

Centre for Competition Law and Economics

(A non-profit initiative u/s 8, The Companies Act, 2013)

To

The Secretary
Competition & Markets Authority
The Cabot, 25 Cabot Square
London
E14 4QZ
United Kingdom

3rd February, 2025

Subject: Response to the Competition & Markets Authority's Google search investigation

Dear Sir/ Ma'am,

We write in reference to the Google Search investigation conducted by the CMA.

Please find attached our representation on the matter.

About the Centre

The Centre for Competition Law and Economics (CCLE) is a research organization working in the field of competition law and economics. The Centre publishes research reports, conducts training activities and assists litigating parties at competition fora across the country to advocate consistent interpretation of the Indian competition law. The Centre regularly collaborates with national law universities and other non-profit organizations to organize seminars, conferences and workshops for the relevant stakeholders to generate capacity in the said field based on mutual interest.

We would be happy to discuss more on the topic and will be looking forward to meeting you in person.

Best Regards,

Sumit Jain

Founding Director

Centre for Competition Law and Economics

<http://www.icle.in>

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Response to the Competition & Markets Authority's Google search investigation

General comments

1. Competition in digital markets has posed renewed challenges for antitrust authorities across the globe. This challenge has ultimately led to a rethink of the sufficiency of the ex-post competition law when it comes to addressing anti-competitive conduct in a timely manner and promoting competition in the market.
2. Some of the key contravention decisions which have led to this afterthought include the Google Android order (EU), Google Shopping order (EU), Google AdSense order (EU), Facebook-WhatsApp merger order (EU), Facebook Marketplace order (EU), Apple decision (EU), Facebook data sharing order (Germany), Google AdTech order (France), Google search engine order (US), Google search engine order (India), Google Android order (India), Google pay order (India) and Facebook data sharing order (India) among many others. The bulk of these decisions revolved around 'nudging' and the Big Tech companies indulging in practices such as bundling/ tying, self-preferencing, cross-utilisation of data across subsidiaries and lack of interoperability along with conventional antitrust wrongs of one-sided terms & conditions and restrictive trade practices.
3. This propelled governments across the globe to promulgate rules which ultimately lead to the opening of the ecosystem, contestability and restoration of fair and level playing in the market. Some of the key measures include the European Union (EU) enacting the Digital Markets Act, Germany enacting the 10th amendment to the German Competition Act, Japan passing the Act on Promotion of Competition for Specified Smartphone Software and a host of other countries such as India and Australia currently under consultation to bring such a law.
4. The UK government passed the Digital Markets, Competition and Consumer (DMCC) Act to address such concerns. The law seeks to identify certain 'conduct requirements' by designating Big Tech players as 'Strategic Market Status (SMS)' in the digital space.

Specific comments

5. One of the key investigations when it comes to identifying competition concerns in search and search advertisement markets is the *US Google search case*. After conducting a

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trial, the District Court of Columbia held that Google has monopolistic power in general search and general search text advertisement markets and has been using the same through various commercial agreements to thwart competition in the market. The net reading of the browser agreement, Mobile Application Distribution Agreement (MADA) and Revenue Sharing Agreement (RSA) was that it results in the foreclosure of substantial market share, deprives the competitors of the necessary scale and reduces the incentive to innovate in the identified markets. The overall harm caused by such a conduct is that Google can charge supernormal prices for its products and degrade the quality of its services.

6. The second instance of looking into competition concerns in this market was in the *Google search engine case* in India. The Competition Commission of India, after conducting a detailed investigation, held Google dominant in the search engine market and found evidence of Google engaging in self-preferencing when it comes to search engine result pages (SERPs) and vertically integrated products. The Indian authority further found out that Google has entered into various commercial agreements with advertisers and publishers whose net effect is to restrict the development of the ecosystem and tilt the market in its own favour.
7. A combined reading of both these cases would highlight that Google has designed its business strategy keeping the general search and search text Ads markets at the center stage. The company has enmeshed its offerings in a manner where either it is simply barred the users from procuring a service/ product on a standalone basis, or it is economically inefficient to do so. For instance, on the end-user side, a consumer cannot simply use an Android smartphone as it is tied with a suite of applications such as Gmail, YouTube and Google search services to promote Google's competitive position. Similarly, even though mobile manufacturers are theoretically free to install other search engines on their devices, the same is economically inefficient given the incentives produced by Google on default settings. A natural corollary to this is that for any competition remedy to be effective, these two aspects need to be taken into account. In simple words, the business users and end users of Google's line of products should be free to procure and use a singular service on a standalone basis. This procurement could be on a per-user or per-use basis. Similarly, Google should not be allowed to give any financial incentives, or anything of 'value' in the words of the Department of Justice (US), directly or indirectly, to its business partners to promote its line of products through preferential or exclusionary terms. On the question of the default setting, choice screen should be implemented as a standard remedial measure.
8. On the ability to use singular service from Google's stack, the Authority should further consider isolating search engine service from the entire ecosystem. This would simply

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mean that a consumer who uses the Google search engine has to avail it by putting its URL in the search bar and it cannot navigate other Google services through the search. If the user has to avail of other services from Google's line of products, it has to come out of Google search and only then shift to another service. There should be further transparency in terms of providing timely reports to business users on the quantity and quality of engagement of various ads and campaigns. This would ensure the restoration of competition and fair play in the market.

9. On the question of self-preferencing, Google should be mandated to make disclosures wherever its own products and services are competing in the vertical supply chain. For instance, if an end user is looking for navigation services, Google should make a clear disclosure that 'Google Maps' is owned by itself before showing the said results on the top of the search page. Similarly, for mailbox and video hosting platforms.

Final comments

10. DMCC seeks to strike a balance between conventional ex-post and new age ex-ante competition law framework. In such a balancing, some rearrangements have to be made. The Authority may very well decide not to intervene in the market which is in line with the pro-competitive aspects of search services as mentioned in the background note. The CMA may also consider implementing remedies as mentioned above which would be in line with maintaining the sanctity of the competitive process. The question of remedy in the given investigation, indeed, remains more of a policy than law. This is reflected in continuous change in the technological world.