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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**Co-operative Antitrust in Remedy Design – Note by France**

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This document reproduces a written contribution from France submitted for Item 3 of the 142<sup>nd</sup> meeting of Working Party 3 on 3 December 2025.

More documentation related to this discussion can be found at: [oe.cd/card](https://oe.cd/card).

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## *France*

1. Cooperation in the development of remedies in cases of anticompetitive practices covers both commitment and injunction procedures. In this contribution, only the commitment procedure will be analysed and illustrated by the commitments accepted by the *Autorité de la concurrence* (hereinafter, "the *Autorité*") under Decision 22-D-13 of 21 June 2022 regarding practices implemented in the press sector<sup>1</sup>.

2. In enforcement, commitments are made, in accordance with Article L. 464-2(I) of the French Commercial Code (Code de commerce), to put an end to competition concerns that may constitute practices prohibited in particular by Articles L. 420-1 to L. 420-2 of this Commercial Code. In this case relating to press related rights involving Google, which led to the adoption of the above-mentioned Decision 22-D-13, the competition concerns identified by the investigation services centred on three practices: the imposition of unfair trading conditions, discriminatory treatment and the circumvention of Law 2019-775 of 24 July 2019 creating a related right for news agencies and press publishers (hereinafter "the Law on Related Rights") in the French market for generalist search services provided by Google.

3. Unlike injunction procedures, and in accordance with Article L. 464-2(I) of the French Commercial Code (Code de commerce), commitments are proposed by the company and accepted by the *Autorité* through a unilateral decision. However, this acceptance is preceded by negotiated aspects<sup>2</sup>. The observations of the *Autorité*, the parties and third parties are taken into account, so that the company's initial proposal for commitments differs from the final proposal for commitments accepted by the *Autorité*. This cooperation during the commitment development stage is necessary for two reasons. First, the *Autorité* checks that the commitments are sufficiently relevant, credible, verifiable and proportionate to put an end to the competition concerns identified<sup>3</sup>. Then, the interests of third parties may be affected by the commitments if they are likely to have an impact on their personal situation<sup>4</sup>.

4. The above-mentioned Decision 22-D-13 illustrates cooperation with the parties and third parties in the development of the commitments in two respects. Firstly, regarding the measures that the company undertakes to respect (1), and secondly, regarding the means of monitoring them (2). These two elements are included in the commitment decision published by the *Autorité*.

### 1. Cooperation concerning the development of commitments implemented by the company

5. The commitments implemented by the company are the result of cooperation during at least two stages of the procedure, namely the market test (1.1.) and the hearing

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<sup>1</sup> [Decision 22-D-13 of 21 June 2022](#) regarding practices implemented in the press sector (full text in English)

<sup>2</sup> Procedural notice of 2 March 2009 on competition commitments, paragraph 42.

<sup>3</sup> Procedural notice of 2 March 2009 on competition commitments, paragraph 34.

<sup>4</sup> Procedural notice of 2 March 2009 on competition commitments, paragraph 23.

before the Board of the *Autorité* (1.2.), enabling the undertaking, where appropriate, to improve the commitments initially proposed.

### 1.1. Written observations in the context of the market test

6. Article R. 464-2 of the French Commercial Code (*Code de commerce*) provides that following the preliminary assessment of the practices in question, formulated by the Inspections Unit and brought to the company's attention, the latter may request the commitment procedure. In this context, it draws up an initial proposal for commitments to the *Autorité*. Subsequently, paragraph 3 of the same article provides that "*on receipt of the commitments proposed by the companies or organisations concerned at the end of the period mentioned in the second paragraph, the General Rapporteur will transmit their content to the author or authors of the referral and to the representative of the French Ministry of the Economy (commissaire du Gouvernement). It will also publish, by any means, a summary of the case and the commitments so that interested third parties can submit their observations. It sets a deadline, no less than one month from the date of communication or publication of the content of the commitments, for the submission of the observations of the parties, the representative of the French Ministry of the Economy (commissaire du Gouvernement) and, where applicable, interested third parties. These observations are added to the file.*"

7. In accordance with Decision 22-D-13, the *Autorité* submitted Google's proposed commitments to the parties and interested third parties for comment between 15 December 2021 and 31 January 2022. The market test is still available on the *Autorité's* website<sup>5</sup>. This initial proposal was the subject of comments from the complainants, the representative of the Minister of the Economy (*commissaire du Gouvernement*), several professional associations and publishers and news agencies<sup>6</sup>. As part of this market test, written comments were submitted on the use of a commitment procedure, its scope, and the text of the commitments proposed by Google. However, not all the written contributions were made public. Nevertheless, the *Autorité* devoted a substantial part of Decision 22-D-13 to summarising the written comments received<sup>7</sup>. After reviewing the results of the market test, Google submitted a new version of its commitments to the Investigations Unit on 11 March 2022<sup>8</sup>.

### 1.2. Oral observations during the hearing before the Board of the *Autorité*

8. Cooperation with the parties and third parties also took place during the hearing held before the *Autorité's* Board at the end of the investigation. Pursuant to Article R. 464-2 of the French Commercial Code (*Code de commerce*), the parties and the representative of the French Ministry of the Economy (*commissaire du Gouvernement*) were summoned to the hearing, at which they were able to present oral observations. Furthermore, pursuant to Article L. 463-7, paragraph 2, of the French Commercial Code (*Code de commerce*), the *Autorité de la concurrence* may "*hear any person it considers likely to contribute to its information*". Consequently, even individuals who did not submit written comments during the market test phase may be heard by the *Autorité's* Board if it considers it necessary. In

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<sup>5</sup> Accessible at: <https://www.autoritedelaconcurrence.fr/sites/default/files/Google%20Market%20test.pdf>

<sup>6</sup> Decision 22-D-13 of 21 June 2022 cited above, paragraph 105.

<sup>7</sup> Decision 22-D-13 cited above, paragraphs 106 et seq.

<sup>8</sup> Decision 22-D-13, cited above, paragraph 162.

this case, representatives of Google, the *Syndicat des Éditeurs de la Presse Magazine* (SEPM, as the complainant) and the representative of the French Ministry of the Economy (*commissaire du Gouvernement*) were heard at the hearing held on 12 and 27 April 2022<sup>9</sup>. The representatives of the French Directorate General of Media and Cultural Industries of the Ministry of Culture, the company *Droits Voisins de la Presse* (DVP), the *Syndicat de la presse indépendante d'information en ligne* (SPIIL) and the *Fédération Française des Agences de Presse* (FFAP) were heard on the basis of Article L. 463-7, paragraph 2, of the French Commercial Code (Code de commerce)<sup>10</sup>.

9. Secondly, cooperation on the drafting of commitments also continues during the debates in the hearing. The *Autorité's* board may make acceptance of the proposed commitments subject to certain modifications or reject them if it considers that they do not address the competition concerns<sup>11</sup>. In such cases, the hearing may be suspended if the company concerned agrees to modify its commitments immediately. The session resumes as soon as the commitments have been finalised<sup>12</sup>. In the context of Decision 22-D-13, the hearing before the Board began on 12 April 2022 and was then suspended. Google then filed two new versions of its proposed commitments on 21 and 26 April 2022<sup>13</sup>. The session concluded on 27 April 2022, during which a new version of the commitments was transmitted. Finally, two supplementary notes were placed on file, containing a new version of the commitments dated 29 April 2022 and then the substantially improved final commitments, on 9 May 2022. Compared to the initial proposal, Google proposed ten amendments, which are detailed in Decision 22-D-13.

## 2. Cooperation on developing the monitoring of these commitments

10. In addition to behavioural measures, the decision on commitments also specifies the conditions for monitoring them, thus ensuring their effective implementation and guaranteeing their effectiveness. The *Autorité de la concurrence* is able to appoint a monitoring trustee (2.1.), with whom cooperation during the supervision of commitments is regulated (2.2.).

### 2.1. The appointment of an independent monitoring trustee

11. Cooperation with the parties and third parties is not limited to the commitment review stage in the strict sense, but extends to the monitoring of their implementation. In accordance with Article L. 464-8, paragraph 6, of the French Commercial Code (Code de commerce), the *Autorité de la concurrence* shall ensure that its decisions are implemented. In other words, the *Autorité* is required to monitor compliance with the commitments it adopts. The *Autorité* has several options. It may choose to monitor commitments based on reports submitted by the company to the Investigations Unit, which may request additional information and, where appropriate, conduct an investigation. The *Autorité* may also appoint an independent monitoring trustee to guarantee that the commitments are

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<sup>9</sup> Decision 22-D-13, cited above, paragraph 163.

<sup>10</sup> Decision 22-D-13, cited above, page 2.

<sup>11</sup> Procedural notice of 2 March 2009 on competition commitments, paragraph 35.

<sup>12</sup> Procedural notice of 2 March 2009 on competition commitments, paragraph 36.

<sup>13</sup> Decision 22-D-13, cited above, paragraph 163.

implemented<sup>14</sup>. The appointment of an independent monitoring trustee allows the *Autorité* to monitor compliance with the commitments while avoiding an excessive use of resources<sup>15</sup>. The monitoring trustee acts independently of the company that proposed the commitments. In the context of Decision 22-D-13, the behavioural nature of the commitments was one of the reasons why the *Autorité* appointed a monitoring trustee<sup>16</sup>. The monitoring trustee will supervise the progress of the negotiations between Google and the press agencies and publishers, under the control of the *Autorité*. The trustee is also involved in the review and update of the minimum base of information that Google provides to the press agencies and publishers and the list of information to be provided by the press agencies and publishers wanting to enter into negotiations with Google. They trustee also play an active role in settling any disagreements that may arise between the parties during their negotiations<sup>17</sup>. For example, they may be required to issue opinions or proposals on any dispute relating to the certification of a press publisher or agency, on whether a press publisher's domain contains protected content, or on the technical feasibility or appropriateness of a request for additional information, and on the manner in which responses to requests for additional information should be communicated to press publishers and agencies.

12. Furthermore, cooperation in monitoring compliance with commitments is not limited to the appointment of the monitoring trustee. Indeed, Decision 22-D-13 provides that the trustee may enlist the services of technical, financial or intellectual property experts to carry out their tasks. The *Autorité* considers that the complexity and resources required for the regular monitoring of negotiations on related rights justify the use of experts<sup>18</sup>. The trustee has the ability to select these experts and, if necessary, name an independent auditor to certify the financial information provided by Google<sup>19</sup>.

## 2.2. Rules on cooperation in monitoring compliance with commitments

13. Although responsible for monitoring compliance with commitments, the trustee - and, where applicable, the experts they select - does not replace the *Autorité de la concurrence*. Appendix 3 to the Commitments, annexed to Decision 22-D-13, details the appointment procedure and the tasks of the trustee responsible for monitoring compliance with commitments. In practice, the commitments arising from Decision 22-D-13 provide for the transmission of quarterly reports to the *Autorité* on Google's compliance with the commitments, including a summary of exchanges between Google and the publishers and press agencies, allowing the progress of the negotiations and any difficulties they raise to be monitored. It is also stated that the monitoring trustee must alert the *Autorité* without delay if they consider that Google is not respecting its commitments<sup>20</sup>. The monitoring trustee is therefore "closely involved"<sup>21</sup> in the implementation of the commitments.

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<sup>14</sup> Procedural notice of 2 March 2009, paragraphs 48 and 49.

<sup>15</sup> Decision 13-D-15 of 25 June 2013 on practices implemented in the sea freight transport sector between Northern Europe and the French Antilles, paragraph 175 (French only).

<sup>16</sup> Decision 22-D-13, cited above, paragraph 237.

<sup>17</sup> Decision 22-D-13, cited above, paragraph 245.

<sup>18</sup> Decision 22-D-13, cited above, paragraph 241.

<sup>19</sup> Decision 22-D-13, cited above, paragraph 246.

<sup>20</sup> Decision 22-D-13, cited above, paragraph 247.

<sup>21</sup> Decision 22-D-13, cited above, paragraph 243.

14. However, case law to date considers that the reports prepared by the monitoring trustee are useful in informing the *Autorité's* analysis, without the *Autorité* being bound by their assessments<sup>22</sup>. Therefore, the monitoring trustee does not replace the *Autorité de la concurrence* but rather cooperates with it. The *Autorité de la concurrence* is the sole body competent to assess and, where appropriate, sanction any failure to comply with commitments.

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15. The behavioural remedies adopted following Decision 22-D-13 cited above illustrate the benefits and terms of cooperation between the *Autorité*, the company making the commitments and third parties throughout the commitment development process. The commitment procedure governs the consideration of written and oral contributions, through the market test and in the hearing before the *Autorité's* Board. This phase allowed Google's proposed commitments to be amended several times, specifically to address the concerns raised by third parties in their contributions. The remedies are therefore the result of dialogue between these stakeholders. In addition, cooperation is also central to the development of the framework for monitoring compliance with commitments, as the *Autorité* may appoint a monitoring trustee, who may themselves appoint technical experts to carry out their tasks. This cooperation makes it possible to use the full range of technical expertise of each stakeholder involved in the case, to guarantee that the *Autorité de la concurrence* has information on the assessment of the relevance, credibility, verifiability and proportionality of the commitments, as well as their practical implementation by the company.

## Useful links

- Procedural notice of 2 March 2009 on competition commitments.
- *Autorité de la concurrence*, Behavioural Remedies, Collection Les Essentiels.
- Decision 22-D-13 of 21 June 2022 regarding practices implemented in the press sector
- Decision 24-D-03 of 15 March 2024 regarding compliance with the commitments in Decision 22-D-13 of 21 June 2022 of the *Autorité de la concurrence* regarding practices implemented by Google in the press sector.

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<sup>22</sup> Judgment of the *Cour d'appel de Paris* (Paris Court of Appeal), Section 5, Chamber 7, 2 September 2021, Case 20/09358, paragraph 137.