

Kluwer Competition Law Blog

Bundeskartellamt launches sector inquiry into online advertising

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The Federal Cartel Office (“FCO”) announced on February 1, 2018, to launch a sector inquiry into online advertising ([here](#)). This in line with the FCO’s focus on competitive conditions in the digital economy and big data. The FCO follows the French competition authority that started a separate online advertising sector inquiry in 2016 and has recently published its results.

In parallel, the FCO published a paper on online advertising ([here](#)), which sheds some more light on the background and scope of the inquiry.

I. Sector inquiry

The reasons for launching the sector inquiry include the great economic significance of the sector (with a volume of €5 to 9 billion in Germany), and the “discussions about the difficult competitive environment in this market”, hinting at possible complaints.

The FCO will in particular analyze the technological development of online advertising and its impact on the market structure, and the market opportunities of the various players concerned.

- One focus will be the functioning and competitive role of the various relevant *technical services* on which online advertising relies, such as options for measuring visibility, collecting data and preventing fraud, as well as actual *marketing and procurement* of ad spaces services.
- Another focus will be the allegation that some large market players, like Facebook or Google, have successfully created closed system (so-called “*walled gardens*”), and what the competitive impact of these would be, if any, for example in terms of access to and processing of data by third parties and possible foreclosure effects.

The FCO says it will first enter into a dialogue with various companies from the business communities concerned in order to understand their views and shape the scope of the inquiry, before it intends to send out questionnaires to market participants in spring 2018. At the end, the FCO will publish a final report, which may form the basis for subsequent proceedings. Depending on the scope and complexity, a sector inquiry may take a long time. For example, the sector inquiry into the food retail sector in Germany took more than three years. Given that the FCO tends to stress that swift reactions of enforcers in the fast-developing digital economy are important, one question is whether this sector inquiry will proceed more quickly.

II. Background paper

The background paper deals with the development and various types of online advertising, as well as the importance and current issues of online advertising. The paper provides some background to the sector inquiry and the possible areas of interest.

1. Types of online advertising

The paper refers to the well-known categories of search vs. display advertising. *Search ads* appear alongside the results of search engines and typically consist of text ads. Search ads are particularly interesting for advertisers because the related search terms allow to identify and target users with specific interests. Search advertising space is sold through an auction process with the price based on a cost-per-click base. Search engine operators offer and deliver search advertising. Unsurprisingly, Google, the leading search engine operator, is also described as the market leader in this field in Germany.

Display advertising or banner ads often go beyond text ads (with graphics, images, animation, videos), and are shown on any website. Originally, display ads did thus not allow much targeting. Key players in this field are advertisers, publishers and intermediaries, i.e., media agencies, marketers, ad networks and ad exchanges. Media agencies and marketers are viewed as traditional players. New players now enable targeting and real-time-advertising in display ads. They include supply-side platforms helping publishers and marketers to offer ad bundles to several advertisers via interface/automated procedures. Conversely, demand-side platforms help advertisers and agencies to purchase advertising space from several providers via interface/automated procedures. Data management platforms collect, collate and manage the large data volumes required for modern targeting methods.

Other types of online advertising are *mobile advertising*, specially designed to be displayed on smartphones, i.e., optimized for smaller screens and other specific features particular to mobile use, as well as *social media advertising*, including ads placed in social media platforms and influencer advertising.

2. Current issues

Market players regard the development of *mobile online advertising* as important, where web-based services compete with (sometimes faster) services provided via apps. Google has adapted its policy and launched accelerated mobile pages (“AMP”) in order to foster the creation of websites for mobile devices. AMP-enabled documents are supposed to be more quickly available through browsers commonly used on mobile devices than traditional websites. AMP may thus foster mobile ad acceptance through faster ad loading, but there are concerns that it may lead to advertisers being tied to Google in case of delivery through AMP enabled sites and via Google’s server.

There are concerns that advertising platforms by Google or Facebook are *walled gardens*, i.e., closed systems with user restrictions, which prevent users to gain deeper insights. This renders the platform non-transparent for advertisers, which claim that the model makes it more difficult to independently measure advertising coverage or impact, would not allow exporting data collected during campaigns and impede combating ad fraud or ensuring brand safety (i.e., preventing that ads are placed on inappropriate websites or editorial context). Another complaint is that walled garden platforms favor their own inventory on the platform.

Access to data as a success factor in online advertising is a key issue, with data becoming increasingly important for placing targeted ads. There are concerns that the large platforms have paramount advantages as they can combine their reach and data access. Concentration of data relevant for online advertising may have negative foreclosure effects on competition in the field, in particular in case of exclusive access to particularly relevant data volumes (e.g., through direct interaction with users), and/or network effects.

Ad blockers are programs that prevent that ads placed on websites are actually displayed to users, with an obvious direct impact on the success of online advertising. The papers refers to different reactions of the advertising industry to ad blockers: website operators can exclude users if they have enabled ad blockers, or advertisers can choose to use or develop less intrusive ad forms that users accept. The paper expects the debate about ad blockers to play a key role in the future as the new generation of browsers of Google Chrome and Apple Safari will incorporate ad blocking technology.

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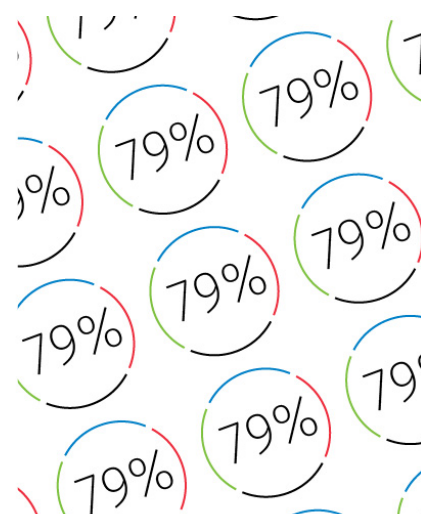
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