

In re: Matrimony.com v. Google (Case Nos. 07 and 30 of 2012)

Decision Date: 31.01.2018

Keywords: *abuse of dominant position; search bias; digital market*

Issue: Whether Google's conduct in giving preferential treatment to its own vertical search engines amounts to abuse of dominant position?

Rule: Sec. 4 of the Competition Act, 2002

It was alleged that some of Google's search results features namely, Universal Results, OneBoxes and Commercial Units were being used by Google in a biased manner which amounted to abuse of dominant position. On February 2, 2018 the CCI gave its decision in favour of Google on all but one count. It found that Google had abused its dominant position under Sec 4(2)(a)(i) through prominent placement of its Flights Unit which displayed results only from Google Flights, Google's own vertical search engine.

For determination of "search bias" the CCI was required to examine three features of the Search Engine Results Page (SERP) namely, Universal Results, Oneboxes and Commercial Unit. Universal results are groups of search results for a specific category of information such as, news, images or local businesses. OneBoxes provide factual answers to users' queries such as mathematical questions, time, currency conversion, etc. Commercial Units are the boxes which Google sets apart in ad space and distinguishes from search results with a "sponsored" label. It was alleged that Google through the use of these three features had ranked results on parameters other than merits thereby misleading consumers about the relevance of these results and also favouring its own vertical search engines and increasing its ad revenue.

For Universal Results two things were alleged: *first*, that Universal Results as a category itself was prominently displayed irrespective of its overall relevance in the SERP and; *second*, that within the Universal Results it was only Google's own vertical search engines which were used. Some examples of Universal Results would be segregated prominent display of videos or news on Google's general search engine where the content within the Universal Results category is displayed from YouTube and Google News respectively. In response to these Google argued that Universal Results were not always preferentially positioned but were

subject to the same ranking mechanism as the other results. The positioning of Universal Results was dependant on its overall relevance and subject to the same parameters as the other results.

The CCI noted the arguments made by both sides and reached the following conclusion. The prominent positioning of Universal Results overall in the SERP is not biased but is in fact in consonance with Google's objective of displaying the most relevant results since Universal Results by identifying unique categories provide the most relevant results for the users.

It was alleged that Google selected the content to appear in the OneBoxes at random and therefore, these were not necessarily the most relevant results. The manner in which a website or a result is selected to be shown in the OneBox is completely unknown. Hence, Google's conduct of selecting any one website to appear in the OneBox amounts to an abuse of dominant position. In response Google argued that OneBoxes appear only in response to factual questions which have just one correct answer therefore the question of favouring a less relevant website does not arise. Moreover, for OneBoxes where there can be different possible answers *e.g.*, weather forecasts, Google selects the content providers based on evaluation of relevance, quality, and business terms. Google is not paid by content providers and has, thus, no incentive to select an inferior content provider. There exists no evidence that Google has ever actually selected an inferior provider for its OneBoxes. Google also argued that OneBoxes amounted to an improvement in the quality of the product and therefore, displaying them on the SERP was for the purpose of promoting competition by providing better quality services. The CCI held that there was no evidence to suggest that the most relevant result had not been chosen for the OneBoxes. Mere possibility that it may not select the most relevant provider, is not a substitute for actual evidence of bias.

Google has Commercial Unit for two things in India: products and flights. While Google reserves this ad space which can technically be accessed by anybody and is labelled with the word "Sponsored", it was alleged that it was used by Google only to promote its own products or Google Flights vertical as the case may be. It was alleged that Google treats Commercial Units in a "preferential" manner because they are based on mechanisms that do not apply in an equivalent manner to links to non-Google websites. Google admitted that ranking in the Commercial Units was not based on the same considerations as the other parts of the SERP but this did not mislead consumers as Google specifically labelled these parts as "sponsored." This according to Google was sufficient notice to users that these results were not based on the same

relevance standards but also depended on the bidding amount by the advertisers. In this context the CCI reached the following conclusion that by using the Flights Commercial Unit to display results solely from Google Flights page, Google gives its own search vertical prominent placement and successfully drives traffic from its general search page to its own vertical and generates revenue. Furthermore, the Flights Commercial Unit contains a link to “Search Flights” and clicking on this link takes the user to Google flights and not any third party’s search vertical for flights. Further the CCI held that Google Search being the primary gateway to search for flights forces third party travel verticals to bid for space on Flights Unit to increase visibility and traffic.

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