

Kluwer Competition Law Blog

Competition Commission of India strikes another blow to Google for abuse of dominant position

Mohit Agarwal (Gujarat National Law University) · Thursday, July 18th, 2019

On 16th April 2019, the Competition Commission of India (CCI) ordered a probe against the multinational technology company, Google, for abusing its dominant position in clear violation of Section 4 of the (Indian) Competition Act, 2002 (**‘Act’**).^[1]

The present case was filed under Section 19(1)(a) of the Act, alleging Google LLC and Google India Private Limited, (collectively **‘Google’**) of abuse of its dominant position in the mobile operating systems market. Google is leading in the operating systems’ market as majority of the users and the developers use its operating system (OS) along with varied other Google’s proprietary applications and services [Google Mobile Services (GMS)]. The CCI noted that a wide range of applications like Google Maps, Google Chrome, YouTube were only available through GMS on android phones which had to be preinstalled by the manufacturer and couldn’t be availed directly by the end-users. In order to obtain rights to these applications, the manufacturers had to enter into agreements with Google, namely, Mobile Application Distribution Agreement (“MADA”) and Anti Fragmentation Agreement (“AFA”).

The CCI recorded that to form a *prima facie* case of abusive conduct, it was necessary to identify the relevant market and to define the dominance of Google in such market. Firstly, it observed that the primary relevant market will be the market for licensable smart mobile device OS in India. The CCI identified that the mobile OS are different from OS designed for desktop as they have additional handheld use features. Thus, it differs in characteristics and on the basis of usage. Also, the CCI noted that other OS like iOS and Windows are not available for licensing to third-party developers and thus are excluded from the relevant market.

Secondly, the CCI held that Google appears to be dominant in the relevant market as **Android accounted for 80% of India’s mobile OS market**. The European Commission’s decision was also relied upon where the EC had found Google to dominant in the markets of general internet search services and licensable smart mobiles OS.^[2] The CCI also followed the **EU Commission’s Press Release** in finding Google dominant in the associated market of app stores for Android mobile OS.

Furthermore, the Commission held that the signing of MADA mandates pre-installation of entire suite of Google apps. ‘Play Store’, a must have app, cannot be pre-installed separately thereby compulsorily tying it with the other applications. In the backdrop, the CCI noted that making pre-

installation of 'Play Store' conditional, Google reduced the ability and disincentivized the device manufacturers to develop viable alternatives, thereby restricting technical development to the prejudice of consumers violative of Section 4(2) of the Act.

The Commission has ordered proper examination of 'fragmentation' of the GMS applications, which prevents the users from customizing their phones and install competing apps. Prevention of 'fragmentation' of the applications would clearly violate the Section 3 of the Act, as this may form a tie-in agreement which requires a manufacturer to purchase some other goods as a precondition to purchasing a certain good.

The CCI forms a *prima facie* opinion that mandatory pre-installation of GMS amounts to unfair trading conditions standing in clear violation of Section 4(2)(a)(i). It is pertinent to note that the Google has leveraged its dominant position in the licensable smart mobile device OS market to obtain advantage in general internet search services as the latter relevant market is data-driven which requires higher volume of usage and by tying Google Search in the GMS suite, Google is able to perpetuate in the online search market.

Notably, Google mandating pre-installation of the GMS suite in the Android phones has strengthened its dominant position in the market as well as hindered development of market access to rivals or third-party applications. While reading Section 4 with Section 32 of the Act, it is important to note that the conduct of Google to tie or bundle applications and services is an attempt to eliminate effective competition from the market. There exists an element of coercion as the device manufacturers are coerced to purchase the GMS suite altogether which results in consumer harm through reduction in choice of products.

The **Guidance paper by the European Commission** states that there exists a high incentive for the dominant firm to undertake exclusionary conduct when there exists little product differentiation in the market and when a greater proportion of the competitors is affected.^[3]

More importantly, the CCI found Google dominant in the online search service market based on the case of *Matrimony.Com Limited v. Google LLC & Ors*^[4] and ruled that there exists a possibility that Google might have abused its dominant position in the licensable smart mobile OS market to accrue benefits in the online search service market. The CCI must subject its findings to the Rule of Reason test, wherein the pro-competitive effects shall be compared against the anti-competitive effects to decide whether the Google's practice must be prohibited or not. The CCI in the case of *Sonam Sharma v. Apple & Ors*^[5] held that for an agreement to be anti-competitive, the seller must have sufficient market power, there must be two products that can be tied together and the tying arrangement must affect a 'not insubstantial' amount of commerce.

The order has come as a second blow to the US multinational from CCI after the 'search bias' case where they imposed a fine of INR 135.86 crores. While the *prima facie* opinion has provided a stance against the company, it remains to be seen how the investigative arm will carve out observations under the Competition Act, 2002.

^[1] Case No. 39 of 2018, Competition Commission of India, April 2019.

^[2] Case AT.40099 – Google Android, Commission Decision of 18 July 2018.

^[3] Para 85, Guidance on the Commission’s enforcement priorities in applying Article 82 of the EC Treaty to abusive exclusionary conduct by dominant undertakings [2009] OJ C45/7.

^[4] 2018 CompLR 101 (CCI).

[5] 2013 CompLR 346 (CCI).

To make sure you do not miss out on regular updates from the Kluwer Competition Law Blog, please subscribe [here](#).

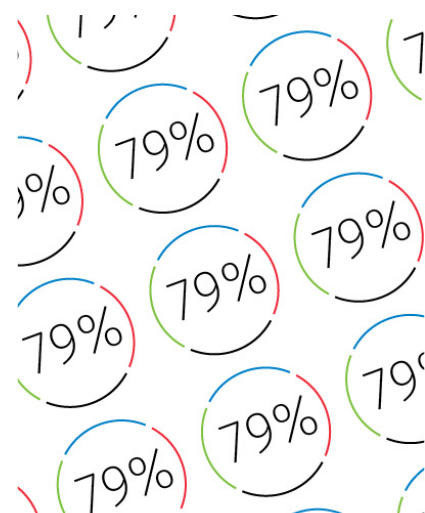
Kluwer Competition Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers are coping with increased volume & complexity of information. Kluwer Competition Law enables you to make more informed decisions, more quickly from every preferred location. Are you, as a competition lawyer, ready for the future?

Learn how **Kluwer Competition Law** can support you.

79% of the lawyers experience significant impact on their work as they are coping with increased volume & complexity of information.

Discover how Kluwer Competition Law can help you.
Speed, Accuracy & Superior advice all in one.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Thursday, July 18th, 2019 at 1:05 pm and is filed under [Source](#):

OECD“>Abuse of dominance, Google, India

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.