



**Indian authority fines Google twice: Finds conduct unlawful in the android mobile device ecosystem and play store policies**

Continuing its crackdown on the Indian digital sector, the Competition Commission of India (CCI), within a span of five days, imposed penalties worth INR 1,337.76 crore (~USD 162 million) and INR 936.44 crore (~USD 113 million) on Google for abusing its dominant position in the Android mobile operating system (Android OS) market and in relation to its 'Play Store' policies, respectively. In addition to the hefty penalties and the cease and desist orders, the CCI has directed Google to adopt corrective measures to create a level playing field.

In this update, we break down the two orders and analyse the approach adopted by the CCI while tackling multi-faceted issues surrounding the digital markets.

### I. Google – Android OS Order

On 20 October 2022, the CCI found Google to have leveraged its dominant position in multiple markets in the Android mobile device ecosystem by requiring Android device Original Equipment Manufacturers (OEMs) to *inter alia* pre-install Google's proprietary applications (apps) as a pre-requisite to gain access to its Android OS.<sup>1</sup> A significant penalty of INR 1,337.76 crore (~USD 162 million) was imposed on Google.

#### Factual background

The investigation was prompted by an information filed before the CCI by certain individual consumers, wherein it was alleged that (i) Google has entered into multiple one-sided agreements with OEMs to mandatorily pre-install Google's proprietary apps (such as Google Maps, Gmail, and YouTube), which leads to denial of market access to rival apps and (ii) such agreements prohibit the ability of OEMs to further innovate and develop devices operating on alternate versions of Android (Android Forks).

The CCI formed a *prima facie* opinion that Google's conduct was in contravention with the provisions of the Competition Act, 2002 (the Act). Consequently, the Office of the

Director General (DG) was directed to initiate an investigation into the conduct of Google.

#### Investigative findings of the DG

The DG analysed various agreements which Google enters into with the OEMs for licensing its Android OS such as:

- (i) Mobile Application Distribution Agreement (MADA), an agreement which mandates the pre-installation of Google's proprietary apps by the OEMs;
- (ii) Anti-fragmentation Agreement (AFA) and Android Compatibility Commitment Agreement (ACC), which enforce anti-fragmentation, a policy which enables Google to prohibit the OEMs from developing devices based on Android Forks; and
- (iii) Revenue Sharing Agreement (RSA), where advertising revenue is shared with OEMs only after requiring exclusive pre-installation of 'Google Search' and 'Google Assistant' in 'qualified device' of OEMs and forbidding the pre-loading of an alternative service to 'Google Search' and 'Google Assistant'.

For the purpose of investigation, the DG delineated five relevant markets, namely:

- (i) "Market for licensable operating system(s)(OS) for smart mobile devices in India;
- (ii) Market for App Store for Android OS in India;
- (iii) Market for general web search services in India;
- (iv) Market for non-OS specific web browsers in India; and

<sup>1</sup> Case no. 39 of 2018.

- (v) Market for online video hosting platform (OVHP) in India.”

Consequently, the DG found Google to be dominant in all the identified markets.


The DG found that the mandatory pre-installation of Google’s proprietary apps for gaining access to its Android OS and the restriction placed on OEMs from developing devices based on Android Forks amounted to be violative of abuse of dominance provisions i.e., Section 4 of the Act. It noted that Google has preserved its dominant position in the online search market by denying market access to competing apps. The DG further noted that Google has leveraged its dominance of its Play Store (Google Play Store), an app store which enables the app developers to list their apps to be downloaded by the end users, to protect its dominant position in online general search.

#### *CCI’s analysis and findings*

- Licensable v. Non-licensable OS: In relation to the delineation of the relevant market, the CCI affirmed the DG’s findings that the market cannot include non-licensable mobile OS and its app store, such as that of Apple, Microsoft and Blackberry as these do not grant license to other OEMs to use their OS and app stores and are solely accessible on devices exclusively manufactured by them. Accordingly, market for licensable OS is a distinct relevant market.
- Market position and dominance: The CCI found Google to be dominant in the identified markets. Google’s market share was found to be close to 95% on a durable basis. The CCI observed that the market is heavily concentrated in favour of Google’s Android OS, Google Play Store, general web search, chrome browser and YouTube due to its dominant, persistent and increasing share in the domestic market. It was further noted that as Google Play Store is pre-installed in all Android based devices, its market share is 100%, as is the case with Google’s aforementioned proprietary apps.
- Role of network effects and agreements: CCI noted that the tying of Google’s proprietary apps with its Android OS, by way of MADAs, AFA/ACCs and RSAs, enables Google to gain a competitive edge over its rivals. Such prominent placement, coupled with network effects and status quo bias have created severe entry barriers for Google’s rivals in the identified markets. Moreover, by way of AFA/ACCs, Google ensured that OEMs are in no position to develop devices based on Android Forks, which has ultimately eliminated the market for Android Fork developers. Similarly, RSAs guaranteed exclusivity to Google’s search services resulting in improvement in advertising revenues and opportunity to continuously augment its services to complete exclusion of competitors.

All in all, the CCI concluded that one-sided MADAs, AFA/ACCs and RSAs has led to foreclosure of market and limited end user choices.

The CCI has directed Google to implement the following remedial measures within a finite 3 month period:

- (i) OEMs to be free to elect the proprietary apps they wish to pre-install and their placement; the pre-installation of the entire suite of proprietary apps should not be forced upon the OEMs.
- (ii) Licensing of the Google Play Store to the OEMs should not be linked with the pre-installing of Google’s proprietary apps.
- (iii) Google shall not deny access to its Play Services APIs to disadvantage OEMs, app developers to enable the app developers to port their apps onto Android Forks.
- (iv) Google shall not impose anti-fragmentation obligations on OEMs; OEMs to be permitted to develop Android Forks based smart devices for themselves.
- (v) Google shall not offer any monetary/ other incentives to, 

or enter into any arrangement with, OEMs for ensuring exclusivity for its search services.

- (vi) Google shall not incentivise or otherwise obligate OEMs for not selling smart devices based on Android Forks.
- (vii) Un-installing of pre-installed apps to be allowed by Google.
- (viii) Users should be free to choose the default search engine during the initial setup of the device with ease.
- (ix) Google shall allow the developers of app stores to distribute their app stores through Google Play Store.
- (x) There should be no restrictions on sideloading, a process where the apps are installed locally between two devices.

## II. Google Play Store Policy Order

Within 5 days of its *Google - Android OS* order, the CCI on 25 October 2022, imposed another penalty of INR 936.44 crore (~USD 113 million) on Google for its anti-competitive payment policies on the Google Play Store. It was found that Google's online payments app – Google Pay, was the only option available to be used as a valid payment method on Google Play Store, which amounted to denial of market access for competing apps.<sup>2</sup>

### *Factual background*

The Informant alleged that Google, through its control over the Google Play Store and Android OS, was providing preferential treatment to its own online payments app – Google Pay.

It was argued that Google mandates apps to use its payment system and Google Play Billing System (GBPS) for app purchases and in-app purchases, as a pre-condition to be listed on the Play Store. It was further averred that Google was forcing OEMs to pre-install Google Pay on their Android enabled devices,

thereby denying market access to its rivals. Based on this, the CCI formed a *prima facie* opinion that Google had abused its dominant position and directed the DG to conduct a detailed investigation in the matter.

### *Investigative findings of the DG*

The DG delineated the following three relevant markets:

- (i) "Market for licensable mobile OS for smart mobile devices in India;
- (ii) Market for App Stores for Android OS in India; and
- (iii) Market for apps facilitating payments through Unified Payments Interface (UPI)."

The DG found that on one hand, Google was mandating the use of GBPS for other apps and on the other, the same yard stick was not being followed for Google's own apps as GBPS was not required to be used for some of Google's apps. The DG also found that service fee for processing of payments charged by Google from app developers, was extremely disproportionate and high, as compared to its rivals and found it to be unfair and discriminatory.

The DG further found that requiring the use of GBPS would significantly restrain the innovative solutions that other payment aggregators would have brought to the market. Such mandatory imposition of GBPS may further restrict the app developers from developing their own in-app payment processors, leading to limiting technical development, which is in violation of section 4(2) of the Act.

Google was also found to have excluded other UPI apps as an effective payment option on the Google Play Store. Further, considering the dominance of Google in the market for licensable mobiles OS and its position as the "gateway to android smartphones", the DG concluded Google to be leveraging its dominance to exploit the gains in the market for online payments.

<sup>2</sup> Case Nos. 07 of 2020, 14 of 2021 and 35 of 2021

### CCI's analysis and findings

In relation to the delineation of relevant market as that for licensable mobile OS for smart mobile devices in India and the market for App Stores for Android OS in India, the CCI agreed with DG's findings and echoed the reasons cited in the *Google - Android OS Order*.

- UPI payments v. digital payments ecosystems: With respect to the market for apps facilitating payments through UPI, the CCI assessed the (i) non-substitutability between cash payment and digital payment; (ii) the non-substitutability between UPI and other methods of digital payment such as net banking, NEFT, RTGS, and IMPS; and (iii) the non-substitutability between UPI enabled payments and mobile wallet payments to agree with the DG's findings.
- With respect to the exclusion of other UPI apps/mobile wallets as effective payment options on Google Play Store, the CCI noted that allowing only Google Pay to use intent flow technology<sup>3</sup> while the other UPI applications only have access to the collect flow technology<sup>4</sup> on the Google Play Store is discriminatory behaviour on the part of Google. This has led to the denial of market access to competing UPI apps.
- Role of agreements, commissions and exclusionary practices: In relation to requiring GBPS to be mandatorily and exclusively used for processing of payments for apps and in - app purchases, the CCI analysed the Developer Distribution Agreement (DDA); the Developer Program Policies (DPP); Google Payments Terms of Service-Seller (GPTS) and the Anti Steering Provisions that are undertaken between Google and app

developers for distributing an app through the Google Play Store.

- The CCI found that GBPS was the only form of payment processing system available with the app developers for app purchases made on the Google Play Store. The CCI further noted that GBPS was being mandated to be used for in - app purchases which were made after the app being downloaded from the Google Play Store.
- Failure to use GBPS by the app developers, resulted in delisting from the Google Play Store.
- The charging of 15 - 30 % service fee for the app and in - app purchases was found to be unfair and discriminatory. The CCI also found the discriminatory pricing aspect vis-à-vis Google's own apps (eg. YouTube), wherein GBPS was not applicable on them, to be violative of section 4(2) of the Act.

In addition to levying monetary fines and passing of a cease-and-desist order, the CCI has directed Google to implement the following remedies:

- Google shall not impose any restriction on app developers to use third party billing/ payment processing services, either for in-app purchases or for purchasing apps.
- Google shall not impose any Anti-steering Provisions<sup>5</sup>.
- Google shall not restrict end users, in any manner, to access and use within apps, the features and services offered by app developers.

<sup>3</sup> A technology which doesn't requires the end users to enter their alphanumeric IDs and no requirement to inter-change between three apps/services (merchant app, SMS, UPI app) to complete a transaction.

<sup>4</sup> It requires that the customer actively engage with the inter-connected apps to manually complete a transaction.

<sup>5</sup> Restrictions placed on app-developers which forbid them from informing the end users within an app that they can also purchase in-app content elsewhere, such as on the website of the app-developer.



- (iv) Google shall not impose any condition (including price related condition) on app developers.
- (v) Google shall ensure complete transparency in communicating to app developers, services provided, and corresponding fee charged. Further, an unambiguous payments policy to be published by Google.
- (vi) Google shall prepare a transparent policy in relation to collection and retention of data. Further, Google is required to give access to the app developer of the data that has been generated through the concerned app, subject to adequate safeguards.
- (vii) Google shall not discriminate against other UPI apps in India vis-à-vis its own UPI app, in any manner.

#### Comment

The twin Google orders represent a potpourri of takeaways for an antitrust junkie. Equally, the decisions are remarkable in that they hold promise for the start-up ecosystem and entrepreneurial ventures to partner with Google as equals.

Compared to an earlier fine of INR 135.86 crore (~USD 16.6 million) on Google in Jan 2018, the quantum of fine in the 2022 season signals that the CCI will no longer take unlawful conduct lying low and is now confident to take on the *meta* challenges presented in the *tech-verse* (world) head-on.

The prescriptive nature of the remedies outlined by the CCI are noteworthy and novel. It represents the granularity with which the CCI has thread-bare evaluated the agreements and their implications in arguably distorting the multiple sides of the markets and their users. Whether the remedies result in higher inclusivity and greater innovation, only time can tell, but for now it may not be out of place to say that these decisions could serve as a prototype for antitrust agencies that are probing similar issues.

Finally, the slew of decisions in the technology driven platform markets are testimony that the CCI is no longer playing catch up in the race to reign in digital giants.

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