Competition Commission of India

Case No. 68/2010

Dated : 15.02.2011

Eximcorp India Pvt Ltd — ***Informant***

M/s .Google India Pvt Ltd. — ***Opposite Party***

Order under Section 26(2) of the Competition Act, 2002

The present information has been filed by Eximcorp India Pvt Ltd (hereinafter referred to as "Informant") under Section 19 of the Competition Act, 2002 (hereinafter referred to as "the Act") against Google India Pvt Ltd (hereinafter referred to as "Opposite Party") for alleging abuse of the dominant position by the company which is engaged in publishing advertisements of the enterprises on its search engine under the banner AdWords.

The allegations as stated in the information, in brief, are as under:-

1.1 The informant is engaged in the business of trading in wood and wood panel products in India and took the service of opposite party for advertising his products.

1.2 Opposite Party is in the business of running the Internet search engines in India under the name and style www.google.co.in, a regional search engine dedicated to Indian web pages. One of the commercial products offered by google is 'AdWords'. Opposite Party under "AdWords" invites enterprises to advertise on their search engine. Whenever any user of the search engine key in words, advertisements of the enterprises of that key word related appear on the right side of the page.

1.3 The Informant has advertised about his company and its products on the Google search engine "AdWords". The informant has opted to pay by cheques in advance. Opposite Party insisted that a proof of payment in the form of attested bank statement to be furnished to them.

1.4 Dissatisfied with the practice of handling the payments by the google, the informant requested to close its account and return the unused advances lying with google on 30-09-2010.in response to its request the Opposite Party has asked certain confidential banking details like the type of the account, IFSC code, Swift code etc., As the refund of payments is done from Ireland, the informant would incur a cost of Rs.2000 towards SWIFT charges. Further, Opposite Party refuses to carry out the transfer of funds without being informed the private relationship detail between the bank and its client.

1.5 The informant has stated that for the Ad services the customer is required to pay through the process of bidding per click. Opposite Party has complete discretion in placing the web page of the client in first or second page of search results. In this aspect informant alleged that the Opposite Party's business practices are inappropriate and discriminatory in nature. These activities are without any transparency and accountability by virtue of its dominant position.

1.6 Informant has also alleged that the bidding process introduced by the google to place advertisements on 'AdWords' is non-transparent. The informant has informed that the bidding process based on key words requires the client to bid for each click by the visitors on search engine subject to minimum limit set out by Part No.1, apparently as equal to bid by others for the same key words. Such limit is also subject to change without prior notice in which case the placement stops running automatically until the same is upgraded to the level of minimum suggested by google. In the absence of any information or transparency about the bidder whose bid has been the basis of minimum limit set out by google, it cannot be demonstrated that the same has not been manipulated by google to take advantage of the process lacking transparency.

1.7 Similarly, the adjustment to advances received by google for total number of clicks on the web page does not demonstrate any ID of the visitor at least in terms of the informant address.

1.8 The informant has also alleged that refusal to accept payments from Indian customers by credit cards is a discriminatory practice based on geographical or political location of the client

1. The matter was considered by the Commission in its meeting held on 10.02.2011.

2. The issues for consideration before the Commission are whether the allegations in this matter involve any competition issue. If so, whether the opposite parties are engaged in any anti-competitive activities which are in violation of any of the provisions of Section 3 or Section4 of the Act.

3. The Commission has carefully gone through the facts and averments advanced in the information and has scrutinized the entire materials submitted by the informant.

4. It is evident that the banking details of the informant required by Opposite Party to transfer funds are as per the banking requirement. RTGS/IFSC code, Account type and other details are the prerequisites to transfer the funds online. From the information available on the public domain, Opposite Party has two types of payment options Prepay and Post pay options for all its customers in India. Payment through credit card facility is available only to post paid customers. The facility provided in India is same as

in other countries. Therefore, the practice adopted by google for making refund of unused advances is not discriminatory.

5. The informant has to pay Opposite Party for both number of Clicks as well as number of impressions of the company appeared on Opposite Party's Search Engine. The appearance of a particular company's advertisement depends on the relevance with the key words used by any user on the search engine. It is the discretion of the informant to choose to which key words his company's advertisement can appear. The order of the advertisements on the page depends on the quality score and the minimum bid placed by the advertiser. This is entirely an automated process.

6. Seeking the information of the ID of the visitor who visits the site of the informant cannot be called as lack of transparency.

7. Prima facie, it appears that the present case is an individual consumer dispute having no bearing on competition in India.

8. The informant has also not been able to bring any cogent evidence on record that the opposite parties are indulging in any anti-competitive activities which have appreciable adverse effect on competition. Therefore, the Commission is of the opinion that, prima facie, there is no violation of any provisions of Section 3 and Section 4 of the Act in this matter.

9. The Commission, therefore, is of the view that no prima facie case is made out for making a reference to the Director General for conducting investigation into this matter under section 26 (1) of the Act and the proceedings are closed forthwith.

10. In view of the above discussion, the matter relating to this information is hereby closed under section 26(2) of the Competition Act.

11. Secretary is directed to inform the informant accordingly.

Sd-
Member (S)

Sd-
Member (R)

Sd-
Member (D)

Sd-
Member (G&G)

Sd-
Member (AG)

Sd-
Member (T)

Sd-
Chairman