

PARIS COURT OF APPEAL

PARIS HIGH COURT OF JUSTICE

NATIONAL FINANCIAL PROSECUTOR

Ref : PNF-15 162 000 335

Public Interest Judicial Agreement

between

the NATIONAL FINANCIAL PROSECUTOR

at the Paris High Court of Justice

and

SARL GOOGLE FRANCE

SIREN 443 061 841

8, rue de Londres

75009 Paris

and

GOOGLE IRELAND LIMITED

Gordon House, Barrow Street,

Dublin 4, Ireland

Having regard to Article 41-1-2 of the Code of Criminal Procedure;

Considering decree n°2017-660 of 27 April 2017 relating to the judicial agreement in the public interest and the judicial guarantee;

I. Google France SARL, Google Ireland Ltd and the Google group

1. Google is a global group providing technology services, which generates most of its revenue from delivering relevant online advertising. AdWords (now called Google Ads) is Google's primary advertising program. It is auction-based. It allows advertisers to deliver relevant ads targeted to search queries by internet users or consulted web content.
2. In addition to Ads, Google's products and services include Android, Chrome, Shopping, Double Click, Google Analytics, Google Cloud, Google Maps, Hardware, Search, Waze and YouTube.
3. Google Ireland Ltd (hereinafter GIL) is an Irish company having its registered office at Gordon House, Barrow Street, Dublin 4, Ireland. GIL is an affiliate of Google Ireland Holdings, which is an affiliate of the American company, Google LLC, created after the replacement of Google Inc, which occurred on September 30, 2017, and which is a subsidiary of the company Alphabet Inc.
4. Google France SARL (hereinafter GF) is a limited liability company incorporated under French law having its registered office at 8, rue de Londres in Paris, and is an affiliate of the American company Google LLC.
5. GIL's main business is the sale of Google products and services in the EMEA market (Europe, Middle East and Africa). As such, its field of activity covers the French market.
6. Under the Marketing and Services Agreement (hereinafter MSA), signed on May 16, 2002 between Google Inc and GF, assigned to GIL by an amendment dated July 1, 2004, it is provided that GF employees provide marketing and sales support to GIL's teams. Thus, from 2004 onwards, the services sold by the Google group to French customers were subject to Irish taxation on commercial companies which tax rate is lower than the French one.
7. According to the MSA, until 2016 the remuneration paid by GIL to GF for the services rendered was determined as the highest amount between the actual cost increased by 8% (hereinafter "cost plus") and a percentage of GIL turnover set at 3%. As the "cost plus" methodology resulted in a higher amount for GF, this methodology was used under the MSA.

II. Statement of Facts

8. On November 12, 2012, the Directorate for national and international assessments of the General Directorate of Public Finances sent a tax assessment notice against GIL for financial years 2005 to 2010, alleging that GIL had a permanent establishment in France. Those adjustments were challenged.
9. The Regional Director of Public Finances of "Ile-de-France" and the Paris district filed a complaint with the National Financial Prosecutor's Office on 10 June 2015, on the basis of an absence of filing of GIL's corporate income tax returns, alleging that it had a permanent establishment in France through GF during fiscal years 2011 to 2014. No criminal complaint was filed for the years 2005 to 2010.

10. An investigation was opened on 16 June 2015 on counts of alleged violations of articles 1741 et seq. of the General Tax Code and article 324-2 2° of the Penal Code. It has been extended on 4 April 2019 to fiscal years 2015-2016 on the basis of the provisions of Article L228C of the Book of Tax Proceedings as amended by the Law of 23 October 2018 relating to the fight against fraud.
11. At the end of its investigations, and after analysis of the administrative Tribunal and Appeal Administrative Court decisions which discharged GIL of the payment of notably corporate income tax for financial years 2005-2010, refusing to recognize GF as a permanent establishment of GIL, the National Financial Prosecutor's Office maintains that the remuneration system applied by GIL to GF between 2011 and 2016 was insufficient in light of the scope of the functions performed and the associated risks borne by GF.
12. The National Financial Prosecutor sets forth that the functions actually performed by GF employees exceeded the contractual framework defined by the MSA.

While the MSA provided as GF activities that GF was not supposed to negotiate contracts concluded by GIL with its clients, according to the National Financial Prosecutor, the investigation revealed the primary role played by GF in the commercial relations between GIL and its "key account" customers located in France.

13. According to the National Financial Prosecutor, GF has carried out other activities than those contractually provided for, regarding both the nature of such activities and the products they concerned. The National Financial Prosecutor's Office maintains that the insufficient remuneration of GF by GIL triggers a readjustment pursuant to Article 57 of the General Tax Code, which is susceptible of characterizing for GF a voluntary reduction in the establishment of corporate income taxes, by concealing a portion of the amounts subject to these taxes, and for GIL a complicity of such action provided for and punishable under articles 1741, 1742 of CGI and 121-6 et 121-7 of CPP.
14. GF and GIL representatives, appointed to represent them during the proceedings, have been interviewed during the investigation. They emphasize that GIL and GF received numerous professional advices regarding the legality and appropriateness of their tax structure, confirmed by administrative court decisions, including on appeal.

GF and GIL however take note that the facts as set forth by the National Financial Prosecutor's Office are, following the investigation, susceptible of receiving the legal qualifications set forth above.

15. For the National Financial Prosecutor's Office and in accordance with the reassessments of GF's remuneration over financial years 2011 to 2016, as applied by the tax administration, the amount of corporate income tax eluded by GF amounts to the following:

GF	2011	2012	2013	2014	2015	2016	Total
Total tax basis included the base already declared by GF	63 002 460 €	88 569 735 €	103 007 336 €	116 114 760 €	129 553 006 €	147 181 714 €	647 429 011 €
Eluded CIT	16 197 150 €	25 237 034 €	31 333 850 €	39 056 898 €	42 448 129 €	35 255 367 €	189 528 428 €

III. Public Interest Fine

16. Under Article 41-1-2 of the Code of Criminal Procedure, the amount of the public interest fine is set *"in proportion to the benefits derived from the breaches found, within the limit of 30% of the average annual turnover, calculated on the basis of the last three annual turnover figures known at the time the breaches were found"*.
17. The amounts of gross turnovers reported by GF for financial years 2016, 2017 and 2018 are 299 301 917 euros in 2016, 325 554 124 euros in 2017 and 411 016 329 euros in 2018.
18. The amounts of gross turnovers reported by GIL for financial years 2015 to 2017 are 22 603 799 000 euros in 2015, 26 287 331 000 euros in 2016 and 32 159 837 000 euros in 2017.
19. The theoretical maximum amount of the public interest penalty incurred by GF is therefore 103 587 237 euros.
20. The theoretical maximum amount of the public interest penalty incurred by GIL is therefore 8 105 096 700 euros.
21. As the combination of criminal and tax penalties is permitted where the total amount of any penalties applied does not exceed the highest amount of one of the penalties incurred, taking into account the total amount of 56 858 528 euros accepted by GF as penalties, the public interest fine may not exceed the sum of 46 728 709 euros.
22. For the National financial prosecutor, it results from the preliminary investigation that the underpayment of the remuneration paid to GF by GIL allowed GF to elude the total payment of 189 528 428 euros between 2011 and 2016 as indicated in paragraph 15.
23. GF justified that it has signed on July 19, 2019 an agreement with the tax administration pertaining to the eluded corporate income taxes, default interest and tax penalties set by the tax authorities for the years 2011 to 2018.
24. In addition to the tax savings thus achieved, GF gained from this breach the benefit of cash position that should be valued by applying the group's return on equity rate. These advantages represent the amount of 13 107 787 euros over the relevant period.
25. The fact that GF settled its tax debt and GF's and GIL's cooperation with the criminal investigation should be taken into account as mitigating factors of the public interest fine.
26. However, the National Financial Prosecutor considers that the significant amounts of eluded taxes and the time during which these breaches have persisted justify applying an additional penalty of 297 363 785 euros.
27. Consequently, the total amount of the public interest fine supported by GF and GIL is set at 500,000,000 euros, 46 728 709 euros being supported by GF and 453 271 291 euros being supported by GIL.

IV. Compensation of the victim's damage

28. On July 19, 2019, the PNF decided to inform the Regional Director of Public Finance of "Ile-de-France" and the Paris district and invited him to submit any evidence likely to establish the reality and extent of his damage pursuant to Article 41-1-2 of the Code of Criminal procedure.
29. Considering that the group agreed the adjustments and undertook to pay the related sums within the agreed-upon timeframes, the General Directorate of Public Finance has not claimed any damage likely to be compensated under this agreement.

V. Terms and conditions of this agreement

30. Pursuant to this agreement, GF agrees to pay the full amount of 46 728 709 euros and GIL agrees to pay the full amount of 453 271 291 euros as part of public interest fine.
31. GF and GIL agree to pay jointly and severally the public interest fines set out above by delivering a certified cheque under the conditions provided for in Article R.15-33-60-6 of the Code of Criminal Procedure within 10 days from the date on which this agreement becomes final pursuant to the tenth paragraph of Article 41-1-2 of the Code of Criminal Procedure.
32. It is reminded that, as per Article 41-1-2 of the Code of Criminal Procedure, the validation order of the present CJIP does not carry a conviction and has neither the nature nor the effects of a conviction judgment.

Paris, on September 3, 2019

Muriel FUSINA
General prosecutor with the
Paris Court of Appeal
Delegated to the duties of
national financial prosecutor

Google France SARL
duly represented for the
purpose hereof

Google Ireland Limited
duly represented for the
purpose hereof