



**COMPETITION COMMISSION OF INDIA**

**C. Nos. 06 & 46 of 2014**

**C. No. 06 of 2014**

**In Re:**

**Shri Vishal Gupta**

**Informant**

**And**

- 1. Google LLC**
- 2. Google Ireland Limited**
- 3. Google India Private Limited**

**Opposite Party No. 1**  
**Opposite Party No. 2**  
**Opposite Party No. 3**

**WITH**

**C. No. 46 of 2014**

**In re:**

**Albion InfoTel Limited**

**Informant**

**And**

- 1. Google LLC**
- 2. Google Ireland Limited**
- 3. Google India Private Limited**

**Opposite Party No. 1**  
**Opposite Party No. 2**  
**Opposite Party No. 3**



## **CORAM**

**Mr. Devender Kumar Sikri**  
**Chairperson**

**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

**Mr. U.C. Nahta**  
**Member**

**Mr. Justice G. P. Mittal**  
**Member**

**Appearances:** Shri Hrishikesh Baruah and Shri Kshitij Paliwal, Advocates for the Informant in Case No. 06 of 2014 alongwith Shri Vishal Gupta, Informant-in-Person.

Shri Arun Kathpalia, Senior Advocate with Shri Suhail Nathani, Shri Samir Gandhi, Shri Ravisekhar Nair, Ms. Aditi Gopalakrishnan, Shri Parthasarathi Jha, Ms. Deeksha Manchanda, Ms. Krithika Ramesh, Ms. Tanaya Sethi, Shri Sahil Khanna, Ms. Anuja Agrawal and Shri Aakarsh Narula, Advocates alongwith Ms. Gitanjali Duggal, Product and Litigation Counsel, for Google.

## **ORDER**

1. The information in Case No. 06 of 2014 was filed by Shri Vishal Gupta ('the Informant-1') against Google LLC ('the Opposite Party No. 1'/ OP-1), Google Ireland Limited ('the Opposite Party No. 2'/ OP-2) and Google India Private Limited ('the Opposite Party No. 3'/ OP-3)



सत्यमेव जयते



[collectively, 'Google'/ OPs hereinafter] alleging *inter alia* contravention of the provisions of Section 4 of the Competition Act, 2002 ('the Act').

2. The information in Case No. 46 of 2014 was filed by Albion InfoTel Limited ('the Informant-2') against Google alleging *inter alia* contravention of the provisions of Section 4 of the Act.

### **Facts**

#### **Case No.06 of 2014**

3. As per the information, the Informant, his family and associates own and manage Shyam Garment Group of Companies which includes Shyam Garment Private Limited (SGL), Delhi Call Centre Private Limited (DCL) and Audney Inc. (Audney). Both SGL and DCL are incorporated under the provisions of the erstwhile [Indian] Companies Act, 1956 whereas Audney is stated to be incorporated under the appropriate laws of Delaware, USA.
4. The Opposite Party No. 1 is a company incorporated under the laws of USA; the Opposite Party No. 2 is a company incorporated under the laws of Ireland; and the Opposite Party No. 3 is a company incorporated under the provisions of the [Indian] Companies Act, 1956.
5. The Informant states that in September 2012, the Informant's Group of Companies had resolved to set up a 'remote technology support' business and for the said purpose SGL had approached Google India (OP-3) for opening a Google Adwords account. The Informant states that after several meetings a standard agreement was executed between SGL and Google Ireland and the Adwords account was opened and activated on 07.01.2013.



सत्यमेव जयते



6. The Informant states that Audney in connection with its remote tech support business had set-up a website based on the guidelines provided by Google and the said website was designed by a Google certified partner. The website provides various remote tech support services in the domain of hardware and software for computers, operating system, anti-virus *etc.* Further, the Informant states that consumers searching for support services in the internet using Google search engine would be able to click on Audney's advertisements, as Audney has a Google Adwords account that enables its advertisements to appear in Google search page along with organic search results. By clicking on the advertisement of Audney, consumers would be able to land on Audney's website and they may either leave a message or make a call on the phone number mentioned therein. The phone calls made by the customers would be routed to DCL and DCL's employees would either receive the same or would be contacting the consumer later to provide support services in a remote manner either through phone or through the internet.
7. The Informant states that the bidding process of Google Adwords is extremely opaque and the lack of transparency is felt more particularly in the mechanism of fixing the 'Cost Per Click'. The Informant states that Audney has been placing its advertisements through Google Adwords ever since its account was opened in January 2013 until the termination of the account in October, 2013. During this period, it had paid Google US \$310,000/- as advertisement expenditure while earning a revenue of US \$750,000/-.
8. The Informant further states that Google has a 'User Safety Policy' which is extremely ambiguous giving rise to potential abuse of dominance by Google. The Informant states that the requirements of Google safety policy do not specify anything other than the following:



सत्यमेव जयते



- a) that advertisements displayed in Google's search results should not have misleading claims;
  - b) advertisements should promote acceptable business practice; and
  - c) advertisements should promote transparency and accuracy.
9. The Informant has stated that there is a complete lack of transparency and certainty with respect to the content that can be uploaded as advertisements. On several occasions, Google's Adword team had suspended advertisements at first, and thereafter, accepted the advertisements earlier disapproved, without making any changes, following protests by the account holders.
10. The Informant has averred that Google had promised that it would review the advertisements of Audney as to whether they comply with the various policies of Google or not. However, before a response was received, the Informant's Google Adwords account was withdrawn on 22.10.2013 and *vide* email dated 23.10.2013 Google informed that the aforesaid account was suspended due to violation of 'User Safety Policy' without issuing any notice or prior intimation. The Informant avers that through the e-mail dated 30.10.2013 it was further informed that the suspension of account was permanent.
11. The Informant has alleged that on 05.11.2013 Google launched its own Remote Tech Support operation in the name of 'Google Helpout' which is a clear alternative to the business setup of the Informant company. The Informant has further alleged that several remote tech support companies have been suspended from Google Adwords programme and the reason for suspension of the Informant's adwords account was *in lieu* of promotion of Google's own activities in an unfair, discriminatory and uncompetitive manner. The Informant also alleged that in this manner



सत्यमेव जयते



Google had been able to restrict competition in an unfair and unreasonable manner.

12. The Informant also alleged that Google has indulged in practices resulting in denial of market access to the Informant and to other remote tech support companies thereby restricting the access to market through the internet. The Informant alleges that by abusing its dominant position to limit or restrict the number of remote tech support companies, Google has caused prejudice to the consumers. Further, the Informant alleges that Google and its group companies have caused trade barriers to help and assist its own programme 'Google Helpout' and other associate companies such as [www.iyogi.com](http://www.iyogi.com).
13. Based on the above averments and allegations, the Informant has filed the present information before the Commission.

Case No. 46 of 2014

14. The Informant is a company incorporated under the provisions of the [Indian] Companies Act, 1956 having its registered office in New Delhi. It is stated to be an IT solutions company providing complete range of comprehensive IT solutions to its clients since over a decade including *inter alia* Remote Tech Support Services, Consulting Services, Infrastructure Built Services, Facility Management Service, Infrastructure as a Service, Software as a Service, Remote Infrastructure Management and technical support.
15. The Opposite Parties (Google) in this case are also the same as in Case No. 06 of 2014.
16. It is averred that the Informant company initiated the business of Remote Technology Support and for this purpose approached Google for



सत्यमेव जयते



opening an account in Google AdWords. It is further averred that this programme enables an advertiser to purchase individualised and affordable keyword advertising that appears instantly on google.com search results page.

17. The Informant opened two AdWord accounts with Google on 10.06.2010 and 27.08.2013. It is stated that as a result of opening these accounts, when the consumers search for remote tech support on the internet by way of Google Search Engine and because of the advertisement placed through Google AdWord by the Informant company, its advertisement would be visible and the customer can click on the advertisement which would lead to the website of the Informant company. The customer can either contact the Informant company by leaving a message or making a call on the phone numbers mentioned therein. It is also stated that while opening an account, the interested party is required to agree to the Google AdWord Policy and in addition to that the interested party also electronically accepts Google's 'User Safety Policy'.
18. It is further averred that the phone calls made by the customer are routed to a Call Centre of the Informant company where it's employees make or receive calls and thereafter in a 'remote manner' provide support to the customer *i.e.* on the phone or through the internet.
19. The Informant is essentially aggrieved by the suspension of its AdWords Accounts by Google in October/ November, 2013. It is the case of the Informant that the said suspension was done without any prior intimation or notice to it and without any cause of action.
20. It is alleged that Google User Safety and AdWords Policy is extremely arbitrary, vague and one-sided giving rise to abuse of dominant position by Google. The inherent ambiguity in these policies has enabled Google



to unilaterally terminate the advertisement campaigns of the Informant company from time to time and finally suspend its account without providing any legitimate reasons whatsoever.

21. It is further alleged that the entire bidding process of Google AdWord is extremely opaque and the lack of transparency of the actual mechanism of fixing the 'Cost per Click' gives Google the ability to abuse its dominant position.
22. It has been stated that the Informant company has always diligently complied with all the policy issues of Google. It has been further averred that the advertisements of the competitors of the Informant company like www.iyogi.com, which are in the same business of providing remote tech support services, have been approved by Google Ad-Word Team and thus, the decision of suspending the AdWords account of the Informant company is nothing but a mechanism adopted by Google in collusion with iYogi to eliminate competition in the Remote Tech Support market.
23. It has been further alleged that iYogi has achieved great heights in business of Remote Tech Support solely because of its strong relationship with Google and the impugned suspension has been done merely with a view to reduce/eliminate competition for iYogi.
24. Based on the above averments and allegations, the Informant has filed this information before the Commission.

#### **Directions to the DG**

25. The Commission after considering the entire material available on record *vide* its order dated 15.04.2014 passed under Section 26(1) of the Act in Case No. 06 of 2014 directed the Director General (DG) to cause an investigation to be made into the matter.



सत्यमेव जयते



26. Subsequently, the Commission *vide* its order dated 12.09.2014 passed under Section 26(1) of the Act in Case No. 46 of 2014 directed the DG to cause an investigation into the matter after observing that the allegations levelled in this case were similar to those made in Case No. 06 of 2014 where investigation had already been ordered by the Commission.
27. It may be noted that Google had filed an application with the Commission on 02.07.2014 for recall of its order dated 15.04.2014 in Case No. 06 of 2014. The Commission *vide* its order dated 31.07.2014 rejected the application seeking recall. Subsequently, this order was challenged by Google before the Hon'ble High Court of Delhi whereupon the same was disposed of by an order dated 27.04.2015 remanding the matter to the Commission to consider afresh the application of Google seeking review/ recall. Pursuant to the said order, the Commission considered the application and dismissed the same *vide* its order dated 11.06.2015. The DG was directed to resume the investigation.
28. The DG, on receiving directions from the Commission, investigated the matters and filed a common investigation report (confidential version) in both the cases on 21.12.2015 and non-confidential version thereof on 28.11.2016.

#### **Investigation by the DG**

29. For the purpose of investigation, the DG has delineated the relevant market as the market for '*Online Search Advertising Services in India*'. To explain the delineation, reference was made by the DG to its earlier Report in Case Nos. 07 & 30 of 2012 against Google dealing *inter alia* with the abusive conduct in online search advertisement market. It was first observed in the said DG Report that Online General Web Search services and sponsored search services/ search advertising are not part of



सत्यमेव जयते



the same relevant product market since the mechanism of generation, display of results and clicking behavior vary; serve distinct goals; and are perceived differently by the various categories of users namely, publishers (websites) and users entering search queries. These services are rather complementary from the perspective of website striving for 'eyeballs'. It was further observed in the Report that due to vast differences in the characteristics of online and offline advertising, they cannot be regarded as being interchangeable or substitutable from the advertiser's perspective and are therefore not part of the same relevant product market.

30. The DG in Case Nos. 07 and 30 of 2012 further analysed whether online search advertising and non-search advertising can be regarded as being substitutable or interchangeable from the perspective of the consumers. After a thorough examination of various aspects in this regard, the DG concluded that the characteristics, intended use and price of search and non-search advertising are very different from each other. Advertisers simultaneously use many different forms of advertising. Online advertisers may choose to allocate their budget to a combination of search and non-search advertising based on their specific advertising objectives. But one form of advertising cannot serve as a replacement for the other. Therefore, it was opined that search and non-search advertising are complementary in nature. In view of the above analysis, it was concluded in the said Report that 'Online Search Advertising Services' was a distinct Relevant Product Market.

31. After having referred to the above reasoning, the DG in the present cases considered the following facts:

- a) Google has an Adwords Program wherein the persons/ entities desirous of hosting their advertisements on Google Online Search Advertising platform can do so;



सत्यमेव जयते



- b) The Informants subscribed to the said Google Adwords Program for hosting their Advertisements for their entities providing Remote Technical Support Services (RTS).
  - c) Informant-1 had hosted the Advertisement for his Company Audney registered in USA for providing RTS to the Consumers in North America. Informant -2 had hosted the advertisement for its company Albion Global Inc. registered in USA and the advertisement was restricted to consumers in UK, USA, Australia and India.
  - d) Any consumer after finding the entities (the Informants in this case) by using Google Online Advertisement Search would call on the numbers given therein or leave a message on the contact email address provided in the advertisement.
  - e) The said phone call or message reaches the Call Centres established by the Informants in India (DCL in case of the Informant -1 in C. No. 06 of 2014 and Albion in case of the Informant -2 in C. No. 46 of 2014).
  - f) The RTS is provided by the Informants from the remote location in India by calling the consumer telephonically, by email or by any other technical methods.
32. Considering the contentions raised in the information memoranda filed by the Informants, the observations made by the Commission in orders under Section 26(1) of the Act, the facts about the manner of use of the Adword Program by its users *i.e.* the Informants and the findings incorporated from the previous report from Case Nos. 07 and 30 of 2012, the DG opined that the 'relevant product market', as noted above, in the matter of Online Advertising Services is equally applicable in the present cases and accordingly, the relevant product market in the instant



सत्यमेव जयते



case was delineated as the “Online search Advertising Services”.

33. With regard to relevant geographic market, the DG noted that both the Informants have subscribed to Google Adwords Program from India and are thus consumers for availing the services of Google. Admittedly, Google India Private Limited is the agent of Google Ireland and Google Inc. Further, it is admitted by Google that the contracting Informants are identified on the basis of their billing address and the currency in which the consideration is paid. The DG also stated that Google’s Adwords Program enables the advertiser to define the demography so that advertisements are hosted only in those geographic locations as selected by the advertiser. It was observed that Informants have admitted in their depositions that their advertisements were restricted to be viewed in the opted jurisdictions/geographical locations only. Google Adwords program offers such a facility wherein the advertisers have the opportunity to opt for very refined forms of targeting, including on the basis of the location of the internet user and his/her language. Google’s Adwords help webpage to refer to the various options available to advertisers in terms of language targeting and targeting based on geographic locations (countries, areas within a country, a radius around a location, or location groups). Thus, the advertiser from India can advertise in various country specific domains of Google including Google.com and Google.co.in. Other entities providing online search advertising services follow a similar practice.

34. The DG further stated that considering the conditions for demand for online advertising services and those for supply of online advertising services in terms of the legislative framework, the presence of local distribution entities and variations in applicable terms and conditions *etc.*, India would be the relevant geographic market for online advertising services in terms of the provisions of Section 2(t) read with 19(6) of the Act.



सत्यमेव जयते



35. Accordingly, the relevant market in the instant case was delineated by the DG as the market for ‘*Online Search Advertising Services in India*’.
36. With regard to the issue of dominance, the DG has also referred to its analysis in previous cases *i.e.* Case No. 07 and 30 of 2012 against Google and after having analysed all aspects, it was opined that Google was dominant in the market of online search advertising services in India. This has been the case despite the long standing presence of other competitors like Yahoo! and Microsoft Bing and new players in the market such as Baidu.com, Yandex and Duckduckgo.com. Other factors like Google’s size and resources, economic power and commercial advantages, entry barriers, *etc.*, further reinforced Google’s position of dominance. The DG also stressed that there exist significant entry barriers in the nature of high cost, technology, network effect, minimum scale requirements and contractual restrictions, *etc.* that bestow economic power on Google and place it at a major advantage *vis-à-vis* its competitors. It was stated that due to these reasons, Google has been able to establish itself as a critical platform for the stakeholders. The competitors have neither been able to dent its market position despite their prolonged presence nor do they pose any significant competitive constraint. Therefore, it was opined that Google enjoys a position of strength in the aforesaid relevant market which enables it to operate independent of prevailing competitive forces and also has the ability to affect its competitors as well as consumers in its favour.
37. The DG further investigated whether the conduct of Google amounted to abuse of its dominant position in terminating the AdWords accounts of the Informants hosted on Search Engines Result Page (SERP) of Google for advertisements of the Informants’ RTS services. It also investigated whether the Informants were thrown out of competition by such an action of Google by denying them market access or otherwise. In brief, though the DG did not find the termination of the accounts of the



सत्यमेव जयते



Informants to be unfair, it concluded that Google had abused its dominant position in the relevant market in violation of the provisions of Section 4(2)(a)(i) of the Act with regard to the allegation on opaqueness and lack of transparency in assigning a quality score in the bidding process. The DG also found violation of Section 4(2)(a)(i) of the Act with regard to one sided terms and conditions provided in clause 11 read with clause 4 of the Adwords Advertisement Terms 2013.

### **Consideration of the DG report by the Commission**

38. The Commission considered the Investigation Report submitted by the DG in its ordinary meetings and decided to forward copies thereof to the parties for filing their respective objections/ suggestions thereto. The matter was finally heard by the Commission on May 23, 30 and 31, 2018 whereupon the Commission decided to pass an appropriate order in due course.

### **Replies/ Objections/ Submissions of the Parties**

39. The Parties filed their respective replies/ objections/ submissions to the Report of the DG besides making oral submissions and filing post-hearing submissions.

### **Replies/ objections/ submissions of the Opposite Parties/ Google**

40. Google filed its response to the Investigation Report. Additionally, on 06.06.2018, 08.06.2018 and 15.06.2018 Google submitted post-hearing submissions, providing, *inter alia*, response to the queries raised by the Commission during the hearings.
41. In its objections and comments to the DG Report, Google contended that AdWords is governed by a universal set of policies designed to safeguard the end-users, and all accounts that breach these policies risk suspension/ termination. Google stated that the DG had correctly found that suspension of the accounts of the Informants was entirely justified,



सत्यमेव जयते



and that Google followed a legitimate process to effectuate the suspension. Specifically, Google contended that for the following reasons (recognised by the DG as well) the termination was justified and there was no contravention of the Act:

- (i) The Informants committed thousands of undisputed violations of the AdWords policies.
- (ii) The violations were often serious and pervasive, and often reflected a concerted effort to evade detection, despite warnings from Google and the publicly available policies that advertisers must abide by.
- (iii) The violations harmed users (the practices deceived and defrauded users).
- (iv) Google thoroughly reviewed the Informants' violations and provided a fair appeal process to AdWords violators, including the Informants.
- (v) The Informants did not allege or show any anti-competitive effects and in fact, their suspensions and terminations were pro-consumer and pro-competitive.

42. Google stated that the DG had rightly found that there was no discrimination or unfair termination of the accounts of the Informants, and the termination policies were fair and in accordance with the Act. Google also stated that user complaints, and reports published by regulators, third parties, and news organizations all identified significant issues within the RTS industry involving scammers, and these concerns have persisted. It was in this background that the accounts of the Informants were legitimately terminated to protect the interests of users.



सत्यमेव जयते



43. On the issue of promoting Google Helpouts, Google stated that the DG had rightly found that Helpouts is not a competing RTS service, and was, in fact, never launched in India. Helpouts was a platform discontinued in 2015, which simply connected users with third party service providers in various fields such as art, music, cooking, computing, education, fitness, and health, *etc.* and was not an RTS provider.
44. Google also contended that the DG's findings that iYogi is not associated with Google were correct and well substantiated with evidence on record. Google argued that there is no evidence of any alignment of interests, an economic link, or any other relationship between Google and iYogi. iYogi held an AdWords account at the same time as the Informants, and was not suspended and/or terminated at the same or similar time as the Informants because it had not, at that point in time, violated the AdWords Policies in a serious or pervasive manner. iYogi was one of the many RTS providers that hold AdWords accounts.
45. Google disagreed with the findings of the DG regarding clause 11, read with clause 4 of the Adwords Advertisement Terms 2013 and argued that the said clauses are not one-sided or abusive. Specifically, Google stated that clauses 11 and 4 benefit advertisers and are objectively justified. The clauses are transparent, accessible, and prevent bad actors from abusing and degrading the platform to the detriment of users and ultimately advertisers. They also allow Google to provide new services, clarify contract language, and make changes as required by law.
46. Google stated that the terms on termination/ suspension and modification are ubiquitous in the industry as it is not practical for Google or for that matter any company to enter into negotiations with each and every AdWords partner.



सत्यमेव जयते



47. Google clarified that clause 11 is not an imposed, unfair or discriminatory condition. The Advertisers voluntarily choose to accept Google's standard terms and such practices are ubiquitous in the online industry. The rights under clause 11 are reciprocal as both advertisers and Google can suspend their advertisements or terminate their accounts at any time, and reject Google's modifications. Moreover, the DG failed to show or provide evidence of any anti-competitive effects.
48. Lastly, Google also argued that the Commission has no jurisdiction to investigate the matter, since the alleged conduct does not have any effect in India. Google stated that the services offered by the Informants were targeted solely at users located outside India, and at no point of time did either of the Informants target users or consumers in India. There is, as such, no potential effect on Indian consumers or competition resulting from any of Google's termination of the Informants' AdWords accounts. The effect of that conduct – allegedly a reduction in the ability of the Informants to compete – affects competition in the market for RTS services and the consumers in that RTS service market were exclusively outside of India. There is, thus, no harmful effect on any consumers in India, and accordingly no basis to invoke India's competition laws.
49. On the basis of the above, Google contended that since Google does not infringe the Act, there is no basis for imposing any penalty.

*Replies/ objections/ submissions of the Informant in Case No. 06 of 2014*

50. The Informant-1 in Case No. 06 of 2014 filed its objections and broadly supported the infringement findings of the DG while objecting to the non-infringement findings. The Informant-1 also filed post-hearing submissions on 04.06.2018.
51. In its objections/submissions to the DG Report, the Informant-1 contended that Google conducted a review of RTS service providers and



terminated accounts of number of advertisers and the DG did not examine as to why accounts were terminated on such a large scale. The DG further failed to appreciate that the termination of the accounts was only to support Google Helpouts.

52. The Informant-1 argued that, with the exception to the findings in relation to Quality Score and clause 11 and 4 of the Adwords Advertisement Terms 2013, which have been held against Google, the findings in respect of the other allegations are incorrect because the DG ignored cogent material on record and because there is no legitimate basis for the termination of Informant-1's account. In this regard, the Informant-1 contended the following:

- (i) The DG relied on complaints against Audney made since 01.11.2013 which was after Audney's account was terminated on 22.10.2013.
- (ii) The DG did not appreciate the steps taken by Audney to comply with Google's policies. Despite seeking an audit in its e-mail dated 16.09.2013 to Google so that there is no violation, Google failed to provide support.
- (iii) The DG's conclusion that there was a violation of User Safety Policy is perverse because the alleged violative advertisements were either never run or became retrospectively violative. Moreover, the violations did not affect consumer interest/welfare.
- (iv) The DG did not consider the proximity of time between the beta launch of Google Helpouts (on 23.08.2013) and raising of 1426 violations (on 22.08.2013) within 48 hours of each other. The DG also did not consider the proximity of time between the Google Helpouts final launch (on 05.11.2013) and the end of Google tech review period (October 2013).



सत्यमेव जयते



- (v) The DG ignored evidence which states that Google will keep 20% of the revenue generated from Google Helpouts. Google under Helpouts Additional Terms accepts that Google will get money from these transactions.
- (vi) The DG did not consider that there was a systematic and deliberate attempt to withdraw support including withdrawal of Account Manager.
- (vii) The DG has incorrectly assumed violation of the User Safety Policy, while the evidence on records reveals that on the date of termination there was no violation of the User Safety Policy.
53. The Informant-1 further argued that the DG violated the principles of natural justice because the protection of confidential information under the Act is not available with the DG, and the Report redacts information that is relied upon by the DG in reaching its conclusions. The Informant-1 also contends that Google obstructed the investigation by unnecessarily claiming confidentiality over non-confidential information.

*Replies/ objections/ submissions of the Informant in Case No. 46 of 2014*

54. The Commission *vide* its order dated 17.01.2017 observed that the notices issued to the Informant in Case No. 46 of 2016 (Albion Infotel Ltd.) had been returned with the postal noting “left”. Further, the counsel who appeared on behalf of this Informant *vide* his letter dated 17.10.2016 stated that he was no longer engaged as the counsel of Albion InfoTel Ltd. In these circumstances, it is apparent that this Informant is not interested in filing any suggestions or objections to the DG Report.



सत्यमेव जयते



### Analysis

55. Briefly stating, the Informant Group of Companies in Case No. 06 of 2014 approached Google India for opening an account in Google Adwords for its online Remote technology support services business. A standard agreement was executed between SGL (the Informant's company) and Google Ireland and accordingly an Adwords account was opened and activated on 07.01.2013. Thereafter, to implement the business objective of establishing an online tech support services, the Informant incorporated a company in the name of Audney in USA with a call centre based in India (DCL). The Informant-1's company, Audney, incorporated in USA, was providing remote technology support services through a business model by placing online advertisements through Google's Adword programme providing link to the website of Audney apart from providing details of the telephone numbers which the consumers could use for obtaining remote tech support services. Thereafter, DCL - an India based call centre - would attend the call and provide the required tech support services remotely. The Informant has been submitting advertisements in Google Adwords since January 2013 to October 2013 when its account was withdrawn/terminated by Google.
56. In Case No. 46 of 2014, the Informant-2 is also aggrieved because of the suspension of its Google AdWords Accounts by Google. It was alleged that Google has imposed unfair/discriminatory conditions in granting access to its AdWords programme. Further, Google's User Safety and AdWords policy was also alleged to be arbitrary and one-sided giving rise to abuse of dominant position.
57. To investigate the aforesaid issues, the DG defined *online search advertising in India* as the relevant market where Google was found to be a dominant enterprise.



58. After delineating the relevant market as *online search advertising services in India* and finding Google to be dominant therein, the DG has identified and investigated the following issues:

- i) What was the nature and extent of problems that have prompted Google to take action against RTS industry and whether or not the termination was a legitimate action?
- ii) Whether Google could have taken a less damaging course of action such as filtering out fraudulent firms and maintaining contracts with firms that have been operating genuinely since long periods of time?
- iii) Whether Google Helpouts was an RTS alternative to the business setup of the Informants and thus whether Google was planning entering the RTS service market?
- iv) Whether Google had terminated large numbers of Adwords Accounts of RTS service providers besides terminating the Accounts of the Informants before launching 'Google Helpouts'?
- v) Whether iYogi is associated with Google?
- vi) Whether Google has adversely discriminated against the Informants and given preference to its alleged associates like iYogi?
- vii) Whether Google's User safety Policy and Adwords policy is extremely arbitrary, vague and one sided giving rise to abuse of dominant position by Google?



सत्यमेव जयते



- viii) Whether the entire bidding process of Google Adwords is extremely opaque and not transparent and there is lack of transparency in the mechanism of fixing Cost per Click (CPC)?
- ix) Whether any of the terms of Google Advertising Program Terms 2013 executed with the Informants is arbitrary and one sided providing sole discretion to Google to suspend and Adwords account or account holder's ability to participate in any of the programs or running of any customer campaigns *etc.*?
59. On the aspects relating to abuse, the DG agreed with Google that the enforcement actions taken by it against RTS industry were prompted by legitimate concerns arising out of warnings from anti-trust authorities, courts, independent reviews, monitoring systems established by Google, repeated violations by the Informants, consumer complaints and other signals from the market relating to RTS business.
60. The DG also found the entire process of temporary suspension and ultimate termination to be based on a process of filtration where opportunities were given to the advertisers to set right the violated area by revising the advertisements. The DG also noted the presence of an appeal mechanism provided by Google to the advertisers whose accounts were being terminated. The DG further noted that the Informants could not substantiate their claim that Google Helpouts was an alternative to RTS services and was a trigger or a well-planned exercise to terminate the Adwords accounts of the Informants. Neither of the Informants could substantiate the allegation of iYogi's association with Google by way of any documentary evidence. From the details requisitioned from the office of ROC Delhi, the DG noted that none of the Directors or shareholders of iYogi was common with Google. No credible evidence was found by the DG to establish that iYogi was given any preferential treatment by Google or that the user safety policies were applied



differently to it. The DG also noted that the user safety policy is neither opaque nor arbitrary nor vague.

61. The DG, however, found the bidding process of Google's Adwords programme to be non-transparent with respect to quality score being assigned primarily on the basis of the findings of the DG in the previous cases against Google *i.e.* Case Nos. 07 & 30 of 2012. The DG found that Google does not disclose to the advertisers their quality scores for a particular bid for a keyword in an auction. Even the indicative quality score that Google seems to be providing on a daily basis is neither actual nor average of the quality score of the bids of the advertiser during the day for a particular keyword and, thus, has very limited utility. The actual quality scores are not provided even on a historical basis. This severely restricts the ability of advertisers to critically evaluate their campaigns and take corrective steps. The said conduct thus amounts to imposition of unfair condition on the advertisers in violation of Section 4(2)(a)(i) of the Act.
62. Lastly, the DG found clauses 4 and 11 of the Google's Advertisement Programme Terms 2013 to be one sided and in contravention of the provisions of Section 4(2)(a)(i) of the Act.
63. On a careful perusal of the DG Report and the submissions of the appearing parties, the Commission is of the considered opinion that the issues: (a) delineation of relevant market; and (b) dominance of Google therein have already been settled by the decision of the Commission issued on 08.02.2018 in the previous set of cases against Google *i.e.* Case Nos. 07 & 30 of 2012.
64. In the aforesaid cases, while determining the relevant market, the Commission observed that online and offline advertising services are not comparable. Online advertising is undertaken using internet as a medium



सत्यमेव जयते



and, hence, its coverage is largely dependent on the reach of the internet. Similarly, online advertising is not substitutable with newspapers, radio or television, for advertisers who seek to target areas or user groups with limited internet access. It was noted that advertising rates are significantly lower for online advertising in comparison to traditional media. Not only that, online advertising allows advertisers to accurately monitor the effectiveness of the advertisement on the basis of the actual number of users that it reaches to whereas for offline advertisements, advertisers rely on the estimated number of views and not the actual views.

65. Adverting to the issue of online search and non-search advertising, the Commission noted that search advertising helps advertisers in targeting specific users. Typically, search advertisements are used for demand fulfilment while non-search advertisements are used for brand awareness or recognition. For that reason, both the advertisements are priced using different pricing mechanisms. For example, search advertisements are generally paid on a cost-per-click basis, while non-search advertisements are usually paid on a cost-per-thousand-impressions basis. Thus, the characteristics, intended use and price of online search and non-search advertising are different from one another.
66. In view of the aforesaid, the Commission in the previous cases against Google, held online search advertising services to be a distinct relevant product market in accordance with the provisions of Section 2(s) read with Section 19(7) of the Act. Further, considering the conditions for demand for online search advertising services and those for supply of online search advertising in terms of the legislative framework, presence of local distribution entities and variations in applicable terms and conditions *etc.*, the Commission held India to be the relevant geographic market for online search advertising services in accordance with the provisions of Section 2(t) read with Section 19(6) of the Act.



सत्यमेव जयते



67. In the result, the Commission determined *Market for Online Search Advertising Services in India* as the relevant market for examining the alleged abusive conduct of Google.
68. After having delineated the relevant market, the Commission proceeded to assess Google's dominance in the said market. While assessing dominance, the Commission noted that Google's market share has been consistently high, which suggests that, besides technical advantages, there exist other factors such as barriers to entry and Google's insurmountable scale, which insulate its market position. The structure of the market is both indicative of and conducive to Google's dominance. In view of the same, the Commission held that Google is dominant in the market for online search advertising services in India.
69. As the allegations in the present case are in respect of online search advertising services, the Commission is of the considered opinion that the market delineated in the aforesaid cases decided by the Commission may be taken as the relevant market in the present case as well. Further, based upon the findings of dominance against Google in those cases, the Commission notes Google to be dominant in the market for online search advertising services in India in these cases as well.
70. On the alleged abusive conduct of Google, from the issues examined by the DG, it appears that essentially only the following three issues survive and arise for consideration in the present case:
- (i) Whether the Adwords accounts of the Informants were suspended by Google in an unfair or discriminatory manner being in abuse of dominance under the Act?
  - (ii) Whether Google imposes unfair conditions (clauses 11 and 4 of Google Advertising Program Terms 2013) on its advertisers



सत्यमेव जयते



and whether this amounts to an abuse of dominance under the Act?

- (iii) Whether the bidding process of Google Adwords is extremely opaque and non-transparent?

#### Issue No. 1

Whether the Adwords accounts of the Informants were suspended by Google in an unfair or discriminatory manner being in abuse of dominance under the Act?

71. The Informant-1 has alleged that Google terminated its account and the accounts of other RTS providers without providing any notice or reason for such termination, and that Google refused to communicate with the Informant-1 about its account. It also argued that: (i) Google failed to provide the necessary support to comply with AdWords policies; (ii) Audney misunderstood vague AdWords policies; (iii) Audney's violations were "technical" in nature; (iv) Audney had corrected each violation; and (v) suspension of Audney's account could not be related to its violations, because such violations allegedly occurred 60 days before the suspension and had been corrected by Audney prior to its suspension.
72. In its response to the Report and at the hearings, the Informant-1 also contended *inter alia* that: (i) there was no reason to terminate his account as advertisements infringing the AdWords Policies had already been paused at the time of suspension; (ii) Google relied on user complaints that were dated post-termination; (iii) the RTS sector was targeted and no appeal process was provided for RTS providers; and (iv) Google terminated his account to favour its own associated service, *i.e.* Helpouts and associate iYogi.



73. The Informant-2 made similar allegations against Google in its information with respect to the termination of its accounts, while also contending that the policies of Google are vague in nature.
74. Before examining the allegations, it would be appropriate to note the findings of the DG in this regard and the same are noted below:

*Google has cited the alerts, triggers and warnings from FTC, other anti-trust regulators, also from the independent rating agencies raising an issue in general that large number of advertisement being hosted are making false claims, hosting misleading advertisement etc. in which particular serious concerns were raised about RTS Service providers. These alerts coupled with internal monitoring prompted Google to review advertisement to check compliance with the user's safety policy and other relevant policies.*

**[Ref. Para 55 p. 202 Investigation Report]**

*These were violations of policies during the period when the accounts of the advertisers were active. It was confirmed by the IPs as well as OP. Attention is drawn to Annexure-C to IP-1 submission dated 14.07.2015 and IP-2 page 67 to 113 of the information dated 16.07.2014. Google has been able to present justification for taking enforcement action based on the legitimate concerns arising out of the warnings from antitrust authorities, courts independent reviews, monitoring systems established by Google, repeated violations by IPs, consumer complaints and other signals from the market relating to RTS business.*

*Moreover, during the course of investigation IPs could not substantiate the allegations by placing credible evidence that the termination of their accounts was based on illegitimate action by Google.”*

**[Ref. Paras. 58-59 p. 202 Investigation Report]**



*The fact remains that the account of IP-1 was active only for a few months from January 2013 to October 2013 and for IP-2 from June 2010 to October 2013. At least IP-1 has not shown any history of genuine operation of long period as even during this short period admittedly his advertisements were temporarily suspended many times. The IP-2 also had few instance of temporary suspension of advertisements.*

**[Ref. Para 66 p. 209 Investigation Report]**

*The whole process of temporary suspension and ultimate termination is a process of filtration. Opportunities have been given by Google to set right the violated area by the IPs by revising the advertisements. Copies of his emails attached to information by IPs show that Google had pointed out the discrepancies in their ad from time to time and even in those emails suggestions were also given as to how the advertisement could be rectified.*

*Each of those email contained a standard warning stating "A repeated violations of our advertising policies may result in a suspension of your adwords account, so it is important to address any issues as soon as possible by reviewing our policies." The link of the site where such policies are available was also provided in the email. For example, attention is drawn to such copies emails attached with the information of IP-2 from page 67- 113 exhibited in his deposition. Similar is the case with IP-1.*

*Therefore, it transpires that ample opportunities had been given by Google to the IPs. Google could also justify the mechanism of identifying the violators and also the opportunities for filing appeal against the termination of accounts. Google in its submission dated 26.11.2015 in response to query number 1 has given the appeal mechanism and also the fact that both the IPs had availed the appeal opportunity which were rejected by passing a detailed response as per Annexure 1 B and 1 C attached to the said submission. Therefore, during the course of investigation Google could justify the trail of*



*action taken before finally terminating the account, being a matter of last resort, whereas the IPs could not substantiate the alternative to termination of account.*

**[Ref. Paras. 68-70 pp. 213-214 Investigation Report]**

*A pointed question with regard to the details and nature of Google Helpouts program was raised before Google in writing as well as during the deposition of the representative of Google on 17.11.2015 vide question number 16. It was informed that Google Helpouts was a platform that allowed a user to connect with the services like Yoga, Cooking, Guitar Lessons, Dance etc.(even though it included the services on computer hardware and software). Google as such was not to provide the services rather it was a platform to connect the seekers of the services from an expert and they interact with each other. Details have also been provided vide para 61 of Google submission 19.12.2014 and also vide para 47 to 49 read with Annexure E to the reply of Google to the application for interim relief by IP-1 before the Commission ( provided during deposition as exhibit RY-5) Google Helpouts was never launched in India and has since now been discontinued.*

*Google Helpouts was like Adword program wherein services were provided by third party service providers. Google was only providing a platform. Google was neither providing any services nor earning any revenue out of Google Helpouts. Whereas RTS services provided by IPs are different from the concept of Google Helpout. RTS Services provided by IPs are that of providing technical support for computer hardware & software. A few screens shots and print outs were provided by I P-1 like Annexure E-19&20 to submission dated 14.07.2015 which indicate that there were few entries of Help on computer hardware & Software etc. from certain persons and a write-up on Google Helpout service launched to bring live video tutorials from real people. Examination of these screenshots and print outs provided by IP-1 only demonstrate the nature of Google Helpout as specified above and not otherwise.*



सत्यमेव जयते



*IPs could not provided any material in support of their allegation that Google was competing with RTS providing business and Google Helpouts was an alternative of their RTS business setup.*

*Therefore, the allegation of IPs could not be substantiated to the extent that either Google Helpouts was alternative to RTS Services or the plans to launch Google Helpouts was a trigger or a well-planned exercise to terminate the IPs Adwords Accounts.*

**[Ref. Paras 83-86 pp. 218-219 Investigation Report]**

*The reasons for terminating of large number of accounts of RTS providers are based on various legitimate reasons and also on the warning alerts and signals from the anti trust authorities like FTC which have been dealt in detail in the above issue Number I. Having noted that Google Helpouts was not alternative to RTS business the allegation that the Google terminated large number of accounts planning for launch of Google Helpout could also be not substantiated.*

**[Ref. Para 89 pp. 219-220 Investigation Report]**

*The representative of iYogi has confirmed that iYogi group has no association with Google group companies except one Adwords account which iYogi Inc. has subscribed. iYogi TSPL is the main company in which RTS Services is being conducted and is a wholly owned subsidiary of iYogi Limited Mauritius whereas iYogi PL is a company promoted by directors of iYogi TSPL with nil business activity as per the balance sheet provided by RoC Delhi. None of the directors or shareholders of these two iYogi Companies is common with Google. iYogi Mauritius has three other subsidiary or step down subsidiaries companies. 1) iYogi Inc. USA 2) iYogi Pte Ltd Singapore and 3) iYogi Spain. OPs has also denied any association with iYogi. Therefore, no association of iYogi with Google group could be established.*

**[Ref. Para 102 pp. 224-225 Investigation Report]**



*Both the IPs in their written submission as well as in during deposition could not substantiate the alleged preferential treatment to iYogi except simply saying that iYogi is also in the same business of RTS services and in the same market but iYogi was not terminated despite of few temporary suspensions even though their advertisement was in the same manner and iYogi is flourishing whereas the IPs Adwords account were terminated. (Albion's reply to question number 21 and Vishal Gupta's reply of questions number 39 during their deposition).*

*The reply of IPs was given during deposition was confronted before the representative of Google during his deposition on 17.11.2015 vide question number 23. He has replied differentiating the advertisement and independent ratings of the two whereby IPs were given Better Business Bureau rating of 'F' and iYogi is rating is 'A'. He has given another example and drawn attention to their written submission of 23.07.2015 highlighting differences in the advertisement. There is no credible evidence brought on record to reach a conclusion if iYogi was given any preferential treatment or the user's safety policies were applied differently.”*

**[Ref. Paras 118-119 pp. 232-233 Investigation Report]**

*As per the written submissions by Google as well as confirmed by the representative of Google in his deposition, there is a policy division in the Google Inc. Headquarter, USA. They take inputs from many teams, which include legal, Engineering, operations and public policy, around the world and taking into the consideration Local laws, Google brand and user protection.*

*The user policy is available online and is prompted to be accepted by the advertiser at the time of application for opening of Adword account as acceptance is a precondition to open an account. This fact was confirmed by both the IPs in their deposition. Both of them confirmed that they had read the policies before opening of account.*



सत्यमेव जयते



*The opening of an account is a online process; availability & acceptance of Google safety policy is part of the process.*

*Google in its submission dated 19.12.2014 has stated that the policies are not unfair, unreasonable or discriminatory as they are proportionate on legitimate principals for protecting the quality of Google's advertisement services. The policies are applied uniformly*

*IP-2 in his deposition on 28.10.2015 was asked vide question number 11 that "Do you have anything to say on Google's User Policy on its transparency and defects, if any? "To which he replied that "No. I have nothing to say and I have not found any defect and lack of transparency". Further, in reply to question number 13 IP-2 had admitted that Google had intimated through email for their violation of advertising policy copies of which were enclosed by IP-2 to his information from Page no. 67 to 113 exhibited as A-1 during deposition.*

*In any case, the nature of advertisement hosted on any search engine cannot remain unregulated in the best interest of the consumers relying upon such advertisements.*

*OP has been able to substantiate the reasoning and justification has been given for policies and the enforcement thereof.*

*At each point of time, IPs had been informed of the violations major or minor, along with suggestions to rectify the defects.*

*In the view of above, it appears that the user safety policy neither is opaque nor arbitrary nor vague."*

**[Ref. Paras. 174-182 pp. 254-255 Investigation Report]**

#### Google's Submissions

75. Google submitted that its AdWords Policies define minimum standards of use for Google's advertising platform (AdWords). Advertisers review,



सत्यमेव जयते



consider, and voluntarily agree to abide by AdWords Policies when they join the platform. The AdWords Policies apply to all advertisers equally and allow Google to protect its platform and users, particularly vulnerable users.

76. Google submitted that it takes action to enforce its AdWords policies *inter alia* where it believes that a breach may harm users. It submits that its enforcement is neither discriminatory nor disproportionate.
77. Google contended that it terminated the accounts of the Informants because there were repeated serious violations by them of the pro-consumer AdWords policies and their conduct endangered the end-users. These terminations occurred at a time of increased enforcement action against RTS providers for breach of consumer protection laws in the US and elsewhere, that support Google's action.
78. It was argued that in accordance with its general practice, Google took action to suspend and terminate AdWords accounts for clear and flagrant violations of its policies in order to protect its users, other advertisers and the AdWords platform in general. Specifically, Google contended that between January 15, 2013 and October 22, 2013, the Informant-1 committed 1,450 ad-level violations (violations that occur within an advertisement, such as trademark misuse in ad text) of the AdWords Policies and for each such violation an e-mail intimation was sent to the Informant-1. The emails contained a standard warning stating “A *repeated violations of our advertising policies may result in a suspension of your adwords account, so it is important to address any issues as soon as possible by reviewing our policies.*” During the relevant period, the Informant-1 also committed numerous site-level violations such as misrepresentation of the place of business and absence of adequate disclaimer on website, in light of which its site was suspended twice, first on 03.05.2013 and the second time on



सत्यमेव जयते



23.10.2013. On each such occasion, the Informant-1 was: (i) informed that it had violated the User Safety Policy, and (ii) asked to re-submit for evaluation after complying with the User Safety Policy.

79. Google submitted that the nature of these violations demonstrates that the Informant-1 intentionally sought to evade the AdWords policy enforcement.

80. In response to claims of the Informant-1 that the infringing advertisements were “paused” (*i.e.*, not run on Google’s advertising platform) and thus were not infringing, Google stated that whether advertisements are paused or not is irrelevant in the context of compliance with the AdWords Policies. A paused advertisement that violates the AdWords Policies may still be disapproved but it can be revived and run at any time at the discretion of an advertiser, without referring it again to Google for its approval which puts the consumers at a risk of harm.

81. Google also provided evidence demonstrating that the Informant-2 committed violations of a similar nature as the Informant-1, and that Google applied the same process with respect to the Informant-2’s accounts. In particular, the Informant-2 violated the AdWords policies 1,192 times. The Informant-2 also violated site-level policies by misrepresenting its place of business and making misrepresentations about its billing practices and services.

82. Google accordingly contended that the Informants’ accounts were terminated based on a collective assessment of: (i) a continued pattern of circumventing the AdWords Policies; (ii) deliberate circumvention of the AdWords Policies; and (iii) misleading bad business practices. As such, the termination of the Informants’ accounts could not result in any anti-competitive effects, but on the contrary, was pro-consumer and Google



सत्यमेव जयते



should not be obliged to engage with such advertisers.

83. Google provided materials and evidence to the DG, confirming that it had no connection with iYogi and that iYogi was in compliance with the AdWords Policies during the relevant period in contrast to the Informants, and that Helpouts was not an RTS alternative that in any way prompted Google to terminate the accounts of the Informants.
84. Google also showed that several Governmental bodies across different jurisdictions, consumer interests groups, and users warned against fraudulent, or otherwise harmful activities such as those committed by the Informants. Google submitted that these materials support its decision to terminate the Informants' accounts.
85. In response to an allegation by the Informant-1 that Audney InfoTel Inc. had been unfairly singled out, Google submitted comprehensive data showing that, in 2013, approximately 2,400 RTS accounts were suspended globally for breach of Google's policies. Google thus argued that the Informants were not unfairly targeted by any enforcement action.

#### The Commission's Findings

86. The Commission has carefully perused the material on record besides hearing the learned counsel for the Parties.
87. The Commission notes that Google's AdWords Policies clearly define minimum standards of use for its advertising platform (AdWords). These policies protect the platform and the end-users, particularly, the vulnerable end-users. The Commission notes that an online advertising platform cannot be left without any regulatory mechanism which is based on defined criterion that ensures not only safety of advertisements for end-users but also to prevent unscrupulous advertisers from making



false and misleading claims and representations. A platform would as such be within its rights to regulate itself to ensure that advertisements conform with its quality and safety standards. More generally, platforms and users are free to agree upon the terms and policies that will govern their relationship, including enforcement mechanisms. Termination of the relationship between a platform and user is a commonly used mechanism to legitimately enforce a variety of policies.

88. The Commission notes that the AdWords Policies are available online, and are just one of a number of policies that advertisers choose to accept when opening an account. Both the Informants, while opening their respective accounts, agreed to comply with the AdWords Policies.
89. The Commission notes that advertisements that infringe Google's AdWords policies may be "disapproved" or "suspended" until rectified (an action designed to alert the advertiser to an infringement and to stop the infringing advertisements from running). Persistent or serious infringements (such as where an advertiser's conduct or business practices pose a significant threat to users, in violation of the User Safety Policy) are likely to lead to an act of permanent suspension *i.e.* "termination" of the advertiser's account (a permanent act).
90. The Commission notes that Google's enforcement action against the Informants took place against the backdrop of significant scrutiny of RTS providers by various competition and consumer protection agencies. Google enhanced its detection mechanisms in response to this challenge in 2013 and sought to more effectively identify what it refers to as "bad actors."
91. The Commission notes that there is evidence on record showing that the Informants' conduct was likely to endanger end-users of remote tech services. They repeatedly committed multiple violations of the AdWords



सत्यमेव जयते



Policies, demonstrating a consistent and persistent pattern of misconduct and user harm (*e.g.*, through tactics designed to mislead or exploit users).

92. From the information on record, the Commission specifically notes that the Informant-1 committed numerous ad-level violations, including:

- a) 1,426 violations of the AdWords Phone Number Policy by including telephone numbers in ad titles, text, or visible URLs (often simultaneously misusing trademarks to falsely imply affiliations with reputable IT companies) that mislead users into thinking they will place a call by clicking on the ad, when in fact they will be redirected to a website;
- b) 21 violations of the Relevance Clarity, and Accuracy, and User Safety policies by using unclear/inaccurate ad text such as falsely implying affiliations with companies such as Epson, Microsoft, Dell, *etc.*, that deceive users into believing that the company is an affiliate of, or official service provider for, such companies; and
- c) 3 violations of the Display URL policy by using multiple URL displays that confuse users about the websites linked to by advertisements.

93. The Commission notes that the Informant-1 was informed of each such ad-level violation by way of email which have been placed on record by the Informant-1 himself in his information at p. A-154 to A-244, Annexure K. The Commission agrees with the findings of the DG that Google provided the Informants with the opportunity to rectify their violations by revising their advertisements. This was specified in each email notifying the Informant-1 of the specific disapprovals. Google notified the Informants of their respective ad-level violations by e-mail, and also provided suggestions on how to rectify each advertisement in



सत्यमेव जयते



those emails.

94. The Informant-1 also committed numerous site-level violations, including:

- a) Misrepresenting the location of its business to be in the U.S. (Audney never accessed its account from the U.S., and provided all services from India); and
- b) Failing to include an appropriate disclaimer as to affiliation or endorsement on its website in respect to the companies in relation to whose product it provides such remote tech services.

95. The Informant-1's site was consequently suspended twice during the period January – October 2013, and all advertisements directing users to its site were disabled:

- a) First, on 03.05.2013, for business practice violations; and
- b) Second on 23.10.2013 for User Safety violations, violations of the Editorial Standards, and inserting phone numbers in visible URLs and ad text.

96. From the email communication reproduced by the Informant-1 himself in his information at p. A-249, Annexure N, the Commission notes that the Informant-1 was: (i) informed that its site violated the User Safety Policy, and (ii) was asked to re-submit its site for evaluation after complying with User Safety Policy. Google re-evaluated the Informant-1's account on each occasion, as detailed below, as part of its appeal process, under which Google considers the nature of an account's violation(s) resulting in suspension, its record of compliance with the AdWords policies, and whether the advertiser has a plan to ensure that



सत्यमेव जयते



no further violations occur. As per the information:

- a) The Informant-1 first submitted its website for re-evaluation on 10.05.2013. On 10.05.2013, Google reviewed the Informant-1's site and found that the specific violations had been addressed. Consequently, Google enabled the Informant-1's site.
- b) The Informant-1 launched an appeal against its site suspension of 23.10.2013 on 28.10.2013. On 29.10.2013, Google reviewed the Informant-1's account activity and, in accordance with its standard practices, informed the Informant-1 that following its review, the Informant-1's account would be terminated. This e-mail also noted that Google would not permit the Informant-1 to open any new AdWords account or run advertisements.

97. The Informant-2 also committed various ad-level violations of the AdWords policy. The 1,192 specific instances of violation include, *inter alia*:

- a) Abuse of third party trademarks and attempts to evade detection for such abuses. The Informant-2 committed 22 such violations, which included deceptive implied affiliations with AOL, Lexmark, HP, Norton, Avast, Kaspersky and other companies that were not actually affiliated with the Informant-2.
- b) Improper use of telephone numbers in advertisements. The Informant-2 committed 777 violations of this policy.
- c) Improper manipulation of text to avoid detection for AdWords policy violations. The Informant-2 committed such violations 104 times. For instance, the Informant-2 intentionally misspelled certain third party trademarks or otherwise attempted to use these



सत्यमेव जयते



trademarks while avoiding detection.

d) Inaccurate display of URL that displays one URL but links to an entirely different site in order to deceive users. The Informant-2 committed such violation 61 times.

e) Using multiple confusing URL displays. Google prohibits multiple URL displays to avoid user confusion about linked websites. The Informant-2 committed this violation 104 times.

98. The evidence on record also shows that Google afforded the Informants a fair process, comprising multiple warnings with clear identification of the specific violation at issue, ample guidance, and a fair appeal process. Particularly, Google clearly warned the Informants that “Repeated violations of our Advertising Policies may result in suspension of your AdWords Account”. Despite these communications from Google, the Informants’ misconduct continued, leaving Google with no choice but to terminate the Informants’ accounts in the interest of user safety and protection of its platform.

99. The material on record shows that the enforcement and implementation of the AdWords Policies are non-discriminatory and based on defined criteria to ensure consumer safety. There is no suggestion or evidence on record to show that the Informants’ accounts were singled out for suspension.

100. The Commission does not find any merit in the Informant-1’s contention that there was no reason to terminate his account as advertisements infringing the AdWords Policies were paused at the time of suspension. The Commission notes that paused advertisements can be revived and run at any time at the discretion of the advertiser at the click of a button. This has also not been denied by the Informant-1. As such, it cannot be



सत्यमेव जयते



argued that paused advertisements should not be made subject to Google's compliance and enforcement efforts. If paused advertisements were not subject to review, there would be a risk of consumer harm because paused advertisements that are in breach of the AdWords Policies could be run immediately at the advertiser's discretion.

101. Similarly, the Informant-1's claim that Google placed reliance on customer complaints that were dated post-termination is misplaced. The Commission notes that the user complaints were not the primary reason for termination of the accounts but the same appear to have been taken into consideration by Google while taking its enforcement action against the remote tech service providers. Essentially, the Informant-1's account was terminated because it violated Google's AdWords policies 1,450 times, and also violated Google's User Safety Policy. In any event, there were at least two complaints dated before the suspension of the Informant-1's account.

102. The Commission also finds that there is no evidence on record to show that Google favoured iYogi. No evidence of any structural or economic links was either submitted by the Informant or found between iYogi and Google during the investigation. On the contrary, Google provided evidence that iYogi did not repeatedly breach the AdWords Policies or demonstrate harmful business practices during the relevant period, in the same way as the Informants did.

103. This is evident, illustratively from the disclaimer on the respective websites. While iYogi had a clear disclaimer on its website stating, *"iYogi is an independent provider of remote tech support service for software, hardware, and peripherals. We are unique because we have expertise in products from a variety of third-party companies. iYogi has no affiliation with any of these third-party companies unless such relationship is specifically specified. For permitted use and specific*



सत्यमेव जयते



*warranties associated with the software, hardware and peripherals, please contact the relevant third party. iYogi is not responsible for third party Content provided on or through the Site and you bear all risks associated with the use of such third party Content, products and services. iYogi's support staff are iYogi Certified technicians but do not necessarily hold any certifications from any third party unless expressly specified.” This is in stark contrast to the disclaimer on the website of the Informant-1, which states that, “Audney is a third party provider for software and hardware driver related issues in desktops, laptops, and peripherals. We provide services through our pool of trained specialists and experts who have experience in handling products of companies such as Microsoft, Dell, IBM, HP, HCL, etc. The brand names, trademarks, logos company names used in the site belong to their respective owners and are for representation purposes only.”*

104. The Commission is of the view that the disclaimer of Audney is not a sufficient disclaimer. The Informant-1 merely states that the brand names, trademarks, and logos belong to the respective owners, but does not say that it is not affiliated with those owners (as iYogi does). The statement represents to users that the Informant-1 is experienced in handling the products of Microsoft, Dell, IBM, HP, HCL, etc. In doing so, it wrongly suggests and indicates affiliation to the above mentioned companies (again, unlike iYogi). As per Google policy this is a site level violation. For these reasons, the Commission disagrees with the argument of the Informant-1 that his site was wrongly terminated and there was a sufficient disclaimer on the website.

105. The arguments of the Informant-1 on discriminatory treatment are unsupported by evidence on record and are based on mere conjectures and surmises, hence, cannot be accepted. In fact, the Informant-1 conceded to the DG that, “[a]t this stage I cannot support [allegations about iYogi] on the basis of any document to prove that iYogi is [an]



सत्यमेव जयते



*associate of Google*”. The evidence on record suggests that there was no discriminatory treatment meted out to the Informant-1 *vis-à-vis* iYogi.

106. The Commission also finds that there is no evidence that the termination of the Informants’ accounts was intended to provide Helpouts with a competitive advantage. It is evident to the Commission that Google did not, through Helpouts, offer RTS services. Helpouts facilitated the exchange of information between experts in various fields (*e.g.*, teachers, personal trainers, doctors, home repair specialists, hobby enthusiasts, and more) and users. Service providers could offer their services *via* Helpout’s online video conferencing facility, video posting facility, and screen-sharing facility. Google itself did not provide services to users through the Helpouts platform but merely acted as an intermediary facilitating a connection between the users and service providers.

107. Moreover, Helpouts did not enable service providers to gain remote access to user computers (*i.e.*, the ability to access and control a computer from a remote location), which is a basic feature for RTS providers. The video conferencing ability, video posting, and screen sharing facility offered by Google is not equivalent to remote access and cannot be categorised to fall within the same market.

108. The Commission is also not persuaded by the Informant-1’s contention that Hangouts has remote access functionality, limited to an add-on feature on Chrome, which means that Google competes with RTS providers through a combination of Hangouts and Helpouts. The Commission notes that Google Hangout is a platform which *inter alia* provides services of messaging and video chat. Further, as contended by Google, it does not provide remote access facility which is *sine qua non* for providing remote technology services. Thus, even in combination with Hangouts, Helpout did not have the ability to remotely access a user’s computer - a key functional feature of RTS. That being so, Google



Helpout does not appear to be a functional substitute to RTS.

109. There is simply no plausible link between the termination of the Informants' accounts, and the launch of Helpouts. The arguments of the Informant-1 in this regard, including proximity of time in launch of Helpouts and the termination of the Informant-1's account are mere conjectures, which are bereft of any evidence. In fact, since Helpouts is not found to be functionally substitutable with RTS services, the theory being sought to be canvassed by the Informant-1 is merely speculative in nature.

110. Similarly, the Informant-1's claims that Google placed reliance on customer complaints and the ranking of Better Business Bureau (BBB), which were dated post-termination are misplaced. The Commission notes that the user complaints were supportive of, but not the reason for, the termination of the Informant-1's account.

111. The Commission also takes notes of the submissions by Google which clarify that while a service provider can become an accredited agency with BBB only after a year of operations, BBB reviews both accredited and non-accredited businesses alike. The Informant-1's claim that it could not have been reviewed before November 2013 is thus not tenable. In any event, as evident from the evidence on record, the BBB ratings and consumer complaints were only supportive of and not the reason of the termination.

112. Similarly, regarding the claim of the Informant-1 that reliance by Google and the DG on the FTC directions/ guidelines to justify the termination of the accounts, is misplaced, the Commission notes that there were no directions issued by the FTC pursuant to which the termination was effectuated. FTC had merely issued warnings to consumers regarding the scams prevalent in the RTS sector and not passed any direction to



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Google to terminate the account of the Informants.

113. Google's enforcement efforts were made against the background of the advisories issued by FTC, but these advisories did not cause the terminations. As shown earlier, the Informant-1's account was terminated because it violated AdWords policies. The timing of Google's enforcement action appears to have been impacted by a range of factors, including the user complaints against the Informant-1 and the development of new and improved detection signals that enabled Google to better identify the scammers. Accordingly, the Commission finds that Informant-1's claim that its termination was caused by FTC directions/guidelines is based on a wrong premise.

114. The Informant-1 further contended that it was allowed to open an account in 2012 despite the FTC warnings in 2011. The Commission takes note of Google's submission in this regard that the Informant-1 would be permitted to open an account (as it did in January 2013) in good faith and on the understanding that the Informant-1 would comply with its commitments under the AdWords Terms and Conditions that includes adherence to the AdWords Policies.

115. In respect of the allegations of the Informant-1 regarding the removal of the account manager and its relation to the admitted violations the Commission notes that an Account Manager assists in commercial matters relevant to the running of an AdWords account and has no role in the enforcement and implementation of AdWords Policies including terminations for User Safety Policy violations.

116. The Commission also notes from the evidence on record, including the correspondence submitted by Google and the Informant-1, that Google provided ample guidance to the Informant-1 on how to correct its AdWords violations. In fact, Google provides public guidance on its



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website. The Informant-1, as such, had sufficient opportunity to rectify past violations and avoid any future violations.

117. The Informant-1 also claimed and urged that the violations are merely “technical” in nature. The Commission however notes that violating the AdWords policies which may potentially deceive consumers are not “technical” violations. As described in paras 103-104, the Informant-1’s AdWords advertisements falsely implied affiliations with reputed third parties to the detriment of Google users, third parties, and Google’s reputation. There is no doubt that deceptive advertising on the Google platform harms Google’s reputation as a provider of search and advertising services.

118. The Commission also rejects the contentions of the Informant-1 that all its violations occurred more than 60 days prior to its suspension; as the Informant-1 was the subject of unresolved user complaints about fraudulent advertising within the 60 day period before suspension of the account. Moreover, it is entirely irrelevant whether the violations occurred more than 60 days prior to Google’s suspension as nothing in Google’s policies or contracts with the Informant-1 prevents Google from terminating the account of Informant-1 due to AdWords policies violations outside of the 60 day window.

119. The Informant-1’s allegations that no appeal process for the RTS sector was provided is incorrect, without any basis and misleading. The Commission notes that there is a well-established appeal process provided by Google as part of its Adwords Policy and the Informant-1 itself availed of that process.

120. As Google explained in its submissions, it provides an appeal process for AdWords account suspensions. Google makes information on its appeal process freely available online as part of the AdWords support pages.



सत्यमेव जयते



An advertiser seeking to appeal an account suspension is required to: (1) review its advertisements and site for compliance with the AdWords policies, including any advertisements awaiting approval prior to the suspension; (2) fix the violations communicated to the advertiser by Google; and (3) request an appeal review for reinstatement *via* a simple online form. Once Google's AdWords policy team receives the appeal request, specialists evaluate all of the information provided by the advertiser and the history of the advertiser's AdWords account, having regard to, for example, the nature of the violation(s) resulting in the suspension, the track record of compliance with AdWords policies, and whether the advertiser has a plan to ensure that no further violations occur in the future.

121. Informant-1 alleged that Google's enforcement of one of its policies (the call extension policy) lacked clarity which prevented advertisers from using phone numbers in advertisement texts. As per the policy, advertisers who wanted to use phone numbers had to use the call extension feature, which would then enable Google to verify the phone numbers.

122. In this regard, the Commission notes that the aforesaid policy was announced in February 2013 to "provide adequate lead time to make ad changes" and was divided into two parts. Google's announcement clearly states that: (1) Google would prospectively disapprove any new advertisements with phone numbers in ad text in the next few weeks, and (2) old advertisements with phone numbers in ad text would be disapproved by Google starting July 2013. Separately on 02.04.2013, Google released its consolidated policy on Editorial Standards specifying that phone numbers would not be allowed in the text of new advertisements. Advertisers who wished to promote phone numbers in their advertisements could use the call extension feature. In any event, the disapprovals on 14.08.2013 were after the unambiguous deadline of



सत्यमेव जयते



July 2013 as provided in the February 2013 announcement. Therefore, the Commission is of the opinion that the claim of the Informant-1 that the call extension policy of Google lacked clarity, is misplaced.

123. The Informants, thus, have no ground to claim that Google's enforcement action was unfair and contrary to Section 4(2)(a)(i) of the Act. On the other hand, Google has demonstrated that it followed a fair, legitimate process using clear, accessible and pro-consumer policies.

124. The Commission accordingly agrees with the DG's conclusions that the termination of the accounts operated by the Informant-1 and the Informant-2 for well documented violations of the AdWords Policies, under clause 11 of the AdWords Terms & Conditions, was fair and legitimate. It did not amount to an infringement of the Act.

#### Issue No. 2

Whether Google imposes unfair conditions (clauses 11 and 4 of Google Advertising Program Terms 2013) on its advertisers and whether this amounts to an abuse of dominance under the Act?

125. The DG specifically analysed clauses 11 and 4 of Google Advertising Program Terms 2013 to assess whether these terms were arbitrary and one-sided, as alleged. For clarity, the clauses are extracted for ready reference hereinunder :

#### *'Clause 4: Ad Cancellation:*

*Unless a Policy, the Programme user interface or an agreement referencing these Terms (an IO) provides otherwise, either party may cancel any Ad at any time before the earlier of Ad auction or placement, but if customer cancels an ad after a commitment date provided by Google (e.g. a reservation based campaign), then customer is responsible for any cancellation fees communicated by Google to customer (if any) and the Ad may still be*



सत्यमेव जयते



*published. Cancelled Ad will generally cease serving within 8 business hours or as described in a Policy or IO, and Customer remains obligated to pay all charges resulting from served Advertisements (e.g.. fees based on conversion ). Customer must effect cancellation of Advertisements (i) online through Customer's account if the functionality is available. (ii) if this functionality is not available, with notice to Google, via email to Customer account representative or (iii) if Customer does not have an account representative, with notice to Google via email to [adwords-support@google.com](mailto:adwords-support@google.com). Customer will not be relieved of any payment obligations for Creative not submitted or submitted by Customer after the due date provided by Google. Google will not be bound by a Customer provided insertion order or other Customer provided terms and condition."*

#### *Clause 11: Term and termination*

*"Google may add to, delete from or modify these Terms at any time. The modified Terms will be posted at [www.google.com/advertisements/terms](http://www.google.com/advertisements/terms). Customer should look at these Terms regularly. The changes to the Terms will not apply retroactively and will become effective 7 days after posting. However, changes specific to new functionality or changes made for legal reasons will be effective immediately upon notice. Either party may terminate these Terms at any time with notice to the other party, but (i) campaigns not cancelled under Clause 4 and new campaigns may be run and reserved and (ii) continue Programme Use is, in each case subject to Google's then standard terms and conditions for the Programme available at [www.google.com/advertisements/terms](http://www.google.com/advertisements/terms). Google may suspend Customer's ability to participate in the Programmes at any time. In all cases, the running of any Customer campaigns after termination is in Google's sole discretion. From time to time Customer may have advertising credits or other unclaimed funds within the AdWords Programme account ("AdWords Credits"). Unless used by the applicable expiration date, Adwords Credits will expire and not be available to the Customer,*



सत्यमेव जयते



*according to the following schedule: (a) Adwords Credits issued pursuant to Clauses 3 or 6 above will expire if not used by the relevant Use By Date; (b) AdWords Credits provided by Google for promotional purposes will expire if not used by the relevant date in the promotion or during the time period specified in such promotional terms and conditions, and (c) AdWords Credits not otherwise covered by (a) or (b) will expire if not used within 3 years of the date when such AdWords Credits became available to Customer within the AdWords Programme.”*

126. The DG was of the view that clauses 4 and 11 provide a one-sided right solely to Google to add, delete or modify the terms at any point of time. Further, such terms are unilateral and the subscriber is left with the option to either accept or terminate the accounts within seven days.

127. The Investigation Report, thus, concluded that clause 11, read with clause 4, of the Advertisement Program Terms 2013 is one-sided and provides Google the sole discretionary power in contravention of Section 4(2)(a)(i) of the Act. Specifically, the DG found that these clauses gave Google the unilateral right to suspend advertisements and modify the Terms & Conditions, in contravention of the Act.

#### Google's Submissions

128. Google submitted that the DG misunderstood the meaning of clauses 4 and 11, and that its findings are both factually incorrect and not supported by any evidence.

129. Google submitted that clauses 11 and 4 benefit advertisers and consumers, and are pro-competitive and objectively justified. Google, specifically urged that clauses 11 and 4:

- a) Are transparent, accessible, and prevent bad actors from abusing and degrading the AdWords platform to the detriment of users



सत्यमेव जयते



and advertisers (as vindicated by the DG in relation to the terminations of the Informants' accounts);

- b) Allow Google to provide new services, clarify contract language, and make changes required by law; and
- c) Enable swift, easy access to a safe, trustworthy, useful, and profitable platform.

130. Google further submitted that clauses 11 and 4 do not impose any unfair or discriminatory conditions, and thus cannot fall within the meaning of Section 4(2)(a)(i) of the Act. Google contended that advertisers voluntarily chose to accept Google's standard terms, including clauses 11 and 4, as a pre-condition for using AdWords.

131. Google also submitted that the concept of standard form contracts has been legally accepted and has existed since long across various industries. Terms equivalent to clauses 11 and 4 are ubiquitous in the industry enabling businesses to provide safe and competitive platforms. This further showed that such terms cannot be "unfair," exploitative, or "imposed" by dominance, but are standard practice across sectors because they serve a legitimate and beneficial purpose. Google contended that even if provided by an allegedly dominant company, clauses 11 and 4 must, at a minimum, come within the "necessary to meet the competition" standard under Section 4(2)(a)(i) of the Act.

132. Google also pointed out that the rights under clause 11 are in fact, reciprocal. Both advertisers and Google can suspend their advertisements or terminate their accounts at any time.



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133. Google further submitted that the DG failed to show or provide any evidence of any anti-competitive effect. Nor can it, because clauses 11 and 4 do not result in any anti-competitive effect for the reasons identified above.

134. Finally, Google argued that the DG also failed to consider that it would be practically impossible for Google or any business for that matter to effectively negotiate its terms of use with tens of millions of users. In 2016 alone, millions of new AdWords accounts were created. Google argued that the DG ignored these crucial facts and legal considerations.

#### The Commission's Findings

135. The Commission has thoughtfully considered the above submissions.

136. At the outset, the Commission observes that without having the ability to suspend and terminate dangerous advertisers, the platform owner would not be able to take immediate action to protect consumers and its platform. In the online world, where unscrupulous players can move quickly and harm consumers in several ways, firms, irrespective of their market power, must have the ability to take prompt action designed to protect consumers from potential harm. With respect to the termination of the Informants accounts, the use of clause 11 in fact benefitted consumers rather than harming them. Without such rights, platforms such as Google would be unable to deal with advertisers that harm consumers thereby allowing them to persist on the internet.

137. The necessity of such a clause is also evident from the applicable laws which may prohibit certain advertisements. Google's policies have to comply with and, facilitate compliance with a vast number of local regulations that may affect the legality of certain advertisements produced by its partners. Google's disablement or suspension of such content or accounts protects partners from unwittingly breaching certain local regulations. The Commission, thus, notes that the aforesaid clause



सत्यमेव जयते



is as such necessary to ensure compliance with local laws.

138. In any event, the findings of the DG with respect to the one-sided nature of the Terms & Conditions are incorrect. The Commission notes that the right to terminate under Clause 11 and 4 extends to both parties, *i.e.* Google and the advertiser. The advertiser can also at any time terminate the contract. Re-admitting an advertiser whose account is terminated is a necessary part of Google's right to terminate, as Google cannot effectively terminate a partner if that partner could readmit itself. On the other hand, Google also cannot force partners to continue to deal with Google once the partners have exercised their termination rights (*i.e.*, Google cannot re-admit itself into a relationship with advertisers).

139. The Commission also notes that though Clause 11 gives Google the right to add or modify terms in the agreement, the DG has failed to note that Clause 11 is not retroactive (*i.e.*, does not affect existing bids), and advertisers can decline to accept the new terms by not entering into new bids or terminating the agreement (with no cause). Thus, the clause does not allow Google to modify existing rights. It allows Google to propose new terms that both existing and new advertisers can either accept (with new bids and continued participation in AdWords) or decline (by ceasing or suspending participation in AdWords, as is their right). In other words, the modification clause is a means by which the parties can efficiently modify (amend) the contract, with each party having the power to decline such modification.

140. The Commission also takes note of Google's submissions that modifications to the Terms & Conditions enhance partner experiences and ensure compliance with applicable laws. The Commission notes that without the right to modify its Terms & Conditions, Google would be unable to introduce new services or modify terms to comply with applicable laws, which would have the potential to stifle Google's



सत्यमेव जयते



incentives to innovate for the benefit of advertisers and consumers or place Google in an impossible situation.

141. Clause 11 allows Google to modify the Terms & Conditions to incorporate new services that enhance the experience and usability of AdWords platforms for AdWords partners. Modifications also strive for greater clarity and accommodate any changes in applicable laws.

142. The Commission also takes note of Google's submission that it has not received any complaints from its customers concerning modifications to its Terms & Conditions. The Informants have also not complained about any of the modifications to the Terms & Conditions and Google has no reason to believe that the Informants, RTS providers, or any other Indian advertisers were adversely affected by AdWords modifications that, as described above, added functionality and clarified language.

143. It is for these reasons that terms analogous to clause 11 (and 4) are standard in the industry. Google identified at least 27 different online service providers / internet platforms such as Bing, Flipkart, Zomato, Myntra *etc.* with similar, if not identical terms thus suggesting that the clauses are not imposed by dominance.

144. In fact, inviting customers to accept legitimate and standard terms and conditions in order to use and benefit from a service is an entirely conventional and efficient commercial practice, followed by businesses around the world. Such terms are ubiquitous among online businesses that cannot practically negotiate bespoke contracts with millions of their customers. This reduces the potential for discrimination and uncertainty amongst users and businesses. Similarly, the Advertisers inherently have the right to suspend their advertising relationship with Google by simply pausing or ceasing to engage in keyword bids. The agreement imposes no ongoing advertising obligations on advertisers.



सत्यमेव जयते



145. Clause 11, as applied across the AdWords platform, is also beneficial because it removes advertisers who violate the applicable laws or Google's policies, using the system to their advantage and harming consumers. Such advertisements and accounts harm competition as business may be diverted from genuine competition to ineffective solutions; and consumers are disincentivised from accessing a useful platform as a result of bad experiences, which threatens the long-term operation and profitability of the market.

146. Moreover, Clause 11 is instrumental in creating a safe ecosystem for both users and advertisers to provide and receive products and services and improves the value and success of advertisers' AdWords campaigns.

147. In sum, taking into consideration the practical concerns regarding administering the AdWords program, the Commission finds a legally cognisable justification for Clauses 11 and 4.

148. In the present cases, the Informants voluntarily agreed to Google's terms and conditions, including a number of policies governing their conduct, such as the AdWords Policies. These terms are simple, coherent and easy to understand.

149. The Commission also notes that the DG itself recognised that Clause 11 was used to protect users, when exercised to terminate the accounts of the Informants. Moreover, the Informants have nowhere been able to show that they have been discriminated against others by way of application and implementation of Clauses 4 & 11. Thus, the elements of Section 4(2)(a)(i) of the Act are not met and no infringement is made out on this count as well.



सत्यमेव जयते



Issue No. 3

Whether the bidding process of Google Adwords is extremely opaque and not transparent?

150. Adverting to the allegations that Google's bidding process was not transparent, the DG, based on the conclusion of the investigation report in Case Nos. 07 & 30 of 2012, found that Google's bidding process is non-transparent on the Quality Score assigned, which tantamounts to imposition of unfair conditions on advertisers in violation of Section 4(2)(a)(i) of the Act. Specifically, the DG found that the Quality Score is "opaque," "of very limited utility", and "susceptible to manipulation." The DG noted the failure to provide more information as, restrictive of the ability of advertisers to critically evaluate their campaigns.

151. In this regard, Google submitted that the Commission has already considered these issues in its order issued on 08.02.2018 in Case Nos. 07 & 30 of 2012 against Google whereby and whereunder, the Commission concluded that *"the DG's concerns regarding disclosure of advertiser performance data by Google does not appear to be well founded...(and)...Google provides sufficient data to advertisers on the performance of their advertisements."* Google thus submitted that the allegations against it are wrong for precisely the same reasons as stated in the said order.

152. Google also submitted that it provides a wealth of information that allows advertisers to "critically evaluate" ad campaigns in extreme detail. Further, it was pointed out that disclosing historical bid and quality score information belonging to competitors would facilitate illegal collusion amongst advertisers and harm consumers based in India.

153. Google also submitted that the Report's allegations are legally insufficient to establish a competition law violation. It was argued that nowhere in the Report does the DG attempt to define a relevant market



सत्यमेव जयते



where anti-competitive effects are felt resulting from Google's non-disclosure of the metrics at issue.

154. Having examined the issue, the Commission is of the considered opinion that this aspect has already been considered extensively and carefully in its order issued in Case Nos. 07 & 30 of 2012. In the said order, the Commission found that *“the DG’s concerns regarding disclosure of advertiser performance data by Google does not appear to be well founded...[and]...Google provides sufficient data to advertisers on the performance of their advertisements.”* The Commission is of the opinion that the same conclusion applies in the present cases, as the DG’s claims are identical to those alleged in Case Nos. 07 & 30 of 2012 and given the short lapse of time since that order, there is no reason to assume that Google has deviated from its policies in providing sufficient useful information to advertisers that allow it to fairly evaluate their campaigns. As a result, the Commission holds that Google provides sufficient data to advertisers on the performance of their advertisements and no contravention of the provisions of the Act can be attributed to the Google’s bidding process.

155. Accordingly, no case of contravention of the provisions of Section 4 of the Act is made out against Google in respect of the allegations of opacity of its Quality Score.

156. Before concluding, it would be appropriate to deal with a jurisdictional objection raised by Google in its objections/submissions to the DG Report. Google argued that the Commission has no jurisdiction to investigate the matter, since there are no effects of the alleged conduct in India. Google stated that the services offered by the Informants were targeted solely at users located outside India, and at no point of time did either of the Informants target users or consumers in India. There is, as such, no potential effect on Indian consumers or competition resulting



सत्यमेव जयते



from any of Google's termination of the Informants' AdWords accounts.

157. In this background, it may be noted that on 02.07.2014, Google had moved an application seeking recall of the Commission's order dated 15.04.2014 passed under Section 26(1) of the Act. The aforesaid application was dismissed by the Commission *vide* its order dated 31.07.2014 holding the same as not-maintainable.

158. The aforesaid order dismissing the recall application was put in challenge by Google before the Ld. Single Judge of the Hon'ble High Court of Delhi by filing W.P.(C) No. 7804 of 2014. The said appeal came to be disposed of by an order of the Division Bench of the Hon'ble High Court of Delhi passed on 27.04.2015 in LPA No. 733 of 2014 holding that the Commission has the power to recall/review the orders passed under Section 26(1) of the Act within the parameters and subject to the restrictions specified therein. Accordingly, the matter was remanded back to the Commission to consider the application of Google for review/recall afresh after fixing a date of hearing.

159. Both Google and the Informant-1 thereafter, filed submissions before the Commission which were duly considered and the parties were called for an oral hearing on 27.05.2015. After due consideration *vide* its order dated 11.06.2015 the Commission disposed of Google's recall application holding that the application was without merit. The Commission however clarified that Google shall remain at liberty to agitate all jurisdictional issues, which could not be gone into in these summary proceedings, at the final stage of hearing before the Commission after submission of the investigation report by the DG.

160. It is noted that though Google did not present any oral arguments on the issue but in its reply to the DG Report, Google stated that in so far as the



सत्यमेव जयते



Informants were providing the concerned services exclusively to consumers located outside India, there was no effect on competition in India thereby ousting the jurisdiction of the Commission.

161. This plea is misconceived. The Commission notes that the advertisers like the Informants were providing RTS services remotely through call centres based in India. They availed Google's Adwords services from India. In fact, the allegations made by the Informants *inter alia* pertain to the discrimination faced by them *vis-à-vis* the other RTS providers who were also providing services from India. In these circumstances, it cannot be disputed that the conduct of Google can be appropriately examined by the Commission when the impugned conduct is alleged to have violated the competitive ecosystem in the RTS industry in India through its alleged unfair and discriminatory actions.

162. In this regard, the Commission also notes the submissions made by the learned counsel appearing for the Informant-1 to the effect that prior to the agreement with Google Ireland, the Informant and his group companies had approached Google India which has its offices at Gurgaon (Haryana); the discussions took place in India; and the agreement was signed electronically by the Informant's group company *i.e.* M/s Shyam Garments Private Limited from India and the same was also recorded in the order passed by the Commission under section 26(1) of the Act. Further, it was highlighted that the company which is the account holder *i.e.* M/s Shyam Garments Private Limited is based in India with its registered office at Delhi. The Commission also notes the submissions of the Informant that the e-mail correspondence between the Informant and the Opposite Parties essentially took place from India with Google India.

163. The Commission accordingly holds that the present subject matter is clearly within the jurisdiction of the Commission.



सत्यमेव जयते



164. The Commission also takes note of the argument of the Informant- 1 regarding violation of principles of natural justice on account of non-provision of Google's confidential information. The Commission finds that the argument is completely misplaced and without any merit. Accepting the arguments of the Informant-1 would render Section 57 of the Act and Regulation 35 of the Competition Commission of India (General) Regulations, 2009 nugatory. While in certain cases, regulated access to confidential information may be provided to protect the rights of defence of a party, in this case, the Commission notes that other than making bald allegations, the Informant-1 has failed to show why he should be provided access to Google's confidential information. In the absence of any reasons for providing access to confidential information, the plea of the Informant-1 is without any substance. The Commission accordingly finds no merit in the plea of denial of natural justice to the Informant-1, as other than raising a bald allegation, the Informant-1 has failed to substantiate the claim or show any prejudice.

165. Based on the above discussion, the Commission is of the opinion that no case of contravention of the provisions of the Act is made out against the OPs.

166. Finally, the Commission notes that Google has filed both confidential as well as non-confidential versions of its responses to the Investigation Report and post-hearing submissions. The confidential versions were kept separately during the pendency of the proceedings. It is ordered that confidentiality claim, as prayed for, shall hold for a further period of 3 years from the date of passing of this order in respect of confidential response to the Investigation Report and other submissions which have been filed before the Commission from time to time and on which confidentiality was claimed. It is, however, made clear that no such confidentiality claim shall be available in so far as the data that might have been referred to in this order.



167. The Secretary is directed to provide copies of this order to the concerned parties through their respective learned counsel(s).

**Sd/-  
(Sudhir Mital)  
Member**

**Sd/-  
(Augustine Peter)  
Member**

**Sd/-  
(U.C. Nahta)  
Member**

**Sd/-  
(Justice G. P. Mittal)  
Member**

New Delhi  
Date: 12.07.2018

**[Dissent Note (Public Version) dated 12.07.2018 by Chairperson at pp. 62-71]**



सत्यमेव जयते



## DISSENT NOTE

### PUBLIC VERSION

#### PER

**Mr. Devender Kumar Sikri**  
**Chairperson**

1. In this opinion, I record my dissent to the order of the Commission that disposes of Cases No. 06 and 46 of 2014 filed under Section 19 (1) (a) of the Competition Act, 2002 (hereinafter 'the Act') by Shri Vishal Gupta (hereinafter 'IP-1') and Albion Infotel Limited (hereinafter 'IP-2') respectively against Google Inc. (now Google LLC), Google Ireland Limited and Google India Private Limited (all three Opposite Parties are hereinafter collectively referred to as 'Google') alleging contravention of the provisions of Section 4 of the Act.
2. Besides perusing the material on record, I have also gone through the Majority order of the Commission. I am in complete agreement with the Majority on the delineation of relevant market in the present case as '*market for Online Search Advertising Services in India*' and the position of dominance of Google therein, as have been settled by the Commission in its previous decision issued on 08.02.2018 in Cases No. 07 and 30 of 2012 against Google. I am also inclined to agree with the Majority on its findings that (i) Termination of the Informants' AdWord accounts by Google caused by well-documented violations of AdWords Policies, was fair and legitimate; (ii) Clauses 11 and 4 of Google Advertising Program Terms, 2013 do not result in any anti-competitive harm in the market and are not unfair; and (iii) as held in Cases No. 07 and 30 of 2012, the allegation that Google's bidding process is opaque and non-transparent is not correct and Google provides the advertisers sufficient data to assess the performance of their advertisements.



सत्यमेव जयते



## **PUBLIC VERSION**

3. However, with all due respect to the Majority, I am unable to persuade myself to agree with the Majority on its certain observations that (i) there is no plausible link between termination of such a large number of AdWord Accounts including the IPs' accounts on 22.08.2013 by Google and the beta launch of Google Helpouts, a newly launched Google vertical, on 23.08.2013; and (ii) Google Helpouts is not functionally substitutable with Remote Technical Support (RTS) services.
4. In my view, the investigation done by the DG is not comprehensive enough so as to enable me to take a decisive view on these issues. The DG ought to have made further investigation on certain aspects, that I am detailing out in the succeeding paragraphs, so as to present a complete picture before the Commission to facilitate it to reach a conclusive determination on these issues.
5. For the sake of brevity, I shall not again recapitulate the background and the facts of the matter (s) at hand which have already been dealt with in detail in the Majority order. I shall only confine myself to the reasons for disagreeing with the Majority view in respect of the two observations stated above.
6. In my opinion, to enable the Commission to come to a concrete finding on the issues as to whether there is any link between termination of a large number of RTS services providers' AdWord Accounts on 22.08.2013 and the beta launch of Google Helpouts on 23.08.2013 and whether Google Helpouts is functionally substitutable with RTS services, the DG ought to have investigated further on the following aspects:



सत्यमेव जयते



## PUBLIC VERSION

### **6.1 Reasons for termination of AdWord accounts of other RTS services providers**

- (a) Though in 2013, Google had suspended/ terminated the AdWords accounts of [REDACTED] different RTS services providers globally including [REDACTED] RTS services providers in India, the DG limited its investigation by probing into the detailed reasons behind the suspension/ termination of AdWord accounts of only IP-1 and IP-2 and establishing that such reasons were in fact genuine. With regard to the termination by Google of other RTS services providers' AdWord accounts, the DG has simply accepted the submissions made by Google and concluded that *“The reasons for terminating of large number of accounts of RTS providers are based on various legitimate reasons and also on the warning alerts and signals from the anti trust authorities like FTC ...”*.
- (b) In my opinion, the DG ought to have analysed such submissions of Google in detail besides putting these submissions to the RTS services providers mentioned in these submissions. This would have helped the DG to test the veracity of the claims made by Google with regard to the specific reasons behind the termination of the AdWord accounts of these other RTS services providers and obtain their take on the same, like it has done in the case of the Informants. Also, details from Google regarding consumer complaints having been received against such other RTS services providers also could have been obtained by the DG, like it has done in the case of the Informants. Then only, the DG or the Commission could have conclusively determined



सत्यमेव जयते



## **PUBLIC VERSION**

whether Google's reasons for termination of all such accounts were in fact justified.

- (c) It is indeed peculiar that all such termination of accounts coincidentally took place within just 48 hours before the beta launch of Google's new service 'Google Helpouts'; which as per the Informants, is a substitutable service with Informants' RTS services and is the reason behind such mass termination of RTS services providers' accounts. Such proximity of time between the beta launch of Google Helpouts (on 23.08.2013) and suspension of accounts (on 22.08.2013), indeed raises suspicion. Furthermore, IP-1 in its information has also stated that on certain earlier occasions as well, Google's AdWords team had suspended certain advertisements and thereafter, accepted the same without any changes, following protests by the account holders, though they were earlier disapproved.
- (d) Hence, due to such peculiarity of circumstances, this aspect certainly needed more deliberation by the DG, especially in view of the fact that though Google claims that termination of AdWord Accounts is done by Google in pursuance to a well established review process, such process of review is not disclosed by Google to the advertisers. Though Google claims that operation of its advertising platform is not opaque but rather very fair and transparent to the advertisers (as has been noted by the Commission in its previous order in Cases No. 07 and 30 of 2012), strangely Google does not disclose the procedure it undertakes for review of the ads to the advertisers. Such procedure was explained by Google before the DG, however, Google claimed confidentiality upon the same and requested for its non-disclosure to the Informants.



सत्यमेव जयते



## **PUBLIC VERSION**

Upon such request of Google, though the DG denied confidentiality upon the review procedure, in appeal, the Commission granted confidentiality from disclosure *vide* its order dated 26.07.2016. In my view, after pursuing the entire case record, it seems that such decision of the Commission needs revisiting and such review procedure of ads as explained by Google need not be kept confidential. I am of the opinion that the Commission ought to have reversed such confidentiality order after hearing the parties at the time of passing the final order.

- (e) Hence, in my view, the DG ought to have made more efforts to analyse the specific reasons given by Google for terminating the AdWord accounts of such large number of RTS services providers and ascertain the veracity of such reasons, rather than limiting its analysis to only the Informants. Further investigation by the DG is required on this aspect.

### **6.2 Remote access through Google Helpouts**

- (a) Secondly, with regard to substitutability between the services of RTS services providers and the services offered by Google Helpouts, the DG has concluded that *“Google was only providing a platform. Google was neither providing any services nor earning any revenue out of Google Helpouts/ whereas RTS services provided by OPs are different from the concept of Google Helpout. RTS Services provided by IPs are that of providing technical support for computer hardware & software.”* In my view, the DG while stating so, might not be entirely correct.



## **PUBLIC VERSION**

- (b) Before the Commission, Google has stated that the services provided by RTS services providers and the services provided by Google Helpouts, are not substitutable. Google has provided several reasons for the same, one of them being that Google Helpouts does not afford remote access to the customer's system as is the case with RTS services. At best, it provides video conferencing ability, video posting and screen sharing, which cannot be equated with sharing one's own screen to access someone else's computer in real time. Further, before the DG, Google has stated that it has been unable to identify any RTS services provider who migrated to Google Helpouts and began offering its services through Google Helpouts, which again shows that the two services are not considered to be alternatives by the service providers. Such submission of Google has been accepted by the Majority in Paras 107 and 108 of the Majority order.
- (c) On the other hand, IP-1 has stated that Google Helpouts is a substitute of RTS services and in case of Google Helpouts also, through the platform of Google Hangouts which has an added feature of 'Remote Desktop', a person can video chat, troubleshoot and control a remote computer right in the same window. It has stated that through the medium of Google Helpouts also, a person can access and take control of a remote computer. Also, IP-2 in its information has stated that it provides RTS services through phone as well as is the case with Google Helpouts.
- (d) From the DG Report, it is seen that the DG has not gone into the question as to whether remote access of the customer's screen is available through Google Helpouts at all. Rather, the



## **PUBLIC VERSION**

DG has based its conclusion of non-substitutability on completely different grounds. A step-by-step comparison of the features of Google Helpouts and the features of RTS services is what was warranted. Without such analysis by the DG, the Majority's observation that Google Helpouts (with the help of Google Hangout) does not enable service providers to gain remote access to users' computers does not seem entirely justified.

- (e) In my view, considering that IP-1 has categorically stated that remote access to a customer's computer is possible even through Google Helpouts (alongwith Google Hangouts) as is the case with RTS services and the submission of IP-2 that it provides RTS services through phone as well, I am of the opinion that there indeed are, certain overlaps between the services provided by RTS services providers and the services provided by Google Helpouts. Further, though Google has stated that it has been unable to identify any RTS services providers who might have migrated to Google Helpouts, the DG, rather than believing Google at face value on this count, should have conducted an empirical investigation so as to determine if this claim of Google was true. Also, the DG should have looked into the demand-side substitutability. The DG ought to have asked the consumers as to whether they consider Google Helpouts to be a substitutable service of RTS services. Hence, in my view, the DG's investigation on this aspect is also restricted and no firm view on this issue can be taken.



सत्यमेव जयते



## **PUBLIC VERSION**

### **6.3 Revenue earned by Google through Google Helpouts**

- (a) Also, in continuation of the above, it is noted that one of the reasons given by Google to the DG for claiming that Google Helpouts is not a substitutable service with RTS services, is that *“Google does not earn revenues from third-party service providers on its Helpouts platform that provide their services free of charge. It would not make commercial sense for Google to shut down an existing revenue-generating stream of business, i.e. advertising revenues from RTS companies active on AdWords, for the sake of an untested product on which users may offer free services without paying fees to Google.”* With regard to such contention raised by Google, the DG has made its interpretation that Google was not earning any revenues from Google Helpouts. IP-1 had stated before the DG that *“Google Helpout took a straight 20% cut on the revenue of the service.”* However, disregarding the same, the DG came to the above-mentioned conclusion.
- (b) Now, it has come before the Commission during the oral hearings held with the parties that such interpretation of the DG is fallacious and Google in fact does take a 20 % cut on the revenues earned by those service providers who do not offer their services for free on Google Helpouts. It has been mentioned under the Google Helpouts Additional Terms for Customers<sup>1</sup> that Google Helpouts may be purchased through Google Wallet which makes it evident that not all service providers offered their services for free on Google Helpouts.

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<sup>1</sup> Annexure E to the statement dated 17.11.2015 of Mr. Reid Yoshio Yokoyama of Google recorded before the DG, annexed at Page 5856 in Volume XII of the Annexures to the DG Report.



सत्यमेव जयते



## **PUBLIC VERSION**

As per Google, what was stated before the DG was only that no money is earned by Google from those service providers on Google Helpouts who themselves offer their services on Google Helpouts free of any charge. However, Google has admitted before the Commission during the oral hearings that it never, before the DG, claimed that Google Helpouts does not earn any revenues. Hence, from those service providers on Google Helpouts who did not offer their services free of charge, it is established that Google used to take a 20 % cut of their fee, through which evidently it made revenues.

- (c) In view of that, I am of the opinion that earning 20 % cut from Google Helpouts service providers rather than earning miniscule revenues from RTS services providers in the form of Cost-per-Click (CPC), does afford Google a commercial motive to terminate the AdWord accounts of all major RTS services providers so as to force them to migrate to the Google Helpouts platform which would help Google earn much more revenue than what it earns from CPC on RTS services ads. Though Google has stated that no such migration actually took place, no experienced verification has been done. In its absence, this could have been the objective of Google at the time of the termination. Whether Google could or could not succeed in achieving its objective cannot be the premise for the DG to say that no objective/ motive existed at all. Hence, further investigation by the DG on this count is required as well.



सत्यमेव जयते



**PUBLIC VERSION**

7. In view of the above, I am of the opinion that rather than passing a final order under Section 27 of the Act, the present cases ought to have been referred back to the DG by the Commission under Section 26 (7) of the Act for further investigation on the facets identified above.

**New Delhi**  
**Date:** 12.07.2018

**Sd/-**  
**(Devender Kumar Sikri)**  
**Chairperson**