

CENTRE FOR COMPETITION LAW AND ECONOMICS

(A non-profit initiative u/s 8, The Companies Act, 2013)

To

The Secretary
Ministry of Corporate Affairs, GOI
A Wing, Shastri Bhawan
Rajendra Prasad Road
New Delhi - 110001

15th May, 2024

Subject: Public comments to the MCA, GOI on the CDCL report by CCLE

Dear Sir/ Ma'am,

Please find attached the public comments submitted by us on the CDCL report and the Draft Digital Competition Bill, 2024.

We would be happy to discuss anything on the subject matter and will be looking forward to meeting you in-person.

Best Regards,

Sumit Jain

Director

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Public Comments to the Ministry of Corporate Affairs on the CDCL report

Background

1. The Parliamentary Standing Committee of Finance published a report on competition law titled 'Anti-competitive practices by the Big Tech' in 2022. The Standing Committee as part of the report identified ten practices which ought to be considered anti-competitive on an ex-ante basis. These practices include anti-steering provisions, self preferencing, bundling and tying, cross utilisation of data, killer acquisitions, deep discounting and excessive pricing, exclusive tie ups, search and ranking preferencing, restricting third-party applications and advertising policies. The Committee held that the current provisions of the Competition Act, 2002 may not be sufficient to address the anti-competitive conduct of the Big Tech and a separate law known as the Digital Competition Act may be enacted to tackle the same.
2. Even earlier, the Indian government formed the Competition Law Review Committee (CLRC) under the aegis of the Ministry of Corporate Affairs (MCA) to look into the enactment and enforcement of competition law in India over the last ten years in 2019. The Committee after following the due procedure submitted its report to the Ministry suggesting changes in the length and breadth of the law. Some of the key changes as suggested by the CLRC included introduction of commitment and settlement scheme, merger of the DG office with the CCI, introduction of 'green channel' for mergers and enhancing financial autonomy of the Commission. The Committee further recommended that the 'leniency plus' scheme should be incorporated within the applicable amnesty framework to increase detection of cartels. Importantly, the Committee held that the current provisions of the Indian Competition Act, 2002 are sufficient to address competition aspects in digital markets and there may be no further requirement to amend the law.

Comments

The Centre most humbly submits as follows:

3. The Competition Commission of India (CCI) over the last fifteen years has received 28 information ('complaint') from first parties and has initiated one matter on its own (suo moto) when it comes to the assessing the conduct of Big Tech players known as Google (Alphabet), Amazon, Meta, Microsoft and Apple (GAMMA). The Information filed at the CCI cover practices such as lack of interoperability, self-preferencing, bundling and tying and cross utilization of data which are alleged to be anti-competitive in the digital markets. Over this period, the Commission has developed three contravention orders and twelve non-contravention orders. There are additional six prima facie orders which are currently pending for disposal. There have been three minority orders as well - one in Singhania LLP, matrimony.com and Vishal Gupta case each - where the CCI held a case of contravention, non-contravention and further investigation respectively. A list of the cases is attached as Annexure A with this representation.
4. A combined reading of these cases would suggest that the current legislative framework through the Competition Act, 2002 has proved to be sufficient for the CCI to look into anti-competitive practices of the Big Tech companies. While the fact that all the three contravention orders passed by the CCI in the Big Tech space are against Google Inc. is worrying, the current standard of abuse under the law duly covers practices such as bundling, tying, pre-installation, self-preferencing and cross-utilisation of data which are mainstay of competition concerns by the Big Tech companies.
5. What, however, is missing in the contravention orders is an assessment of the timing of the intervention. This issue is of some significance as the economic harm caused to the involved stakeholders is continuing in nature. In such a case, we support enactment of ex-ante rules to regulate competition in digital markets in India. Such rules under the Draft Digital Competition Bill would ensure that the impugned anti-competitive practices such as pre-

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installation, bundling, tying, self-preferencing and cross utilization of data undergo due scrutiny before they are implemented in the market.

6. These ex-ante rules would complement the existing competition legal framework in India. An optimum balance of the conventional antitrust jurisprudence combined with the new age market dynamics is something which is required to ensure economically efficient outcomes for the concerned stakeholders.

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Annexure 1

S. No.	Case no.	Respondent	Status	Finding	Comment
1	68 of 2010	Google	Finalised	Non-contravention	NA
2	36 of 2010	Microsoft	Finalised	Non-contravention	NA
3	24 of 2011	Apple	Finalised	Non-contravention	NA
4	80 of 2014	Amazon	Finalised	Non-contravention	NA
5	83 of 2015	Meta & Google	Finalised	Non-contravention	NA
6	99 of 2016	Meta	Finalised	Non-contravention	NA
7	07 of 2012	Google	Finalised	Contravention	Referred as Google search bias case
8	30 of 2012	Google	Finalised	Contravention	Referred as Google search bias case
9	06 of 2014	Google	Finalised	Non-contravention	NA
10	46 of 2014	Google	Finalised	Non-contravention	NA
11	40 of 2019	Amazon	Pending	Pending	NA
12	15 of 2020	Meta	Finalised	Non-contravention	NA
13	09 of 2020	Amazon	Finalised	Non-contravention	NA
14	39 of 2020	Google	Finalised	Non-contravention	NA
15	Suo moto 01 of 2021	Meta	Pending	Pending	NA
16	19 of 2020	Google	Pending	Pending	NA
17	24 of 2021	Apple	Pending	Pending	NA
18	41 of 2021	Google	Pending	Pending	Referred as AdTech case
19	10 of 2022	Google	Pending	Pending	Referred as AdTech case
20	29 of 2020	Amazon	Finalised	Non-contravention	NA
21	Suo moto 04 of 2021	Amazon	Finalised	Non-contravention	NA
22	36 of 2022	Google	Pending	Pending	Referred as AdTech case
23	39 of 2018	Google	Finalised	Contravention	NA

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S. No.	Case no.	Respondent	Status	Finding	Comment
24	07 of 2020	Google	Finalised	Contravention	Referred as Google Pay case
25	14 of 2021	Google	Finalised	Contravention	Referred as Google Pay case
26	35 of 2021	Google	Finalised	Contravention	Referred as Google Pay case
27	37 of 2022	Google	Pending	Pending	Referred as Google Payments case
28	17 of 2023	Google	Pending	Pending	Referred as Google Payments case
29	27 of 2023	Google	Pending	Pending	Referred as Google Payments case