ABUSE OF DOMINANT POSITION BY GOOGLE
CASE ANALYSIS OF GOOGLE v. CCI

*By* [*Kashish Awtani*](https://www.linkedin.com/in/kashish-awtani-1591611b7/)

# INTRODUCTION

In the case of Mr. Umar Javeed and others (Informants) v. Google LLC and Another (Opposite Parties), the Competition Commission of India (CCI) issued an order on October 20, 2022, fining Google Rs. 1337.76 crores for violating Section 27 of the Competition Act, 2002 by abusing its dominant position in numerous markets within the Android mobile device ecosystem. Along with a monetary fine, CCI also issued a "Cease and Desist" order requiring Google to change its behaviour within a predetermined period of time. Google, thus aggrieved by the said order applied to the NCLAT for a stay on the CCI's order. The NCLAT also rejected the stay plea on the CCI's judgment that fined Google Rs. 1,337.76 crores for engaging in anti-competitive behaviour with regard to Android mobile devices. The tech behemoth has thus appealed to the Supreme Court in this case.

# FACTS OF THE CASE

Under Section 19(1)(a) of the Competition Act, 2002 (the "Act"), the "Informants" filed this information against Google LLC and Google India Private Limited (collectively, "Opposite Parties" or "Google"), alleging, among other things, that Google has abused its dominant position in markets related to mobile operating systems in violation of Section 4 of the Competition Act. As a wholly owned subsidiary of holding firm Alphabet Inc. (Alphabet), Google LLC, formerly known as Google Inc., is described as a Delaware limited liability company. With a primary focus on search, advertising, operating systems, platforms, and enterprise, Google offers a range of IT-related services.

Google also provides a web search function. Google's search engine is accessible via applications, partner websites that include Google search technology, and websites like www.google.com. Google offers advertising services to assist companies in promoting and advertising their goods. Chrome, Gmail, Google Drive, Google Maps, Android, Google Play, Search, and YouTube are among Google's primary economic ventures. Additionally, Google India Private Limited (often known as "Google India") is a completely owned indirect subsidiary of Alphabet Inc. as well as Google LLC.[[1]](#footnote-0)

In the present case, the informants allege that google abuses its dominant power because:

* To get any component of GMS in devices made in, sold in, exported to, or marketed in India, Google requires smartphone and tablet makers to preinstall only Google's own applications or services. Such behaviour was alleged to have violated Section 4 read with Section 32 of the Act by impeding the development and market access to competing mobile applications or services.
* Google connects or bundles specific Google applications and services (such Google Chrome, YouTube, Google Search, etc.) provided on Android smartphones in India with additional Google applications, services, and/or Application Programming Interfaces (APIs). This behaviour violated Sections 4 and 32 of the Act by forcibly preventing the development and market entry of competing applications and services.
* Google forbids Indian manufacturers of smartphones and tablets from creating and promoting altered, potentially competitive versions of Android (also known as "Android forks") on other hardware. This behaviour violated Section 4 read with Section 32 of the Act by limiting access to cutting-edge smart mobile devices running alternative, potentially better versions of the Android operating system.
* In order to maintain its dominating position in online general web search services and online video hosting platforms (through YouTube), Google engaged in a variety of anti-competitive activities, either in the market in which they are dominant or in other areas.[[2]](#footnote-1)

# ISSUES RAISED IN THE CASE

**ISSUE I:** Whether mandatory pre-installation of the entire GMS suite under MADA amounts to imposition of an unfair condition on the device manufacturers and thereby infract provisions of Section 4(2)(a)(i) and Section 4(2)(d) of the Act?

**ISSUE II:** Whether Google has perpetuated its dominant position in the online search market resulting in a denial of market access for competing search apps in contravention of Section 4(2)(c) of the Act?

**ISSUE III:** Whether Google has leveraged its dominant position in Play Store to protect its dominant position in online general search in contravention of Section 4(2)(e) of the Act? **ISSUE IV:** Whether Google has abused its dominant position by tying up of Google Chrome App with Play Store and thereby violated provisions of Section 4(2)(e) of the Act?

**ISSUE V**: Whether Google has abused its dominant position by tying up of YouTube App with Play Store and thereby violated provisions of Section 4(2)(e) of the Act?[[3]](#footnote-2)

# THE JUDGEMENT

## The Competition Commission of India

As a result, in accordance with the requirements of Section 27 of the Act, the CCI has fined Google and issued a cease and desist order to stop engaging in practices that have been determined to be in violation of Section 4 of the Act.

In order to prove the same the relevant market(s) in which the concerned entity operates must be identified according to the assessment framework outlined in Section 4, and then the entity's market power, or whether it has a dominating position, must be evaluated. Finally, the dominating entity's behaviour is investigated to determine whether it violates various provisions of Section 4(2) of the Act by being abusive in character.

1. Relevant market: In accordance with Section 2(r) of the Act, both the relevant product market and the relevant geographic market are typically considered when defining the relevant market. Section 19(5) of the Act has a similar implication.

According to Section 2(t) of the Act, a "relevant product market" is "a market consisting of all those items or services which, based on the characteristics of the products or services, their prices, and their intended purpose, are viewed as interchangeable or substitutable by the customer." Additionally, the Section l9(7) lists a number of elements that the Commission must take into account when determining the relevant product market, including the physical attributes or end use of the commodities, the cost of the goods or services, consumer preferences, etc. The main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face. Further, the objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that can constrain those undertakings behaviour and of preventing them from behaving independently of effective competitive pressure.[[4]](#footnote-3)

1. The next step in evaluating the alleged abuse of a dominant position under Section 4 of the Act is to determine whether the concerned company has a dominating position in the relevant market(s) that have been defined. According to the definition of "dominant position" in Section 4 of the Act, this is a position of strength an enterprise has in the relevant market that allows it to operate independently of the competitive forces present there, or to influence its competitors, customers, or the relevant market in its favour. Additionally, Section 19(4) outlines a number of characteristics that should be taken into account when deciding whether an entity qualifies as having a dominant position for the purposes of Section 4 of the Act.

Thus, since device manufacturers are subjected to an unfair condition as a result of the forced pre-installation of the full Google Mobile Suite (GMS) under MADA, their prominent positioning, and the lack of the ability to uninstall the GMS.

The CCI noted that Google presented multiple revenue data points with evident errors and extensive disclaimers in relation to the determination of the penalty. However, the CCI quantified the interim monetary penalties based on the information provided by Google in the interest of justice and with the intent of ensuring the fastest possible market correction.

As a result, the CCI fined Google Rs. 1,337.76 crores on a provisional basis for breaking Section 4 of the Act and ordered the company to pay the fine within 60 days of receiving the order. Google has been given 30 days to submit the necessary financial information and accompanying paperwork.

## National Company Law Appellate Tribunal

The NCLAT decision was followed by the petition filed by Google, which contested the CCI ruling that the tech giant had abused its dominant position in a number of markets within the Android mobile device ecosystem. Google argued that the ruling was unfair to Indian users and would increase the cost of such devices there.

However, Hon’ble Tribunal refused to give a stay of execution of the Competition Commission of India (CCI) penalty and stated that it would issue an order only after hearing from all parties and directed google to pay 10% of the penalty.[[5]](#footnote-4)

## Supreme Court

Google challenged NCLAT’S order for not granting interim relief in the Hon’ble Supreme Court, wherein the Apex Court held that since the appeal is still pending before NCLAT, we are delaying deciding about the merits of the competing arguments put forth by the contesting parties. Any opinion this Court might express on the merits would have an impact on the NCLAT's ongoing proceedings. [[6]](#footnote-5)It would be sufficient to note that the conclusions reached by the CCI cannot be regarded as being either without jurisdiction or subject to a clear mistake that would have required interference in the appeal at the interlocutory stage and directed the NCLAT to dispose of the matter before March 31, 2023.[[7]](#footnote-6)

# CONCLUSION

The current case involves accusations of google abusing its dominating position in the Indian market, similar issues were raised in Europe, wherein the European General Court imposed a fine on google for violating Article 102 of the TFEU and Article 54 of the Agreement on the European Economic Area by improperly imposing anticompetitive contractual restrictions on Android device manufacturers and mobile network providers.

Similarly, Google has been trying to exploit the lenient laws of India, where the interpretation of the competition act remains hazy. As a result of the CCI’s order, If Google complies with the CCI order, it would result in significant systemic changes to the tech giant's policies (Play Store and third parties) and put Google in a challenging situation because it would have suffered financial losses as a result of putting the directives into practice and this would prevent other tech giants from dominating the market.

It is not the first anti-competition agency have had to go after Google. The European Commission had also fined the tech giant and asked it to un-bundle the Google search engine and Google Chrome. The CCI’s order is even more sweeping, affecting nine Google Apps, making the Indian ruling trend-setting in many ways.

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3. Mr. Umar Javeed & Ors. v. Google LLC & Anr. Case no.29 of 2018 [↑](#footnote-ref-2)
4. Competition Commission of India v. Co-ordination Committee of Artists and Technicians of WB. Civil Appeal No. 6691 of 2014 [↑](#footnote-ref-3)
5. Business Standards. NCLAT refuses to stay CCI's order of Rs 936 crore penalty on Google. January 28 2023. https://www.business-standard.com/article/companies/nclat-refuses-to-stay-cci-s-penalty-on-google-for-its-playstore-policies-123011101370\_1.html [↑](#footnote-ref-4)
6. Padmakshi Sharma. Live Law. Will Same Steps Taken In Europe Be Followed In India?': Supreme Court Asks Google In Challenge To CCI Order Over Android Dominance. 16 January 2023.
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