



September 4, 2008

Mr. Thomas O. Barnett
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW, Room 3109
Washington, DC 20530

Dear Mr. Barnett:

The purpose of this letter is to outline the perspectives of the Association of National Advertisers (ANA) on the recently proposed search advertising collaboration between Google and Yahoo.

The ANA is the leading trade association that represents the interests of all advertisers and marketers. The ANA has 375 member companies representing more than 9,000 brands and more than \$150 billion in advertising and marketing spending.

We appreciate the Department of Justice's attention to this proposed advertising partnership. Since the June 12, 2008, announcement of this proposal, interested parties in the marketing community have expressed their concerns and reservations. ANA's Board of Directors asked for a comprehensive assessment to insure that we were appropriately representing the perspectives of our advertiser / marketer constituency.

Since the June 12 Google-Yahoo announcement, ANA has had ongoing discussions and conversations with Google, Yahoo, Microsoft, and member companies of the ANA. This process included a thorough Q&A with the principals—Google and Yahoo. We have also secured varying perspectives from multiple referential sources.

ANA conducted its review with objectivity. We believe that thorough due diligence was a fundamental imperative recognizing the potential implications to ANA members and the search advertising marketplace. ANA has been very deliberate to insure that all parties had an opportunity to voice their opinions and that varying perspectives have been appropriately secured and vetted.

ANA Assessment / Perspectives

The implications of the Google-Yahoo collaboration are profound and complex. The terms of the proposed partnership have been carefully crafted by Google and Yahoo to insure visual compliance with appropriate laws. However, the implications of the collaboration may escape most marketers and agencies. The lack of understanding is largely a function of the relative "newness" of search advertising—particularly the "auction process" that both Google and Yahoo utilize to secure advertisers and advertising. Adding further complexity is that auctions are not fully understood due to factors such as the establishment of minimum prices, the integration of "ad quality," and the influence of ad position on the search engines.

The collective experience and wisdom of the industry have been tapped to give ANA the opportunity to synthesize a "perspective" that it has shared with ANA's Board of Directors. This perspective was overwhelmingly endorsed by ANA's Board. We offer this perspective to the Department of Justice for consideration.

Executive Summary

ANA believes that the overall impact of this deal is, on balance, a "negative" for advertisers. *As such, ANA and its Board of Directors recommends against permitting the Google-Yahoo partnership to proceed.*

- ✓ In the near term, search advertising inventory management / placement for marketers can improve as Yahoo will use “Google ads” to be placed where Yahoo has less search advertising coverage. Marketers will have expanded access and increased reach across the broader search advertising spectrum. However, the Google-Yahoo environment is not the equivalent of a “search advertising exchange” nor is it a free marketplace. Longer term, it is perceived that this controlled marketplace could run counter to advertisers’ interests.
- ✓ The cost of search advertising is likely to rise. Yahoo can leverage Google’s premium pricing and accept much advertising that is priced higher than what Yahoo’s own auction would generate. Over the long term, Yahoo would be expected to source an increasing share of its ads via Google to optimize revenue. Net, overall pricing for search advertising is likely to be higher in the long run than what might otherwise occur if no collaboration between Yahoo and Google existed.
- ✓ Critically, the Google-Yahoo collaboration will likely lead to an increased concentration of market power that will adversely impact the marketing community. The impact of higher market concentration could result in reduced competition and leave advertisers with limited choices and alternatives to secure high-quality, affordable online advertising.

To date, ANA is aware of only one advertiser / marketer that does not object to the proposed Google-Yahoo collaboration. This limited survey includes ANA’s Board of Directors and other ANA member companies. Neither Yahoo nor Google identified any advertisers who support the proposal after they were specifically asked to provide that information. However, they identified several agencies that are supportive of the Google-Yahoo position.

The following is a more-detailed discussion of the proposal’s implications:

• Search Advertising Inventory Placement / Management

It is likely that the proposed collaboration will initially lead to a higher-quality search advertising marketplace. Yahoo will choose to fill a portion of its ad inventory using Google’s ad-matching technology. Theoretically, this will lead to more and better ad matches which can result in an increase in the number and quality of clicks. On the surface, this should “benefit” advertisers.

Additionally, there is “choice” for advertisers. Google advertisers are not obligated to use Yahoo should they not want their ads placed on Yahoo. If advertisers choose to advertise through Google, they will have the option of bidding only on Google.com and not on Yahoo.

Nor is Yahoo obligated to take on ads from Google. Yahoo will make an independent judgment about the ads it wants to display. Yahoo completely controls when to call for Google ads that have been authorized by the advertiser.

Net, the marketplace is “free” as both Google and Yahoo have forcefully and repeatedly explained. Essentially, the “non-exclusive” nature of this arrangement does not obligate one party or the other nor does it obligate advertisers to participate in any way that is not consistent with their objectives and strategies.

However, there are several concerns that advertisers have about the Google-Yahoo collaboration:

- ✓ Google and Yahoo both claim that this arrangement will lead advertisers to see increases in value and ROI. The basis of the argument is that the number of high-quality ads and the amount of inventory on which ads are shown will increase. Google and Yahoo claim that this will generate more relevant matches for consumers. More engaged consumers will lead to more clicks and more conversions—which is the basis for higher ROI.

While this is theoretically and conceptually sound, there is no evidence that this will happen. It is theoretical. Neither Google nor Yahoo offered any case histories from tests or live experience to demonstrate their points. The marketplace should not simply “trust” that this can happen, it should be clear that it is likely to happen. Google and Yahoo both declined to offer examples or provide “guarantees.”

Additionally, while some advertisers may experience an improvement in ROI, many may not. That is a material concern. With this deal, the cost of search advertising is likely to rise (discussed later) based on a number of factors including substantially increased demand for quality search advertising. However, the “return” that advertisers receive is not guaranteed. Advertisers should be unwilling to entertain higher-cost search advertising environments without a better understanding that this environment can produce better overall returns on average. That case has not been demonstrated by either Google or Yahoo.

- ✓ The substantial advances in technology have clearly demonstrated that the search advertising marketplace needs no “artificial stimulation” to produce a higher-quality, more-competitive environment for advertisers. The entire search advertising marketplace has given advertisers substantially more marketing capability than had ever been envisioned. This capability has grown out of the combined technological investments that Google, Yahoo, Microsoft, AOL, Ask.com, and many others have made over recent years. Those investments are likely to continue at a furious pace, recognizing the substantial growth in marketer demand for search advertising. As such, there is little rationale for why the search advertising landscape needs the Google-Yahoo collaboration. The marketplace, investment trends, and technological gains should provide the “natural” and organic growth that advertisers and marketers want. The Google-Yahoo collaboration potentially disrupts the competitive landscape and, perhaps, investments in the search advertising marketplace. Whatever gains some (not all) advertisers may realize from the collaboration do not appear sufficient to interfere with the “natural evolution” of the search advertising marketplace.
- ✓ ANA is uncomfortable that two major players will be able to “collaborate” to jointly manage an extraordinarily sensitive marketing industry asset—namely 90 percent of the search advertising inventory. The issue here is that the collaboration on inventory management has an *indirect influence* on the price paid by the advertiser. The proposed deal appears to be artfully structured to insure that there is “perceived” independence between Google and Yahoo. However, because Google makes its ads “available” to Yahoo (in many cases) at higher prices, Yahoo can leverage that “availability” at its discretion to place inventory at revenue rates that it could not secure on its own. That is an issue that advertisers should be uncomfortable with.

Business and industry have a history of joint ventures or partnership arrangements. Airlines share reservation codes, manufacturers produce products for competitors, and there are dozens more examples. However, none of those situations ever brings parties together that collaboratively dominate a market or have the ability to indirectly “influence” the price of their products and services. The partnership between Google and Yahoo appears to cross that line—even if that line is somewhat blurry.

Imagine if this type of inventory management arrangement existed in other media—like television. Could any advertiser be comfortable if NBC, ABC, Fox, CBS, and CW collaborated to make their proprietary advertising inventory available to each other? Some independent authority would need to “oversee” that this arrangement was fair, equitable, and beneficial to all parties in a “coordinated” marketplace. In the Google-Yahoo proposal, there is no independent oversight to insure that fairness and equity are realized in all cases. Advertisers must rely strictly on the Google and Yahoo business system to exercise that judgment all of the time. We believe this should be enough reason for marketplace “discomfort.”

• Price / Cost of Search Advertising

Google and Yahoo have both indicated that they do not set the prices for inventory. Rather, prices are set by independent “auction” processes that each company manages.

Under the proposal, there is no definitive answer as to what will happen to prices. However, there is a reasonable probability that the cost for ad space on Yahoo will rise above what the marketplace currently commands. The reason is that Yahoo has little-to-no incentive to accept ads delivered via Google unless the price is higher than what Yahoo can command on its own. If Yahoo accepts these ads (as they likely will), they will command prices that they normally would not have received through their Panama auction process.

Technically, the marketplace determines the prices via separate auctions on Google and Yahoo. However, when Google makes its advertising available for Yahoo to select from, *final prices paid to Yahoo are “influenced.”* Those prices will likely be different than what they might otherwise be if Google advertising were not available to Yahoo. The introduction of Google as an “advertising agent” likely overrides the outcomes of the auctions that are independently conducted by Yahoo.

The prices paid to Yahoo for ads selected from Google are likely to be higher—even though the ads were sourced from an auction-based process. By making Google ads available to Yahoo, the *final prices advertisers pay to Yahoo are likely to be higher* than what they might otherwise be. Net, the effect in price paid for a position on Yahoo is “indirectly” influenced by the availability of Google-sourced advertising.

Perspectives that elevate this concern are:

- ✓ According to Search Ignite (a search management and auction-based optimization company) “Yahoo would receive the most financial gain if they select Google advertisers across both head and tail terms where the keywords and advertising rank are more profitable per click than their own advertisers’ keyword bids.” Although this is a speculative estimate, Search Ignite analysis suggests that “keyword prices on Yahoo may increase by an average of 22 percent ...”
- ✓ When the deal was announced on June 12, Yahoo President Sue Decker said “It (the deal) gives us the flexibility to take advantage of the areas in search where Google performs exceptionally well, for example in tail queries to better monetize our search inventory.”
- ✓ Assuming that Yahoo leverages Google’s business system to source ads that display next to Yahoo search results—and assuming that Yahoo believes that this business system can enhance Yahoo’s revenue stream, *there is a reasonable probability that Yahoo’s connection to Google will grow over time.* Marketers should expect this if Google can consistently provide advertising that delivers higher profitability for Yahoo. If Google can command higher and higher prices from advertising sourced through its own auction process, the Yahoo-Google partnership should be expected to increase. This perspective is reinforced by marketplace data. According to search engine optimization firm, Efficient Frontier, Google’s average cost per click during the first quarter 2008 was at a 35 percent premium to Yahoo’s. That premium “gap” had been steadily growing over the past four quarters.

With a lucrative new source of advertising, Yahoo would benefit by “optimizing” the amount of ads it sources from Google. Therefore, Yahoo has an incentive to sell more inventory through Google’s higher-cost platform. One could reasonably conclude that the relationship between the two firms should grow—with Google providing a greater and greater share of Yahoo’s advertising. This could result in continued upward pressure on search advertising prices.

Yahoo and Google have argued that there are many other media alternatives that marketers can leverage to insure a competitively priced marketplace. However, there are few alternatives that can perform in the manner that search advertising can. It is the core reason marketers’ search advertising demand has increased.

This conclusion was echoed by Harvard Professor Benjamin Edelman (who specializes in designing electronic marketplaces) when he said, “Google’s purchase of substantial advertising inventory from Yahoo would increase prices for many advertisers that currently buy ads from Yahoo.”

ANA’s assessment is that prices are likely to increase. Yahoo is inventory gap filling. They will continue to fill the gap with Google-based “bids” that are at a higher price for the advertiser than what the advertiser would have bid if totally managed via Yahoo. Although marketers are “free” to bid independently, the “lure” of broader search advertising coverage through the Google-Yahoo partnership will likely entice them to participate.

• Concentration of Market Power

It is ANA’s opinion that Google should not be involved with Yahoo’s business because *it risks concentrating power* with Google. No one can guarantee that it will—but the sheer fact that *the risk is reasonable* suggests that the marketplace should avoid that situation.

Marketers have unpleasant experiences with industry organizations that have a “concentration of power.” Together, Google and Yahoo handle about 90 percent of the search advertising industry market. If their collaboration were to be permitted, it is likely that Yahoo will increasingly rely on Google as a source of profitable advertising—more profitable than Yahoo could ever generate on its own. Professor Edelman expressed his fears of this outcome when he testified before the House of Representatives Committee on the Judiciary Task Force on Competition Policy and Antitrust Laws. He said:

“Yahoo will find itself with only the remnants of an ad platform—not a robust marketplace with a wide variety of listings. Yahoo itself has worried that a deal with Google would create “an effective monopoly.”

That feeling pervades among ANA member companies. The following is from the media department of one of ANA’s Board of Directors:

“In its current state, the search marketplace places an enormous amount of power in the hands of one or two vendors. While Yahoo and Google will inevitably argue that the “marketplace” decides what a word is worth—a decreasing pool of auction options inevitably limits competition and will drive prices up. It is in the best interests of the industry to drive for increased competition in the search marketplace. We cannot

support an environment where marketers have no choice in vendors. We believe this move by Yahoo and Google limits choice and creates an anticompetitive environment which is not in the best interests of marketers."

The Google-Yahoo partnership is not a wide open marketplace or a free market exchange where all buyers and sellers participate equally. If search inventory was made available for all advertisers with all search engines, then our "comfort" would be raised. Marketers would be looking at total inventory opportunities across all platforms and make choices with free and open knowledge. But here, the efficient media buy only applies to Yahoo—and Google influences it. Google makes Yahoo stronger by bringing inventory it would not otherwise acquire on its own. Google is the master facilitator and acts as the orchestra leader—to make everyone "healthy." But the marketplace risk is that as all search engines rely on Google to "help" (and this includes Ask.com and AOL), Google acts as the marketplace "allocator" and manager. So even if the deal is not technically "illegal," the deal gives Google marketplace power. How so? Well, let's say that Google becomes increasingly effective at directing inventory to everyone's sites (Yahoo, Ask.com, AOL). Google is put in defacto control of the marketplace. Should Google unilaterally back out of its partnerships, each search engine is left in a theoretically weakened position because they have become so reliant on Google. That gives "defacto" power to Google to use with respect to their relationships with partners and, therefore, with marketers.

We believe the marketplace would be healthier if Google did not assist Yahoo. Yahoo should use its free cash flow to strengthen its services and attract advertisers based on its own merits and direct investments. We prefer that Yahoo not to rely on Google to "help"—even if that help appears to strengthen Yahoo in the short term. NBC doesn't "help" CBS stay strong. CBS learns on its own or ceases being an operation.

We believe the marketplace should evolve unfettered—as it has done so efficiently up to this point. If all businesses are healthy, then letting Yahoo "rely" on Google interrupts its independence and could, conceivably, make it "soft" longer term. It could also jeopardize the marketplace by having direct competitors "rely" on each other for their success and operations. Yahoo should be allowed to pursue its strategic interests. However, when it relies, even partially, on the dominant player in the industry, we believe that the risk to the longer-term health of the industry is potentially seriously undermined.

Conclusions

It is the assessment of ANA's Board of Directors that the collaboration between Yahoo and Google may provide certain opportunities for some marketers. However, the inherent risks in search advertising price and the concentration of power far outweigh these benefits. ANA believes it is in the best interests of the marketplace for the Department of Justice to not support the proposed collaboration.

To recap:

- The overwhelming majority of advertisers canvassed do not support the Google-Yahoo partnership.
- Natural advances of technology and the investment by competitive organizations will stimulate the evolution of the search advertising marketplace and, organically, will provide marketers with the advantages they need. Marketers should not have to rely on the Google-Yahoo partnership to make those evolutionary advantages available.
- Search advertising prices are likely to increase as Yahoo selects higher-priced Google advertising to enhance its profitability.
- Marketplace power is likely to be concentrated in the hands of Google as all search engines increasingly rely on Google as a source of advertising.

The ANA is available to discuss the contents of this letter and its overall recommendation in further detail.

The ANA appreciates the Department of Justice's consideration and looks forward to further conversation as you deem necessary.

Sincerely,



Robert D. Liodice
President and Chief Executive Officer
ANA