

SECOND Preliminary Information Report

submitted by CUTS to CCI

1. The aim of this report is to provide relevant information regarding the potential anticompetitive activities of Google in India in the conduct of their business here in order to elucidate the need for the Competition Commission of India (CCI) to undertake a detailed investigation into their activities. Concern for the internet and all related markets is warranted at this early stage to prevent anticompetitive practices in their incipiency. To this effect we draw upon varied sources; our basic concern is with the growing internet and related markets in India which are potentially very large indeed; our aim is to initiate investigation into these at an early stage so as to check problems at their inception which could also have a deterring effect on such practices.
2. Google is by far the largest search engine in the world as also in India and has an Indian subsidiary, Google India. The number of internet users in India has grown from 40 million in 2007 to 100 million at present and growing. While internet use is increasing rapidly in India, the penetration level at present is still low; however, if mobile telephony offers any precedent, internet use in India is a vast untapped potential market. Moreover it is at present a very fast growing market and may have reached a stage of exponential growth, such as the mobile phone market. The growth of search engines more or less parallels the growth of the

internet. Moreover some parts of the internet are growing faster than others, for instance e-commerce both of the business to business variety as well as business to consumer; for example travel and online shopping sites in India are proliferating at a very high pace.

3. Google is under investigation from antitrust authorities all over the world for four kinds of activities and these activities are potentially relevant with respect to the Indian market too in the following areas:

(a) Its core business of internet search and advertising, cases brought by EU and the Attorney General of the State of Texas and the very recent review started in June, 2011 by the FTC;

(b) Acquisitions like Doubleclick (software technology and services), ITA (online travel), Admob (mobile ad networks), Admeld (ad optimization firm) and most recently of Motorola (the mobile phone manufacturer); (c) Unfair business practices, trademark and patent infringement (Skyhook), and;

(d) Most recently the FTC has begun investigating Android, Google's operating system for smartphones which allows users to download applications and games where there are complex possibilities of exclusionary practices.

However, some of these have been cleared (the purchase of Doubleclick and ITA by the FTC) while others are still being investigated and therefore awaiting decision.

4. The online search market is a network industry where the online search is provided free to people looking for various kinds of information and is paid for by the advertising revenue generated from the searches. The technology of search, the methods of advertising and the payment system for advertising have developed considerably in the recent past, concomitant with the development of the online search and advertising industry. By 2007, online advertising was a \$21 billion market in the USA and accounted for 7% of all US spending on advertisements.

The unique features of online advertising include the use of Internet based technologies and data collection mechanisms to target and track specific individuals and to automate the buying and selling of advertising inventory. These are the basic differences between advertising online and offline. Online advertising tends to be more and more performance based advertising, defined in various ways. On the other hand, offline refers to advertising a website and its URL in traditional media such as newspapers, radio, TV and magazines. Online advertising being very much more focused can allow a much more judicious use of advertising budgets as well as reduce risk to companies who are advertising.

5. Advertising in the search industry context take these two basic forms (1) Traditional display advertising such as found in offline newspapers, radio, TV and magazines where a website and its URL are displayed.

(2) Search specific ad products (a) paid placement when an ad is linked to a search term (keyword) (b) paid placement where the advertiser pays a fee to the search engine provider in order to get a site included in the search index. In the late 90's, online advertising was revolutionized by a commercial venture called GoTo which solicited ads from users and indexed them by keywords.

Users searched for relevant ads by keyword and the results returned were ranked based on how much the advertiser was willing to pay for the keyword. Advertisers bid on keywords and advertisers paid only when a user clicked on the result (CPC- cost per click model). This introduced two new features into web advertising (a) the auction based system in the bidding for keywords (b) performance based advertising which allows a much more focused use of resources spent on advertising.

Most of the allegations against Google in online advertising centers around its system of keywords, of ranking, and pricing, algorithms which are closely held by Google.

6. The case brought by the EU in Nov 2010, the recent investigation begun by the FTC as also the prior case brought by the Attorney General of the State of Texas involves (a) where a detailed investigation is being undertaken of the entire online search and online advertising business. The FTC has started a formal investigation into Google's business practices including search and advertising. The Attorney General had requested Google to provide information relating to ad pricing, shopping search and the ranking of websites in search results and ad listings. To

understand the complex issues more clearly, we focus on the EU investigation to begin with.

7. The complaint against Google in the EU was brought by search service providers about unfavorable treatment of their services in Google's unpaid and sponsored search results coupled with alleged preferential placement of Google's own services. The Commission in its statement said it would investigate three separate issues:
 - (a) Whether Google has manipulated its unpaid or Algorithmic search results to penalize Google competitors or promote Google products?
 - (b) Whether Google forced exclusivity contracts with advertising partners? The allegation is that Google bars the placement of ads from competing companies on a partner website
 - (c) The portability restrictions of online advertising campaign data. Does Google restrict the way that campaign data can be migrated to a competing platform?

The Commission said it will investigate whether Google lowered the page placement of unpaid results of services with which it competes, such as price comparison or specialized search and placed its own services higher to draw out competition. The Commission will also investigate allegations that Google lowered its Quality Score for so called sponsored or paid links of competing search services.

8. A basic concern regarding India is that Google should not use its market power in the search engine and online advertising market to affect the growth of the Indian search and advertising markets as well as the related e-commerce markets. Online advertising in India is growing fast and one estimate is that within 2 years it will equal TV advertising in size.. In this regard the acquisitions made by Google in India need to be monitored particularly closely because Google may try and enter these fast growing markets by buying an existing online shopping portal like Shopzilla or Ugenie among others and may thereby undertake anticompetitive activities on two fronts, mergers and abuse of dominance.

9. The online search industry in India consists of two kinds of participants, all the approximately 20 or so search engines there are in the world market (Bing, Altavista, Google etc) and the Indian search engines, Guruji, 123 Khoj etc which seem to cater to a rather different market and seem to be of a very different quality. The market for online search is complicated by the fact that it is:
 - (a) a two sided market – and therefore as with the usual model, free for one side, generally the user.
 - (b) the demand for online search will surely vary with the tastes and preferences of the user – in keeping with the principle of substitutability in defining relevant markets there will surely be differences in search between different socio economic groups for different content. Therefore, there is firstly a question whether the Indian search engines and the foreign

search engines are in the same relevant market. For instance many users may be more interested in matters pertaining to local news and local or at best state wide customs. However, probably due to its superior technology and strong learning by doing effects, Google at present is certainly the market leader in India.

(c) Language will certainly be a factor in the above; not all 100 million users will want to use the same language to conduct their search and this is gradually beginning to appear in different forms on the Indian use of the internet. In this context, it should be remembered that Yandex, the Russian search engine still has a large share (60%) of the Russian search market because of the advantage conferred by language.

10. More than a third of all smartphones are powered by Google's Android, an operating system for mobile phones which allows downloading several applications, and the figure is growing quickly. Several makers of smartphones, like HTC, Samsung (which also uses Bada), LG, Kyocera, Sony Ericsson all use Android. With the introduction of 3G and 4G phones, the growing use of smartphones and the growing use of applications, the use of Android is a potential way to lock in customers. For instance, withholding the systems latest version from handset makers that favour rivals services could be a potent stick for Google to wield. It is precisely to prevent such exclusionary practices that the competition authority needs to conduct this investigation. Just as the Windows operating system came to dominate personal computer use, so too Android may dominate

mobile smartphone use. On the positive side, Android is giving competition to Microsoft's monopoly along with other new technologies such as cloud computing.

11. The recent acquisition of Motorola by Google is by and large a vertical merger with Motorola using the Android software produced by Google for its smartphones. There are unlikely to be any horizontal issues here. There may be some issues of foreclosure relating to the use of Android by other smartphone manufacturers, like HTC, Samsung etc, all of whom are present in the smartphone market in India, again a very fast growing market, which needs to be kept an eye on for potential anticompetitive practices. There are also potential patent issues here and how they relate to the Indian market because Motorola has 17000 patents to its credit. There may well be issues of patent clusters and patent infringement being done here deliberately, and this may be exacerbated because the patent laws in our country are not so strictly enforced. Again, the exclusionary practices referred to above may be also be relevant in such mergers.

12. Google needs to be investigated with regard to all the issues alluded to above and in all related relevant markets. Thus online advertising, the operating systems for smartphones, e-commerce and related software markets and with respect to its mergers and acquisitions. Also it may be useful to keep an eye on its activities with respect to patents.