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COMPETITION COMMISSION OF INDIA

Case No. 41 of 2021

In Re:

**Digital News Publishers Association
India Today Group Mediaplex
FC 8, Sector 16A, Film City,
Noida, Uttar Pradesh – 201301**

Informant

And

Alphabet Inc.

**1600 Amphitheatre Parkway Mountain View,
CA 94043 United States of America**

Opposite Party No. 1

Google LLC

**1600 Amphitheatre Parkway Mountain View,
CA 94043 United States of America**

Opposite Party No. 2

Google India Private Limited

**691, Delhi – Jaipur Expressway
Silokhera, Sector 15, Part 2
Gurugram, Haryana – 122001**

Opposite Party No. 3

Google Ireland Limited

**Gordon House, Barrow Street,
Dublin 4, D04 E5W5, Ireland**

Opposite Party No. 4

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



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Order under Section 26(1) of the Competition Act, 2002

1. The present Information has been filed under Section 19(1)(a) of the Competition Act, 2002 ('Act') by Digital News Publishers Association ('Informant') against Alphabet Inc., Google LLC, Google India Private Limited and Google Ireland Limited (collectively referred to as 'Google'/'OPs') alleging violation of Section 4 of the Act.
2. The Informant is stated to be a private company limited by shares, incorporated in the year 2018, under Section 8 of the Companies Act, 2013, to promote, aid, help, encourage, develop, protect and secure the interest of digital news publishers.
3. Google LLC is stated to be a technology company which specializes in internet-related services and products that include online advertising technologies, a search engine, cloud computing, software and hardware solutions, along with various other services. Alphabet Inc. is stated to be the holding company of Google LLC. It has been averred that Alphabet Inc.'s revenue as of September 2019 was USD 116 billion, of which almost 84% came from advertising. Google India Private Limited is a subsidiary of Google LLC, and it assists and represents Google in its operations in India. Google Ireland Limited was set up in 2003 and is also stated to be a subsidiary of Google LLC.
4. The Informant has averred that its members, being engaged in the business of News Media, have endeavoured to provide credible and fact-checked news, which is the bedrock of any democracy. To this end, members of the Informant have invested and continue to invest a sizeable amount of money to train their journalists and other officials, hire reporters and invest in production to provide credible news. Further, the pandemic, triggered by the novel coronavirus, SARS CoV-2, has turned out to be a watershed for many industries and businesses, with the news media industry being one of the hardest hit. The pandemic has accelerated the transition of consumers of news from traditional print and television media to digital channels. The web of digitally consumed news has expanded rapidly, starting from websites, e-mailed



newsletters and text messages, to complex data and algorithm-driven curation and dissemination of news through smartphones and social media.

5. The Informant further submits that the newspaper industry in India has sustained itself on a business model driven by advertising, which accounts for two-thirds of its total revenue, with only one-third of its total revenue coming from subscription by readers. In view of the increasing influence of digital media, the revenue of the newspaper industry has seen a steady decline over the past decade. It has been further averred that financial dependence of media companies on digital advertising has risen over the last few years. The Informant has relied on a few research reports to assert the same.
6. Further, as per the Informant, the majority of the traffic on news websites comes from online search engines (more than 50%), wherein Google is claimed to be the most dominant search engine. Based on the same, the Informant has averred that more than 50% of the total traffic on the news websites is routed through Google and, being the dominant player in this field, Google, by way of its algorithms, determines which news website gets discovered via search. It has been further averred that it is the content produced by news media companies that create the context for the audience to interface with the advertiser; however, online search engines (Google) end up leveraging the revenue/returns much more than publishers. The Informant has also elaborated on the ecosystem of digital advertising and the role played by Google and its associate companies in the same, which enable them to earn a major share of revenue from the digital advertising space. It has been contended that Google not only has a monopolistic position in search in India, it also has a very strong position in advertising intermediation and controls/retains the major share at each level.
7. The Informant alleges that Google is the major stakeholder in the digital advertising space, and it unilaterally decides the amount to be paid to the publishers for the content created by them, as well as the terms on which the aforesaid amounts have to be paid. As an illustration, the Informant alleges that Google has unilaterally decided not to pay the publishers of news for the snippets used by them in search.



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Further, the Informant has averred that the website publishers only receive 51% of the advertisement spend by the advertisers.

8. The Informant has delineated four relevant markets in the Information, i.e., market for online search advertising services in India, market for online general web search services in India, market for publishing of news content in India and market for online advertisement in India. The Informant has also averred that Google has substantial market share in relevant markets, not only in India but globally as well. Further, in view of the barriers to entry and the advantage that Google enjoys in the market, it is highly unlikely that the users will switch to any alternative search engine. The Informant has further asserted that none of the competitors of Google have been able to match the market strength of Google. The dependency of the customer on Google is also stated to be a well-known fact. In view of the above and other factors given under Section 19(4) of the Act, the Informant has averred that Google enjoys a dominant position in the relevant markets.
9. The Informant has averred that the OPs have abused their dominant position in the market and violated the following provisions of the Act:

Section 4(2)(a)(i)

- 9.1. The Informant has averred that the OPs hold a dominant position in the online web search business, which is monetized by the OPs through online search advertising and by allowing website links on their search engine through the advertisements reflected on the said websites. It has been alleged that OPs impose direct/indirect unfair conditions on the members of the Informant, while allowing website links of the members of the Informant on their search engine results.
- 9.2. As per the Informant, the members of the Informant are not informed of or given any data pertaining to the amount of revenue earned by the OPs by providing advertisements on the websites/links of the members of the Informant. Further, the OPs give a small chunk of revenue generated from the



advertisements on the websites/links of the members of the Informant in an arbitrary manner, without disclosing any basis for calculation of such revenue. It has been further alleged that, while OPs use snippets of the content created by members of the Informant, they do not fairly compensate use of the content. It has also been averred that the terms of the agreements entered between the members of the Informant and the OPs for sharing the advertisement revenues are unilaterally and arbitrarily dictated by the OPs, and the members of the Informant have no other option but to accept the terms, as they are, with no bargaining power whatsoever.

- 9.3. As per the Informant, the aforesaid acts on the part of the OPs clearly depict that the OPs are abusing their dominant position to impose unfair and arbitrary conditions on the members of the Informant, in violation of Section 4(2)(a)(i) of the Act.

Section 4(2)(b)(ii)

- 9.4. The Informant has, *inter alia*, alleged that the OPs, by depriving the members of the Informant of the fair value of the content, discourage innovation and technical development of the services provided by the members of the Informant and other media companies, to the detriment of consumers. The alleged arbitrary and unfair acts of the OPs are asserted by the Informant to be detrimental and prejudicial to the interests of the consumers as well as the journalism industry.

Section 4(2)(c)

- 9.5. The Informant has, *inter alia*, averred that the OPs hold a dominant position in the relevant markets and have used such position to restrict the members of the Informant in the market of news content and advertising thereof. It has been submitted that the members of the Informant are not paid fair value for their content even after investing heavily to make and publish well-researched, quality content.



- 9.6. It has been submitted that because of the unilateral, arbitrary and unfair decisions of the OPs, the members of the Informant have to suffer a loss of advertising revenues and the inability to bargain a fair share in the value chain of news dissemination, despite working and generating credible news. The OPs are alleged to be guilty of using their dominant position in the relevant market(s) to deny market access to members of the Informant in the digital advertising space.
- 9.7. The Informant has also averred that, while dealing with the term “*in any manner*”, as found in Section 4(2)(c) of the Act, the Hon’ble Supreme Court in Civil Appeal No. 7215 of 2014 in *Competition Commission of India v. M/s Fast Way Transmission Pvt. Ltd. and Ors.* was pleased to hold: ‘11. The words “*in any manner*” one of wide import and must be given their natural meaning.’ Applying the aforementioned observation in the present case, the Informant has alleged that the OPs are in breach of Section 4(2)(c) of the Act.

Section 4(2)(e)

- 9.8. The Informant has averred that the OPs have entered into the news aggregation genre by launching Google News, Google News Showcase, etc. It has been averred by the Informant that the OPs do not produce any news of their own; however, they have steadily grown their influence in the news space by effectively using their dominance in the relevant markets. This has been enabled by OPs’ ability to dictate what a viewer sees first, thereafter using advanced algorithmic tools to cater tailormade news as per the viewing history of each viewer.
- 9.9. The Informant has submitted that that there has been a surge in zero-click searches from 50% in June 2019 to 65% between January and December 2020. Zero-click searches have been stated to mean that user queries have been resolved on the results page itself, without the user going on to the target website. As such, by displaying its own advertisements, Google is stated to extract value from zero-click searches, while publishers lose out on traffic.



- 9.10. In addition, the Informant has also, *inter alia*, alleged that Google gives publishers no choice but to implement Accelerated Mobile Pages (AMP) standard or lose critical placement in mobile search, resulting in reduced traffic. To this end, publishers were forced to build mirror-image websites using this format, with Google caching all articles in the AMP format and serving the content directly to mobile users. It has been further averred that, for AMP articles, Google restricts paywall options unless publishers rebuild their paywall options and their meters for AMP. The only alternate to the AMP system is for publishers to subscribe with Google, which benefits Google, to the detriment of the publishers.
- 9.11. As per the Informant, the abovementioned conduct of Google amounts to violation of Section 4(2)(e) of the Act.
10. The Informant has also relied on developments in other jurisdictions, viz., Australia, France, European Union, etc. to assert the anti-competitive practices being carried out by the OPs.
11. In view of the above, the Informant has alleged that Google, by way of its conduct and actions, have violated provision of Section 4 of the Act, as mentioned above. Accordingly, the Informant has, *inter alia*, prayed the Commission to pass an order under section 26(1) of the Act to inquire into the conduct of the OPs.
12. The Commission considered the Information and documents filed therewith in its ordinary meeting held on 23.12.2021 and decided to pass an order in due course.
- Analysis*
13. The gravamen of the allegations of the Informant relates to the impugned conduct of Google, resulting in denial of fair share in the digital advertising revenue to news publishers and disclosure of inadequate information to reach a fair settlement. As per the Informant, the newspaper industry in India has sustained itself on a business model driven by advertising, which accounts for two-thirds of its total revenue, with



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only one-third of its total revenue coming from subscription by the readers. Further, digitalization of the economy has resulted in higher spending on digital advertising, increasing the dependence of the news publishers on digital advertising. The Informant has relied on *KPMG India, A Year Off Script: Media and Entertainment Report 2020* as well as *Pitch Madison Advertising Report, 2021* to assert decrease in advertising through conventional sources and a constant increase in advertising through digital modes. For example, the share of *digital* advertising in the Indian advertisement market over the last three years (i.e., 2018 to 2020) has increased from 19% to 31% (increment from INR 11705 crores in 2018 to INR 16974 crores in 2020) whereas that of *print* advertising has decreased from 32% to 22% (decline from INR 19457 crore in 2018 to INR 11925 crores in 2020). Further, as per the KPMG Report, compounded annual growth rate (CAGR) of advertising revenue from digital and OTT is stated to be 32% over FY 2016–20, whereas that of print is only 1%. Also, as per the report published by Dentsu Aegis Network titled *Digital Advertising in India 2020*, the digital media ad spend is projected to grow 27% compared to 3% of print media. The report projects digital advertisement industry to grow to INR 58,550 crores by 2025 with a CAGR of 27.42%. These data points indicate increasing dependence of news publishers on digital advertising, which is replacing print advertisement.

14. The Informant has further averred that prominent source of traffic to news publisher website is through online search engines (more than 50%). The same is claimed to be indicative of the dependence of news publishers on search engines for a majority of the traffic, wherein Google occupies the most significant position.
15. Against this backdrop, it is noted that the Informant is aggrieved by the denial of fair advertising revenue to its members resulting from the abuse of its dominant position by Google. The Informant has alleged violation of various provisions of Section 4 of the Act. For examining the allegations pertaining to alleged abusive conduct of Google under Section 4 of the Act, delineation of the relevant market and determination of dominance of Google, if any, in those markets is essential.



16. For the purpose of assessment of present matter, the Informant has, *inter alia*, delineated the market for online general web search services in India as well as market for online search advertising services in India. The Commission had the occasion to examine these two markets in *Case Nos. 07 and 30 of 2012 vide its order dated 08.02.2018 (Google Search Bias case)*, wherein the Commission determined these markets as two distinct relevant markets. In relation to the market for online general web search services, the Commission, *inter alia*, observed that online general web search services cannot be substituted with direct search option by typing the URL of websites in internet browsers, and accordingly, search engines become the first port of call for a user looking for information online. Further, in relation to the market for online search advertising services, the Commission, *inter alia*, observed that online and offline advertising services are not comparable, and the characteristics, intended use and price of search and non-search advertising are different from one another. Accordingly, the Commission held that the market for online general web search services as well as the market for online search advertising services to be distinct relevant product markets.
17. The Commission is of the *prima facie* view that the same principle continues to be valid, and accordingly, relevant markets in the present case for examining the alleged abusive conduct of Google may be taken as *Market for Online General Web Search Services in India* and *Market for Online Search Advertising Services in India*. Other markets relevant in the present matter are discussed separately, in this order.
18. The Commission in *Google Search Bias case* also held that Google is dominant in both relevant markets, i.e., market for online general web search services and market for online search advertising services in India. Some of the relevant excerpts from the said order are as follows:

“...though the Act does not contemplate a market share threshold beyond which dominance is presumed, it is critical to observe that irrespective of the metric applied to assess market share, Google has the highest share, and this share is exponentially greater than its nearest competitor. Market share of Google in excess of [...] on various metrics coupled with very low market



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shares of competitors, clearly evidences that Google enjoys indisputable dominance in the relevant market...”

“...Google’s market shares have been consistently high, which suggests that it has got other advantages, besides technical advantages, which insulate its market position. The structure of the market is both indicative of and conducive to Google’s dominance...”

“...As Google has an insurmountable scale advantage and given that only market participants in the online general web search market can compete in the search advertising market, the barriers in the online general web search market also effectively restrict entry into the search advertising market...”

19. In the present matter also, relying on data from *gs.statcounter.com*, the Informant has averred that Google holds a market share of 98.83% in the search engine market in India and 99.59% in the mobile search engine market in India (both in August 2021). The Commissions also notes that, as per data available on *www.statista.com*, Google’s market share ranged from 98% to 99% in the mobile search engine market during the period April 2019 to July 2021¹. Similar market share is noted from the data available on *gs.statcounter.com*². Further, the said market share appears to be stable over a period of time, indicating the entrenched position of Google in the said market. Apart from market share data, the Commission has also taken note of the detailed submissions of the Informant on other factors given under Section 19(4) of the Act to assert the dominance of Google in the relevant markets. It is specifically noted that the relevant markets appear to be characterised by entry barriers resulting from significant investment required to develop sophisticated algorithm as well as to reach a sufficient scale of search queries. Further, these markets exhibit network effects wherein the online general web search and online search advertising are interdependent and the increase in the number of users on the search engine increases the value of search advertising offered by Google for the advertisers.

¹ Share of Google in the mobile search engine market across India from April 2019 to July 2021, as available at: <https://www.statista.com/statistics/938846/india-google-share-in-mobile-search-market/>

² Search Engine Market Share India (Nov 2020 to Nov 2021), <https://gs.statcounter.com/search-engine-market-share/all/india>



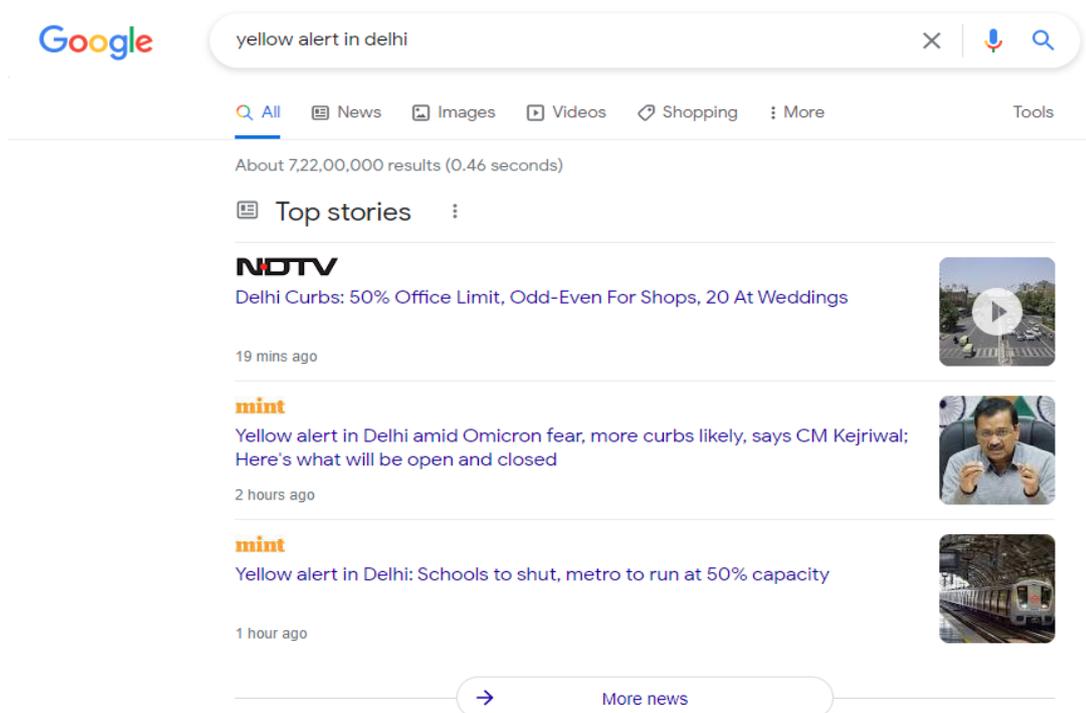
20. In relation to the dependence of news publishers on Google, it has been averred that Google's search engine results are a prominent source of online traffic to news website publishers. This is corroborated from the traffic data accessed from *similarweb.com*, which indicates that search engines generate 25% to 77% (depending on the publisher) of the total traffic to news publisher websites³. Thus, discoverability for news publishers appears to be dependent on search results from Google. This dependence also implies that selling of advertising space on their respective websites by the news publishers primarily relies on traffic generated by Google.
21. Accordingly, for the purpose of the present matter, the Commission is of the *prima facie* view that Google is dominant in both the relevant markets, i.e., market for online general web search services and market for online search advertising services in India.
22. Based on the information available, it appears that the instant information highlights the alleged bargaining power imbalance that flows from the alleged position enjoyed by Google as a necessary trading partner for digital news publishers in accessing online audience as well as in generating digital ad revenue. The case also brings forth the issue of alleged lack of transparency and information asymmetry in the ad tech services provided by Google, which does not allow publishers to optimize the yield on their ad inventory.
23. The Informant has alleged that Google imposes unfair conditions on the members of the Informant while providing its services in the form of displaying website links of members of the Informant to appear in web searches. As per the Informant, its members are not informed of or given any data pertaining to the amount of revenue earned by Google by providing advertisements on the websites/links of the members of the Informant. Further, Google is stated to give a small portion of revenue generated from the advertisements on the websites/links of the members of the

³ This traffic data of few members of the Informant has been obtained from data available on *similarweb.com*.



Informant, in an arbitrary manner, without disclosing any basis for calculation of such revenue. It has also been alleged that the members of the Informant are not compensated for snippets of the content created by them which is displayed by Google in search engine result page.

24. It is noted that Google displays news content (a) on its search engine page(s) in the form of general/organic search results, i.e., Google Search, as well as through (b) its news aggregator vertical, i.e., Google News. In response to a search query related to news items, in addition to organic results, Google also displays a ‘Top Stories’ carousel on its search engine result page. An example of the same is as follows:



25. In addition, Google provides a news tab on Google Search, which groups news articles related to the search query. The news tab displays the title of the news article, an excerpt from the article, the thumbnail as well as the publisher’s name. An extract of the results of the same search query is as follows:



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Google search results for "yellow alert in delhi". The search bar shows "yellow alert in delhi" and the search button. Below the search bar, there are navigation options: All, News, Images, Videos, Shopping, and More. The search results show "About 8,32,000 results (0.35 seconds)".

Delhi CM Arvind Kejriwal announces yellow alert

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Business Standard
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2 hours ago

Times of India
Omicron surge: Delhi Metro, offices, restaurants to operate with 50% capacity; schools, cinema halls shut
NEW DELHI: The Delhi government on Tuesday announced more restrictions in view of the rising Omicron and Covid-19 cases in the national...
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Hindustan Times
Schools, cinemas and gyms shut: Yellow alert in Delhi amid Covid alarm | 10 points
Night curfew will be in place from 10pm-5am in view of the "yellow alert". Delhi Metro and bus services to function at 50% seating capacity.
1 hour ago

26. Google also displays news content through its specialised service called Google News, which aggregates news articles from various sources (on desktop as well as mobile). The Google News homepage categorizes the news articles in various segments, viz., 'Top Stories', 'For You', 'Following', 'News Showcase', 'India', 'World', etc. It also allows the user to search for a specific news. An excerpt of Google News is as follows:



Google News

Search for topics, locations & sources

Top stories

- For you
- Following
- News Showcase
- Saved searches

COVID-19

- India
- World
- Your local news
- Business
- Technology
- Entertainment
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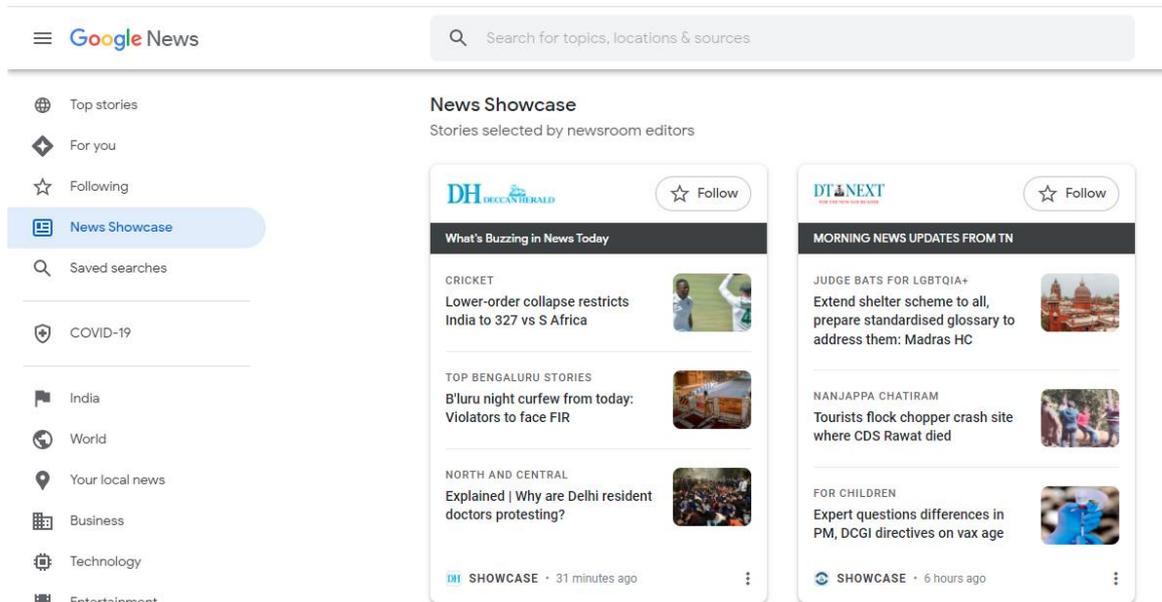
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 NDTV · 3 hours ago

27. In this regard, it is also noted that, in May 2021⁴, Google announced a licensing program in India titled Google News Showcase to incentivize news publishers to curate high-quality content on Google’s News and Discover platforms. The programme was launched in India with 30 news publishers, including national, regional and local news organizations. This programme is in addition to the existing uses of the news content published by the members of the Informant and is a subset of Google News services. An excerpt of Google News Showcase is as follows:

⁴ Google’s support of the news industry in India dated 18.05.2021, as accessed from <https://blog.google/products/news/google-support-news-showcase-india/>



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28. Thus, it is noted that Google displays news content in a variety of ways through hyperlinks, thumbnails, extracts, etc. These hyperlinks, when clicked, take the users to the websites of the respective news publishers. Such access by the users allows the news publishers to monetize their content by offering advertising space on their websites to potential advertisers.
29. Thus, in the digital advertising ecosystem, news publishers operate as sellers of advertising space on their websites and, in the process, interact with various intermediaries in the digital advertising value chain (ad-tech) to reach out to the demand side of the market, i.e., advertisers. As per the Informant, the ad-tech supply chain is made up of a series of providers who supply services to advertisers and publishers, such as ad servers, demand-side platforms (DSP) and supply-side platforms (SSP).
30. Therefore, for examining the alleged conduct of Google, in addition to its role in online general search as well as search advertising, it is important to note Google's role in this value chain in ad-tech. In this regard, the Informant has averred that Google not only has a monopolistic position in search markets, but also has a very



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strong position in online digital advertising intermediation services. To assert the predominance of Google in the above ecosystem, the Informant has relied on *Online Platforms and Digital Advertising Study Report* dated 01.07.2020 published by UK CMA. As per the study, Google has a very strong position in advertising intermediation, and its market share ranges from 50% to 100% in various intermediary services. Further, as per a report⁵ published by *Australian Competition and Consumer Commission* in August 2021, Google operates services across the entire ad-tech supply chain and is, by far, the largest provider of ad-tech services. It has been further noted that “...*Google’s share of impressions is over 70% at each stage of the supply chain, and it has a share of between 40–70% of revenue for services where revenue data is available...*” Thus, it appears that Google occupies a significant position in the ad-tech intermediary services globally.

31. Further, relying on a study by ISBA/PwC on *Supply Chain Transparency 2020*, the Informant has asserted that publishers receive approximately half of the advertiser spend, whereas the remaining is absorbed by the intermediaries. As per the UK CMA study referred above, “...*on average in 2019, publishers received around 65% of initial advertising revenue that was paid by advertisers (ie the overall ‘ad tech take’ was around 35 pence from every pound spent by advertisers)...*”
32. At this stage, it cannot be denied that by virtue of its position of strength of its vertically integrated ecosystem which covers not only the markets of Online General Web Search Services and Online Search Advertising Services but also the online digital advertising intermediation services, Google appears to be a preferred service provider to publishers wanting to offer search and advertising services on their websites. The Commission at this stage is *prima facie* satisfied that, based on the global presence of Google, as adumbrated *supra*, it can be reasonably inferred that Google occupies a significant position in the market for online digital advertising

⁵ Digital advertising services inquiry – Final report published by ACCC in August 2021, as available at: <https://www.accc.gov.au/system/files/Digital%20advertising%20services%20inquiry%20-%20final%20report.pdf>



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- intermediation services, as well. The investigation would bring out these aspects in detail.
33. Based on the above, it appears that news publishers are dependent on Google for the majority of the traffic, which makes Google an indispensable trading partner for news publishers. This is exacerbated by the significant role played by Google in the ad-tech value chain. The allegations of the Informant, when seen in this vertically integrated ecosystem operated by Google, makes it *prima facie* appear that news publishers have no choice but to accept the terms and conditions imposed by Google. Google appears to operate as a gateway between various news publishers on the one hand and news readers on the other. Another alternative for the news publisher is to forgo the traffic generated by Google for them, which would be unfavourable to their revenue generation. As per the submission of the Informant, the terms of the agreements entered between the members of the Informant and Google for sharing the advertisement revenues are unilaterally and arbitrarily dictated by the OPs, and the members of the Informant have no other option but to accept the terms, as they are, with no bargaining power whatsoever.
34. With consumers increasingly accessing news content online, advertiser expenditure on digital advertising has grown significantly, which has also seen a reflection in the growing share of digital ad revenues in total ad revenues earned by news publishers. In such a scenario, the concern raised by the Informant regarding alleged lack of transparency in online digital advertising intermediation services, which makes it difficult for publishers to audit and verify the ad revenue generated on their websites, merits examination. In view of Google's market position in the online digital advertising intermediation services, the alleged unilateral and non-transparent determination and sharing of ad revenues appears to be an imposition of unfair condition on publishers. The alleged opacity on critical aspects such as data and audience management practices, or generation and sharing of revenue with publishers, exacerbates the information asymmetry and is *prima facie* prejudicial to the interest of publishers, which, in turn, may affect the quality of their services and innovation, to consumer detriment. Thus, the imposition of such unfair conditions as



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well as price by Google in the provision of its various services is *prima facie* violation of Section 4(2)(a) of the Act.

35. The Informant has also alleged that Google has unilaterally decided not to pay the publishers of news for the snippets used by them in search engine results. As per the ACCC Report referred above, 'snippet' refers to the small amount of text, an image or a short video that forms part of a link. The purpose of the snippet is to provide context to the hyperlink and an indication of the contents of the relevant website to the user, so that the user can evaluate the relevance of the website to their search query. While a snippet may be the first line or two of a news article, it can also be extracted from the body of a news article if the search engine finds that information to be more relevant to answering the user's query. The issue of scraping and displaying news snippets and leads by Google on its search platform without compensating the content creators also assumes particular significance in view of the increasing zero-click searches.
36. The display of snippets may ensure online visibility of content/content creators and enhance their market reach and penetration. However, if the readers do not click on the snippets to enter the news publisher websites (as the snippet itself is sufficient to address the query), it would limit the ad revenue earning potential of news publishers while Google would continue to earn ad revenue on its result page as well as by enriching its search algorithm resulting from the volume of search queries. It might also result in an increase in the number of users on the search engine as users accessing Google search for news content might also use search for non-news content. Thus, Google continues to earn revenue directly/indirectly in such cases even though news publishers may not be able to do so until the user clicks on the search links. It needs to be examined whether the use of snippets by Google is a result of bargaining power imbalance between Google on the one hand and news publishers on the other, and whether it affects the referral traffic to news publisher websites, and thus, their monetization abilities. In a well-functioning democracy, the critical role played by news media cannot be undermined, and it needs to be ensured that digital gatekeeper firms do not abuse their dominant position to harm the competitive



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- process of determining a fair distribution of revenue amongst all stakeholders. Therefore, the alleged conduct of Google appears to be an imposition of unfair conditions and price which, *prima facie*, is a violation of Section 4(2)(a) of the Act.
37. Similarly, the alleged issue of publishers being forced to build mirror-image websites using the AMP format, with Google caching all articles and serving the content directly to mobile users, can have revenue implications for the publishers. As alleged, for AMP articles, Google restricts paywall options unless publishers rebuild their paywall options and their meters for AMP, which may amount to an unfair imposition on publishers. These aspects would be suitably examined during investigation.
38. In the present matter, it also needs to be examined whether Google imposes any discriminatory condition or price on various news publishers, which would violate Section 4(2)(a) of the Act. Such issues would also require a detailed assessment, which can only be done during investigation.
39. Based on the above, the Commission is of *prima facie* view that Google has violated the provisions of Section 4(2)(a) of the Act, which merits investigation. Further, the Informant has also alleged that abovementioned conduct of Google results in violation of the provisions of Section 4(2)(b)(ii) as well as Section 4(2)(c) of the Act. The DG can appropriately examine these allegations as well during investigation.
40. Further, it appears that Google is using its dominant position in the relevant markets to enter/protect its position in the market for news aggregation services in violation of Section 4(2)(e) of the Act, which again merits detailed investigation.
41. The Commission also takes note of the development in some countries such as France and Australia, as referred by the Informant, that Google has been asked to enter into fair/ good faith negotiation with news publishers for paid licensing of content to address the bargaining power imbalance between the two and the resultant imposition of unfair conditions by Google. No doubt, Google, being the gateway, generates substantial traffic for news publishers, but at the same time, the bargaining power



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imbalance and denial of fair share in the advertising revenue, as alleged by the Informant, merit detailed investigation for the reasons detailed *supra*. The investigation by the DG would be able to examine the issues in a comprehensive manner by giving an opportunity to all concerned to present their case.

42. In view of the foregoing analysis, in sum, the Commission is of *prima facie* view that Google has violated provisions of Section 4 of the Act, as detailed above. In this regard, it is also noted that a three-judge Bench of the Hon'ble Supreme Court through its judgement in Civil Appeal No. 7779 of 2010 titled *Commission of India v. Steel Authority of India Ltd.*, decided on 09.09.2010, has already settled the issue by holding that “...Neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor can any party claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a *prima facie* case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter.” At this stage, the Commission is satisfied that a *prima facie* case is made out against the alleged conduct of Google, which merits an investigation. Google would have sufficient opportunity to present its case during investigation.
43. Accordingly, the Commission directs the Director General (DG) to cause an investigation into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the date of receipt of this order.
44. It is also made clear that nothing stated in this order shall be tantamount to a final expression of opinion on the merits of the case, and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.



45. The Secretary is directed to send a copy of this order along with the Information to the office of DG forthwith through speed post/e-mail.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 07/01/ 2022