



Commissioner Margrethe Vestager
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

3 December 2018

Request for a sector inquiry of online advertising

Dear Commissioner Vestager,

I write to urge the Commission to use its power defined in Article 17 of Regulation 1/2003 to conduct a sector inquiry of the online behavioural advertising market throughout the European Economic Area that identifies concentration and distortion, and considers the specific issues set out below.

1. **Cross-usage of data by dominant players that creates barriers to entry**
2. **Monopsony and practices that disadvantage sellers in the €12 billion “programmatic online behavioural advertising” market.**
3. **Consumer harm**

These specific issues go beyond the Commission’s current probe in to Google AdSense. Rather, they concern the broad advertising sector, and are sufficiently important that they require scrutiny at Union level.

Introduction

I represent Brave, a rapidly growing technology company that financially supports websites and protects users’ privacy online. Brave is at the cutting edge of the online media industry. Its CEO, Brendan Eich, is the inventor of JavaScript, and co-founded Mozilla/Firefox. Brave’s employees across the globe innovate in areas such as machine learning, blockchain, and security. We work with partners across the online media and advertising industry. Brave has an interest in this matter as a participant in the online advertising market.

The online advertising market is large. It generated €36.8 billion in 2016, according to the 2018 update from the European Audiovisual Observatory.¹ It is also important. This market supports the dissemination of digital news and entertainment throughout European society, and is the driver of the European Digital Single Market. Yet, despite its size and importance it is an opaque market.

¹ “The EU online advertising market Update 2016”, 2017, European Audiovisual Observatory.



There is a serious concern that the online advertising market is distorted by severe concentration issues, and perhaps by anti-competitive behaviour. Indeed, concerns about concentration and anti competitive behaviour have already prompted the German, French, Dutch, and UK antitrust authorities to consider the sector.² However, these national actions can not fully investigate the European market as a whole. Nor do they address the specific issues that are raised below.

Therefore, we request that the Commission use its powers under Article 18, 19, and 20 of Regulation 1/2003 to consider whether there is problematic concentration in the online advertising sector, and whether this distorts the market. In particular, we request that the Commission consider the following issues as part of a sector inquiry:

Specific issues

1. Cross-usage of data by dominant players that creates barriers to entry

Whether online platforms leverage their dominant positions in one line of business by cross-using user data accumulated in that line of business to dominate other lines of business too, rather than by competing on the merits? The initial line of business from which the user data were accumulated may or may not be related to online advertising.

If so, this may also create barriers to entry for existing and potential competitors and create a serious competition issue, as the Autorité de la concurrence notes in Opinion 10-A-13 of 2010 on the cross-usage of customer databases. In 2015 the Belgian National Lottery was fined for reusing personal data acquired through its monopoly for a different, and incompatible, line of business.

We note that if firms are offensively leveraging users' personal data then this is also highly likely to infringe the "purpose limitation" principle in Regulation 2016/679 (the GDPR). As I wrote in my letter to you of 28 September 2018, responding to your call on submissions on the topic of "shaping competition policy in the era of digitisation", "purpose limitation" should be a valuable tool for identifying the ways in which firms take advantage of personal data, and whether they cross-use the data.

² In November of this year, the UK's Competition and Markets Authority was requested by the House of Lords to investigate. In June, the Dutch Autoriteit Consument & Markt launched a market study on changing revenue models in the media sector, including personalised advertising. In March, France's Autorité de la concurrence concluded an extensive, year-long inquiry and identified significant problems that required further investigation. In February, Germany's Bundeskartellamt launched a sector inquiry.

2. Monopsony and practices that disadvantage sellers in the €12 billion “programmatic online behavioural advertising” market.

The programmatic online behavioural advertising market was €12 billion in 2017.³ In this market, publishers of websites and apps supply people to view advertising. Marketers that pay for advertisements to be shown are the buyers. Advertising technology companies such as “ad exchanges”, “demand side platforms”, “data management platforms” and “supply side platforms” control distribution. These companies are often owned by a single company.

We ask the Commission to examine two issues.

a) The degree to which concentration in the adtech sector, which controls distribution, may have created a monopsony situation, where publishers who supply advertising views are compelled to do business with a small number of highly concentrated “real-time bidding” (RTB) advertising exchanges and systems that purchase or facilitate the purchase of their advertising space, and that dictate terms. As a part of this, whether publishers are required to agree to practises such as the use of unique identifiers in RTB “bid requests” that enable companies that receive these to turn each publishers’ unique audience in to a commodity that can be targeted on cheaper sites and apps. This strips a reputable publisher of their most essential asset.

b) Perhaps as a consequence of point a), the degree to which “adtech” firms that control the distribution of the advertising slots supplied by web site publishers have distorted the market. 70%-55%⁴ of advertising revenue now goes to distribution “adtech” firms. Current studies described in November’s FTC hearings show that advertisers, who buy from these distributors, pay up to 500% more than they would otherwise do, even though they receive only minor benefit as a result.⁵

³ European Programmatic Market Sizing 2017, IAB/IHS Markit, 12 September 2018 (URL: <https://www.iabeurope.eu/research-thought-leadership/programmatic/iab-europe-report-european-programmatic-market-sizing-2017/>)

⁴ 70% figure from the investigation by *The Guardian*, which purchased advertising on its own web site as a buyer, and received only 30% of its spend as a supplier. See “Where did the money go? Guardian buys its own ad inventory”, *Mediatel Newsline*, 4 October 2016 (URL: <https://mediatel.co.uk/newsline/2016/10/04/where-did-the-money-go-guardian-buys-its-own-ad-inventory/>). 55% figure from “The Programmatic Supply Chain: Deconstructing the Anatomy of a Programmatic CPM”, IAB, March 2016 (URL: <https://www.iab.com/wp-content/uploads/2016/03/Programmatic-Value-Layers-March-2016-FINALv2.pdf>).

⁵ Alessandro Acquisti, presentation at FTC Hearing 6 - Competition and Consumer Protection in the 21st Century - The Intersection of Big Data, Privacy, and Competition - Session 2, 6 November 2018 (URL: <https://www.ftc.gov/news-events/audio-video/video/ftc-hearing-6-competition-consumer-protection-21st-century-1>).

3. Consumer harm

Whether anti-competitive conduct in online advertising disrupts the market and harms European consumers, by diverting advertising revenues from publishers, and therefore reducing choice.

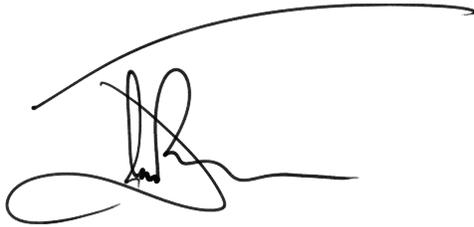
Conclusion

Our request reiterates that of our colleagues at the European Consumer Organisation (BEUC) in March, but it also elaborates upon that general request by articulating specific issues that we hope the Commission will consider as part of a sector inquiry.

I very much hope that you will consider the merits of this inquiry, and will proceed with urgency to shine a light on this opaque market.

I am at your disposal.

Sincerely,



Dr Johnny Ryan FRHistS
Chief Policy & Industry Relations Officer
Brave

cc :

Mr Roberto Viola, Director General - DG CONNECT

Mr Giuseppe Abbamonte, Director - DG CONNECT

Mr Guillaume Lorient, Director - DG COMP

Mr Friedrich-Wenzel Bulst – Cabinet Mrs Vestager

Mr Carl-Christian Buhr – Cabinet Mrs Gabriel