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CCI imposes a monetary penalty of Rs. 1337.76 crore on Google for anti-competitive practices in relation to Android mobile devices

1. The Competition Commission of India (Commission) has imposed a penalty of Rs. 1337.76 crore on Google for abusing its dominant position in multiple markets in the Android Mobile device ecosystem, apart from issuing cease and desist order. The Commission also directed Google to modify its conduct within a defined timeline.
2. Smart mobile devices need an operating system (OS) to run applications (apps) and programs. Android is one such mobile operating systems which was acquired by Google in 2005. The Commission in the instant matter has examined various practices of Google *w.r.t.* licensing of this Android mobile operating system and various proprietary mobile applications of Google (*e.g.* Play Store, Google Search, Google Chrome, YouTube, *etc.*).
3. For this purpose, the Commission delineated following five relevant markets in the present matter:
 - a. Market for licensable OS for smart mobile devices in India
 - b. Market for app store for Android smart mobile OS in India
 - c. Market for general web search services in India
 - d. Market for non-OS specific mobile web browsers in India
 - e. Market for online video hosting platform (OVHP) in India.
4. During the course of inquiry, Google argued about the competitive constraints being faced from Apple. In relation to understanding the extent of competition between Google's Android ecosystem and Apple's iOS ecosystem, the Commission noted the differences in the two business models which affect the underlying incentives of business decisions. Apple's business is primarily based on a vertically integrated smart device ecosystem which focuses on sale of high-end smart devices with state of the art software components. Whereas Google's business was found to be driven by the ultimate intent of increasing users on its platforms so that they interact with its revenue earning service *i.e.*, online search which directly affects sale of online advertising services by Google.
5. Further, in relation to app stores, the Commission noted that the demand for the same, come from three different sets of consumers *i.e.*, (a) Smart device OEMs who wish to install an app store to make their smart devices commercially viable and marketable; (b)



app developers, who want to offer their services to the end users; and (c) end users to wish to access app stores to access content or avail other services. The Commission examined the substitutability between Google's Play Store for Android OS and Apple's App Store for iOS from the perspective of all three demand constituents and found that there is that no substitutability between Google's Play Store and Apple's App Store. The Commission further noted that there might be some degree of competition between the two mobile ecosystems *i.e.*, Android and Apple, however, that too is also limited at the time of deciding as to which device to buy. At that stage also, the Commission was of the considered view that the primary and the most significant factor in the mind of an end user is the hardware specification and the device price.

6. Based on its assessment, the Commission found Google to be dominant in all the above-mentioned relevant markets.
7. Google operates/ manages the Android OS as well as licences its other proprietary applications and OEMs use this OS & Google's apps in their smart mobile devices. Accordingly, they enter into multiple agreements to govern their rights and obligations *viz.* Mobile Application Distribution Agreement (MADA), Anti-fragmentation Agreement (AFA), Android Compatibility Commitment Agreement (ACC), Revenue Sharing Agreement (RSA), *etc.*
8. MADA assured that the most prominent search entry points *i.e.*, search app, widget and chrome browser are pre-installed on Android devices, which accorded significant competitive edge to Google's search services over its competitors. Further, Google also secured significant competitive edge over its competitors, in relation to its another revenue earning app *i.e.* YouTube in the Android devices. The competitors of these services could never avail the same level of market access which Google secured and embedded for itself through MADA. Network effects, coupled with status quo bias, create significant entry barriers for competitors of Google to enter or operate in the concerned markets.
9. AFA/ ACC guaranteed that distribution channels for competing search services is altogether eliminated by prohibiting OEMs from offering devices based on Android forks. It ensured that OEMs are not able to develop and/ or offer devices based on forks, which are outside the control of Google. In the absence of these restrictions, the competing search services could have availed of sufficient distribution channels in partnership with OEMs, offering devices based on forks. Similarly, the android fork developers also could not find distribution channels for their fork OSs as almost all the OEMs were tied with Google.



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10. Simultaneously, RSAs helped Google to secure exclusivity for its search services to the total exclusion of competitors. The combined results of these agreements guaranteed a continuous access to search queries of mobile users which helped not only in protecting the advertisement revenue but also to reap the network effects through continuous improvement of services, to the exclusion of competitors. With these agreements in place, the competitors never stood a chance to compete effectively with Google and ultimately these agreements resulted in foreclosing the market for them as well as eliminating choice for users.
11. The Commission opined that the markets should be allowed to compete on merits and the onus is on the dominant players (in the present case, Google) that its conduct does not impinge this competition on merits. By virtue of the agreements discussed above, Google ensured that users continue to use its search services on mobile devices which facilitated un-interrupted growth of advertisement revenue for Google. Further, it also helped Google to further invest and improve its services to the exclusion of others. Thus, the underlying objective of Google in imposing various restrictions *via* MADA, AFA/ ACC and RSAs was to protect and strengthen its dominant position in general search services and thus, its revenues *via* search advertisements.
12. The Commission concluded that,
 - 12.1. mandatory pre-installation of entire Google Mobile Suite (GMS) under MADA (with no option to un-install the same) and their prominent placement amounts to imposition of unfair condition on the device manufacturers and thereby in contravention of the provisions of Section 4(2)(a)(i) of the Act. These obligations are also found to be in the nature of supplementary obligations imposed by Google on OEMs and thus, in contravention of Section 4(2)(d) of the Act.
 - 12.2. Google has perpetuated its dominant position in the online search market resulting in denial of market access for competing search apps in contravention of Section 4(2)(c) of the Act.
 - 12.3. Google has leveraged its dominant position in the app store market for Android OS to protect its position in online general search in contravention of Section 4(2)(e) of the Act.
 - 12.4. Google has leveraged its dominant position in the app store market for Android OS to enter as well as protect its position in non-OS specific web browser market through Google Chrome App and thereby contravened the provisions of Section 4(2)(e) of the Act.
 - 12.5. Google has leveraged its dominant position in the app store market for Android OS to enter as well as protect its position in OVHPs market through YouTube and thereby contravened provisions of Section 4(2)(e) of the Act.



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12.6. Google, by making pre-installation of Google's proprietary apps (particularly Google Play Store) conditional upon signing of AFA/ ACC for all android devices manufactured/ distributed/ marketed by device manufacturers, has reduced the ability and incentive of device manufacturers to develop and sell devices operating on alternative versions of Android *i.e.*, Android forks and thereby limited technical or scientific development to the prejudice of the consumers, in violation of the provisions of Section 4(2)(b)(ii) of the Act.

13. Accordingly, in terms of the provisions of Section 27 of the Act, the Commission has imposed monetary penalty as well as issued cease and desist order against Google from indulging in anti-competitive practices that have been found to be in contravention of the provisions of Section 4 of the Act. Some of the measures that were indicated by the Commission are as follows:

- i. OEMs shall not be restrained from (a) choosing from amongst Google's proprietary applications to be pre-installed and should not be forced to pre-install a bouquet of applications, and (b) deciding the placement of pre-installed apps, on their smart devices.
- ii. Licensing of Play Store (including Google Play Services) to OEMs shall not be linked with the requirement of pre-installing Google search services, Chrome browser, YouTube, Google Maps, Gmail or any other application of Google.
- iii. Google shall not deny access to its Play Services APIs to disadvantage OEMs, app developers and its existing or potential competitors. This would ensure interoperability of apps between Android OS which complies with compatibility requirements of Google and Android Forks. By virtue of this remedy, the app developers would be able to port their apps easily onto Android forks.
- iv. Google shall not offer any monetary/ other incentives to, or enter into any arrangement with, OEMs for ensuring exclusivity for its search services.
- v. Google shall not impose anti-fragmentation obligations on OEMs, as presently being done under AFA/ ACC. For devices that do not have Google's proprietary applications pre-installed, OEMs should be permitted to manufacture/ develop Android forks based smart devices for themselves.
- vi. Google shall not incentivise or otherwise obligate OEMs for not selling smart devices based on Android forks.
- vii. Google shall not restrict un-installing of its pre-installed apps by the users.
- viii. Google shall allow the users, during the initial device setup, to choose their default search engine for all search entry points. Users should have the flexibility to easily set as well as easily change the default settings in their devices, in minimum steps possible.
- ix. Google shall allow the developers of app stores to distribute their app stores through Play Store.



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

14. In relation to computation of penalty, the Commission noted that there were glaring inconsistencies and wide disclaimers in presenting various revenue data points by Google. However, in the interest of justice and with an intent of ensuring necessary market correction at the earliest, the Commission quantified the provisional monetary penalties on the basis of the data presented by Google. Accordingly, the Commission imposed a penalty of Rs. 1337.76 crore upon Google on provisional basis, for violating Section 4 of the Act. Google has been given a time of 30 days to provide the requisite financial details and supporting documents.

15. The public version of the order shall be uploaded on the website of the Commission tomorrow.
