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CASE COMMENTARY ON :

GOOGLE LLC & Anr. v. COMPETITION COMMISSION OF INDIA & Ors. , 2023

~ Naesha Goradia¹

CASE DETAILS

CASE NAME: *Google LLC & Anr. v. Competition Commission of India & Ors.*

CITATION:

- **Supreme Court of India (Appellate/Stay Stage):**
 - *Google LLC v. Competition Comm'n of India, Civil Appeal No. 229 of 2023, 2023 SCC OnLine SC 69 (India).*
- **National Company Law Appellate Tribunal (NCLAT):**
 - *Google LLC v. Competition Comm'n of India, Competition Appeal (AT) No. 01 of 2023, 2023 SCC OnLine NCLAT 147 (India).*
- **Competition Commission of India (Original Orders):**
 - *Umar Javeed v. Google LLC, Case No. 39 of 2018 (CCI, Oct. 20, 2022) (India).*
 - *Match Group, Inc. v. Google LLC, Case No. 14 of 2021 (CCI, Oct. 25, 2022) (India).*

DATE OF DECISION: 19 January 2023²

BENCH: *Supreme Court of India (Interlocutory / Stay Application Stage - Jan 2023): Dr. D.Y. Chandrachud, C.J. (Chief Justice of India), Justice P.S. Narasimha, and Justice J.B. Pardiwala*

SUBJECT/ KEYWORDS:

Competition Law, Android Ecosystem, Digital Sovereignty, Google Mobile Services, Digital Anti-trust

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² Note: The final cross-appeals on the core merits are currently pending/ongoing before the Supreme Court

INTRODUCTION

The rapid expansion of the digital economy has brought about shift in the traditional competition law jurisprudence, and has posed a fundamental challenge to the traditional antitrust framework. At present in India, there has been a very crucial junction for this jurisprudence in the multi-stage litigation in Google LLC & Anr. v. Competition Commission of India & Ors. (arising from Umar Javeed & Ors. v. Google LLC)³. This case revolves around the use of Google's technology called the Google Mobile Services (GMS) system by Google within the Android platform.

Whereas the Competition Commission of India (CCI) had earlier delivered a decision with a massive fine of ₹1,337.76 crore and far-reaching behavioural cures, whose major findings were affirmed by the National Company Law Appellate Tribunal (NCLAT), the litigation process continues to be highly dynamic. The ultimate decision of the case rests in the hands of the Supreme Court of India, who has taken up cross-appeal proceedings to ascertain the limits of antitrust law enforcement, digital platform governance, and regulatory jurisdiction. In this case comment, the unfolding litigation has been critically analysed in light of the economic theory of market applied and exploring its wider implications on global platform regulation and digital sovereignty, employed by the subordinate tribunals and its overall systemic ramifications for regulating big tech in the Global South.

FACTS OF THE CASE

Google LLC and Google India Private Limited challenged the order passed by the Competition Commission of India in the case of *Mr. Umar Javeed and others vs. Google LLC* before the National Company Law Tribunal. The Competition Commission of India found Google guilty of engaging in anti-competitive practices in violation of Section 4⁴ of the Competition Act, 2002. Remedies were granted in view of Section 27⁵, imposing a penalty of Rs. 1337 crores on Google under Section 27(b)⁶ of the Act. Under Regulation 10 of the CCI Regulations⁷, a preliminary conference was held, and orders were passed under Section 26(1)⁸ of the Competition Act, directing the Director General to investigate allegations of abusive and discriminatory conduct under Sections 3 and 4⁹ of the Act.

The Commission, after hearing the matter and assessing the Director General's report, concluded provisions of Section 4(2)¹⁰ of the Act by mandatory pre-installation of the entire GMS suite under the Mobile Application Distribution Agreement, dominant position in the online search market, leveraged position in the app store for Android OS, and limited technical or scientific development relating to goods and services violative of Section 4(2) (b) (ii)¹¹.

To address these concerns, CCI granted remedies under Section 27, directing Google to a. Cease anti-competitive activities by not requiring Original Equipment Manufacturers (OEMs) to pre-install Google search services.

1. Cannot offer monetary incentives such as revenue-sharing agreements to gain exclusivity.

³ Competition Appeal (AT) No.01 of 2023

⁴ The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India), § 4.

⁵ *Id.* § 27.

⁶ *Id.* § 27(b).

⁷ Competition Commission of India (General) Regulations, 2009, Gazette of India, pt. III Sec. 4 (May 22, 2009), reg. 10.

⁸ The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India), § 26(1).

⁹ *Id.* § 3.

¹⁰ *Id.* 4(2).

¹¹ *Id.* § 4(2)(b)(ii).

2. Cannot impose Anti-Fragmentation agreements and Android compatibility commitments to limit innovation and reduce competition.
3. Allow users to uninstall pre-installed apps on their devices and choose default search engines.

Google challenged the order in front of the NCLAT, but the order was upheld along with the penalty for violation of Sections 3 and 4, dismissing the plea filed by the appellants.

ISSUES FRAMED

1. Whether mandatory pre-installation of the entire G Suite under the MADA perpetuates anti-competitive practices violative of Section 4 (2) (a) (i) and Section 4 (2) (d)?
2. Whether the AFA and ACC agreements limited the ability of manufacturers to develop and sell alternative versions of Android, thereby reducing scientific and technical development under Section 4(2) (b) (ii)?
3. Whether Google restricted competition and deny market access to competing search apps by leveraging its position in the online search market?
4. Whether Google abused its position by tying up the Play Store with the YouTube app and the Google Chrome app to expand into another market?
5. Whether the order of the Competition Commission of India replete with confirmation bias?
6. Whether the order passed by the commission in exercise of its power under Section 27 follows the law?
7. Whether the penalty imposed on the Appellants by the commission based on its findings was disproportionate and excessive?

ARGUMENTS OF BOTH PARTIES

Key contentions by the Appellant:

The learned counsel for the appellant raised multiple submissions in support of the appeal. ^{1 12}.

1. **Voluntary Nature of Agreements:** The Mobile Application Distribution Agreement (MADA) is a voluntary, non-compulsory instrument. OEMs willingly sign it to gain access to Google's proprietary applications.
2. **No Pre-installation Barriers:** MADA does not restrict OEMs from pre-installing competing applications, browsers, or search engines. 'Google Chrome' is not mandated as the default search engine.
3. **Consumer Autonomy:** Users retain full autonomy to disable pre-installed apps and download alternatives. Core apps consume negligible storage and improve out-of-the-box device utility.
4. **Legitimate Quality Control:** The Anti-Fragmentation Agreement (AFA) and Android Compatibility Commitment (ACC) are benign quality-control frameworks establishing minimum baseline requirements, rather than restricting downstream innovation.
5. **Distinct Commercial Agreements:** MADA, AFA/ACC, and the Revenue Sharing Agreements (RSA) are mutually exclusive contracts that do not systematically foreclose market access.
6. **Organic Market Success:** Google Search's dominant market share is a reflection of superior quality and user preference, not a consequence of pre-installation defaults.

Key contentions by Respondents:

¹² Google LLC v Competition Commission of India [2023] NCLAT (Competition Appeal (AT) No. 01 of 2023)

1. **Constructive Tying:** Mandating the pre-installation and premium placement of 11 core applications via MADA constitutes an unlawful tying arrangement under **Section 4(2)(a)(i) and Section 4(2)(d)**.
2. **Ecosystem Interdependence:** The MADA, AFA/ACC, and RSA are structurally interdependent. OEMs must sign the AFA/ACC to access MADA, allowing Google to exert total vertical control over device portfolios.
3. **Exclusive Foreclosure:** The combination of MADA and RSA ensures that Google Search functions as both the default and exclusive search service, creating insurmountable barriers for competitors.
4. **Stifling of Innovation:** The AFA/ACC covenants are not mere quality checks; they actively prohibit the commercialization of alternative "Android forks," violating **Section 4(2)(b)(ii)**.
5. **Status Quo Bias:** Pre-installation exploits user passivity, giving Google an artificial, anti-competitive head start that cannot be mitigated by the theoretical option to disable apps.
6. **Justified Penalty:** The Commission's decision to impose a penalty @ 10% of Google's turnover is justified. The Commission proceeded with the best possible alternative to compute the amount of penalty after failure of Google to provide relevant data with the intent of ensuring necessary market correction at the earliest.

RATIO DECIDENDI AND ANALYSIS

Google leveraged its position as a dominant player in the operating system and search engine market to further cement its standing by anti-competitive and discriminatory practices. By imposing unfair conditions on OEMs through the mandatory pre-installation of apps, limiting the scientific and technical development of manufacturers, denying market access to competitors, imposing excessive conditions through arrangements such as AFA/ACC and RSA and exploiting its position in the Android OS market to dominate in other relevant sectors. To deliver its decision, the NCLAT relied upon findings of the Competition Commission of India, regulations under the Competition Act, 2002, along with certain judgments such as *Excel Crop Care Ltd. vs. CCI*¹³, *Uber (India) Systems Pvt. Ltd. vs. CCI*¹⁴ and *Saurabh Tripathi vs. CCI*¹⁵. Practices perpetuated by Google harmed competition and reduced consumer choice. By upholding the order along with the penalty, the NCLAT emphasised the need to regulate large tech firms and ensure their compliance with the competition laws. The economic market must operate within a legal process, and the competition law must promote competitive growth for businesses to thrive and for consumers to receive maximum choices.

CONCLUSION

The NCLAT's endorsement of the CCI's findings in the *Google Android* saga marks a foundational moment in the evolution of Indian digital antitrust jurisprudence. By validating the regulator's stance against the mandatory bundling of the GMS suite and the restrictive covenants of the AFA/ACC, the appellate tribunal firmly established that ecosystem-driven efficiencies cannot be weaponized to foreclose market access or stifle downstream technological innovation. Relying on foundational precedents like *Excel Crop Care* and *Uber India*, the NCLAT reinforced a crucial principle: market power in multi-sided digital platforms

¹³ Excel Crop Care Ltd. vs. Competition Commission of India (CCI) (2017) 8 SCC 47.

¹⁴ Uber India Systems Pvt. Ltd. v. Competition Commission of India 2019 (8) SCC 697.

¹⁵ Shri Saurabh Tripathy v. Competition Commission of India & Anr. AIR 2020 Delhi 62, 2020 (2) ADR 19

must operate within the boundaries of legal process, ensuring that algorithmic gatekeepers do not compress consumer choice or obstruct competitive growth.

However, because the final determination of this dispute remains **pending before the Supreme Court of India**, the definitive boundaries of platform regulation in the Global South are still being drawn. The apex court's forthcoming ruling faces the complex task of balancing ex-post enforcement under Section 4 of the Competition Act, 2002, against the economic realities of high-tech industries. The ultimate outcome of these cross-appeals will not only decide the fate of Google's operating model in India but will also set the baseline for regulatory sovereignty, data transparency, and the impending shift toward ex-ante legislative frameworks designed to govern Big Tech.