

Maouloua Ltd – Response to Interim Report Consultation

Dear Sirs,

Re: Complaint against Google

We are informed the monopolies commission are investigating Google and have invited businesses to lodge any concerns and issues they have in relation to the same.

We are a small business providing call related value-add services who have over the past two years have faced constant breaches, disruption and frustration from Google which has resulted in loss of profit and cessation of our business and that of clients.

We are in now in dispute with Google and are in the process of taking legal advice. We are taking on a global giant which is proving to be no easy task. They are evasive, aggressive and unresponsive when asked to help resolve matters and the legal costs involved in bringing a global giant like Google to court are out of reach for most businesses.

Your Key Questions

Our understanding of the markets within our scope

We agree with your understanding of the markets within your scope.

Our initial findings and concerns under each theme

We believe the recent findings of the French Competition Authority need to be reviewed and incorporated into your concerns. In particular some of the heads of complaints we have experienced along with other small businesses comprise:

1. Rules confusing in their formulation and interpretation and which, moreover, are subject to numerous and arbitrary modifications

Google behaved ambiguously with us in several respects: their policies are opaque and difficult to understand, giving Google all discretion to interpret and modify them. In addition, the application of their policies does not seem to follow coherent principles: tens of thousands of our ads have been suspended by Google whilst those of others, with similar content, have been maintained and can be readily found with similar keyword searches – likewise with our Google account that was suspended in January 2019 and despite a year of appeals we receive nothing more than canned replies refusing to provide specifics.

2. Imprecise Rules

Given its dominant position with no serious alternatives, reinforced by the existence of very high barriers to entry, Google is required to define the operating rules of its advertising platform in an objective, transparent and non-discriminatory manner.

However, policy wording on several policies is not based on any clear definition, which gives Google full latitude to interpret them according to its advantage.

Thus, the "Sale of Free Items" policy prohibits, without further form of specification, the "charging of fees to users for products or services that are normally free". However, the "normally free" nature of a service cannot be easily determined. In terms of call routing, recording or transcripts, many sites make a charge for these services, these charges varying. It is very difficult for a professional to determine whether the service in question is "normally free", since this concept is not precisely defined. The same can be said of their trademark policy relating to resellers, or their policy relating to misleading services.

Furthermore, Google is seeking to promote its own alternative services where they provide call numbers and routing offerings, thereby marginalising competition with its policing of vaguely defined policies. It is noteworthy that Google was recently fined for having manipulated its search algorithms to give more visibility and preference to its services (Commission Decision in Case AT.39740 Google Search (Shopping), 27/06/2017 (n 18)).

3. Changes in position in the interpretation of policies

Google frequently changed its position on the interpretation of its policies, its bots disapproving ads based on one interpretation of policies, some teams approving them on appeal, other teams refusing to do so, whilst others suspending entire accounts.

Despite ads being whitelisted by Google staff following repeated appeals and approvals, Google bots would repeatedly flag them up again as breaching policies, which would then go through repeated cycles of approvals with variable results following various subjective interpretations.

This instability and inconsistency had the effect of keeping us in a situation of legal and economic insecurity and limbo, exposed to random and unpredictable changes in Google's stance and therefore to the suspension of our site or even account, which we cannot anticipate.

The French Competition Authority noted in September 2014, Google considered the paid site directories-inverse.net complied with its policies relating to the sale of normally free services. However, in January 2015, without the site having changed its economic model, Google suspended the site. We have encountered the very same behaviour from Google.

Google's support teams, with whom we can chat, often had difficulty understanding the scope and content of Google policies themselves and in many cases turned to other specialized teams in charge of ensuring sites comply with the policies, to obtain explanations. Google's internal teams sometimes have diverging approaches, the first ones committing in some cases to advertisers to recommend lifting the suspension of accounts, without being followed by the "Policy" teams.

Google support teams have even gone as far as to putting us at risk vis-à-vis the policies, providing misleading and erroneous interpretations of Google policies.

The French Competition authority cited the case of Amadeus, whose Google sales teams actively participated in promoting its services on Google Ads, by participating in the writing of advertisements and the editing of the home page of its site until the end of 2017. However, the site was then be suspended by Google in January and July 2018 for non-compliance with policies.

4. Changes to the Rules not transmitted to the sites

The content of policies has, moreover, evolved on numerous occasions during the period covered by the instruction, without these changes in content having been the subject of information or notification to advertisers concerned.

For example, our site and ads were suspended several times. During its last suspension, Google justified the suspension of this site by an update of policy on the sale of free items. If this modification was indeed published on the help center, listing all the modifications of the "policies", no information had been notified.

This variability of policies has the effect of keeping us in a situation of legal and economic limbo, the latter being exposed to changes in position of Google, and therefore to the suspension of our site, ads or even account, which we couldn't anticipate.

5. Rules applied in a discriminatory manner: several sites were suspended while others, with similar content, were not

According to the French Competition Authority Google has temporarily suspended Gibmedia's site (s) or its Google Ads account several times, before suspending them definitively in 2015, for violation of various Internet user protection rules. However, at the same time, Google continued to run similar ads. While it has, for example, suspended the accounts attached to the reverse directory sites published by Gibmedia, it has, at the same time, maintained those of its sister company - with content however similar - and even supported its development. Beyond the referral to Gibmedia, the Authority has highlighted that other sites may also have been subject to differential treatment in the application of the Rules.

We too have faced similar behaviour where we note Google have supported other sites as well as sites of organisations known to us whilst disapproving us.

Google has also applied its own policies inconsistently. Google's sales teams were able to offer sales support to promote previously suspended sites.

6. Serious practices that may have discouraged the development of innovative sites

The objective of consumer protection, displayed by Google, is perfectly legitimate but it cannot justify that Google treats actors in a differentiated and random manner in comparable situations. Google cannot suspend the account of an advertiser on the

grounds that it would offer services that it considers contrary to the interests of the consumer, while agreeing to reference and accompany on its advertising platform sites that sell similar services.

If the evidence does not establish that Google has implemented a deliberate and comprehensive strategy to disrupt competition downstream, that is to say on the development of new sites, it nevertheless proof, at best of negligence, at worst of opportunism, by displaying a behaviour of consumer protection, while developing commercial offers towards editors of sites however considered by Google itself as doubtful, with the objective to increase investments in Google Ads (support services).

In addition, the policy on the " sale of free services " encourages sites to favour a content policy based on free coupled with advertising, a model very present in the ecosystem of Google products. Indeed, in order not to be caught in default on the policy prohibiting the sale of free services, sites have been able to review their economic model by exclusively offering non-paying services for users, and financed, indirectly, by the sale advertising space via display advertising for which Google offers its services.

These practices also damaged sites with low awareness. Indeed, the optimization of natural referencing can only be long and complex, the only real possibility offered to these sites to make themselves known is, in the vast majority of cases, paid referencing, ads linked to Google searches having become the "factual standard" for advertisers wishing to purchase this type of advertising.

The French Competition Authority noted Google implemented these practices even though it was regularly alerted to the importance of respecting competition rules. The European Commission has indeed penalized it for offenses of another kind but also constituting an abuse of a dominant position, in the Google Shopping, Google Android and Google Search AdSense cases. As regards more particularly the drafting and application of the Rules on the advertising market, the Authority has since 2010 specified on several occasions 4 the conditions of their legality, in decisions granting or rejecting protective measures, commitments or rejection for lack of evidence.

The merits and challenges of the potential interventions identified

We believe your proposed interventions are too timid, fearful and limited and do not go anywhere near the degree necessary.

The market for search advertising has become increasingly more concentrated and consequently less competitive. The merging of data from different sources enabled by Google's 2012 privacy policy amendment reinforced data-driven externalities and therefore Google's market position: more data means enhanced learning-by-doing and therefore the ability to render more relevant search results and better targeted ads. Deprived of scale and access to data, market penetration and expansion by Google's competitors has become almost impossible. Complaints have been made that Google and Facebook are measuring the performance of their own advertising services whilst restricting the ability of advertisers to resort to independent third

parties to this end. According to the Australian Competition & Consumer Commission, 'the inability for advertisers to verify the delivery and performance of their ads on Google and Facebook has the potential to lessen competition in the supply of advertising services. This is because it has the potential to mislead advertisers into thinking their ads perform better than they actually do. This impedes the transmission of price and quality signals in the market and encourages some advertisers to advertise on [Google and Facebook] rather than with competing suppliers of advertising services.'

We would suggest the CMA recommend breaking up Google as its overwhelming dominance means that small businesses have no choice in the marketplace for alternatives should Google choose to suspend their ads or accounts or not permit their services on their platform, especially on the mobile phone platform where Microsoft is so far distant in the UK market as to provide in effect no viable alternative service or platform for small businesses to advertise upon. Any alternative approach leaves this out of control behemoth free to continue wreaking chaos on small businesses and associated livelihoods and jobs.

We would in light of our experiences with Google Ads along with many other small businesses suggest substantive sanctions are imposed on Google. The French competition authority imposed a penalty of 150 million euros on Google – we would suggest the UK CMA considers a similar course of action. Too often Google continues with its practices as sanctions are minor compared to its revenue and benefits from continuing with such practices.

We would also suggest the CMA instructs Google:

- to clarify the procedures for suspending accounts in order to avoid them being brutal and unjustified;
- to re-review accounts it has cancelled and provide sound reasons for their suspension or reinstate them
- address the complaints against them or oblige them to be arbitrated through alternative means of dispute resolution which is more cost effective and faster for smaller businesses
- to clarify the drafting of its policies for its Google Ads advertising platform and to review the information procedures concerning changes to the Rules (individual notification two months before the change of policy);
- set up procedures for alert, prevention, detection and treatment of breaches of its policies, so that measures to suspend sites or Google Ads accounts are strictly necessary and proportionate to the objective of consumer protection.
- Google organize mandatory training for staff responsible for personalized support for companies present on Google Ads so that the teams are sufficiently informed of the content and scope of the Google Ads Policies, as well as the risks that their customers and users incur if they don't respect them.
- Google report to the Authority annually specifying in particular the number of complaints filed against it by UK Internet users, the number of sites and accounts suspended, the nature of the policies violated and the terms of the suspension.

Additionally, it is requested Google present to the CMA:

- a report detailing the measures and procedures it intends to take to comply with the orders.
- a report detailing all the measures and procedures that it has actually put in place.

Market investigation

We are in agreement with this section.

Further work we propose to do over the second half of the study

We have highlighted gaps in our responses above.

We look forward to and welcome your findings and further enquiries.

Yours Faithfully,

Maouloua Ltd