

UMAR JAVED & ORS V GOOGLE & ANR.

Case No. 39 of 2018

Decision Date: 16.04.2019

Keywords:

Rule: s 4(2)(a) of the Competition Act, 2002.

The Informants are consumers of the Android smartphones. The OP (Google) is a multinational conglomerate specializing in internet related products and services.

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. Majority of smartphone and tablet manufacturers in India use OP's Android Operating System (OS). 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).

Google 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.

ALLEGATIONS

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, there are four allegations against Google:

- **s 4(2)(b)(ii) limiting scientific or technical development to the prejudice of consumers:** 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.
- **s 4(2)(b)(ii) limiting scientific or technical development to the prejudice of consumers:** Google prevents smartphone and tablet manufacturers in India from developing and marketing modified 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.
- **s 4(2)(d) tying or bundling: Google ties 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.

OP's Response:

- The preinstallation obligation imposed by Google under MADA is limited in scope. Preinstalled Google app icons take up very little screen space. OEMs can use the remaining space to preinstall, promote and even provide superior placement to both their own, and third-party apps. The MADA preinstallation conditions are not exclusive. Nor are they exclusionary.
- 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.
- 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. But, this freedom 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) are free to differentiate their devices on top of that baseline. 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 is entirely optional, though agreeing to adhere to the COD is a condition of MADA.

ANALYSIS

Relevant Market Analysis

Since the allegations pertain to Google using its dominant position in one market to cement its position in other markets, the Commission, apart from determining a primary market, decided to delineate associated relevant markets too.

Primary Relevant Market: Market for licensable smart mobile device operating systems in India

- **Relevant Product Market:** 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
- **Relevant Geographic Market:** Since the conditions of competition are homogeneous, the relevant geographic market will be considered as the whole of India.

First Associated Market: the relevant market for app stores for android mobile operating systems also appears to be appropriate and necessary for the assessment of the impugned conduct.

Second Associated Market: The relevant market for online general web search service proposed in consonance with the definition considered by the Commission in Matrimony.Com Limited v. Google LLC & Ors., Case Nos. 07 and 30 of 2012.

Third Associated Market: For each application such as online video hosting platform (where YouTube competes), browser (where Chrome competes), map, music etc., there will be separate relevant market.

Analysis of OP's position in the Relevant Markets

Primary Market: Google prima facie appears to be dominant as per: statista.com, in 2017, which said that Android accounted for 80% of India's mobile OS market; as per the Economic Times, in 2018, prominent smartphone manufacturers in India together held 82% of the Android market; and European Commission's decision against Google on Android (Case No. 40099) where Google was found to be dominant in the markets for general internet search services, licensable smart mobile OS.

First Associated Market: 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.

Second Associated Market: The Commission found Google to be dominant in this relevant market in its decision in Matrimony.Com Limited v. Google LLC & Ors.

Third Associated Market: Every application operates in a separate relevant market, separate analysis of dominant position was not done by CCI in this order.

Analysis of Abuse of Dominance:

First, the Commission observed that MADA requires the device manufacturers (who choose to preinstall Google mobile apps) to preinstall the entire suite of Google apps and in predetermined 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;
- 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;

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. Therefore, reducing the ability and incentive of device manufacturers to develop and sell devices operating on alternative versions of Android, and thereby limited technical development to the prejudice of consumers.

Second, 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. Therefore, this mandatory preinstallation of entire GMS suite under MADA amounts to imposition of unfair condition on the device manufacturers; It also amounts to leveraging of Google's dominance in Play Store to protect the relevant markets such as online general search.

HOLDING:

First, 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 produced 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.

Second, 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 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.

Questions requiring detailed investigation by the DG:

- 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.
- Google's plea 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.
- Whether 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.
- Google's plea that MADA preinstallation conditions are not exclusive or exclusionary, must be appropriately examined during investigation.

Order for Investigation:

- 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 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.