

French Competition Authority Concludes Online Advertising Sector Inquiry and Announces Possible Further Actions

Kluwer Competition Law Blog
March 16, 2018

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Please refer to this post as: Charlotte Breuvert, Eric Barbier de la Serre, Laurent De Muyter, 'French Competition Authority Concludes Online Advertising Sector Inquiry and Announces Possible Further Actions', Kluwer Competition Law Blog, March 16 2018, <http://competitionlawblog.kluwercompetitionlaw.com/2018/03/16/french-competition-authority-concludes-online-advertising-sector-inquiry-announces-possible-actions/>

The French Competition Authority ("FCA") has published the results of its sector-specific inquiry into display online advertising. The 125-page opinion of March 6, 2018, ("Opinion") identifies potential competition concerns and is likely to trigger individual antitrust investigations by the FCA (and potentially other national competition authorities) in the online advertising sector.

Background

In May 2016, the FCA and the German *Bundeskartellamt* published a [joint report](#) on Big Data and its implications for competition law. While the *Bundeskartellamt* followed up the report with investigations in the social media sector, the FCA initiated a sector-specific inquiry focused on display online advertising, which complemented its earlier 2010 report on search advertising.

Primary Significance

Internet advertising is the leading form of advertising in France, and the FCA describes access to data as a critical aspect in the sector. Based on the Opinion, the FCA will assess whether to initiate individual antitrust investigations into specific practices. The FCA's president also stressed the need to act as quickly as possible in addressing potential anticompetitive advertising practices in digital markets.

Main Insights

The FCA's inquiry mapped out the various stakeholders and the functioning of the sector, which it characterized as being in "fragile competitive equilibrium" with the presence of only two significant global players. According to the FCA, these leading players benefit from several competitive advantages, such as vertical integration of data analysis and advertising services, which enable very powerful targeting capabilities.

The sector inquiry also pointed out a set of practices considered as potentially detrimental to competition, essentially in the so-called advertising intermediation sector. These suspect practices include (i) strategies involving bundling/tying, "low prices" and exclusivities, (ii) leveraging effects, (iii) discrimination, (iv) restrictions on interoperability and (v) restrictions on the ability to collect and access data.

Addressing questions concerning market definition, dominance and access to data will therefore be critical to any future FCA enforcement action in the online advertising sector. We will be tracking and reporting on these developments.

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