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COMPETITION COMMISSION OF INDIA

Case No. 37 of 2022

In Re:

People Interactive India Private Limited

Informant

And

Alphabet Inc.

Opposite Party No. 1

Google LLC

Opposite Party No. 2

Google India Private Limited

Opposite Party No. 3

Google India Digital Services Pvt. Ltd.

Opposite Party No. 4

WITH

Case No. 17 of 2023

In Re:

Mebigo Labs Private Limited

Informant

And

Alphabet Inc.

Opposite Party No. 1

Google LLC

Opposite Party No. 2

Google India Private Limited

Opposite Party No. 3

Google India Digital Services Pvt. Ltd.

Opposite Party No. 4

WITH

Case No. 27 of 2023

In Re:

Indian Broadcasting and Digital Foundation

Informant No. 1

Indian Digital Media Industry Foundation

Informant No. 2

And

Alphabet Inc.

Opposite Party No. 1

Google LLC

Opposite Party No. 2



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**Google India Private Limited
Google Asia Pacific Pte. Ltd.
Google Ireland Ltd**

**Opposite Party No. 3
Opposite Party No. 4
Opposite Party No. 5**

CORAM:

**Ms. Ravneet Kaur
Chairperson**

**Mr. Anil Agrawal
Member**

**Ms. Sweta Kakkad
Member**

**Mr. Deepak Anurag
Member**

Present

For People Interactive India Private Limited (**PIIPL**) : Mr. Jayant Mehta, Sr. Advocate with Mr. Abir Roy, Mr. Aman Shankar, Mr. Vivek Pandey, Mr. Udit Dedhiya and Mr. Sasthibrata Panda, Advocates

For Mebiggo Labs Private Limited (**Mebigo**) : Mr. Abir Roy, Mr. Aman Shankar, Mr. Vivek Pandey and Mr. Sasthibrata Panda, Advocates

For Indian Broadcasting and Digital Foundation (**IBDF**) and Indian Digital Media Industry Foundation (**IDMIF**) : Mr. Rajshekhar Rao, Senior Advocate with Ms. Pallavi Shroff, Mr. Yaman Verma, Ms. Parinita Kare, Mr. Ritwik Bhattacharya, Mr. Rohan Bhargava, Mr. Shivek S. Endlaw, Advocates along with Mr. Rishi Sharma and Ms. Siboney Sagar, Representative of IBDF/IDMIF

For Alphabet Inc., Google LLC, Google Ireland Limited, Google India Private Limited, Google Asia Pacific Pte. Ltd. and : Mr. Sajan Poovayya, Senior Advocate with Mr. Karan Singh Chandhiok, Ms. Deeksha Manchanda, Ms. Avaantika Kakkar, Mr. Kaustav Kundu, Mr. Tarun Donadi, Ms.



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Google India Digital Services
Private Limited (collectively,
'Google'/ 'OPs')

Bhavika Chhabra, Mr. Palash Maheswari, Ms.
Raksha Agrawal, Mr. Aditya Sahagal,
Advocates along with Mr. Thomas Bohnett, Ms.
Aditi Gopalkrishnan and Ms. Richa Srivastava,
Representatives of Google.

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

1. The Informations in the captioned cases have been filed under Section 19(1)(a) of the Competition Act (hereinafter, 'the Act') against Google alleging contravention of Section 4 of the Act, on its part.
2. As the subject matter of all these Informations is substantially the same, this common order is being issued in respect of allegations made in the same.
3. Case No. 37 of 2022 has been filed by People Interactive India Private Limited (**PIIPL**) which is stated to be an internet company and operates brands such as Shaadi.com and Sangam.com and providing online matchmaking classified service across the globe.
4. Case No. 17 of 2023 has been filed by Mebiggo Labs Private Limited (**Mebigo**) which is stated to be an internet company that owns the brand such as Kuku FM and provides audio content such as audiobooks, stories, originals and similar categories through apps and website across the globe.
5. Case No. 27 of 2023 has been filed by Indian Broadcasting and Digital Foundation (**IBDF**) and Indian Digital Media Industry Foundation (**IDMIF**). IBDF is stated to be a leading association which *inter alia* works towards the interests of the Indian television industry and the digital media industry, including but not limited to online curated content publishers (OCCPs)/over the top (OTT)/video on demand (VOD) application developers. IDMIF is stated to be a subsidiary of IBDF representing OCCP members who operate/manage applications/websites that reach millions of Indian consumers.



6. Alphabet Inc. is a multinational technology conglomerate holding company. It was created through a restructuring of Google on 02.10.2015 and became the parent company of Google and several former Google subsidiaries. Google LLC is a Delaware (USA) based limited liability company and wholly owned subsidiary of Alphabet Inc. Google's core products and services, including its proprietary digital store for mobile based applications, *i.e.*, Google Play Store, and its proprietary OS, *i.e.*, Android OS are developed, provided, and administered by Google LLC. Google Ireland Limited (Google Ireland) is a legal entity formed under the laws of Ireland. Google Asia Pacific Pte. Limited, a subsidiary of Google LLC, is incorporated in Singapore and it provides management services on a contract or fee basis. Google Asia Pacific offers online content services for users, advertisers, and other content providers. Google India Private Limited is a company incorporated under the Companies Act, 2013. It has been appointed by Google Asia Pacific Pte. Ltd. as a non-exclusive authorised reseller of online advertisement space in India as provided by Google Asia Pacific Pte Ltd through Google Ads program to advertisers in India. All these entities are collectively referred to as 'Google'.
7. The Informants are primarily aggrieved with Google's updated payment policies in relation to its proprietary app store (*i.e.*, Google Play Store), which is alleged to be in violation of Section 4 of the Act and is stated to be impacting several stakeholders, including app developers, payment processors, and users alike.
8. It has been averred that for app developers to be able to distribute their apps through the Google Play Store, they are *inter alia* required to accept Google Play Store's non-negotiable payment policies. Google Play Store's payment policies previously mandated that: (a) all payments for paid app downloads and in-app purchases (IAPs) on digital service apps, must only be processed through Google's own payment processing system (*i.e.*, Google Play Billing System, (GPBS)); and (b) app developers must pay a commission of 15% / 30% to Google for each such transaction, *inter alia* as consideration for the payment processing services Google is offering to these app developers. It has been further stated that several terms of



Google's payment policies were earlier found to be anti-competitive by the Commission *vide* an order dated 25.10.2022 passed under Section 27 of the Act, in Case Nos. 07 of 2020, 14 of 2021 and 35 of 2021 ('Google Play Case'). In this case, Google was found to have contravened various provisions of Section 4 of the Act, as detailed therein.

9. In September 2022, Google introduced 'User Choice Billing' pilot wherein certain changes were made to Google Play Store's payment policies. Amongst others, Google announced that app developers offering digital content can offer alternative billing systems (ABS) alongside GPBS. Further, for transactions which are processed through GPBS (on apps offering digital content), Google will continue to impose a 15% / 30% service fee / commission. Where a user avails an ABS to complete any transaction on these apps, the rate of commission payable to Google by the app developer would be reduced by 4% (*i.e.*, reduced to 11% from 15%; or 26% from 30%, as the case may be). It has been averred that in the UCB system, Google is offering an illusory choice for users to opt for an alternative billing option next to Google Play's billing system.
10. The updated policies of Google have been alleged to be discriminatory and unfair which skew and disrupt competition in the downstream app markets and continue to favour Google's own apps and cement Google's position in the payment processing market as well. It has been further alleged that Google imposes a service fee / commission model wherein it admittedly makes only 3% of the app developers bear the entire cost of all 100% of the app developers on the Google Play Store by charging them an exorbitant service fee / commission without any commensurate additional services. Further, Google's service fee is also alleged to be excessive as this commission / fee has no reasonable economic relation to the services provided by Google.
11. It has been stated that Google's discriminatory policies and excessive fee / commission is also likely to cause an appreciable adverse effect on competition (AAEC) in other markets. As a result of Google's discriminatory conduct, a limited



set of app developers are claimed to bear the burden of huge costs, significantly impacting their profitability, commercial operations, and ability to effectively compete with other apps who are not made to bear such costs. Further, it will gravely impact users as they will be made to ultimately bear the increased costs and reduction in quality / choices.

12. The Informants have delineated three relevant markets in the matter, *i.e.*, market for licensable smart mobile OS in India, market for app stores for Android OS in India and market for processing of IAPs for digital content on Android apps distributed through the Google Play Store in India. It has been further averred that Google enjoys a dominant position in the first two relevant markets.
13. The Informants have alleged that the OPs have abused their dominant position in the relevant markets and violated following provisions of the Act:
 - 13.1. Section 4(2)(a)(i): Google is charging 11% or 26% commission from the app developers even on payments made through ABS and thus, Google is charging commission for the services which it is not even providing. The same is alleged to be unfair for app developers. It has also been alleged that Google is imposing a discriminatory service fee / commission on only 3% of the app developers on the Google Play Store, in exchange for no additional value, service, or discoverability, to subsidise the cost for running the Google Play Store for all apps. These conducts are alleged to be in violation of Section 4(2)(a)(i) of the Act.
 - 13.2. Section 4(2)(a)(ii): Google's imposition of an excessive service fee / commission on app developers for processing payments through the GPBS and for processing payments through ABS under UCB, violates Section 4(2)(a)(ii) of the Act.
 - 13.3. Section 4(2)(b)(ii): Google's imposition of an excessive service fee leads to app developers having less resources at their disposal to improve/develop their app offerings, restricting development in the app market, in violation of Section 4(2)(b)(ii) of the Act. Further, Google's service fee reduces the incentive of app developers to partner with alternate payment processors, thereby reducing



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technical and scientific development in the payment processing market as well. Google's conduct to impose a discriminatory service fee / commission on only 3% of the app developers on the Google Play Store disturbs innovation incentives of app developers to develop premium paid offerings for users and undertake technical development and innovation. This further violates Section 4(2)(b)(ii) of the Act.

13.4. Section 4(2)(c): Google's imposition of an excessive service fee / commission on app developers will likely result in several app developers being forced to exit the market /not being able to enter the market owing to higher operational costs, causing denial of market access to such app developers. Such conduct of Google also restricts the freedom of app developers to choose their business model, and mode of user engagement. Further, Google's service fee / commission reduces the incentives of app developers to partner with alternate payment processors thereby denying market access to alternate payment processors in the market as well. Therefore, Google's conduct is in violation of Section 4(2)(c) of the Act. Google imposes a discriminatory and disproportionate service fee / commission on app developers who offer paid downloads and IAPs and reduce the incentives of app developers to monetise their apps or develop paid apps thereby denying market access to such app developers in the market, in violation of Section 4(2)(c) of the Act.

13.5. Section 4(2)(e): Google has violated Section 4(2)(e) of the Act by leveraging its dominance in the markets for licensable smart mobile OS and app stores for Android OS in India to protect its position in the downstream segment for payment processing on the Google Play Store. It has also been alleged that through UCB, Google would not only have the ability to collect data but also have the incentive to use this data for its other verticals markets viz. creating consumer profiles and monetizing the same through search advertising services, other paid services offered by Google, identifying and entering into new markets, etc. This abusive practice would result in leveraging its dominance in other vertical markets, which is a violation of Section 4(2)(e) of the Act.



14. In view of the above, the Informants have alleged that Google by way of its conduct and actions has violated various provisions of Section 4(2) of the Act, as mentioned *supra*. Accordingly, the Informants have *inter alia* prayed the Commission to pass an order under section 26(1) of the Act to inquire into the conduct of the OPs.
15. In this regard, the Commission *vide* its order dated 22.11.2023 directed Google to file its consolidated response on the Information filed by the Informant(s) in all these three cases as well as Interim Relief Applications filed u/s 33 of the Act, if any, with advance copy to the Informants. The Informants were also allowed to file their respective rejoinders, if any, thereto with advance copy to Google. The Commission *vide* the said order also disposed of an application dated 08.06.2023 filed by Google *inter alia* requesting the Commission to defer proceedings in the present case until the final disposal of the inquiry under Section 42 of the Act initiated in Case Nos. 07 of 2020, 14 of 2021 and 35 of 2021 (Google Play Case). The Commission *inter alia* noted that nature and scope of these two proceedings (*i.e.*, Section 26 proceedings in the present matter and Section 42 Proceedings in Google Play Case) are different.
16. After extension of time, Google filed its reply on 28.02.2024 and thereafter, the Informants also filed their respective rejoinders on 04.03.2024 and 05.03.2024. The Commission also heard the detailed arguments made by the learned senior counsel(s) appearing on behalf of PIPL, IBDF/IDMIF and Google and the learned counsel appearing on behalf of Mebigio on 06.03.2024. Thereafter, the Commission decided to pass an appropriate order in due course. The parties have also filed brief synopsis of their oral arguments.
17. The Commission has perused and examined the information available on record including the Informations filed by the Informants, response filed by Google, rejoinder filed by the Informant, oral arguments made during the course of hearing as well as post hearing submissions made by the parties. Now, the Commission proceeds to examine the matter.



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Analysis of the Commission

18. It is noted that the Informants are primarily aggrieved by the billing policy of Google for in-app purchases and paid apps. The Informants have alleged that Google is abusing its dominant position in the relevant market by imposing its payment policy and thus, is in violation of various provisions of Section 4 of the Act.
19. At the outset, the Commission notes that certain sections of Google's policies, as existing at that point in time primarily the requirement to use GPBS and its attendant anti-competitive consequences, were examined by the Commission in Case Nos. 07 of 2020, 14 of 2021 and 35 of 2021. The Commission *vide* its order dated 25.10.2022 passed under Section 27 of the Act (Final Order) found that Google has contravened various provisions of Section 4 of the Act, as detailed therein. The Commission *inter alia* directed Google to cease and desist from engaging in the anti-competitive practices found to have been in contravention of the provisions of Section 4 of the Act as well as to implement certain specific measures as mentioned therein. Google was also allowed three months from the date of receipt of the Final Order to implement necessary changes in its practices and/or modify the applicable agreements/ policies and to submit a compliance report to the Commission in this regard. Subsequently, Google introduced some changes in its policies and claimed the same to be in compliance with the directions of the Commission. The Commission is presently in the process of examining compliance by Google of various directions issued *vide* order dated 25.10.2022 in separate proceedings.

Delineation of Relevant Market & Assessment of Dominance of Google therein

20. For the purpose of assessment of present matter, the Informants have *inter alia* delineated market for licensable smart mobile OS in India and market for app stores for Android OS in India, as the relevant markets. The Commission had the occasion to examine these two markets in Case No. 39 of 2018 *i.e.*, Google Android Case (Order dated 20.10.2022 issued under Section 27 of the Act) as well as Google Play



Case (Order dated 25.10.2022 issued under Section 27 of the Act). Based on a detailed assessment, the Commission determined these two as distinct relevant markets to examine the conduct of Google. The Informants have also placed reliance on these two decisions of the Commission in support of their relevant market delineation. The assessment of the Commission in these two decisions is not being reproduced here for brevity.

21. The Commission is of the *prima facie* view that same principle continues to be valid, and no information has been brought on record which would warrant taking a different approach in the present matter. Accordingly, relevant markets in the present case for examining the alleged abusive conduct of Google are determined to be the *market for licensable OS for smart mobile devices in India* and the *market for app store for Android smart mobile OS in India*.
22. The Commission in *Google Android Case* as well as *Google Play Case* also held that Google is dominant in both, the market for licensable OS for smart mobile devices in India and market for app stores for Android smart mobile OS in India. The Informants have also placed reliance on these two decisions of the Commission in support of their arguments claiming Google to be dominant in these two markets. The assessment of the Commission in these two decisions is not being reproduced here for brevity.
23. Accordingly, for the purpose of the present matter also, the Commission is of the *prima facie* view that Google is dominant in both the relevant markets *i.e.*, market for licensable OS for smart mobile devices in India and market for app stores for Android smart mobile OS in India.

Assessment of alleged abuse of its dominant position by Google



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24. Before examining the alleged abusive practices of Google, the Commission takes note of following observations made by it in the Google Play Case (Para 325 and 327):

“325. Google has submitted that about 97% app developers pay only a nominal registration fee of USD 25 to access Google Play, whereas only 3% of developers on Google Play are subject to a service fee. Even with-in this 3%, a limited number of apps are subjected to a service fee of 30% and others pay a service fee of 10% of 15% depending on various parameters. Going by these assertions of Google, it is noted that the monetization model of Google is based on cross-subsidization by Google where the 3% of the apps offering paid apps or IAPs are made to bear the entire cost of the Play Store, even though all the apps are using similar services of the Play Store. Therefore, the question to be determined is whether it is reasonable and fair for these 3% of the apps to bear the 100% cost of the Play Store. In the same vein, the Commission also notes that amongst these 97% are those apps also, which have significant business operations but are not contributing towards recoupment of Play Store costs, directly through service fee. The Commission also notes that Google has other revenue streams also from the ‘free apps’ listed on Play Store, in the form of advertisement related revenue earned by Google from the apps hosted on Play Store and otherwise. These revenue streams are also contributing towards recoupment of the costs associated with Play Store and Android ecosystem, in addition to the service fee. The determination of issues at hand requires examination of all these aspects.

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327. Based on the foregoing, the Commission is of the view that information available on record is not sufficient to give a finding on the monetization model, as sketched supra, followed by Google. Therefore, the Commission is not inclined to give any finding on this aspect, at this stage.”

25. In this backdrop, the Commission notes that the primary allegation of the Informants relates to service fee being charged by Google for paid apps as well as IAPs. Google has submitted that it charges a service fee when app developers sell apps or IAPs to their users. The service fee is calculated as a percentage of the price the app developer charges for their apps or IAPs. In this regard, it is important to note that prior to introduction of UCB in India by Google, the app developers were required



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to exclusively use GPBS for paid apps and IAPs. However, with the introduction of UCB, the app developers requiring or accepting payment from users in India for access to IAPs were allowed to offer users an ABS of their choice within the app alongside GPBS for those transactions.

26. The percentage of service fee being charged by Google is dependent on whether the user chooses GPBS or alternative billing system (ABS) under UCB for making payment for IAPs. When a user makes a purchase through a developer's ABS under UCB, the service fee for such transactions is equal to the service fee applicable for transactions *via* GPBS reduced by 4%. To summarise, the table below outlines the service fees payable by developers to Google under GPBS as well as ABS (as submitted by Google).

Developers / transaction category	Service fee	Reduced service fee under UCB
Developers enrolled in the 15% service fee tier.	15% for the first \$1M (USD) revenue earned by the developer each year	11%
	30% for earnings in excess of \$1M (USD) revenue earned by the developer each year	26%
Revenue from subscription purchases	15% for automatically renewing subscription products purchased by subscribers, regardless of revenue earned by the developer each year	11%
Other transactions	15% or lower for eligible developers who qualify under programmes such as the Google Play media experience programme ¹ (10% for e-books and on-demand music streaming services)	6-11%

¹ Google has submitted that this programme is offered to apps primarily offering video, audio, or books in which users pay to consume content.



27. Among other things, the service fee charged by Google has been alleged to be excessive in nature and by requiring the app developers to pay such excessive service fee for processing payments through GPBS as well as ABS under UCB, Google is alleged to be imposing an unfair price, in violation of Section 4(2)(a)(ii) of the Act. It has been *inter alia* claimed by the Informants that, the service fee / commission charged by Google bears no reasonable relation to the services Google is offering in exchange for the fee; the difference between the costs actually incurred and the price actually charged appears to be excessive; and that Google's service fee / commission is significantly higher than the service fee / commission charged by its competitors for similar services (most of whom charge 0% for such services).
28. Google on the other hand *inter alia* contends that the Commission is not a price regulator, and it should show restraint while considering claims about the level of the Google Play service fee.
29. The Commission is of the view that anti-trust regulators typically focus on promoting competition and preventing monopolistic behaviour rather than directly regulating prices. However, this approach is based on an important assumption that a competitive market will naturally lead to fair prices being determined by supply and demand forces. By ensuring a competitive marketplace, regulators aim to encourage efficiency, innovation, and consumer choice as well as discovery of a competitive price. However, in cases where the market is characterized by significant entry barriers coupled with the presence of a dominant player, the antitrust regulators may intervene if such a dominant player engages in pricing practices that harm consumers or stifle competition. While the long-term solution continues to be ensuring a competitive marketplace, in the short term the intervention by the antitrust regulators to prevent unfair pricing assumes importance in critical internet based economic activities. In consonance with this approach, Section 4(2)(a)(ii) of the Act specifically proscribes imposition of unfair price in purchase or sale of goods or service by a dominant enterprise.



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30. Google itself submits that *Market-based pricing is a cornerstone of competition*. In this regard, the Commission notes that the relevant market for app stores for Android OS is characterised by significant entry barriers and virtually absence of any competition in the market. It is noted that Google enjoys a strong ‘network effect’ of large base of users and apps developers in the market of app store for Android OS, which makes Google’s position unassailable. Network effects results in entry barriers for new entrants and make it much more difficult to achieve a commercially viable scale. Further, investment is required in development, maintenance, functioning and updating of app store platform. Furthermore, the Commission in Google Android Case as well as Google Play Case also examined the criticality of Google Play Store for OEMs as well as app developers and noted the same as a ‘*must have*’ app. The app developers perceive Play Store to be indispensable for reaching out to the entire spectrum of Android device users and the OEMs too perceive Play Store to be indispensable for the commercial success of their handsets. Accordingly, the Commission is of the *prima facie* view that the present market construct is not self-correcting and thus, does not enable determination of fair market price.
31. The Commission has earlier examined the issue of unfair pricing in *Shri Shamsher Kataria v. Honda Siel Cars India Limited and Others*². In the said case, the Commission also relied on the judgement of European Court of Justice in *United Brands Company and United Brands Continental BV v. Commission [1978] ECR 207*. According to *United Brands Case*, for establishing an unfair price, it has to be examined that whether the difference between the costs actually incurred, and the price actually charged is excessive. If the answer to this question is affirmative, then it needs to be determined whether a price has been imposed which is either unfair in itself or when compared to competing products.
32. In the facts and circumstances of the present matter, the Commission at this *prima facie* stage of inquiry notes that the Informant in *Case No. 27 of 2023* has relied on

² Case No. 03 of 2011 decided on 25.08.2014.



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Google's internal documents and has stated that *Google's internal documents record that it does not require more than 6% of the revenue share on paid downloads and IAPs to break even on the services provided in relation to the Google Play Store. Google has also internally stated that rate of commission imposed upon app developers is largely determined basis the commission charged by the dominant market player in the non-licensable smart mobile OS, i.e., Apple (which is largely 30%), rather than any actual cost / investment analysis.*

33. Google appear to be charging a service fee ranging from 10% to 30% in case of GPBS and 6% to 26% in case of ABS. The analysis of exploitative pricing invariably includes computing difference between the cost and the price of the product/service. At this stage of inquiry, the break-even revenue share @ 6% is being considered as a proxy of the cost of providing the Play Store services by Google. Google has also neither contested this value nor provided any other value which may be considered as cost incurred by Google. Accordingly, based on the abovementioned break-even revenue share @ 6% as disclosed by the Informant, it appears that the service fee @ 30% under GPBS (or 26% under ABS) being charged by Google substantially exceeds its cost of providing the services and thus, excessive. Based on this 6% break-even revenue share, Google is charging 4 to 5 times of its cost to the app developers which on a *prima facie* level appears to be disproportionate to the economic value of services being rendered to the app developers and appears to be an abuse of dominant position by Google.

34. The Commission in *Shamsher Kataria* also observed that the concept of unfairness of a price is related to the notion that such price is unrelated to the 'economic value' of the product and that such price is being charged by the enterprise because of its capacity to use its market power or position of strength in that relevant market to affect its competitors or consumers in its favour. In the present matter, app developers appear to have insignificant bargaining power *vis-à-vis* Google and are forced to accept terms that deter legitimate competition and increase their costs of operation. The app developer has no choice but to agree to the terms and conditions unilaterally decided by Google, otherwise they will not be able to access a vast pool



of potential Android users in India. Sufficient degree of competition in the available channels for distribution of apps would have allowed discovery of a competitive and fair price. However, it appears that Google has used its virtual monopoly power to reap trading benefits which it would not have reaped if there had been effective competition. Given this complete dependence of app developers on Google Play Store, the price being charged by Google appears to be unfair in itself.

35. The revenue distribution model within the Google Play Store appears skewed in favour of Google, with app developers potentially facing substantial costs. Allegedly, developers need to allocate nearly half of their chargeable value, towards service fee of Google (*i.e.*, up to 30%) and an additional 20% spent on advertising across Google's platforms and third-party apps. Such a significant portion of revenue flowing to Google suggests a potential imbalance in the ecosystem, necessitating a thorough examination to ensure fair competition and equitable treatment of developers within the digital marketplace. In this regard, the Commission also notes from the submissions that online advertisement service constitutes a significant majority of Google's total revenues.
36. Google also claims that 97% of developers pay no service fee at all (and yet benefit from all of Google Play's services). However, the Commission notes that Google has other revenue streams from the 'free apps' listed on Play Store, in the form of advertisement related revenue or otherwise. Therefore, it appears that these 97% apps also contribute to the recoupment of the costs associated with Play Store and Android ecosystem, in addition to the service fee.
37. In view of the foregoing, the Commission is of the *prima facie* view that Google has imposed unfair price in violation of Section 4(2)(a)(ii) of the Act which warrants a detailed investigation. Moreover, it appears that such imposition results in app developers having fewer resources to enhance or develop their app offerings, thereby constraining the growth of the app market, which appears to be in violation of Section 4(2)(b)(ii) of the Act. Additionally, Google's imposition of unfair service fee on app developers could force them out of the market or deter them from entering



due to increased operational costs, thus denying market access to these developers. This behaviour also curtails the freedom of app developers to select their business model and user engagement methods. Furthermore, Google's discriminatory and disproportionate service fee on developers offering paid downloads and IAPs appears to be diminishing incentives for app monetization and paid app development, further obstructing market access for such developers, potentially violating Section 4(2)(c) of the Act.

38. It has also been alleged that Google has created an arbitrary distinction between apps that offer digital goods and services for purchase (Digital Delivery Apps) and apps that offer physical goods and services for purchase (Physical Delivery Apps). It has been averred that both these types of apps avail the same developer resources, discovery and distribution services; yet Google applies a service fee on Digital Delivery Apps but not on Physical Delivery Apps. It has been further alluded that Google has arbitrarily determined that the particular content / service is physical as opposed to digital, and vice versa. Basis such an arbitrary distinction, Google has categorised certain apps as 'dealing in physical goods' and has excluded them from the ambit of service fee/ commission even when they operate substantially similarly to the apps categorised as 'dealing in digital goods'.
39. In this regard, Google has submitted that it does not charge the service fee for in-app transactions for physical goods as they are differently placed as compared to IAPs for digital services. As per Google, *in the case of IAPs, users typically pay for features that can be consumed within the app that is acquired via Google Play, such as magical swords that they can use in a gaming app or subscriptions that allow users to consume content within the app. These payments represent a remuneration for the use of the app and the goods and services consumed within the app. By contrast, physical goods cannot be consumed within the app and the payment is therefore remuneration for the physical goods and services provided outside of the app, rather than use of the app.*



40. In this regard, the Commission notes that Google claims that service fee is charged for multitude of services provided by Play Store to app developers. Taking this forward, if the service fee is for the services rendered to app developers, then the reasoning given by Google *i.e.*, consumption of content within the app, for not charging Physical Delivery Apps, does not appear to be reasonable. This issue assumes importance in view of the fact that various Physical Delivery Apps are very large in size and yet do not contribute towards recoupment of Google's investment in Play Store (as claimed by Google). Extending this further, it is not clear as to why consumption only apps have been allowed relaxation when their content is consumed within the app. On the whole, the applicability of service fee seems to be arbitrary and discriminatory.
41. In this regard, the Commission also takes cognisance of submissions made by the Informants that Google has not provided any objective metric or rationale for distinguishing between digital content/services and physical content/services, and it arbitrarily determines whether a particular content/service is physical or digital, leading to inconsistent categorizations. It has been further submitted that the primary function of apps categorized as "dealing in physical goods" is to operate an online platform connecting users with goods or service providers. For instance, dating apps which enable users to connect with others digitally and then meet in person, are considered as offering digital content/services by Google. Conversely, apps providing transportation services (like Uber and Ola), online shopping (like Amazon and Flipkart), food ordering (like Zomato and Swiggy), or home services (like Urban Company) allow users to connect with and book the service providers. Subsequently, users of these apps meet these providers in the physical world to avail themselves of the services. These apps are classified by Google as offering physical content/services.
42. In this regard, the Commission also takes cognisance of its following observations made in Google Play Case *vide* order dated 25.10.2022 (para 322):



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“Another connected issue highlighted by Match Group in its submission is that of selection of category of apps on which service fee is imposed by Google. As already stated, service fee of Google is applicable on apps offering digital content. Match Group in this regard has submitted that Google’s distinction between apps offering digital content in comparison to those offering physical goods or services is arbitrary. Ride sharing apps such as Uber and Ola, offer a digital platform connecting two sets of users i.e., a rider and a driver. Google considers these as physical goods / services and permits them to use alternative payment solutions, although Uber or Ola themselves are not providing the cab service. Google however classifies dating services, such as those provided by the Match’s portfolio brands, as digital goods / services. Both dating and ridesharing apps, however, share the same fundamental purpose, i.e., matching two people online to meet in the real world for an offline interaction. The distinction between the two is therefore inherently arbitrary. The Commission notes that there are multiple category of apps which are subjected to service fee. Further, within these apps, the service fee varies based on the type of service fee offered by the app. However, as alleged by the Informants, there seems to be ambiguity and not adequate transparency and justification for differential treatment accorded to apps by Google leaving it susceptible to discrimination.

(Emphasis added)

43. It has also been alleged by IBDF/IDMIF that Google is also discriminating amongst similarly placed apps in the OTT industry itself. For example, the app Amazon Prime Video app offers IAPs (subscription of its Prime service, movies for rent and access to other channels such as BBC iPlayer, Lionsgate Play) but the use of GPBS has not been mandated on that app so it is free to use its own embedded payment system. It is therefore, alleged that Google is selectively and arbitrarily imposing its Payments Policy upon certain app developers in a discriminatory manner.
44. Based on the above, the Commission is of the *prime facie* view that Google is implementing its policies in a discriminatory manner, in violation of section 4(2)(a) of the Act.
45. Before parting, the Commission would also examine the contention of Google that the Informants are reagitating the issues already decided by the Commission in the Final Order or is currently being examined by the Commission in Section 42 proceedings in Google Play *Case*. In this regard, it is noted that the Commission has



earlier not given any finding on the issues in respect of which the investigation is being directed in the present matter (*supra*). In fact, the Commission at para 327 of the Final Order specifically noted that *information available on record is not sufficient to give a finding on the monetization model, as sketched supra, followed by Google. Therefore, the Commission is not inclined to give any finding on this aspect, at this stage.* Therefore, these issues have neither been decided in the Final Order nor being examined under Section 42 proceedings in the Google Play Case. Therefore, the contention of Google is rejected *sans* merit.

Conclusion

46. In view of the foregoing, the Commission is of the *prima facie* view that Google has violated the provisions of Section 4(2)(a), 4(2)(b) and 4(2)(c) of the Act, as elaborated *supra* which warrants detailed investigation.
47. Accordingly, 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 a consolidated investigation report within a period of 60 days from the date of receipt of this order.
48. It is further noted that Google has filed its submissions in two versions *viz.* confidential as well as non-confidential. It has also filed an application seeking confidentiality over certain documents/information filed by it under Regulation 35 of General Regulations, 2009. The confidential version was kept separately during the pendency of the proceedings. It is made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used for the purposes of the Act in terms of the provisions contained in Section 57 thereof.
49. 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.

50. 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, through speed post/e-mail. The Secretary is directed to serve a copy of this order to the counsel(s) of the parties also, through speed post/e-mail.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi
Date: 15 / 03 / 2024