



COMPETITION COMMISSION OF INDIA

Case No. 39 of 2018

In re:

1. **Mr. Umar Javeed**
F12/3 Second Floor
Malviya Nagar
New Delhi – 1100017 **Informant No. 1**
2. **Ms. Sukarma Thapar**
B-7, Extension, 14/A
Safdarjung Enclave
New Delhi – 110029 **Informant No. 2**
3. **Mr. Aaqib Javeed**
Goriwan Bijbehara
Jammu & Kashmir – 192124 **Informant No. 3**

And

1. **Google LLC**
Through its MD/Directors/CEO
1600 Amphitheatre Parkway
Mountain View, CA 94043
United States of America **Opposite Party No. 1**
2. **Google India Private Limited**
Through its MD/Directors/CEO
No. 3, RMZ Infinity – Tower E
Old Madras Road, 4th and 5th Floors
Bangalore – 560016 **Opposite Party No. 2**



position by Google in the mobile operating system related markets in contravention of the provisions of Section 4 of the Act.

2. The Informants, who are stated to be consumers of the Android smartphones, have filed the instant information against Google LLC (OP-1) and its Indian subsidiary Google India Private Limited (OP-2).
3. Google is stated to be a multinational conglomerate specializing in internet related products and services. Google's core products include Google Search, Chrome, Android, YouTube, Gmail, Google Maps, Google Play *etc.* The Informants stated that majority of smartphone and tablet manufacturers in India use Google's Android Operating System (OS).
4. The Informants stated that Android is an open-source mobile OS, meaning that it can be freely used and developed by anyone. Android Open Source Project (AOSP) is the fundamental Android source code subject to a basic license. The majority of smartphone and tablet manufacturers in India use the Android operating system. A large number of them use the Android in combination with a range of Google's proprietary applications and services *i.e.*, the Google Mobile Services (GMS).
5. The Informants stated that GMS is a collection of Google applications and Application Programme Interface (APIs) that help support functionality across devices. As per the Informants, GMS includes wide range of Google apps such as Google Maps, Gmail, and YouTube which the Informants allege are available only through GMS and cannot be downloaded separately by device manufacturers. In order to obtain the right to install these applications and services on their Android devices, manufacturers need to enter into certain agreements with Google. The Informants also alleged that end-users cannot avail such services directly.



6. The Informants stated that depending upon which “Android” device OEMs/ device manufacturers want to offer, they have to sign one or more agreements:

- (i) Android without GMS: If an OEM wants to manufacture a ‘bare’ Android device, it needs to only pass technical tests and accept the Android License agreement but in bare Android devices OEMs are not permitted to include any of GMS such as Google Maps, Gmail and YouTube.
- (ii) Android with GMS: In order to obtain GMS, an OEM has to enter into two additional agreements with Google (a) Mobile Application Distribution Agreement (“MADA”) and (b) Anti Fragmentation Agreement (“AFA”).

7. The Informants have delineated 4 distinct markets for the purpose of the present information *viz.* the market for:

- (i) Licensable Smart Mobile OS

As per the Informants, there are three options for mobile OS *i.e.* Android, Apple’s iOS and Windows Phone. The Informants pointed out that Android is a licensable OS and therefore it is different from other OS which are used exclusively by vertically integrated companies and are not available for licensing by third party device manufacturers.

The Informants have relied upon the European Commission’s decision against Google on Android (Case No. 40099) (“Android decision”) where Google was found to be dominant in the markets for general internet search services, licensable smart mobile OS.

The Informants stated that as per statista.com Google is also dominant in India because in 2017 Android accounted for 80% of India’s mobile



OS market. In June 2018, as reported by the Economic Times, prominent smartphone manufacturers in India together held 82% of the Android market.

(ii) App stores for the Android Mobile OS

The Informants stated that Google's Play Store is the biggest app store in the world with more than 3.6 million apps and as per the Android decision, accounted for more than 90% of the apps downloaded on Android devices.

(iii) Online Video Hosting Platform (OVHP)

The Informants have also alleged that OVHP *e.g.* YouTube is a distinct relevant market which provides free access to consumers and monetizes its platform through advertisements. As per the Informants, OVHP is not substitutable with Video on Demand services *e.g.* Netflix which is a subscription-based business model. The Informants also distinguished between YouTube and services like Netflix where users watch user uploaded content as against watching movies and TV shows.

Citing newspaper reports, the Informants submitted that YouTube has over 930 million subscribers in India of which 300 million use smartphones and 85% of the content streamed on YouTube is consumed on mobile phones. Based on public sources, the Informants averred that Google is dominant in the OVHP market in India with YouTube holding a market share of 80%.

(iv) Online General Web Search Service

The Informants submitted that the market for online general web search services is distinct from the market for specialised/ vertical search service as well as search advertising. The Informant placed



reliance on the Commission's decision in *Matrimony.com Ltd. v. Google LLC & Ors.*, where the Commission defined the market for Online General Web Search Service as a distinct relevant product and found Google to be dominant in that market.

8. With respect to the relevant geographic market, the Informants have stated that since conditions of competition are distinctly homogenous in India, India would be the relevant geographical market.
9. Adverting to the abusive conduct, the Informants have alleged that Google has engaged in different kinds of anti-competitive practices, either in the market in which they are dominant or in separate markets, with the aim of cementing Google's dominant position in Online General Web Search Services and Online Video Hosting Platform (through YouTube). In this regard, the Informants essentially made the following allegations:
 - (i) Google mandates smartphone and tablet manufacturers to exclusively pre-install Google's own applications or services in order to get any part of GMS in smartphones manufactured in/ sold in/ exported to/ marketed in India. This conduct has hindered the development and market access of rival mobile applications or services thereby violating Section 4 read with Section 32 of the Act.
 - (ii) Google ties or bundles certain Google applications and services (Such as Google Chrome, YouTube, Google Search *etc.*) distributed on Android devices in India with other Google applications, services and/ or application programming interfaces of Google. This conduct illegally prevented the development and market access of rival applications and services in violation of Section 4 read with Section 32 of the Act.



(iii) Google prevents smartphone and tablet manufacturers in India from developing and marketing modified and potentially competing versions of Android (so-called “Android forks”) on other devices. This conduct restricted access to innovative smart mobile devices based on alternative, potentially superior versions of the Android operating system in contravention of Section 4 read with Section 32 of the Act.

10. Based on the above averments and allegations, the present Information has been filed by the Informants against the Opposite Parties alleging contravention of the provisions of Section 4 of the Act.

11. The Commission held preliminary conference with the parties on 08.01.2019 in terms of the provisions contained in Regulation 17 of the Competition Commission of India (General) Regulations, 2009 besides perusing the material available on record.

12. Before advertng to the issues arising out of the present Information, it would be appropriate to note, in brief, the submissions of Google.

(i) Android is an open source platform and it does not require OEMs to sign a MADA or any other agreement to license Android. OEMs can offer Android devices without preinstalling any Google apps. If OEMs choose to preinstall Google mobile apps, the MADA allows OEMs to preinstall a suite of Google mobile apps and services referred to as Google Mobile Services (GMS).

(ii) This preinstallation obligation is limited in scope. It was pointed out that preinstalled Google app icons take up very little screen space. OEMs can and do use the remaining space to preinstall and promote both their own, and third-party apps. It was also submitted that the MADA preinstallation conditions are not exclusive. Nor are they



exclusionary. The MADA leaves OEMs free to preinstall rival apps and offer them the same or even superior placement.

- (iii) Android users have considerable freedom to customise their phones and to install apps that compete with Google's. Consumers can quickly and easily move or disable preinstalled apps, including Google's apps. Disabling an app makes it disappear from the device screen, prevents it from running, and frees up device memory - while still allowing the user to restore the app at a later time or to factory reset the device to its original state.

- (iv) Google's open source Android license allows anyone to change the Android code and adapt it to their needs. This provides OEMs with considerably more freedom than a proprietary licensing model. This freedom comes at a cost, though, as it creates a threat to the viability and quality of the platform. If companies make changes to the Android source code that create incompatibilities, apps written for Android will not run on these incompatible variants. As a result, fewer developers will write apps for Android, threatening to make Android less attractive to users and, in turn, even fewer developers will support Android. To avoid the potentially devastating effects of fragmentation, Google has defined, and asks OEMs to adhere to, a minimum baseline compatibility standard for Android called the Compatibility Definition Document (COD). OEMs that comply with the COD through an agreement called the Android Compatibility Commitment (ACC) (previously the AFA) are free to differentiate their devices on top of that baseline. ACC signatories commit that all of their Android devices will comply with the COD. The ACC seeks to ensure that all Android apps work on all compatible Android devices, allowing Android to compete with rival platforms for app developers, and improving the availability and reliability of apps for consumers. Like MADA, ACC



(as with the AFA before it) is entirely optional, though agreeing to adhere to the COD is a condition of MADA.

13. To form a *prima facie* view about the alleged abusive conduct, it would be first appropriate to define the relevant market and to determine dominance of Google therein, if any.
14. In this regard, the Commission observed that the operating system designed for mobile devices are different from operating system designed for desktop computers in terms of use. Mobile operating systems combine features of a personal computer operating system with other features useful for mobile or handheld use. Each mobile manufacturer designs the device as per the operating system it is going to use on it. Thus, the mobile operating system differs in terms of characteristics and use from the computer operating systems. From the Original Equipment Manufacturers (OEMs)' perspective, only such operating systems are accessible to them which are licensed by the developers. Thus, the non-licensable operating systems such as iOS do not appear to be part of the same market since they are not available for license by third party OEMs. Thus, the primary relevant product market in this case appears to be the market for licensable smart mobile operating systems and for the purpose of the instant analysis, the relevant geographic market will be considered as the whole of India as conditions of competition are homogeneous. Thus, the primary relevant market for this *prima facie* assessment will be "*market for licensable smart mobile device operating systems in India*". In this relevant market, Google *prima facie* appears to be dominant on the basis of the material brought on record by the Informants wherein *inter alia* they have stated that as per statista.com, in 2017, Android accounted for 80% of India's mobile OS market.
15. Further, apart from the above delineated primary relevant market, it would be necessary to determine some associated relevant markets to examine the



impugned conduct. In this regard, the Commission notes that *prima facie*, the relevant market for app stores for android mobile operating systems, proposed by the Informants, also appears to be appropriate and necessary for the assessment of the impugned conduct. As the European Commission, in its Press Release, notes, Google is dominant in the worldwide market (excluding China) for app stores for the Android mobile operating system. Google's app store, the Play Store, accounts for more than 90% of apps downloaded on Android devices. Google's app store dominance is not constrained by Apple's App Store, which is only available on iOS devices. As such, Google's dominance in this relevant market also becomes evident.

16. Also, the relevant market for online general web search service proposed by the Informants is in consonance with the definition considered by the Commission in *Matrimony.Com Limited v. Google LLC & Ors.*, Case Nos. 07 and 30 of 2012. The Commission also found Google to be dominant in this relevant market in the aforementioned cases.
17. Lastly, it is pertinent to note that for each application such as online video hosting platform, browser, map, music *etc.*, there will be separate relevant market.
18. Before examining the alleged abusive conduct, it would be appropriate to note some factual background from Google's submissions. It has been stated by Google that it develops a number of proprietary mobile apps, services, and APIs for Android devices, together called Google Mobile Services ("GMS"). GMS includes Google Play, plus ten user-facing apps. Google Play is an app store with over two million apps, most of which are free to download. The GMS suite of apps currently consists of Google Search, YouTube, Google Maps, Gmail, Google Drive, Chrome, Google Play Music, Google Play Movies, Hangouts/Duo, and Google Photos. OEMs that wish to preinstall GMS on their devices sign an optional, non-exclusive contract called the



Mobile Application Distribution Agreement (“MADA”). In exchange for a free license to GMS, the OEM agrees to place the Google Search widget, the Play icon, and a folder with a selection of other Google apps (such as Chrome) on the default home screen.

19. In this backdrop, adverting to the alleged abusive conduct, it is observed that MADA requires the device manufacturers (who choose to preinstall Google mobile apps) to preinstall the entire suite of Google apps and in pre-determined positions. Further, signing of ACC *i.e.* to adhere to the compatibility definition, is a condition of MADA. Thus, the two agreements that Google offers to the mobile device manufacturers in India *i.e.* ACC and MADA, in conjunction essentially entail the following restrictions:

- i) In order to be able to preinstall Google’s proprietary apps, device manufacturers have to commit to comply with the Android Compatibility Definition Document (CDD) for all devices based on Android manufactured/distributed/sold by them; and
- ii) In order to be able to preinstall any proprietary app of Google, *e.g.* Play Store, device manufacturers will have to preinstall the entire suite of Google apps;

20. Though Google has argued that licensing of Android operating system is not conditional upon signing of either of the two agreements *i.e.* MADA and ACC as both are optional, the Commission is of the *prima facie* opinion that since Google Play Store is a ‘must have’ app and users expect it to be preinstalled on their devices, marketability of Android devices may get restricted if these agreements are not signed, making these agreement *de facto* compulsory.

21. In the aforesaid backdrop, the Commission is of the *prima facie* opinion that by making pre-installation of Google’s proprietary apps (particularly Google



Play Store) conditional upon signing of ACC for all android devices manufactured/distributed/marketed by device manufacturers, Google 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 relating to goods or services to the prejudice of consumers in contravention of Section 4(2) (b) of the Act.

22. The Commission also takes note of the submission of Google that Android users have considerable freedom to customise their phones and to install apps that compete with Google's besides the ability to quickly and easily move or disable preinstalled apps, including Google's apps. This aspect requires a detailed empirical validation particularly from consumers and cannot be determined at this stage. So also the plea of Google that the stipulations in the ACC are necessary to serve the legitimate purpose of preventing 'fragmentation', can be appropriately examined during the investigative stage through empirical validation from device manufacturers, application developers and independent experts.
23. Coming to the allegation of mandatory preinstallation of entire GMS suite under MADA, it is observed that under MADA, Google offers its mobile apps and services to device manufacturers as a bouquet, which includes the Google Play Store, the Google Search widget and a folder containing multiple Google apps including Google Chrome browser. As per the conditions of MADA, the device manufacturers who sign this agreement cannot pick and choose from amongst the GMS suite of apps for preinstallation. In essence, this entails compulsory tying of 'must have' Google apps (such as Play Store), which the device manufacturers would like to have on their devices with other apps where other credible alternatives may be available.



24. In this regard, the Commission is of the *prima facie* opinion that mandatory preinstallation of entire GMS suite under MADA amounts to imposition of unfair condition on the device manufacturers and thereby in contravention of Section 4(2)(a)(i) of the Act. It also amounts to *prima facie* leveraging of Google's dominance in Play Store to protect the relevant markets such as online general search in contravention of Section 4(2)(e) of the Act. Mobile search has emerged as a key gateway for users to access information and Android is a key distribution channel for mobile search engines. Search engines exhibit data-driven scale effects. Improvements in search algorithm require sufficient volume of data, which, in turn, needs sufficient volume of queries from users who are increasingly resorting to mobile search. Thus, the impugned conduct of Google may help perpetuate its dominance in the online search market while resulting in denial of market access for competing search apps in contravention of Section 4(2)(c) of the Act. These aspects warrant a detailed investigation. The plea of Google that MADA preinstallation conditions are not exclusive or exclusionary, can also be appropriately examined during investigation.
25. In view of the foregoing, the Commission directs the Director General ('DG') to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act. The Commission also directs the DG to complete the investigation and submit the investigation report within a period of 150 days from the date of receipt of this order.
26. The DG is also directed to investigate the role, if any, of the persons who were in charge of, and were responsible to the companies for the conduct of the businesses of such companies at the time the alleged contravention was committed. The DG will also investigate such officers of the companies who consented to or connived in respect of the alleged contravention or the alleged contravention was attributable to any neglect on the part of such officers.



27. Before concluding, it is noted that Google has filed its submissions dated 31.12.2018 and 18.01.2019 in two versions viz. confidential as well as non-confidential. The confidential versions were kept separately during the pendency of the proceedings. It is made clear that no confidentiality claim shall be available in so far as the information/ data that might have been used/ referred to in this order in terms of the provisions contained in Section 57 of the Act.
28. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
29. The Secretary is directed to send a copy of this order alongwith the Information and other material available on record to the Office of the DG forthwith.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(U. C. Nahta)
Member

Sd/-
(Sangeeta Verma)
Member

New Delhi
Date: 16/04/2019