

## IN-DEPTH ANALYSIS OF CASE- GOOGLE VS COMPETITION COMMISSION OF INDIA

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### ABSTRACT

*Have we ever elicited the idea of how our Android phones require a Gmail account for smartphones? Why all the Google apps are pre-installed on the phone? And why these apps cannot be deleted by the user? Who are the other dominant players in the field of search engines and even if there are, why are they not as popular as Google? How come Google has become this humungous entity dominating every field? We do read articles about it every day but tend to ignore how Google has become a dominant player in the market by violating the provisions of the law. And it is because of this it has been under the scanner of Competition Law worldwide. Earlier in the year 2018 European Union imposed a penalty on Google for abuse of its dominant position and this time Competition Commission of India imposed a penalty for violation of Section 4 of The Competition Act, 2002.*

**Keywords:** Dominant position, European Union, Competition Act.

### INTRODUCTION

“Competition is always a good thing. It forces us to do our best. A monopoly renders people complacent and satisfied with mediocrity.”<sup>1</sup>

- Nancy Pearcey

Competition ensures growth for everyone and it encourages others to participate without hindering the growth of others. But when companies violate the laws under Competition Act, they are penalized for the same. Recently Google was under the scanner and it was held accountable for using its dominant position in the search engine space.

Recently, CCI i.e., the Competition Commission of India imposed a penalty of INR 1337.76 crore on Google for abuse of its dominant position in the Android Mobile Device Ecosystem

<sup>1</sup> <https://www.brainyquote.com/authors/nancy-pearcey-quotes>

key directions. Before coming to the recent judgment, it is important to understand the purpose of Competition Law and the timeline of the case which led to this present judgment.

### **UNDERSTANDING THE PURPOSE OF COMPETITION LAW**

Competition law in India is regulated by Competition Act 2002, passed by the Parliament in 2002, and received President's assent in January 2003. This act was formed with the purpose to prevent unfair trade practices which might affect competition concerning promoting and substantiating competition in the Indian market. It is necessary to look after the interest of the person involved in the trade. Since consumer interest is already protected under Consumer Protection Act 2019, the need was felt to secure businessmen with the development of our economy. The act is comprehensive and provides for antitrust practices and penalties for the same.

### **EVER ELICITED ON WHY WE HAVE PRE-INSTALLED GOOGLE APPS ON ANDROID PHONES?**

Whenever we buy Android phones it only works on Gmail, all the Google apps are preinstalled on Android phones and devices and they cannot be deleted. iPhone has its own web browser Safari but when it comes to Android devices it only has pre-installed Google apps. It is also interesting to note that these pre-installed apps cannot be deleted by the user and also, and they have become so essential that Android phones only start by setting up a Gmail account. This practice by Google has asserted dominant practice in its favor by denying other browsers to get ahead in the same field. At present only Google dominates the Android market and there is no other player in the market to match the market strength created by Google. At present, we all rely on Google for everything and even if a new app or browser comes, we might not use that app due to our comfort with the familiar system of Google.

### **TIMELINE OF THE EVENTS**

It all started when in the year 2021 Information was filed by the Digital News Publisher Association (Informant) with the Competition Commission of India against Alphabet Inc.,

Google LLC, Google India Private Limited, and Google Ireland Limited (collectively referred to as 'Google'/'OPs')<sup>2</sup> for violating provisions of section 4 of The Competition Act 2002.

### WHO FILED AND WHY?

The case was filed by The Digital News Publisher Association (India Today Group). It was argued before Competition Commission that the newspaper industry has only one-third of its total revenue from subscriptions by readers whereas advertising renders two third of its total revenue. Post covid reliance on online news has gained importance and with a technological change, the newspaper industry has witnessed a constant decline. Newspaper agencies rely heavily on digital advertising to sustain their organization.

Since Google is a prominent web browser and the majority of Android devices have pre-installed Google apps, it adds to their advantage of shifting profits in its favor. The algorithms of Google enable them to earn more than a publisher. Now, this is not limited to only India but everywhere around the world.

In the facts presented by Informant, they cited four relevant markets<sup>3</sup> in the information system used by Google are-

- the market for online search advertising services in India,
- the market for online general web search services in India,
- the market for publishing news content in India and
- the market for online advertisement in India.

Due to the monopoly of Google, it is less likely that any other web browser will come into the picture and take competition from it to match its market strength. With the popularity of Google, a general preference among users is created towards its pattern. Despite publishing good articles which are well-researched on topic and written by eminent journalists, Informants are not able to earn much.

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<sup>2</sup> Competition Commission of India, *Case No. 41 of 2021*, Order under Section 26(1) of the Competition Act, 2002, Para 1, <[http://164.100.58.95/sites/default/files/order\\_41\\_2021.pdf](http://164.100.58.95/sites/default/files/order_41_2021.pdf)>

<sup>3</sup> Competition Commission of India, *Case No. 41 of 2021*, Order under Section 26(1) of the Competition Act, 2002, Para 8, <[http://164.100.58.95/sites/default/files/order\\_41\\_2021.pdf](http://164.100.58.95/sites/default/files/order_41_2021.pdf)>

## COMMISSION HELD GOOGLE ACCOUNTABLE

After hearing the plea order was passed because Google has indeed played a dominant position by not giving a fair chance to other companies to come forward in this field. The Commissions relied on the data available on [www.statista.com](http://www.statista.com) that Google's market share ranged from 98% to 99% in the mobile search engine market during the period April 2019 to July 2021<sup>4</sup>. The commission relied on the data and after well examining the monopoly of Google, it referred to Director General to investigate this matter. It also directed that an investigation is to be completed within 60 days of this order.

### PRESS RELEASE NO.56/2022-2023 BY CCI

In the PRESS RELEASE No. 56/2022-23 By Competition Commission on 25 October 2022, CCI imposed a monetary penalty of Rs. 936.44 crores on Google for anti-competitive practices concerning its Play Store policies. Now, this penalty was imposed keeping in mind: First, the dominant position of Google in the play store as every Android device has pre-installed Google apps that cannot be removed from the phone rendering an unfair advantage to other competitors in the same field; Second for not using GBPS for its applications such as YouTube whereas it is mandatorily compiled for other applications; Third for different methodologies used by Google to integrate, its own UPI app vis-à-vis other rival UPI apps, with the Play Store results in violation of Sections 4(2)(a)(ii), 4(2)(c) and 4(2)(e)<sup>5</sup> of the Act. Along with the penalty, a set of guidelines were issued which were to be complied with by Google.

### GOOGLE LLC VS COMPETITION COMMISSION OF INDIA ON 19 JANUARY, 2023 CIVIL APPEAL NO 229 OF 2023

The appellant challenged the order of NCLAT dated 4 January 2022. As per Section 53A of the Competition Act 2002, National Company Law Tribunal (NCLAT) constituted under Section 410 of the Companies Act 2013 is the Appellate Tribunal for this Act. The appellant argued that NCLAT showed urgency in passing the interim order and not giving an explanation for passing such an order. Supreme Court said that it would not interfere by passing the order as an appeal is pending before the NCLAT. It also advised the NCLAT to dispose of the appeal

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<sup>4</sup> 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/>

<sup>5</sup> Competition Commission of India, 'PRESS RELEASE No. 56/2022-23', Page 3 point 8.6, <<https://cci.gov.in/images/pressrelease/en/pr-no-562022-231666698260.pdf>>

by 31<sup>st</sup> March 2023 and appellants are to attach this order and give it to NCLAT within three days.

GOOGLE VS CCI, Competition Appeal (AT) No.01 of 2023 decided on 29-03-2023

Google filed an appeal challenging order dated 20-10-2022 in which CCI held that Google violated the following sections of the Competition Act –

- 4(2)(a)(i)- Abuse of Dominant position by an enterprise for imposing unfair conditions on the sale, purchase of goods or service
- 4(2)(b)(ii)- When an enterprise limits or restricts technical or scientific development relating to goods or services
- 4(2)(c)- When an enterprise does act which denies the market access to others
- 4(2)(d)- To make contracts that have no link with the main contracts
- 4(2)(e)- Using a dominant position in one market

Now section 4 of this act is about the use of the dominant position. These subsections pertain to unfair practices, which limits directly or indirectly create a monopoly and result in another competitor in the same market in denial of the market.

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This is not the first time that Google was awarded a penalty for its use of its dominant position in the market. The year 2015 European Union initiated the proceeding against Google's Android Licensing practice in Europe and proceedings for infringement of Article 102 of the Treaty of the Functioning of the European Union<sup>6</sup>. European Commission decided on 18-07-2018 to hold Google accountable for the use of its dominant position in the market and imposed heavy fines and penalties.

### **IMPORTANT ISSUES BEFORE THE NCLAT TO BE DECIDED WERE**

- A. How we can prove abuse of dominant position under Section 4 of the Competition Act 2002?
- B. Pre-installation of Google apps is an abuse of the dominant position or not?

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<sup>6</sup> Competition Commission of India, 'Competition Appeal (AT) No.01 of 2023'. Page no 4, Para 3(ii), <[https://regmedia.co.uk/2023/03/30/google\\_march\\_29\\_india\\_appeal\\_order.pdf](https://regmedia.co.uk/2023/03/30/google_march_29_india_appeal_order.pdf)>

- C. Whether Commission considered evidence on record o Google being anti-competitive?
- D. Whether Google has asserted a dominant position in the search engine market, play store, tying up YouTube, and denying other competitors to level up in the same field?
- E. If the Investigation conducted was accordance with the principles of Natural Justice?
- F. Is the order valid as there was no Judicial Member in the Commission while passing the order?

NCLAT answered all the issues in 189 long judgment. By citing the case of **Harshita Chawla and Ors. vs. WhatsApp – 2020 SCC OnLine CCI 32**<sup>7</sup> in which while examining the provisions of Section 4(2)(a)(i) and 4(2)(a)(d) of the Competition Act, one of the conditions for the dominant position in the market is that tying is capable of restricting/ foreclosing competition in the market. The way Google does with its competitors is by tying YouTube with the play store and violating Section 4(2)(e).

The Tribunal took help from **Case No.13/2019–MCX Stock Exchange Ltd. vs. National Stock Exchange of India Ltd**<sup>8</sup>, the Commission has observed that once it is established that an enterprise or group is engaged in conduct specified in clauses (a) to (e) of Section 4, there is no statutory requirement to examine any other additional impact on competitors. Justifying that Commission didn't need any additional requirement of impact on competitors of Google once the provisions of Section 4 have been violated.

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By pre-installing apps on the phone, Google has deprived smartphone manufacturers to install their software or any other search engine and violated Section 4(2) (c). Commission argued with evidence that Google is involved in Anti-competitive practices.

The court held that the investigation carried out by the Director General was per the principle of natural justice and that just because there is no judicial member in the commission doesn't render the order illegal. In the case, **Amazon.com NV Investment Holdings LLC vs. Competition Commission of India – Competition Appeal (AT) No.01 of 2022**<sup>9</sup>, where the judgment of the Delhi High Court was also taken into account and relying on Section 15 of the Competition Act, this Tribunal held that the absence of Judicial Member is not a fatal one.

<sup>7</sup> [https://regmedia.co.uk/2023/03/30/google\\_march\\_29\\_india\\_appeal\\_order.pdf](https://regmedia.co.uk/2023/03/30/google_march_29_india_appeal_order.pdf) Page no 63

<sup>8</sup> [https://regmedia.co.uk/2023/03/30/google\\_march\\_29\\_india\\_appeal\\_order.pdf](https://regmedia.co.uk/2023/03/30/google_march_29_india_appeal_order.pdf) Page no 66

<sup>9</sup> [https://regmedia.co.uk/2023/03/30/google\\_march\\_29\\_india\\_appeal\\_order.pdf](https://regmedia.co.uk/2023/03/30/google_march_29_india_appeal_order.pdf) Page 158

The Tribunal held all the directions issued by CCI were valid and directed them to delete the following four paragraphs<sup>10</sup>-

617.3- Google shall not deny access to its play services to hinder Original Equipment Manufacturers and existing competitors.

617.7- Google shall not obstruct a user to delete pre-installed Google apps on Android phones.

617.9- Allow all the app developers to use the platform play store to distribute or sell their apps.

617.10 Google shall not restrict the ability of app developers in any manner to distribute their apps through side-loading.

The tribunal upheld the CCI's penalty and now Google has to pay Rs.1337.76 crores.

## CONCLUSION

It all started when the news agency filed a complaint against Google for violating the provisions of The Competition Act 2002, it opened a plethora of violations committed on the part of Google. We rely too much on Google in our everyday life, whenever we don't know or want to find we google it. Google has gained so much popularity over time that instead of using the term "Search it" we use "Google it". Google has been under the scanner for violating privacy laws and anti-trust laws worldwide. It is high time that tech giants like Google should be held accountable for violating the law.

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<sup>10</sup> Simran, 'Google-CCI Case] [NCLAT upholds Rs1,337 crore penalty on google for abuse of dominant position in Android Mobile Device Ecosystem' , ([www.sconline.com](http://www.sconline.com)) , Published on 29 March 2023 <https://www.sconline.com/blog/post/2023/03/29/penalty-on-google-nclat-sets-aside-certain-directions-by-cci-but-upholds-inr-1337-crore-penalty-on-google-for-abuse-of-dominant-position-in-android-mobile-device-ecosystem-legal-news-legal-researc-up/> Accessed on 6 April 2023