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Case Commentary: Google LLC & Anr. v. Competition Commission of India (Android Mobile Device Ecosystem Case)

- *Nagashree R*

Background and Introduction

The matter of Google LLC & Anr. v. Competition Commission of India is one among the landmark competition law cases in India relating to online markets and tech giants. It addresses accusations that Google misused its market position in the Android mobile operating system setup in India. The Competition Commission of India (CCI) initiated the case upon a complaint filed in 2018 by the complainants. After an in-depth inquiry by its Director General (DG), the CCI delivered a final order on 20 October 2022, declaring Google liable and guilty for violation of Section 4 of the Competition Act, 2002.¹

The CCI levied the penalty of 1,337.76 crore rupees on Google and issued multiple directives to alter its commercial practices. Google challenged this order before the National Company Law Appellate Tribunal (NCLAT). On 29th March 2023, the NCLAT also upheld the CCI's verdict on misuse of market position and the penalty amount, but altered and removed some of the remedies. Appeals and cross-appeals are currently pending before the Supreme Court of India. This dispute is frequently compared with the European Commission's 2018 Google Android decision because of similar issues.²

Facts of the Case

Google's Android is a publicly accessible open source operating system, but Google governs vital proprietary services such as the Google Play Store, Google Search, Chrome browser, YouTube, and other Google Mobile Services (GMS). Smartphone producers (called Original Equipment Manufacturers or OEMs like Samsung, Xiaomi, etc.) who are willing to use these popular Google apps and services must sign certain contracts and deals with Google.

The main allegations were that Google forced OEMs to:

Primary allegations were that Google compelled OEMs to:

1. Install beforehand the package of Google apps (the whole set of GMS suite) on the Android devices.

¹ Umar Javeed & Ors. v. Google LLC & Anr., Case No. 39 of 2018, Competition Commission of India (20 Oct. 2022).

² Google LLC & Anr. v. Competition Commission of India & Ors., Competition Appeal (AT) No. 01 of 2023, National Company Law Appellate Tribunal (29 Mar. 2023).

2. Set Google as the default search engine and other defaults.
3. Sign Anti-Fragmentation Agreements (AFAs) or Android Compatibility Commitments (ACCs), which restricted OEMs from supporting and building substitute variants of Android.
4. Give monetary shares in exchange for novelty, creating difficulty for rival search engines, app stores, or browsers to compete.

These strategies, in accordance with complainants and CCI, hindered competition and damaged consumers, developers, and rival firms in India, where Android holds a greater market share, i.e., over 95-98% of smartphones.

Relevant Markets and Dominance

The CCI identified 5 relevant markets in India:

1. Market for licensable smart mobile operating systems (Android was found dominant).
2. Market for app stores for Android OS (Google Play Store dominant).
3. Market for online general search services.
4. Market for online video hosting platforms (YouTube).
5. Market for web browsers.

Google's supremacy was evident due to exceptionally high market shares, interconnection benefits (more users resulting attraction of more developers and vice versa), high obstacles to newcomers, and the fact that switching away from Android or Google services is very difficult for users and manufacturers.

CCI's Key Findings on Abuse of Dominance

The CCI determined that Google contravened several clauses of Section 4(2) of Competition Act:

- **Imposing unfair conditions** [Section 4(2)(a)(i)]: Google made licensing of the Play Store and GMS conditional on pre-installing the entire suite of Google apps. OEMs had no real choice; they could not pick and choose apps.
- **Limiting technical or scientific development** [Section 4(2)(b)(ii)]: Through Anti-Fragmentation Agreements, Google restricted OEMs from developing or selling devices with modified Android versions. This reduced innovation and prevented competition from Android forks.
- **Denial of market access** [Section 4(2)(c)]: Competing search engines, browsers, and app stores found it extremely difficult to reach users because Google apps were pre-installed and set as defaults.
- **Tying and bundling** [Section 4(2)(d)]: Google tied the Play Store with other services, forcing OEMs to accept the bundle.
- **Leveraging dominance** [Section 4(2)(e)]: Google used its strong position in the app store market to strengthen its positions in search and video hosting markets.

The CCI ordered that these practices made a self-enforcing cycle that protected Google's monopoly and hindered competition. It rejects Google's arguments that these procedures were necessary for security, user experience, or to increase investments in Android.

Penalty and Remedies Ordered by CCI

The CCI levied a fine of **₹1,337.76 crore**, which was calculated on the basis of Google's recent and relevant turnovers in India.³ Other than the monetary penalty, it issued detailed "stop and refrain" directions, including:

- Allowing OEMs to choose which Google apps to pre-install (no forced bundling).
- Not restricting sideloading of apps or installation of third-party app stores.
- Permitting users to uninstall pre-installed Google apps easily.
- Providing choice screens for users to select default search engines, browsers, etc.
- Not denying Play Services access to punish OEMs.
- Not forcing revenue-sharing or exclusivity arrangements that foreclose competitors.

NCLAT's Decision (29 March 2023)

Google appealed to the NCLAT, where they argued that the CCI's judgment lacked proper monetary analysis, that before in-hand installation benefits the users, and the investigation was biased, and the penalty was excessive

The tribunal, after hearing the arguments, substantially affirmed the CCI's order. It was agreed that Google is prominent and its act amounted to the misuse of dominance. It found that the effect-based analysis has been done properly, and said that the penalty amount is reasonable

But the tribunal changed a few directions of issues by the CCI, as it found that they were too broad or not directly supported by the evidence. Remedies such as no forced bundling, choice for default apps, and promoting competition in search and app distribution were kept. Google was ordered to deposit the penalty within a fixed time.

Current Status before the Supreme Court

Both Google and CCI have filed appeals before the Supreme Court. The Supreme Court has accepted the appeals, and the case is still pending for the final hearing. In the preliminary proceedings, the Supreme Court denied a stay of the NCLAT's directions completely, which meant that Google had to begin developing several changes in its contracts with Indian OEMs.⁴

Critical Analysis and Significance

This matter is crucial for many reasons. First, it is true that India's competition law applies a strong effects-based approach in digital markets, looking at some practices that affect competition, innovation, and user choice rather than just form. Second, it shows the unique

³ Competition Commission of India, Press Release, CCI imposes a monetary penalty of Rs. 1337.76 crore on Google (20 Oct. 2022).

⁴ Google LLC & Anr. v. Competition Commission of India, Special Leave Petition (Civil) (Diary) No. 4065 of 2023, Supreme Court of India (4 Jan. 2023) (interim).

characteristics of the platform market, strong network effects, data advantages, and the importance of default settings, which contribute to Google's dominance.

Positive aspects of the decisions:

The judgement promotes greater consumer usage, for example, uncomplicated uninstallation and default selection, support novelty in Android forks, and opens up space for Indian and international competitors in search, browser, and app distribution. The penalty, while significant, was based on Indian turnover, which is seen as balanced.

Criticisms: A few critics claim that directions could have been wider in areas like full Application Programming Interface access or customer uninstall rights. Few claim that in the rapid growing tech markets, behavioural solutions and continuous monitoring. Google has sustained that its practices improve security and provide a consistent experience to billions of users.

Broader Impact: The verdict has enhanced the CCI's regulatory actions against big tech firms in India. It creates a benchmark on ongoing cases involving Google such as the separate Play Store billing case, and establishes an example for evaluating bundling, utilizing, and monopoly practices in digital environments. It also influences to the global talks on regulating Big Tech while balancing innovation with fair competition.

The conclusion, the Google Android matter clearly establishes that even a prominent player like Google cannot use its market dominance to impose unfair restrictions that hinder competition. It recreates the Competition Act's aim to protect the competitive process in India's rapidly growing tech economy. The final word from the Supreme Court will provide further clarity on the scope of solutions and penalty principles in such cases.

References :

1. Google LLC & Anr. v. Competition Commission of India, Competition Appeal (AT) No. 01 of 2023, National Company Law Appellate Tribunal (Mar. 29, 2023).
2. Google LLC & Anr. v. Competition Commission of India, Special Leave Petition (Civil) Diary No. 4065 of 2023, Supreme Court of India (pending).
3. Competition Commission of India, Press Release. CCI Imposes a Monetary Penalty of Rs. 1,337.76 Crore on Google for Anti-Competitive Practices in Android Mobile Device Ecosystem (Oct. 20, 2022).
4. Umar Javeed & Ors. v. Google LLC & Anr., Case No. 39 of 2018, Competition Commission of India (Oct. 20, 2022).