

## EU and UK launch twin Meta and Google probes

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The UK and EU competition watchdogs have formalised parallel investigations into an online advertising agreement between Meta and Google that came to light in an ongoing US antitrust probe.

Both the European Commission and the UK's Competition and Markets Authority today launched fully-fledged investigations into an agreement that Google's internal documents refer to as "Jedi Blue". The CMA is also examining if Google abused its dominance in the header bidding sector more widely.

Header bidding is a type of advertising auction that allows publishers to bid on multiple ad exchanges at the same time. The antitrust probes aim to determine if an agreement the two technology companies made in September 2018 regarding Meta's use of Google's advertising auction product was an attempt to stop header bidding from expanding.

Both agencies said they will work closely together during the probes. An agreement between the two allows companies to waive confidentiality restrictions to let the enforcers share information, but whether Meta and Google have done so remains confidential.

The EU's probe is under both Articles 101 and 102 of the Treaty on the Functioning of the European Union – a rarity for its Big Tech probes, which have previously fallen under only abuse of dominance rules.

Meanwhile, the CMA's probe into the agreement is only under the UK equivalent of Article 101, but its wider probe into Google relates to a potential abuse of dominance.

The enforcer's chief executive, Andrea Coscelli, said it is concerned that Google may have "teamed up" with Meta "to put obstacles in the way" to rivals providing important online display advertising services to publishers.

The CMA is also investigating Google's conduct in relation to header bidding services more generally to see if the company gained an unfair advantage over competitors that tried to provide a similar service to its own.

Coscelli added that the CMA "will not shy away from scrutinising the behaviour of big tech firms" while it [awaits legislation](#) to give its recently-formed Digital Markets Unit new powers.

EU competition commissioner Margrethe Vestager said that Meta's and Google's conduct, if confirmed, "would restrict and distort competition in the already concentrated ad tech market, to the detriment of rival ad serving technologies, publishers and ultimately consumers."

The EU enforcer said it is particularly concerned that the agreement may form part of efforts to exclude ad tech services competing with Google's Open Bidding programme. Like header bidding, this is a form of real-time advertising auctions but is run from the publisher's side through Google's Ad Manager programme.

The agreement between Google and Facebook, as Meta was then known, was unearthed by a coalition of US states led by Texas attorney general Ken Paxton that are suing Google under the country's monopolisation law.

A New York judge in October [unsealed](#) vast swathes of the lawsuit, although the states expanded on those allegations one month later in a third amended [complaint](#). Google [filed](#) a motion to dismiss the case in January, which is currently pending.

The complaints cite multiple internal Google documents that suggest the company granted Facebook a sweetheart deal so it would continue using Open Bidding and not switch to header bidding.

The agreement purportedly guaranteed Facebook 90% of auctions, regardless of the number of bids. It also gave the social media company 300 milliseconds to bid compared to the standard 160 milliseconds, and allowed it to view the identity of a large proportion of web users.

While they have certain information-sharing agreements with the federal US antitrust agencies, the EU and UK enforcers have no such agreement with their state equivalents. This means they are largely restricted from cooperating with the states as the investigations progress.

A Facebook spokesperson said the company is cooperating with the probes. Google did not respond to a request for comment.

Thibault Schrepel, an associate professor of law at VU Amsterdam and a faculty affiliate at Stanford University, said Meta and Google will struggle to explain how this agreement, if proven, increases consumer welfare.

Demonstrating consumer gain is harder when an anticompetitive agreement is involved than it is in Article 102 cases, he said.

Schrepel also noted that Google holds less than 40% of the online advertising market, yet both the commission and the CMA mention a possible abuse of dominance.

He questioned whether this means they will further segment the market or find a separate market for "header bidding services". "If so, they will have to synchronise their findings," he said.

Cristina Caffarra, an economist who has been involved with the Texas Attorney General Office complaint since 2019, said "adtech reckoning is long overdue".

“That the market is beset by a cascade of dominant positions on each side of each trade, and by a fundamental conflict of interest, has been known for some considerable time,” she said.

“How this will play with the [DMA](#) [Digital Markets Act] is unclear, but good to see some movement and great it was the Texas complaint that has spurred this on,” Caffarra added. “This is all the hard work of Dina Srinivasan, Roger Alford and the Texas litigation team.”

Srinivasan, a fellow at Yale University, and Notre Dame Law School professor Alford published various research on the market power of large technology platforms, particularly Google, that laid the groundwork for the states’ case.

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