



COMPETITION ACT

Unpacking Google's Play Store Policies: Is the Tech Giant Stifling Competition in Real Money Gaming?

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PUBLISHED 4 December 2024

Introduction

The CCI addressed allegations brought by Winzo Games Private Limited (Winzo) against Google LLC (Google), accusing the tech giant of abusing its dominance in the app store and licensable operating system (OS) markets. The order focused on issues such as restrictive app listing policies, prejudicial payment warnings, discriminatory ad policies, and practices surrounding Real Money Gaming (RMG) applications.

Complaint Details (Paras 1-9)

The Informant Winzo, a digital gaming company, alleged that Google abused its dominant position in the markets for licensable OS for smart mobile devices and app stores in India. It claimed that Google's restrictive policies disadvantage developers of RMG apps, particularly those offering skill-based games.

Allegations

App Listing Restrictions

- Google Play Store policies prohibit the listing of RMG apps, including those offering skill-based games, despite their recognition as legitimate business activities under Indian law.
- Developers like Winzo rely on sideloading, where users download apps directly from the developer's website. Google exacerbates this challenge by displaying malware warnings during sideloading, discouraging users and damaging developers' app reputations.

Payment Warnings on Google Pay

- Arbitrary warnings, such as "This person might be flagged as risky. Check again or cancel this payment," discourage transactions on RMG platforms, impacting revenues and user experience.

Selective Pilot Program for DFS and Rummy

- In September 2022, Google launched a Pilot Program allowing only Daily Fantasy Sports (DFS) and Rummy apps to be listed on the Play Store. This selective inclusion created a perception of legitimacy for these apps, sidelining other RMG developers.

Discriminatory Google Ads Policy

- Google Ads restricted advertisements to only DFS and Rummy apps from November 2022, significantly affecting other RMG apps' visibility and market presence.

Market Definitions

Winzo identified two relevant markets where Google holds a dominant position:

1. The market for licensable OS for smart mobile devices in India, where Android commands the majority share.
2. The market for app stores on devices with licensable OS in India, dominated by the Google Play Store.

Legal Framework

Winzo alleged that Google's practices violated Sections 4(2)(a)(i), 4(2)(b)(i), and 4(2)(c) of the Competition Act, 2002, which prohibit:

- Unfair or discriminatory conditions in the sale of goods or services.
- Limitations on market development hindering innovation or scientific progress.
- Denial of market access to competitors.

Winzo sought the Commission's intervention to address these practices and ensure fair competition in the digital ecosystem for RMG apps.

Consideration by the Commission (Paras 10-12)

Response Process

- The CCI sought submissions from both parties. Winzo filed a rejoinder, while Google explained its policies and practices.
- The Ministry of Electronics and Information Technology (MEITY) was consulted to clarify the regulatory landscape for RMG apps.

Preliminary Hearing

- Both parties presented their positions during a conference. Additional written synopses were filed.

Input from MEITY

- MEITY confirmed that RMG app guidelines were evolving and would rely on a Self-Regulatory Body (SRB) framework for certification, which was not operational at the time.

Analysis of the Commission (Paras 13-22)

Relevant Market Analysis

The CCI delineated three markets:

1. Licensable OS for smart mobile devices in India.
2. App stores on devices with licensable OS in India.
3. Online search advertising services in India.

Google was found to dominate all three markets based on its established presence and previous cases.

Abuse Allegations

The CCI noted prima facie evidence of restrictive policies adversely impacting competition, particularly regarding Google's selective programs and practices.

Preliminary Conclusions

The Commission raised concerns about Google's selective policies favouring certain RMG categories, potentially distorting competition.

RMG PILOT

The paragraphs (23–39) of the document detail the concerns, justifications, and the Commission's views regarding Google's Real Money Gaming (RMG) Pilot Program and its implications. Here's a summarized overview:

Key Allegations by Informant (Winzo Games):

1. **Discriminatory RMG Pilot Program:** Google initiated a Pilot Program allowing only Daily Fantasy Sports (DFS) and Rummy apps on its Play Store, excluding other RMGs, which was perceived as arbitrary and biased.
2. **Market Access Denial:** Non-participation in the Pilot Program increased the Informant's cost of acquiring users and restricted market access.
3. **Unfair Competition:** Preferential treatment to DFS and Rummy apps provided them a competitive edge, allowing them to gain significant user traction.

Google's Defense:

1. **Legal and Regulatory Justifications:** The Pilot focused on DFS and Rummy due to legal clarity and user popularity, enabling a safer and controlled test environment.
2. **Prolonged Pilot Period:** Google's extensions to the Pilot were aimed at aligning with evolving regulations and operationalizing self-regulatory bodies (SRBs) for online gaming.

3. **Non-discrimination:** Google argued it applied uniform criteria, and its selection was based on objective considerations like legal certainty and risk minimization.

Commission's Observations:

1. **Potential Competitive Distortion:** The selective inclusion of DFS and Rummy in the Pilot created a two-tier market, disadvantaging excluded RMG apps.
2. **Prolonged Pilot Effects:** Extending the Pilot indefinitely could entrench advantages for selected apps, creating barriers for others and potentially distorting competition.
3. **Necessity for Investigation:** The Commission deemed it essential to investigate whether Google's conduct violated competition laws by imposing unfair conditions and denying market access.

Outcome:

The Commission concluded that:

- Google's RMG Pilot and its criteria might violate Sections 4(2)(a)(i), 4(2)(b), and 4(2)(c) of the Competition Act, necessitating a detailed investigation.
- Google's policies could unfairly disadvantage non-DFS and non-Rummy RMG developers by denying equitable market opportunities.

Detailed Analysis: Google Ads Policy and Its Implications (Paras 40-53)

Informant's Allegations

- Google's Ads policy restricted advertisements to DFS and Rummy apps, excluding other RMG apps.
- This exclusion led to significant declines in app installs and user acquisition for developers like Winzo.
- Winzo argued that Google's keyword bidding practices allowed competitors to exploit its trademark, further disadvantaging its market position.

Google's Defense

- Google claimed its Ads policy consistently allowed advertisements for DFS and Rummy apps based on their legal recognition as games of skill.
- The company defended keyword bidding as a user-centric approach to enhance search relevance.

CCI's Observations

- The Commission identified inconsistencies in Google's approach, citing a dual policy where DFS and Rummy ads were allowed, but Play Store listing was initially restricted.
- Google's selective policies appeared discriminatory, limiting market access for non-DFS/Rummy RMG developers.

Sideloaded and Payment Warnings (Paras 54-61)

Sideloaded Warnings

- Winzo alleged that Google's warnings during sideloading mislead users and harm developers' reputations.
- The CCI refrained from intervening due to pending litigation on this issue.

Payment Warnings

- The Commission noted prima facie evidence that Google's payment warnings adversely impact user trust and transactions for non-DFS/Rummy apps.
- The warnings seemed selectively applied, raising competition concerns.

Conclusion and Directives (Paras 62-65)

Prima Facie Findings

The CCI found evidence of violations under Sections 4(2)(a)(i), 4(2)(b), and 4(2)(c) of the Competition Act, indicating:

- Discriminatory conditions.
- Restriction of market access and technical development.
- Denial of market access to competitors.

Directive for Investigation

The Commission directed the Director General (DG) to conduct a comprehensive investigation into Google's practices and submit a report within 60 days.

Confidentiality and Final Remarks

The CCI clarified that its observations are preliminary and non-binding.

Conclusion

The CCI's preliminary findings in Case No. 42 of 2022 against Google highlight the potential for anti-competitive practices in India's burgeoning digital ecosystem, particularly concerning Real Money Gaming (RMG) applications. By focusing on restrictive app listing policies, discriminatory ad practices, and selective pilot programs, the Commission has underscored the need for fair and transparent market dynamics. While Google's defenses cite legal clarity and operational challenges, the Commission's directive for a detailed investigation signals its commitment to encouraging competition and innovation. This case is a pivotal moment for the evolving regulatory framework in India's digital market, with significant implications for app developers, consumers, and the broader tech landscape. A balanced resolution will be essential to ensuring equitable market access and promoting sustainable growth in the digital economy.

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