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The provisional measures ordered by the competition authority against Meta for abuse of dominance in negotiations with APIG and DVP

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Resume: *The case of Meta against the unions of publishers and news agencies[1], following the negotiations undertaken for the sharing of values resulting from the publication of articles on Meta s digital platforms. This case is a direct consequence of the transposition of the EU Neighbouring Rights Directive of 17 April 2019 (transposed on 24 July 2019[2]). I will thus present the ongoing case, in which the competition authority issued protective measures on July 8, 2026 (No. 26-MC-01 and 26-MC-02), in respect of Meta, for their anti-competitive practices during the negotiations on December 31, 2024, for DVP members and January 31, 2025, for APIG members. The practices complained of include the imposition of unfair trading conditions, circumvention of the law (refusal to provide essential information) and failure to pay for failure to reach an agreement.*

The alliance of the generalist press (APIG) and the associated press rights society (DVP) have started negotiations with the Meta group regarding the remuneration of associated rights.

Both associations complain that Meta offered them a lower remuneration than that provided in the previous agreements and that it did not provide them with the necessary information to assess the proposed remuneration. They also consider that Meta has thus imposed unfair commercial conditions and circumvented the obligations relating to related rights.

The APIG and the DVP refer the matter to the competition authority on the basis of Article L. 464-1 of the Commercial Code and request interim measures. The two applications give rise to Decisions No. 26-MC-01 for APIG and No. 26-MC-02 for DVP, published on 8 July 2026.

APIG and DVP, argue that Meta has a dominant position in the European market for social network services, and that the

[1] Press release of the competition authority "Related rights: the competition authority issues precautionary measures and enjoins Meta to negotiate in good faith with publishers and news agencies".
[2] Rule n° 2019-775 du 24 juillet 2019 create a related right for the benefit of news agencies and news publishers

group uses this dominant position to impose unbalanced trading conditions, that the group does not provide the information necessary for negotiations. The two associations are thus requesting provisional measures.

The question we are entitled to ask is whether the competition authority can take interim measures on the basis of competition law (Article 102 TFEU) since the alleged facts only occurred during the negotiations?

The competition authority issues a decision dated July 8, 2026, in which it takes protective measures against Meta, ordering the presumption of negotiations with publishers and agencies, and respecting the transmission of information necessary for a transparent and objective negotiation, neutrality in negotiations and to ensure the smooth running of negotiations, the authority requires a report on the implementation of the negotiations.

It bases its decision on the fact that Meta holds a dominant position in the European market for social network services and uses this position for practices constituting an abuse of its dominant position, in particular with regard to the communication of information and unfair commercial conditions and the circumvention of legislation on related rights. And finally, the authority notes a serious and immediate attack against the press sector.

To answer this question, we will first look at the very use of Art 102 TFEU extended to negotiations between digital platforms and press publishers: The justified application of Article 102 TFEU to negotiations on related rights, as illustrated by the Google case-law (I), and in a second part The limits of competition law in the regulation of related rights (II).

I. The justified application of Article 102 TFEU to negotiations on related rights, as illustrated by the Google case-law.

We will see on the one hand The submission of negotiation conditions to the control of abuse of dominant position, as illustrated by the Google case (A) and on the other hand, The requirement for transparency in negotiations as a guarantee of fairness in the negotiations (B).

A. <u>The submission of negotiation conditions to the control of abuse of dominant position, as illustrated by the Google case</u>

The Court of Justice used it in particular in the United Brands judgment[3], concerning the potentially excessive nature of the price

[3] CJCE, n° C-27/76, Arrêt de la Cour, United Brands Company et United Brands Continental BV contre Commission des Communautés européennes, 14 février 1978

charged by a dominant company, but also in cases more broadly related to the conditions imposed on commercial partners.

Article 102(a) TFEU prohibits, in particular, the fact that a dominant undertaking 'imposes directly or indirectly purchase or selling prices or any other unfair trading conditions'. This reasoning is not unknown to European law.

Indeed, the Court of Justice in the United Brands judgment of 14 February 1978, indicates to us that abuse of a dominant position may result from an undertaking using the economic power at its disposal to obtain commercial advantages which it could not have obtained under normal and sufficiently effective conditions of competition, in particular to impose unfair prices or transaction conditions.

In this case, the competition authority considers that Meta imposes unfair commercial conditions on publishers and news agencies, in particular due to the lack of communication of information necessary for the evaluation of its offers as well as their opaque or difficult to understand nature. She adds that Meta also sought to impose its own mythology of the evaluation of compensations.

The logic of authority is based on the methods used by Meta and takes into account the quality of the negotiation process. In particular, it notes the way in which Meta has imposed its calculation methods on the remuneration of related rights. The competition authority recognizes that Meta has a dominant position in the digital platform market, and that it uses this position to put pressure on news agencies during the negotiations.

Article 102 is no longer used only to counter behaviour that has a directly observable impact on prices or market structure; it can also be used to address certain forms of exploitation of market power in trade relations. This type of decision that protects competitors is not new.

Indeed, in the Google judgment dated April 9, 2020[4], the competition authority had taken protective measures against Google for abuse of dominant position in the context of contractual negotiations with publishers and news agencies for the remuneration of related rights. The facts reproached to Google were similar to those of Meta, namely a lack of transparency and objectivity in the information provided to traders, but also unfair remuneration conditions imposed by Google, and for this purpose, using its dominant position on the market.

4 Décision 20-MC-01 du 09 avril 2020

Google had decided to no longer display certain press content, extracts from articles, photographs, videos, etc., unless the publishers allowed it to present them free of charge, thereby imposing its conditions by putting pressure on its merchants.

In this regard, L. Idot, in his article : "New intervention by the Authority in contractual relations between Google and press publishers regarding the remuneration of related rights,"[5] tells us that the authority may intervene in commercial relations under Articles 102 TFEU and L420-2 of the Commercial Code. Google's dominant position in the French market for general search services is not open to question. The practices constituting an abuse of this dominant position are to have imposed unfair conditions as regards remuneration but also a poor transmission of information, such practices constitute an abuse of exploitation within the meaning of Article 102 TFEU, according to the authority.

The author specifies that it is through cases in which digital giants are involved that the notion of abuse of exploitation has returned to the forefront. Therefore, this concept fully legitimises the intervention of the authority in the context of negotiations, as soon as it establishes an abuse by an undertaking in a dominant position, within the meaning of Article 102 TFEU.

The authority's intervention in negotiations between Meta and publishers and news agencies is legitimate, as it is close to the Google case. We can therefore consider looking at one of the other main offences by Meta, for which Google has been found guilty, namely the unfair transfer of information as part of these same negotiations.

B. <u>The requirement for transparency in negotiations as a guarantee of fairness in the negotiations</u>

Since it has become clear that authority can intervene in the context of negotiations, the offences must therefore be classified as constituting abuse of exploitation, which causes an imbalance in the negotiations.

One of the main arguments of the competition authority is based on the absence or poor quality of information provided to news agencies.

The argument is that, in addition to its dominant position on the market, Meta has advantages over news agencies: it has

[5] L. Idot, "Google and the related rights case: when the Competition Authority sets a framework for contract negotiations," Review of contracts No. 01 - March 1, 2022

essential information for assessing the economic value and use of press content, particularly with regard to their distribution, their use or even their place in the services offered by Meta.

However, by having the data necessary to determine the value of the service and refusing to disclose it, Meta prevents publishers and press agencies from negotiating on fair terms, and is likely to accept a proposal from Meta more quickly. The authority finds under Article 102 TFEU that Meta is committing an abuse of exploitation.

The application of Article 102 TFEU, in the context of negotiations, notably to condemn the absence of information, is part of a desire to respect inequalities in negotiations and more particularly the respect for related rights.

Article 15 of Directive (EU) 2019/790[6], which is based on respect for the related rights of press publishers, which was transposed in France by the law of 24 July 2019. This directive aims to protect rights in contracts with publishers and news agencies, and allows them to be remunerated for publishing their content to the online public of digital platforms.

The late or insufficient provision of all the information necessary for negotiations would constitute an abuse of a dominant position and would be in contradiction with the objective pursued by the directive, which is to enable publishers and news agencies to be remunerated. However, unfair conditions for negotiations due to the poor circulation of information prevent the objective pursued by neighbouring rights.

In the Google case, the lack of transparency in the negotiations was also noted, and the authority condemned this practice for abuse of exploitation, as contrary to Article 102 TFEU and making the conditions of negotiations unfair.

C. Dubucq, in his article: "Rights related to the press: the competition authority enjoins Meta to negotiate in good faith and draws up the analysis grid applicable to artificial intelligence suppliers,"[7] tells us that for the company in a dominant position, transparency in the context of negotiations is an obligation without which negotiations become inequitable with the weak party. This obligation is a component of the

[6] DAMUN - Directive (EU) 2019/790 of 17 April 2019 on copyright and related rights in the digital single market

[7] C. Dubucq : "Rights related to the press: the competition authority enjoins Meta to negotiate in good faith and draws up the analysis grid applicable to artificial intelligence suppliers" 10/07/2026 : https://bruzzodubucq.com/droits-voisins-de-la-presse-lautorite-de-la-concurrence-enjoint-a-meta-de-negocier-de-bonne-foi-et-dessine-la-grille-danalyse-applicable-aux-fournisseurs-dintelligence-art/?utm_source=chatgpt.com

responsibility of the company in a dominant position.

The application of Article 102 TFEU is therefore necessary to make the application of related rights effective and thus protect publishers and press agencies, and ensure them fair negotiation conditions for their remuneration.

Recourse to competition law thus appears as a means of ensuring the effectiveness of a legal system that could remain theoretical, including a digital platform in a dominant position. However, this evolution of the role of Article 102 TFEU has its limits.

II. The limits of competition law in the regulation of related rights

We will see on the one hand, The uncertainty of authority in the concept of unfair transactions (A) and on the other hand, The complex and uncertain boundary between competition law and neighbouring rights (B).

A. The uncertainty of authority in the concept of unfair transactions

If the difficulty does not lie in identifying Meta's dominant position, or even in that of its practices, it may lie in defining the injustice of the negotiations imposed by Meta.

The control of trading conditions is more delicate and the difficulty consists in particular in distinguishing a truly abusive condition from a simple unfavorable commercial proposal. A dominant firm may seek to negotiate for its own benefit, but it does not abuse the position by offering a lower remuneration than in a previous agreement.

Anne C. Witt in her article : "Unfair Unfair Trading Conditions—The Revival of a Dormant Concept of EU Competition Law"[8] tells us that the use of Article 102 TFEU in the context of negotiations is more or less sudden and that the precedents are rather few.

In the present case, the authority intervenes on the basis of Article 102(a) TFEU relating to the imposition of excessive prices even though the question of the real economic value of the content published by digital platforms is complex.

It is not enough to prove that Meta offers less than at the time of its first offer, to determine that the negotiations are unfair or even unbalanced. It must be possible to determine

[8] Witt, Anne C., « Unfair Trading Conditions —The Revival of a Dormant Concept of EU Competition Law », May 08, 2025 Journal of Competition Law & Economics

the actual value of the service, as well as the reasons justifying the modification of the proposed price, with a view to determining whether the offer made by Meta is disproportionate, unfair or even unbalanced.

Since the Authority cannot fully appreciate this value, it focuses more on other practices, notably in the calculation method and the lack of transparency imposed by Meta in negotiations with news agencies. However, this does not solve the underlying problem; it simply allows Meta to stop its practices.

The question we are entitled to ask is whether the negotiations were conducted in good faith, in a free and enlightened manner, to the point that the intervention of the competition authority could have taken place?

However, the appellate court in the Google case told us that "this injunction to enter into good faith negotiations was a direct response to the observed conduct." Thus, an authority may infringe the freedom of contract if anti-competitive behaviour is found.

In this case, the risk would be that Article 102 TFEU becomes an instrument of sanctions in the context of a commercial relationship between a company in a dominant position and its counterparty which it deems unfair or even unbalanced. Competition law could undermine freedom of trade and the contractual balance.

B. <u>The complex and uncertain boundary between competition law and neighbouring rights</u>

The legislator created the neighboring law with the aim of addressing the economic imbalance in publishers' publishing contracts via digital platforms, hence the question of the intervention of the competition authority for compliance with the directive and the 2019 law on related rights, and this, on the basis of Article 102 TFEU. The authority can therefore only act for the respect of competition law or if it can also protect other European principles, in this case neighbouring rights.

In the present case, because of Meta's practices, the authority did not simply answer this substantive question; it linked them to an objective of balance in negotiations under related rights. and finds that failure to provide information essential for the negotiations constitutes an abuse of a dominant position, and therefore takes protective measures to put an end to such abuses.

However, the question of the limits of the authority's intervention in negotiations, notably through its precedents, arises.

Mr. Debroux in his article: "Rights related to the press: precautionary measures imposed

on Meta,"[9] questions us about the new role of the authority, which is to supervise negotiations. We have seen in the Google cases and now in the Meta case that the intervention of the authority through its interim measures imposes on digital platforms in a dominant position a precise way of negotiating. This can refer to a negotiation function.

The content of the protective measures is indicative of this trend. Indeed, in its decision, the competition authority requires that Meta resume negotiations in good faith and provide all the information necessary for the objective and transparent assessment of the remuneration of publishers related to their publication. In addition, the measures must remain in force until a final decision is made.

However, these injunctions are governed by Article L464-1 of the Commercial Code, which provides that provisional measures must be necessary to address an emergency: "Such measures may be taken only if the practice in question causes serious and immediate damage to the general economy."

In the present case, the protection of holders of related rights and the regulation of digital platforms were at issue, which could justify such measures, notably the absence of remuneration during the suspension of negotiations. In addition, the authority imposes significant constraints on digital platforms to prevent the negotiation from remaining blocked during the proceedings.

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[9] Mr. Debroux : "Rights related to the press: precautionary measures imposed on Meta" Essential Distribution and competition law N°8 - 7 sept. 2026