



COMPETITION COMMISSION OF INDIA

Case No. 19 of 2020

In Re:

1. **Kshitiz Arya**
Flat No. 121, Block-I,
Nav Sansad Vihar, Sector -22,
Dwarka, New Delhi - 110077 **Informant Party No. 1**
2. **Purushottam Anand**
29A, 2nd Floor, M Block, Malviya
Nagar, New Delhi - 110017 **Informant Party No. 2**

And

1. **Google LLC**
1600 Amphitheatre Parkway,
Mountain View, CA 94043, USA. **Opposite Party No. 1**
2. **Google India Private Limited**
No 3, RMZ Infinity - Tower E,
Old Madras Road, 4th & 5th Floors,
Bangalore - 560016. **Opposite Party No. 2**
3. **Xiaomi Technology India Pvt. Ltd.**
Orchid (Block E), Ground Floor to 4th Floor,
Embassy Tech Village,
Marathahalli- Sarjapur Outer Ring Road,
Bengaluru, Karnatka 560103 **Opposite Party No. 3**
4. **TCL India Holdings Private Ltd.**
SATS CORPORATION
#160-162, Sector 21-B,
Faridabad, Haryana, India **Opposite Party No. 4**



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CORAM

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Order under Section 26(1) of the Competition Act, 2002

1. The Information in the present case has been filed by two individuals, *i.e.* Mr. Kshitiz Arya and Mr. Purushottam Anand (collectively referred to as, the ‘**Informants**’) under Section 19(1)(a) of the Competition Act, 2002 (the ‘**Act**’) against Google LLC, Google India Private Limited, Xiaomi Technology India Pvt. Ltd. & TCL India Holdings Pvt. Ltd. alleging contravention of various provisions of Sections 3 and 4 of the Act. The Opposite Party Nos. 1 and 2 are hereinafter collectively referred to as ‘**Google**’.

Facts as stated in the Information.

2. The Informants, stated to be consumers of the android based smart-phones and smart television devices, have alleged that Google is guilty of anti-competitive practices which violate Section 4 read with Section 32 of the Act. It has also been alleged that Google has entered into anti-competitive



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agreements with OP-3 and OP-4 which are in violation of Section 3 read with Section 32 of the Act.

3. OP-1 is stated to be a multinational technology company specializing in internet-related services and products. It has been averred that majority of smart mobile and tablet manufacturers in India are using OP-1's Android Operating System. Further, OP-2 is stated to be an Indian subsidiary of OP-1. OP-3 and OP-4 are stated to be leading manufacturer/seller/distributor of smart TV devices in India. The Informants have included only two of the leading smart TV/mobile manufacturers in the matter and have requested to include other Original Equipment Manufacturers (OEMs) as party, during the course of investigation, if deemed fit.

4. The Information further states that, in *Case No. 39 of 2018 vide* order dated 16.04.2019 passed under Section 26(1) of the Act (*CCI Google Android Matter*), the Commission had *prima-facie* held Google to be in contravention of Section 4 in respect of the market for licensable operating systems for smart mobile devices in India. In the said case, the Commission had *prima facie* opined that certain clauses of agreements entered into between Google and OEMs, *i.e.* Mobile Application Distribution Agreement (MADA) and Android Compatibility Commitments (ACC) amounted to abuse of dominant position by Google in violation of various provisions of Section 4 of the Act, as detailed therein. In the present matter, the Informants, relying on various media reports, averred that similar agreements are entered into between Google and smart TV OEMs also. The Informants allege that by virtue of the restrictive covenants in the said agreements, the Opposite Parties are liable



for contravention of various provisions of Section 3(4) and Section 4 of the Act.

5. The Informants have also made brief submissions on the smart TV ecosystem wherein, it has been averred that a smart TV is an upgrade to the traditional/ conventional television device in so far as it enables the consumers to stream video content available over the internet, view photos, browse internet, *etc.* Further, smart TVs require an Operating System (OS) to provide the consumer with a user-interface for facilitating the use of smart TV functions. It has also been averred that the user cannot change the pre-installed OS on a smart TV device. The Informants have further submitted that one of the most popular operating systems used by smart TV OEMs in India is Android TV, an operating system developed by Google especially for television devices. As per the Informants, Google licenses the Android TV operating system to smart TV OEMs in similar fashion as it licenses Android for smart mobile phones to smart mobile device OEMs.
6. For the purpose the present case, the Informants have submitted that the following relevant markets should be considered:
 - a) Market for licensable smart mobile operating systems in India;
 - b) Market for App Store in smart mobile devices in India; and
 - c) Market for '*licensable smart TV device operating systems*' and the market for '*App store for smart TV device operating systems*' in India.
7. The Informants have relied on the observations of the Commission in *CCI Google Android Matter* in respect of delineation of first two markets as well as dominance of Google in these markets. In relation to relevant



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market for licensable smart TV device operating systems, the Informants have averred that there are multiple TV OSs being used by smart TV OEMs; however, from the perspective of OEMs, only those operating systems are accessible to them which are licensable by the developers thereof and therefore, all non-licensable operating systems are not part of the relevant market. For this reason, the Informants have excluded all those smart TV OSs which are not licensable and tied to a particular brand such as Tizen (Samsung), WebOS (LG), *etc.* from the scope and purview of the relevant market. Moreover, operating systems which are not available in the geographic region of India such as Roku have also been excluded from the relevant geographic market.

8. To assert dominance of Google in this relevant market, the Informants have relied on the market share of different smart TV OEMs (after excluding OEMs using non-licensable smart TV OSs *i.e.* LG (WebOS) & Samsung (Tizen)) and stated that Google has market share of 75% or more. The Informants have also averred that 6 out of the top 10 smart TV OEMs have signed up with Android TV and thereby, Google has effectively established its dominance in the market for licensable operating systems for smart televisions. The Informants have further averred that Google is dominant in the market for app stores for smart TV device operating systems also, as practically all Android TVs come installed with Google's proprietary app store *i.e.* Play Store. The Informants have also referred to network effects, economic power of Google, size and importance of competitors, vertical integration of operating system and app stores, consumer dependence, entry barriers, *etc.* to assert dominance of Google in these markets.



9. The Informants have also submitted that Google, after the ruling in the European Union in 2018-19 has modified its agreements and therefore, the relevant period for contravention may be from 2009-2018/19 or up till the time when Google has sufficiently and suitably modified their contravening agreements.
10. The Informant has alleged that Google has imposed several restrictions, as summarized below, upon smart TV and smart mobile device OEMs by virtue of the agreements entered into with them which tantamount to abuse of its dominant position by Google, in terms of various provisions of Section 4 of the Act, in the abovementioned relevant markets:
- a) Bundling its two different products, *i.e.* its app store (Play Store) to the operating system developed by it for television devices, *i.e.* Android TV. All Android TV based smart TV devices are alleged to come pre-installed with Google's app store, *i.e.* Play Store for smart TVs.
 - b) Android Compatibility Commitments (ACC) formerly referred to as the Anti-fragmentation Agreements (AFA) stipulate and prevent OEMs from manufacturing/ distributing/ selling any other smart television or mobile devices which operate on a competing forked Android operating system. Thus, the developers of such forked Android operating system are denied market access resulting in violation of Section 4(2)(c) of the Act.
 - c) Google's Play Store is not available on other licensable operating system as Google does not make available its app store to any TV operating on a forked Android operating system to prevent competition in these distinct relevant markets. This in turn also results in denial of market access which is alleged to be another violation of Section 4(2)(c) of the Act.
 - d) OEMs which have entered into the ACC/AFAs with Google, are restrained from developing their own operating system based on 'forked



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android' for televisions. This has been stated to have not only created a barrier to entry into the market but actively resulted in limiting further research and scientific/ technical development of forked Android based Operating Systems. Further, as per the Informants, such restriction on the OEMs tantamount to imposition of supplementary obligations and have no connection or nexus with the licensing of OS or Google Mobile Services (GMS) for smart device.

- e) The obligations, by virtue of the ACC/ AFA, restrict freedom of action of OEMs with regard to the whole of their device portfolio (smart mobile devices, televisions, *etc.*), and not just the devices on which the Play Store or Android TV OS is pre-installed. Thus, the Informants have alleged that these obligations can in no manner be conceived as connected to agreement for licensing of Android OS or app store for TV.

11. In addition to allegations under Section 4 of the Act, the Informants have averred that the agreements entered into by the OPs are in the nature of agreements as contemplated by Section 3(4) of the Act. These agreements are causing/ have caused an appreciable adverse effect on competition and therefore, are in contravention of Section 3(1) of the Act.

12. The Informants have alleged that by virtue of agreements entered into between the OPs, smart TV OEMs have decided to refrain from selling TVs with competing forked android based operating systems. As a result, Google's competitors in this industry such as Amazon, have not been able to enter the market for licensable operating systems for TVs. The Informants have averred that these aforesaid agreements are of great significance in light of the extremely high market shares enjoyed by Google in the relevant market(s) in India.



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Consideration by the Commission

13. The Commission considered the Information, in its ordinary meeting held on 22.07.2020 and decided to seek response from Google in relation to the allegations made in the Information along with details of licensing agreements entered between Google and all smart TV OEMs having business presence in India. The Informants were also allowed to file their rejoinder, if any, to the response filed with an advance copy to Google. Such response from Google as well as rejoinder from the Informants have since been received. Google, *vide* application dated 29.01.2021 sought an opportunity to submit a short sur-rejoinder to the rejoinder filed by the Informants. It was submitted that *“the Informants have used the Rejoinder as an opportunity to introduce new information on record which was not included in the original Information, and have continued to mischaracterize Google’s agreements with Original Equipment Manufacturers without any credible basis.”* The Commission considered the same in its meeting held on 03.02.2021 and decided that the averments made by the Informants in the rejoinder which are not relatable to the allegations made in the original Information filed under Section 19(1)(a) of the Act, would not be considered by the Commission being beyond the scope of the Information. Accordingly, the application filed by Google was dismissed. Subsequently, Google filed certain additional submissions on 10.02.2021 and 14.04.2021.
14. The Commission considered the Information and the other material available on record in its ordinary meeting held on 15.04.2021 and decided to pass an appropriate order in due course.



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Submissions of Google

15. Before advertng to the issues arising out of the present Information, it would be appropriate to note, in brief, the submissions of Google.
- (i) Google makes Android Open Source Project (AOSP) license available to any third parties under an open source license, which does not oblige (or entitle) licensees to preinstall any proprietary Google apps, app store, or services. Google has claimed that the free and open-source AOSP has facilitated development of successful Android Forks, including FireOS by Amazon.
 - (ii) It is essential to understand the difference between (a) OS developed by third parties on the basis of the AOSP license, which permits anyone to study, change, and distribute the Android source code to anyone, for any purpose, and for free, and (b) Android TV, which is Google's variant of Android for the connected TV sector. Third parties, such as OEMs and operating system developers, can and do (i) modify AOSP to produce their own variants of the Android TV platform, and (ii) produce differentiated Android devices. Google licenses Android TV 'launcher' (*i.e.*, Android TV's user interface, which allows users to navigate channels, apps, and content) under an agreement namely, Television App Distribution Agreement (TADA), as well as license of Google's other proprietary apps.
 - (iii) TADA is a separate and optional agreement that enables OEMs, on a device-by-device basis, to provide users with a set of preinstalled Google apps. OEMs can decide whether to install Android TV and the accompanying Google apps (including Play) on some, all, or none of their devices. Further, app stores like Play are less



important to smart TV users compared to users of smartphones or tablets and therefore, it is misleading for the Informants to equate the two sectors. In any event, neither Android TV nor Play is dominant in any market, and there can be no *status quo bias* in favour of Play or other Google apps.

- (iv) ACC requires that OEM partners observe a minimum level of compatibility for smart TV devices that run on Android TV which is claimed to have a strong pro-competitive rationale. Google claims that by requiring a minimum level of baseline compatibility, the ACC facilitates competition between Android TV and longer-established players in the connected TV sector to the benefit of Indian consumers.
- (v) The Informants' allegations concerning Google's licensing practices in the smart TV sector are unsupported by evidence, factually incorrect, and based on material legal misconceptions. It has been averred by Google that it is not dominant; Google's licensing arrangements are pro-competitive; Google does not require exclusivity from OEM partners; Google does not illegally tie Play with Android; and Google does not illegally deny access to Play on other apps.
- (vi) The Informants claim that Google's share on a notional "market" for licensable smart TV device OS is "likely to easily be in the range of 75% and upwards." As per Google, this assertion is based on several flawed assumptions, which conveniently overstate Google's competitive position.
- (vii) There is vigorous competition both at the consumer level and among smart TV OSs. Consumers have many options when choosing how to watch TV content streamed over the internet: on a smart TV; using a device that plugs into a traditional (or smart)



TV, including a streaming stick or a set-top box; or without a TV at all (including on a laptop). Suppliers of smart TVs and other devices (including streaming sticks and set-top boxes) therefore compete to attract consumers, while smart TV OS developers compete for pre-installation on smart TVs and smart TV devices.

Analysis of the Commission

16. The grievances of the Informants primarily relate to the alleged restrictive obligations imposed by TADA and ACC on the smart TV OEMs which are stated to be in violation of various provisions of Section 4(2) as well as Section 3(4) of the Act. For examining the allegations pertaining to alleged abusive conduct of Google under Section 4 of the Act, delineation of the relevant market followed by determination of dominance of Google in those markets is essential.

Determination of Relevant Market and Dominance of Google

17. In relation to the smart TV ecosystem, the Informants have averred that there are various TV operating systems like Android TV OS (Licensable OS developed by Google), Roku TV (Licensable OS developed by Roku but not available in India), Tizen (developed and used by Samsung but not licensable), WebOS (developed and used by LG but not licensable), Fire TV (Licensable 'forked android' OS developed by Amazon), etc. However, from the perspective of smart TV OEMs, only those operating systems are accessible to them which are licensable by the developers thereof and Google competes against all such licensable operating systems. Therefore, as per the Informants, all smart TV operating systems which are not licensable and tied to a particular brand such as Tizen (Samsung) and WebOS (LG) are beyond the scope and purview of the



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relevant market since they are not available for license to third party OEMs. The relevant market is therefore defined by the Informants as the market for licensable smart television device operating systems in India.

18. The Commission is of the view that from the OEMs perspective, only those operating systems which are accessible to them through licensing form part of the relevant market. Therefore, non-licensable operating systems do not appear to be part of the same market. This is in line with the rationale given by the Commission in *CCI Google Android Matter* while delineating the relevant market. Further, for the purpose of the instant analysis, the relevant geographic market will be considered as the whole of India as conditions of competition are homogeneous. Thus, the primary relevant market for this *prima facie* assessment will be “*Market for licensable smart TV device operating systems in India*”.
19. The Commissions in *CCI Google Android Matter* also delineated another relevant market for app stores for android mobile operating systems for examining the impugned conduct in that matter due to the significant role played by app store in a smart mobile device ecosystem. In relation to smart TV ecosystem, Google has contended that an app store with access to a large volume of downloadable apps is a relatively unimportant consideration for OEMs when selecting a smart TV OS. Instead, both users and OEMs mostly value the availability of a select few content providers (*e.g.* Netflix, Amazon Prime Video, YouTube). It has also been asserted that developers as well as users do not rely exclusively on Play to distribute and access apps in India.
20. In this regard, the Commission is of the *prima facie* view that an app store appears to be the only place available to the user to download apps. Google



offers its app store for Android TV, *i.e.* Play Store for Android TV for accessing and downloading apps on Smart TVs. While pre-installation of major entertainment apps like Netflix, Amazon Prime and YouTube is prominent in smart TVs offered by OEMs but there are various other apps which can be subscribed and used by the users to access content. The OEMs cannot pre-install all these apps due to limited real estate availability in terms of disk space on smart TV hardware and the users need options to download the apps of their choice. Further, the demand as well as supply of these apps is dynamic and not static *i.e.*, new apps are routinely launched by content providers to attract users. Therefore, it is critical for the OEMs to offer an app store along with smart TV to meet the dynamic needs of the users. Therefore, the contention of Google that app store is not an important consideration for users/OEMs, *prima facie* does not appear to be true rather the same appears to be a “*must-have*” app for OEMs to offer. In view of the above, in smart TV ecosystem, the Commission finds it appropriate to delineate an associated *relevant market for app store for Android smart TV operating systems in India* to assess the impugned conduct.

21. Further, as observed by the Commission in *CCI Google Android Matter*, it appears that for each of the Google’s proprietary applications such as online video hosting platform, music, search, *etc.*, there will be separate relevant market, as all of these offers different services to the users, which are not substitutable with each other.
22. In relation to dominance of Google in the market for licensable smart TV device operating systems in India and the market for app store for Android smart TV operating systems in India, the Informants have submitted that the market-share of different licensable OS for smart TV devices itself



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could not be gathered on account of lack of data in this regard. However, the Informants have relied on the market share of different OEMs of smart TVs (by identifying Smart TV OS used by each OEM) to claim dominance of Google. Based on a news report, the Informants have claimed that after excluding WebOS (LG) & Tizen (Samsung) from the relevant market, the actual market share enjoyed by Google is likely to be in the range of 75% and upwards. The Informants have also relied on another information available in public domain¹ which indicates that Google has signed agreements with 6 out of the top 10 smart TV OEMs for Android TV OS. By signing agreements with 6 out of 10 TV Manufacturers, Google is stated to have established dominance in the market for licensable operating systems for smart televisions. Similarly, the Informants have averred that Google is dominant in the app store market for Android smart TV device operating systems in India as only Play Store is permitted to be installed in Android OS framework for downloading/accessing apps. With network effects in play, the market share of Google in this market is also stated to be more than 75%.

23. The Commission has perused the submissions made by Informants and Google in this regard. The Commission notes that data about market share of licensable smart TV OS suppliers has not been made available either by the Informants or Google. However, the proxy suggested by the Informants (*i.e.* market share of smart TV OEMs) seems *prima facie* reasonable to estimate market share of Android TV OS in the relevant market as the OS used by OEMs is a public knowledge. In this backdrop, the approach suggested by the Informants appears to be relevant as it gives reasonable approximation of market power enjoyed by different smart TV

¹ Best Practices for developing on Android TV; on YouTube, available at https://www.youtube.com/watch?time_continue=7&v=Vo-UQDVykIs&feature=emb_logo



OS providers. The Commission has accessed the market share data of smart TV OEMs from the Statista.com², wherein, the market share assigned to major smart TV OEMs is as follows: Xiaomi - 27% (licenses Android TV), LG - 14% (uses proprietary WebOS), Samsung - 10% (uses proprietary Tizen), Sony - 9% (Licenses Android TV as well uses Linux based OS), TCL - 8% (licenses Android TV), Others³ (32%). As already stated, non-licensable smart TV OSs do not appear to be part of the same relevant market and accordingly, sales of LG, Samsung and Sony (based on Linux based OS⁴), which are based on a non-licensed smart TV OSs, should be excluded from the market share analysis. Based on this methodology, the market share of major OEMs in the market for licensable smart TV OSs is as follows: Xiaomi - 37%, Sony - 7% (based on sales of Android TV based smart TVs only), TCL - 11%, ‘Others’ using Android TV - 35% and ‘Others’ using Smart TV OS other than Android TV – 10%. Thus, based on a preliminary estimation of the market shares of different licensable smart TV OSs, it appears that the market share of Android TV OS is almost 90%. The Commission has also noted that Android TV is now used in 7 out of top 10 smart TV OEMs which include TCL,

² As available at: <https://www.statista.com/statistics/1092228/india-smart-tv-market-share-by-vendor/>

³ As per the information available in public domain, the ‘Others’ category which constitute a significant portion of the smart TV market, primarily covers OEMs like Panasonic, Sharp, Philips, iFFalcon, Motorola, Nokia, Sanyo, OnePlus, Thomson, Llyod, etc. All of these OEMs appear to be using Android TV in their smart TVs. Some other OEMs in the ‘Others’ category viz. Toshiba, Amazon Basics, Onida, etc. uses smart TV OS other than Android TV. To compute the market share data for the purpose of *prima facie* analysis, the Commission has made crude apportionment of the market share assigned to ‘Others’ by Statista.com, between Android TV and other OSs, based on the number of OEMs using these OSs.

⁴ As per the submissions of Google, Linux based OSs are preinstalled on around 50% of Sony’s smart TV devices. Google has also claimed that Linux based OSs are preinstalled on around 30% of TCL’s smart TV devices, however, as per information available in public domain, smart TVs sold by TCL are based on Android TV. In any case, even assuming that 30% of smart TVs sold by TCL are based on Linux, the market position of Android TV would not change significantly.



Panasonic, Sanyo, Sharp, Sony, Mi, *etc.*⁵ Further, the profound network effects operating in the relevant markets which attract more and more users, app developers and OEMs result in entry barriers for the competitors of Google. At this stage, these parameters are sufficient to indicate the extent of market power enjoyed by Google and accordingly the Commission is of the *prima facie* view that Google is dominant in the relevant market for licensable smart TV device operating systems in India.

24. However, Google has submitted that Samsung and LG have announced that their OS would be available for license and thus, they should be included in the relevant market. In this regard, the Commission notes that *firstly*, even if the respective OSs of LG and Samsung are included in the relevant market for licensable smart TV OS, Google would still have a market share of more than 65% (based on the Commission's preliminary assessment after allocation of market share assigned to 'Others' between Android TV and other OSs); and *secondly*, the assessment of competitive constraints on an enterprise are dependent on credible threat of future expansion by actual competitors or entry by potential competitors (expansion and entry), however, such potential competition needs to be tested for sufficiency, likeliness and timeliness so as to gauge the extent of competitive constraints exerted on enterprise concerned. In the present matter, though LG and Samsung have announced their intention recently to license their respective OSs, there is no evidence on record to show that OEMs have started licensing the OS offered by LG/Samsung for their smart TVs and launched them in the Indian market. Given the pertinent facts of the present matter, the extent of competitive constraints to be

⁵ What's new on Android TV, available at:
<https://www.youtube.com/watch?v=OOV6Ef9zDg0>



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exerted by Samsung and LG on Google can be examined appropriately during detailed investigation.

25. Google has also contended that competition in the smart TV segment is driven by access to over-the-top (“OTT”) content which takes place over several channels, including smart TVs, streaming sticks, set-top boxes and other connected devices that plug into TV sets. Thus, Google claims to compete in a fiercely competitive smart TV sector against multiple well-resourced and established players. In this regard, the Commission notes that the allegations in the present matter pertain to commercial transaction between Google as a licensor of Android TV/app store and Smart TV OEMs as a licensee. Therefore, the relevant markets have been defined as market for licensable smart TV device operating systems in India and the market for app store for Android smart TV operating systems in India. Therefore, these assertions of Google are misplaced. Google has also contended that OEMs wield significant buyer power. The Commission is of the view that such assertion of Google can be appropriately examined during detailed investigation only.
26. In relation to its alleged dominance in the app store market for smart TV OSs (Google offers Play for Android TV in this market), Google has again contested that it is not dominant based on the assertions that the Informants rely on false equivalences between smartphones and smart TV to assert that Play is a must-have app. However, as already noted, *prima facie* app stores in smart TV ecosystems are an important consideration for both OEMs as well as users and therefore, they appear to be a must have app. Further, it appears that all the Android TV based smart TVs come with pre-installed Play Store for Android TV. As already stated, Google occupies most significant position in the relevant market for licensable



smart TV OS. Therefore, based on the aforesaid observations, *prima facie* it appears that Google has a dominant position in the relevant market for licensable smart TV device operating systems in India and the market for app store for Android smart TV operating systems in India.

Assessment of alleged abusive conduct

27. Based on the information submitted by Google, it is noted that Google enters into two agreements with Android TV licensees *i.e.* Television App Distribution Agreement (TADA) and Android Compatibility Commitment (ACC). Google makes AOSP available to any third parties under an open-source license, however, the AOSP license does not grant OEMs, the right to distribute Google's proprietary apps such as Play Store, YouTube, *etc.* referred to as Google Applications in TADA. The AOSP license further does not grant OEMs, the right to use the Android logo and other Android related trademarks. In order to obtain those rights, Google requires OEMs to sign an optional, non-exclusive agreement, *i.e.* TADA. Further, TADA requires the OEMs to be in compliance with a valid and effective ACC. Thus, the two agreements that Google offers to the smart TV OEMs in India *i.e.* ACC and TADA, in conjunction essentially entail the following restrictions:
- a) In order to be able to preinstall Google's proprietary apps, device manufacturers have to commit to comply with the ACC for all devices based on Android manufactured/distributed/sold by them; and
 - b) 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.



28. It appears that the obligations imposed by ACC restricts OEMs from dealing in Android Forks as OEMs commit that:
- i. *“All devices based on Android that Company manufactures, distributes, or markets will be Android Compatible Devices”.*
 - ii. *“All Android-based software that Company develops, distributes, or markets will be designed to run on Android Compatible Devices.”*
 - iii. *“Company may not distribute or market an SDK based on Android to third parties or participate in the development of such as SDK. Company remains free to develop an SDK based on Android for its own internal use.”*
29. Further, TADA imposes various restrictions on OEMs, *i.e.* OEM has to distribute all Google Applications on each Device; OEMs have to comply with the Application Order Requirements; Google Applications are required to be preloaded and placed on default Home Screen; Google Play Store would be the only application or service that will have `INSTALL_PACKAGES` permission; all devices running Android, including those on which OEMs do not pre-install Google's apps, must pass the Compatibility Test Suite prior to commercial distribution, *etc.*
30. Google, in its submissions, has asserted that licensing of Android operating system is not conditional upon signing of either of the two agreements *i.e.* TADA and ACC as both are optional. In this regard, the Commission is of the *prima facie* opinion that Google's app store, *i.e.* Play Store is *prima facie* noted as a ‘*must have*’ app, in the absence of which the marketability of Android devices may get restricted. Since, the license to pre-install Play Store is dependent on execution of TADA and ACC



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between Google and OEMs, therefore, these agreements become *de facto* compulsory.

31. In this backdrop, the Commission is of the *prima facie* opinion that by making pre-installation of Google's proprietary apps (particularly Play Store) conditional upon signing of ACC for all android devices manufactured/distributed/marketed 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. Further, ACC prevents OEMs from manufacturing/distributing/ selling any other device which operate on a competing forked Android operating system. Therefore, given the dominance of Google in the relevant markets and pronounced network effects, by virtue of this restriction, developers of such forked Android operating system are denied market access resulting in violation of Section 4(2)(c) of the Act.
32. The Informants have also alleged that the obligations imposed by ACC restrict freedom of hardware manufacturers with regard to whole of their device portfolio, and not just the device category on which the Android TV OS is pre-installed. The Commission of the *prima facie* view that such obligations which appear to be applicable across all the devices manufactured by the OEMs are akin to making conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts and thus, violative of provisions of Section 4(2)(d) of the Act.



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33. In relation to ACC, Google has *inter alia* contended that by requiring a minimum level of baseline compatibility, the ACC facilitates competition between Android TV and longer-established players in the connected TV sector to the benefit of Indian consumers. Further, ACC's compatibility requirement makes content providers more willing to certify their content for use on Android TV since they can be assured that their content will work as intended across all certified Android TV devices. The Commission is of the view that such pleas of Google can be appropriately examined during the investigative stage based on examination of device manufacturers and application developers.
34. In relation to the mandatory preinstallation of the all the Google Applications under TADA, it is observed that the device manufacturers who sign this agreement cannot pick and choose from amongst the Google Applications 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. The Commission is of the *prima facie* opinion that mandatory preinstallation of all the Google Applications under TADA amounts to imposition of unfair condition on the smart TV device manufacturers and thereby 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 video hosting services offered by YouTube, *etc.* in contravention of Section 4(2)(e) of the Act. All these aspects warrant a detailed investigation.



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Allegations under Section 3(4) of the Act

35. In addition to allegations under Section 4 of the Act, the Informants have averred that the agreements entered into by the OPs are in the nature of agreements as contemplated by Section 3(4) of the Act, *i.e.* those which include clauses amounting to ‘refusal to deal’ and ‘exclusive dealing’. As per the Informants, by virtue of these agreements entered into between Google with all major smart TV OEMs, the OPs have virtually created a huge wall for OS developers to develop/license a competing and potentially better ‘forked android’ OS. As per the Informants, given the significant market position of Google in the relevant markets, such agreements are likely to cause an appreciable adverse effect on competition and therefore, are agreements in contravention of Section 3(1) of the Act.
36. The Commission has perused the allegations of the Informants and is of the *prima facie* view that, for the reasons already explained above, no separate directions are required to be passed in respect of anti-competitive impact resulting from purported ‘refusal to deal’ and ‘exclusive supply agreement’ in terms of the provisions contained in section 3(4) read with Section 3(1) of the Act. The DG may also examine these allegations. The efficiencies claimed by Google can be appropriately examined during investigation by the DG.
37. In view of the foregoing, 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 Commission also directs the DG to complete the investigation and submit the investigation report within a period of 60 days from the date of receipt of this order.



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38. Google has also sought an opportunity for oral hearing (by video conference) for Google to present its arguments on the issues raised in the Information. However, the Commission, based on the information available on the record (including the submissions made by Google), is *prima facie* convinced that a case is made out for directing an investigation by the DG. Google and other OPs would be at liberty to make further submissions before the DG during the investigation wherein the same would be appropriately examined. In this regard, it is also noted that a three judges Bench of the Hon'ble Supreme Court through its judgment in *Competition Commission of India v. Steel Authority of India Ltd.*, Civil Appeal No. 7779 of 2010 decided on September 09, 2010 has already settled the issue by holding that “...Neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor can any party claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a *prima facie* case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter.”
39. Lastly, it is noted that Google has filed its submissions dated 27.10.2020, 10.02.2021 and 14.04.2021 in two versions *viz.* confidential as well as non-confidential. The confidential versions were kept separately during the pendency of the proceedings. The DG, however, shall be at liberty to examine the confidentiality claims as per law. Further, it is made clear that no confidentiality claim shall be available in so far as the information/ data that have been used/referred to in this order for the purposes of the Act in terms of the provisions contained in Section 57 thereof.



40. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
41. The Secretary is directed to send a copy of this order along with the Information and other material available on record to the office of DG forthwith.

Sd/-
(Ashok Kumar Gupta)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 22 / 06 / 2021