

Centre for Competition Law and Economics

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

To

The Secretary
Competition Commission of India
9th Floor, Office Block - 1
Kidwai Nagar (East)
New Delhi, 110023, India

19th August, 2025

Subject: Competition concerns in online gaming sector

Dear Sir,

We write in reference to the public consultation held by the CCI on the commitment received by it in **Winzo Games Pvt. Ltd. v Google LLC and Ors case**.

Please find attached our representation on the matter.

About the Centre

The Centre for Competition Law and Economics (CCLE) is a research organization working in the field of competition law and economics. The Centre publishes research reports, conducts training activities and assists litigating parties at competition fora across the country to advocate consistent interpretation of the Indian competition law. The Centre regularly collaborates with national law universities and other non-profit organizations to organize seminars, conferences and workshops for the relevant stakeholders to generate capacity in the said field based on mutual interest.

We would be happy to discuss more on the topic and will be looking forward to meeting you in person.

Best Regards,

Sumit Jain

Founding Director

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Public comments on the commitment received by the CCI in Winzo Games Pvt. Ltd. v Google LLC and Ors case

1. The facts of the case were that WinZO, an online gaming company, filed an information (complaint) against Google alleging discrimination when it comes to conducting business on Play Store and acceptance of advertisements on the Google search platform. The company raised multifold allegations suggesting: (a) discrimination in the selection criteria as far as Google's pilot programme is concerned; (b) anomaly in the application of its Online Gambling and Games Policy in favour of DFS and Rummy; (c) preferential treatment given to Zupee and MPL when it comes to debarring advertisements under its Ad policy among other things. This was said to be in violation of section 4, i.e. abuse of dominance, under the Act.
2. As per the legal text, the Commission ought to first ascertain the economic activity and then proceed to the three-step process to reach a finding. The economic activity in this case is playing online real money games. It is most humbly submitted that the legal position around the same is rather unclear. The same has been stated in the *prima facie* order passed by the CCI.
3. It is most humbly submitted that as part of ascertaining economic activity, the jurisdiction of the Competition Commission of India isn't made out. The burden of proof is on the Informant, more so when it is seeking *in personam* relief. As per an article published in moneycontrol¹, any import of 'special responsibility' on a dominant firm, even before the legality of economic activity has been ascertained, might be premature. A copy of the original transcript as published is attached as Annexure A with this representation.
4. Given that the nature of the economic activity couldn't be ascertained, the Commission ought not to proceed to the three-step process and close the matter at the threshold level itself.
5. The sectoral regulator in the given case is the Ministry of Electronics & IT, Government of India. The Ministry ought to clear the prevailing ambiguity as far as the distinction between the game of skill and game of chance is concerned by constituting Self Regulatory Bodies

¹ <https://www.moneycontrol.com/news/opinion/special-responsibility-under-competition-law-drawing-new-boundaries-in-the-online-gaming-sector-12997478.html>

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(SRBs) on a priority basis. The department is yet to notify such a constitution even after two years of enactment of the amended IT Rules, 2021.

6. The CCI duly availed the referencing mechanism on a best-effort basis and engaged in inter-departmental consultation to ensure a coherent action under the policy.
7. In the given facts, the commitment given by Google seems to address competition concerns as raised by the CCI in the order. The company has proposed a uniform policy for all online RMGs thereby addressing any concern around discrimination. The said policy is proposed for both listing of games and offering of advertisements.
8. As far as showing a warning is concerned, the Commission ought to further engage in inter-departmental consultation with the Reserve Bank of India which is the sectoral regulator in this case. The Commission ought to ensure that any display of such warnings isn't done in a selective manner thereby raising concerns around distortion of fair and level play.

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Annexure A

‘Special responsibility’ for a dominant enterprise under competition law: Drawing new boundaries in the online gaming sector

Byline: In an interacting world where legal systems influence each other on a regular basis, this might be a simple stretch of the ‘special responsibility’ standard to its totality.

Introduction

The Competition Commission of India (CCI) recently passed a prima facie (PF) order in the online gaming sector where it has held Google in contravention of competition law. The brief facts of the case were such that WinZO, an online gaming company, filed an information (complaint) against the search-giant alleging discrimination when it comes to conducting business on Play Store and acceptance of advertisements on the Google search platform. This was said to be in violation of section 4, i.e. abuse of dominance, under the Act.

CCI order

The Commission conducted a detailed assessment of various submissions made by the parties before passing the PF order. As per the statutory requirement, the Commission followed the three-step process, i.e. delineation of ‘relevant market (RM)’, establishing dominance within the given RMs and assessment of abuse of dominance. The Commission has identified three RMs for now, i.e. market for licensable OS for smart mobile devices, market for application stores available on devices with licensable OS and market for online search advertising services in India. It has held Google in a dominant position in all based on its past decisions. As far as allegations of abuse are concerned, the CCI has ordered investigation on, at least, three counts: a) Google’s justification for the selection criteria in favour of DFS and Rummy as far as its pilot programme is concerned; b) anomaly in the application of its Online Gambling and Games Policy in favour of DFS and Rummy; c) allegation of preferential treatment given to Zupee and MPL when it comes to debarring advertisements under its Ad policy.

The Commission further restricted itself on two allegations as made by WinZO. The Commission held that it won’t be able to exercise its jurisdiction on violation of a trademark owned by WinZO as this is an IPR issue. Additionally, the Commission held that the National Company Law Appellate Tribunal has set aside one of its earlier findings on the issue of sideloading and the matter is currently pending before the Supreme Court of India. As such, it is not inclined to entertain such an allegation made by the Informant at this stage.

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‘Special responsibility’ as a legal standard

It is a settled position under the Indian law that once an entity is established as a dominant enterprise in a given RM, there is a special responsibility casted upon it to comply with the provisions of the Competition Act, 2002. The CCI has reiterated this position in an order, as recently as last week, while finding a case of abuse of dominance against Meta (Facebook) group and imposed a monetary penalty of ~INR 213 crore. The same principle has been applied in this case where the Commission has held that it is a ‘practical necessity’ for technology firms to be present on Play Store given its overarching presence in the Android ecosystem.

This decision, however, goes a step beyond. The Commission was duly apprised on the prevailing ambiguity when it comes to legalising Real Money Games (RMGs) with certain state governments banning such games altogether. Even though the central government has notified rules on the presumed distinction between ‘game of skill’ vs. game of chance’, the Ministry of Electronics and Information Technology (MeiTy) is yet to notify the constitution of the regulatory body reflecting the dilemma. In such a case, any import of ‘special responsibility’ on a dominant firm, even before the legality of economic activity has been ascertained, might be premature. It is also true that such a responsibility doesn’t exist in some parts of the world. For instance, under the US antitrust law, dominance is perceived as a reward to a performing firm in a market economy. In an interacting world where legal systems influence each other on a regular basis, this might be a simple stretch of the ‘special responsibility’ standard to its totality.

Google as a no-beginner

It would be equally treacherous to see Google as a victim in this case. The company was transacting with DFS and Rummy despite being aware of the prevailing ambiguity in the law. Naturally, large companies such as DFS and Rummy emerge as partner-choice for Google under a risk-minimising and profit-maximising framework. The fallacy in Google’s arguments was stark where it designed the ‘pilot programme’ for a year in an industry where the market might tip in a span of three years. This is not to discount for the fact that the company has been found violating antitrust laws on multiple occasions across the globe. The most recent contravention order was passed by the US district court of Columbia where the question of implementing remedies is still open.

Conclusion

The Commission is all set to churn jurisprudence when it comes to competition concerns in digital markets. It was able to balance the existing regulatory ambiguity with the continued harm being

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caused, were RMGs to be held legal in-toto, while passing the order. The silver lining in this case is that it did make a reference to MeitY before passing the order thereby negating the possibility of engaging in 'turf-war'. The regulatory needle is set against Google. This would not be a deterrence for the company to pursue follow-on litigation, though. Under a 'law and economics' framework, the penalty amount gets approved in the first board-meeting of the contravenor thereby fueling the perpetuating cycle of dispute with state authorities.