



**COMPETITION COMMISSION OF INDIA**

**Case Nos. 07 & 30 of 2012**

**Case No. 07 of 2012**

**In Re:**

**M/s Consim Info Private Limited**

**Informant**

**And**

**1. M/s Google Inc., USA**

**Opposite Party No. 1**

**2. M/s Google India Private Limited**

**Opposite Party No. 2**

**WITH**

**Case No. 30 of 2012**

**Consumer Unity & Trust Society (CUTS)**

**Informant**

**And**

**1. M/s Google Inc., USA**

**Opposite Party No. 1**

**2. M/s Google India Private Limited**

**Opposite Party No. 2**



## **CORAM**

**Mr. Ashok Chawla**  
**Chairperson**

**Dr. Geeta Gouri**  
**Member**

**Mr. Anurag Goel**  
**Member**

**Mr. M. L. Tayal**  
**Member**

**Mr. S. L. Bunker**  
**Member**

**Appearances:** Shri Ravi Sekhar Nair and Shri Sameer Gandhi,  
Advocates for the opposite parties in both the cases.

## **Order under section 43 of the Competition Act, 2002**

In Case No. 07 of 2012, an information under section 19(1)(a) of the Competition Act, 2002 („the Act“) was filed against M/s Google Inc. and M/s Google India Private Limited (collectively „Google“) by M/s Consim Info Private Limited, alleging that Google runs its core business of online search and search advertising in a discriminatory manner, causing harm to advertisers and indirectly to consumers and creating an uneven playing field by favouring its own services and of its vertical partners, by manipulating the search algorithms. It was also alleged that Google provides a number of vertical search services like YouTube, Google News, Google Maps *etc.* and in order to promote its vertical search services, it mixes many of vertical results into organic search results. The effect of such manipulation of results was that



Google's vertical search partners will appear predominantly when an internet user searches for some information, irrespective of whether the search results are most popular or relevant.

2. The Commission, on perusal of the material available on record and after hearing the arguments advanced on behalf of the informant, opined that there existed a *prima facie* case to direct the Director General (DG) to cause an investigation to be made into the matter. Accordingly, the Commission vide its order dated 03.04.2012 directed the DG to investigate the matter and to submit its report.

3. Subsequently, another information *viz.* Case No. 30 of 2012 was filed by Consumer Unity & Trust Society (CUTS) against Google, wherein it was also alleged that Google was abusing its dominant position by practices like search bias, search manipulation, denial of access and creation of entry barriers for competing search engines *etc.*

4. The Commission in this case also *vide* its order dated 20.06.2012 found *prima facie* the acts/ conduct of Google to be in contravention of the provisions of section 4 of the Act and accordingly ordered investigation in this case as well. It was also noted by the Commission that since the allegations in the previous case also pertained to abusive conduct of Google in the online search engine markets, it was ordered that the subsequent information be clubbed with the previous case in terms of the provisions contained in proviso to section 26(1) of the Act read with regulation 27 of the Competition Commission of India (General) Regulations, 2009.

5. Both the aforesaid cases are pending investigation before the DG and a consolidated investigation report is awaited.

6. During investigations, it appears that the DG sought certain information and documents from Google. It appears that Google did not



furnish the information as requisitioned by the Office of the DG. Accordingly, the DG reported the matter to the Commission seeking initiation of proceedings against Google in terms of the provisions contained in sections 43 and 45 of the Act.

7. The proposal of the DG for initiation of penalty proceedings was considered by the Commission in its ordinary meeting held on 13.02.2014 wherein it was observed that the opposite parties have not supplied complete information/ documents as sought for by the DG *vide* its numerous notices dated 12.02.2013, 26.09.2013, 11.10.2013, 13.11.2013, 27.11.2013, 03.12.2013 and 21.12.2013.

8. It was further noted by the Commission that the opposite parties have shown an attitude of either withholding the information sought by the DG or furnishing only a part of the information sought. It was observed by the Commission that non filing of complete reply to the aforesaid notices of the DG shows willful disregard of the opposite party to the communication of the DG. As such, the Commission decided to issue show cause notice to the opposite party under section 43 of the Act. The opposite party was directed to file reply to the show cause notice within two weeks of the receipt of same. As regards the offences under section 45 of the Act, the Commission, at this stage reserves its action.

9. At the outset, it would be appropriate to quote the show cause notice issued to the opposite parties under section 43 of the Act read with regulation 48 of the Competition Commission of India (General) regulations, 2009:

*Subject: Show cause notice under section 43 of the Competition Act, 2002 read with regulation 48 of the Competition Commission of India (General) regulations, 2009 in the case of M/s Matrimony com private limited against Google Indian Private Limited (Case Nos. 07 & 30 of 2012)*



सत्यमेव जयते



1. Whereas the Competition Commission of India (the Commission) vide its order dated 03.04.2012 was of the opinion that there existed a prima facie case under section 26(1) of the Competition Act, 2002 ('the Act') and referred the matter to the Director General (DG) for investigation.

2. Whereas pursuant to the aforesaid direction, the DG issued following notices to you to furnish certain information/ documents within the stipulated time therein from the receipts of the said notice either by appearing in person or through an authorized representative:

- (i) Notice dated 12.02.2013
- (ii) Notice dated 26.09.2013
- (iii) Notice dated 11.10.2013
- (iv) Notice dated 13.11.2013
- (v) Notice dated 27.11.2013
- (vi) Notice dated 03.12.2013
- (vii) Notice dated 21.12.2013

3. Whereas you have failed to furnish the complete information as required by the DG within the stipulated time.

4. Whereas the Commission vide its order dated 13.02.2014 prima facie satisfied that there has been a non-compliance of the directions given to you by the DG in exercise of its powers conferred under section 36(2) of the Act.

5. You are hereby directed to show cause in writing within two weeks from the receipt of this notice as to why a penalty in terms of the provisions of section 43 of the Act be not imposed upon you.



*6. That if no cause is shown by you within the stipulated period, it shall be presumed that you have nothing to say in the matter and the Commission shall proceed further in accordance with the provisions of law.*

*7. The oral submission, if any, may be made before the Commission on date 06.03.2014 at 10:30 AM in person or through an authorized representative.*

10. The opposite parties filed reply to the aforesaid show cause notice and were also heard by the Commission on 06.03.2014.

11. The opposite parties in their reply contended that far from displaying a failure to comply, Google has made (a) multiple lengthy submissions to date, both in response to requests from the DG and of its own volition, despite the increase in scope and scale of the issues under investigation, and (b) every effort to engage frequently with the DG, including facilitating direct interactions with its employees (often located overseas) who were best placed to explain the highly technical issues that form part of the investigations. It was further submitted that there has been no non-compliance or any unreasonable delay on Google's part in the provision of information to the DG.

12. It was argued that Google has adopted, and continues to maintain, a policy of complete cooperation and frequent engagement with the DG, and has dedicated significant time and resource in assisting the DG with the investigations. It was highlighted that from the time of commencement of Consim and CUTS investigations, Google has rendered complete cooperation and compliance, by providing extensive information, in the form of written responses to numerous sets of questions, detailed voluntary submissions and several in-person meetings. It was also sought to be suggested that the scope



of both investigations is extremely broad, reaching into almost every commercial activity of Google, globally. Further, the issues under consideration have grown in scale and complexity, rather than becoming more focused over the course of the investigations. In both investigations, it was argued that there have been no set parameters for the time periods to provide information under consideration. Neither CUTS information nor Consim information clearly outlines any period of contravention. As a result, information, on occasions, was required to be provided for lengthy periods ranging up to five years.

13. It was argued that given the broad contours of the investigations, which have expanded over time, and which currently stretch to nearly every facet of Google's businesses, the information requests issued by the DG have often been extremely wide-ranging. At times, these requests have been very broadly-worded and required the production of complex and technical information. Further, as the investigations have progressed, information requests have been issued with increasing frequency, often with short timeframes for response. This has made the process of collecting and presenting information in a timely and reader-friendly fashion even more challenging.

14. It was also contended that owing to the broad nature of the investigations, information requests have often been widely-worded and unspecific, potentially catching information not wholly relevant to the issues under investigation. It has been, in part, because of this that Google has invested significant time and resource in delivering presentations and submitting information voluntarily which would help the DG better understand Google's business. Coupled with the often technical nature of the information sought, making it ever more challenging for Google to respond within short periods of time. Each time a request for information is received, Google has to identify relevant business persons/ divisions, who/ which are



often located in different parts of the world, collate information, distill, and present the same into a reader friendly format for the DG.

15. It was further argued that Google is a global organization with offices all over the world. There is no single central database from which to source all the information sought by the DG and the information sought is seldom "off the shelf". As such, responding to information requests has often required extensive work to be undertaken by Google employees located in different countries, departments, divisions and roles, across multiple time-zones.

16. A detailed sequence of events relating to the notices was also given in the reply stating categorically that all the requests identified in the show cause notice have been met in full. Further, it was argued that for all but one of the areas of inquiry, Google submitted its complete responses prior to the show cause notice being issued.

17. Conceding delays, it was argued that the delays have been few and far between, and have only occurred for genuine reasons relating to the complexity and scale of the information in question. It was averred that though Google regrets any inconvenience that this may have caused, Google's aim was always to provide a full and complete response in a form that would be useful to the DG's investigation. It was sought to be suggested that such behavior is not typical of a party that is attempting to either withhold information, or provide only part of the information in disregard of the requests made.

18. Lastly, it was submitted that throughout the investigation, Google has displayed good faith and a complete willingness to cooperate with the DG and the Commission. Google has expended considerable effort in providing information that is relevant to the investigation, whether specifically requested or voluntarily offered. Multiple written submissions have been made, including extensive responses to requests from the DG and voluntary



submissions and numerous in-person meetings have been held, often at Google's request in order to facilitate the DG's better understanding of its business. Most importantly, the following points were highlighted :

(i) First, section 43 of the Act allows the Commission the discretion to find a breach and impose a penalty only in circumstances where a person “fails to comply” with a direction given by the Commission or the DG “without reasonable cause”.

(ii) Second, in applying section 43, the Commission must also distinguish between “belated compliance”, and “failure to comply” (*Kingfisher Airlines Limited v. Competition Commission of India & Ors.*, order of COMPAT passed in Appeal No. 15 of 2012 dated 29.08.2012).

(iii) Third, various courts in India have established that a penalty will not ordinarily be imposed unless the party against whom failure was alleged acted deliberately or in defiance of law or was guilty of conduct, contemptuous or dishonest conduct or acted in conscious disregard of its obligation. (*Hindustan Steel Limited v. State of Orissa*, 1969 (2) SCC 627).

(iv) At no point has Google disregarded any requests for information. Delays have been minimal and, where occurring, have arisen for genuine reasons of complexity and scale. In each case, Google has responded to requests as soon as it has been practicable (including by responding in part) and has liaised constantly with the DG to explain the relevant circumstances.

(v) Further, contrary to the notice, which states that Google “failed to furnish complete information”, as of the date of the notice all requests barring one had been met in full, and the remaining requests had been met, by the date of this response.



(vi) Not only has there not been a failure to comply, the standard of "reasonable cause" has been met on the few occasions when there has been a delay. It cannot therefore be the case that Google's conduct in these investigations warrants enforcement action under section 43 of the Act. In fact, it is an established principle in India that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from a *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute (*Hindustan Steel Limited v. State of Orissa*) (*supra*).

(vii) Further, in assessing the issues raised in the notice, it is essential that the Commission is fully aware of the context to the requests listed in the notice. These investigations raise numerous issues that expanded in scope over the course of the investigations, rather than becoming focused, and which touch on almost every aspect of Google's business in India and abroad. The challenges raised by the complexity and broad scope of the investigations have been compounded by the three changes in the officers responsible for the case at the DG since the original orders of the Commission. It would be wrong, and manifestly unfair, to attribute the general length of time taken in these investigations to-date, to any apparent delays in Google's provision of information. Google's intention to offer complete cooperation to the DG at all times is reflected in the fact that Google has submitted close to ten thousand pages of information in response to almost 20 separate notices, comprising over 200 distinct questions/requests. As on the date of this submission, Google is continuing to engage with the DG and is providing additional information and documents as are being requested by the DG from time-to-time.

19. In light of the above, it was prayed to the Commissions that the legal standards provided under section 43 of the Act have not been met and a penalty is not merited.



20. The Commission has very carefully perused the material available on record besides examining the reply/ written response tendered by the opposite parties to the show cause notice issued by the Commission under section 43 of the Act as also follow-up submissions of the opposite parties. The Commission has also heard at length the counsel for the opposite parties.

21. One of the contentions of the counsel appearing for the opposite parties relates to the DG widening the scope of investigation, particularly with respect to information sought on remote tech Adword accounts. The Commission, however, observes that the scope of the present investigations ordered under section 26(1) of the Act is very broad and encompasses various aspects relating to Google's policies with respect to online search advertising. Further, it is not limited to advertisers of any particular industry and would cover all who advertise on Google. Against this background, information sought by the Office of the DG with respect to the suspensions of Adword accounts of remote tech support advertisers, squarely falls within the ambit of the present investigation.

22. As noted earlier, the show cause notice issued by the Commission under section 43 of the Act was relatable to the notices dated 12.02.2013, 26.09.2013, 11.10.2013, 13.11.2013, 27.11.2013, 03.12.2013 and 21.12.2013 issued by the DG to the opposite parties seeking information/ documents specified therein. It would be appropriate to delineate in detail the information/ documents as sought thereunder and the response of the opposite parties thereon.

#### Information related to algorithmic changes

23. It may be noted that pursuant to Q. 11(i) of the notice of the DG dated 12.02.2013, it was required of the opposite parties to give details about the change in search algorithm made by the opposite parties either manually or by means of automated software in the last 24 months on each occasion by



26.02.2013. In response thereto, Google *vide* its letter dated 08.03.2013 *inter alia* submitted that they do not manipulate the search results and manual algorithmic changes are aimed to enhance users experience by providing them most useful and relevant results in response to their query. On the matter being taken up by the DG with the opposite parties and their counsel, the opposite parties were directed to furnish the details of algorithmic changes for a limited period *i.e.* w.e.f. August 2010 to December 2010 and August 2011 to December 2011, which substantially reduced the overall volume of information to be submitted. In view of the further request by the opposite parties seeking 4 weeks of additional time, *vide* notice dated 26.09.2013 the DG granted additional time upto 04.10.2013. As Google *vide* letter dated 04.10.2013 furnished only a list of changes made to the search algorithm and not the details of changes, the DG *vide* its letter dated 11.10.2013 intimated the opposite parties that the Office of the DG required much more than mere the title of the changes made in the algorithm *i.e.* reasons and supporting internal documents to facilitate investigation to reach a logical conclusion. It was specifically mentioned that in view of the observations in the said letter their reply was not considered as complete and full. It may be noted that till 15.01.2014 *i.e.* when the DG reported the matter to the Commission, the opposite parties did not supply the said information.

#### Non-submission of copies of Agreements

24. In order to examine the issue related to exclusivity, the Office of the DG *vide* Question No. 1 of notice dated 13.11.2013 directed Google to furnish copies of agreements entered with certain parties as specified in the notice along with other details as enumerated therein. In response thereto, the opposite parties through their advocate *vide* letter /e-mail dated 25.11.2013 submitted part reply of the queries and sought an extension of seven days for submission of reply of remaining Query No. 1. Accordingly, the opposite party was granted time till 02.12.2013. On non-receipt of reply, the opposite parties were further reminded and directed to furnish reply by 06.12.2013.



Again, it appears that the opposite parties *vide* letter dated 06.12.2013 sought extension up to 11.12.2013. Accordingly, they were granted time till 11.12.2013. On 11.12.2013, the opposite parties met the DG and expressed that they were pre-occupied to prepare for the deposition of the opposite parties scheduled on 16-18 December, 2013 and they would furnish the same after recording of statement. Again, notice *vide* e-mail dated 21.12.2013 was issued by the DG advising the opposite parties to submit requisite information by 26.12.2013. No information was furnished by the opposite parties till the time the proposal for initiation of penalty proceeding was mooted by the DG *vide* its note dated 15.01.2014.

Non-submission of internal supporting document relate to termination of Octathorpe, Adsense Account

25. The DG *vide* Q.2 of notice dated 13.11.2013 asked Google to furnish the reasons for termination of Adsense account *viz.* Octathorpe on the ground of invalid clicks. Google *vide* letter dated 25.11.2013 furnished certain information whereupon the DG *vide* its notice issued through e-mail dated 27.11.2013 directed the opposite parties to furnish the related data and supporting internal documents which led to its termination by 03.12.2013. Google *vide* letters dated 06.12.2013 and 11.12.2013 furnished Adword account statement but did not furnish any relevant data related to invalid clicks and internal documents related to the decision for such shut down.

Non-submission of internal documents related to termination/suspension of certain tech-support Adword accounts.

26. The Office of the DG *vide* Q.3 of notice dated 13.11.2013 directed Google to furnish certain information related to termination/ suspension of tech support accounts. Based on the information received, Google was *inter alia* directed by the Office of the DG *vide* notice dated 03.12.2013 to furnish the certified copies of internal documents containing the decision for the



internal review of tech support Adword accounts and enforcement action thereon by 10.12.2013. The opposite parties *vide* letter dated 11.12.2013 submitted certain information to the Office of the DG but did not furnish internal documents as sought, within the given timeframe. Nor did they seek any extension of time for compliance.

Non-furnishing of informations following-on from the depositions within the given timeframe

27. Lastly, it may be observed that during 16-18 December, 2013, while recording statements of the representatives of Google, the opposite parties told the DG that they would revert on certain issues but failed to do so. Accordingly, they were, *vide* notice dated 21.12.2013 of the DG (sent through e-mail), directed to furnish the reply to the queries raised during recording of statement by 10.01.2014. However, the opposite parties neither furnished the information/documents within the given timeframe nor sent any communication in this regard.

28. In view of the sequence of events adumbrated above, it is evident that the opposite parties have failed to comply with the directions given by the DG in exercise of its powers under section 41(2) read with section 36(2) of the Act. The Commission is constrained to note that despite liberal indulgence shown by the DG to the opposite parties, the opposite parties engaged in dilatory tactics in order to procrastinate and prolong the investigations without any justifiable reason.

29. In the circumstances, the Commission notes that no cause, much less any reasonable cause, was shown by the opposite parties save and except raising and advancing the pleas based on abstract propositions (broad and complex scope of investigations stretching to every facet of Google's businesses *etc.*) as noticed and detailed above. In fact, as noted earlier, the



opposite parties have conceded the non-compliance with the requisitions made by the DG within the stipulated period.

30. In such circumstances, the Commission has no hesitation in holding that the opposite parties have rendered themselves liable to be proceeded and punished in terms of the provisions contained in section 43 of the Act.

31. As per the provisions of section 43 of the Act, if any person fails to comply, without reasonable cause, with a direction given by (a) the Commission under sub-sections (2) and (4) of section 36; or (b) the Director General while exercising powers referred to in sub-section (2) of section 41, such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.

32. It is to be noted that when law casts an obligation upon the party to comply with a direction, the same needs to be complied with in the manner and the time stipulated therein. Further, it is trite to state that every failure to comply with the directions and requisitions constitutes a separate ground for imposition of penalties. In the instant case, as detailed hereinabove, it is manifest that the opposite parties have failed to comply fully with the various notices issued by the DG on different occasions. Despite reminders and opportunities extended by the DG, the opposite parties advanced frivolous and vexatious pleas to delay and avoid compliance. It may be noted that the period of failure to comply commenced w.e.f. 26.02.2013 in terms of the first notice of the DG dated 12.02.2013 whereby the opposite parties were directed to comply with the requisitions contained therein before the said date.

33. The Commission, however, taking into consideration the totality of the facts and circumstances of the case, and, in particular, considering the fact that the opposite parties have submitted some of the informations/ documents as sought for by the DG, is of opinion that ends of justice would be met if the



maximum fine envisaged under the provisions of section 43 of the Act is imposed upon the opposite parties by taking only one instance of non-compliance. It is, however, made clear that if the opposite parties further fail to comply with the directions of the DG in future, each instance of non-compliance shall be taken separately besides considering the same as aggravating factor for the purposes of imposition of fine.

34. In the result, a fine of rupees one crore is imposed upon the opposite parties. The opposite parties are further directed to deposit the same within a period of 60 days from the receipt of the order. The opposite parties are also directed to furnish the informations/ documents required by the DG *vide* the notices under consideration within a period of 10 days from the receipt of this order, if not already furnished.

35. The opposite parties are further directed to cooperate with the investigations by furnishing such other informations/ documents which may be required by the DG during the course of further investigations.

36. It is ordered accordingly.

37. The secretary is directed to inform the parties accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(Geeta Gouri)**  
**Member**



**Sd/-**  
**(Anurag Goel)**  
**Member**

**Sd/-**  
**(M. L. Tayal)**  
**Member**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

New Delhi

Date: 26/03/2014