November 2022

TECHNOLOGY
INSIGHT

ANIMESH SINHA & PARTNERS

ADVOCATES & SOLICITORS

CCI decides on Google's alleged abuse of dominant position

On 25.10.2022, the Competition Commission of India delivered its judgment in a complaint against Google. In a 200 page thesis of a judgment, CCI critically assessed certain aspects of Google's business operations in India. Eventually, the tech giant was held guilty of abuse of dominant position and penalised with a fine of Rs. 936.44 Crore.

Google has been held liable for:
a. Making the use of Google's Play Billing System (GPBS) exclusive and mandatory by app developers on Google's Play Store. As per CCI, all app purchases and in-app purchases were to be mandatorily and exclusively processed by the app developers/owners through GPBS. Additionally, Google's payment policies comprise of an 'Anti-Steering Provision' restricting app developers from informing consumers within an app of their ability to purchase in-app content through other sources, such as a website.
b. Excluding other UPI apps/mobile wallets as effective payment options on Play Store. It was contended against Google that Google Pay has been integrated within the play store with intent flow methodology, whereas other UPI apps can be used through collect flow methodology.

During investigation, it was revealed that the intent flow technology is far superior and user-friendly than collect flow technology, with intent flow offering significant advantages to both customers and merchants. CCI observed that this gave Google a significant advantage over other UPI apps leading to higher share of overall UPI payments.

Despite the decision being widely reported and commented upon, what has not seen enough traction is Google's side of the story and the indictments it successfully defended.

In response to compulsory and exclusive use of GPBS, Google contended that GPBS enables Google to protect its users by making available a safe and uniform billing system. GPBS relieves the app developers of additional administrative burden and costs by allowing for efficient collection and processing of Google's service fees. It further contended that googles payment policy is fair and the use of standard terms reduce the potential for discrimination. Even otherwise, developers have several alternative options to distribute the apps on android devices such as Samsung's play store if they do not agree with Google Play's policies and thus, do not wish to distribute through Google Play.

So far as exclusion of other UPI apps was concerned, Google submitted that the investigation report had failed to demonstrate that Google's alleged conduct had any anti-competitive effects on rival UPI apps, either within the play store or outside. It argued that the investigation report is notional at best and lacks corroborative evidence. Google offered statistics to show that its share of overall UPI transactions had actually declined from 2020 and it was other UPI payment service providers that were flourishing.

Other than what it has been held liable for as mentioned above, Google was also accused of:

1. Charging a commission of 15-30% on all app purchases and In-App Purchases(IAP) as against the payment processing fees in the range of 0-3% charged by other payment gateways.

2. Pre-installing and giving prominence to Google Pay UPI App on mobile devices.

Google successfully distinguished its service fee from payment processing charges. As per Google, it levies service fee for the hundreds of services provided by Google Play to developers and users with payment processing being only one of the said services in contrast to payment processors which only facilitate financial transactions. The payment processing costs account for only a small proportion of Google Play's service fee. Google provides access tools, programs and insights that help developers reach and engage users so they can grow their apps and games, thereby fuelling innovation and competition. The service fee covers Google's investment in Google Play and is necessary for it to provide a wide gamut of services - a cost which otherwise would have had to be born by app developers. Furthermore, the service fee is levied only once an app or an in-app purchase was made thereby enabling developers to avoid upfront costs when distributing their apps.

Google further submitted that Google pay is not preinstalled on all android devices and is not the default payment app. It only licenses its payment app to equipment manufacturers as a part of its Mobile Application Distribution Agreement (MADA) and it is upon each individual manufacturer to make a selection of apps it wishes to pre-install on its devices. Accordingly, none of the two accusation were held sustainable.

Though not a subject of popular media highlights, when under discussion, a comprehensive understanding and knowledge of the proceedings is imperative. Rationale is as important as the dictum. Big Techs are being subjected to similar scrutiny across jurisdictions. While CCI has done a meticulous job in adjudicating charges against Google, the proceedings partly seem to compensate for a legislative void. Reference in this regard may be made to the Digital Markets Act recently approved in the EU. In a blog post dated July 19, 2022 Google spoke of reducing its service fee to 3% and permitting apps to use alternate payment systems - two issues directly under discussion before the CCI - in compliance with Digital Markets Act, a legislation aimed at regulation of big tech. Selective understanding of complicated issues is likely to adversely affect law and policy making in India, especially now, when law and policy making is the need of the hour.

RBI's E-Rupee Pilot Project

Following the release of its Concept Note on Central Bank Digital Currency, the Reserve Bank of India launched its e-rupee pilot project on 01.11.2022. The pilot project tested the wholesale version of the digital rupee for settlement of transactions in government securities. As per RBI's Concept Note, CBDC is defined as a legal tender issued by the central bank in digital form. It further classifies CBDC into two categories - (a) Retail CBDC available for general use by all as an electronic form of cash for retail transaction; and (2) Wholesale CBDC available to select financial insututions and having restricted use for settlement of interbank transfers and transactions.

The e-rupee was widely praised during the pilot project by the 9 financial institutions participating in the project for its stability, efficiency and varied use cases.

Norms governing resolution professionals

The Insolvency and Bankruptcy Board of India is likely to soon come up with regulations governing insolvency resolution professionals. While the Board has been regulating resolution professionals in the past by way of independent circulars and notifications on matters such as necessary disclosures by resolution professionals, annual compliance certificates, penalties, etc, a more consolidated regulation encompassing such independent circulars is on the horizon setting a more wholesome scheme for governance.

E-Waste Management Rules, 2022

The government of India has notified the E-Waste (Management) Rules, 2022 that will come into effect on 01.04.2023. The Rules mandate to reduce the use of lead, mercury, cadmium among others in the manufacturing of electronic equipment that have an adverse impact on human health and the environment. The Rules further require employment of technology or methods to make the electrical and electronic equipment waste recyclable and to ensure that component or part made by different manufacturer are compatible with each other so as to reduce the quantity of e-waste. Compliance with the Rules is to be ensured through random sampling of electrical and electronic equipment placed on the market by the Central Pollution Control Board.

Data Protection Bill, 2022

In one of the biggest developments of November, 2022, the Ministry of Electronics and Information Technology published the new draft of the Digital Personal Data Protection Bill, 2022 for public comments.

E 10 SF Defence Colony
New Delhi - 110024

asp@sinhapartners.com
www.sinhapartners.com

+91 11 41 046 911
+91 11 40 536 008