

DELINEATION OF RELEVANT MARKET STRUCTURE IN ONLINE SEARCH & ADVERTISEMENT EFFECTING COMPETITION LAW

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ABSTRACT

One of the thorniest questions which competition authorities are increasingly confronted with is the extent to which traditional market definition tools can be used to assess the competitive dynamics of today's knowledge-intensive, user-based internet search business. The question is challenging for two main reasons: *firstly*, the peculiarities of two-sided markets; and *secondly* the key role of user data in online search and advertising. This report mainly deals with starting from a description of the interrelationship between online search and advertising, the role of user data as the most valuable asset for future growth in the industry for e-commerce. Finally, it concludes with suggestions for product market definition.

INTRODUCTION

The rapid growth of the internet, and the incredible flow of information that the internet has made possible, has transformed the business of advertising¹ among so many other things. Today it is difficult to surf the web without coming across online advertising, often in the form of visual display ads on web sites (including pop-ups and pop-downs) and textual ads on search sites. There is little doubt that on-line advertising has taken business away from traditional modes of advertising, such as newspapers, snail mail, and radio.

¹Product or Service market

In the last few years, competition authorities have come across number of occasions to define the product market for online search and advertising. The three main problems arise when defining the product market:

firstly, because of this type of market, particularly its **double-sided nature** and the interaction of paid search with natural algorithmic search;²

Secondly, because of the rapid innovation and with a continuous expansion of the boundaries of the relevant market and a constant alteration of the competitive constraints;

Thirdly, authorities need to give importance to user data which adds an economic value in both the markets of online- search and advertising.

Specific Features of Internet Markets

Since competition law is an economic law, its application depends to a large extent on. From a legal point of view, it is important to understand the economic dimensions of competition law. Therefore, as an introduction, some economic principles with relevance to the online world are discussed:

- **Two-sided market in search**

A very important feature of high-tech markets is their multi-sided nature. Two-sided markets exist where a platform caters to two distinct groups who have in each other some kind of

¹ (Federal Networking Council, *FNC Resolution: Definition of "Internet,"* (October 24, 1995), at http://www.nitrd.gov/fnc/Internet_res.html, at 2.45 pm, on 4th July, 2017

2. THÉPOT FLORENCE, MARKET POWER IN ONLINE SEARCH AND SOCIAL--NETWORKING: A MATTER OF TWO--SIDED MARKETS, CLES WORKING PAPER SERIES 4/2012, P. 12.

benefit. Typical two-sided markets are media markets in which the publishers earn most of their revenue from selling advertising space. Publishers try to attract readers as a higher the reader increases the value of their advertising space Ex. newspaper.

In two sided - or multi-sided markets, ISP's enable the realization of gains from interaction between market participants by reducing the transaction cost of finding each other. This usually leads to network effects which can be of a direct or an indirect nature. Direct network effects mean that the more customers use the same service, the more the value of the service increases³. examples are telecommunication networks, for example Skype, which are more attractive to users if the application is used by a larger number of users.²

CHARACTERISTIC OF ONLINE MARKETS

Mostly the search engine generate revenue through advertising. Financing comes from so called **search advertising**, meaning that search related advertisements are shown next to the results page of the users' search. Moreover consumers are not charged for using search engine however they incur cost for availing internet connection such as broadband, database etc. Search engine markets are typical two-sided markets as the more people use a search engine, the more advertisers are attracted. Similarly when a newspaper running agency charge a nominal amount from its readers though the cost of its newspaper is more than its unit selling price. Keeping the selling price low, it encourages people to read it and thus increases its reader base. With the increase reader base the agency negotiate best price from advertisers for space in news.

As market entry barriers include high fixed costs since the development and maintenance of an effective search algorithm is very expensive. The network effect builds up market entry barriers, as it might be hard to attract users to a new search engine⁴. Users seem to remain loyal to the search engine they use⁵ and users change to another search engine if they have a poor search experience. Google is currently the most popular search engine and maintains a market share of 90% in Europe offers other services to users, such as maps and email.

3. WHISH/BAILEY (supra note 3), p. 11; FATUR, ANDREJ, EU-Competition Law and the Information and Communication Technology Network Industries, Oxford/Portland 2012, p. 82.

³**User- side market for search engine** -. On the user side of search engine when a query is typed in the search box, and is “searched” then it renders a list of results. The majority of internet users are unaware of the fact that only some of the results are completely natural, i.e. deriving from a mechanic operation of the algorithm. In fact, there are results representing so called “paid search results”. Paid search results are visibly distinguished from natural search results. As their placed on the top of the ranking or on the right side of the screen. Due to the lack of homogeneity, a user is not able to tell with certainty whether he is clicking on a "natural algorithmic result or a paid search result". European Commission does not see vertical or social searches as substitutes for general search engine and, therefore, tends to define the market for internet searches in a narrow way, only including the general search engines.

Sponsored Links (Ads)

Google Toyota Prius Search Advanced Search Preferences

Web Show options... Results 1 - 10 of about 8,040,000 for Toyota Prius. (0.09)

2009 Toyota Prius
www.Toyota.com/Prius The New 2009 Prius - Build Your Own at Toyota.com. Sponsored Links

New Toyota Prius
PrimeToyotaCars.com Home of the Test-Drive Spin for \$250 Toyota Prius
Show map of 1575 VFW Pkwy, West Roxbury, 02132

The 3rd Generation Toyota Prius Hybrid + X
The official web site for the 3rd Generation Toyota Prius.
www.toyota.com/prius-hybrid/ - 65k - Cached - Similar pages -
Models & prices Options
Photos & colors View brochure
Features & specs Awards & Press
Demos & Videos Warranty
More results from toyota.com »

The 3rd Generation Toyota Prius Hybrid models and prices + X
Find 2010 Toyota Prius Hybrid models and prices for Prius II, Prius III, Prius IV, Prius V models, along with colors, exterior views, photo galleries, ...
www.toyota.com/prius-hybrid/trims-prices.html - 67k - Cached - Similar pages -

Toyota Prius - Wikipedia, the free encyclopedia + X
The Toyota Prius (pronounced /ˈpriːəs/) is a hybrid electric mid-size car developed and manufactured by the Toyota Motor Corporation. ...
en.wikipedia.org/wiki/Toyota_Prius - 309k - Cached - Similar pages -

News results for Toyota Prius
Review: 2010 Toyota Prius - 16 hours ago
By Thane Peterson Toyota (TM) has done a masterful job of redesigning the Prius, the nation's top-selling hybrid vehicle since first coming out in 1997. ...
BusinessWeek - 156 related articles »

New Honda Insight Hybrid
The right car at the right price.
Learn more about the Honda hybrid.
www.honda.com/Insight

Fuel Efficient Vehicles
Huge Vehicle Inventory Serving All New England. Get a Quick Quote Now!
www.BostonToyotaDealers.com

2009 Toyota Prius
\$199 Per Month Prius Clearance
During Toyota Perfect Timing Event!
www.BuyAToyota.com
Massachusetts

Top 10 Selling Hybrids
110 HP, EPA 60 mpg / 51 mpg
Edmunds Empowers The Auto Consumer
www.Edmunds.com

Looking for a ToyotaPrius
Research Review Request
Your Hybrid Car Search Made Simple
CleanGreenAutos.com
Massachusetts

New Prius In Stock
Low Prices On Toyotas.
Visit Woburn Toyota Online.
www.WoburnToyota.com

4. CRAIG PAUL/DE BÚRCA GRÁINNE, EU Law – Text, Cases and Materials, 14th Edition Oxford 2008, p. 1020.

5. DEVINE (*supra note 20*), p. 26

6. Microsoft/Yahoo! Search Business, Case No COMP/M.5727, available at <http://ec.europa.eu>, par. 30., at 3.30 am on 4th July.

Advertising - side market for search engine:

Advertising is the most common source of financing for internet service providers. There is a wide diversity of internet advertising, ranging from traditional banners or pop-ups to context sensitive search advertising⁷. Usually, the relevant product or service market for internet advertising is distinguished from offline advertising⁸. The online advertising platforms pool the advertisers' demand for web space on one side and they acquire the advertising space on websites through agreements with the publishers on the other side.

⁴Google's advertising model is referred to as 'search advertising'. The popularity of 'search ads' is that they provide a better way to target advertising. However, 'non-search ads' can also target customers in different ways. Two major trends in the online advertising industry are behavioural targeting and data analytics. Through these methods, online entities are able to gather data on the online behaviour of people, such as the websites they visit and the purchases they make online. This data might be matched together with other information and used to target advertisements at people⁹.

Role of user data in Market:

Recently, competition authorities seem to be observing the online industry more closely. Google's example also shows that they are not only monitoring it but are also willing to conduct investigations in this area. Although Google is, at least currently, the market leader in the online search business, there is a trend in the online industry towards web portals which offer a variety of services, including not just search services but also networking, information and communication services¹⁰. Google has even tried to build up its own social network, called Google+, and other services which interacts between the users.⁵

The users attention is important for the advertisers because the more the users more the advertisement . Therefore, the market for user attention should be taken into account. Running a business on the internet depends largely on the possibility of selling advertising

7. KAGAN (supra note 35), p. 285.

8. *Google/Double-click*, Case No COMP/M.4731 from 11.03.2008, available at <<http://ec.europa.eu>>, Para. 44 – 47 and 56; *Microsoft/Yahoo!* (supra note 35), par. 61., dated on 5th July, 2017 at 10.15 am.

9. EVANS DAVID S., *The Online Advertising Industry Economics, Evolution, & Privacy*, Journal of Economic perspective

10. DEVINE (supra note 20), p. 41.

space to advertiser. Therefore, internet service providers need to remain attractive to the users, either in delivering a useful service, such as Google with its search tool, or an entertaining service, such as Face book.

The need of personal data is not only important for the advertisers' side but also for the users' side, since personal data are relevant for improving the quality of a service. For example, search engines collect a vast amount of user data and, through the findings gained from the search tools, they are able to improve the search function. As user data is a key part of the success of internet service providers: *firstly*, through the findings of user data providers are able to put better adverting models at the disposal of advertisers; and *secondly*, through the data they are able to improve their service and attract more users. This, in turn, attracts advertisers and thereby the circle is closed.

However, the collection of user data might be a two - edged sword: consumers and regulators. It has to look with the privacy issues on the internet. Consumers and policy makers should pay more attention to their online privacy. The reality is that many consumers still do not know that their private data are being collected.

Legal Frame work and structure of Online world:

As competition law looks into unlawful agreements (cartels), the abuse of a dominant market position and merger control. Due to the special characteristics of internet markets, the internet industry is dominated by big players with high markets shares. Therefore, most of the complaints heard in internet markets are based on non-compliance with competition law caused by monopolistic conduct.

ABUSE OF DOMINANCE IN ONLINE SEARCH & ADVERTISEMENT IN EUROPEAN UNION

Article 102 of the Treaty on the Functioning of the European Union (TFEU) is mainly aimed at preventing undertakings who holding a dominant position in a market and abusing private industry by producing worse outcomes to it consumers and society. It is the second key provision¹¹ after Article 101, in TFEU (Treaty on the Functioning of the European Union) competition law. The text of Article 102 provides the following:

*“Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.”*⁶Such abuse may, in particular, consist in-

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

What is comparison shopping product / services?

Comparison shopping engines are product-specific search queries as they're designed to link users to specific on-line storefronts. Comparison shopping engines are employed by merchants who add things or transfer their online catalogs to those looking shopping search engines. They are doing therefore by finding online portals designed for his or her business, that solely allow specific online storefronts or service providers to use their comparison shopping engines, and also, they may only allow certain types of products to be listed. Some comparison shopping engines are free for merchants, while others charge fees.

Google also allows users to search for products on online shopping websites and compare prices between different vendors. Originally these services listed prices was monitored by Ad words. But in May, 2012 Google announced that services shift to a paid model where merchants would have to pay the company in order to list their product or services. Google justified stating that it would allow the service to deliver the best for people searching for products and will help to come merchants with the right customers But it proved different as the small business

11. Available at, http://en.wikipedia.org/wiki/Article_102_of_the_Treaty_on_the_Functioning_of_the_European_Union, dated on 10th July, 2017 at 10.20 pm.

would not be able to compete with larger companies and would affect the advertising budget. Google stated giving its own products sufficiently better than rivals, depriving the full benefit of competition.

EU Commission Alleged:

- After a five-year of investigation, the EU Commission announced that "**Google has abused its dominant position**" in the markets for general internet search services by favouring its own **comparison shopping** product in general search pages doing this was attracting customers making it better from others.
- Moreover, the commission says this infringes on EU antitrust rules because it stifles competition and harms consumers".
- "In the case of Google, company has given an unfair advantage to its own comparison shopping service", in breach of **EU Anti-trust** rule imposing **fine of €2.42 billion** for breaching Anti - Trust Rule. It denied different companies the chance to compete on the merits and to innovate. It denied consumers a genuine choice of services and the full benefits of innovation the basic objective of EU.

Back ground of the Case:

As the EU Commission initiated proceedings in this case in November 2010. The preliminary conclusion of the Commission's investigation is that Google gives systematic favorable treatment to its comparison shopping product (currently called 'Google Shopping') in its general search results pages, e.g. by showing Google Shopping more prominently on the screen. It may therefore artificially divert traffic from rival comparison shopping services and hinder their ability to compete on the market. This was followed by a number of complaints by European and US competitors that Google had breached EU antitrust rules. After an initial investigation, Google sought to address the Commission's concerns by offering legally binding commitments. Google proposed three sets of commitments (the third was submitted [in February 2014](#)). However, the feedback the Commission received from third parties showed that they were not

effective to address the Commission's competition concerns in full. Since various attempts to reach a conclusion by means of commitments failed, from November 2014, This led to two Statements of Objections, in April 2015 and July 2016, setting out the Commission's preliminary conclusions and a range of additional evidences.

Google's Abuse of Dominance:

Google has abused its market dominance in general internet search by giving a separate Google product. In 2004 Google entered the separate market of comparison shopping in Europe, with a product that was initially called "Fro ogle", re-named "Google Product Search" in 2008 and since 2013 has been called "Google Shopping". When Google entered comparison shopping markets with Fro ogle, there were already a number of established players. Contemporary evidence from Google shows that the company was aware that Fro ogle's market performance was relatively poor. As More traffic leads to more clicks and generates revenue. Furthermore, more traffic also attracts more retailers that want to list their products with a comparison shopping service. Given Google's dominance in general internet search, its search engine is an important source of traffic for comparison shopping services.

From 2008, Google began to implement this in European markets to push its competition by comparison shopping service. Thus, this strategy relied on Google's dominance in general internet search.

Allegation imposed on Google:

Firstly, Manipulation in its own search engine results - Google manipulated its search results-both organic and paid results creating dominance on its search engine to afford preferential placement to its own service & depress the ranking of competitors¹². These competitors include “vertical” search services and specialized search engine that let users search in specific area such as Travel, shopping, maps. Indeed, Google has a “policy” putting links to its own products above the natural search results Notwithstanding the fact that these links are not “natural” results determined by Google’s normal search algorithm and the fact that Google has an economic interest in placing links to its own pages there, Google does not disclose the nature or placement of these links to users.

Secondly Targeting specific Rivals- Rival comparison shopping services appear in Google's search results on the basis of Google's generic search algorithms. Evidence shows that even the most highly ranked rival service appears on average only on page four of Google's search results, and others appear even further down. Google's own comparison shopping service is not subject to Google's generic search algorithms, including such demotions. As a result, Google's comparison shopping service is much more visible to consumers in Google's search results, whilst rival comparison shopping services are much less visible. for e.g. Bing Maps, Microsoft Online Services, Microsoft Office Live¹³.

Thirdly manipulation in Algorithms -Google can program its algorithm to exclude, penalize, or promote specific sites or whole categories of sites¹⁴. The evidence shows that consumers click more often on results that are more visible, i.e. the results appearing higher up in Google's search results. Even on a desktop, the ten highest-ranking generic search results on page 1 together generally receive approximately 95% of all clicks on generic search results (with the top result receiving about 35% of all the clicks). The first result on page 2 of Google's generic search results receives⁷ only about 1% of all clicks. Thus, moving the first result to the third rank leads to a reduction in the number of clicks by about 50%. The effects on mobile devices are even more pronounced given the much smaller screen size.

Fourthly Blocking advertising platform interoperability- As Google has made advertising platform interoperability difficult, increasing the costs of an advertiser¹⁵, which has the effect of denying competitors market access which is in violation of section 4(2)(c) of the act.

How it has breached the EU Anti- Trust rules?

- Google's practices amount to an Abuse of Google's Dominant position in general internet search by stifling competition in comparison shopping markets.

12. Available at www.brandnignity.com/2011/03/google-manipulating-search-results/ Dated on 10th July, 2017 at 7.40pm.

13. Available at <http://blogs.wsj.com/law/2009/05/08/as-google-grows-so-to-do-the-antitrust-issues/> /Dated on 10th July, 2017 at 8.00 pm.

14. Available at www.Googleopoly.net Research, Dated on 11th July, 2017 at 10.20 am.

15. techfreedom.org/people/berin-szoka, www.foreignaffairs.com/articles/, Dated on 11th July, 2017 at 10.45am

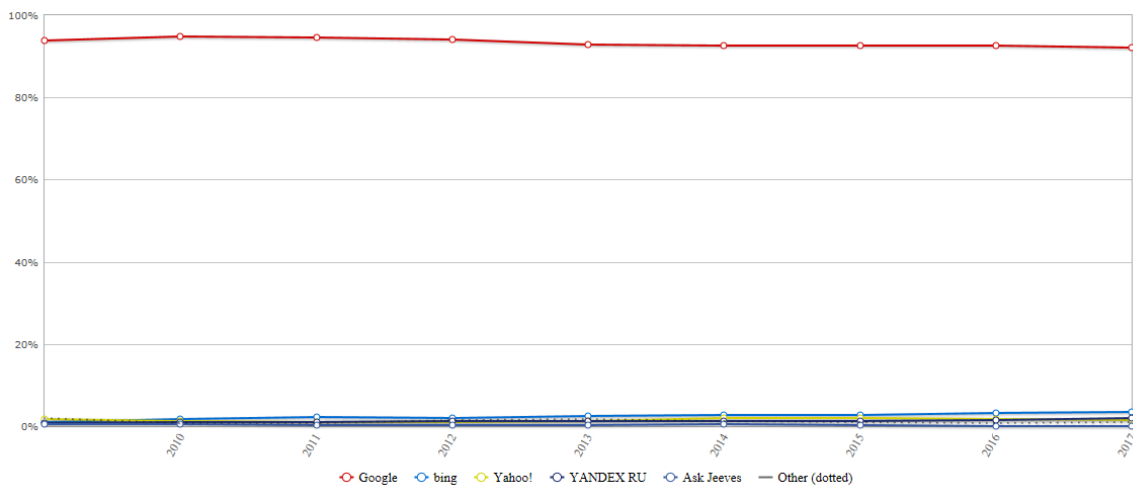
- Google has abused this market dominance by giving its own comparison shopping service an illegal advantage. It gave prominent placement in its search results only to its own comparison shopping service, whilst demoting rival services. It stifled competition on the merits in comparison shopping markets

Market share of Google:

Google has proved its **dominance in all 31 EEA** countries since starting in January 2008. This assessment is based on the fact that Google's search engine has held very high market shares in all EEA countries, exceeding 90% in most, which is the period investigated by the Commission. Whereas Google has introduced the practice of comparison **shopping** service in all **13 EEA** Countries. Google's comparison shopping service has increased its traffic 45-fold in the United Kingdom, 35-fold in Germany, 19-fold in France, 29-fold in the Netherlands, 17-fold in Spain and 14-fold in Italy.

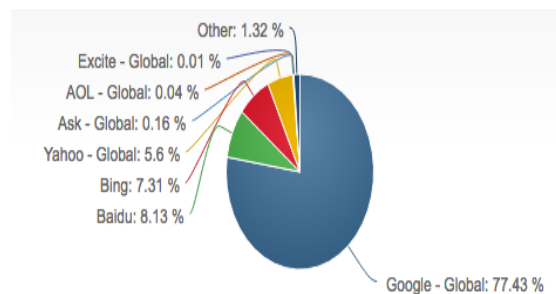
Search Engine Market Share in Europe

2009 to 2017



According to the global marketing share percentage¹⁶ in terms of use of search engine, the most favoured use of search engine is Google with 77%. This states that Google are the market leaders, however the other search engine such as yahoo, Bing still holds a large audience. Google market share is still on the increase. Last year in 2016 we saw 67% of market share for Google, so Google has taken another 10% of the market from its rivals in just the past 12

months.⁸ Google huge online advertising business and has made \$22.4bn (£17.5bn) in advertising revenue of last year. So, EU Commission has charged heavy antitrust scrutiny on conditions attached to its adverts, the dominance of its Android operating system and prioritizing its shopping services in its search engine.



Effect of Google's illegal practices:

Google's illegal practices have a significant impact on competition between Google's own comparison shopping service and rival services;

- They allowed Google's comparison shopping service to create vital gains in traffic at the expense of its rivals and to the imperilment of European consumers.
- Given Google's dominance in general internet search, its search engine is an important source of traffic. As a result of Google's illegal practices, traffic to Google's comparison shopping service increased significantly, whilst rivals have suffered terribly substantial losses of traffic.
- Since the beginning of each abuse, Google's comparison shopping service has increased its traffic 45-fold in the United Kingdom, 35-fold in Germany, 19-fold in France, 29-fold in the Netherlands, 17-fold in Spain and 14-fold in Italy.
- Traffic to **rival comparison** shopping services on the other hand dropped significantly. The Commission found specific evidence of sudden drops of traffic to certain rival websites of 85% within United Kingdom, up to 92% in Germany and 80% in France.

16. Available at <http://www.smartinsights.com/search-engine-marketing/search-engine-statistics/>, Dated on 24th July, 2017 at 8.10 am.

Evidence gathered by the Commission:

In reaching its Decision, the Commission has gathered and comprehensively analysed a broad range of evidence, including:

- 1) contemporary documents from both Google and other market players;
- 2) very significant quantities of real-world data including 5.2 Terabytes of actual search results from Google (around 1.7 billion search queries);
- 3) experiments and surveys, analyzing search results on consumer behaviour and click-through rates;
- 4) Monetary and traffic data
- 5) Market investigation of customers and competitors.

Fine imposed:

On 27th June, 2017, the Commission imposed fine of **2.42 billion**, takes account of the duration and gravity of the infringement. In accordance with the Commission's 2006 Guidelines on fines, the fine has been calculated on the basis of the value of Google's revenue from its **comparison shopping** service in the **13 EEA countries**.

Consequences of the Decision:

- As per EU decision, Google must stop its illegal practices concerning its own comparison shopping service within 90 days.
- Google must respect the simple **principle of equal treatment** in its search results for its own comparison shopping product and rival comparison shopping products.
- Google must apply the same processes and ways to position and show rival comparison shopping services in Google's search results pages as it gives to its own comparison shopping service.
- It is Google's sole responsibility to ensure compliance and it is for Google to explain how it intends to do so,
- The Commission will monitor Google's compliance closely and Google is under an obligation to keep the Commission informed of its actions (initially within 60 days of the Decision, followed by periodic reports).

- Non-compliance would be a topic of separate case where Google would have the opportunity to comment.
- If the Commission decides that Google had failed to comply with its obligations under the decision, it would be subject to a daily penalty payment of up to 5% of the average daily worldwide turnover of Alphabet.
- Google is also liable to face civil actions for its anti-competitive behaviour by other member states.

Other Google cases:

The Commission is still on the process of conclusion stating that Google has abused its dominant position in two other cases, which are still being investigated. These concerns are

(a) **Ad Sense**

Commission is concerned that Google has reduced choice by preventing third-party websites from sourcing search ads from Google's competitors. The Commission's view set out that these practices have enabled Google to **protect its dominant position in online search advertising**. It has prevented existing and potential competitors, including other search providers and online advertising platforms, from entering and growing in this commercially important area.

Google places search ads directly on the Google search website but also as an intermediary on third party websites through its "Ad Sense for Search" platform ("*search advertising intermediation*"). These include websites of online retailers, telecoms operators and newspapers. Whenever a user enters a search query, in addition to the search results, search ads are displayed. If the user clicks on the search ad, both Google and the third party receive a revenue.

The Commission considers at this stage that Google is dominant in the market for search advertising in the European Economic Area (EEA), with market shares of around 80% in the last ten years. The Commission takes note that, in the context of its antitrust proceedings, Google has recently decided to change the conditions in its Ad Sense but still the matter is under investigation by Brussels

(b) **Android operating system**, where the Commission is concerned that Google has stifled choice and innovation in a range of mobile apps and services by pursuing an overall strategy on mobile devices to protect and expand its dominant position in general internet search.

The Commission alleges that Google has breached EU Anti-trust rules by:

- requiring manufacturers to "**pre-install Google Search and Google's Chrome browser**" and require them to set Google Search as default search service on their devices
- Stopping manufacturers from selling smart mobile devices **running on competing operating systems** based on the Android open source code;
- Giving **financial incentives** to manufacturers and mobile network operators on condition that they exclusively pre-install Google Search on their devices. The Commission believes that these business practices may lead to a further dominant position of Google Search in general internet search services.

UNITED STATES

United States antitrust Competition law, known in the United States as **Antitrust law**, is law that promotes or maintains market competition by regulating anti-competitive conduct by companies. The Sherman Act of 1890 attempted to outlaw the restriction of competition by large companies, who co-operated with rivals to fix outputs, prices and market shares, initially through *pools* and later through *trusts*.

S. 1 of the Sherman Act declared illegal "every contract, in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations".

S. 2 of the Sherman Act prohibits monopolies, or attempts and conspiracies to monopolize. Following the enactment in 1890 US court applies these principles to business and markets. Under this antitrust law of the US the expressions "dominance" or "abuse of dominance" are not used. The corresponding concept under that law is of 'monopoly' and 'attempt to monopolize' is being used.

In the United States, the Federal Trade Commission also is investigating Google for possible Antitrust violations, and recently hired a prominent outside litigator to oversee the probe. United States Senate Judiciary Committee's antitrust subcommittee has instituted an investigation against Google Inc. for its alleged abuse of dominance position in the Internet search market in USA¹⁶.

Market Share:

Google remains the undisputed leader of the global online advertising market. It offers a number of products that have helped it maintain its leadership. Some of these main products are Google Search (a search engine), Ad words (an auction-based advertising program), Double-click (infrastructure for serving ads), YouTube (a video platform), and Android (a mobile operating system). These products have helped Google maintain above 30% share in the worldwide digital advertising market. According to various monthly U.S. explicit core search reports from Co score, Google has managed to maintain its share at around 63.4% in the U.S. search market over the last few years. Other prominent search engines—like Microsoft ([MSFT](#)) Bing, Yahoo ([YHOO](#)), and AOL ([AOL](#))—are way behind Google in this market.

⁹Google conduct for its Anti-competitive behaviour

Google has been under a lot of scrutiny from anti-trust authorities throughout the world. Google has faced a number of complaints in the last few months accusing the company of promoting its own content through its search results. Last year, Microsoft and Oracle had complained about Google's anticompetitive behavior in using Android to promote its own apps on smart phones.

In June, 2013 Aptoide, a Portuguese company that runs its own app store, filed a complaint with European Union regulators that Google makes it difficult for users to install its apps on Android's platform. Then again in July 2017, Yelp complained about Google promoting its own content through users' search queries. More recently, Google has entered into **exclusive agreements** with high traffic websites, according to these agreements¹⁷, any search made on these web sites will be directed to Google's search platform only. These agreements establish Google as exclusive search provider and deny¹⁰ this to rival generic search platform as well as vertical platform¹⁸ thus by doing this it can generate revenue through advertisement. These agreements

16. Available at www.nytimes.com/.../us-move-has-google-fighting-on-2-fronts.html, dated on 18th July, 2017 at 2.30 pm.

17. Available at

http://books.google.co.in/books/about/Guide_to_the_Ec_Block_Exemption_for_Vert.html?id=zsNL8Bwt-PQC&redir_esc=Y, dated at 18th July, 2017 at 2.40 p.m

18 Available at <http://mobile.bloomberg.com/news/2012-04-10/aol-sanofi-rosetta-stone-google-intellectual-property>, dated at 18th July, 2017 at 3.20 p.m

19. Section 4(1) of the Competition Act, 2002

deny the benefits of wider choices to consumers. This highlights the fact that it wants them not to be open for other search engines for which Google is paying the cost to the detriment of existing as well as potential rivals. Thus this is how Google is acting in a Dominant Position and is affecting the online market .

INDIAN LAW

The sec 4 of the Indian Competition Act, 2002 provides for prohibition on Abuse of Dominant position. This section states that being in dominant position itself is not prohibited, however, abuse of such dominance is prohibited¹⁹ simple reason being it is anti- competitive.

Dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to -

- (a) operate independently of competitive forces prevailing in the relevant market; or
- (b) affect its competitors or consumers or the relevant market in its favour.

Role of CCI regarding Google Abuse of Dominating position:

¹¹The investigation arm of the Competition Commission of India (CCI) has recorded a finding that Google has abused its market dominance in some instances, which if confirmed by the watchdog, could lead to lengthy regulatory battles. The probe arm of CCI, under director-general (investigation), probed these four cases before the commission found enough evidence to launch an inquiry. *Consume Info Pvt Ltd and Consumer Unity & Trust Society (CUTS)* had filed cases against Google Inc and Google India Pvt Ltd. Consume owns the matrimony portal *BharatMatrimony.com*. The other two cases have been filed by an individual, *Vishal Gupta, and Albion InfoTel Ltd*. These have been filed against Google Inc, Google Ireland Ltd and Google India.

20. Available at, <http://epaperbeta.timesofindia.com/Article.aspx?eid=31816&articlexml=Googles-Muscle-Runs-Into-CCIs-Algorithm-2207>, Dated on 19thJuly, 2017 at 10.15 am
21 *consim Info Pvt. Ltd vs Google India Pvt. Ltd* , 10 September, 2012.

1. Consume Info Pvt Ltd vs. Google India Pvt Ltd²¹.

Informants filed case alleging that Google enjoyed a dominant position and was conducting its business in a manner that was discriminatory, by manipulating algorithms and was causing harm to advertisers and indirectly consumers. It was further alleged that by using a number of vertical services such as YouTube, Google News, Google Maps etc., it mixed many vertical results into generic search results. Informants contended manipulation in search results and that there was also denial of access and creation of entry barriers for competing search engines etc.

CCI concluded that *prima facie* Google's had abused its dominant position and that a case had been made within the meaning of Section 26 (1) of the Competition Act.

During the investigation Google did not comply with the notices and the matter was directed to CCI. CCI issued a show cause notice to Google as to why measures under Section 43 of the Competition Act should not be taken against Google.

Contention raised by Google

- Google contended that there wasn't unreasonable delay on its part. Google sought to substantiate its *bona fides* by demonstrating that it had in fact cooperated with the DG
- Google further contended that the investigation was open-ended and that the investigation expanded over time and covered every facet of Google's business.
- Some delay was acknowledged, it was contended that this was unintentional and only for the purpose of ensuring that complete information was submitted.
- Google also sought to allay CCI's apprehensions that it was withholding any information at all and in fact was taking all measures possible to furnish information and cooperate with DG
- Google also contended that the Supreme Court had recognized the principle that penalty was to be imposed only in cases of deliberate non-compliance. Google

corroborated its contentions with the various submissions and information provided by Google. It also placed reliance on Section 43 of the Competition Act and contended that the provision itself contemplated 'reasonable cause' and hence CCI ought to determine with the delay in submission by Google was with cause or without cause.

CCI Order:

CCI concluded that Google had not yet supplied information relating to algorithmic changes nether it has supplied requisite information. CCI rejected Google's contentions. CCI concluded that Google had given 'frivolous' and 'vexatious' pleas in an attempt to stall investigation and Google sought to avoid compliance. It concluded that Google had failed to demonstrate 'reasonable cause' as per Section 43 of the Competition Act. It imposed a fine of Rs. 10 Million, to be deposited within 60 days from receipt of the CCI Order. CCI further notes that in the event that Google failed to comply with future directions from either the DG or CCI, additional fine would be imposed. CCI held that each and every act of non-compliance of Google would give the DG fresh cause of action against Google.

2. **Another case where Google abused its dominance in Albion InfoTel Limited vs. Google Inc**²¹

The present information has been filed under section 19(1) (a) of the Competition Act, 2002 by M/s Albion InfoTel Limited against M/s Google Inc. Google' alleging *inter alia* contravention of the provisions of section 4 of the Act.

Informant initiated the business of Remote Technology Support and for this purpose approached Google India for opening an account in Google Ad Words account. This programme enables any advertiser to purchase individualized and affordable key word advertising that appears instantly on the google.com search results pages. Informant's advertisement was placed through Google Ad word when the consumers search internet through Google search engine, the advertisement of the Informant will appear along with Google's search results pages and if the consumers click on the advertisement that will lead to the website of the Informant. It is also stated that while opening an account, the interested party is required to agree to the Google Ad Word Policy and at the time of accepting this policy, the

interested party also electronically accepts the Google User Safety Policy. Informant is aggrieved by the suspension of its Ad Word Accounts by Google. The Google User Safety and Ad Words policy is also alleged to be arbitrary and giving rise to abuse of its dominant position.

12Determination Of Relevant Market

In this connection, it may be pointed out that in the previous three cases against Google. Commission in its *prima facie* orders delineated the market for online search advertising in India as the relevant market. The Commission also found Google to be in a dominant position in the said relevant market. As the allegations in the present matter also pertain to the alleged abusive conduct of Google in the online search advertising market, the said market may also be considered as the relevant market in the present case as well. the Commission has already ordered investigation in this case for examining of contraventions under the provisions of section 4 of the Act, against the opposite party and DG is asked to investigate into the matter.

3. *Vishal Gupta Vs. M/S Google Inc and Others*²² in the present case information has been filed under section 19(1)(a) of the Competition Act, 2002 by Shri Vishal Gupta against Google Inc alleging contravention of S.4 of the act. As the Facts are similar to previous case.

Determination of Relevant Market

The Commission held that to examine the allegations relating to abuse of dominance by Google, it is first necessary to determine and delineate the relevant market. The Commission in its *prima facie* orders delineated the market for online search advertising in India as the relevant market. The Commission *prima facie* found Google to be in a dominant position in the said relevant market.

Commission is of opinion that an investigation would be required to determine the nature and extent of problems that have prompted Google to take actions against the RTS industry and whether or not the termination was legitimate action. The investigation also needs to determine if Google could have taken less damaging courses of action such as filtering out fraudulent firms and maintaining contracts with firms that have been operating genuinely for long periods

21. *Albion InfoTel Limited vs. Google Inc*, Sep 12, 2014.

of time. Goggles practices *prima facie* stem, to a large degree, from its undisputable dominance in the online search market. Therefore, Goggles practices towards Ad Words customers such as the RTS firms in this case, needs to be investigated under section 4 of the Act. Accordingly, the Commission directs the Director General (DG) to cause an investigation to be made into the matter and to complete the investigation within a period of 60 days from receipt of this order.¹³

4. Another case which was filed by *Consim Info Pvt. Ltd vs. Google Inc.* before CCI for engaging in discriminatory and retaliatory practices relating to Ad Words'. the complainant alleged that Google abused its dominant position in online advertising and it requested the Commission to impose measures for ensuring fair competition²³.

Google is in a position of dominance capable of affecting the consumers and the advertising market. As per Section 4(2)(a) of the Competition Act, 2002, Google is prohibited from imposing any unfair or discriminatory terms in the provision of advertising services. This, however, should not be misunderstood as imposing an obligation on them to promote competition through advertising in any particular trade.²⁴ Google's advertising policy might have affected a few trademark owners like this case. When it comes to advertisers, Google cannot prevent Shaadi.com from using characters that are descriptive of their trade. At the same time, preventing Bharat Matrimony from bidding for their protected marks to trigger their ad would be discriminatory. While it is for the Director-General to investigate into any malpractices relating to the auctioning of any keywords. As of CCI cannot take any action unless there is evidence suggesting that the search engine has effected any advertiser causing prejudice to any other competitor. Therefore, Bharat Matrimony is free to carry on their ad campaigns on Google just like its competitors. ¹⁴

22. *Vishal Gupta Vs. M/S Google Inc and Others*, April 15, 2014

23. Available at <https://spicyip.com/2012/03/my-ad-or-no-ad-bharat-matrimony-sues.html>, Dated on 27thJuly, 2017 at 2 pm.

24. Available at <https://spicyip.com/2012/03/my-ad-or-no-ad-bharat-matrimony-sues.html>, Dated on 27thJuly, 2017 at 2 pm.

CONCLUSION

From the perspective of competition law, the question arises as to whether the traditional approaches are still appropriate for assessing the competition problems in this area. Looking at two of the current market leaders in the online market, **Google and Face book**, it seems that new ideas should be considered, particularly with regard to the **market delineation** and the **assessment of abusive behaviour of dominant** firms. These facts could lead to the conclusion that competition authorities should not hurry to make a decision but should keep monitoring the internet industry carefully. In the light of the points made above if we assume that there is only one market for online advertising, user attention or user data and therefore Google is dominating in any of those markets, strict legal intervention does not seem necessary at the moment. However, such an assessment does not mean that competition law should not play any kind of role in the internet. As long as the big market players are aware that they are being watched by the competition authorities and they might be the object of an investigation if they abuse their market power, this might encourage them to act more carefully with competition regulations.

