LEGAL AMENITY LAW JOURNAL – ISSN 3107-9148

Volume II Issue II March – April 2026

REVISITING DIGITAL DOMINANCE: A CRITICAL ANALYSIS OF GOOGLE LLC & ANR V. COMPETITION COMMISSION OF INDIA & ORS.

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ABSTRACT

The rapid growth of digital markets has made it increasingly difficult for traditional competition law frameworks to keep up. The decision in *Google LLC v Competition Commission of India* is a strong example of this shift, particularly in the context of platform-based markets. This case commentary looks at how the Competition Commission of India (CCI) approached Google's conduct in the Android ecosystem, along with the developments before the NCLAT and the Supreme Court. It examines issues such as market definition, dominance in zero-price markets, and the legality of agreements like MADA and AFA. While the decision shows a clear attempt to address modern forms of market power, it also highlights certain gaps, especially in defining digital dominance and balancing regulation with innovation. Overall, the case reflects both progress and uncertainty in how competition law engages with digital economies.

Keywords: Competition Law; Abuse of Dominance; Digital Platforms; Android; CCI; Market Definition

INTRODUCTION

Over the last decade, digital platforms have moved far beyond being simple intermediaries. They now operate as core structures within the economy, shaping how markets function and how users interact with services. Companies like Google are not just participants in these markets, they often control access to them. This shift has made it harder for traditional competition law, which largely focuses on price and output, to fully capture the realities of digital dominance.

The dispute involving Google and the Competition Commission of India (CCI) emerges within this broader context. The case concerns allegations that Google abused its dominant position in the Android ecosystem by imposing restrictive contractual obligations on smartphone manufacturers. These obligations, according to the CCI, limited competition and reinforced Google's market power.

On 20 October 2022, the CCI delivered its decision in *In Re: Android Mobile Operating System Case*, imposing a penalty of ₹1337.76 crore on Google and directing it to cease certain practices.[1] The decision was subsequently challenged before the National Company Law Appellate Tribunal (NCLAT)[2], which delivered its judgment on 29 March 2023, largely affirming the findings of the CCI.[2] The matter eventually reached the Supreme Court of India, where interim relief was considered but not substantially granted, allowing the CCI's directions to remain operative.[3]

What makes this case particularly significant is not merely the finding of abuse, but the broader legal questions it raises regarding the application of competition law to digital ecosystems. It forces a reconsideration of foundational concepts such as market definition, dominance, and consumer harm in contexts where traditional metrics are inadequate. In many ways, the case shows that the difficulty is not just in identifying dominance, but in understanding what dominance actually looks like in digital markets.

LITERATURE REVIEW

Recent scholarship has increasingly focused on the challenges posed by digital markets to traditional competition law frameworks. Scholars have argued that concepts such as market

1 ibid

2 National Company Law Appellate Tribunal, Google LLC v Competition Commission of India *(Company Appeal (AT) No 01 of 2023, judgment dated 29 March 2023).*

3 Supreme Court of India, Google LLC v Competition Commission of India *(order dated 19 January 2023).*

definition and dominance require reconsideration in platform-based environments, where services are often provided at zero price and value is derived from data and network effects.

Internationally, decisions of the European Commission and the General Court in cases involving Google have played a significant role in shaping the discourse on digital dominance. These decisions emphasise the importance of understanding ecosystems rather than isolated product markets.

In the Indian context, cases such as *MCX Stock Exchange Ltd v National Stock Exchange of India Ltd* and *Shamsher Kataria v Honda Siel Cars India Ltd* have contributed to the development of principles relating to abuse of dominance, particularly in non-traditional market settings.

However, there remains limited consensus on how these principles should be applied to digital platforms. This paper builds on existing scholarship by examining how the Indian competition framework is evolving in response to these challenges.

CASE BACKGROUND

The proceedings originated from information filed by consumers and industry participants alleging anti-competitive conduct by Google in relation to its Android operating system. Android, developed by Google, is an open-source mobile operating system that is widely used by smartphone manufacturers across the globe. At the same time, while the base version of Android is open-source, access to essential proprietary applications such as the Google Play Store requires manufacturers to enter into specific agreements with Google.

The CCI's investigation identified three key agreements:

1. **Mobile Application Distribution Agreement (MADA)**

   This agreement required original equipment manufacturers (OEMs) to pre-install a suite of Google applications, including Google Search, Chrome, and YouTube, as a condition for obtaining the Google Play Store license.

2. **Anti-Fragmentation Agreement (AFA)**

   These agreements prevented OEMs from developing or selling devices based on forked versions of Android that were not approved by Google.

3. **Revenue Sharing Agreements (RSA)**

Under these arrangements, OEMs were incentivized to exclusively pre-install Google Search in exchange for a share of advertising revenue.

The CCI found that these agreements collectively created barriers to entry for competing applications and operating systems. It held that Google had leveraged its dominant position in the market for licensable mobile operating systems to protect and expand its dominance in adjacent markets, particularly online search and app distribution[4].

Google, in its defence, argued that:

- Android is an open-source platform that promotes competition
- Pre-installation ensures a consistent and secure user experience
- Apple's iOS provides strong competitive pressure

Despite these arguments, the CCI concluded that Google's practices amounted to abuse under Section 4 of the Competition Act, 2002. It imposed both monetary penalties and behavioural remedies, including restrictions on tying arrangements and limitations on anti-fragmentation clauses.

The NCLAT, in its judgment dated 29 March 2023, upheld the majority of the CCI's findings while slightly modifying the penalty[5]. It agreed that Google's conduct had the effect of denying market access and restricting innovation.

Google subsequently approached the Supreme Court, seeking a stay on the CCI's order. However, in January 2023, the Court declined to grant interim relief, observing that the issues raised required detailed consideration and did not warrant immediate interference.

LEGAL ISSUES

The case presents a cluster of interrelated legal issues:

- Whether Google holds a **dominant position** in the relevant market
- The appropriate method for defining the **relevant market in digital ecosystems**

4 (n 1)
5 (n 3)

- Whether Google's agreements constitute **abuse of dominance under Section 4**
- The role of **consumer choice and behavioural bias** in assessing anti-competitive effects
- The extent to which competition law should intervene in **innovation-driven markets**

What becomes immediately clear is that these issues cannot be addressed in isolation. The determination of dominance, for instance, depends heavily on how the market itself is defined. Similarly, the assessment of abuse is influenced by how consumer behaviour is interpreted in digital contexts.

ANALYSIS AND COMMENTARY

The CCI defined separate relevant markets, including the market for licensable mobile operating systems and app stores for Android[6]. This approach excluded Apple's iOS on the ground that it is not licensed to third-party manufacturers.

At one level, this reasoning aligns with traditional competition law principles. But in digital markets, that approach starts to feel incomplete.

Consumers do not experience Android and iOS as separate licensing markets—they experience them as competing ecosystems. By narrowing the market definition, the CCI effectively reduced competitive pressure in its analysis, making Google's dominance appear stronger than it might be in a broader, ecosystem-based view.

A similar concern has appeared in European jurisprudence, particularly in *Case T-604/18 Google LLC v European Commission*, where the General Court upheld a narrow market definition but acknowledged the complex, interconnected nature of digital markets.[7]

What this shows is that **market definition in digital cases is no longer just a technical step—it can quietly decide the outcome**.

2. Dominance Beyond Price: A Shift in Analytical Thinking

6 (n 1)

7 Case T-604/18 Google LLC v European Commission *EU:T:2022:541.*

Google does not charge for Android, which makes traditional indicators like pricing power less useful. The CCI instead relied on structural indicators such as control over the Play Store, OEM dependence, and network effects.[8]

This shift reflects a broader evolution in competition law. Indian jurisprudence has previously dealt with dominance in non-traditional contexts—for instance, in MCX Stock Exchange Ltd V. National Stock Exchange of India Ltd, where zero pricing was also scrutinized as a potential tool for exclusionary conduct.

That case established that **price alone cannot determine competitive harm**, a principle that becomes even more relevant in digital markets.

However, the present case stops short of building a structured framework around these factors. Dominance here is identified, but not fully theorized. And that leaves a gap—because future cases will need clearer benchmarks.

3. Anti-Fragmentation Agreements: Control vs Exclusion

Google's Anti-Fragmentation Agreements prevented OEMs from developing or selling devices based on forked Android versions. Google argued that this was necessary to maintain ecosystem integrity.

The CCI, At the same time,, treated these agreements as exclusionary.

The tension here is not new. Competition law has long struggled with distinguishing between **efficiency-enhancing restrictions and anti-competitive conduct**. A useful parallel can be drawn with Shamsher Kataria v Honda Siel Cars India Ltd, where restrictions in the automobile spare parts market were examined for their impact on aftermarket competition.

In both cases, the core issue is similar:

- When does control become excessive?
- When does standardization begin to restrict entry?

The present judgment recognizes the problem but avoids drawing a clear line. That ambiguity could become problematic, especially in future cases involving platform governance.

8 MCX Stock Exchange Ltd v National Stock Exchange of India Ltd (2011) CompAT.

4. Pre-Installation, Tying, and Behavioural Lock-in

The requirement to pre-install Google applications under MADA was treated by the CCI as a form of tying. At first glance, this appears to be a fairly standard competition concern. However, the issue becomes more complex when user behaviour is taken into account.

Most users tend to stick with what is already available on their devices. Once an application is pre-installed, it is more likely to be used (not necessarily because it is better, but because it is visible and convenient. This creates what behavioural economists describe as default bias).[10]

The CCI's reasoning reflects an awareness of this behavioural aspect, which is a positive development. At the same time, it raises a difficult question. If default settings influence user choice in almost every digital product, where should competition law draw the line?

Treating all defaults as problematic could restrict product design, while ignoring them entirely could allow dominant firms to quietly strengthen their position. The judgment identifies this tension but does not fully resolve it.

5. Leveraging Dominance Across Markets

The CCI concluded that Google leveraged its dominance in the Android operating system to strengthen its position in online search and browser markets.[9]

This concept of leveraging is well established in competition law, but its application in digital markets requires careful handling.

Unlike traditional tying cases, digital services are often interconnected by design. The integration of services can enhance user experience, but it can also create barriers for competitors.

A comparable concern was raised in Belaire Owners' Association v DLF Ltd, where dominance in one segment was used to impose unfair conditions in another.

The present case extends this logic into the digital realm. At the same time, it also highlights the difficulty of distinguishing between **value-creating integration and anti-competitive leveraging**.

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9 CCI (n 1)

6. Innovation vs Regulation: An Unresolved Balance

Google's central defence was that its practices promote innovation by ensuring consistency, security, and efficiency.

This argument cannot be dismissed lightly.

Competition law is not meant to penalize success or discourage innovation. At the same time, it must prevent market structures that limit future competition.

The challenge is finding the balance.

The decision leans towards regulatory intervention, which is understandable given the scale of Google's influence. But it does not fully engage with the long-term risk that excessive intervention could discourage platform development.

What emerges is a familiar tension **the law is trying to regulate fast-moving markets using relatively slow-moving tools**.

CONCLUSION

The decision in *Google LLC v Competition Commission of India* marks a significant development in the application of Indian competition law to digital markets. It moves beyond traditional frameworks and acknowledges the role of data, network effects, and platform dependency in shaping market power.

At the same time, the case reveals important conceptual gaps.

First, the reliance on narrow market definitions risks overstating dominance and oversimplifying competitive dynamics. Second, the absence of a clear and consistent test for digital dominance creates uncertainty for both regulators and market participants. Third, the distinction between legitimate platform control and anti-competitive conduct remains insufficiently defined.

Despite these limitations, the case represents a necessary step forward. It signals a willingness on the part of Indian competition authorities to engage with the complexities of digital ecosystems, even if the analytical tools are still evolving.

In the final analysis, the judgment does not offer a complete solution. Instead, it opens the door for a more refined and context-sensitive approach, one that recognizes that digital markets require not just the application of existing principles, but their careful adaptation. If anything, the case reflects not the failure of competition law, but its ongoing struggle to adapt to markets that no longer behave in traditional ways.

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