ABUSE OF DOMINANCE IN DIGITAL MARKETS IN INDIA: A CASE COMMENT ON *GOOGLE LLC* v. *COMPETITION COMMISSION OF INDIA (2023)*

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I. INTRODUCTION

Competition law plays a vital role in regulating the behaviour of enterprises that dominate their markets. It ensures that markets remain open, competitive, and fair. Its object is not to punish size or success, but to prevent the misuse of power. In a world, where digital platforms act as vital gateways between consumers and services, questions about dominance and its abuse have acquired new urgency. The idea that "big is not bad" is an established principle of competition policy.[1] A firm's size may be the result of innovation, a novel business model, or simply more efficient operations.[2] Therefore, holding a dominant position is not wrong *per se.* In India, the Competition Commission of India (CCI) is the statutory regulator responsible for enforcing the Competition Act, 2002. Section 4 of the Act prohibits abuse of dominant position.[3] It does not condemn dominance in itself, but targets practices where an enterprise uses its market power to distort competition. This provision has become crucial in regulating large technology companies propelled towards digitalization in recent times.

The case of *Google LLC* v. *Competition Commission of India*[4] is one of the most significant rulings in this field. It addresses how Indian law applies to digital platforms that operate complex ecosystems. The dispute revolved around Google's conduct in the Android mobile operating system (OS) market. Android are used in most of the smart phones in India and abroad. Because the Play Store is the principal gateway for applications on Android, Google's control over the ecosystem raised serious concerns. The CCI found that Google tied its core services with the Play Store, imposed restrictions on device manufacturers, and foreclosed rivals. It imposed a fine of ₹1337.76 crore and ordered structural and behavioural changes in Google's business model.[5] Google appealed in the National Company Law Appellate Tribunal (NCLAT) which upheld the findings of CCI in March 2023. The Tribunal confirmed the penalty, accepted the need for remedies, but struck down some directions it considered disproportionate. In the given context, this case comment examines the facts, issues, arguments, observations, and implications of the ruling. It also places the decision in comparative context, drawing lessons for the future of Indian competition law in digital markets.

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[1] OECD, "Abuse of dominance in digital markets", Dec. 2020, *available at*: https://www.oecd.org/daf/competition/abuse-of-dominance-in-digital-markets.htm (last visited on May 31, 2023).
[2] *Ibid.*
[3] The Competition Act, 2002 (Act 12 of 2003), s. 4.
[4] *Google LLC* v. *Competition Commission of India*, Competition Appeal (Appellate Tribunal) No. 1 of 2023; Decided on Mar. 29, 2023.
[5] "NCLAT upholds Rs. 1,337 crore penalty on google for abuse of dominant position in Android Mobile Device Ecosystem" *SCC Online Times,* Mar. 29, 2023, *available at*: https://www.scconline.com/blog/post/2023/03/29/penalty-on-google-nclat-sets-aside-certain-directions-by-cci-but-upholds-inr-1337-crore-penalty-on-google-for-abuse-of-dominant-position-in-android-mobile-device-ecosystem-legal-news-legal-researc-up/ (last visited on May 30, 2023).

II. FACTS OF THE CASE

In August 2018, three informants—Umar Javeed, Sukarma Thapar, and Aaqib Javeed—approached the CCI under section 19(1) (a) of the Competition Act.[6] They alleged that Google abused its dominance in the Android mobile ecosystem. Acting on this complaint, the CCI formed a prima facie opinion and, in exercise of its powers under section 26(1)[7] of the Competition Act, directed the Director General (DG) to undertake a detailed investigation. DG examined Google's contractual arrangements with Original Equipment Manufacturers (OEMs). The focus was on three key agreements:

1. *Mobile Application Distribution Agreement (MADA),* which required OEMs to pre-install a bouquet of Google applications—such as Chrome, Search, YouTube, and others—as a condition for accessing the Play Store.
2. *Anti-Fragmentation Agreement (AFA),* which prevented OEMs from developing or supporting Android forks.
3. *Android Compatibility Commitment (ACC),* which reinforced restrictions to maintain uniformity across devices.

The DG concluded that these agreements tied the Play Store to Google's own applications, created barriers for rival app developers, and discouraged innovation in mobile operating systems. The CCI defined its 'relevant market': "licensable smart mobile operating systems in India, app stores for Android, general web search services, mobile web browsers, and online video hosting platforms". It held that Google was dominant in each of these markets and had abused its dominance. On October 20, 2022, the CCI imposed a fine of ₹1337.76 crore under section 27(b) and issued broad behavioural directions. These included:

i. Stopping the practice of linking Play Store licensing with pre-installation of Google apps.
ii. Ensuring that users are provided with the option to select their preferred default search engine at the time of device setup.
iii. Giving users the option to uninstall pre-installed apps.
iv. Removing restrictions on OEMs from developing or using Android forks.

Google challenged the CCI's order before the NCLAT. The Tribunal, at the interim stage, directed Google to deposit 10 percent of the penalty. Google carried the matter in appeal to the Supreme Court; however, the Court declined to grant relief and instead directed the NCLAT to dispose of the appeal expeditiously. The NCLAT delivered its final judgment on March 29, 2023.

III. ISSUES INVOLVED

The Tribunal was called upon to determine several important questions arising from the CCI's findings. A central issue was whether a finding of abuse under section 4 of the Competition Act requires an 'effects-based analysis' of market impact, or whether the mere existence of restrictive agreements is sufficient. Closely linked to this was the question of whether the mandatory pre-installation of Google's Apps on Android devices amounted to an unfair condition or an anti-competitive tying arrangement. Another important issue was the

[6] *Umar Javeed, Sukarma Thapar and Aaqib Javeed* v. *Google LLC*, Case No. 39 of 2018; Order of the CCI dated Oct. 20, 2022.
[7] The Competition Act, 2002 (Act 12 of 2003), s. 26(1).

legality of Google's anti-fragmentation clauses, which restricted device manufacturers from developing or supporting Android forks. The Tribunal had to decide whether such provisions unduly restricted technical or scientific development. In addition, it examined whether Google's conduct effectively denied market access to rival search engines, browsers, and video platforms, thereby entrenching its dominance.

The Tribunal also considered whether Google had leveraged its dominance in the Android operating system and app store markets to protect or extend its position in other adjacent markets, such as search and video hosting. Alongside these substantive questions, the Tribunal was asked to address procedural objections, including whether there were defects in the DG's investigation or in the CCI's adjudicatory process. Finally, the Tribunal had to evaluate whether the penalty imposed was proportionate and based on the correct assessment of relevant turnover, and whether the remedial directions issued by the CCI were necessary, proportionate, and enforceable in practice.

IV. Arguments of the Parties

Google argued that its contracts ensured compatibility and safety. Google further contended that it was subject to significant competitive pressure from Apple, arguing that Android directly competes with Apple's iOS and, therefore, could not be regarded as dominant in the relevant market. According to Google, since consumers can choose between Android and iOS, the relevant market must include both operating systems. Google said pre-installation was a legitimate promotional strategy to recoup Android investments and that users remained free to download alternatives. The Company claimed pre-installation did not block rivals because users could download alternatives and manufacturers could add other apps. It said the CCI relied too much on the EU Android case and failed to show actual harm. It also argued the fine was excessive and that the CCI process was flawed. The CCI said Google was dominant in key markets and tied Play Store access to pre-installation of its own apps. This gave Google's services an unfair edge and made it hard for rivals to compete. Anti-fragmentation rules also blocked innovation. The CCI argued that the fine was fair and based on Google's turnover in India.

V. Tribunal's Observations

The NCLAT carefully analysed each of these issues. On the methodological question, it held that section 4 requires an effects-based analysis. A mere finding of dominance and restrictive agreements is not enough; there must also be evidence that the conduct harms competition. However, it found that in this case the CCI had indeed demonstrated foreclosure of rivals and adverse market effects. On tying, the Tribunal observed that Play Store access was essential for any Android device. By making this access conditional on pre-installation of the full suite of Google apps, Google imposed an unfair condition on original equipment manufacturers (OEMs). The Tribunal emphasised that pre-installation and default settings strongly influence consumer behaviour, as most users do not download alternatives once an app is pre-installed. This gave Google's apps a significant competitive advantage and foreclosed rivals. On market definition, the Tribunal agreed that iOS is non-licensable and therefore sits outside the relevant market for licensable mobile operating system. That choice is central to assessing dominance in India's device vendor ecosystem. On the "free service" point, the Tribunal accepted the CCI's view that Android, the Play Store, Search and related services function in multi-sided markets where data fuels product quality and advertising revenue, so an effects-based analysis must consider the role of data advantages. On anti-

fragmentation, the Tribunal acknowledged that preventing fragmentation could help maintain consistency. But it concluded that the broad scope of the Anti fragmentation Agreement (AFA) and Android Compatible Commitment (ACC) discouraged innovation by blocking OEMs from experimenting with Android forks. This restricted technical and scientific development, violating section 4(2)(b)(ii).

The Tribunal also upheld the finding of denial of market access. By tying its apps with the Play Store and restricting OEM choices, Google made it difficult for rival search engines, browsers, and video platforms to compete effectively. This amounted to leveraging dominance from the operating system and app store markets into adjacent markets, contravening section 4(2)(c) and 4(2)(e). Google's procedural objections were dismissed. The Tribunal held that the DG's investigation followed due process, reliance on foreign precedents did not invalidate the order, and the absence of a judicial member did not undermine the validity of the CCI's decision. On penalty, the Tribunal confirmed the fine of ₹1337.76 crore. It accepted the CCI's approach to calculating relevant turnover from Google's Indian operations and held that the fine was proportionate to the gravity and duration of the infringement. The Tribunal, however, modified the remedies. It struck down four of the CCI's directions (paras 617.3, 617.7, 617.9, 617.10) as disproportionate or lacking adequate justification. The rest of the directions were upheld as necessary to restore competitive conditions.

VI. Outcome of the Case

The NCLAT dismissed most of Google's appeal. It upheld the CCI's findings of abuse of dominance under Section 4, confirmed the penalty of ₹1337.76 crore, and maintained most of the remedial directions.[8] Only a few directions were struck down. Google was required to pay the balance of the fine.

VII. Analysis of the Case

The CCI's decision and the NCLAT's judgment together offer a clear picture of how Indian competition law applies to digital markets. A major contribution of the case was the definition of the relevant market. Google argued that Android competes with Apple's iOS. The Director General, however, excluded iOS because it is a closed, non-licensable system, while Android is licensable to device manufacturers. The Commission and later the Tribunal accepted that the relevant market was "licensable smart mobile operating systems in India". On this basis, Google's dominance was obvious, as Android accounted for almost the entire market.

The authorities also rejected Google's claim that its search services are "free" and therefore outside competition analysis. The Commission pointed out that digital platform is multi-sided. Even when users do not pay, companies like Google monetise user attention and data through advertising. Data itself has value and acts as a competitive asset. By collecting vast amounts of user data and using it to improve targeted advertising, Google strengthened its position in both operating systems and search. The investigation carefully assessed how pre-installation of apps affects user behaviour. Evidence showed that when an app comes pre-installed, most users do not download alternatives. This "default effect" created a powerful barrier to entry. That behavioural reality transforms what might look like a neutral

[8] *Supra* note 4.

"promotion" into a structural barrier. Competing apps struggled to gain visibility, even if they were innovative. Google's defence that pre-installation was just a promotional strategy to recover investment was dismissed. The Tribunal agreed that it went beyond promotion and locked in consumer choice, reducing competition.

These findings highlight how Google's large revenue base and continuous reinvestment gave it an edge that rivals could not match. While earning profits and innovating are not wrong in themselves, combining these advantages with exclusionary practices such as tying, defaults, and restrictive contracts created a feedback loop. More users meant more data, better data improved services, improved services attracted more users, and rivals were locked out. This cycle entrenched Google's dominance across markets. At the same time, the Tribunal took a balanced approach to remedies. It upheld most of the CCI's directions but struck down those that were disproportionate or lacked evidence. This shows that Indian courts will not rubber-stamp every regulatory order but will insist on proportionality. The judgment also reinforced that abuse under section 4 must be tested through effects, aligning Indian law with global practice.

Still, challenges remain. The Tribunal did not lay down a clear test for how to measure competitive effects, leaving room for uncertainty. Reliance on EU reasoning, while useful, risks importing foreign assumptions. Enforcement will also be a problem: monitoring compliance with behavioural remedies across hundreds of devices and manufacturers is complex. Comparisons with global cases show that India's approach is close to the European Union, which fined Google €4.34 billion in 2018 for similar practices, a fine largely upheld by the General Court in 2022.[9] The United States has been stricter in requiring clear exclusionary proof before penalising defaults.[10] India's decision therefore aligns with Europe's focus on market structure and consumer choice. Overall, the case demonstrates the flexibility of Section 4 of the Competition Act to deal with digital platforms. It strengthens the hand of regulators while recognising the need for proportional remedies.

VIII. CONCLUSION

The *Google* v. *CCI* case stands as a watershed moment in the evolution of Indian competition jurisprudence. On the merit side, it demonstrates that Indian authorities are ready to embrace an effects-based approach to abuse of dominance. Instead of condemning form alone, the CCI and NCLAT looked at how Google's conduct actually shaped consumer behaviour and foreclosed competitors. This represents an important step in aligning Indian practice with international best standards. The judgment also recognises the central role of defaults and data in digital markets. By acknowledging that pre-installed apps and large data advantages can entrench power, the ruling modernises the understanding of "market power" for the digital age. At the same time, NCLAT showed restraint by pruning remedies that lacked justification, underscoring the judiciary's insistence on proportionality and regulatory discipline.

On the demerit side, the decision leaves open several uncertainties. First, while insisting on an effects-based approach, the Tribunal did not articulate a clear test or framework for measuring anti-competitive effects. Future cases may therefore struggle with evidentiary standards and consistency. Second, the Tribunal's heavy reliance on the European

[9] *Google LLC* v. *European Commission*, Case T-604/18, Judgment of the General Court (Sep. 14, 2022).
[10] *United States* v. *Microsoft Corp*., 253 F.3d 34 (D.C. Cir. 2001).

Union's Android decision risk importing foreign reasoning without fully accounting for Indian market realities, where mobile penetration, consumer sophistication, and app ecosystems differ substantially. Third, the enforcement of behavioural remedies remains a formidable challenge. Monitoring compliance across hundreds of OEMs, app developers, and software updates requires regulatory resources that the CCI may not always possess. Without effective follow-up, even well-designed remedies looks symbolic rather than transformative.

Taken together, the case confirms that dominant digital platforms cannot impose unfair contractual terms that distort competition or limit consumer choice. It signals that Indian regulators and courts are prepared to confront Big Tech directly, yet with a careful eye on proportionality. This balance between assertiveness and restraint is crucial. On one hand, it reassures consumers and rivals that competition law can keep pace with the realities of digital markets. On the other, it signals to global investors and technology firms that India's enforcement will be firm but not arbitrary. The ruling's significance also extends beyond the immediate dispute. It provides jurisprudential clarity that Section 4 of the Competition Act is flexible enough to deal with digital ecosystems. It also adds momentum to policy debates on whether India needs an *ex-ante* Digital Competition Act to complement case-by-case enforcement. Finally, it situates India within the global movement to regulate platform dominance: closer to the European Union's structural approach than to the more cautious stance of the United States.

In conclusion, *Google* v. *CCI* not only resolves a high-profile dispute but also sets the tone for the future of Indian digital competition law. It highlights the opportunities and limits of section 4, places consumer welfare at the heart of regulatory design, and establishes proportionality as the guiding principle for remedies. As digital markets continue to evolve, this ruling will remain a touchstone for regulators, courts, and scholars seeking to balance innovation with fairness in the Indian economy.