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Google: Abuse Of Dominant Position

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New Delhi
2nd July 2012
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INTRODUCTION TO THE PROJECT

Aim of the project: The proposed research study is based on achieving the following objectives:

- To find out various Competition issues involved in the case.
- To find out whether Google has abused its dominant position in the relevant market.
- To find out legal remedies available under Indian and foreign laws to make a case for or against Google.

Research methodology: The proposed research study will be carried out with the help of the following strategies:

- Studying primary and Secondary Sources
- Interpretation of cases
- Library Research
DEFINITION OF RELEVANT TERMS

1. **Antitrust**: An act that harms or seeks to harms the market or the process of competition among businesses, and that has no legitimate business purpose.¹

2. **Dominant position**: "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-
   (i) operate independently of competitive forces prevailing in the relevant market;
   (ii) affect its competitors or consumers or the relevant market in its favor;

3. **Search engine**: Google Search, a web search engine, is the company's most popular service. According to market research published by comScore in November 2009, Google is the dominant search engine in the United States market, with a market share of 65.6%. Google indexes billions of web pages, so that users can search for the information they desire, through the use of keywords and operators.

4. **Ad Words**: The Google Ad words program allows advertisers to display their advertisements in the Google content network through cost per view scheme. To begin advertising visit [www.adwords.google.com](http://www.adwords.google.com).

5. **AdSense**: The Google Ad sense program differs in that it delivers Google Ad words adds to individual websites Google then pays web publisher for the ads displayed on their sites based on users clicks on ads or ads impressions, depending on the type of ads. It allows websites owners to display their advertisements on their web sites & earn money every times ads are clicked.

¹ Bryan A. Garnert, Black’s Law Dictionary, 9th ed., West, p. 109
Introduction - Google

Google began in January 1996 as a research project by Larry Page and Sergey Brin when they were both PhD students at Stanford University in California. Google Inc. is an American multinational public corporation invested in Internet search, cloud computing, and advertising technologies. Google CEO Dr. Eric Schmidt, co-founder and president, Products Larry Page and co-founder and president, Technology Sergey Brin. Google hosts and develops a number of Internet-based services and products, and generates profit primarily from advertising through its Awards program.

Google offers online productivity. Its products are more than 60 some of them are as follows.

Google's internet search provides for two types of results when people are searching for information. These are unpaid search results, which are sometimes also referred to as "natural", "organic" or "algorithmic" search results, and third party advertisement shown at the top and at the right hand side of Google’s search results page, so-called

2: http://amcptwo.blogspot.com/2006/08/poll-s...ine-do-you.html
3: http://www.astahost.com/info/ticft-google-introduction.html
search results or sponsored links. These sponsored results are different from the organic Google results in that they're paid for. Companies can enter an auction to have their ad appear in Google sponsored links if it is relevant to a user's search query by setting up an Ad Words account.

**Google Performance from 2007 to 2012:**

<table>
<thead>
<tr>
<th>Year</th>
<th>Development</th>
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<tbody>
<tr>
<td>1995-97</td>
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<tr>
<td>1998</td>
<td>Google Inc.</td>
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<tr>
<td>1999</td>
<td>Commercial search customer</td>
</tr>
<tr>
<td>2000</td>
<td>Google directory, search10 languages, adwords</td>
</tr>
</tbody>
</table>

5Google: Search, Online Advertising, and Beyond… – http://gallaugher.com/

6http://www.seomoz.org/google-algorithm-change
<table>
<thead>
<tr>
<th>Year</th>
<th>Services</th>
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<tbody>
<tr>
<td>2001</td>
<td>Google image search, google catalog search</td>
</tr>
<tr>
<td>2002</td>
<td>Google news</td>
</tr>
<tr>
<td>2003</td>
<td>Google adsense, blogger</td>
</tr>
<tr>
<td>2004</td>
<td>Gmail, google sms, groups.</td>
</tr>
<tr>
<td>2005</td>
<td>Google maps, Google blog, analytic</td>
</tr>
<tr>
<td>2006</td>
<td>Google video player, YouTube</td>
</tr>
<tr>
<td>2007</td>
<td>Google presentation program, video conferencing, online advertising, social networking service</td>
</tr>
<tr>
<td>2008</td>
<td>Online video, weblog software</td>
</tr>
<tr>
<td>2009</td>
<td>Security, mobile advertisement, online advertisement</td>
</tr>
<tr>
<td>2010</td>
<td>Social search, email search, music, travel, JAVAs tools</td>
</tr>
<tr>
<td>2011</td>
<td>E-book, social networking service, online video, mobile software, mediacenter, Motorola mobility</td>
</tr>
<tr>
<td>2012</td>
<td>Instant Messaging, productivity suite</td>
</tr>
</tbody>
</table>

**Google Search Engine Working**

**Google’s Query Processor**: The query processor has several parts, including the user interface (search box), the “engine” that evaluates queries and matches them to relevant documents, and the results formatter.\(^7\)

![Google Search Engine Workflow Diagram](http://www.infotoday.com/searcher/may01/liddy.htm)
Procedure for displaying advertisement on Google(Ad Words)

Before getting started it is necessary to have an existing Google Account email address for both analytical and Ad Words account.  

Ad words is Google’s pay per click (PPC) advertising platform and main source of revenue.

“In the Ad words paid search advertising model, users Bid on the keywords they want to triggers their sponsored ads and Google decides which ads are displayed& in what position based on each user’s maximum bid & quality score.”

Quality score determined by:-

1. The ads clicks through rates.

2. Relevance of ads to its corresponding Landing Page as shown below:-

Key metrics There are two key metrics in PPC:

1. The click through rate relates to the ad. It is a percentage calculated by dividing the number of clicks by the numbers of impressions (in yellow above). A click through rate of 1% to 5% is generally considered very good. The more targeted your keywords are, the higher click through rate you will achieve.

http://support.google.com/googleanalytics/bin/answer.py?hl=en&answer=55507
number of clicks by the numbers of impressions (in yellow above). A click through rate of 1% to 5% is generally considered very good. The more targeted keywords are, the higher click through rate.

2. **The conversion rate** is a percentage calculated by dividing the number of conversions (people who purchased or contacted after clicking on ad) by the number of clicks.

To maximize your conversion rate the need is to ensure that:

- The landing page’s content meets the requirements of the people who visited after clicking on ad.
- There is a call-to-action (a motivation for people to buy).

**Steps for successfully setup Ad words Account**

1. The first step for setting up an advertisement on ad words is to visit the website [http://Adwords.google.com](http://Adwords.google.com)
2. Click “Try Ad Words Now” (top right corner)
3. Select the Standard Edition
4. Create your account by following the prompts
5. Log in to your account on [http://adwords.google.com](http://adwords.google.com)
6. Follow the prompts again.
7. Then set up ads and Finalize payment information.

**Pay only for results:** If someone clicks on ad, not when ad is displayed. Payment options vary by country and currency.

**Researching keywords:** Keywords research is key to a successful campaign. The following steps are follow for researching keywords.

1. Use the Ad Words keyword tool (log into your account _ Campaign management _ Tools _ Keyword tool). Choosing country where ads are displayed.
2. The Quintura tool [www.quintura.com](http://www.quintura.com) can also used for finding more keywords.

Then Add keywords to AdGroups. After that many other keywords can also be discovered that could group into new AdGroups. In initially there will be 6-12 AdGroups.
Importance of Google Ad Words program:

- **Targeted reach**: Ad Words program helping in target new audiences on Google and advertising network.

- **Greater control**: With the help of Ad words program editing in ads and any adjustment in budget can easily be done. A variety of ad formats and even target to specific languages and geographic locations can also be easily made.

- **Measurable value**: There's no minimum spending requirement or time commitment. And with the cost-per-click option, charged if people click on ads.

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9 https://accounts.google.com/ServiceLogin?service=adwords&hl=en_US&tmpl=jfk&passive=true&ifr=false&alw=1&continue=https://adwords.google.com/um/gaiaauth?appt%3DNone%26tmpl%3DJfk&sauc=1&arp=1
Examination Under Competition Act, 2002

SECTION 2 Relevant market

"Relevant Market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

(a) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas;¹⁰

(b) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.¹¹

¹⁰ Refer to sec.19(6)- The Commission shall, while determining the" relevant geographic market", have due regard to all or any of the following factors, namely:-

(a) regulatory trade barriers;
(b) local specification requirements;
(c) national procurement policies;
(d) adequate distribution facilities;
(e) transport costs;
(f) language;
(g) consumer preferences;
(h) need for secure or regular supplies or rapid after-sales services.

¹¹ The Commission shall, while determining the" relevant product market", have due regard to all or any of the following factors, namely:-

(a) physical characteristics or end-use of goods;
(b) price of goods or service;
(c) consumer preferences;
(d) exclusion of in-house production;
(e) existence of specialized producers;
Whether the market constitutes a “relevant market” for the purpose of determining the liability of Google?

Analysis from the Point of view of Competition Act, 2002

As more people spend more time online, advertisers are now shifting from old channels of advertising to the Internet. More and more online transactions are taking place for which users particularly make use of search engines. For online sellers (e-commerce websites) and those who want to buy the product online particularly, online advertising on search engines constitute a separate relevant market.

For online sellers (e-commerce websites) and those who want to buy the product online particularly, The relevant product market is “Search engines advertising”. Because Google acquires the largest search market share as compare to its competitors. Google search market share is 87.6%.

Whether the consumer or the suppliers search something on google or want to see results of his query it can only be done with the help of google search engine. When a user enters a query on Google’s search website, in response two types of results are displayed: ‘Natural / organic results’ and ‘Sponsored or paid results’. The final natural / organic results are located on the left-hand side of Google's search results page and sponsored links on its right hand side. It shows both results. So we can say that there is only one market:-the relevant product market is the market of search engine services provided on the internet.

The relevant geographic market is national i.e. India as is evident from the fact that Google has a separate entity to run its operations in India with a separate website (www.google.co.in).

(1) classification of industrial products.

12http://legalservicesindia.com/article/article/ -198-1.html
Section 3 Anti-competitive agreements

Anti-competitive agreements.-

(1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services,

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including-

13(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition: Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services. Explanation.- For the purposes of this sub-section," bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.
(a) tie-in arrangement;

(b) exclusive supply agreement;

(c) exclusive distribution agreement;

(d) refusal to deal;

(e) resale price maintenance, shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India. Explanation.- For the purposes of this sub-section,\(^{14}\)

(5) Nothing contained in this section shall restrict-

(i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under\(^ {15}\)

\(^{14}\)(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

(b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

(c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

\(^{15}\)(a) the Copyright Act, 1957 (14 of 1957 );

(b) the Patents Act, 1970 (39 of 1970 );

(c) the Trade and Merchandise Marks Act, 1958 (43 of 1958 ) or the Trade Marks Act, 1999 (47 of 1999 );

(d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999 );

(e) the Designs Act, 2000 (16 of 2000 );
(ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

**Whether Google’s conduct is Anti-competitive in the relevant market?**

**Exclusive supply agreement**: Google has entered into exclusive agreements with high traffic websites. According to these agreements, any search made on these websites will be directed to Google’s search platform only. These agreements establish Google as exclusive search provider and deny this to rival generic search platform as well as vertical platform.\(^\text{17}\) section 3(4)

\(^\text{16}\) http://books.google.co.in/books/about/Guide_to_the_Ec_Block_Exemption_for_Vert.html?id=zsNL8Bwt-PQC&redir_esc=y
\(^\text{17}\) http://mobile.bloomberg.com/news/2012-04-10/aol-sanofi-rosetta-stone-google-intellectual-property
a. These agreements impact negatively the revenue generating capacity of other
generic search platforms as well as vertical search platforms through advertisements.  
Section19(3)(a & b).

B. These also lessens the opportunities for advertisers to switch to alternative search
engines thus make it impossible for new search engines both generic as well as vertical
to draw upon enough search traffic to reach the critical mass necessary to become
independently sustainable. Section19(3)(c).

C. These agreements deny the benefits of wider choices to consumers. Section19(3)(d).

Google in its own statement in the annual report (form 10K-SEC submissions) has
admitted that its exclusive search agreements with a number of websites are not always
profitable:”. This highlights the fact that it wants them not to be open for other search
ingines for which Google is paying the cost to the detriment of existing as well as
potential rivals.

**Dominance and its Abuse**

In different countries, provision for abuse of dominant position is there which lay down
the factors which should be kept in mind while determining whether an enterprise enjoys
a dominant position or not.\(^{18}\) For example European Commission presumption which
specifies that where an enterprise’s market share are above 50% and in south Africa

\(^{18}\text{See: the Indian competition Act,2002.sec19(4) states that the Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:—}
(a) market share of the enterprise;
(b) size and resources of the enterprise;
(c) size and importance of the competitors;
(d) economic power of the enterprise including commercial advantages over competitors;
(e) vertical integration of the enterprises or sale or service network of such enterprises;
(f) dependence of consumers on the enterprise;
(g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
(h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
(i) countervailing buying power;
(j) market structure and size of market;
There are basically three players in search engine advertising market i.e. Google, Yahoo and Microsoft’s Bing with 83%, 8.9%, and 4% shares respectively.  

**Section 19 (4) (a)**

Google is one of the largest technology companies in the world with world-wide revenues of over USD 31.12 billion and is among the top 25 companies by market capitalization -Approx. 160 Billion- **Section 19 (4) (b)**

Google due to its market share in search engine has an edge over its competitors. **Section 19 (4) (c)**

Google is leveraging its stronger position in Generic search to specialized search market known as vertical search e.g. videos, maps, finance, travel etc. **Section 19 (4) (e)**

In generic search engine market Google, Yahoo and Bing has 96%, 3% and 1% shares respectively and due to the network effect advertisers as well ultimate consumer prefer to use Google’s search engine. Moreover, Google has been continuously doing customer profiling to make advertisements more targeted which other search engines due to their low market shares are not able to match. **Section 19 (4) (f)**

Google has exclusive agreements with the high traffic websites on which the ad companies prefer to place their advertisements. This act as a barrier for a new entrant as well as for others. **Section 19 (4) (h)**

Google has the world’s strongest brand. It is regularly voted among the best firms to work for in America. And its share of the search market has consistently grown while its next two biggest competitors have shrunk as shown below

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(k) social obligations and social costs;  
(l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;  
(m) any other factor which the Commission may consider relevant for the inquiry.

19 Gallaugher – Google: Search, Online Advertising, and Beyond… – http://gallaugher.com/chapters

20 http://www.netmarketshare.com/google-market-share
Google is rapidly taking revenue share from Google’s Partners/competitors who depends on Google’s unbiased platform to be founded and monetized.

Source:-

Google Inc. Financial Tables at:-
http://investor.google.com/Financial/tables.html
Due to the weak competitive forces and its stronger position, as clear from above, Google is able to affect adversely its consumers both searchers as well advertisers; existing as well as potential competitors and thus can be held to be dominant in the relevant market.  

Section 4 Abuse of dominant position

(1) No enterprise shall abuse its dominant position.

(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise,

(a) directly or indirectly, imposes unfair or discriminatory-

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or service.

Explanation. - For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

(b) limits or restricts-

(i) production of goods or provision of services or market therefore; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access [in any manner]; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market. Explanation. - For the purposes of this section, the expression-

(a) "dominant position"

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21 Http://www.searchmarketshare.com
22 Subs. By Competition(Amendment)Act,2007 for “No enterprise shall abuse its dominant position.”
23 Subs. By Competition(Amendment)Act,2007 for “under sub-section(1), if an enterprise”
24 Ins.by Competition(Amendment)Act,2007
(b) "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Where a firm has a dominant position, it has a special responsibility not to allow its conduct to impair competition in the common market. 25

**Whether Google has abused its dominant position?**

In the previous table, it is clearly established that Google has a dominant position and a large market share in comparison to other search engine in a number of countries including India.

Having established that Google is a dominant player in many countries, it is examined further that whether Google could have abused its dominant position.

**A. Manipulation in search engine results:**

Google manipulating search results-both organic and paid results-on its dominance search engine to afford preferential placement to its own service & depress the ranking of competitors. 26. These competitors includes “vertical” search services and specialized search engine that let users search in specific area such as Travel, shopping, maps, video.

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26 [www.brandignity.com/2011/03/google-manipulating-search-results/](http://www.brandignity.com/2011/03/google-manipulating-search-results/)
**B. Targeting specific rivals:** The other allegation against Google is that it unfairly targets websites owned and controlled by its major rivals especially Microsoft, and website acquired by Microsoft see a marked drop in their rankings. The effect of this is that when a person or customer searches something using the Google search engine, the result which are displayed will be see that the Microsoft owned websites or products would rank lower in the search, despite the fact that they might be more relevant to users query. for e.g. Bing Maps, Microsoft Online Services, Microsoft Office Live.

**C. Manipulation in algorithm:** Google can program its algorithm to exclude, penalize, or promote specific sites or whole categories of sites.

**For Example:**

1. "Blacklist" or ban a site;

2. Raise the price of clicks for a competitor unilaterally and without warning.

**D. Denial of access to content:** Google denial access to competing search engines of content owned by them which result in decreasing their efficiency. For Example, Google’s denial of access can be seen in the way it deals with You Tube Content. However, after Google acquired You Tube, they took step to make it difficult for competing search engine such as Bing,Yahoo,Rediff,Guruji,Indiatimes,Jadoo etc.to access You Tube Content. It is alleged that such restrictions results in a denial of market access in violation of section.

**E. Deceptive Display:**

Google’s display of search results is deceptive to users and forecloses the ability of other sites to be seen. For example, a query for “milwaukee doctors,” returns nearly a full screen of links -- which include multiple links to Google Places pages -- that are separate from the natural search results that begin only at the bottom of the page.

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27 Infra
Indeed, Google has a “policy” of putting links to its own products above the natural search results.30 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.31

F. Unauthorized use of scrap content:-Google also has a history of scraping content, such as user reviews, from other websites and displaying that content without authorization on its own pages, such as Google Places, Google Hotpot and Google Product Search page. for example,Google has scraped content directly from yelp and Trip Advisor for its Places pages.

31 Id. at 43:23 ("To the degree that we host content, we ultimately have a monetary incentive to drive people to those pages if those pages have ads on it.").
G. Refusal to License: Google also discriminates its competitors by refusing to license its content to be used by them for other markets. An example of the same can be seen from the refusal of Google to provide Microsoft’s Windows Phone access to high quality YouTube content that is available on the iPhone and Android (a Google product) smartphones. Such act of Google is in violation of section 4(2)(c) of the Act.

H. Entering into Exclusive Vertical Agreements to Create Entry Barriers for Competing Players: Google has systematically entered into a web of exclusive contract that are designed to prevent competitors from obtaining the scale necessary to

32 windowsphonenetwork.com/.../google-is-complaining-competitors-ar.
compete with the Google. Such act of Google is in violation of section 4(2)(c) of the Act.

I. **Blocking advertising platform interoperability:** Google has made advertising platform interoperability difficult, increasing the costs of an advertiser, which has the effect of denying competitors market access which is in violation of section 4(2)(c) of the act.

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33 books.google.com › Law › General
34 techfreedom.org/people/berin-szoka, www.foreignaffairs.com/articles/137737/...a.../not-feeling-lucky?...
**Legal Position**

The legal position in respect of abuse of dominance in states like EU, the US and India is given below:-

**European law:-**

**Article 102** of the Treaty on the Functioning of the European Union is aimed at preventing undertakings who hold a dominant position in a market from abusing that private industry and produce worse outcomes for consumers and society. It is the second key provision\(^{36}\), 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."

Such 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.

**U.S LAW**

**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. Section 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". Section 2 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 united states the expressions "dominance" or "abuse of dominance" are not used. The corresponding concept under that law is of 'monopoly' and 'attempt to monopolize'.

3. Indian Law Position

The sec4 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 dominant position is prohibited. Under the law for the simple reason that it is anti-competitive.

Sec4(2) in detail lists out when an enterprise is said to abuse the dominant position. But for ascertaining whether an entity is in dominant position, one has to refer to explanation (a) of sec4(2).

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37 It reads as follows:
"Every person who shall monopolize, or attempts to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court."
38 sec4(1) of the act
39 It states:
“(a)"dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favor;
Google abused dominant position in context of various jurisdiction

**European** A ruling from the European Commission on allegations that Google abused its dominant market position is expected after 9 April 2012. Google is accused of using its search service to direct users to its own services and to reduce the visibility of competing websites and services. The complaints were lodged by French search engine eJustice.fr and the U.K.-based Foundem in 2010. Regulators extended the case last November into a full investigation to determine whether Google's algorithm unfairly penalizes rivals. 40

**Penalties**:-If the company is found to have breached E.U. competition laws, the Commission will issue a “statement of objections” outlining its concerns. Google will then have a chance to respond and potentially resolve the problems before facing sanctions. If it comes to that, the Commission can fine companies up to 10 percent of their global turnover for breaching E.U. rules as well as imposing conditions on how they run their businesses.

**India**:-India’s Competition Commission (CCI) has received an antitrust complaint against Google alleging the internet company abused its dominance in the search and online advertising markets.(case:“Bhartimatrimonial”) 41

**SAN FRANCISCO**—Google confirmed that its online search and advertising services are under scrutiny by regulators in Argentina and South Korea. Word of the probes came after the US Federal Trade Commission revealed it hired former Justice Department prosecutor Beth Wilkinson to head an investigation into whether Google abused its dominance in online search. 42

**U.S**:-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

40 http://www.pcworld.com/article/252761/did_google_abuse_its_dominant_position_eu_decision_expecte d_within_days.html
41 http://sharingbywasim.blogspot.in/2012/04/cci-orders-formal-probe-against-google.html
42 legalnews.findlaw.com/article/03Fg0Q94RWbo6
has instituted an investigation against Google Inc. for its alleged abuse of dominance position in the Internet search market in USA.  

**Commercial Tribunal of Paris (CTP):** On 31 January 2012 the Commercial Tribunal of Paris (CTP) found that Google (namely Google France and Google Inc.) abused its dominant position in the French market for “online mapping allowing for the geolocalisation of sales points on company websites,” in breach of Article L.420-2 of the French Commercial Code.

**Penalties:** Google ordered to pay damages in France for abuse of dominance in the API (application program interface) and ordered Google to pay damages, amounting to Euro 500,000, to its French competitor BottinCartographes (Bottin). In essence, the CTP held that Google abused its dominant position insofar as it offered its geographic search engine “Google Maps” for free with the goal to exclude competition from the market and, ultimately, to further exploit its dominant position in the commercialization of targeted advertising.

**CCI VIEW REGARDING GOOGLE ABUSE OF DOMINATING POSITION**

The Competition Commission of India (CCI) has already found “prima facie” evidence that Google had abused its dominant market position by being discriminatory in allotting keywords to matrimonial site Bharatmatrimony.com”. The probe is to focus on Ad Words – Google’s flagship advertising product and main source of revenue. In February a complaint was filed by BharatMatrimony against Google for selling keywords associated with its matchmaking sites – which include TamilMatrimony.com and BengaliMatrimony.com – to rival sites. The CCI marks it out as the latest in a number of regulatory bodies from around the world to begin investigating Google’s business practices. It is important regulators investigate fully and if needed halt abusive practices

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in order to protect businesses and consumers and so encourage an innovative and healthy online marketplace.45

**Impact on consumers**

Google’s tactics result in real harm to consumers in the form of deception, increased prices, and less innovation.46

**Deception:** Users expect search results to be returned in order from most relevant to least relevant. Google’s own links often take up a significant amount of the screen real estate, limiting the number of natural results that can appear, making it even more difficult for users to find quickly the link most likely to be relevant to the query.

**Higher Prices:** In the absence of a competitive search advertising marketplace, the prices Google commands for advertisements are higher than they otherwise would be. Just as in the offline world, higher advertising prices are passed along to consumers in the form of higher prices on goods and services.

**Reduced Innovation:** Google’s tactics foreclose the ability of other sites to compete on the merits and to achieve the scale necessary to succeed. Without search traffic and the resulting revenues, these sites are unable to deliver innovative content and better services to consumers.

45http://sharingbywasim.blogspot.in/2012/04/cci-orders-formal-probe-against-google.html

46http://www.fairsearch.org/tag/bloomberg/
Suggestion and Conclusion

In view of above analysis it is suggested that, investigation against Google is required because once in such a situation, Microsoft tried to kill the competition in the browser market by bundling in Internet Explorer for free with windows Operating System. However after a case against Microsoft for maintaining this exclusivity, the company changed its policy and gave users the option to use any browser. However despite the provision of an option of browser, the user still retained considerable control over the services it choose to using it. On the other hand ,in case of Google ,the Google ‘s Chrome, Android Smart phones and Chrome OS all encourage use of Google’s Search, which makes a thorough investigation even more essential. The issues identified in respect of Google definitely raise doubt about the conduct of the Google and needs in-depth investigation to determine whether such practices relating to search engines and advertising search market are also being resorted to in India. This is because Indian market also has no. of vertical search engines which may be feeling the brunt. Moreover, the issues are very complex due to the technological involved and can be understood well with the in-depth investigation.
Indicative Reading And References

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