
GOOGLE MATRIMONY CASE

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ABSTRACT

The Matrimony.com Limited v. Google LLC and CUTS v. Google LLC cases (Case Nos. 07 and 30 of 2012) revolve around allegations of Google's abuse of dominance in online search and advertising services in India. The informants, Consumer Unity & Trust Society (CUTS) and Matrimony.com Limited, claimed that Google favored its own services and partners by manipulating search results, thus harming advertisers and consumers. They argued that Google's dominant position in the market allowed it to access confidential information, manipulate ad services, and restrict user choices. The Competition Commission of India (CCI) found Google to be dominant in both relevant markets, supported by its high market share and user preference in India. While the CCI acknowledged the "status quo bias" influencing user choices, it concluded that Google's actions constituted an abuse of dominance by imposing restrictive conditions, violating Section 4 of the Competition Act. However, the CCI's decision on Google's default browser agreements was contentious, as they did not explicitly restrict user choices but influenced user behavior. In summary, these cases highlight Google's dominance and its impact on the online search and advertising markets in India, ultimately leading to a finding of abuse of dominance under the Competition Act.

1. FACTS OF THE CASE

Informants Consumer Unity & Trust Society (CUTS): non-profit organisation working for consumer protection and competition; and Matrimony.com Limited (Consim Info Pvt. Ltd): providing a platform for marriage alliances alleged abuse of dominance by: Google LLC, Google India Pvt. Ltd. and Google Ireland Ltd. (joined later).

Case 07: Google runs search and advertising in a discriminatory manner, causing harm to advertisers and consumers. Informant alleged that Google favoured its own service and

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partners by manipulating search results to the advantage of its vertical partners. Google manipulated the algorithm to its favour and mixed vertical results to organic search results to promote its vertical search sites like youtube, google maps, etc. Google acquired software to complete vertical integration. Averred that Google abused its dominant position in the relevant market in India thereby contravening the provisions of Section 4 of the Competition Act.

Case 30: Informants alleged that Google is indulging in AOD through practices leading to search bias, search manipulation, denial of access to competing search engines, refusal to licence content to competing search engines and creation of entry barriers, etc. Further alleged imposition of unfair and discriminatory conditions on consumers.

CCI passed an order on 03.04.2012 under Section 26(1) for a DG investigation in case no. 07, and passed another order on 20.06.1012 regarding case no.30. DG reported that Google Ireland, a subsidiary of Google, to be included as OP3 due to its important operations in Google India. DG conducted investigation and filed a common Investigation Report in 2015.

DG Report observations:

- i. In its relevant market analysis, the DG found that the relevant market was A) Relevant market of Online General Web Search Service in India B) Relevant market of Online Search Advertising in India.
- ii. DG report concluded that specialised searches cannot be constituted as being part of the same market as general searches.
- iii. The DG based on the characteristics, intended use and price, had found that Online advertising is distinct from offline advertising. Further it also found that Online “search” advertising is distinct from other advertising forms which consist of texts, images, graphics, social network advertising. It found that Google was a dominant enterprise in both relevant markets despite the long-standing presence of other competitors such as Yahoo! and Bing.
 - i. The DG had rejected Google’s claim that Facebook was one of its main competitors in the online advertising market owing to its strong presence in the display ads

segment. Google has a suite of products and services apart from Online general web search services wherein it provides specialised search services.

- ii. Google was found to be indulging in practices of search bias via its Specialised search options. The use of special designs for search results by Google was found not to be based on relevance. However, the special appearance of the results would mislead users into believing that Google's ranking is "driven purely by quality considerations".
- iii. Google also integrated its own vertical search services/options/features in its online general web search services in Universal results in ways that did not apply to Google equally. It also offered its own specialised search features at prominent ranks or position on the Search Engine Results Page (SERP), via which google steers users to its own products and services and produces biased results. This also results in users not receiving the most relevant results. These acts harmed the competition and Google was found to be violative of S.4(2)(a)(i), S.4(2)(b)(ii), S.4(2)(c) and S.4(2)(e) of the Act.
- iv. Google did not disclose to the advertisers the details of their scores or any other data, leading to a lack of transparency. This made the entire process subject to hidden manipulation by google, which violated s.4(2)(a)(i).
- v. Google policy regarding compensation was also unfair as it imposed no obligation on Google to compensate the advertisers for any loss that may be attributed to Google's system error.
- vi. Google had allowed the usage of Minor variations of Consim's Trademark under the AdWords Program which put Consim at a disadvantage. In fact, Consim's own ads were blocked for searches on its trademark terms despite complying with Google's procedures. This imposition of unfair conditions on Consim was a violation s.4(2)(a)(i).
- vii. The DG found Google to have contravened Section 4(2)(c) of the Act on the ground that two of its distribution agreements (i.e. Google's agreement with Apple for its Safari browser and Google's agreement with Mozilla for its Firefox browser) set Google as default search engine.
- viii. It was concluded by the DG that Google abused its dominant position in the relevant markets of "Online General Web Search Service in India" and "Online Search Advertising in India", in violation of Section 4(2)(a)(i), 4(2)(b)(ii), 4(2)(c) and

Section 4(2)(e) of the Act.

The Commission considered the Investigation Report submitted by DG and forwarded copies to parties to invite objections. Matter heard by CCI in January, 2017 whereby the current order was passed.

2. ISSUES

- A. What is the relevant market in the present case?
- B. Whether Google is dominant in the said relevant market(s)?
- C. If finding in Issue 2 is in the affirmative, whether Google has abused its dominant position in the relevant market(s)?

3. CONTENTIONS/Objections raised by Google.

- i. Google objected to the definition of the relevant market. It stated that there is no relevant market for “general searches”. Consumers search for specific things/queries such as places, recipes, products and within each of these query categories, google competes with all types of services which are able to answer the query. The DG had erred in its finding that Vertical search services do not compete with general search services. The DG should have analysed whether users consider vertical search services and general search services as substitutable for individual queries as that is the ask of s.2(t) of the Act.
- ii. The DG report ignored the ad-funded nature of Google’s business which meant that the relevant market can only be of advertising and not free search. This was in accordance with international precedents. Even the Act required the existence of a trading relationship between a company and its customers as a pre-condition for defining a relevant market. Because search engines are free, Google has no trading relationship with the users of its search service and hence the basis for establishing dominance is absent. The DG’s market definition was also flawed as the assertion that the relevant market constitutes only online search advertising is incorrect. An advertiser who wants to run an ad campaign could take advantage of a multitude of different advertising opportunities, both online and offline. Irrespective of whether

offline or online, they all serve the same purpose of attracting awareness to the advertiser's product or service. Based on the relative assessment of their costs and Return-On-Investment, these forms of advertising are interchangeable from an advertiser's perspective and should therefore be a part of the same relevant market.

- iii. The DG report suffered from various issues on market analysis. These included:
 - (i) The Report dismissed offline ads as a constraint based on low level of Internet coverage throughout India. This was erroneous as the test should start from the narrowest candidate frame and then expand not the other way around.
 - (ii) The DG had not accounted for recent developments in digital analytics and targeting technology available for offline ads.
 - (iii) The DG in its report relies on older decisions of other jurisdictions, which identify separate markets for online and offline ads. But with the new developments in Media, ad tech, these older decisions become inapplicable.
- iv. Further, the Report's claim that search and non-search advertising should be differentiated has been made without explaining how or why the different characteristics affect advertiser demand. The Report ignored the convergence of the two mediums.
- v. Google's share is much lesser in a properly defined relevant market, which encompasses all forms of advertising including offline advertising. It provided various other reasons for allegedly not being dominant in the relevant market of online search services which included:
 - (i) Google faces substantial competitive constraints in each query category
 - (ii) Usage shares are not, in any event, a proxy for market power over quality and innovation.
 - (iii) Google's high innovation rates exclude dominance. This is because if Google were to reduce its innovation rates, it would lose its users to its rivals. Therefore, it has to keep consistently high innovation rates
 - (iv) The Investigation Report ignores the constraint from user switching. Users in India do often also attempt to use other search engines. Despite trying those engines, the users choose to come back to Google which is only reflective of Google's innovative and high-quality services.
 - (v) None of the "other factors" under Section 19(4) of the Act give Google market power. Google's size/ resources are not different from its rivals. Its search is not

subject to direct or indirect network effects. Google search is not characterized by substantial barriers to entry and expansion. Neither is Google integrated vertically in a way that conveys market power in search. Lastly, users and websites do not “depend” on Google.

- vi. Google provided various other reasons for allegedly not being dominant in the relevant market of online advertising which included:
 - (i) The Investigation Report ignores extra-market constraints. Recent precedents had found that online ads may compete with offline ads (*Cloudwalker*), and that search and non-search ads do constrain each other. Entities like Facebook cannot be ignored in a competitive analysis of online ads in India. Google cannot operate independently of such competitive forces.
 - (ii) The Investigation Report ignores constraint from advertiser switching. Users frequently multi-home between ad platforms such as Bing/Yahoo!. This precludes dominance of Google.
- vii. The Report overstates the barriers to entry. If a new entrant has an innovative product and succeeds in generating a good ROI, marketers will be driven to place greater proportions of their budget with the new entrant, and over time it will grow.
- viii. The DG’s report is based on information that is not accessible to Google and it cannot understand the precise information relied upon against it, understand the Investigation Report’s reasoning, or verify the conclusions that the DG seeks to draw from this information. Without access to such information, any infringement decision against Google would be contrary to the principles of natural justice and the jurisprudence of COMPAT.
- ix. Google also contested that the Commission could not have ordered an investigation against Google Ireland Ltd. without making a *prima facie* determination that Google Ireland itself has contravened s.4 of the act. Insufficient reasons had been given for joining Google Ireland as a part of the investigation.
- x. Google responded stating that the DG report does not claim that these agreements are exclusive. It only alleges that because Google is set as the default option, this “amounts to denial of market access to competing search engines.” However, a default setting does not deny market access to competitors. Defaults are only for convenience and users are always free to switch.
- xi. It also argued that the Report mentions no evidence that the agreements have resulted

in denial of market access. Further, it also stated its competitors' impact on the agreements, such as Google losing one of its distribution deals. Further competitors like Microsoft put Bing as the default search engine in their browser.

4. HELD

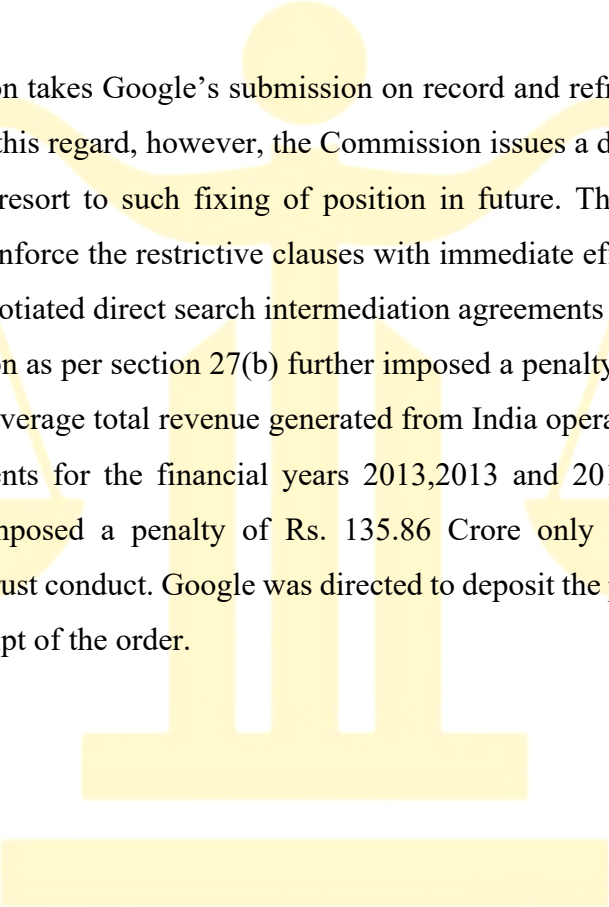
- i. The CCI upheld the findings of the DG with respect to the analysis of the relevant market on all fronts. The final markets determined by the Commission were:
 - (a) Market for Online General Web Search Services in India.
 - (b) Market for Online Search Advertising Services in India.
- ii. The Commission held that Google is dominant in both the relevant markets i.e., market for online general web search services and the market for online search advertising services in India.
- iii. After determining the Market share of Google in the market of Online general web searches in India, the Commission held that while the act does not mention any market share threshold beyond which dominance is presumed, it is still a critical metric. Google in this market was held to have exponentially greater share than its nearest competitor and it enjoys indisputable dominance in the relevant market.
- iv. The Commission concluded that Google has had a consistently high market share which suggests that it has got other advantages, besides technical advantages, which insulate its market position. The structure of the market is both indicative of and conducive to Google's dominance.
- v. The Commission held that the scope of the investigation cannot be unduly restricted, and the DG may be justified in looking and examining the aspects which have not been specifically directed to be investigated by the Commission. It relied on the case of *Excel Crop Care Ltd. v. CCI* to hold that while an inquiry starts at the allegations in the complaint, in carrying out the investigation, other facts also get revealed and are brought to light then the DG is well within his powers to account for those and bring other entities within the purview of the investigation. A restricted manner of investigation would defeat the very purpose of the Act which is to prevent practices having AAEC.
- vi. The Commission also rejected Google's contentions regarding the erroneous joining of Google Ireland as a party. The Commission sanctioned it, and the DG provided sufficient reasons for joining. Further, there is no requirement under the law to pass

separate detailed orders at such intermediate stages when the Commission has already issued prima facie orders detailing the abusive conduct for investigation. The Commission held that the DG had the jurisdiction to investigate Google Ireland in the case.

- vii. It also held that Google was granted access to all confidential information of the parties after following an elaborate procedure as against the contention of Google.
- viii. It held that online general web search could not be substituted with direct search option by typing URLs as users barely are aware of URLs of a lot of websites.
- ix. Further, it agreed with the finding of the DG that online and offline ad services cannot be compared. Online advertising is undertaken using the internet as a medium and, hence, its coverage is largely dependent on the reach of the internet. Similarly, online advertising is not substitutable for newspapers, radio or television for advertisers who seek to target areas or user groups with limited internet access. Further, Advertising rates for online ads are much lower than traditional media.
- x. The Commission agreed with Google and held that the agreements are neither exclusive nor the report establishes any denial of market access. The user is not obliged to use the default search service; they can always switch. Default settings could not be equated with the exclusivity.
- xi. According to the Commission, Google was also using its dominance in the market for online general web search to impose restrictive conditions in online syndicate search agreement, which was in violation of Section 4(2)(e) of the Act. Further, as competitors were denied access to online search syndication services market, a contravention of s.4(2)(c) was also made out.
- xii. The Commission found that Google enjoyed a domination position in the relevant markets and that Google had abused its dominant position on three counts.

(a) Ranking of Universal Results prior to 2010 which was not strictly determined by relevance. Rather the rankings were pre-determined to trigger at the 1st, 4th or 10th position on the SERP. Such practice of Google was unfair to the users and was in contravention of the provisions of Section 4(2)(a)(i) of the Act.

(b) Prominent display and placement of Commercial Flight Unit with link to Google's specialised search options/ services (Flight) amounts to an unfair imposition upon users of search services as it deprives them of additional choices and thereby such conduct is in contravention of the provisions of Section 4(2)(a)(i) of the Act.

- (c) The prohibitions imposed under the negotiated search intermediation agreements upon the publishers are unfair as they restrict the choice of these partners and prevent them from using the search services provided by competing search engines.
- xiii. Imposing unfair conditions on such publishers by Google amounts to violation of the provisions of Section 4(2)(a)(i) of the Act. Google is doing so because it has dominance in the market for online general web search to strengthen its position in the market for online syndicate search services. This amounts to violation of the provisions of Section 4(2)(e) of the Act. Further, as competitors were denied access to the online search syndication services market, contravention of Section 4(2)(c) of the Act is also made out.
- xiv. The Commission takes Google's submission on record and refrains from issuing any cease order. In this regard, however, the Commission issues a desist order and directs Google not to resort to such fixing of position in future. The Commission orders Google to not enforce the restrictive clauses with immediate effect, as is found in the order, in its negotiated direct search intermediation agreements with Indian partners.
- xv. The Commission as per section 27(b) further imposed a penalty on Google at the rate of 5% of their average total revenue generated from India operation from its different business segments for the financial years 2013, 2014 and 2015. Consequently, the Commission imposed a penalty of Rs. 135.86 Crore only upon Google for the infringing antitrust conduct. Google was directed to deposit the penalty amount within 60 days of receipt of the order.
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5. ANALYSIS

- i. The Commission rightfully held that Google is dominant in both relevant markets i.e., market for online general web search services and the market for online search advertising services in India. This is not merely reflected by the market share of Google (which is also higher than any of its competitors by a significant margin), but by the statistics of Google being the preferred search engine by majority of the users in India.
- ii. A major point pertaining to how Google abuses its dominant position is the access to all confidential information of parties, which allows it to further manipulate ad services and search results by displaying more and increasing the visibility score of targeted ads.
- iii. However, a potentially erroneous point in the order was when the Commission agreed with Google's contention that the agreements to set Google as the default browser in certain systems does not lead to denial of market access. Even though such an agreement technically does not restrict a consumer from switching to an alternative search engine, a big section of users give leeway to the existing system and get "accustomed" to Google and thereby end up using it, instead of exercising their free choice to prima facie use a search engine of their choosing, which is reflective of the customer's 'status quo bias,' which was taken up by the Commission in the later cases involving Google.
- iv. It is akin to the reasoning given by the Commission in para 253 of the order when it found Google to be abusing its dominance by manipulating flight searches. Users are bound to concede to the primary choices presented to them by virtue of bias, and this deprives them of additional choices which is a conduct in contravention of the provisions of Section 4(2)(a)(i) of the Act.
- v. Therefore, pursuant to paragraph 397, Google was rightfully abusing its dominance in the relevant market to impose restrictive conditions. Google was therefore rightfully found to be in contravention of section 4 of the Competition Act.