]).
2039 […] reply to Q8.1 of the Commission's RFI to DSPs of October 2022 (ID[…]).
2040 Replies to Q8.1 of the Commission's RFI to DSPs of October 2022.
2041 […] reply to Q25b of the Commission's RFI to advertisers of December 2020 (ID[…]).
2042 […] reply to Q25b of the Commission's RFI to advertisers of December 2020 (ID[…])
2043 […] reply to Q25b of the Commission's RFI to advertisers of December 2020 (ID[…]).
2044 […].
2045 Replies to Q12 of the Commission's RFI to publishers of December 2020.
2046 […] reply to Q12 of the Commission's RFI to publishers of December 2020 (ID[…]).
2047 […] reply to Q12 of the Commission's RFI to publishers of December 2020 (ID[…]).
2048 […] reply to Q12 of the Commission's RFI to publishers of December 2020 (ID[…]).
2049 […] reply to Q12 of the Commission's RFI to publishers of December 2020 (ID[…]).

(6) According to […].[2051]

(7) According to […].[2052]

(1750) When explicitly asked whether the volume of demand is an important factor when considering which SSP to use, […] publishers that replied to the Commission's RFI confirmed that this is the case. In particular, around […] of the publishers confirmed that the volume of demand made accessible by an SSP is the single most important factor driving their choice of which SSP to use, while for […] volume of demand was among the most important choice criteria together with other factors such as quality of demand, pricing and transparency.[2053] This indicates that for an SSP it is particularly important to offer a sufficient volume of advertisers' demand in order to incentivize publishers' use of their platform.

(1) According to […].[2054]

(2) According to […].[2055]

(3) According to […].[2056]

(1751) On their part, Google's internal documents […].

8.5.2.1.4. Multi-homing

(1752) Evidence on the Commission's file indicates that publishers usually integrate with multiple SSPs.[2057] However, publishers tend to sell the majority of their ad inventory via a single main SSP, while the remaining long tail of smaller SSPs with which publishers are integrated usually intermediate only a limited fraction of their programmatic transactions.[2058] This behaviour is exacerbated by the Sell-side Conduct, which contributes to channelling the inventory of publishers using DFP towards a single SSP, AdX.

(1753) On their part, ad buying tools also typically multi-home and purchase inventory across a broad range of SSPs.[2059] Google's ad buying tools represent a notable exception as they tend to concentrate a significant share of their purchases on a single platform, AdX (see recital (1761)). Given the size of Google's ad buying tools (see […]), this creates strong incentives for publishers to integrate with AdX, in order to reach such large share of advertisers' demand.

(1754) In light of this tendency by publishers and Google's ad buying tools to concentrate a significant share of their programmatic transactions on a single main platform (as illustrated in more details below), the Commission concludes that a certain degree of multi-homing by publishers and ad buying tools is not incompatible with the presence of indirect network effects. Furthermore, the Buy and Sell-side Conducts, by channelling demand and inventory from Google's dominant ad buying tools and publisher ad server towards a single SSP, AdX, contribute to exacerbate such indirect network effects.

2050 […] reply to Q12 of the Commission's RFI to publishers of December 2020 (ID[…]).
2051 […] reply to Q12 of the Commission's RFI to publishers of December 2020 (ID[…]).
2052 […] reply to Q12 of the Commission's RFI to publishers of December 2020 (ID[…]).
2053 Replies to Q B.D.6 of the Commission's RFI to publishers of February 2024. […].
2054 […] reply to Q B.D.6 of the Commission's RFI to publishers of February 2024 (ID[…]).
2055 […] reply to Q B.D.6 of the Commission's RFI to publishers of February 2024 (ID[…]).
2056 […] reply to Q B.D.6 of the Commission's RFI to publishers of February 2024 (ID[…]).
2057 […].
2058 See recital (1757) below.
2059 Replies to Q 6 of the Commission's RFI to DSPs of October 2022.

(1755) The emergence of a single large platform, in this case AdX, alongside other much smaller intermediaries implies that most players on both sides of the market have to integrate with the large platform, as this is where most users on the other side of the market are located. While multi-homing might prevent the market from completely tipping, the indirect network effects at play […].[2060] - protect the largest platform from competition from the smaller players.

(1756) On the publishers' side, the Commission has considered data from the third-party data analytics firm […]. The Commission has also considered qualitative evidence from publishers' replies to the Commission's RFIs. The results of the Commission's analysis of this evidence are reported in recitals (1759) and (1760) below.

(1757) First, as can be seen from Figure 35, on average, a publisher's main SSP intermediated approximately […]% of the publisher's yearly impressions in the years covered by the data. By contrast, a publisher's second largest SSP on average intermediated […]% of the publisher's yearly impressions, while all remaining SSPs on average intermediated […]% or less of the publisher's yearly impressions. For those publishers that had AdX as their main SSP, the average share of the main SSP rises to approximately […]% in those years.[2061]

Figure 35: […][2062]

(1758) Second, […].

(1759) Third, qualitative evidence from publishers' replies to the Commission's RFI confirms that multi-homing is often driven by the need to reach specific audiences or geographies where a certain SSP might have a strong foothold, rather than different SSPs being considered as substitutes by publishers. For example:

(1) According to […].[2063]

(2) According to […].[2064]

(3) According to […].[2065]

(1760) Fourth, […] publishers indicated that, even though they integrate with more than one SSP (in particular since it creates opportunities to increase revenues), the benefits of integrating with a large number of SSPs might be limited. For example:

(1) According to […].[2066]

(2) According to […].[2067]

(3) According to […].[2068]

(1761) On the ad buying tools' side, the Commission has considered data on Google Ads and DV360 inventory purchasing behaviour, submitted by Google in response to the Commission's RFI. Such data indicate that […].[2069] […].[2070]

2060 See recitals (1742) and (1743).
2061 […].
2062 […].
2063 […] reply to Q B.D.2 of the Commission's RFI to publishers of February 2024 (ID[…]).
2064 […] reply to Q B.D.2 of the Commission's RFI to publishers of February 2024 (ID[…]).
2065 […] reply to Q B.D.2 of the Commission's RFI to publishers of February 2024 (ID[…]).
2066 […] reply to Q B.D.2 of the Commission's RFI to publishers of February 2024 (ID[…]).
2067 […] reply to Q B.D.2 of the Commission's RFI to publishers of February 2024 (ID[…]).
2068 […] reply to Q B.D.2 of the Commission's RFI to publishers of February 2024 (ID[…]).

(1762) Given the market share of Google's ad buying tools ([…]), publishers have no choice but to use AdX to access such demand at scale, which in turn creates strong incentives for other ad buying tools to integrate with AdX. The result is indirect network effects benefitting exclusively AdX.

(1763) This dynamic is also illustrated in a Google internal email of May 2016, […].[2071]

8.5.2.1.5. Google's arguments on indirect network effects

(1764) The Commission's conclusion that the EEA-wide market for SSPs is characterised by the presence of indirect network effects is not contradicted by Google's arguments that:

(1) Both ad buying tools and publishers multi-home extensively;[2072]

(2) […];[2073]

(3) […];[2074] and

(4) The Commission analysis of the […] data is flawed insofar as:

(a) it ignores that even a small SSP that only wins few impressions can still constrain a much larger SSP; and

(b) it ignores that the tendency of using mainly one SSP does not establish any lack of multi-homing.

(1765) In the first place, the number of SSPs used by ad buying tools and publishers is an imperfect measure of multi-homing, which overstates the effective degree of multi-homing present in the market for the purpose of assessing the strength of network effects and the advantages conferred by a large scale. This is because both Google's ad buying tools and publishers tend to run the large majority of their programmatic transactions using a single main platform.

(1) Firstly, while Google claims that DV360 purchased impressions across […] to […] non-Google SSPs annually[2075], […]. Such a marked asymmetry in the intensity of use of each SSP clearly implies that a simple count of the intermediaries used by an ad buying tool is not an appropriate measure of the degree of multi-homing in the market.

(2) Secondly, […][2076], […].[2077] […].[2078] […].[2079]

(1766) In the second place, multi-homing by publishers and ad buying tools does not negate the presence of indirect network effects, but at most partially mitigates their intensity. Indeed, multi-homing does not in itself put in question the advantages deriving from scale and the resulting indirect network effects. It remains the case that an SSP with more advertisers will be more valuable to publishers, and vice versa, as explained in sections 8.5.2.1.1, 8.5.2.1.2 and 8.5.2.1.3 on the basis of statements

2069 […].
2070 […].
2071 […].
2072 […].
2073 […].
2074 […].
2075 […].
2076 […].
2077 […].
2078 […].
2079 […].

from publishers, ad buying tools, advertisers and Google's own internal documents. Multi-homing may, if sufficient, mitigate the risks that the market tips. However, the Commission assessment of the potential effects of the Buy- and Sell-side Conducts does not seek to establish market tipping in favor of AdX. Rather, as explained in recital (1699), the Commission concludes that, during the period affected by the Buy-side and Sell-side Conducts, AdX has maintained its position as the largest intermediary in the EEA-wide market for SSPs, despite the potential disintermediation threat posed by Header Bidding and despite charging higher fees than the market average and most of its largest competitors. These market dynamics are consistent with the presence of indirect network effects. Indeed, publishers cannot ignore AdX, due to its size and the volume of demand it brings. As explained in recital (1866)(2), […] of publishers that replied to the Commission's RFI indicated that they consider AdX as a must-have for the purpose of monetising their inventory. Publishers will thus use AdX systematically to sell a significant portion of their inventory, as this is where the largest demand is available. In turn, this will create strong incentives for ad buying tools to integrate with AdX, as this is where most inventory is available. Such indirect network effects dynamics, […],[2080] protects AdX from the risk of disintermediation, and has allowed it to remain the largest player in the SSP market since at least 2018 (see Table 4 and Table 5).

(1767) In the third place, while SSPs can differentiate to a certain extent their offerings by competing on other elements than the volume of users they give access to, evidence on the Commission's file indicates that the volume of users is the key element that drives adoptions on both sides of the platform.

(1) Firstly, Google itself, in internal documents, […].[2081] […].[2082]

(2) Secondly, […] SSPs that replied to the Commission's RFI confirmed that the volume of demand made accessible by an SSP is an important factor driving their choice of which SSP to use.[2083] For […] of the publishers using SSPs to sell their online ad inventory, volume of demand was indicated as the single most important factor considered when selecting SSPs.[2084]

(1768) In the fourth place, […]. In fact, the very presence of a single large platform with a market share in excess of […]%, AdX, alongside a long tail of small SSPs, each unable to reach even […] of AdX's size, is in itself evidence of an indirect network effects dynamic (see Table 4 and Table 5 below), all the more considering that such gap in scale between AdX and its rivals has been persistent over time. Indeed, since at least 2018, AdX has been […] platform, and none of the competing SSPs, including any new entrants, managed to gain […] share of the market during this period.

(1769) In the fifth place, Google's claims on the Commission's analysis of the […] data are unfounded.

(1) Firstly, the fact that a small SSP bids for the same set of publisher impressions than a larger SSP is not enough to conclude that the former can effectively constrain the latter. This would be true if the two SSPs can channel the same volume of demand for most impressions for which they compete, thus being

2080 […].
2081 […].
2082 […].
2083 Replies to Q B.D.6 of the Commission's RFI to publishers of February 2024.
2084 Replies to Q B.D.6 of the Commission's RFI to publishers of February 2024. […].

able to submit bids of similar value (before the intermediation fee is deducted) and hence offer the same revenues to publishers. However, in practice, if the larger SSP has access to a larger volume of demand, then the spread between the value of its bids and those of the smaller competitor is likely to be significant. As the larger SSP is able to guarantee higher bids to the publisher, it can charge higher intermediation fees. In such instances, the smaller SSP hence does not effectively constrain its larger competitor, despite the two bidding for the same impression. This is the case of AdX, thanks to its privileged access to demand from Google's ad buying tools. In turn, this allows AdX to charge intermediation fees that are among the highest in the market, […], thus indicating that smaller SSPs are unlikely to effectively constrain AdX, despite possibly bidding for the same set of impressions.

(2) Secondly, the Commission's analysis of the […] data establishes that multi-homing behaviour by publishers is not incompatible with the presence of indirect network effects, given publishers' tendency of using one main platform to intermediate the large majority of their programmatic sales, as explained in section 8.5.2.1.4. The analysis does not seek to establish the lack of multi-homing by publishers.

8.5.2.2. Scale improves an SSP's ability to collect valuable data for publishers and advertisers

(1770) The evidence on the Commission's file also shows that scale improves an SSP's ability to collect valuable data for publishers and advertisers.

(1771) […] stated that […] [2085]

(1772) As explained by […], there are three main categories of data that are relevant to SSPs:[2086]

(1) Bid request data, which according to […] consists of information about the inventory to be filled, including certain information about the end-user's device, browser, operating system, language and settings;

(2) Log-level data, which according to […] consists of granular impression level data relating to an ad transaction, including information about winning bid prices, geo-data, advertising IDs, operating systems and device types; and

(3) User data, which according to […] consists of information about users' characteristics and online behaviour that is used to build a user profile for targeting purposes.

(1773) An SSP's scale is an important determinant of its ability to effectively collect and use such data.

(1774) First, the more transactions an SSP has intermediated, the more historical bidding data it has access to, in the form of both bid request data and log-level data.

(1775) The breadth of log-level data can be particularly important for publishers' ability to maximise returns on their inventory. […].[2087]

2085 […].
2086 […] reply to Q19 of the Commission's RFI to SSPs of December 2020 (ID[…]).
2087 […] reply to Q19 of the Commission's RFI to SSPs of December 2020 (ID[…]).

(1776) […] further explains how historical bidding behaviour of ad buying tools is used by SSPs to inform how price floors are set and how the expected clearing price of each auction is estimated: […].[2088]

(1777) Second, scale allows an SSP to access more user data. An SSP's ability to collect user data is indeed related to the breadth of users it can reach, which in turn depends on the scale of ad inventory the SSP can access.

(1778) User data is primarily used by advertisers to create audiences for targeting purposes and measure ad performance. Moreover, […] explains that user data can also be useful on the sell side: […].[2089]

(1779) A larger SSP intermediating a greater volume of transactions will hence be able to offer publishers a wider breadth of data, both in the form of historical bidding data and user data, which the publisher can leverage to optimize the yield on its inventory.

(1780) Third, scale can also improve how efficiently data is shared across the adtech stack, thus ultimately increasing its value for publishers and advertisers. In particular, an SSP's scale plays a key role in determining the success rate of matching a user between an SSP and an ad buying tool database (i.e., cookie matching, see section 7.3.4).

(1781) […].[2090] […].[2091] […][2092], […].[2093]

(1782) An SSP's scale is thus important for the success of cookie matching for two main reasons.

(1783) In the first place, an SSP integrated with a larger number of publishers will come into contact with users more frequently and will therefore have larger user databases as well as a richer set of information on each user's characteristics and online behaviour. Consistently Google, which has access to the largest breadth of inventory thanks to the strong market position of DFP and AdX, was found to be the market leader with respect to the placement of third-party tracking tools on websites by the CMA in its Online Advertising Market study, as explained in recital (1794).

(1784) In the second place, a larger SSP will be more likely to interact regularly with the main ad buying tools. Thanks to their previous interactions and past exposure to impressions from the same users, large SSPs and ad buying tools will thus have a higher percentage of matched users on their respective databases. As explained by […].[2094]

(1785) Fourth, when directly asked, […] of SSPs confirmed that scale positively affects their ability to collect data deemed relevant for the purpose of offering SSP services. SSPs also indicated that such data are important to improve their services.[2095] For instance:

(1) According to […].[2096]

2088 […] reply to Q19 of the Commission's RFI to SSPs of December 2020 (ID[…]).
2089 […] reply to Q19 of the Commission's RFI to SSPs of December 2020 (ID[…]).
2090 […] reply to Q2 of the Commission's RFI to DSPs and SSPs of July 2022 (ID[…]).
2091 […] reply to Q6 of the Commission's RFI to DSPs and SSPs of July 2022 (ID[…]).
2092 […] reply to Q6 of the Commission's RFI to DSPs and SSPs of July 2022 (ID[…]).
2093 […] reply to Q6 of the Commission's RFI to DSPs and SSPs of July 2022 (ID[…]).
2094 […] reply to Q6 of the Commission's RFI to DSPs and SSPs of July 2022 (ID[…]).
2095 Replies to Q B16 of the Commission's RFI to SSPs of February 2024.
2096 […] reply to Q B16 of the Commission's RFI to SSPs of February 2024 (ID[…]).

(2) According to […].[2097]

(3) According to […].[2098]

(4) According to […].[2099]

(1786) In line with SSPs' statements, Google's internal documents explain […].

(1787) For example, a Google internal document titled […].[2100]

(1788) Another Google internal document titled […].[2101]

(1789) Similarly, […].[2102]

(1790) The Commission's conclusion that scale improves an SSP's ability to collect valuable data for publishers and advertisers is not contradicted by Google's arguments described below.

(1791) First, Google argues that multi-homing by ad buying tools and publishers implies that each SSP will receive the same bid request data about the same inventory irrespective of its size.[2103]

(1792) Google's claim is unfounded. Multi-homing by ad buying tools and publishers does not imply that all SSPs have access to the same volume of data regardless of their size. As noted in recital (1765), Google's assessment of multi-homing is flawed, in so far as it does not consider that both Google's own ad buying tools (which are the largest in the market) and publishers tend to concentrate the majority of their transactions on a single platform. This implies that not all SSPs receive the same number of bids from ad buying tools or of bid requests from publishers. For example, according to data submitted by Google to the Commission, […].[2104] In particular, a large SSP, intermediating every inventory type across all geographies, will be exposed to a greater volume of bids requests from publisher ad servers and will consequently also receive more bids from ad buying tools. In turn, this will give a large SSP the possibility to collect a wider breadth of data than a smaller competitor. Google's conducts themselves, by restricting the bidding behaviour of Google's ad buying tools or by preventing third-party SSPs from bidding on certain portions of DFP's inventory, limit the breadth of data that third-party SSPs receives. For example, under First-Look, only AdX is allowed to bid for all impressions served on DFP, while third-party SSPs can only submit a bid when AdX cannot solicit bids above the price floor. Similarly, Google Ads placed bids exclusively on AdX until June 2015. While Google Ads has started to bid on a number of third-party SSPs since then, as of 2021, still […] of its bids were placed on AdX (see recital (777)).

(1793) Second, Google argues that multi-homing allows small SSPs to obtain a broad access to users, thus increasing cookie-matching rates.[2105]

2097 […] reply to Q B16 of the Commission's RFI to SSPs of February 2024 (ID[…]).

2098 […] reply to Q B16 of the Commission's RFI to SSPs of February 2024 (ID[…]).

2099 […] reply to Q B15 of the Commission's RFI to SSPs of February 2024 (ID[…]).

2100 […].

2101 […].

2102 […].

2103 […].

2104 Commission's calculations based on Annex 38.1 of Google's reply to the Commission's RFI to […] of July 2021 (ID[…]). Bids on Google's O&O inventory and Google's ad networks AdSense and AdMob are excluded from the calculations.

2105 […].

(1794) In the first place, and for reasons similar to those described in recital (1792), multi-homing by ad buying tools and publishers does not offset the advantages in relation to cookie-matching enjoyed by a larger SSP intermediating a higher volume of transactions. Consistently, Google, which has access to the largest breadth of inventory thanks to the strong market position of DFP and AdX, was found to be the market leader with respect to the placement of third-party tracking tools on their websites in the CMA Online Advertising Market Study: according to the CMA, Google was present in approximately 85% of websites in 2016 and 81% of websites in 2019. By comparison, aside from Google, only Meta, Twitter, Amazon, Xandr, and Oracle were present on more than 10% of websites in 2016.[2106]

(1795) In the second place, SSPs' replies to the Commission's RFI confirmed the link between scale and the ability to collect data used to improve an SSP's functionality (see recital (1785)).

8.5.3. The Buy-side Conduct has the potential to steer publishers and ad buying tools towards AdX and to exclude rivals

(1796) The Commission reaches the conclusion that the Buy-side Conduct is capable of steering publishers towards AdX, thereby potentially excluding rival SSPs. This is due to the reasons explained below.

(1797) First, as explained in Section 8.5.1.1, each element of the series of practices that constitute together the Buy-side Conduct has the capability to increase the number of successful bids intermediated by AdX as opposed to rival SSPs, in particular from Google's ad buying tools. Accordingly, the Buy-side Conduct forces publishers to integrate with AdX in order to access demand from Google's ad buying tools at scale.

(1798) Second, Google Ads and DV360 are by far the largest ad buying tools in the market, with […] in each year since at least 2014. […]. AdX's access to demand from Google's ad buying tools is accordingly decisive in steering publishers away from rival SSPs.

(1799) Third, due to indirect network effects, as more publishers are drawn to AdX, the breadth of inventory it offers increases, thus making AdX more attractive also for ad buying tools. In turn, this further expands the breadth of demand that AdX can offer to publishers, hence further incentivising publishers to work with AdX. As a result, AdX is thus positioned to fully reap the benefits of scale in the form of indirect network effects and improved ability to collect valuable data for its customers. Indeed, as shown in section 8.5.7, AdX is significantly larger in terms of value of impressions intermediated than its competitors. In a market with indirect network effects, such a difference of scale limits the competitive threats that rivals could pose to AdX, thus potentially cementing AdX's central position in the adtech stack and potentially foreclosing its rivals. […].[2107]

(1800) Fourth, due to the importance of scale, the effects of the Buy-side Conduct are not limited to the proportion of impressions directly affected by each of the practices that constitute the Buy-side Conduct. Rather, the effects propagate to the entire EEA-wide market for SSPs. […]. As publishers and ad buying tools prefer to integrate with SSPs that allow them to reach a sufficiently large mass of users on the other side of the platform (see sections 8.5.2.1.2 and 8.5.2.1.3), this confers AdX an

2106 CMA Online Advertising Market Study, Appendix G, paragraphs 299 and 301 (ID[…]).

2107 […].

advantage vis-a-vis third-party SSPs even when competing for impressions that are not affected by the Conduct.

(1801) This is confirmed by the following Google internal documents which show that […].[2108] […].[2109]

(1802) An internal document dated January 2014 summarises […].[2110]

(1803) In another internal document, […].[2111]

(1804) A presentation prepared by Google […].[2112] […].

Figure 36: […] [2113]

(1805) Another Google internal document mentions […].[2114]

(1806) In another internal document, […].[2115]

(1807) […].[2116]

(1808) […].[2117] […].[2118]

(1809) A Google internal document […].[2119]

(1810) […].[2120]

(1811) On their part, several publishers stated that AdX's privileged access to Google Ads and DV360 demand influenced their choice to use AdX as SSP. For example:

(1) According to […].[2121] […].[2122]

(2) According to […].[2123] […].[2124]

(3) According to […].[2125]

(4) According to […].[2126]

(5) According to […].[2127]

(6) According to […].[2128]

(7) According to […].[2129]

2108 […].
2109 […].
2110 […].
2111 […].
2112 […].
2113 […].
2114 […].
2115 […].
2116 […].
2117 […].
2118 […].
2119 […].
2120 […].
2121 […] reply to Q10 of the Commission's RFI to publishers of December 2020 (ID[…]).
2122 […] reply to Q16 of the Commission's RFI to publishers of November 2022 (ID[…]).
2123 […] reply to Q16 of the Commission's RFI to publishers of November 2022 (ID[…]).
2124 […] reply to Q8 of the Commission's RFI to publishers of December 2020 (ID[…]).
2125 […] reply to Q16 of the Commission's RFI to publishers of November 2022 (ID[…]).
2126 […] reply to Q16 of the Commission's RFI to publishers of November 2022 (ID[…]).
2127 […] reply to Q16 of the Commission's RFI to publishers of November 2022 (ID[…]).
2128 […] reply to Q6 of the Commission's RFI to publishers of December 2020 (ID[…]).
2129 […] reply to Q16 of the Commission's RFI to publishers of November 2022 (ID[…]).

(1812) Publishers also indicated that they are highly dependent on AdX and its associated demand to monetise their ad inventory. […] publishers that replied to the Commission's RFI indeed stated that they would not be able to fully replace AdX with other SSPs. For instance:

(1) According to […].[2130]

(2) According to […].[2131]

(3) According to […].[2132]

8.5.4. The Sell-side Conduct has the potential to steer publishers and ad buying tolls towards AdX and to exclude rivals

(1813) The Commission reaches the conclusion that the Sell-side Conduct is capable of steering publishers and ad buying tools towards AdX, thereby potentially excluding rival SSPs. This is due to the reasons explained below.

(1814) First, as explained in section 8.5.1.2, each element of the series of practices that constitute together the Sell-side Conduct has the capability to increase the number of successful bids intermediated by AdX as opposed to rival SSPs. In particular, the Sell-side Conduct, by favouring DFP bids placed by AdX compared to bids placed by rival SSPs, increases the likelihood that publishers using DFP as their ad server will also sell a significant proportion of their inventory through AdX.

(1815) Second, DFP is by far the largest publisher ad server in the market, with a market share in excess of […] in each year since at least 2014. […] and therefore, […]. This compounds the effects of AdX's privileged access to DFP's inventory.

(1816) Third, programmatic ad buying tools are likely steered to integrate with AdX in order to benefit from the full breadth of DFP's ad inventory. Due to indirect network effects, as more ad buying tools and advertisers are drawn to AdX, the breadth of demand it gives access to increases, thus making AdX more attractive for publishers as well. In turn, this further expands the inventory that AdX can offer to ad buying tools and advertisers, hence further incentivising them to work with AdX. […].[2133] As a result, AdX is thus positioned to fully reap the benefits of scale in the form of indirect network effects and improved ability to collect valuable data for its customers. Indeed, as shown in section 8.5.7, AdX is significantly larger in terms of value of impressions intermediated than its competitors. In a market with indirect network effects, such a difference of scale limits the competitive threats that rivals could pose to AdX, thus potentially cementing AdX's central position in the adtech stack and potentially foreclosing its rivals.

(1817) Fourth, due to the importance of scale, the effects of the Sell-side Conduct are not limited to the proportion of impressions directly affected by each of the practices that constitute the Conduct. Rather, the effects propagate to the entire EEA-wide market for SSPs. This is because the Sell-side Conduct, by diverting impressions from rival SSPs towards AdX, have allowed AdX to achieve a significant scale, […]. As publishers and ad buying tools prefer to integrate with SSPs that allow them to reach a sufficiently large mass of users on the other side of the platform (see section

2130 […] reply to Q B.D.4 of the Commission's RFI to publishers of February 2024 (ID[…]).
2131 […] reply to Q B.D.4 of the Commission's RFI to publishers of February 2024 (ID[…]).
2132 […] reply to Q B.D.4 of the Commission's RFI to publishers of February 2024 (ID[…]).
2133 […].

8.5.2.1.2 and 8.5.2.1.3), this confers AdX an advantage vis-a-vis third-party SSPs even when competing for impressions that are not affected by the conduct.

(1818) As a DSP explained […].[2134]

(1819) Similarly, […] stated that […].[2135]

(1820) […] explained that […].[2136]

(1821) The statements above are confirmed in a Google's internal email, which states that […].[2137]

(1822) On their part, advertisers themselves, and especially large advertisers are also drawn to AdX due to the breadth of its inventory. For instance […].[2138] […].[2139] […],[2140] […].[2141]

8.5.5. The Buy-side and Sell-side Conduct have each the potential to increase SSP fees, limit multi-homing and reduce innovation and transparency in the EEA-wide market for SSPs

(1823) The Commission concludes that the Buy-side and Sell-side Conducts, by steering publishers and ad buying tools towards AdX, and thereby potentially excluding rivals SSPs, can lead to increased SSP fees, reduced incentives to multi-home, less innovation and transparency in the EEA-wide market for SSPs.

(1824) First, the Buy-side and Sell-side Conducts allow Google to impose and maintain higher SSP fees, by reducing the competitive constraints exerted by rival SSPs on AdX. […].[2142]

(1825) Google's own employees believed that AdX's ability to charge a 20% fee to publishers was inherently linked to the Buy-side Conduct, and in particular to Google Ads' preferential treatment of AdX. […]. The Sell-side Conduct also contributed to AdX's ability to charge a 20% fee. […].

(1826) These higher fees may lead to lower revenues for publishers, potentially causing them to invest less in their business and in the quality of the content they provide. At the same time, lower revenues from advertising might force publishers to resort to alternative monetization strategies, including introducing paywalls or raising subscription fees to access their contents. Higher fees for SSP services could therefore lead to an increase in the costs of accessing online contents for internet users.

(1827) Second, the Buy-side and Sell-side Conducts are capable of reducing the incentives of ad buying tools and advertisers to multi-home. Publishers engage in multi-homing to maximize the breadth of demand they can access. Similarly, ad buying tools integrate with multiple SSPs to access more inventory. Typically, publishers and ad buying tools will integrate with a new SSP if it can guarantee access to sufficient incremental demand or inventory on top of what they can already access from their

2134 Anonymous party's reply to Q8.4 of the Commission's RFI to DSPs of October 2022 (ID[…]).
2135 […] reply to Q8.4 of the Commission's RFI to DSPs of October 2022 (ID[…]).
2136 […] reply to Q8.4 of the Commission's RFI to DSPs of October 2022 (ID[…]).
2137 […].
2138 […] reply to Q25d of the Commission's RFI to advertisers of December 2020 (ID[…]).
2139 […] reply to Q23d of the Commission's RFI to advertisers of December 2020 (ID[…]).
2140 […] reply to Q25d of the Commission's RFI to advertisers of December 2020 (ID[…]).
2141 […] reply to Q23d of the Commission's RFI to advertisers of December 2020 (ID[…]).
2142 […] reply to Q14 of the Commission's RFI to publishers of November 2022 (ID[…]).

existing intermediaries. As the practice steer both publishers and ad buying tools towards AdX, the ability of competing SSPs to offer access to incremental demand or inventory is reduced and so is their value for publishers and ad buying tools. As such, publishers and ad buying tools will be increasingly reliant on AdX for the majority of their transactions, effectively ceasing to use other SSPs or use them for the sole purpose of accessing particular niches in terms of demand or inventory.

(1828) Third, the Buy-side and Sell-side Conducts are capable of reducing the incentives of Google to improve the quality of its SSP. This is because AdX benefits from a must-have status thanks to its integration with the largest source of demand and inventory. Scale and indirect network effects further strengthen AdX's market position vis-à-vis its competitors. As such, Google does not currently need to compete on the merits with rival SSPs and has limited pressure to improve the quality of its SSP.

(1829) The incentives to innovate of competing SSPs are potentially similarly reduced. As explained by […].[2143] Since rival SSPs cannot access the same breadth of inventory, demand and data as AdX due to the Buy-side and Sell-side Conducts, their incentives to innovate are reduced, as innovation alone is unlikely to close the competitive gap with AdX.

(1830) Fifth, as a result of the Buy-side and Sell-side Conducts, AdX is capable of operating in a less transparent way as it faces limited constraints from its competitors. […] explained that […].[2144] This is echoed by […], which explained that […].[2145] Such lack of transparency reduces publishers' and advertisers' visibility into how AdX operates, thus in turn limiting their ability to make informed choices and as such further reducing the competitive constraints that other SSPs can impose on AdX.

8.5.6. Google's arguments on the potential effects of the Buy-side and Sell-side Conducts

(1831) The Commission's conclusion about the potential effects of the Buy-side and Sell-side Conducts is not contradicted by Google's arguments described below.

(1832) First, Google argues that the Buy-side and Sell-side Conducts are not capable of excluding rival SSPs. This is because there is widespread multi-homing in the market, with ad buying tools and publishers using multiple SSPs besides AdX. Similarly, there is extensive multi-homing also by advertisers using Google's ad buying tools, which thus are not a source of unique demand in the market.[2146]

(1833) In the first place, as explained in section 8.5.2.1.5, Google is overstating the actual degree of multi-homing. While publishers do use multiple SSPs, they tend to concentrate the majority of their transaction on a single platform. For example, as explained in recital (1757), publishers using AdX as their main SSP concentrated over […] of their programmatic transaction on AdX. On the ad buying tools side, intermediaries indeed generally purchase inventory across a wide range of SSPs. […] (see recital (1761)).

(1834) In the second place, advertisers also tend to concentrate the majority of their programmatic spend on a single ad buying tool. As such, while the same advertiser's demand might be available on multiple ad buying tools, the large proportion of that demand remains concentrated on a single ad buying tool. Hence, for an SSP, being able to offer publishers access to the advertiser's main ad buying tool as opposed to

2143 […] reply to Q10 of the Commission's RFI to DSPs and SSPs of July 2022 (ID[…]).
2144 […] reply to Q25d of the Commission's RFI to advertisers of December 2020 (ID[…]).
2145 […] reply to Q25d of the Commission's RFI to media agencies of December 2020 (ID[…]).
2146 […].

only offer access to ancillary ad buying tools can represent a significant difference in terms of the volume of demand they are able to guarantee to their clients. Indeed, the Commission's analysis of the […] indicate that, on average and weighting by advertisers' spend:[2147]

(1) Advertisers that used Google Ads as their main ad buying tool spent […] of their annual ad spend on Google Ads.[2148]

(2) Advertisers that used DV360 as their main ad buying tool spent […] of their annual ad spend on DV360.[2149]

(1835) In the third place, Google's internal documents, […] (see recital (1012)).

(1836) In the fourth place, the evolution of the EEA-wide market for SSP is consistent with the potential exclusion effects described in sections 8.5.3, 8.5.4 and 8.5.5. Indeed, as it will be explained in more details in section 8.5.7 below, AdX has been the largest SSP since at least 2018. As of 2023, […], while all other SSPs were less than […] of its size and in many cases not even […] of AdX size. Such a persistent gap in size between AdX and its competitors is consistent with Google's efforts to prevent other SSPs from challenging AdX's central position in the adtech stack, at a time where such position could have been endangered by the introduction of Header Bidding.

(1837) Second, Google argues that actual market dynamics, […] are not consistent with the exclusion of AdX's competitors.[2150]

(1838) In the first place, for the reasons below, the Commission does not consider data provided by SSPs on their profit margin as a percentage of total costs to be sufficiently reliable nor representative to allow to draw sound inferences on their profitability.

(1839) Firstly, […] were able to provide the data requested by the Commission's RFI.

(1840) Secondly, of the […] SSPs mentioned by Google, […] did not actually provide its profit margin as a percentage of total costs, but rather simply provided their revenue share, i.e. their net revenues over gross revenues.

(1841) Thirdly, the majority of the SSPs mentioned by Google did not provide any information on how such profit margin was computed. The calculation of profit margins is not a straightforward exercise. Profit margins depend on how cost items are allocated across fixed and variable costs. For companies active across multiple product lines, profit margins also depend on how costs are allocated across the different product lines, particularly for cost items that are common to more than one product line. For these reasons, […] SSPs mentioned explicitly that they could not provide data in response to the Commission's RFI. Therefore, absent precise information on the assumptions underpinning profit margins calculations, it is not possible to meaningfully compare such margins across different companies, as differences in margins could be simply due to different assumptions.

2147 Commission's analysis based on data submitted by […] in response to Q 43 of the Commission's RFI to […] of February 2024 (ID[…]). […].

2148 The proportion of spend accounted for by Google Ads raises to […] if a simple average with no weighting is used.

2149 The proportion of spend accounted for by DV360 raises to […] if a simple average with no weighting is used.

2150 […] and […].

(1842) In the second place, the fact that a number of SSPs maintain a profitable business does not call into question the potential exclusionary effects of the Buy-side and Sell-side Conducts.

(1843) Third, Google argues that AdX fees are aligned with the market, thus proving that the Buy-side and Sell-side Conducts have not allowed AdX to charge supra-competitive prices.[2151]

(1844) In the first place, the Commission analysis of the fees charged by AdX and its competitors indicate that […]. This all the more remarkable given AdX's scale: AdX is not only among the most expensive SSPs but […] SSPs do charge higher fees than AdX. However, their presence appears to be confined to limited niches of the market. Indeed, as shown in recital (1897), SSPs with a higher take rate than AdX on Open Auction transactions had a combined market share […]. See section 8.5.8, and in particular recitals (1907) to (1911) below.

(1845) In the second place, Google internal documents […]. For instance:

(1) According to an internal email: […].[2152]

(2) According to another internal email: […].[2153]

(3) According to a third email: […].[2154]

(1846) Third, Google argues that the continuous investments in AdX and launches of new features indicate that Google faces strong incentives to continue improving the quality of its adtech offering.[2155]

(1847) In the first place, Google internal documents indicate that, […].

(1) According to an internal document indicating […].[2156] […].[2157]

(2) According to an internal email from September 2016, […].[2158]

(1848) In the second place, Google's evidence does not suggest that it would not invest more if it was forced to effectively compete with rivals without the advantages deriving from the Buy-side and Sell-side Conduct. In fact, as results from the previous recital, […].

8.5.7. The evolution of the value of programmatic display ads transacted via AdX is consistent with the assessment of the potential effects of the Buy-side and Sell-side Conducts

(1849) The Commission has considered the evolution of the total value of the impressions transacted via AdX and its main competitors in the EEA-wide market for SSPs. First, the Commission considered data from Google internal documents, estimating AdX's market position worldwide and in several EEA sub-regions before the period affected by the Buy-side and Sell-side Conducts. Then, the Commission considered the evolution of the total value of impressions intermediated by AdX and its main competitors in the EEA-wide market for SSPs during the period affected by the Buy-

2151 […].
2152 […].
2153 […].
2154 […].
2155 […].
2156 […].
2157 […].
2158 […].

side and Sell-side Conducts.[2159] Finally, the Commission considered the evolution of the share of impressions served on Google's publisher ad server, DFP, and intermediated by AdX during the period affected by the Buy-side and Sell-side Conducts.[2160] This quantitative evidence was complemented by qualitative evidence from publishers' replies to the Commission's RFIs.

(1850) The quantitative evidence indicates that […], and at the end of 2023, […]. Publishers' replies to the Commission's RFIs confirm that AdX has been able to grow significantly, reaching a must-have status for the majority of publishers (see recital (1866)). This evolution of the market is consistent with the potential effects of the Buy-side and Sell-side Conducts identified by the Commission (see sections 8.5.3, 8.5.4 and 8.5.5 above).

(1851) First, Google internal documents […].[2161]

(1852) A number of Google internal documents […]:

(1) In an internal email chain from […].[2162]

(2) In another internal email from 2014, […].[2163]

(3) An undated internal document […].[2164]

(1853) A Google internal presentation from 2014 […].[2165] […].[2166]

(1854) […].

Figure 37: […][2167]

(1855) The sustained growth of AdX is noted also in Google internal documents. A presentation titled […].[2168]

Figure 38: […]

(1856) Third, while other SSPs have also grown, AdX has been by far the largest SSP in the EEA in terms of value of impressions sold since at least 2018 (when data from most competitors are first available), and at the end of 2023, […]. This is the case both when considering all deal types intermediated by SSPs (such as Open Auction, Private Marketplaces, Preferred Deals, Programmatic Guarantee and others) and when restricting the focus to Open Auction deals only.

(1857) Table 4 below shows AdX's share of the total value of impressions intermediated by the SSPs in the Commission's sample, considering all deal types. Table 5 focuses instead on Open Auction deals only.

2159 […]. Therefore, the Commission first estimated the evolution of the total value of impressions intermediated by AdX between 2016 and 2023. When comparing the share of the total value of impressions intermediated by AdX and its main competitors, the Commission instead only considered the 2018-2023 period.

2160 […].

2161 […].

2162 […].

2163 […].

2164 […].

2165 Share of wallet indicates how much a consumer spends on a company's products or services as opposed to the products or services of competitors.

2166 […].

2167 […].

2168 […].

(1858) As can be seen from Table 4 below, AdX's share of the total value of impressions intermediated by the SSPs in the Commission's sample (considering all deal types) has remained around […] between 2018 and 2023. During this period, the share of the total value of impressions intermediated […], remained relatively constant at […] between 2018 and 2023, despite […]. The share of AdX's second largest competitor, […], decreased from […] in 2018 to […] in 2023. Its size relative to AdX thus decreased […] between 2018 and 2023.

Table 4: […][2169] [2170] [2171]

(1859) When considering only Open Auction deals, AdX's share has remained around […] between 2018 and 2023, as can be seen from Table 5. Similarly to what was observed in Table 4, the share of […], which are among AdX's largest competitors, has remained relatively constant also when restricting the focus to Open Auction deals only.

Table 5: […][2172] [2173] [2174] [2175]

(1860) Some of AdX's other competitors not mentioned at recitals (1858) and (1859) and included in the […] category in Table 4 and Table 5 experienced sustained growth between 2018 and 2023, both when considering all deal types and when focusing only on Open Auction deals. However, none of them even approached […] of AdX's size, and in most cases not even […]. Their share […] in any year between 2018 and 2023. As explained by a publisher, […].[2176]

(1861) In a market with indirect network effects, such a difference of scale means that these competitors are unlikely to exert any substantial competitive pressure on AdX (see sections 8.5.3 and 8.5.4). Moreover, a number of the fastest growing SSPs only focus on specific niches of the market. These include […],[2177] […][2178] […][2179].

(1862) The evolution of AdX's and its rival SSPs' share of intermediated impressions is consistent with Google's efforts to cement AdX's central position in the adtech stack and to prevent competing SSPs from reaching a sufficient scale to be able to effectively challenge AdX.

2169 Source: […] reply to Q1 of the Commission's RFI to […] of September 2022 (ID[…]) and Q 41 of the Commission's RFI to […] of February 2024. Replies to Q24 Commission's RFI to SSPs of December 2020, Q24 Commission's RFI to DSPs and SSPs of July 2022 and Q17 of the Commission's RFI to SSP of February 2024

2170 […] gross revenues for 2021, 2022 and 2023 and […] gross revenues for 2018 were estimated by the Commission based on the observed growth trend for the available years.

2171 Others include […].

2172 Source: […] reply to Q1 of the Commission's RFI to […] of September 2022 (ID[…]) and Q 41 of the Commission's RFI to […] of February 2024 (ID[…]). Replies to Q24 Commission's RFI to SSPs of December 2020, Q24 Commission's RFI to DSPs and SSPs of July 2022 and Q17 of the Commission's RFI to SSP of February 2024.

2173 […] gross revenues for 2021, 2022 and 2023 and […] gross revenues for 2018 were estimated by the Commission based on the observed growth trend for the available years.

2174 Others include […].

2175 […].

2176 […] reply to Q14 of the Commission's RFI to publishers of November 2022 (ID[…]).

2177 […] reply to Q1 of the Commission's RFI to SSPs of December 2020 (ID[…])

2178 […] reply to Q1 of the Commission's RFI to SSPs of December 2020 (ID[…]).

2179 […] reply to Q3 of the Commission's RFI to SSPs of December 2020 (ID[…]).

(1863) Fourth, the Commission also considered the evolution of the share of impressions served on Google's ad server, DFP, and intermediated by AdX during the period affected by the Buy-side and Sell-side Conducts. […].[2180]

(1864) As can be seen from Table 6, the share of DFP's impressions sold through AdX programmatic auctions […]. AdX growth within DFP is all the more important considering DFP's […] in the EEA-wide market for publisher ad servers, (see Table 2).

Table 6: […][2181]

(1865) Table 7 shows that, once direct deals are removed, AdX invariably accounted for the […] served on DFP between 2019 to 2023, which is consistent with AdX's share of total value of impressions intermediated by SSPs presented in Table 4 and Table 5. During the same period, Header Bidding only experienced limited growth. Despite several publishers indicating that Header Bidding has significantly increased their revenues (see section 8.4.2.2.1), in 2023 (i.e. around nine years after the development of the Header Bidding technology) it still accounted only for […] of the DFP impressions intermediated by AdX.[2182] Google thus managed to protect AdX's central position in the adtech stack, and successfully contained the threat posed by Header Bidding, which was seen as potentially capable of challenging AdX position. […].[2183] […].[2184]

Table 7: […][2185]

(1866) Publishers' replies to the Commission's RFIs confirm AdX's growth and its position as a must-have intermediary in the adtech stack.

(1) First, the following publishers, in their responses to the Commission's RFI confirmed that AdX has grown since at least 2009.

(a) According to […].[2186] […].

(b) According to […].[2187]

(c) According to […].[2188]

(d) According to […].[2189]

(e) According to […].[2190]

(2) Second, the […] publishers that replied to the Commission's RFI indicated that they consider AdX as a must-have for the purpose of monetising their

2180 […].
2181 Source: […] reply to Q 36 of the Commission's RFI to […] of February 2024 (ID[…])
2182 In its reply to Q62 of the Commission's RFI to […] of August 2020 (ID[…]), […] notes that […].
2183 As Header Bidding and direct deals are not distinguishable before June 2018 (as prior to that date both are included in the Reservations category), the Commission considers that the comparison between Header Bidding and AdX is meaningful only from 2019 onwards.
2184 […].
2185 Source: […] reply to Q24 of the Commission's RFI to […] of October 2022 (ID[…]).
2186 […] reply to Q14 of the Commission's RFI to publishers of November 2022 (ID[…]).
2187 […] reply to Q14 of the Commission's RFI to publishers of November 2022 (ID[…]).
2188 […] reply to Q14 of the Commission's RFI to publishers of November 2022 (ID[…]).
2189 […] reply to Q14 of the Commission's RFI to publishers of November 2022 (ID[…]).
2190 […] reply to Q14 of the Commission's RFI to publishers of November 2022 (ID[…]).

inventory.[2191] While publishers also mentioned other SSPs as must-have, AdX is the most frequently mentioned SSP. Moreover, publishers often made a distinction between the importance of AdX and its associated demand, and that of other SSPs, with non-Google SSPs being added to diversify revenues or access certain functionalities not supported by AdX. For instance:[2192]

(a) According to […].[2193]

(b) According to […].[2194]

(c) According to […].[2195]

(d) According to […].[2196]

(e) According to […].[2197]

(f) According to […].[2198]

(3) Third, publishers' replies to the Commission's RFI also indicate that AdX accounts for a […] of their revenues from Open Auction programmatic display advertising.[2199] In particular, on average, in 2023, AdX accounted for approximately […] of revenues from Open Auction programmatic display advertising across those publishers. This is consistent with evidence presented in recital (1757), showing that publishers using AdX as their main SSP concentrated over […] of their programmatic transaction on AdX. Such high concentration of transaction on a single intermediary indicates that AdX is pivotal for publishers' ability to monetise their inventory.

(1867) The Commission's conclusion that the actual evolution of the value of programmatic display ads transacted via AdX is consistent with the assessment of the potential effects of the Buy-side and Sell-side Conducts is not contradicted by Google's arguments described below.

(1868) First, Google argues that AdX's market share has […].[2200] As set out below, this argument is not incompatible with the Commission's conclusion on the potential effects of the Buy-side and Sell-side Conducts.

(1869) In the first place, the Commission's calculations show that […] (see recitals (1856), (1858), (1859) and (1860) above). This is true both when considering all deal types and when restricting the sample to Open Auction deals only. Such […] between AdX and its competitors is consistent with […].

2191 Replies to Q B.D.1 of the Commission's RFI to publishers of February 2024. For instance, see […] reply (ID[…]). […]. These are: […]- see reply to Q B.D.1 (ID[…]) -, […] - see reply to Q B.D.1 (ID[…]) - and […]- see

2192 See further […] (ID[…]), […] (ID[…]), […] (ID[…]), […] (ID[…]) and […] (ID[…]) replies to Q B.D.1 of the Commission's RFI to publishers of February 2024.

2193 […] reply to Q B.D.1. of the Commission's RFI to publishers of February 2024 (ID[…]). reply to Q B.D.1 (ID[…]). One additional publisher, […] - see reply to Q B.D.1 (ID[…]), does not sell inventory via Open Auction. […] stated that they do consider certain SSPs as must-have but did not state which - see reply to Q B.D.1 (ID[…]).

2194 […] reply to Q B.D.1. of the Commission's RFI to publishers of February 2024 (ID[…]).

2195 […] reply to Q B.D.1. of the Commission's RFI to publishers of February 2024 (ID[…]).

2196 […] reply to Q B.D.1. of the Commission's RFI to publishers of February 2024 (ID[…])

2197 […] reply to Q B.D.1. of the Commission's RFI to publishers of February 2024 (ID[…]).

2198 […] reply to Q B.D.3. of the Commission's RFI to publishers of February 2024 (ID[…]).

2199 Replies to Q B.D.3 of the Commission's RFI to publishers of February 2024.

2200 […].

(1870) In the second place, the trend in AdX's market share should be read in the context of the introduction of Header Bidding, which could have allowed other SSPs to compete more aggressively with AdX on an increasing number of impressions. […]. However, in 2023, i.e. approximately nine years after the introduction of this technology, no other player had managed to reach a significant position ([…] of AdX size, while all other SSPs were less than […] of its size), let alone take over AdX's position […].

(1871) In the third place, the trend in AdX's market shares show that AdX managed to remain […] despite […] and being perceived as an expensive player by both […] (see section 8.5.8).

(1872) In the fourth place, the trend in market shares of AdX and its competitors is consistent with the presence of indirect network effects. Indeed, the evolution of the market shows that a single large platform, AdX, has emerged as a must-have intermediary for publishers, while a number of smaller platforms coexist competing for niche and specialised intermediation services. As most publishers and ad buying tools use AdX, both types of users need to integrate with AdX in order to be able to reach the majority of users on the other side of the platform. This protect AdX's central position in the adtech stack from new technologies such as Header Bidding and allows it to extract higher fees than the market average.

(1873) Second, Google argues that the Commission's estimations of AdX's share within DFP are incorrect insofar as (i) they remove direct deals from the set of impressions served by DFP, ignoring that […] of DFP impressions are associated with publishers using both direct and indirect channels to sell their inventory; and (ii) they only consider AdX evolution from 2019, ignoring earlier data which show that AdX's share of impressions served on DFP has […], while Header Bidding's share […].[2201]

(1874) In the first place, Google's calculations on the share of impressions served on DFP and intermediated by AdX versus Header Bidding are misleading. Google excludes Reservation impressions from the set of impressions served on DFP. Then, for each year between 2015 and 2021, Google computes AdX and Header Bidding's share of the total DFP impressions minus Reservation, concluding that […],[2202] while the Header Bidding share […].[2203] However, this trend is explained by the fact that, between 2015 and June 2018, Header Bidding impressions are included in the Reservation category.[2204] Header Bidding becomes a self-standing category in the data only from June 2018. Thus, by removing Reservation, Google is removing also all Header Bidding impressions from 2015 to June 2018. Then, these impressions are added back from June 2018 onwards, causing AdX's share as calculated by Google to decline artificially and Header Bidding to grow artificially rapidly. For this reason, and as explained in recital (1865), the Commission considers that the comparison between Header Bidding and AdX is meaningful only from 2019 onwards. Such comparison shows that, despite Header Bidding having experienced some growth since 2019, in 2023, i.e. approximately ten years after its introduction, it only accounted for […] of the impressions intermediated by AdX. This is again consistent with Google's efforts to contain Header Bidding and protect AdX's position.

2201 […].
2202 […].
2203 […].
2204 See […] reply to the Commission's RFI to […] of August 2020 (ID[…]).

(1875) In the second place, the Commission maintains that direct deals are not part of the relevant market, as explained in section 5.4.2. However, even if direct deals were to be included, AdX's share of impressions served on DFP would […] during the period affected by the Buy-side and Sell-side Conducts, from […] in 2015 to […] in 2023, as can be seen from Table 7. In 2023, AdX had the […] of DFP impressions as direct deals. For context, direct deals' share in 2016 was […] than AdX's share.

(1876) Third, Google argues that the Commission made a methodological error by not including "Reservation" deals in its calculations of AdX's market share within DFP. Google explains that, by not including Reservation in its calculations, the Commission is not only removing direct deals from the market, but also […].[2205] These include, among others, non-guaranteed line items such as "bulk", "network" and "price priority" line items, and other indirect reservations such as House ads (i.e. non-revenue generating ads usually used to promote products or services offered by the publisher itself) and Bumper ads (i.e. short videos usually used to indicate that an ad is about to be displayed). Google recomputes the share of AdX within DFP removing only the direct deal portion of Reservation. The results of Google's calculations are reported in Table 8 below.[2206]

Table 8: […]

(1877) However, this does not affect the conclusions drawn in this Decision from Table 7, in which "Reservation" impressions have not been included.

(1878) In the first place, even according to Google's calculations, AdX Programmatic is […] the largest intermediation category within DFP.

(1879) In the second place even if, according to Google's calculations, Header Bidding grew during the period considered, it nevertheless remains a […] of AdX's size. According to Google's calculations, in 2023 (i.e. approximately nine years after its launch) Header Bidding accounted for […] of the impressions intermediated by AdX.

(1880) In the third place, Google's calculations suggest that Header Bidding is growing at the expense of other non-guaranteed line items as opposed to AdX. Indeed, while AdX's share remained […] between 2019 and 2023, the share of those other non-guaranteed line items […] during the same period. This trend is consistent with Google's efforts to protect AdX's position via the Buy-side and Sell-side Conducts and also with the Commission's characterisation of Header Bidding as a more efficient technology to allocate online ad inventory than technical methods available in the Waterfall (non-guaranteed line items such as bulk, network and price priority items).

(1881) Fourth, Google argues that the Commission has overstated AdX's market share by only including a limited set of competitors in the market reconstruction, ignoring evidence that there are […] active SSPs in the EEA.[2207]

(1882) Google's claim is unfounded. The Commission's market reconstruction includes […] competitors of AdX. These include AdX's largest competitors but also a long tail of very small players, including a number of players with a market share below […]. As

2205 […].
2206 […].
2207 […].

shown in Table 4, in 2023, only […] competitors had a market share above […].[2208] Google lists only […][2209] in […]. All these […] competitors are included in the Commission's market reconstruction. Google fails to identify any other key competitor that might be missing from the Commission's market reconstruction, aside from generic claims that […] SSPs are active in the market. While a long tail of players indeed offers SSP services, it is unlikely that their inclusion would alter significantly AdX's market share, given their marginal size and niche offerings.

(1883) Fifth, Google argues that the Commission's reconstruction of the market for SSPs excludes two players, […] and […], despite these having provided data in response to the Commission's RFI. Google claims that, as a result of this omission, AdX's market position is overstated. According to Google, the inclusion of […] alone would lower AdX's market shares by between […] in both 2022 and 2023.[2210]

(1884) In fact, the Commission has included the two allegedly missing players in the SSP market reconstruction, as explained below.

(1885) With regard to […], such player is active both as a publisher ad server and, following the acquisition of another third-party SSP, also as an SSP. Google includes in its alternative SSP market share calculation also the revenues generated by the publisher ad server's portion of this undertaking's business. The Commission maintains that, consistently with the treatment of other vertically integrated players, including Google itself, revenues generated by publisher ad server services should only be included in the reconstruction of the publisher ad servers' market. Therefore, the Commission has included only the proportion of revenues related to this player's SSP's activity.

(1886) With regard to […], the Commission has used estimated revenues, as opposed to the actual revenues provided by the company in response to the Commission's RFI for 2022 and 2023, in the market reconstruction featuring all deal types. This is because such actual revenues are approximately […] of the equivalent figure provided by the company for 2021 and previous years. Furthermore, such actual revenues, despite supposedly including all deal types, are in fact lower that the equivalent figures provided by the company in relation to Open Auction transactions only. For these reasons, the Commission has considered the actual revenues provided by the company unreliable and has thus estimated revenues generated by […] for the years 2022 and 2023 based on the available data. This estimation is conservative: if the actual revenues were to be used in place of the Commission's estimates, AdX's market share would be […].

(1887) Sixth, Google argues that the statements by publishers on AdX's growth used by the Commission are not reliable evidence of AdX's relative market position.[2211]

(1888) Google does not provide any explanations to justify its claim that statements by publishers are not reliable evidence of growth in AdX's market share. In fact, publishers are SSPs' direct clients and rely on SSPs to generate revenues from their online content. Large publishers have dedicated units to manage their advertising inventory. As such, it can be reasonably expected that publishers regularly monitor the market and stay up to date with the available offerings and market developments.

2208 This figure considers all deal types intermediated by SSP. When restricting the sample to Open Auction transactions only, only […] competitor had a market share […] as of 2023.

2209 […].

2210 […].

2211 […].

(1889) Seventh, Google argues that an internal Google document supports the view that AdX's position is the result of competition on the merits.[2212] This is because the document refers to […].[2213]

(1890) In the first place, […].

(1891) In the second place, […].[2214]

8.5.8. The evolution of AdX's revenues and margins is consistent with the assessment of the potential effects of the Buy-side and Sell-side Conducts

(1892) The Commission reaches the conclusion that the evolution of AdX's revenues and margins is consistent with the potential effects of the Buy-side and Sell-side Conducts. First, the Commission considers AdX's growth in terms of net revenues (section 8.5.8.1). Second, the Commission compares the take rate of AdX and its main competitors (section 8.5.8.2). Third, the Commission considers Google's pricing across the adtech stack, and the incentives associated with the pricing model adopted by Google (section 8.5.8.3).

8.5.8.1. The growth in AdX's net revenues

(1893) As shown in section 8.5.7, AdX gross revenues […] during the period affected by the Buy-side and Sell-side Conducts (see recital (1854) above) and, at the end of 2023, no third-party SSP had yet managed to […] as AdX in terms of gross revenues generated (see recitals (1856), (1858), (1859) and (1860) above). This section shows that the same conclusions hold also when considering net revenues generated from SSP fees. While gross revenues include both the value of payments to publishers and that of intermediation fees retained by the SSP, net revenues only include the fees' value. In other words, net revenues are what SSPs earn after payouts to publishers.

(1894) Over the period from 2018 to 2021 AdX […] in the EEA […], from EUR […] to EUR […].[2215] Over the same period, the net revenues generated in the EEA by each of the competing platforms […].[2216] […]. Moreover, there is a […] gap between AdX and its competitors. Indeed, over the period from 2018 to 2021, none of AdX competitors' net revenues exceed […] of AdX's net revenues.[2217]

(1895) Google's internal documents […].[2218] AdX's net revenues have thus increased by […] over the period from 2011 to 2018, and by close to […] between 2011 and 2021.

8.5.8.2. The take rate of AdX and its competitors

(1896) According to data provided by Google and third-party SSPs in response to the Commission's RFIs, AdX is among the most expensive SSPs in the market. This conclusion is […].[2219] This all the more remarkable given Adx's scale: AdX is not only among the most expensive SSPs but […]. While some SSPs charge a higher take rate than AdX, these appear to be niche players with a very limited market presence, as explained below.

2212 […].

2213 […].

2214 […].

2215 […] reply to Q41 of the Commission's RFI to […] of February 2024 (ID[…]). Google stated that data on AdX revenues are available only from August 2017. The Commission has considered data from 2018 as 2018 is the first complete year for which such data are available.

2216 Replies to Q25 of the Commission's RFI to DSPs and SSPs of July 2022.

2217 […].

2218 […].

2219 […].

(1897) First, when considering Open Auction transactions only, AdX was the […] that responded to the Commission's RFI. However, the […] SSPs with a higher take rate had a combined market share of only […] in 2023.[2220] Conversely, AdX has a higher take rate than its main rivals, such as […].[2221]

(1898) Second, AdX remains among the most expensive SSPs in the market also when considering a global take rate across all deals offered. In this case, AdX take rate between 2018 and 2021 was never among the […] in the market. However, its take rate was significantly […]. Indeed, AdX take rate was approximately […] in each year between 2018 and 2021, while the market average (excluding AdX and weighting each SSP's take rate by the volume of impressions intermediated) was between […] and […] during the same period.[2222] This again indicates that, while there might be a number of SSPs that are more expensive than AdX, [2223] these only have a […] market position.

8.5.8.3. Google pricing across the adtech stack and the associated incentives

(1899) According to Google internal documents, […]. For instance, according to […].[2224]

(1900) When focusing on impressions transacted using the full bundle of Google adtech services (Google Ads/DV360 + AdX), Google documents show […] between 2017 and 2022: (i) the net revenue margin of Google Ads' media spend on AdX was […] in 2017 and 2022, and (ii) the net revenue margin of DV360 media spend on AdX open auction was […] in 2017 and […] in 2022.

(1901) Google internal documents also […][2225] […].

Figure 39: […][2226]

(1902) Consistent with these incentives, the Buy-side and Sell-side Conducts contributed to directing […] to the bundles of Google adtech services, where Google collects a higher net revenue margin: (i) Google Ads' worldwide media spend on AdX increased from USD […] in 2017 to USD […] in 2022 and (ii) DV360's worldwide media spend on AdX open auction increased, during the same period, from USD […] to USD […] in 2022.[2227] By contrast, Google's media spend on service combinations with third-party components (third-party SSPs or third-party ad buying tools) remained at […] and, for some, […] in the period under consideration: (i) Google Ads media spend on third-party SSPs was USD […] in 2017 and USD […] in 2022; (ii), DV360 media spend on third-party SSPs in open auction was USD […] in 2017 and USD […] in 2022; and (iii) third-party ad buying tools media spend on AdX in open auction was USD […] in 2017 and USD […] in 2022.[2228]

2220 Commission's analysis of data provided by SSP in response to the Commission's follow-up email RFI to SSPs of April 2024 and […] reply to Q 41 of the Commission's RFI to […] of February 2024 (ID[…]).

2221 French NCA Adtech Decision, paragraph 392. See also […] reply to Q14 of the Commission's RFI to publishers of November 2022 (ID[…]).

2222 […] reply to Q1 of the Commission's RFI to […] of September 2022 (ID[…]). Replies to Q24 Commission's RFI to SSPs of December 2020 and Q24 Commission's RFI to DSPs and SSPs of July 2022.

2223 […].

2224 […].

2225 […].

2226 […].

2227 […].

2228 […].

(1903) As a result of DV360 […] on AdX, and the […] of third-party ad buying tools spend, the share of AdX net revenues generated by impressions purchased by DV360 increased by […] between 2017 and 2022, from […] to […].[2229]

8.5.8.4. Google's arguments on AdX's net revenues and take rates

(1904) The Commission's conclusion that the evolution of AdX's revenues and margins is consistent with the assessment of the potential effects of the Buy-side and Sell-side Conducts is not contradicted by Google's arguments described below.

(1905) First, Google argues that the growth in AdX's net revenues is in line with broader market growth.[2230]

(1906) In this regard, the Commission notes that, while AdX's net revenues might not have grown as a proportion of the overall market for SSPs for online display advertising, no competing SSP has managed to generate […] a similar volume of revenues during the 2018 to 2023 period. Such persistent gap in size between AdX and its competitors is consistent with Google's efforts to protect AdX's central position in the adtech stack via the Buy-side and Sell-side Conducts, during a period in which such position could have been threatened by the emergence of Header Bidding.

(1907) Second, Google argues that AdX's average […]. In fact, according to Google, AdX take rate in 2021 was equal to the median take rate across a sample of 16 SSPs.[2231]

(1908) The Commission considers that Google's analysis of the take rates of AdX and its competitors does not provide a reliable estimate of AdX actual take rate nor of the rank of AdX take rate relative to the competitors' take rate.

(1909) In the first place, Google's remarks on AdX take rate refer to AdX average take rate across all deal types intermediated by AdX. Such average take rate includes deals type that are not part of the relevant market, such as Programmatic Guarantee and Preferred Deals. Moreover […]. On the contrary, Google internal documents instead typically […]. AdX's Open Auction take rate has been stable […] in the period from 2018 to 2023. As noted in recital (1897), AdX Open Auction take rate was the […] out of […] SSPs that provided comparable data. However, the […] with a higher take rate had a combined market share of only […] in 2023.

(1910) In the second place, even when considering AdX average take rate across all transactions, Google's claim that AdX take rate was equal to the median take rate across all SSPs is not reflective of the actual competitive dynamics in the SSPs market. This is because Google's calculations ignore the relative size of different SSPs, and thus fails to consider that SSPs that are more expensive than AdX only have a […]. Indeed, as shown in recital (1898), AdX take rate between 2018 and 2021 was […].

(1911) In the third place, Google internal documents acknowledge that […]. For instance:

(1) According to an internal note: […]. The same note states that […].[2232]

(2) According to a Google Executive: […].[2233]

2229 Commission calculations based on data in […].

2230 […].

2231 […].

2232 […].

2233 […].

(1912) Third, Google argues that there is no evidence that the Buy-side and Sell-side Conducts contributed to directing more spend towards Google's adtech services. In particular, between 2017 and 2022, Google Ads spend on third-party SSPs […] by a […], while DV360 spend in Open Auction […].[2234]

(1913) In the first place, the Commission has provided ample evidence on how the Buy-side and Sell-side Conducts contributed to directing more spend towards Google's adtech services, and AdX in particular, in sections 8.5.1, 8.5.3 and 8.5.4 above. These sections […].

(1914) In the second place, between 2017 and 2022, DV360 spend on AdX […].[2235] This indicates that the gap between DV360 spend on AdX and third-party SSPs is in fact widening, as spending on the former platform is […].

(1915) In the third place, between 2017 and 2022, Google Ads progressively reduced the categories of bids for which it was exclusively bidding on AdX (see section 8.3.2.1.2 and 8.3.2.1.3). The compared evolution of Google Ads' spend on AdX and third-party SSPs is therefore not driven by the alleged lack of effect of Google's Conducts, but merely by the fact that Google progressively reduced the scope of that specific anticompetitive practice. As Google Ads spend on third-party SSPs was at […] in 2017 (USD […], versus USD […] on AdX), it is to be expected that such spend […] than spend on AdX when the scope of the AwBid program was expanded. Nevertheless, in absolute terms, the difference between Google Ads' spend on AdX and on third-party SSPs still […] during the period considered, from USD […] in 2017 to USD […] in 2022.[2236]

8.5.9. Google's arguments on the legal requirements to show effects

(1916) Google alleges that the Commission fails to establish to the required legal standard that the Buy-side and Sell-side Conducts are capable of producing anticompetitive effects. This is because, in Google's view, the Commission's assessments of effects is purely hypothetical and not sufficiently substantiated. According to Google, the Commission's assessment of effects fails to demonstrate any causal link between the Buy-side and Sell-side Conducts and the anticompetitive effects. Further, Google claims that the Commission's assessment of effects has not considered whether the Buy-side and Sell-side Conducts are consistent with competition on the merits.[2237]

(1917) Google's claims are unfounded for the reasons described below.

(1918) In the first place, the Commission has explained how each element of the series of practices that constitutes respectively the Buy-side Conduct and Sell-side Conduct are capable of diverting impressions from competing SSPs to AdX (sections 8.5.1.1 and 8.5.1.2). Notably, such assessment is complemented by evidence from Google internal documents where […].

(1919) In the second place, the Commission has explained why scale is important for SSPs (section 8.5.2). The Commission's analysis draws on evidence from Google internal documents and statements from publishers, SSPs, ad buying tools and advertisers.

(1920) In the third place, the Commission has shown how the Buy-side and Sell-side Conducts are each capable of steering publishers and ad buying tools towards AdX,

2234 […].
2235 […].
2236 […].
2237 […].

potentially resulting in the exclusion of competing SSPs (sections 8.5.3 and 8.5.4). As a result, the Commission has explained that the Buy-side and Sell-side Conducts are capable of affecting price and innovation in the market (section 8.5.5). As explained by the General Court, the Commission is not "*required to demonstrate that possible consequences of the elimination or restriction of competition actually manifested themselves, for example in the form of less innovation or price increases that could only be explained by the lack of competition. It is accepted in that regard that the weakening of competition is highly likely to have such consequence.*"[2238]

(1921) In the fourth place, the Commission has demonstrated the link between the Buy-side Conduct and Sell-side Conduct and the anticompetitive effects to the required legal standard. The General Court has explained that "*in order to establish the actual or potential effects of practices which it examines, the Commission may in particular rely on other information obtained by observation of the actual evolution of the market or markets concerned by the practices. If a correlation is observed between those practices and the modification of competition on those markets, additional information, which may include for example the assessments of market participants, their suppliers, their customers, professional or consumer associations, may be capable of demonstrating the causal link between those practices and the evolution of the market. It may in some circumstances be for the undertaking concerned to put forward relevant information that may cast doubt on that causality*".[2239] The General Court's findings were upheld by the ECJ.[2240]

(1922) The Commission has established a causal link between the Buy-side and Sell-side Conducts and the potential effects by considering Google's internal documents containing Google's own assessment of the effects of such conducts. These documents show […]. This assessment is consistent with the Commission's theoretical explanation on how each element of the series of practices that constitutes respectively the Buy-side Conduct and Sell-side Conduct have the capability to increase the number of bids intermediated by AdX, and it is complemented with qualitative evidence from RFI responses. The Commission has considered the effects of Google's Conducts in light of relevant circumstances characterizing the EEA-wide market for SSPs, namely the importance of scale for SSPs.

(1923) In addition, the Commission has considered the evolution of the market share of AdX and its competitors from 2018 to 2023 alongside the following additional elements (sections 8.5.7 and 8.5.8):

(1) Information on AdX and rival SSPs pricing, indicating that AdX is amongst the most expensive players in the market, […]. Indeed, SSPs with more aggressive pricing have been unsuccessful in eroding AdX share.

(2) Information from Google internal documents, […]. Yet, nine years after the introduction of Header Bidding, no SSP has managed to reach […].

(3) Information from publishers, […].

(1924) In the fifth place, the Commission has reached the conclusion that the Buy-side and Sell-side Conducts departed from competition on the merits (see sections 8.3 and 8.1).

2238 Case T-612/17 *Google Shopping*, EU:T:2021:763, paragraph 443.

2239 Case T-612/17 *Google Shopping*, EU:T:2021:763, paragraph 382.

2240 Judgment of the ECJ of 10 September 2024 in Case C-48/22 P *Google Shopping*, EU:C:2024:726, paragraphs 225-230.

8.6. Potential Effects of the Buy-side Conduct in the EEA-wide market for publisher ad servers

(1925) The Commission reaches the conclusion that the Buy-side Conduct also has potential effects in the EEA-wide market for publisher ad servers, resulting in the potential exclusion of third-party publisher ad servers, reduction of choice and of innovation. Indeed, the potential effects of the Buy-side Conduct are felt beyond the EEA-wide market for SSPs. Due to the tight integration between AdX and DFP, the potential effects of the favouring of AdX by Google Ads and DV360 also extend to contributing to DFP's commercial success. The Commission sets out the findings in section 1 for the sake of completeness, as they are not necessary for establishing that the Buy-side Conduct is abusive, which is sufficiently supported by the findings in sections 8.3 and 1 above.

(1926) This section demonstrates that there is a tight integration between AdX and DFP (section 8.6.1), that the Buy-side Conduct has the potential to exclude third-party publisher ad servers, reduce choice and result in less innovation in the EEA-wide market for publisher ad servers via its effects on the EEA-wide market for SSPs (section 8.6.2) and that the evolution of impressions transacted via DFP is consistent with the assessment of the potential effects of the conduct (section 8.6.3).

8.6.1. There is a tight integration between AdX and DFP

(1927) First, AdX does not interoperate with third-party publisher ad servers in the same way as it does with DFP. On the one hand, Google claims that DFP and AdX […].[2241] On the other hand, publishers wishing to access demand from AdX using another publisher ad server than DFP must seek bids from AdX separately and directly, via a tag, rather than receiving an AdX bid via Dynamic Allocation. This direct configuration, known as "AdX Direct", involves additional latency and other technical difficulties that aggravate the one already induced by the use of a client-side header bidding solution.

(1928) Another means of accessing Google buy-side demand via the AdX auction demand is via 'Remnant Line Implementation' which involves the third-party publisher ad server first selecting a bid from a competing SSP and then calling DFP in order to query AdX. Again, this involves additional latency. This implementation is also technically more cumbersome for the publisher to set up.

(1929) Several publishers have confirmed that they have faced difficulties in obtaining real time demand from AdX when using a different publisher ad server than DFP:

(1) According to […].[2242]

(2) According to […].[2243]

(3) According to […].[2244]

(4) According to […].[2245]

(5) According to […].[2246]

2241 […].

2242 […] reply to Q B.D.8. of the Commission's RFI to publishers of February 2024 (ID[…]).

2243 […] reply to Q B.D.8. of the Commission's RFI to publishers of February 2024 (ID[…]).

2244 […] reply to Q B.D.8. of the Commission's RFI to publishers of February 2024 (ID[…]).

2245 […] reply to Q B.D.8. of the Commission's RFI to publishers of February 2024 (ID[…]).

2246 […] reply to Q B.D.8. of the Commission's RFI to publishers of February 2024 (ID[…]).

(1930) Second, Google does not seem to have publicized the AdX Direct or "Remnant Line Implementation" features, nor provided any assistance for their use, at least until spring 2022.[2247] […].[2248] On the contrary, Google marketed DFP to publishers as the most efficient means, if not the only means, by which they can access the AdX auction and therefore Google's buy-side tools demand.

(1931) For example, […].[2249] […].[2250]

(1932) Consequently, the majority of publishers that replied to the Commission's RFI stated that they see DFP and AdX as benefiting from more favorable interoperability compared to alternative set-ups combining AdX and a third-party ad server.[2251] For instance:

(1) According to […].[2252]

(2) According to […].[2253]

(3) According to […].[2254]

(1933) Several publishers consider DFP as the only publisher ad server that fully allows access to Google's ad buying tools demand via AdX. A number of publishers added that this was in fact one of the main, if not the main, reason for the attractiveness of DFP:

(1) According to […].[2255]

(2) According to […].[2256]

(3) According to […].[2257]

(4) According to […].[2258]

(5) According to […].[2259]

(6) According to […].[2260]

(7) According to […].[2261]

(8) According to […].[2262]

(9) According to […].[2263]

2247 Pursuant to the French NCA Adtech decision, Google updated its Ad Manager Help Center in Spring 2022 in order to introduce official guidance on how to use AdX with a third-party adserver. See: https://support.google.com/admanager/answer/12022850?hl=en, downloaded on 16 May 2023 (ID[…]).

2248 […].

2249 […].

2250 […].

2251 Publishers' replies to Q B.D.7 of the Commission's RFI to publishers of February 2024.

2252 […] reply to Q B.D.7. of the Commission's RFI to publishers of February 2024 (ID[…]).

2253 […] reply to Q B.D.7. of the Commission's RFI to publishers of February 2024 (ID[…]).

2254 […] reply to Q B.D.7. of the Commission's RFI to publishers of February 2024 (ID[…]).

2255 […].

2256 […].

2257 […].

2258 […].

2259 […].

2260 […] reply to Q11 of the Commission's RFI to publishers of December 2020 (ID[…]).

2261 […] reply to Q11 of the Commission's RFI to publishers of December 2020 (ID[…]).

2262 […] reply to Q11 of the Commission's RFI to publishers of December 2020 (ID[…]). Commission's translation of: […].

(10) According to […].[2264]

(1934) For their part, a number of publisher ad servers also indicated that, because of their limited interoperability with AdX, they cannot propose a competitive offering to publishers. For example, […] states that: […].[2265] Another publisher ad server, […], explains that […].[2266]

(1935) Third, Google internal documents reveal that, […]. An internal discussion in […].[2267] A further internal presentation entitled […].[2268]

(1936) While the Commission has no evidence of Google actually implementing such a […],[2269] […]. As shown in Table 9 below, the percentage of AdX impressions being transacted […].

Table 9: […][2270]

(1937) The Commission's conclusion that there is a tight integration between AdX and DFP is not contradicted by Google's arguments described below.

(1938) First, Google argues that the set-up costs of Remnant Line Implementation and the latency of AdX Direct and Remnant Line Implementation are comparable to those involved with using Header Bidding with DFP as primary ad server.[2271]

(1939) Google's claim is not relevant as the comparison here is not between using a third-party publisher ad server to access AdX and using Header Bidding with DFP as primary publisher ad server but with using a third party ad server to access AdX demand versus using DFP to access AdX demand. Several publishers have confirmed that alternative set ups to obtain AdX's demand using a third-party publisher ad server are technically more cumbersome and overall less efficient than using AdX in combination with DFP.[2272] Publishers rely on publisher ad servers and SSPs to manage and monetize their online advertising inventory. Therefore, it can be reasonably expected that publishers are particularly attentive at the ad server and SSP set up they choose to implement. Indeed, this affects how efficiently they can manage their inventory, and ultimately the revenues that such inventory generates. It should be noted that Google itself has argued that […].[2273]

(1940) Second, Google argues that several publisher ad servers and publishers have indicated in replies to a Commission RFI that a third-party ad server can readily access demand from AdX.[2274] Google also argues that comments from publishers

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2263 […] reply to Q11 of the Commission's RFI to publishers of December 2020 (ID[…]). Commission's translation of: […].

2264 […] reply to Q11 of the Commission's RFI to publishers of December 2020 (ID[…]).

2265 […].

2266 […].

2267 […].

2268 […].

2269 As part of the French Commitments (ID[…]), […].

2270 […] reply to Q59 of the Commission's RFI to […] of August 2020 (ID[…]).

2271 […].

2272 […].

2273 […].

2274 […], quoting from replies to questions B7 and B8 of the Commission's RFI to publisher ad servers of February 2024 by […] (ID[…]) and […] (ID[…]) and replies to questions B.D.5, B.D.7 and B.D.8 of the Commission's RFI to publishers of February 2024 by […] (ID[…]), […] (ID[…]), […] (ID[…]).

that describe difficulties in accessing AdX demand via third-party ad servers: […].[2275]

(1941) In the first place, Google's short extracts from the responses of two publisher ad servers and three publishers fail to capture their full explanations about the ease of accessing demand from AdX. For example, Google cites […] as noting that: […].[2276] However […] also states that: [...][2277] […].[2278] Google quotes publisher […] as noting that […][2279] […].[2280]

(1942) In the second place, Google's observation that publishers describing difficulties have a […] ignores the actual experience detailed by numerous sophisticated market participants.[2281] Google refers to positive comments about interoperability by […] publishers[2282] whereas […] publishers[2283] have indicated that they consider that DFP/AdX benefit from more favourable interoperability and/or that they consider DFP as the only publisher ad server that fully allows access to Google's ad buying tools demand via AdX. Moreover the fact that, prior to the French Adtech Decision, Google appears to have provided no publicity or assistance regarding interoperability,[2284] suggests that, if there is a […], it appears to have been actively exploited by Google, as noted in recital (1931).

(1943) Third, Google argues that the Commission has misconstrued the content of the presentations to […] and […], insofar as the presentation to […] and that: […].[2285]

(1944) Google's claims regarding the two documents are unfounded. In the presentation to […], Google was clearly promoting access to […] via DFP and AdX together (the […]) and in the presentation to […], the fact that Ad manager publishers can benefit from other demand sources competing with Google AdX on a net basis (i.e. via Exchange/Open Bidding and Header Bidding) is mentioned only after the claim that there will be higher net eCPMs for publishers […].[2286]. As for the alleged mitigating effects of […], this is addressed in section 8.5.2.1.4 above.

8.6.2. The Buy-side Conduct has the potential to exclude third-party publisher ad servers, reduce choice and result in less innovation in the EEA-wide market for publisher ad servers via its effects on the EEA-wide market for SSPs

(1945) The Commission reaches the conclusion that the Buy-side Conduct has the potential to steer publishers to DFP and thus the potential to exclude DFP's rivals, thereby reducing choice available to publishers and innovation in the EEA-wide market for publisher ad servers. This is for the following reasons.

(1946) First, the Buy-side Conduct has the potential to exclude DFP's competitors in the EEA-wide market for publisher ad servers. Thus, by making a very important source of advertising demand mainly accessible via AdX, DFP's competitors are forced to

2275 […].
2276 […] reply to Q B.6 of the Commission's RFI to publisher ad servers of February 2024 (ID[…]).
2277 […] publisher ad server, acquired in 2021.
2278 […] reply to Q B.7 of the Commission's RFI to publisher ad servers of February 2024 (ID[…])
2279 […].
2280 […] reply to Q B.D.8 of the Commission's RFI to publishers of February 2024 (ID […]): […].
2281 See, in particular, recital (1929).
2282 See recital (1941).
2283 See recitals (1932)-(1933).
2284 See recital (1930).
2285 […].
2286 […].

deal with AdX, as AdX's demand is needed to compete effectively in the EEA-wide market for publisher ad servers. However, since rival publisher ad servers do not have access to AdX at the same terms as DFP, those rival publisher ad servers cannot compete effectively. This significantly limits the competitive threats that smaller rivals could pose to DFP, thus cementing DFP's central position in the adtech stack.

(1947) Indeed, […] publishers that replied to the Commission's RFI indicated that DFP's integration with AdX is important for their ability to sell their inventory and confirmed that this influences their choice to use DFP.[2287] For instance:

(1) According to […].[2288]

(2) According to […].[2289]

(3) According to […].[2290]

(4) According to […].[2291]

(5) According to […].[2292]

(1948) Second, the Buy-side Conduct restricts publishers' choices. Publishers believe they have to rely on DFP to be able to fully access Google Ads and DV360 demand, which jointly account for […] of all demand available through ad buying tools (see Table 1). Given that publishers tend to single-home as regards publisher ad servers, this further reduces the alternatives actually available to publishers (see section 7.4.4).

(1949) Third, the Buy-side Conduct has the potential to reduce the incentives of Google to improve the quality of its publisher ad server. This is because DFP benefits from a must-have status thanks to its privileged access to the largest source of demand (Google Ads and DV360 via AdX). As such, Google does not currently need to compete on the merits with rival publisher ad servers and experiences limited pressure to improve the quality of its services.

(1950) The incentives to innovate of competing publisher ad servers are similarly reduced. Competing publisher ad servers will have an incentive to invest in developing innovative services only if they can reasonably expect that their services will be able to attract a sufficient number of publishers.

(1951) In addition, it is unlikely that investments to improve the quality of service are enough for Google's competitors to match DFP's advantages resulting from its access to Google's buy-side tools' demand. Their incentives to innovate are thus reduced, as innovation alone is unlikely to close the competitive gap with DFP.

(1952) The Commission's conclusion that the Buy-side Conduct has the potential to exclude third-party publisher ad servers, reduce choice and result in less innovation in the EEA-wide market for publisher ad servers via its effects on the EEA-wide market for SSPs is not contradicted by Google's arguments that (i) the Commission did not provide any evidence to support its claim, (ii) that publishers can access AdX's demand via third-party publisher ad servers on equal terms as when using DFP, (iii)

2287 Replies to QB.D.5 of the Commission's RFI to publishers of February 2024. See also recital (1933) for more views of publishers.

2288 […] reply to Q B.D.5 the Commission's RFI to publishers of February 2024 (ID[…]).

2289 […] reply to Q B.D.5 the Commission's RFI to publishers of February 2024 (ID[…]).

2290 […] reply to Q B.D.5 the Commission's RFI to publishers of February 2024 (ID[…])

2291 […] reply to Q B.D.5 the Commission's RFI to publishers of February 2024 (ID[…]).

2292 […] reply to Q B.D.5 the Commission's RFI to publishers of February 2024 (ID[…]).

that […] publishers also indicated in replies to the Commission's RFI that DFP's integration with AdX does not influence their choice of publisher ad server and (iv) that there is fierce competition in the EEA-wide market for publisher ad servers.[2293]

(1953) First, publishers' responses to the Commission's RFI indicate that publishers are steered towards DFP in order to access AdX demand. The Commission has also explained that publishers tend to single-home (see recital (649)). As such, once publishers decide to use DFP in order to be able to access AdX's demand, it is likely that they will switch the entirety of their online advertising inventory to DFP.

(1954) Second, the Commission has reported ample evidence from publishers contradicting Google's claim that AdX's demand can be accessed via third-party publisher ad servers on equal terms as when using DFP. Publishers that replied to the Commission's RFIs have mentioned that using AdX in conjunction with a third-party ad server as opposed to DFP can lead to increased latency, increased technical complexity, reduced access to demand from Google's ad buying tools and less revenues generated by their online advertising inventory (see section 8.6.1).

(1955) Third, while Google cites evidence from a number of publishers allegedly stating that access to AdX does not influence their choice of a publisher ad server,[2294] a […] respondents have stated that the ability to access AdX demand easily was an influence.[2295] Moreover, the fact that a publisher states that access to AdX did not influence its choice of a publisher ad server does not contradict as such the fact that the privileged access to AdX was a significant reason for its choice of a publisher ad server. Indeed, if there were already other reasons to choose DFP, then the privileged access to AdX, while also a significant reason for the choice, did not influence that choice in the end.[2296]

(1956) Fourth, Google's claim that there is fierce competition in the EEA-wide market for publisher ad servers is not supported by the actual market dynamics, as it will be explained in more details in section 8.6.3. Indeed, in the period from 2014 to 2023, a number of rival publisher ad servers have exited the market (see recital (1960)), while several players that are still in the market have experienced poor performances. During the same period DFP's market share […], and no rival has managed to […] (see recitals (1957) to (1959)).

2293 […]. Google also argues that the Commission failed to demonstrate that the Buy-side Conduct is capable of having effects in the EEA-wide market for SSPs and that, as such, the Buy-side Conduct cannot have effects in the EEA-wide market for publisher ad servers. In section 1, the Commission has carefully explained how the Buy-side Conduct is capable of producing effects in the EEA-wide market for SSPs and why Google's arguments in that regard are unfounded.

2294 […].

2295 In response to the Commission's RFIs to publishers of February 2024 and November 2022. See also recital (1933).

2296 For example, one of the publishers cited by Google as not being influenced by the DFP link with AdX - […] - in its response to Q B.D.5 of 5 the Commission's RFI to publishers of February 2024 (ID […]), noted that it had […] and […]. An anonymous response cited by Google as noting that other options exist to get the Google demand using another ad server stated first that […] and added that using another ad server to access Google demand […] (response to Q16 of the Commission's RFI to publishers of November 2022 (ID […])).

8.6.3. The evolution of impressions transacted via DFP is consistent with the assessment of the potential effects of the Buy-side Conduct

(1957) As explained in section 7.4.2, over the period from 2014 to 2023, DFP […] its share of the EEA market for publisher ad servers, starting from a market share of […] in 2014 and reaching a market share of […] in 2023 (see Table 2).

(1958) In 2023, only one competitor, […], managed to reach a share of […]. This was achieved by focusing exclusively on a specific segment of the market (mobile applications) and by adopting an aggressive pricing policy involving monetary subsidises to publishers to join […], instead of charging a fee for the use of the platform, […]. Despite such aggressive, growth-pursuing strategy, in 2023 […] size was only […].[2297]

(1959) None of DFP's other competitors has been able to reach a comparable scale over the same period. In fact, the market share of […], which was […] between […] and […]. Similarly, the market share of […], which was among Google's largest competitors until 2017, even […] share experienced […] during the period, but its size remained […] as of 2023. All other publisher ad servers never had a market share […] in the period considered.

(1960) Since 2014, a number of rival publisher ad servers have gone out of business. In addition to the aforementioned […] publisher ad server, these include the […] publisher ad server, which was closed down in […] following its acquisition by […] in […], which closed its publisher ad server in […] and […], which offered various tools including a publisher ad server and […]. In addition, as another publisher ad server has commented: […].[2298]

(1961) This actual evolution of the market is consistent with the potential effects of the Buy-side Conduct on the EEA-wide market for publisher ad servers.

(1962) The Commission's conclusion that the evolution of impressions transacted via DFP is consistent with the assessment of the potential effects of the Buy-side Conduct is not contradicted by Google's arguments described below.

(1963) First, Google argues that the Commission has not established a causal link between the Buy-side Conduct and the potential effects on the EEA-wide market for publisher ad servers.[2299]

(1964) Google's claim is unfounded. The Commission has demonstrated a causal link between the Buy-side Conduct and the anticompetitive effects to the required legal standard. The Commission has shown that there is a tight integration between AdX and DFP. This forces publishers to use DFP in order to access AdX demand, which is important for publishers' ability to monetise their inventory, thus cementing DFP's central position in the adtech stack.

(1965) In addition, the Commission has considered the evolution of the market share of DFP and its competitors from 2014 to 2023 alongside the following additional elements:

2297 Google also operates […], a service for […] similar to […], which is also active only in the specific segment of […] and is not included in Table 2 This means that the market shares above […] Google, and […] competitors, not the least […], as the inclusion of impressions going through […] in addition to those going only through DFP would only […] the market share of Google.

2298 […] reply to Q9 of the Commission's RFI to publisher ad servers of December 2020 (ID[…]).

2299 […].

(1) Statements by publishers pointing to the importance of AdX's demand for their business and the need to use DFP as their ad server in order to access such demand (see recital (1947)).

(2) Statements by publishers indicating that alternative set-ups including a third-party ad server and AdX are less effective that using AdX in combination with DFP (see recital (1932)).

(3) Statements by publisher ad servers indicating that, because of their limited interoperability with AdX, they cannot propose a competitive offering to publishers (see recital (1934)).

(1966) Second, Google argues that the market evolution and that several publisher ad servers have been able to compete successfully with DFP contradicts the Commission's conclusions.[2300]

(1967) In the first place, only one player, […], has been able to […] during the period from […] to […].

(1968) In the second place, even regarding […], the Commission maintains that […] growth should be discounted for the reasons explained below.

(1) Firstly, […] is only active in a specific segment of the market, […].[2301]

(2) Secondly, Google also operates […], a service for […] similar to […], which is also active only in the specific segment of […] and is not included in Table 2.[2302] This means that the […]Google's, and […] its competitors' market position, not the least […], as the inclusion of impressions going through […] in addition to those going only through DFP would only […] the market share of Google.[2303]

(3) Thirdly, Google itself, in internal documents, […].[2304]

(4) Fourthly, as noted in recital (1958), despite […] aggressive, growth-pursuing strategy, as of […] its size was only around […] of DFP.

8.7. Objective justification

8.7.1. The Buy-side Conduct is not objectively justified

(1969) The Commission reaches the conclusion that the Buy-side Conduct is not objectively justified.

(1970) Pursuant to the case law, in order to escape the prohibition of Article 102 TFEU, a dominant undertaking must show that its conduct is objectively justified. To be objectively justified, the conduct must be objectively necessary or produce efficiencies that counterbalance, or even outweigh, the negative effects of the conduct on competition.[2305] The framework and burden of proof for the legal

2300 […].

2301 […] Form 10-K filing to the U.S. S.E.C. for the fiscal year ended 31 December 2023 refers to […] as an […] (see pages 75, 88) and as a […] (see pages 5 and 46) (ID[…]).

2302 See for instance […].

2303 […] traffic data was submitted in […] reply to Q 30 of the Commission's RFI to […] of October 2022 (ID[…]).

2304 See […].

2305 Case C-209/10 *Post Danmark*, EU:C:2012:172, paragraphs 40 and 41 and case-law cited therein; case C-307/18 *Generics (UK)*, EU:C:2020:52, paragraph 165; case C-377/20 *Servizio Elettrico Nazionale*, EU:C:2022:379, paragraph 84; case C-333/21 *European Superleague Company*, EU:C:2023:1011, paragraphs 201 and 202.

assessment of objective necessity and efficiency defences is established in settled case law.

(1971) With regard to the objective necessity defence, it is for the dominant undertaking to demonstrate that its behaviour was objectively justified and proportionate to that justification.[2306] An efficiency defence requires the dominant company to demonstrate cumulatively: first, that its conduct can allow efficiency gains to be achieved by establishing the actual existence and extent of those gains; second, that such efficiency gains counteract the likely harmful effects of that conduct on competition and consumer welfare on the markets concerned; third, that that conduct is necessary for the achievement of those gains in efficiency; and, fourth, that it does not eliminate effective competition, by removing all or most existing sources of actual or potential competition.[2307]

(1972) Google states that the Buy-side Conduct is objectively justified. In support of that claim, for each of the practices that make-up the Buy-side Conduct, Google argues that (i) it […], (ii) it was […], (iii) the anticompetitive effects alleged by the SO […].[2308] In sections 8.7.1.1, 8.7.1.2 and 8.7.1.3, the Commission explains why, contrary to Google's claims, the Buy-side Conduct is not objectively justified.

8.7.1.1. Channelling Google Ads demand preferentially through AdX

(1973) Google argues that channelling Google Ads demand preferentially through AdX was objectively justified for the following reasons.

(1974) First, Google argues that this practice generated efficiencies (which Google also calls […]) in that it underpinned Google Ads' value proposition as an ad network by offering advertisers risk-free buying, in relation to which advertisers pay only when the user takes a desired action in relation to the ad shown. According to Google, this model brought significant benefits and differentiated Google Ads from other ad buying tools, including DV360.[2309]

(1975) Second, Google argues that the conduct was necessary and proportionate to achieve Google's allegedly pro-competitive aims. According to Google, in order to offer a performance-based pricing model, it must be able to accurately predict transaction risk, which is higher when bidding on third-party SSPs than on AdX. Both the trajectory and development of AwBid and the pricing of bids on AwBid reflect this higher risk. More extensive cross-platform buying, it is claimed, would undermine the business model.[2310]

(1976) Third, Google argues that any anticompetitive effects would be outweighed by efficiencies that benefit competition and consumers. According to Google, advertisers understand that Google Ads offers risk-free buying primarily on Google's in-network inventory and actively choose to use it for this reason.[2311]

2306 Case C-311/84 *CBEM v CLT and IPB*, EU:C:1985:394, paragraphs 26 and 27; case T-604/18 *Google and Alphabet v Commission (Google Android)*, EU:T:2022:541, paragraph 883; case C-377/20 *Servizio Elettrico Nazionale*, EU:C:2022:379, paragraph 103.

2307 Case C-209/10 *Post Danmark*, EU:C:2012:172, paragraph 42; case C-333/21 *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 204.

2308 […].

2309 […].

2310 […].

2311 […].

(1977) Fourth, Google argues that its conduct did not eliminate effective competition.[2312]

(1978) Google's arguments on an objective justification for channelling Google Ads demand preferentially through AdX do not meet the conditions set out by the settled case-law set out above.

(1979) In the first place, Google has not shown that the practice generated efficiencies or pro-competitive benefits. To the contrary, the practice insulated AdX from competition from all other SSPs for a prolonged period in relation to the largest single source of demand for display ad inventory (Google Ads), without any demonstrated benefit to advertisers.

(1980) As explained in recitals (847) to (873), Google's internal documents show […].

(1981) Further, these documents show that […]. These documents individually and collectively show that […].

(1982) Moreover, as explained in recitals (1037) to (1045), it is not necessary to buy almost exclusively from an integrated sell-side tool to profitably offer advertisers risk-free (CPC) pricing. Other ad buying tools that predominantly use CPC pricing profitably do so while buying far more extensively through third-party SSPs than has Google Ads, since it introduced AwBid. Moreover, those buying tools informed the Commission that the transaction risk mentioned by Google, which arises when the advertiser pays on a CPC basis whilst the buying tool must pay the SSP on a CPM basis, is generally manageable.

(1983) In the second place, Google has not shown that the conduct was necessary to achieve any (alleged) efficiencies or pro-competitive benefits. As noted above in recital (1982) and as explained in recitals (1037) to (1045), Google's practice of channelling Google Ads demand preferentially through AdX, resulting in Google Ads buying almost all, or nearly all, of its impressions bought from an SSP via AdX, was not necessary for the maintenance of Google Ads' business model. In particular, it is not necessary to buy almost exclusively from an integrated sell-side tool in order to offer CPC pricing whilst effectively managing the accompanying transaction risk.

(1984) Further, as explained above in recitals (1053) to (1055), Google fails to show that the higher, fixed take rates used on AwBid helped to mitigate the additional costs incurred when bidding on third-party SSPs. Indeed, […]. Accordingly, the higher fixed take rates were not necessary to achieve any (alleged) pro-competitive aim.

(1985) In the third place, as noted above in recitals (1979) to (1982), Google has not shown that the practice generated any pro-competitive efficiencies that could potentially outweigh the anti-competitive effects of the practice. As explained in recital (1030), Google has not demonstrated that advertisers value Google Ads *because* it buys almost exclusively via AdX among all SSPs. To the contrary, the internal documents cited above in recitals (961) to (967) show that […]. Accordingly, it does not appear that any gains to advertisers were likely to be brought about as a result of the conduct. In the absence of any substantiation from Google, the Commission is not required to carry out on its own initiative a balancing of the anti-competitive and pro-competitive effects of the conduct.

(1986) In the fourth place, the Commission notes that there is no need to assess whether effective competition was eliminated as the four criteria are cumulative and the preceding three are not fulfilled.

[2312] […].

8.7.1.2. Inflating the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself

(1987) Google argues that its practice of inflating the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself on a substantial number of them was objectively justified for the following reasons.

(1988) First, Google argues that the policy of sending two bids with a view to second pricing itself (called by Google […]) generated significant efficiency benefits (which Google also calls […] benefits) as it protected the integrity and simplicity of the Google Ads second-price auction, in which advertisers could simply bid their value without having to estimate how others would bid or put in place predictive models to decide optimal bid levels and that it also ensured that Google Ads charged advertisers a competitive target take rate (while publishers received the benefit of the second highest bid in Google Ads).[2313]

(1989) Second, Google argues that its […] was necessary and proportionate as the Commission failed to show that there was an alternative that would achieve the same efficiency benefits (which Google also calls […] benefits). In this context, Google argues that Google Ads submitting one bid only would have harmed both advertisers and publishers because it would have compromised the integrity and simplicity of the Google Ads second-price auction, or increased Google Ads' margin at the expense of AdX publishers. [2314]

(1990) Third, Google argues that any anticompetitive effects would be outweighed by advantages in terms of efficiency that also benefit competition and customers, as advertisers benefited from the simplicity of the Google Ads auction. In this context, Google argues that Google Ads was straightforward to use and that advertisers did not have to make complex judgments regarding the optimal bidding strategy, and moreover that Google Ads could charge advertisers a low take rate.[2315]

(1991) Fourth, Google argues that its conduct did not eliminate effective competition. [2316]

(1992) Google's arguments on an objective justification to inflate the value of the Google Ads impressions channelled through AdX by deliberately second pricing itself do not meet the conditions set out by the settled case-law set out above.

(1993) In the first place, the fact that Google Ads deliberately second priced itself on a substantial number of impressions did not generate any efficiency gains or pro-competitive benefits claimed by Google. Firstly, […][2317] […]. Secondly, and as to Google's claim that the conduct protected the integrity and simplicity of Google Ads' second-price auction, Google has not provided any evidence and quantification of the alleged efficiency gain. Its argument is entirely theoretical and as explained in recitals (1104) to (1106), advertisers are unlikely to adopt the type of behaviour Google describes as threatening the integrity and simplicity of the auction.

(1994) In the second place, it was not necessary for Google Ads to deliberately second price itself on a substantial number of impressions to protect the integrity and simplicity of the Google Ads second-price auction. In fact, Google's argument that Google Ads second-pricing itself was the only way of preserving advertisers' incentives to bid

2313 […].
2314 […].
2315 […].
2316 […].
2317 […].

their true value is entirely theoretical (see recitals (1104) to (1106)). […].[2318,2319] As to the claim that the practice is necessary to achieve a low take rate and that it was good for AdX publishers, this is irrelevant as benefits to publishers at the expense of Google Ads and its customers, the advertisers, cannot be considered an efficiency and thus in the absence of efficiencies, the conduct cannot be considered necessary.

(1995) Furthermore, in any event, the two efficiencies alleged by Google could have been achieved in a less anticompetitive manner if Google Ads had adopted the same bidding strategy when bidding on rivals SSPs as on AdX. For instance, Google Ads could have sent bids to rivals SSPs for the same categories of campaigns as it did for AdX, and, in doing so, sent two bids to the rival SSPs in the same way as it did for AdX, or, when the rival SSP was using a first-price auction, ensured that Google Ads was aiming at the same take rate on the rival SSP as on AdX.

(1996) As to Google's claim that the Commission failed to show that there was an alternative that would achieve the same efficiency benefits, it was up to Google (and not the Commission) to show that there was no less restrictive alternative that would achieve the same (alleged) efficiencies.

(1997) In the third place, as noted above in recital (1993), Google has not shown that the practice generated any pro-competitive efficiencies that could potentially outweigh the anti-competitive effects of the practice. In the absence of any substantiation from Google, the Commission is not required to carry out on its own initiative a balancing of the anti-competitive and pro-competitive effects of the conduct.

(1998) In the fourth place, there is no need to assess whether effective competition was eliminated as the four criteria are cumulative and the preceding three are not fulfilled.

8.7.1.3. Placing lower bids by DV360 on rival SSPs running first price auctions and modified second price auctions with the aims of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX.

(1999) Google argues that its practice of placing lower bids by DV360 on rival SSPs running first price auctions and modified second price auctions with the aims of shifting spend towards AdX and hindering the adoption of Header Bidding was objectively justified for the following reasons.

(2000) First, Google argues that project Poirot brought the following efficiencies (which Google also calls […] benefits):

(1) it prevented advertisers from overpaying in first price auctions or second-price auctions that had modified features that made them close to first price auctions, at a time where SSPs were often not clear on the type of auctions they used to run; and

(2) as a result, project Poirot improved the quality of DV360 and reduced costs for advertisers by optimising their bidding levels into such auctions, thereby improving their ROI.[2320]

(2001) Second, Google argues that project Poirot was necessary to achieve such result and that it was proportionate as it aimed at lowering the bids only as needed to maximise advertisers' surplus.[2321]

2318 […].
2319 […].
2320 […].

(2002) Third, Google argues that even if the Commission had demonstrated any anticompetitive effects resulting from the application of project Poirot, these effects would be outweighed by advantages in terms of efficiency that project Poirot brought to advertisers, saving them from overpaying in non-clean second-price auctions.[2322]

(2003) Fourth, Google argues that its conduct did not eliminate effective competition.[2323]

(2004) Google's arguments on an objective justification for placing lower bids by DV360 on rival SSPs running first price auctions and modified second price auctions with the aims of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX do not meet the conditions set out by the settled case-law cited above.

(2005) In the first place, the Commission does not deny that the implementation of project Poirot resulted also in some efficiencies for advertisers, since, by lowering the bids on third-party SSPs running first price or what Google considered to be modified second price auctions, it also reduced advertisers' costs for those impressions won despite the lowered bids. However, Google did not provide any evidence of the extent of the efficiencies resulting from the way it bid shaded on third party SSPs and not AdX, and in particular in terms of the alleged reduced costs for advertisers, let alone of their total gains or improved ROI. In addition, Google claims that project Poirot increased the surplus of advertisers compared to a situation where DV360 did not shade bids on any SSP, but this is not the relevant scenario to determine the presence of efficiencies associated to the methodology followed by project Poirot. The relevant scenario would be that of an optimisation algorithm which is not designed and maintained with the aim of hindering the adoption of Header Bidding and diverting DV360 spend towards AdX.

(2006) In the second place, the methodology followed by project Poirot was not necessary to achieve the alleged efficiencies. In fact, even if the alleged efficiencies were properly evidenced, there would have been less anticompetitive manners to provide advertisers with the efficiency benefits claimed by Google, or even more efficiency gains, while at the same time averting or at least mitigating the shift in spend towards AdX.

(2007) For instance, one such way would have been to provide rival SSPs with the same information on the existence and workings of project Poirot as Google provided to AdX, including providing rivals with the same ability to test whether project Poirot applied to the features of their modified second price auctions, as well as to discuss with the team of project Poirot the adequacy of shading bids on certain features.

(2008) In doing so, Google would have given rival SSPs the possibility to adapt their auctions to project Poirot in the same way as AdX did. They could for instance have decided to stay away from certain types of modification features considered at a given time too close to first price auctions. This would have brought advertisers the same benefit, since, the rival's auction remaining far from a first price auction, they would not have overpaid their bids, while avoiding the anticompetitive effect of diverting the spend of those advertisers away from the rival SSP into AdX. Rival SSPs could also have implemented adaptations, such as exempting DV360 alone from the application of some of their features, exactly in the same way as AdX

2321 […].

2322 […].

2323 […].

exempted DV360 from the application of AdX DRS, as explained at recitals from (948) to (950).

(2009) Another example of a less anticompetitive manner of implementing project Poirot would have been that of designing it in a way that it would not have resulted in the substantial shift in spend from SSPs participating in Header Bidding towards AdX. This could have been achieved, for instance, by lowering the bids on first price auctions while ensuring that the bids sent still had a chance to win the impression and compete with those sent to AdX.

(2010) Another possible way to achieve the same, and even more efficiencies, would have been that of designing project Poirot in a way that would have generated some extra surplus for advertisers by lowering the bids sent by DV360 on AdX, following the example of other DSPs, as illustrated in recital (1138). The internal documents cited at recitals (931) to (950) demonstrate that […]. The document cited at recital (941), for instance, shows that […].

(2011) In the third place, Google has not proved that the anticompetitive effects of project Poirot were outweighed by advantages in terms of efficiency that also benefitted competition and customers. In fact, since Google has not provided any evidence on the extent of the alleged efficiency gains, it did not demonstrate that such gains counteracted the harmful effects suffered by the SSPs. In the absence of any substantiation from Google, the Commission is not required to carry out on its own initiative a balancing of the anti-competitive and pro-competitive effects of the conduct.

(2012) In the fourth place, the Commission notes that there is no need to assess whether effective competition was eliminated as the four criteria are cumulative and the preceding three are not fulfilled.

8.7.2. The Sell-side Conduct is not objectively justified

(2013) The Commission reaches the conclusion that the Sell-side Conduct is not objectively justified. The framework and burden of proof for the legal assessment of such objective justification and objective necessity defence are established in recitals (1970) and (1971).

(2014) Google states that the Sell-side Conduct is objectively justified. In support of that claim, for each of the practices make-up the Sell-side Conduct, Google argues that (i) it […], (ii) it was […], (iii) the anticompetitive effects alleged by the SO […] and (iv) it […].[2324] In sections 8.7.2.1, 8.7.2.2 and 8.7.2.3, the Commission explains why, contrary to Google's claims, the Sell-side Conduct is not objectively justified.

8.7.2.1. First look and Last Look

(2015) Google argues that the First Look and Last Look were objectively justified for the following reasons.

(2016) First, Google argues that Dynamic Allocation was a pro-competitive innovation that benefited publishers and increased publisher revenues. [2325]

(2017) Second, Google argues that the First Look and Last Look practices were necessary and proportionate as it is not aware of a technological feature that would have enabled real-time bids from rival SSPs to be taken into account in the Waterfall

[2324] […].
[2325] […].

channel. According to Google, it was not feasible to provide real-time bidding from multiple SSPs when Dynamic Allocation was developed in 2007, before the start of the infringement period. Google has supported real-time bidding from rival SSPs via Header Bidding from at least 2014 and has introduced Open Bidding in 2016. The alternatives to First Look and Last Look would have harmed publishers or represented what Google did actually do.[2326] As for Last Look, Google argues that Last look was not a DFP feature but was simply the result of how publishers used Header Bidding with Dynamic Allocation. According to Google, the alternatives suggested by the Commission on what Google could have done to stop Last Look would have harmed publishers. [2327]

(2018) Third, Google argues that the benefits of Dynamic Allocation outweigh any possible anticompetitive effects as it increases revenues for publishers. [2328]

(2019) Fourth, Google argues that its conduct did not eliminate effective competition. [2329]

(2020) Google's arguments on an objective justification for First look and Last Look do not meet the conditions set out by the settled case-law set out above.

(2021) In the first place, Google did not demonstrate that the First Look and Last Look practices generated efficiencies (which Google also calls […]). The allegation that Dynamic Allocation was a pro-competitive innovation that benefited publishers and increased publisher revenue (compared to the way the Waterfall channel had previously worked) cannot constitute an efficiency gain of the Sell-side Conduct. This Decision does not object against the fact that AdX could place real time bids through Dynamic Allocation. Rather, it objects to the fact that all ways in which rivals SSPs could place bids for ad inventory of publishers using DFP were disfavoured compared to AdX. Google did not provide any justification that those restrictions in themselves benefited publishers and increased publisher revenue.

(2022) In the second place, concerning Google's arguments about necessity, whether it was possible or not to provide real-time bidding from multiple SSPs when Dynamic Allocation was introduced is irrelevant. […]. What matters is whether it was possible to provide real-time bidding from multiple SSPs during the period covered by the findings of this Decision, namely as from January 2014. Header Bidding is a technology that enables such real-time bidding from multiple SSPs, and Header Bidding was introduced before 2014. Furthermore, this Decision already sets out in recitals (1483) and (1489) why the Last Look advantage was not a DFP feature that was simply the result of how publishers used Header Bidding with Dynamic Allocation, but instead a consequence of Google's actions that could have been undone easily by Google. Finally, as explained in recitals (1550) and (1551), Google is wrong to allege that the Commission itself would have ever suggested any "alternative" forms of restrictive behaviour.

(2023) In the third place, Google has also not provided any quantification showing that the alleged benefits could potentially outweigh the anti-competitive effects of the practice. In fact, as noted above in recital (2021), Google has not shown that the practice generated any pro-competitive efficiencies. In the absence of any substantiation from Google, the Commission is not required to carry out on its own

2326 […].
2327 […].
2328 […].
2329 […].

initiative a balancing of the anti-competitive and pro-competitive effects of the conduct.

(2024) In the fourth place, the Commission notes that there is no need to assess whether effective competition was eliminated as the four criteria are cumulative and the preceding three are not fulfilled.

8.7.2.2. Open Bidding

(2025) Google argues that the restrictions on Open Bidding were objectively justified for the following reasons.

(2026) First, Google argues that […]. According to Google the increased competition from Open Bidding benefits publishers and rival SSPs. Further, Google argues that: […].[2330]

(2027) Second, Google asserts that the restrictions on Open Bidding are limited to the amount necessary and proportionate to achieve the aim […]. In this regard, Google states that the criteria for admitting SSPs in Open Bidding are legitimate requirements and they do not favour AdX and that; […]. As regards Last Look, Google reiterates that this applied only during the test phase for Open Bidding and that Google quickly changed the auction mechanics of AdX and Open Bidding following feedback, which presumably suggests that this feature was proportionate Concerning the Open Bidding fee, Google notes that it is entitled to charge for this service and that the fee is necessary and proportionate to compensate Google for the resources involved in running and developing Open Bidding. Google also argues that other server-side Header Bidding solutions also charge a percentage-based fee. Finally, as regards the restriction on Open Bidders using vertically integrated demand, Google states that this is necessary and proportionate to ensure that Open Bidding: […].[2331]

(2028) Third, Google argues that, even if Open Bidding has anti-competitive elements, these are outweighed by advantages in terms of efficiency that benefit competition and customers because Open Bidding increases publisher revenue and is appreciated by publishers, because it enables increased real-time competition between SSPs (including AdX) and because it offers a superior competitive alternative to Header Bidding.[2332]

(2029) Fourth, Google argues that its conduct did not eliminate effective competition.[2333]

(2030) Google's arguments on an objective justification for the restrictions imposed on Open Bidding do not meet the conditions set out by the settled case-law set out above.

(2031) In the first place, Google has failed to establish the actual existence and extent of any efficiency gain. To begin with, the very introduction of Open Bidding cannot be invoked as the source of efficiency gains for the purpose of this exercise. Indeed, this Decision does not object to the introduction of Open Bidding as such. Rather, it objects to certain features of Open Bidding, such as the restrictions imposed on the participation of rival SSPs in Open Bidding, the Last Look in the initial phase, the Open Bidding fee and the restrictions on the SSPs' ability to use vertically integrated

2330 […].
2331 […].
2332 […].
2333 […].

demand. Google has not demonstrated to the standard required by the existing case law how these elements generate pro-competitive effects.

(2032) As regards the restrictions imposed on third-party SSPs from participating in Open Bidding, Google has not demonstrated, for example, how the smaller SSPs that it has excluded have lower 'product quality' in terms of, for example, […].[2334] Nor has Google provided any evidence of how it […] whether a particular SSP will provide […] to publishers[2335] or […][2336] in contrast to the clear evidence of internal discussions of Google executives about […].[2337] Those rival SSPs whose applications to participate in Open Bidding have been rejected are clearly not benefitting from Open Bidding. In addition, limiting participation in Open Bidding is unlikely to benefit publishers. As noted in recital (1617), publishers have multiple reasons for wanting to work with different SSPs – access to niche advertiser interests or unique selling formats, for example, and restricting access to a certain category ('*big fish*')[2338] of SSPs is unlikely to meet this range of criteria. Google's primary aim in restricting participation in Open Bidding is, having introduced a new auction channel, to limit the flow of its traditional business into this channel.

(2033) As regards the imposition of Last Look during the first year of Open Bidding, Google does not identify any efficiency gain for this feature.

(2034) As regards the imposition of a fee for participation in Open Bidding, Google has provided no evidence that this fee has funded any further developments in Open Bidding, whether technical, commercial or otherwise. Indeed, if Google is arguing that the efficiency gain of Open Bidding could only be achieved through such development[2339], it has failed to demonstrate that any have been realised.

(2035) Finally, as regards the restriction on vertically integrated SSPs that participate in Open Bidding from using their own ad buying demand, Google has failed to provide any arguments that this is efficient or pro-competitive.

(2036) In the second place, as regards the restrictions on participation in Open Bidding, Google provides no additional explanations as to why its refusal to admit over […] SSPs to Open Bidding is necessary for the aim of combatting fraud and providing value to publishers. Google has stipulated specific criteria: […][2340] but given no indication, beyond the fact that it makes a general assessment of how SSPs are expected to demonstrate that they have met these.[2341] Google could, for example, have required those SSPs that applied to participate in Open Bidding to show that they had taken steps against fraud and malware, but there is nothing in any internal documents, or comments from third-party SSPs, that suggests […].[2342] In contrast, there are a number of internal documents discussing […].[2343] In terms of providing incremental value to publishers, then, given the varying criteria of publishers in

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2334 […].

2335 See recital (1340).

2336 See recital (1608).

2337 See, for example, recital (1411).

2338 See recital (1412).

2339 See recital (2026).

2340 […].

2341 See recital (1340).

2342 As regards the one reference to Open Bidding applicant […], see recital (1426), the primary concern was about cannibalisation and any disquiet about 'violation' was a fear that […] might not actually comply with the Open Bidding restriction on using its own integrated buyside demand.

2343 See, for example recitals (1410) to (1412).

choosing an SSP,[2344] the more SSPs are able to access Open Bidding and offer this channel to publishers, the greater the benefits to them and, conversely, the greater the anti-competitive effects, both to publishers and rival SSPs, of a restriction on participation.

(2037) Concerning the Last Look during the first year of Open Bidding, Google states that it was ended but has submitted no arguments that this was at all necessary in order to achieve any pro-competitive benefits in the first place.

(2038) As re*gard*s the Open Bidding fee, Google has also not demonstrated it was necessary. Google has not provided any reasons why AdX should not be subject to the same payment or the same auction processes as the other SSPs. Google's claim is that the Open Bidding fee resulted in efficiency gains since it allowed funding developments in Open Bidding but Google has not demonstrated any developments in the service being provided because of the fee.

(2039) Finally, as regards the restriction on integrated Open Bidder SSPs from using their own demand, Google provides no explanation as to why this element is necessary to achieve pro-competitive aims. The statement that this was necessary to ensure that Open Bidding was used by SSPs as opposed to ad buying tools does not explain why those SSPs, if integrated, could not use their ad buying demand. In reality, the inability of SSPs to use their own ad buying tools is likely to create inefficiencies and increase costs.

(2040) The Commission thus concludes that, despite Open Bidding being appreciated by publishers because it involves real time bidding in which AdX, with unique access to Google ad inventory, such a solution is entirely possible without those particular design elements that are incorporated by Google in order to favour AdX.

(2041) In the third place, Google has not provided any evidence that any alleged efficiency gains counteract the likely harmful effects of the conduct. Firstly, there are no obvious efficiency gains from restricting participation by SSPs in Open Bidding. Google has provided no evidence that denying smaller SSPs increases 'quality' and reduces fraud or malware, or that reducing the choice of SSPs increases the incremental value to publishers. On the other hand, there are obvious potentially harmful effects to those SSPs that are denied access, in terms of lost business opportunities, to those publishers that might want to work with, for example, small SSPs with niche market connections, and to overall competition in the adtech market. Secondly, the primary gain of Last Look in the first phase of Open Bidding was to Google and its potentially harmful effect to competing SSPs was to reduce their successful bidding rates and revenues. Thirdly, there are no efficiency gains to counteract this.

(2042) Google has also submitted no evidence that the Open Bidding fee was used to develop Open Bidding. In contrast, the fact that the fee was deducted from the third-party SSP bid submitted to publishers was likely to reduce any incremental financial gain, that is, revenues, to publishers from this channel, as well as placing an extra charge on SSPs that AdX was not subject to. Finally, there are no efficiency gains from restricting the use of integrated buying demand by third-party Open Bidder SSPs, whereas this clearly reduces the competitiveness of integrated SSPs and is likely to result in increased costs for such SSPs and therefore lower bids for publisher inventory. In the absence of any substantiation from Google, the

[2344] See recital (1616).

Commission is not required to carry out on its own initiative a balancing of the anti-competitive and pro-competitive effects of the conduct.

(2043) In the fourth place, the Commission notes that there is no need to assess whether effective competition was eliminated as the four criteria are cumulative and the preceding three are not fulfilled.

8.7.2.3. Unified Pricing Rules

(2044) Google argues that the Unified Pricing Rules are objectively justified for the following reasons.

(2045) First, Google argues that the Unified Pricing Rules brought efficiencies (which Google calls "pro-competitive" benefits) as they provide a non-discriminatory approach allowing all auction buyers to compete on the same price floor and therefore improve ad buyer trust and allocative efficiency, and ultimately increases publisher revenue. [2345]

(2046) Second, Google argues that the Unified Pricing Rules are necessary and proportionate to achieve Google's pro-competitive aims, i.e. improving ad buyer trust and allocative efficiency as well as increasing publisher revenue. [2346]

(2047) Third, Google asserts that, even if the Unified Pricing Rules have anti-competitive effects, they are outweighed by the pro-competitive benefits for ad buyers and ultimately publishers. Google argues that the majority of publishers are neutral or support the Unified Pricing Rules, as shown by an independent third-party survey and corroborated by evidence in the file. [2347]

(2048) Fourth, Google argues that its conduct did not eliminate effective competition. [2348]

(2049) Google's arguments on an objective justification for the imposition of Unified Pricing Rules do not meet the conditions set out by the settled case-law set out above.

(2050) In the first place, Google has failed to establish the actual existence and extent of any efficiency gain to the standard required by the existing case law. Google has not given any evidence that the ad buyers welcomed the Unified Pricing Rules as an improvement of their trust in the auction system, while many publishers have expressed their strong opposition to the introduction of the Unified Pricing Rules, which resulted in a serious concern for Google, as set out above in recitals (1454) to (1457). As to the allegation that the Unified Pricing Rules improved […], it is also merely a statement from Google, with no evidential support, let alone any characterisation of the extent of the gains provided by that improved […]. Recitals (1594) to (1596) show that Google disregards the various reasons for which publishers use different price floors. In addition, Google has also not provided any evidence nor quantification of the alleged efficiency gains.

(2051) In the second place, even considering the improvement of ad buyer trust and allocative efficiency as a legitimate and pro-competitive aim, Google has not shown that the Unified Pricing Rules were necessary for its achievement. Google has not demonstrated how the option for publishers to set price floors per SSP have undermined ad buyers trust in the DFP's auction system. It is notable that several

2345 […].
2346 […].
2347 […].
2348 […].

publisher ad servers competing with Google allow publishers to set a different price floor by SSP. It would be surprising that they would have allowed such an approach if it had led to […] by ad buyers or […] of their auction. Accordingly, the Unified Pricing Rules were not necessary to achieve any (alleged) pro-competitive aim.

(2052) In the third place, Google has also not provided any quantification showing that the alleged benefits could potentially outweigh the anti-competitive effects of the practice. In fact, Google has not shown that the practice generated any pro-competitive efficiencies. As explained in recital (2050) above, Google has not demonstrated that ad buyers and publishers supported the introduction of the Unified Pricing Rules. To the contrary, the internal documents cited in recitals (1454) to (1457) show that […]. In the absence of any substantiation from Google, the Commission is not required to carry out on its own initiative a balancing of the anti-competitive and pro-competitive effects of the conduct.

(2053) In the fourth place, the Commission notes that there is no need to assess whether effective competition was eliminated as the four criteria are cumulative and the preceding three are not fulfilled.

8.8. Single and continuous infringement

(2054) The concept of a single and continuous infringement relates to a series of actions which form part of an overall plan because their identical objective distorts competition within the internal market.[2349]

(2055) For the purposes of characterising various instances of conduct as a single and continuous infringement, it is not necessary to ascertain whether they present a link of complementarity, in the sense that each of them is intended to deal with one or more consequences of the normal pattern of competition, and, through interaction, contribute to the attainment of the set of anticompetitive effects desired by those responsible, within the framework of a global plan having a single objective. By contrast, the condition relating to a single objective requires that it be ascertained whether there are any elements characterising the various instances of conduct forming part of the infringement which are capable of indicating that the instances of conduct do not form part of an 'overall plan' as a result of their identical object distorting the normal pattern of competition within the internal market. In that regard, it is necessary to take into account any circumstance such as the period of application, the content (including the methods used) and, correlatively, the objective of the various actions in question.[2350]

(2056) The Commission has reached the conclusion that Google abused its dominant position in the EEA-wide market for programmatic ad buying tools for the open web by adopting the Buy-side Conduct. The Commission has further reached the conclusion that Google abused its dominant position in the EEA-wide market for publisher ad servers by adopting the Sell-side Conduct. Each of these abuses constitutes an infringement of Article 102 TFEU in its own right.

(2057) For the reasons set out below, the Commission reaches the conclusion that the different abuses also, in addition, constitute a single and continuous infringement of Article 102 TFEU.

2349 Case C-441/11 P *Commission v Verhuizingen Coppens*, EU:C:2012:778, paragraph 41 and case-law cited therein.

2350 Joined Cases C-239/11 P C-489/11 P and C-498/11 P *Siemens AG and Others v Commission*, EU:C:2013:866, paragraphs 247 and 248.

(2058) First, they pursue an identical objective, namely to protect and strengthen Google's position in the EEA-wide market for SSPs and benefit AdX at the expense of rival SSPs. They all proceed by tending to exclude competing providers of SSP services. Through both the Buy-side and Sell-side conduct, Google has favoured AdX by channelling its advertiser demand overwhelmingly and on better terms through AdX and by favouring the bids coming through AdX to fill its DFP publisher ad inventory.

(2059) Second, the conducts described in sections 8.3 and 8.4 are complementary in that Google creates an interlocking interdependence between them. This is illustrated, for instance, by the relationship between project Poirot and the Uniform Pricing Rules (see recitals (1402) to (1405)). The indirect network effects that characterise the market for SSPs[2351] further reinforce the interdependence between the conducts and compound their effects.

(2060) Third, both the Buy-side and Sell-side Conducts cover the same overlapping period, since 2014, and are still ongoing. Some aspects of each conduct may have started after 2014 or have been already brought to a close because the Buy-side and Sell-side conducts evolved over time. However, together they constitute a continuum of abusive behaviour covering both the Buy-side and the Sell-side for the entire duration of the Infringement. This is apparent from the fact that the overall orientation of both the Buy-side and the Sell-side Conducts during the whole period has been centred around the favouring of AdX and has remained the same.

(2061) In this context, the Commission also reaches the conclusion that the single and continuous infringement:

(1) departs from competition on the merits;

(2) is capable of producing anti-competitive effects in the EEA-wide market for SSPs; and

(3) is not objectively justified.

(2062) The reasons for the Commission's conclusion are explained below.

(2063) First, the Commission has concluded that each of the Buy-side and Sell-side Conducts departs from competition on the merits (see sections 8.3 and 8.4), and therefore it follows that the single continuous infringement consisting of the two Conducts together also departs from competition on the merits.

(2064) Second, the Commission has established that each of the Buy-side and Sell-side Conducts are capable of producing anticompetitive effects in the EEA-wide market for SSPs. The Commission concluded that each of the conducts is capable of producing anti-competitive effects in its own right (see section 8.5.3 for the Buy-side Conduct and section 8.5.4 for the Sell-side Conduct). The effects of each conduct further reinforce each other. From this, it follows that the single continuous infringement consisting of the Buy-side Conduct and the Sell-side Conduct taken together is also capable of producing anticompetitive effects in the EEA-wide market for SSPs.

(2065) Third, the Commission has concluded that neither the Buy-side Conduct nor the Sell-side Conduct were objectively justified (see section 8.7.1 and 8.7.2). From this, it follows that the single continuous infringement consisting of the Buy-side Conduct

[2351] See section 8.5.2.1.

and the Sell-side Conduct taken together is also not necessary to achieve a legitimate objective.

(2066) The Commission's conclusion that the Buy-side and Sell-side Conducts also constitute a single and continuous infringement of Article 102 TFEU is not contradicted by Google's arguments described below.

(2067) First, Google argues that the Buy-side and Sell-side conducts should not be classified as a single and continuous infringement because they relate to individual decisions which served their own purposes and applied for different time periods. As regards content and objective, none of the conducts would depart from competition on the merits, benefit AdX at the expense of rival SSPs (as well as advertisers and publishers) or exclude rival SSPs. As regards timing, the practices that constitute the Buy-side and Sell-side Conducts would have applied at different time periods.[2352]

(2068) In the first place, as regards content and purpose, Google merely repeats its arguments in relation to the qualification of the Buy-side and Sell-side conducts. These arguments have been addressed in sections 8.3 and 8.4 above. These same sections show on the contrary that both the Buy-side and Sell-side conducts had the same objective, which was to favour AdX vis-à-vis rival SSPs.

(2069) In the second place, as regards timing, the various practices that constituted the Buy-side and Sell-side conducts were launched at different points in time and were taken in the context of product and market circumstances prevailing at the time. However, they shared the same objective and their periods of application overlapped. For example, between the second quarter of 2017 and at least until September 2019, Google placed lower bids by DV360 on rival SSPs running first price auctions and modified second price auctions […] (project Poirot – see recital (827)). Similarly, between January 2014 and September 2019, the Last Look advantage allowed AdX to divert impressions away from rival SSPs that participated in Header Bidding (see recital (1302)).

(2070) Second, Google argues that any finding of a single and continuous infringement is flawed because the Commission fails to establish infringements of Article 102 TFEU.[2353]

(2071) Google merely repeats its arguments in relation to the qualification of the Buy-side and Sell-side conducts. These arguments have been addressed in sections 8.3 and 8.4 above.

8.9. Duration of the infringements

(2072) The Commission reaches the conclusion that the start date of the Buy-side Conduct is at the latest 1 January 2014. This is because the Commission concludes that (i) Google is dominant in the EEA-wide market for buy-side tools for buying programmatic ads in the open web at least since 1 January 2014 (section 7.3); and (ii) the Buy-side Conduct has been in place since September 2009 (section 8.3.2).

(2073) There is no evidence in the Commission's file indicating that the Buy-side Conduct has ended. The Commission therefore reaches the conclusion that the abusive conduct is ongoing.

(2074) The Commission reaches the conclusion that the start date of the Sell-side Conduct is at the latest 1 January 2014.[2354] This is because (i) the Commission concludes that

2352 […].

2353 […].

Google is dominant in the EEA-wide market for publisher ad servers at least since 1 January 2014 (section 7.4); and (ii) the Sell-side Conduct has been in place since at least 1 January 2014 (section 8.4.2).

(2075) There is no evidence in the Commission's file indicating that the Sell-side Conduct has ended. The Commission therefore reaches the conclusion that the abusive conduct is ongoing.

(2076) The Commission reaches the conclusion that the single and continuous infringement began at the latest on 1 January 2014. This is because (i) Google has been holding a dominant position in the EEA-wide market for programmatic ad buying tools for the open web at least since January 2014; (ii) Google has been holding a dominant position in the EEA-wide market for publisher ad servers at least since January 2014; and (iii) Google engaged in the two conducts which constitute the single and continuous infringement since at least 1 January 2014.

(2077) There is no evidence in the Commission's file indicating that the single and continuous infringement has ended. The Commission therefore considers that the single and continuous infringement is ongoing.

9. JURISDICTION

9.1. Principles

(2078) The Union competition rules set out in Articles 101 and 102 TFEU are intended to prevent collective or unilateral conduct of undertakings limiting competition within the internal market. While Article 101 TFEU prohibits agreements and practices which have as their object or effect the prevention, restriction, or distortion of competition 'within the internal market', Article 102 TFEU prohibits the abuse of a dominant position 'within the internal market or in a substantial part of it'.[2355]

(2079) In order to justify the Commission's jurisdiction, it is sufficient that conduct is either implemented in the EEA or is liable to have immediate, substantial and foreseeable effects in the EEA.[2356] Those two approaches for establishing the Commission's jurisdiction are alternative.[2357]

(2080) The criterion of implementation is satisfied by the mere sale within the Union of the products or services concerned by the conduct, irrespective of the location of sources of supply and of production plants.[2358]

(2081) The criterion of immediate, substantial and foreseeable effects of conduct in the EEA is satisfied when the conduct in question is capable of having such an effect, there being no need to show actual effects.[2359] A relevant factor in conducting this assessment is whether the conduct was intended to produce effects within the internal market.

2354 With the exception of France, see recital (709).

2355 Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraph 42.

2356 Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85 *Ahlström Osakeyhtiö and Others* v *Commission*, EU:C:1988:447, paragraphs 11 to 18; Case T-102/96 *Gencor* v *Commission*, EU:T:1999:65, paragraphs 89 to 101.

2357 Case C-413/14 P *Intel Corp. v Commission*, EU:C:2017:632, paragraphs 40 to 46.

2358 Joined Cases 89/85, 104/85, 114/85, 116/85, 117/85 and 125/85 to 129/85 *Ahlström Osakeyhtiö and Others (Wood Pulp)* v *Commission*, EU:C:1988:447, paragraph 17; Case T-102/96 *Gencor* v *Commission* EU:T:1999:65, paragraph 87.

2359 Case C-377/20, *Servizio Elettrico Nazionale and Others*, EU:C:2022:379, paragraph 50.

9.2. Application to this case

(2082) The Commission concludes that it has jurisdiction to apply Article 102 TFEU and Article 54 of the EEA Agreement to Google's conduct as described in this Decision for the following reasons.[2360]

(2083) First, Google's conduct is implemented in the EEA as Google has favoured its SSP AdX through the Buy-side Conduct and the Sell-side Conduct in all Contracting Parties to the EEA Agreement. Google's conduct concerns products and services provided across the entire adtech stack,[2361] including publishers, advertisers, sell-side and buy-side intermediaries which are established and operate in the EEA.

(2084) Second, Google's conduct is capable of having substantial, immediate and foreseeable effects in the EEA. Google's conduct is liable to affect the competitive structure by excluding competing SSPs, which are established and operate in the EEA.

10. EFFECT ON TRADE BETWEEN MEMBER STATES

10.1. Principles

(2085) Article 102 TFEU prohibits as incompatible with the internal market an abuse of a dominant position "*in so far as it may affect trade between Member States*". Article 54 of the EEA Agreement contains a similar prohibition with respect to trade between Contracting Parties to the EEA Agreement.

(2086) The effect on trade criterion consists of three elements.

(2087) First, "*trade*" must be affected. The concept of trade is not limited to traditional exchanges of goods and services across borders, but covers all cross-border economic activity. It also encompasses practices affecting the competitive structure of the internal market by eliminating or threatening to eliminate a competitor operating within the territory of the European Union.[2362]

(2088) Second, a practice must be capable of having an effect on trade between Member States.[2363] In other words, it must be foreseeable with a sufficient degree of probability on the basis of a set of objective factors of law or fact that the practice in question has an influence, direct or indirect, actual or potential, on the pattern of trade between Member States.[2364] Where a dominant undertaking engages in exclusionary conduct in more than one Member State, such conduct is normally, by its very nature, capable of affecting trade between Member States.[2365]

(2089) Third, the effect on trade between Member States must be "*appreciable*". This is assessed primarily with reference to the position of an undertaking on a relevant

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2360 As stated in recital (709), this Decision does not include any findings as regards the Sell-side Conduct in France in the period before the adoption of the French statement of objections.

2361 See Figure 2 and Figure 3.

2362 Joined Cases 6/73 and 7/73 *Commercial Solvents*, EU:C:1974:18, paragraphs 32 and 33; Joined Cases T-24/93 and others *Compagnie Maritime Belge v Commission*, EU:T:1996:139, paragraph 203.

2363 Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 104; Case C-41/90 *Höfner and Elsner v Macrotron*, EU:C:1991:161, paragraph 32; and Case T-228/97 *Irish Sugar v Commission*, EU:T:1999:246, paragraph 170.

2364 Case 5/69 *Voelk v Vervaecke*, EU:C:1969:35, paragraph 5/7.

2365 Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty, OJ C 101, 27.4.2004, page 81, paragraph 75.

product market.[2366] The stronger the position of an undertaking, the more likely it is that the effect on trade between Member States of a practice will be appreciable.[2367]

10.2. Application to this case

(2090) The Commission considers that the different forms of conduct described in sections 8.3 and 8.4 individually and collectively have an appreciable effect on trade between Member States (and Contracting Parties to the EEA Agreement) for the following reasons.

(2091) First, Google's economic activities related to online display advertising intermediation are, by their very nature, cross-border in scope, given that online communications transcend national boundaries. Whilst a particular advertisement might be directed at users in a certain linguistic or geographic area, the industry is international, and publishing and advertising customers include global brands as well as local players.

(2092) Second, the different forms of conduct affect the competitive structure of the internal market by eliminating or threatening to eliminate competitors of the adtech stack operating within the territory of the EEA.

(2093) Third, the different forms of conducts have been implemented in all Contracting Parties to the EEA Agreement.

(2094) Fourth, since at least 2014, Google holds a dominant position in (i) the EEA-wide market for programmatic ad buying tools for the open web; and (ii) the EEA-wide market for publisher ad servers. Given Google's dominant position in these markets, it is therefore likely that the effect on trade will be appreciable.

11. ADDRESSEES

11.1. Principles

(2095) Article 102 TFEU and Article 54 of the EEA Agreement are addressed to undertakings. The concept of an undertaking refers to any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.[2368] The term "undertaking" must also be understood as designating an economic unit even if in law that economic unit consists of several persons, natural or legal.[2369]

(2096) When such an economic entity infringes the competition rules, it falls, according to the principle of personal responsibility, to that entity to answer for that infringement.[2370] However, the infringement of competition law must be imputed unequivocally to a legal person on whom fines may be imposed and the SO must be addressed to that person. It is also necessary that the SO indicates in which capacity a legal person is called on to answer the allegations.[2371]

2366 Case 5/69 *Voelk v Vervaecke*, EU:C:1969:35, paragraph 5/7.

2367 Case T-65/89 *BPB Industries and British Gypsum v Commission*, EU:T:1993:31, paragraph 138.

2368 Case C-90/09 P *General Química and Others v Commission*, EU:C:2011:21, paragraph 34 and the case-law cited.

2369 Case C-90/09 P *General Química and Others* v *Commission*, EU:C:2011:21, paragraph 35 and the case-law cited.

2370 Case C-90/09 P *General Química and Others* v *Commission*, EU:C:2011:21, paragraph 36 and the case-law cited.

2371 Case C-97/08 P *Akzo Nobel and Others v Commission*, EU:C:2009:536, paragraph 57.

(2097) A parent company that owns 100% (or almost 100%) of a subsidiary has the ability to exercise decisive control over such subsidiary. In such a case, there exists a rebuttable presumption that the parent also in fact exercises that control without the need for the Commission to adduce further evidence on the actual exercise of control (the parental liability presumption).[2372]

11.2. Application to this case

(2098) For the reasons set out above in sections 8.3 and 8.4, the Commission concludes that Google's Buy-side Conduct, on the one hand, and Sell-side Conduct, on the other hand, constitute, each by themselves, an infringement of Article 102 TFEU and of Article 54 of the EEA Agreement.

(2099) As set out above in section 1, the Commission also reaches the conclusion that these abuses constitute a single and continuous infringement of Article 102 TFEU and of Article 54 of the EEA Agreement.

(2100) First, for the reasons set out in this Decision, the infringements should be imputed to Google LLC as of January 2014 as it has directly engaged in all abuses, considered together as a single and continuous infringement, or each of them as an individual infringement. The relevant products are designed by Google LLC, and the strategy implemented on the relevant markets is defined by Google LLC.

(2101) Second, the Commission holds Alphabet Inc. jointly and severally liable as of 2 October 2015 for all abuses, considered together as a single and continuous infringement, or each of them as an individual infringement. Alphabet Inc. holds 100% of Google LLC since 2 October 2015 (indirectly through XXVI Holdings Inc. since 30 September 2017) and is therefore presumed to exercise decisive influence over Google LLC, the legal successor of Google Inc., since that date. For its part, Google Ireland Ltd. is a wholly owned subsidiary of Google Ireland Holdings, whose ultimate parent company is also Alphabet Inc. since 2 October 2015.

12. REMEDIES

12.1. Article 7 of Regulation 1/2003 – termination of the infringement

12.1.1. Principles

(2102) Where the Commission finds an infringement of Article 102 of the TFEU and Article 54 of the EEA Agreement, it may by decision require the undertaking concerned to bring such infringement to an end pursuant to Article 7 of Regulation 1/2003.[2373]

(2103) According to Article 7 of Regulation 1/2003, the Commission may impose any behavioural or structural remedies that are proportionate to the infringements committed and necessary to bring the infringements effectively to an end. When the

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[2372] Case C-90/09 P *General Química and Others* v *Commission*, EU:C:2011:21, paragraphs 39-40 and the case-law cited.

[2373] Under Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements of implementing the Agreement on the European Economic Area "*the Community rules giving effect to the principles set out in Articles 85 and 86 [now Articles 101 and 102 TFEU] of the EC Treaty [...] shall apply mutatis mutandis. This shall also hold good for any relevant provisions which the Community might adopt in the future in the field of competition*" (OJ L 305 of 30.11.1994, page 6).

infringements have ended, remedies can be imposed to prevent the infringements being committed again in the future where there is a risk of such repetition.[2374]

(2104) It follows that a decision pursuant to Article 7 of Regulation 1/2003 may include an order to the undertaking concerned "*to do certain acts or provide certain advantages which have been wrongfully withheld as well as prohibiting the continuation of certain action, practices or situations which are contrary to the Treaty. For this purpose the Commission may, if necessary, require the undertaking concerned to submit to it proposals with a view to bringing the situation into conformity with the requirements of the Treaty*".[2375]

(2105) Regarding structural remedies, Article 7 of Regulation 1/2003 provides that these may only be imposed "*either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy*".

(2106) Recital (12) of Regulation 1/2003 further indicates that "*[c]hanges to the structure of an undertaking as it existed before the infringement was committed would only be proportionate where there is a substantial risk of a lasting or repeated infringement that derives from the very structure of an undertaking*".

(2107) The requirement that a remedy must be effective empowers the Commission to enjoin a dominant company to refrain from adopting any measures having the same or an equivalent object and/or effect as the conducts identified as abusive.[2376]

(2108) The Commission may also impose structural remedies. In the past, the Commission has imposed such remedies, including divestments, where behavioural measures would have been insufficient to effectively end the infringement and prevent the recurrence of measures having the same or equivalent object and/or effect.[2377] Divestitures have also been accepted as binding commitments under Article 9 of

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2374 By analogy, see Joined Cases C-6/73 and C-7/73 *Commercial Solvents*, EU:C:1974:18, paragraph 46; Case C-62/86 *Akzo*, EU:C:1991:286, paragraph 155; Case T-228/97 *Irish sugar*, EU:T:1999:246, paragraph 299.

2375 Joined Cases C-6/73 and C-7/73 *Commercial Solvents v Commission*, EU:C:1974:18, paragraph 45.

2376 Judgment of the Court of First Instance in Tetra Pak II, paragraph 220. In its Decision in Tetra Pak II, the Commission not only considered the contractual tying Tetra Pak had engaged in to be abusive and required its termination pursuant to Article 82 EC, but also ordered Tetra Pak in Article 3 of the Decision to refrain from adopting measures having equivalent effect as the ones found unlawful. In Article 3, Tetra Pak was inter alia ordered to "*inform any customer purchasing or leasing a machine of the specifications which packaging cartons must meet in order to be used on its machines*." (See Decision 92/163/EEC, Article 3(5) and judgment of the Court of First Instance in Tetra Pak II, paragraph 139.) In Hilti, in addition to imposing a fine and requiring that the infringement be brought to an end, the Commission ordered that Hilti: "*shall refrain from repeating or continuing any of the acts or behaviour specified in Article 1 and shall refrain from adopting any measures having an equivalent effect.*" (Commission Decision 88/138/EEC in Cases IV/30.787 and 31.488 - *Eurofix-Bauco v Hilti* (OJ L65, 11.3.1998, page 19, Article 3). See also Commission Decision 93/252/EEC in Cases No IV/33.440 *Warner- Lambert/Gillette and Others* and No IV/33.486 *BIC/Gillette and Others* (OJ L116, 12.5.1993, page 21) and Decision in *British Midland* and the judgment in *Commercial Solvents*, paragraph 45).

2377 Case COMP/AT.39759 *ARA foreclosure*, Decision of 20 September 2016. The Commission required the dominant undertaking to divest the part of Austria's waste collection infrastructure that it owned, as a remedy for an infringement by which that undertaking had set unjustified conditions for the use of this infrastructure, which could not be duplicated by competitors. The Commission found that the divestiture was a necessary and proportionate remedy, taking into account the substantial risk of a repeated infringement in light of ARA's past behaviour and the fact that no other less burdensome measures could be conceived that would equally effectively remove ARA's remaining possibility to refuse access to the relevant infrastructure.

Regulation 1/2003 in order to remove competition concerns resulting from inherent, structural conflicts of interest that no other remedy could remove.[2378]

12.1.2. Application to the present case

(2109) The Commission does not have any indication that Google has terminated the Infringement. Therefore, it is necessary to order that Google brings each of the practices of the Buy-side and Sell-side Conduct to an end in so far as it has not already done so.

(2110) Furthermore, as mentioned in the SO and explained below in section 12.1.2.1 the Commission considers that additional measures are necessary to bring the Infringement effectively to an end and prevent the repetition of the whole or parts thereof, in particular by eliminating Google's structural conflicts of interest that enable and incentivise the conduct making up the Infringement and that present a significant risk of repetition.

(2111) […], Google raised, *inter alia*, specific claims in relation to the Commission's preliminary conclusions on the conflicts of interest and risk of repetition requiring remedies. These claims made by Google in the course of the proceedings will be addressed below in Section 12.1.2.2.[2379]

(2112) Section 12.1.2.3 sets out the process to be followed by Google in order to bring the Infringement effectively to an end. Thus, the Commission instructs Google to notify the Commission of any measures by means of which it intends to terminate the practices constituting the Infringement and to prevent its recurrence. This includes any such measures required to eliminate Google's structural conflicts of interest. If deemed appropriate or necessary, and subject to the opportunity for Google to be heard and the Commission's duty to state reasons, the Commission may adopt a second decision under Article 7(1) of Regulation 1/2003 in this case, making binding specific remedies on Google. Before ordering any specific remedy, the Commission will consider the remedies proposed by Google.

12.1.2.1. Measures eliminating Google's structural conflicts of interest are required to bring the Infringement effectively to an end

12.1.2.1.1. Google's dominant presence in the adtech stack creates structural conflicts of interest which enabled and incentivised Google's anticompetitive conducts

(2113) In the SO, the Commission informed Google that it had reached the preliminary conclusion that Google's presence and dominance on multiple levels of the adtech stack give it insurmountable advantages over rivals and create structural conflicts of interest that enabled and incentivised Google's anticompetitive conducts.[2380] The Commission maintains that conclusion in this Decision, for the reasons that follow.

2378 See for example case COMP/AT.39315 *ENI*, Commitments decision of 29 September 2010 and case COMP/AT.39402 *RWE gas foreclosure*, Commitments decision of 18 March 2009. The Commission approved the divestiture of transmission infrastructure which the companies either owned or had a significant shareholding in. In both cases, the Commission pointed out the inherent conflicts of interest arising from the position the companies had both as suppliers of gas and as operators of a transmission system. This dual role gave them the ability to exclude competitors in the supply of gas by refusing or degrading conditions for access to the transmission system, and necessitated divestiture as a remedy in order to remove the risk that the infringing practices could be repeated. In both cases, the Commission found that without a structural remedy, the incentives to exclude competitors deriving from that conflict of interest would not be removed.

2379 […].

2380 Sections 12.2.1.1 and 12.2.1.2 of the SO.

(2114) First, the Buy-side and Sell-side Conducts both have as their overall objective the leveraging of Google's dominance in one level of the adtech stack into another level (in particular the EEA-wide market for SSPs), thereby strengthening Google's position in the latter level. Google employed several practices whereby one of its services would favour its other services to the detriment of rivals. The various practices each contributed to the foreclosure of rivals in the EEA-wide market for SSPs, thereby helping to ensure that Google would remain the largest intermediary throughout every part of the adtech stack.

(2115) In the first place, on the sell-side of the adtech stack, Google has significant advantages over potential rivals via its dominant position on the EEA-wide market for publisher ad servers (DFP, now integrated in GAM; see section 7.4). With DFP, Google controls the decision point that manages the publisher ad inventory and determines which bidder ultimately wins the ad impression. The publisher ad server is, moreover, a service in relation to which it is difficult and expensive for a publisher to switch providers.

(2116) In the second place, on the buy-side of the adtech stack, Google is dominant with two tools (DV360 and Google Ads; see section 7.3), effectively participating as the largest bidder (both in terms of impressions and revenues, see recital (1007)) in its own auctions. Moreover, as explained in section 7.3.4, Google's buy-side tools further benefit from integration with other parts of Google's ecosystem, which results in several strategic advantages vis-à-vis rival buy-side tools, including significant user data advantages.

(2117) In addition to holding those two dominant positions, Google also maintains the largest SSP (AdX, integrated with the publisher ad server function in GAM). As detailed in section 8.6.1, AdX and DFP are moreover tightly integrated in ways that allow them to benefit from more favourable interoperability than either can achieve with a third-party SSP or publisher ad server.

(2118) There are other participants in the adtech stack that offer at least some services on both the buy- and sell-side with a degree of vertical integration, for example a DSP and an SSP. However, no other player […] Google's scale on any single part of the stack, let alone across all levels of it. No other undertaking plays such a […] role both in managing and holding auctions for publishers' ad inventory, as well as in bidding for that inventory. This structure, in combination with Google's dominant positions, creates inherent conflicts of interest making its vertical integration a tool to abuse its dominance, against its rivals and, in many occasions, against the interest of its own customers. Google has done so by systematically adopting strategies that favour its own services, hence foreclosing rivals, reducing choice and locking both advertisers and publishers into the use of its services, to the detriment of those advertisers and publishers, rival players on the ad tech stack and ultimately consumers.

(2119) Google's conducts are complex and involve various forms of favouring occurring in both "directions", on the buy-side and on the sell-side, that interact and reinforce each other. However, they share one common objective, […]. In practice, Google has accomplished this objective by inducing its dominant services at each end of the adtech stack to favour the SSP sitting in the middle (i.e. AdX), preventing rival SSPs from competing on equal terms both for demand from advertisers supplied by its programmatic ad buying tools and for the inventory of publishers supplied by its

publisher ad server.[2381] […]. It has generally prevented the emergence of competitive alternatives that could disintermediate Google from this primary position, especially on the sell-side.

(2120) Second, these conflicts of interest are plainly on display in the chronology of the Buy-side and Sell-side Conducts described in sections 8.3 and 8.4, […]. These numerous, multi-faceted practices on different markets confirm that the essence of the problem is in the inherent conflicts of interest stemming from Google's structure and market power, and not any specific practice taken in isolation.

(2121) Google's Buy-side Conduct reveals several ways in which the inherent conflicts of interest resulting from its vertical integration across the adtech stack induced Google to engage in abusive favouring of its own services.

(2122) In the first place, as detailed in sections 8.3.2.1 and 8.3.3.2.1, […].[2382] Then, when AwBid was eventually launched, Google Ads still treated AdX with […],[2383] first by allowing Google Ads to bid on third-party SSPs only for a small subset of its bids, and then by systematically lowering the bids Google Ads would place for inventory on third-party SSPs compared with bids placed on AdX. At every stage, […].[2384]

(2123) In the second place, as detailed in sections 8.3.2.2 and 8.3.3.2.2, Google Ads deliberately second-priced itself on AdX for a significant percentage of impressions, inflating the value of those impressions and revenues for AdX while extracting higher payments from advertisers. As explained in section 8.3.4.1.2, this practice is motivated by the structural conflict of interest between Google Ads' mission to provide value to advertisers and Google's internal need to support AdX's performance. […].[2385]

(2124) In the third place, as detailed in sections 8.3.2.3 and 8.3.3.2.3, […] placed by DV360 on third-party SSPs in such a way as to harm rival SSPs that adopted Header Bidding and direct bids instead to AdX. It did so knowing that, […].[2386] As explained in section 8.3.4.1.3, this practice not only favoured AdX but also, at least partially, sacrificed the interests of DV360's advertisers and DV360 itself.

(2125) The Sell-side Conduct also reveals a different but related aspect of Google's structural conflicts of interest, centred around Google's dual role, on the one hand, as bidder (and bid aggregator) via AdX, an SSP whose interest is in intermediating as many ad impressions as possible, and on the other hand, as auction manager via DFP, a publisher ad server whose purpose should be to manage publishers' ad inventory and drive their display advertising revenues by running fair and transparent auctions that attract a maximum of competitive bids.

(2126) The chronology of the practices and Google's internal documents shows […].

(2127) In the first place, as explained in section 8.4.2.1, rival SSPs placing bids in the Waterfall channel for inventory of publishers using DFP were relegated to static bids, generally based on historical average prices, and were only considered at all if AdX declined, in real time, to buy the impression via Dynamic Allocation. This meant in

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2381 Google favoured AdX in ways that departed from competition on the merits via the Buy-Side Conduct (section 8.3) and the Sell-Side Conduct (section 8.4).

2382 See recital (755).

2383 See recital (853).

2384 See recital (862). […].

2385 See recital (985).

2386 See recital (1000).

practice that the SSP willing to bid highest for an impression would not always win it, allowing AdX to cherry-pick the most valuable ad inventory and reducing publisher revenues compared to a situation in which all SSPs could bid in real time. […] (sections 8.4.3.2.1 and 8.4.4.1.1).[2387]

(2128) As detailed in section 8.4.2.2, publishers and adtech rivals reacted to the First Look advantage enjoyed by AdX by developing Header Bidding, a technology which is generally acknowledged as having significantly increased the revenues of publishers who adopted it, beginning around 2014. Google recognised internally […].[2388]

(2129) In the second place, Google saw Header Bidding as an […] precisely because it could have allowed market participants to […].[2389] In response, Google employed various strategies to favour bids placed by AdX for inventory of publishers using DFP compared to bids placed by rival SSPs via Header Bidding, as detailed in section 8.4.2.2.[2390] Notably, the "first look" advantage AdX enjoyed in the Waterfall set-up, in which AdX could simply choose whether or not to buy an impression before any other SSP was called, was transformed into a "last look" advantage against Header Bidding, whereby AdX effectively knew what price it had to beat from the Header Bidding channel in order to win the impression. Google exacerbated the "last look" advantage by implementing sell-side DRS. […].[2391]

(2130) In the third place, in parallel, as detailed in section 8.4.2.3.1, Google developed Open Bidding, a new auction technology within DFP that would give selected SSPs besides AdX a chance to compete for impressions via real-time bids, a retreat from the "last look" and a development that Google employees […].[2392] However, even with this development, Google devised and implemented diverse ways of favouring AdX via DFP, largely preserving its advantages, as detailed in section 8.4.2.3.2.

(2131) In the fourth place, Google forced on publishers, despite their vocal and reasoned opposition, the Unified Pricing Rules, which prevent publishers to set different price floors for different SSPs within DFP's unified first price auction, an ability that publishers valued for various legitimate reasons. Google pushed this rule through together with its switch to a Unified First Price auction in DFP in September 2019 because […].[2393]

(2132) Third, Google's adtech services are not merely vertically integrated along a supply chain, as is common in many undertakings and in many industries. Google's adtech services are, rather, integrated in a way that makes them especially conducive to abuses of a dominant position based on favouring.

(2133) Specifically, there are at least three levels of platforms (and at least four distinct Google services) concerned by the favouring conduct. These are DV360 and Google Ads at the level of the buy-side tools, the AdX component of GAM at the level of the SSP, and the DFP component of GAM at the level of the publisher ad server, on the supply-side. Taken together, these services run all along the adtech stack from the advertiser to the publisher, with the entire structure acting as a two-sided market. Google operates on the adtech stack not only as a provider of tools to buyers to bid

2387 […].
2388 See recital (1439).
2389 See recital (1378).
2390 Note that, as detailed in recitals (1281) to (1285), […].
2391 See recitals (1443) to (1446).
2392 See recital (1333).
2393 See recital (1456).

on ad inventory, but also as an exchange where bids from buyers are matched with offers from sellers, and as an auction manager acting on behalf of the seller.

(2134) As the conduct described in this Decision demonstrates, Google has the capability to intervene at multiple points of the stack, by various means and against the interests of either advertisers or publishers, or both, in ways that harm rivals and the conditions of competition on the entire stack.[2394]

(2135) Google's structure renders it conflicted because its different adtech tools offer distinct services to either publishers or advertisers, whose interests in relation to the pricing of ad inventory are diametrically opposed, with publishers interested in maximising revenue and advertisers interested in getting the most value out of their advertising spend. […].[2395]

(2136) Google's end-to-end structure and dominance at both ends allow it to arbitrage between buyers and sellers according to its own preferences and priorities rather than based on normal market forces. Hence the recognition by Google employees that […].[2396]

(2137) Further, Google's structural conflicts of interest manifest themselves not only between the buy-side and sell-side, but also within the two components of the sell-side tool (GAM) itself, in that via DFP Google makes the rules for, and conducts, the auctions on which Google also competes with rival intermediaries for the submission of bids for ad inventory via AdX, DV360 and Google Ads. Google operates as both a supplier of bids for ad inventory (albeit as an intermediary) via AdX (not the least as it largely channels bids from Google Ads and DV360) and as a kind of system operator, insofar as it controls the publisher ad server, DFP, that defines the rules and competitive parameters of the auctions that determine which bid wins an impression offered by the publisher. As explained above in section 8.4.4.1, Google's incentives to favour its own services to the detriment of rivals often trumped the interests of publishers in having a publisher ad server that conducts fair, impartial auctions and thereby maximises competitive demand for their inventory.

(2138) Fourth, the auctions at issue in this case are complex and are affected by many variables. The bidding behaviour of any given undertaking active on the stack is determined by a complex interaction between its ability to determine the interests of the user to whom an ad will be shown, the bidding models and optimizations used by the intermediaries, the structure of the auction, the goals of each intermediary with respect to their revenue share, and other factors. The complexity and variation of the conduct described in this Decision show that these variables can be instrumentalised in numerous ways to engage in the favouring of one counterparty at the expense of others and that detection of any such favouring from outside can be extremely difficult. Favouring practices can be disguised as legitimate commercial objectives, or can even be intertwined with them, which renders any attempt to recognise them from the outside, all the more challenging.

2394 This is to say that, as the evidence put forth in this Decision demonstrates, Google can at least devise and implement favouring strategies in its buy-side tools for the benefit of its sell-side business, or originating in the publisher ad server but benefiting a service that sits between that sell-side service and the advertiser.

2395 […].

2396 See recital (847).

12.1.2.1.2. Google's dominant presence in the adtech stack creates a risk of repeated infringement

(2139) In the SO, the Commission also informed Google that it had reached the preliminary conclusion that there is a substantial risk of a lasting or repeated infringement that derives from the very structure of Google's adtech services.[2397]

(2140) As explained in the preceding section, the Commission considers that Google's adtech services are vertically integrated in a way that makes them especially conducive to abuses of a dominant position based on favouring and that has enabled and incentivised numerous forms of abusive conduct, as detailed in sections 8.3 and 8.4. The Commission maintains the conclusion that the structure of Google's adtech business presents a substantial risk of a repeated or lasting infringement, for the reasons set out below.

(2141) The chronology of the practices set out in this Decision demonstrates that Google's vertical integration and strength throughout the adtech stack have consistently enabled it to adapt its behaviour, in many cases without the knowledge of other market participants, in order to retain any unfair advantage caused by the respective favouring conduct, despite being temporarily endangered by other actions Google itself decides to take, or due to the actions of other participants or the general evolution of the industry. Some of the behaviours also appeared to have gone undetected for a substantial amount of time.

(2142) Numerous examples can be observed, in both the Buy-side Conduct and the Sell-side Conduct, of Google's ability to adapt and modify its favouring strategies.

(2143) First, in respect of the Buy-side Conduct, Google Ads has decisively favoured AdX from the moment AdX was launched until the present, but the mechanism of the favouring has had three distinct iterations over time, in which Google Ads has progressively moved from bidding on no SSP other than AdX (2009 to mid-2015)[2398] to bidding on third-party SSPs but only for a single targeting type (mid-2015 until late 2018),[2399] to bidding for additional targeting types but demanding a revenue share so high that Google Ads almost never wins with bids on other SSPs (from late 2018 to the present).[2400]

(2144) Google Ads has also favoured AdX via the double bidding scheme from 2009 until 2019, whereby Google Ads would submit two bids per impression to AdX, resulting in Google Ads often second-pricing itself.[2401] The behaviour, as well as its evolution in project Bernanke,[2402] aimed at increasing AdX revenues and appears to have largely escaped detection (until it was revealed through investigations by antitrust authorities).

(2145) Via project Poirot, Google reduced the values of DV360's bids into third-party SSPs using Header Bidding, diverting traffic in favour of AdX.[2403] Project Poirot was launched in the second quarter of 2017 and went through various changes to the

2397 Section 12.2.2.2 of the SO.
2398 See section 8.3.2.1.1.
2399 See section 8.3.2.1.2.
2400 See section 8.3.2.1.3. Google even calibrated those higher margins on AwBid at two different levels ([…] for remarketing and […] for all other targeting types), depending on its needs in respect of different targeting types.
2401 See section 8.3.2.2.
2402 See recitals (798) and (799).
2403 See section 8.3.2.3.

models underlying its bidding logic, making […] to the point where a bid on a third-party SSP could […].[2404]

(2146) Second, with respect to the Sell-side Conduct, Google likewise adapted its strategies in response to changing conditions, always maintaining some form of favouring towards AdX. When the advent of Header Bidding called into question AdX's "first look" advantage, which allowed AdX to take an impression before any rival SSP had a chance to bid on it, Google accepted the winning Header Bidding bid into the final auction held by DFP but gave AdX a "last look" instead, which allowed it to bid knowing the price it had to beat to take the impression.[2405] Google amplified this serious advantage via a sell-side version of DRS, whereby AdX would reduce its fee (effectively raising its bid) when it needed to do so to win an impression. A second version of sell-side DRS followed the first, allowing AdX also to increase its fee when it could do so and still win an impression, based on its knowledge of the highest Header Bidding bid.[2406]

(2147) In 2019, when Google introduced the Unified First Price Auction into DFP, it gave up the last look and claims to have paused sell-side DRS. However, it devised other means to favour AdX, in particular by instituting the Unified Pricing Rules.[2407]

(2148) In respect of some of the projects and changes listed above, such as the DRS projects, project Bernanke, project Poirot and the differential revenue shares on AwBid, the evidence indicates that the existence and implementation of these projects were concealed or not fully explained to advertisers, publishers or adtech providers, as the case may be, whilst these were often opted in to the change by default. This level of secrecy and opacity would have been very difficult, if not impossible, to maintain for an adtech provider lacking Google's scale and end-to-end integration across the full stack.

12.1.2.2. Google's arguments on the existence of structural conflicts of interest and the risk of recurrence due to the very structure of Google's adtech business

(2149) […], Google contests that its presence on the adtech stack is characterised by structural conflicts of interest that enable and incentivise the conduct, and that these conflicts of interest give rise to a serious risk of a lasting and repeated infringement.

(2150) Google argues that its vertical integration across the ad tech stack and the fact that it serves both sides of a two-sided market do not amount to a structural conflict of interest.[2408]

(2151) In particular, Google argues that it does not have any special ability or incentive to foreclose rivals or favour itself giving rise to a risk of a lasting or repeated infringement. Essentially, Google argues that it is no different from any vertically integrated undertaking and claims that the Commission has not shown otherwise. Google further contests the Commission's allegation that some of the conduct occurred without the knowledge of other market participants or went undetected for a substantial amount of time.[2409]

2404 See recital (828).
2405 See sections 8.4.2.2.2.1 and 8.4.2.3.2.2.
2406 See recital (1314).
2407 See section 8.4.2.2.2.2.
2408 […].
2409 […].

(2152) The Commission considers that Google's arguments do not convince for the reasons set out below.

(2153) First, as regards Google's argument that there are no structural conflicts of interest, the Commission has explained above in detail its conclusion that the very structure of Google's presence (and dominance) across the whole adtech stack gives rise to structural conflicts of interest which create in turn a substantial risk of a lasting or repeated infringement. In light of this, the Commission considers that the complete removal of such conflicts of interest is necessary in order to effectively bring the infringements to an end.

(2154) Contrary to Google's claims that the Commission has merely described normal vertical integration across a supply chain, the Commission explained in the SO and in the preceding section of this Decision (in particular recitals (2132) to (2138)), that there are a number of factors that make Google's presence on the adtech stack different from an ordinary example of vertical integration. These factors give rise to structural conflicts of interest which enabled and incentivised the conduct throughout the duration of the Infringement and risk its repetition if such conflicts of interest are not removed. The Commission thus explained that Google's adtech services are not merely vertically integrated along a supply chain, but are rather integrated in a way that makes them especially conducive to favouring, especially when taking into account Google's scale at each level of the supply chain. This is because:

(1) There are at least four distinct Google services concerned (DV360, Google Ads, AdX and DFP), and at least three levels of platforms (programmatic ad buying tools for the open web, SSPs and publisher ad servers). Google is dominant in two of them: in the EEA-wide market for publisher ad servers and in the EEA-wide market for programmatic ad buying tools for the open web. In addition, Google also maintains the largest SSP. Taken together, these services run all along the adtech stack from the advertiser to the publisher, with the entire structure acting as a two-sided market (i.e. the advertiser side and the publisher side).

(2) Google operates on the adtech stack not only as a provider of tools to buyers to bid on ad inventory, but also as an exchange where bids from buyers are matched with offers from sellers, and as an auction manager acting on behalf of the sellers of ad inventory.

(3) Google therefore operates a conflicting dual role as both a supplier of bids for ad inventory and as a kind of system operator, as it also operates the dominant publisher ad server that defines the rules and competitive parameters of the auctions that determine which advertiser's bid wins an impression offered by the publisher, thus giving Google significant influence on the conditions of supply to which it and other market participants (rival intermediaries, advertisers and publishers) are subject.

(4) Google's scale on any single part of the adtech stack, let alone across all levels of it, is unmatched, and no rival plays nearly as important a role both in managing and holding auctions for publisher ad inventory, as well as in bidding itself for that inventory on those same auctions.

(2155) Second, the chronology of the Buy-side and Sell-side Conducts described in this Decision demonstrates the existence of these conflicts of interest, as Google has favoured the interests of AdX over the interests of its own buy-side business and often that of advertisers, as well as, at times, against the interests of DFP and its

customers, the publishers, in various ways that changed and adapted over a period of time. […].[2410]

(2156) Third, Google's claim that the Commission erred in alleging that some of the conduct went undetected for a significant period is without merit. Google attempts to refute the Commission's finding by suggesting that the existence of online help pages mentioning a particular feature of one of its adtech services, or a general awareness that a feature exists, are sufficient to render that feature's workings transparent and enable third parties to detect anticompetitive conduct related thereto.[2411]

(2157) This is contradicted by the Commission's findings, based on contemporaneous evidence, in which the Commission determined that: (i) advertisers had very limited information on Google Ads' take rates and were unlikely to be aware that double bidding on Google Ads resulted in them overpaying for ad inventory;[2412] (ii) […];[2413] […].[2414]

12.1.2.3. Google's obligation to effectively terminate the Infringement

(2158) This Decision finds that Google has infringed Article 102 TFEU and requires Google to bring the Infringement effectively to an end within 90 days from the date of notification of this Decision.

(2159) In this respect, for the reasons set out in Sections 12.1.2.1 and 12.1.2.2 above, the Commission considers that the mere discontinuing of the practices constituting the Sell-side and Buy-side Conducts that are ongoing would not be sufficient to effectively terminate the Infringement. Merely discontinuing the ongoing practices would not guarantee that Google's ability and incentives to engage in the future in abusive conduct are completely removed. In particular, it cannot ensure that Google would not engage in measures having the same or equivalent object and/or effect as the Buy-side or the Sell-side Conducts as long as the structural conflicts of interest have not been removed and thus Google's ability and incentive to favour its own operations would remain.

(2160) The Commission thus concludes that to prevent the recurrence of the Infringement and thus to effectively bring it to an end, the mere termination of the on-going practices identified in this Decision is not enough and that Google's structural conflicts of interest must also be removed.

(2161) While the SO preliminarily considered that only structural remedies, and in particular the divestiture of parts of Google's activities in the adtech stack possibly accompanied by further conditions to ensure its effectiveness (see sections 12.2.1.3 and 12.2.1.4 of the SO), would be capable of completely removing Google's structural conflicts of interest, it is for Google to propose the measures it will adopt to effectively bring the Infringement to an end, pursuant to the process set out below.

(2162) Accordingly, Google's obligation to effectively terminate the Infringement entails the following.

2410 See recital (847).
2411 […].
2412 See recital (1112).
2413 See recitals (826) and (953).
2414 See recital (1397).

(2163) First, to the extent that Google has not already done so, Google should be required to ensure that the practices identified in this Decision, which constitute the Buy-side and Sell-side Conducts, and which are still ongoing, are terminated within 90 days from the date of notification of this Decision. In this respect, Google should be required to notify the Commission, within 60 days from the date of notification of this Decision, how it intends to discontinue the practices constituting the Buy-side and Sell-side Conducts.

(2164) Second, in addition to terminating these ongoing practices, Google should implement measures that prevent the recurrence of the Infringement. Such measures should ensure the complete removal of Google's structural conflicts of interest in the adtech stack and, thus, both its ability and incentive to favour AdX, either via its ad buying tools or via DFP. These measures should also ensure that Google cannot circumvent the remedy by replicating the favouring between its advertiser facing and publisher facing services in the adtech stack via other, equivalent conduct.

(2165) In this respect, Google should be required to notify the Commission, within 60 days from the date of notification of this Decision, of the measures which will ensure that the recurrence of the Infringement is prevented.

(2166) When submitting its proposed measures, Google should ensure that they address the concerns expressed in sections 8.3 and 8.4. Google's proposal should be sufficiently reasoned and detailed to enable the Commission to assess whether the proposed measures will ensure that the recurrence of the Infringement is avoided and thus that it will be effectively brought to an end.

(2167) Following Google's submission on the proposed measures referred to in recital (2164), the Commission will assess whether these measures will ensure that recurrence of the Infringement is avoided and thus that the Infringement will be brought effectively to an end. In the context of this assessment, the Commission will give due consideration to the interests of third parties.

(2168) Should it consider that the measures proposed by Google are capable of bringing the Infringement effectively to an end, the Commission may, if deemed appropriate, impose those remedies proposed by Google by decision.

(2169) Should it consider that the measures proposed by Google are not capable of bringing the Infringement effectively to an end, the Commission will communicate its preliminary conclusions to Google in relation to those measures. The Commission's preliminary conclusions will set out the remedies it intends to impose on Google in order to bring the Infringement effectively to an end and explain why such remedies are necessary and proportionate in order to achieve this objective. The Commission will consider the interests of third parties and will give Google the opportunity of being heard on the Commission's preliminary conclusions before reaching a final decision imposing any remedies. In addition, as of the expiry of the period of 90 days from the date of notification set by this decision for bringing the Infringement to an end, the Commission may impose periodic penalty payments on Google (see section 12.3 below).

(2170) The Commission may, on its own initiative or upon Google's request, extend the time period of 90 days from the date of notification set by this decision for bringing the Infringement to an end, to enable the proper assessment and implementation of any measures proposed by Google as a result of recitals (2164) to (2166).

(2171) The Commission will monitor Google's implementation of any measures proposed by, and/or imposed on, Google in order to bring the Infringement effectively to an

end. For these purposes, it is entitled to use the powers of investigation provided for under chapter V of Regulation 1/2003. The Commission may also decide to use the services of one or several external technical expert(s).[2415]

12.1.2.4. Conclusion

(2172) Google is required to effectively bring the Infringement to an end within 90 days from the date of notification of this Decision, by terminating the practices identified in sections 8.3 and 8.4 of this Decision and by avoiding their recurrence. In particular, Google is required to discontinue the practices comprising the Buy-side and Sell-side Conducts to the extent that they would still be ongoing and to implement any measures which will ensure that the recurrence of the Infringement is prevented. To this effect, Google is required to notify the Commission, within 60 days from the date of notification of this Decision, how it intends to discontinue the practices comprising the Buy-side and Sell-side Conducts which are still ongoing and which measures it intends to implement in order to avoid the recurrence of the Infringement.

12.2. Article 23(2) of Regulation 1/2003 – fines

12.2.1. Principles

(2173) Pursuant to Article 23(2)(a) of Regulation 1/2003 and Article 5 of Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area,[2416] the Commission may by decision impose fines on undertakings, where, either intentionally or negligently, they infringe Article 102 TFEU and Article 54 of the EEA Agreement. For each undertaking participating in the infringements, the fines shall not exceed 10% of its total turnover in the preceding business year per infringement.

(2174) An infringement of Article 102 of the TFEU or Article 54 of the EEA Agreement is committed intentionally or negligently where the undertaking concerned cannot be unaware of the anticompetitive nature of its conduct, whether or not it was aware that it was infringing the competition rules of the TFEU.[2417] Regarding an undertaking in a dominant position, the undertaking is aware of the anti-competitive nature of its conduct where it is aware of the essential facts justifying both the finding of a dominant position on the relevant market and the finding by the Commission of an abuse of that dominant position.[2418]

(2175) Where the Commission establishes the existence of a single and continuous infringement consisting of several infringements, it may impose a single fine and is not required to break down the amount of the fine between the different

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2415 Case T-201/04, *Microsoft v Commission*, EU:T:2007:289, paragraph 1265.

2416 OJ L 305, 30.11.1994, page 6.

2417 Case T-83/91, *Tetra Pak v Commission*, EU:T:1994:246, paragraph 238, upheld on appeal in Case C-333/94 P, EU:C:1996:246, paragraph 48; Case T-271/03, *Deutsche Telekom v Commission*, EU:T:2008:101, paragraph 295 and 296, upheld on appeal in Case C-280/08 P, EU:C:2010:603, paragraph 124; Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 319, upheld on appeal in Case C-295/12 P, EU:C:2014:2062, paragraph 156; Case C-681/11 *Schenker & Co. and Others*, EU:C:2013:404, paragraph 37; Case T-472/13 *Lundbeck v Commission*, EU:T:2016:449, paragraph 762.

2418 Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 107; Case T-336/07, *Telefónica SA v Commission*, EU:T:2012:172, paragraph 320.

infringements nor to state specifically how it took into account each of the infringements.[2419]

(2176) Pursuant to Article 23(3) of Regulation 1/2003, in fixing the amount of fines, the Commission must have regard both to the gravity and to the duration of the infringements. In setting the fine(s) to be imposed, the Commission will also refer to the principles laid down in its Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation 1/2003[2420] ("Guidelines on fines").

(2177) First, the Commission will determine a basic amount. The basic amount of the fine(s) will be set by reference to the value of sales of goods or services to which the infringement(s) directly or indirectly relates in the relevant geographic area within the EEA.[2421] The basic amount will be related to a proportion of the value of sales of up to 30%,[2422] depending on the degree of gravity of the infringement(s), multiplied by the number of years of the infringement(s).[2423] The Commission may also include in the basic amount an additional amount of a sum up to 25% of the value of sales[2424] ("entry fee") to deter undertakings from infringing the competition rules.

(2178) Second, the Commission may take into account circumstances that result in an increase or decrease in the basic amount. It will do so on the basis of an overall assessment which takes account of all the relevant circumstances.[2425]

(2179) Third, the Commission pays particular attention to the need to ensure that the fine(s) have a sufficiently deterrent effect. To that end, the Commission may increase the fine to be imposed on an undertaking which has a particularly large turnover beyond the sale of goods or services to which the infringement relates.[2426]

12.2.2. Application to the present case[2427]

12.2.2.1. Intention or negligence

(2180) The Commission reaches the conclusion that, based on the facts described in this Decision, Google committed the single and continuous infringement described in section 1 intentionally or, at the very least, negligently.

(2181) In the first place, Google could or should not have been unaware of the fact that Google held a dominant position on the markets for ad buying tools and publisher ad servers in the EEA (see Sections 5 and 6) for the reasons below:

(1) Google ought to have been familiar with the principles governing market definition in competition cases and, where necessary, taken appropriate legal

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2419 Joined Cases 100/80 to 103/80 *Musique Diffusion française and Others v Commission*, EU:C:1983:158, paragraph 127; Case T-83/91 *Tetra Pak II*, EU:T:1994:246, paragraph 236; Joined Cases T-25/95 and others *Cimenteries CBR v Commission*, EU:T:2000:77, paragraph 4761; Case T-203/01 *Michelin v Commission*, EU:T:2003:250, paragraph 265; Case T-73/04 *Carbone-Lorraine v Commission*, EU:T:2008:416, paragraphs 47 and 48; Case T-321/05 *AstraZeneca v Commission*, EU:T:2010:266, paragraph 906; Case T-446/05 A*mann & Söhne and Cousin Filterie v Commission*, EU:T:2010:165, paragraphs 154 and 155.

2420 OJ C 210, 1.9.2006, page 2.

2421 Point 13 of the Guidelines on fines.

2422 Point 21 of the Guidelines on fines.

2423 Point 19 of the Guidelines on fines.

2424 Point 25 of the Guidelines on fines.

2425 Point 27 of the Guidelines on fines.

2426 Point 30 of the Guidelines on fines.

2427 In calculating any fine, the Commission would take due account of the French NCA Adtech decision.

advice regarding the definition of the markets for ad buying tools and publisher ad servers.[2428]

(2) Google ought to have been familiar with the significance of Google's strong and stable market shares in the markets for ad buying tools and publisher ad servers in the EEA.[2429]

(2182) In the second place, Google could or should not have been unaware of the fact that conduct consisting in the use of a dominant position on one market to extend that dominant position to one or more adjacent markets can constitute an abuse. Such a form of conduct constitutes a well-established, independent, form of abuse falling outside the scope of competition on the merits.[2430] Moreover, the Commission set a precedent concerning favouring in respect of Google itself in 2017,[2431] whilst the Infringement has continued for more than seven full years subsequently. In any event, even if the Buy-side Conduct or the Sell-side Conduct may have certain features that have not been examined in past decisions, this does not prevent the imposition of a fine.[2432]

(2183) Since Google could not be unaware of the essential facts of the Commission's findings, its arguments that[2433] (i) it had no reason to consider it was dominant in any relevant markets; and that (ii) pre-existing law and practice did not indicate that the conducts impugned by the Decision would be considered abusive, must be rejected.

12.2.2.2. Value of sales

(2184) In determining the basic amount of the fines to be imposed, according to the Guidelines on fines, the Commission normally takes into account the sales of goods or services to which the infringement directly or indirectly relates and made by the undertaking in the relevant geographic area within the EEA during the last full business year of the occurrence of the infringement.[2434] The value of sales will be assessed before VAT and other taxes directly related to the sales.[2435]

(2185) Accordingly, the Commission intends to use Google's relevant sales in the last available full business year of the Infringement.

(2186) In the present case, the Commission considers that the services to which the Infringement directly or indirectly relates must be understood as referring to the gross revenues of Google's SSP, namely AdX, related to the provision of online advertising intermediary services, including notably open auctions and private auctions. This is because the Buy-side and Sell-side Conducts pursue an identical

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2428 Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraph 323.

2429 Case T-336/07 *Telefónica SA v Commission*, EU:T:2012:172, paragraphs 324 and 325.

2430 See recital (693) and footnote 1015.

2431 Case AT.39740 *Google Search (Shopping)*, decision of 27 July 2017. Moreover, in that case, the Commission adopted (i) a Preliminary Assessment under Article 9 of Regulation 1/2003 on 13 March 2013, taking the view that Google's favourable treatment of its own services contravened Article 102 TFEU; and (ii) a Statement of Objections on 15 April 2015. Although Google contested the Commission's allegations, this does not change the fact that Google has been aware since at least March 2013 that the Commission considered such practices potentially abusive.

2432 Case 322/81 *Michelin v Commission*, EU:C:1983:313, paragraph 107; Case T-321/05, *AstraZeneca v Commission*, EU:T:2010:266, paragraph 901; Case T-472/13 *Lundbeck v Commission*, EU:T:2016:449, paragraph 782.

2433 […].

2434 Point 13 of the Guidelines on fines.

2435 Point 17 of the Guidelines on fines.

objective, namely to protect and strengthen Google's position in the EEA-wide market for SSPs.

(2187) For the purpose of the value of sales, the Commission therefore takes into account the gross turnover of AdX in the provision of online advertising intermediary services, generated by Google from this activity during the last full business year of the infringement, in the EEA.[2436] The Commission excludes revenues realised by AdX from (i) the intermediation of any Google O&O inventory and (ii) direct deals, including programmatic guaranteed and preferred deals.

(2188) The Commission's conclusion that the infringement directly or indirectly relates to the gross revenues of AdX, subject to the exclusions set out above, is not contradicted by Google's arguments that the Commission ought to exclude from the value of sales, payments made to publishers by Google for the placement of advertisements purchased via Google's intermediation tools on non-Google, third-party websites ("traffic acquisition costs").[2437]

(2189) The Commission is entitled to include in the value of sales the gross revenues of AdX, including traffic acquisition costs, for the reasons set out below.

(2190) In the first place, the wording of the second subparagraph of Article 23(2) of Regulation 1/2003 refers to the total turnover of the undertaking concerned, without any deduction.[2438]

(2191) In the second place, and in any event, Google's traffic acquisition costs are an […] part of Google's online advertising intermediation revenues and a component of the price charged to advertisers for Google's services.[2439] Consequently, traffic acquisition costs are a component of the overall sales price[2440] and thus of the value of sales within the meaning of the Guidelines on fines.

(2192) In the third place, in line with settled case law, it is irrelevant whether traffic acquisition costs constitute a […] part of Google's gross revenues[2441] or that such costs are predetermined as a specific portion of Google's gross revenues and thus readily identifiable.[2442]

(2193) In the fourth place, not to take gross turnover into account in some cases but to do so in others, would require a threshold to be established, in the form of a ratio between

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2436 Point 13 of the Guidelines on fines. Sales in France are taken into account in respect of the period from 8 June 2021 (the day after the adoption of the French NCA Decision of 7 June 2021) until the date of adoption of the present Decision.

2437 […]. Google refers to these traffic acquisition costs as "publisher's revenue share."

2438 Case T-410/09 *Almamet v Commission*, EU:T:2012:676, paragraph 225.

2439 Joined Cases T 25/95 etc *Cimenteries CBR and Others v Commission*, EU:T:2000:77, paragraph 5030; Case T-523/15 *Italmobiliare SpA v Commission*, EU:T:2019:499, paragraph 102.

2440 Case T-406/08 *ICF v Commission*, EU:T:2013:322, paragraphs 175-176; Case T-410/09 *Almamet v Commission*, EU:T:2012:676, paragraph 225.

2441 Case T-254/12 *Kühne + Nagel International and Others v Commission*, EU:T:2016:113, paragraph 247, confirmed on appeal in Case C-261/16 P, EU:C:2018:56, paragraphs 80-85; Case T-265/12 *Schenker v Commission*, EU:T:2016:111, paragraph 263; Case T-267/12 *Deutsche Bahn and Others v Commission*, EU:T:2016:110, paragraph 207; Case T-270/12 *Panalpina World Transport (Holding) and Others v Commission*, EU:T:2016:109, paragraph 131.

2442 Case T-254/12 *Kühne + Nagel International and Others v Commission*, EU:T:2016:113, paragraph 251; Case T-270/12 *Panalpina World Transport (Holding) and Others v Commission*, EU:T:2016:109, paragraph 132.

net and gross turnover, which would be difficult to apply and would give scope for endless and insoluble disputes.[2443]

12.2.2.3. Last full year of the infringement

(2194) The Commission concludes that there are no exceptional reasons to deviate from the basic principle that the fine should be based on Google's gross revenues generated on AdX in 2024, the last full business year of the Infringement.[2444]

(2195) The Commission's conclusion is not contradicted by Google's argument that the Commission's reliance on Google's relevant sales in the last available full business year of the Infringement to calculate the fine would be inappropriate in this case, as a single year's turnover is not representative of Google's revenues over the period of the Infringement.[2445]

(2196) The Commission considers, to the contrary, that Google's gross revenues on AdX in 2024 reflect the economic reality because they take into account the size and economic power of Google and the scale of the infringement at the time at which the Commission adopts its Decision (in particular as the Infringement is ongoing as of adoption), as well as the fact that the abusive conduct contributed to the growth of AdX's revenues during the period of the Infringement. For these reasons, using an average value of sales over the period of the infringement would render the fine insufficient to achieve deterrence as it would not take into account the fact that the abuse enabled Google to increase the revenues of AdX.

12.2.2.4. Gravity

(2197) In order to determine the gravity of the Infringement, the Commission takes into account the factors set out in recitals (2198) to (2203) below.

(2198) First, the relevant markets for the purposes of this Decision are markets of considerable economic importance and which play, in particular, a crucial role in ensuring the existence of a free and diverse media and information ecosystem in the EEA, via the funding of online content by means of advertising. This means that any anticompetitive behaviour on these markets is likely to have had a considerable impact.

(2199) Second, the Infringement is multi-faceted, involving two distinct conducts, engaged in by three individual Google-owned services, namely Google Ads, DV360 and DFP, that evolved over the duration of the Infringement.

(2200) Third, as explained in detail in sections 8.3.3.2 and 8.4.3.2 above, at least parts of the Infringement appear to have been intentional, insofar as both the Buy-side Conduct and the Sell-Side Conduct were intentionally designed to provide AdX a substantial competitive advantage over rival SSPs in the EEA-wide market for SSPs.[2446]

(2201) Fourth, at least some of the practices detailed in this Decision were covert or concealed by Google from the parties affected by those practices.[2447]

2443 Case C-272/09 P *KME Germany and Others v Commission*, EU:C:2011:810, paragraph 53; Case C-389/10 P *KME Germany and Others v Commission*, EU:C:2011:816, paragraph 62.

2444 Point 13 of the Guidelines on Fines.

2445 […].

2446 See, e.g., recitals (847), (864), (866), (875), (885), (886), (893), (894), (898), (908), (910), (916), (938), (1376), (1393), (1394), (1396), (1401), (1410), (1411), (1424), (1425), (1426) and (1432).

2447 See, e.g., recitals (952) and (1106) for instances in which Google's conduct occurred without the knowledge of other participants. Moreover, Google informed the Commission that no announcement

(2202) Fifth, the whole EEA was covered by the Infringement.

(2203) On this basis, the Commission concludes that the proportion of the value of sales to be used to establish the basic amount of the fine should be 11%.

(2204) This conclusion is not contradicted by Google's arguments that:[2448]

(1) The online display advertising intermediation markets have grown due to Google's investments;

(2) Google could not have known that the practices would be deemed abusive;

(3) High market shares and the EEA-wide nature of the abuse are not indicative of the gravity of the conduct;

(4) Google's practices were not covert and had pro-competitive objectives;

(5) The different forms of Google's conduct had no anticompetitive effects;

(6) The different forms of Google's conduct lasted for a shorter period of time than the total infringement duration and they were different in nature;

(7) Google has cooperated with the investigation […] and;

(8) […].

(2205) In the first place, it is irrelevant that the online display intermediation markets might have grown as a result of Google's investments. The Commission does not generally object to Google's investments, only to Google's abusive conduct. Moreover, Google's claims in this respect are vague and unsubstantiated, and notably do not attribute any alleged growth in the markets to the conduct at issue.

(2206) In the second place, conduct consisting in the use of a dominant position on one market to extend that dominant position to one or more adjacent markets constitutes a well-established form of abuse falling outside the scope of competition on the merits.[2449] Further, as detailed above in recital (2182) and footnote 2431, Google has been aware since March 2013 at the latest, that such leveraging conduct consisting in the favouring of its own services was considered by the Commission as potentially abusive.

(2207) In the third place, Google's market shares were not taken into account for purposes of setting the gravity percentage. In any event, the remaining factors are sufficient to set the percentage at 11% of the value of sales.

(2208) In the fourth place, while the covert nature of an infringement may be a circumstance leading to the Commission setting the gravity percentage at the higher end of the scale referred to in point 21 of the Guidelines on Fines that can go up to 30%, a gravity percentage of 11% is nearer the lower end of that scale. In any event, as noted above in footnote 2447, the Commission has established that at least some of the practices found to be abusive in this Decision were at least partly covert.

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was made in relation to the expansion of AwBid in 2018. […] reply to Q46 of the Commission's RFI to […] of 31 October 2022 ([…]). Therefore, third parties are unlikely to have been aware of important aspects of the abusive conduct related to AwBid, such as the much higher take rates Google used when bidding on third-party SSPs.

2448 […].

2449 See recital (693) and footnote 1015.

(2209) Further, for the reasons set out in sections 8.7.1 and 8.7.2, the Commission concludes that Google has not demonstrated that the Buy-side Conduct and the Sell-side Conduct were necessary to achieve any pro-competitive objective.

(2210) In the fifth place, the Commission concludes, based on an analysis of all the relevant circumstances, that the Buy-side Conduct and the Sell-side Conduct were capable of producing exclusionary effects (see sections 8.5 and 8.6).

(2211) In the sixth place, for the reasons set out in section 8.8, the Commission concludes that Google's different forms of conduct pursued an identical objective and were complementary, regardless of how long each individual type of conduct lasted.

(2212) In the seventh place, Google's alleged cooperation with the Commission cannot be considered an effective cooperation beyond Google's legal obligations.[2450] Moreover, Google did not assist the Commission in establishing the existence of the infringement with less difficulty.[2451]

(2213) […].

12.2.2.5. Duration

(2214) The Commission concludes that the single and continuous infringement, consisting of the infringements of Article 102 TFEU and Article 54 of the EEA Agreement described in Section 8, started on 1 January 2014 and is still ongoing. The Commission therefore uses the date of adoption of this Decision as the end date of the single and continuous infringement for the purpose of calculating the fine. The Commission concludes that the duration of the single and continuous infringement is 4 265 days (approximately 11.67 years).

(2215) Alphabet is jointly and severally liable with Google for the single and continuous infringement as of 2 October 2015. Therefore, the duration of the single and continuous infringement for which Alphabet is jointly and severally liable is 3 626 days (approximately 9.92 years).

(2216) The Commission's conclusion regarding the duration of the single and continuous infringement is not contradicted by Google's arguments that:[2452]

(1) Google was not dominant and had no reason to believe it was dominant. Further, even if Google's conduct did strengthen Google's market position from 2014, Google could not have reasonably been aware of its position;

(2) The abusive practices did not all endure for the entire period of Google's alleged dominance and do not qualify as a single and continuous infringement. Some were in place before 1 January 2014 or have subsequently ended.

(3) Google should not be penalised for engaging in […].

(2217) In the first place, as explained in Section 7, the Commission has found Google dominant on the EEA-wide markets for programmatic ad buying tools for the open web, and for publisher ad servers. For the reasons explained in recitals (2180) to (2181)(2), the Commission finds that Google could not have been unaware of its position on the EEA-wide market for programmatic ad buying tools for the open web

2450 Point 29 of the Guidelines on Fines; Case T-384/09 *SKW v Commission*, EU:T:2014:27, paragraph 186.

2451 See, to that effect, Case T-66/01 *Imperial Chemical Industries v Commission*, EU:T:2009:255, paragraphs 446 and 447.

2452 […].

and the EEA-wide market for publisher ad servers from 1 January 2014, the first day of the Infringement.

(2218) In the second place, for the reasons set out in Section 8.8, the Commission concludes that Google's different forms of conduct pursued an identical objective and were complementary, thus constituting a single and continuous infringement. Each of these forms of conduct did not individually last for the entire period of the Infringement, but they evolved over time, together forming a continuum of abusive behaviour at both the Buy-side and the Sell-side for the entire duration of the Infringement.

(2219) In the third place, the fact that Google […], is irrelevant to the duration of the infringement retained for the purpose of calculating the fine for the following reasons:

(1) Google has not shown that […], added to the duration of the Infringement in the present case, since nothing stopped Google from terminating the Infringement pending the Commission's investigation.

(2) Google was aware that the Commission considered the Infringement to be ongoing and could have actively cooperated with the Commission to establish the existence of the infringement. Google has not done so.

(3) In general, any cooperation with the Commission could not justify disregarding the full duration of the Infringement, as established by this decision, to the extent that it does not change the start or end date of the Infringement. At most, such cooperation could entitle the undertaking to a fine reduction as a mitigating circumstance.

12.2.2.6. Additional amount

(2220) The Commission finds that the basic amount of the fine should include an additional amount in order to deter undertakings from entering into the same type of infringements as Google have committed as set out in this Decision.

(2221) For the determination of the level of the additional amount to be added to the basic amount, the Commission takes account of the same factors as set out in recitals (2198) to (2202). Therefore, the additional amount should be 11% of the value of sales in 2024.

(2222) Google's argument that an additional amount is not justified[2453] should be dismissed. Indeed, Google does not make any specific claims in relation to the additional amount, claiming only that it is […] in light of its other arguments advocating for no (or a low) fine. The Commission has addressed and rejected these arguments individually in recitals (2190) to (2193), (2196), (2205) to (2213), and (2217) to (2219).

12.2.2.7. Aggravating or mitigating factors

(2223) The Commission may take into account circumstances that result in an increase or a decrease in the basic amount.[2454] These circumstances are listed in a non-exhaustive way in points 28 and 29 of the Guidelines on fines.

(2224) In the present case, first, as regards aggravating circumstances, the Commission takes note of two previous decisions adopted against Google in 2017 and 2018 for

2453 […].

2454 Point 27 of the Guidelines on fines.

infringements of Article 102 TFEU, and the fact that the Infringement has continued for a significant period following these decisions.[2455] The Commission considers that an increase of the basic amount of 60%, based on the aggravating circumstance of recidivism is reasonable.[2456]

(2225) Google argues that no increase for recidivism should be applied, because:[2457]

(1) It would be disproportionate to do so in circumstances where the Commission also imposes remedies, in particular structural remedies;

(2) The Commission rarely applies a recidivism uplift in cases involving Article 102 TFEU;

(3) The infringement in the present case is not similar to the two previous infringement decisions adopted against Google in 2017 and 2018, one of which is also under appeal; and

(4) The infringement in the present case began before the first decision against Google was adopted in 2017.

(2226) Google's claims should be dismissed for the reasons set out below.

(2227) In the first place, the imposition of remedies in antitrust cases pursues a different objective than increasing the fine due to recidivism. On the one hand, the purpose of taking repeat infringements into account is to induce undertakings which have demonstrated a tendency towards infringing the competition rules to change their conduct.[2458] On the other hand, the imposition of remedies aims at ensuring the infringement at stake is brought effectively to an end and cannot be repeated in the future. Nothing in the applicable legislation nor in the case law of the Union Courts precludes the application of both in one and the same case.

(2228) In the second place, there are precedents for the application of an uplift for recidivism in cases involving Article 102 TFEU.[2459]

(2229) In the third place, the Commission has previously applied an uplift for recidivism in cases where both infringements constituted a violation of Article 102 but did not concern the exact same type of practice. In order for a prior infringement to be considered similar for the purposes of a finding of recidivism, it is sufficient that it is an infringement of the same legal provision.[2460] Both prior decisions against Google as well as the current Decision have Article 102 TFEU as their legal basis.

(2230) Further, as the acts of the institutions of the Union are presumptively lawful until they are annulled, it is irrelevant that one of the two prior infringements referenced for the finding of recidivism is under appeal.

(2231) In the fourth place, the fact that the Infringement found in this Decision began before the decision was adopted in the two prior cases does not preclude the application of a fine increase for recidivism. The current Infringement is still ongoing more than six

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2455 Cases AT.39740 *Google Search (Shopping)*, decision of 27 July 2017; AT.40099 *Google Android*, decision of 18 July 2018.

2456 According to Point 28 of the Guidelines on Fines, the Commission may increase the basic amount of the fine by up to 100% for each previous infringement.

2457 […].

2458 Case T-590/20, *Clariant AG v Commission*, EU:T:2023:650, §49.

2459 See, e.g., Case COMP/39523 *Slovak Telecom*; Case COMP/40049 *MasterCard II*.

2460 Case T-101/05 *BASF*, EU:T:2007:380, paragraph 64.

years after the adoption of the later of the two prior infringement decisions.[2461] To preclude an uplift for recidivism in these circumstances would undermine deterrence.

(2232) Second, as regards mitigating circumstances, the Commission finds that there are no grounds for the application of a mitigating circumstance justifying a reduction of the basic amount. The Commission thus rejects Google's arguments that:[2462]

(1) it has cooperated diligently with the Commission;

(2) the Commission's investigation has been excessively long in duration; and

(3) Google did not act culpably and could not have reasonably expected the conduct would be found to infringe competition law.

(2233) In the first place, the fact that […] does not constitute a mitigating circumstance.[2463] The Commission may take account, for purposes of reducing the fine, of assistance given to it by the undertaking concerned to establish the existence of the infringement with less difficulty.[2464] By […], Google did not, however, assist the Commission in establishing the existence of the Infringement. On the contrary, […], Google expressly denied any wrongdoing or liability under Article 102 TFEU in relation to the Commission's investigation.

(2234) Further, […]. Under these circumstances, no reduction in the fine on account of cooperation with the Commission's investigation is warranted.

(2235) In the second place, Google's claim regarding the allegedly excessive duration of the administrative procedure is unfounded.

(2236) Firstly, the duration of the investigative proceedings is justified by the particular circumstances of this case, including the complexity and technical nature of the conduct, the need for the Commission to send numerous requests for information and the size of the administrative file. Moreover, Google itself contributed to the duration of the proceedings as indicated above in recital (2234). Finally, the duration of the proceedings was not extended due to an unjustified period of prolonged inactivity by the Commission.[2465]

(2237) Secondly, Google has put forward no evidence to demonstrate that the exercise of its rights of defence may have been affected for reasons related to the allegedly excessive duration of the administrative procedure.

(2238) Thirdly, the allegedly excessive duration of the administrative procedure is incapable of leading to a reduction of the amount of the fine imposed. Rather, the appropriate remedy is an action for damages pursuant to Articles 268 and 340 of the Treaty.[2466]

2461 Case AT.40099 *Google Android*, decision of 18 July 2018.

2462 […].

2463 Case T-486/11 Orange Polska v Commission, EU:T:2015:1002, paragraph 224.

2464 Case T-406/09 Donau Chemie v Commission, EU:T:2014:254, paragraph 154; Case T-489/09 Leali v Commission, EU:T:2014:1039, paragraph 407; Case T-456/10 Timab Industries et Cie financière et de participations Roullier v Commission, EU:T:2015:296, paragraph 92, confirmed on appeal in Case C-411/15 P, EU:C:2017:11, paragraph 85.

2465 Case T-460/13 Sun Pharmaceutical Industries and Ranbaxy (UK) v Commission, EU:T:2016:453, paragraph 369; Case T-467/13 Arrow Group and Arrow Generics v Commission, EU:T:2016:450, paragraph 346; Case T-470/13 Merck v Commission, EU:T:2016:452, paragraph 484; Case T-471/13 Xellia Pharmaceuticals and Alpharma v Commission, EU:T:2016:460, paragraph 365.

2466 Case C-414/12 P Bolloré v Commission, EU:C:2014:301, paragraphs 106-107; Case C-608/13 P Compañía Española de Petróleos (CEPSA) v Commission, EU:C:2016:414, paragraphs 61 and 71; Case C-616/13 P Productos Asfálticos (Proas) v Commission, EU:C:2016:415, paragraphs 74 and 79; Case

(2239) In the third place, Google has committed the infringement intentionally or at least negligently (see section 12.2.2.1 and recital (2206)).

12.2.2.8. Application of the 10% turnover limit

(2240) The total amount of the fine for the Infringement does not exceed 10% of Alphabet's total turnover relating to the business year preceding the date of adoption of a Commission decision pursuant to Article 23(2) of Regulation 1/2003. Therefore, no further adjustment of the fine is required.

12.2.3. Joint and several liability

(2241) The Commission intends to hold all Alphabet legal entities mentioned in section 11.2 above jointly and severally liable for the Infringement. They should therefore be held jointly and severally liable to pay the fine. Alphabet is jointly and severally liable for the period from 2 October 2015, the date of its incorporation, until the end date of the Infringement.

12.2.4. Conclusion: final amount of the fine

(2242) The Commission concludes that the final amount of the fine to be imposed on Google amounts to EUR 2 954 291 000.

(2243) Google's turnover in the business year ending 31 December 2024 was EUR 323 382 million. As the amount of the fine set out in recital (2242) is below 10% of that figure no adaptation is necessary pursuant to Article 23(2) of Regulation 1/2003.

12.3. Article 24(1)(a) of Regulation 1/2003 - periodic penalty payment

12.3.1. Principles

(2244) Pursuant to Article 24(1)(a) of Regulation 1/2003 and Article 5 of Council Regulation (EC) No 2894/94, the Commission may, by decision, impose on undertakings or associations of undertakings periodic penalty payments not exceeding 5% of the average daily turnover in the preceding business year per day and calculated from the day specified in the decision, in order to compel them to put an end to an infringement, in accordance with a decision taken pursuant to Article 7 of Regulation 1/2003.

12.3.2. Application to this case

(2245) The Commission concludes that it is necessary to impose periodic penalty payments pursuant to Article 24(1)(a) of Regulation 1/2003 and Article 5 of Council Regulation (EC) No 2894/94 if Google fails to: (i) notify the Commission, within 60 days following notification of this Decision, of how it intends to discontinue the practices identified in this Decision, in so far as it has not already done so; (iii) notify the Commission, within 60 days following notification of this Decision, of the measures by means of which it intends to effectively bring the Infringement to an end; and (iii) implement, within 90 days following notification of this Decision or the extended period (if relevant), the measures to effectively bring the Infringement to an end.

T-460/13 Sun Pharmaceutical Industries and Ranbaxy (UK) v Commission, EU:T:2016:453, paragraph 376; Case T-467/13 Arrow Group and Arrow Generics v Commission, EU:T:2016:450, paragraph 355; Case T-470/13 Merck v Commission, EU:T:2016:452, paragraph 525; Case T-471/13 Xellia Pharmaceuticals and Alpharma v Commission, EU:T:2016:460, paragraph 376.

(2246) In setting the level of the periodic penalty payments, the Commission has taken into account the need to impose periodic penalty payments sufficient to ensure compliance by Google with this Decision.

(2247) Consequently, if Google were to fail to comply with any of the requirements set out in recital (2245), the Commission hereby imposes a daily periodic penalty payment of 5% of Google's average daily turnover in the business year preceding such failure to comply.

HAS ADOPTED THIS DECISION:

Article 1

1. Google LLC and Alphabet Inc. have infringed Article 102 of the Treaty and Article 54 of the EEA Agreement by participating in a single and continuous infringement consisting of two infringements in their own right, namely: the Buy-side Conduct and the Sell-side Conduct.

2. The single and continuous infringement was committed since the following dates: (a) 1 January 2014 as regards Google LLC and (b) 2 October 2015 as regards Alphabet Inc. The single and continuous infringement is continuing as at the date of adoption of this Decision.

3. The geographical scope of the single and continuous infringement is (i) as regards the Buy-side Conduct, the entire EEA from 1 January 2014 until the date of adoption of this Decision; and (ii) as regards the Sell-side Conduct, the EEA with the exception of France from 1 January 2014 until 30 September 2020 and the entire EEA from 30 September 2020 until the date of adoption of this Decision.

Article 2

For the single and continuous infringement consisting of two separate infringements referred to in Article 1, a fine of EUR 2 954 291 000 is imposed on Google LLC, of which Alphabet Inc. is jointly and severally liable for EUR 2 569 414 000.

The fine shall be credited, in euros, within three months of the date of notification of this Decision, to the following bank account held in the name of the European Commission:

BANQUE CENTRALE DU LUXEMBOURG
2, Boulevard Royal
L-2983 Luxembourg

IBAN: LU27 9990 0001 1400 100E
BIC: BCLXLULL
Ref.: EC/BUFI/AT.40670

After the expiry of that period, interest shall automatically be payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first day of the month in which this Decision is adopted, plus 3.5 percentage points.

Where an action pursuant to Article 263 of the Treaty is brought before the Court of Justice of the European Union against this Decision, the fine shall be covered by its due date, either by providing an acceptable financial guarantee or by making a provisional payment of the fine in

accordance with Article 108 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council.[2467]

Article 3

1. Google LLC and Alphabet Inc. shall, within 60 days from the date of notification of this Decision, notify the Commission how they intend to terminate the practices identified in this Decision, in so far as they have not already done so, and of any measures by means of which they intend to avoid the recurrence of such practices.

2. Google LLC and Alphabet Inc. shall, within 90 days from the date of notification of this Decision, bring the single and continuous infringement effectively to an end by terminating the practices identified in this Decision, in so far as they have not already done so, and by implementing any measures required to avoid their recurrence.

3. The Commission may extend the period set out in subparagraph 2 above, on its own initiative or upon request by Google LLC and/or Alphabet Inc., if necessary to enable the proper assessment and implementation of certain defined measures required to avoid the recurrence of the practices identified in this Decision.

Article 4

If Google LLC and Alphabet Inc. fail to comply with the order set out in Article 3, they shall incur a daily periodic penalty payment of 5% of the average daily turnover of the undertaking to which they belong in the business year preceding such a failure to comply.

[2467] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 26.09.2024).

This Decision is addressed to

Google LLC
1600 Amphitheatre Parkway
CA 94043 Mountain View
United States of America

And

Alphabet Inc.
1600 Amphitheatre Parkway
CA 94043 Mountain View
United States of America

Done at Brussels, 5.9.2025

For the Commission

(Signed)

Teresa RIBERA
Executive Vice-President