

# Google versus CCI: Whom to blame for the media leak?



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So, has Google got it wrong this time? Recently, the Delhi High Court rapped the internet giant for “threatening” to sue the fair market regulator, the Competition Commission of India (CCI), for the “leak” of the confidential investigation report of its investigative arm, the director general, to the media, leading to headline stories in India. The manner of Google’s protest and reaction smacks of both arrogance and ignorance about the procedural aspects of India’s common law and calls for a public debate.

Undoubtedly, the media leak of this magnitude, where the whole investigation report gets leaked to “unauthorised” persons, is unprecedented and has caused huge embarrassment to the CCI. It is condemnable and reveals chinks in CCI’s armour, for which, I am sure, CCI must have started internal inquiries. This may undermine CCI’s hard-earned reputation as an efficient regulator to keep business secrets, particularly those related to ex-ante and mandatory competition assessments of mergers and acquisitions. This deserves serious consideration at the highest levels in the government to restore the credibility of this essential institution, a sine qua non for growth of free market economy in India.

In the backdrop of the above caveats, can the allegedly “threatening letter” sent by Google’s top US-based legal managers to the CCI chairman (leading to the filing of the legal suit), seeking that the investigation report itself be quashed on account of the leak, be legally and morally justified? Since the matter is sub judice, no outcome can be or should be predicted. Yet, it is pertinent to reflect on related aspects, which are germane to this episode for larger public interest.

Facts first. Like those in the European Union, Google is currently facing three par-

allel antitrust inquiries in India before the CCI on account of its alleged position of dominance in three separate yet related online markets. The first inquiry (vide a CCI order dated April 16, 2019) is for Google’s allegedly unfair and restrictive conditions imposed on smartphone makers using its android operating system (OS) as well as in the market for the apps available on Google’s Play Store for Android OS, which is used in 98 per cent smartphones globally as also in India. The second inquiry (dated November 9, 2020) relates to alleged leveraging of its dominant position to protect and strengthen its power in the market for apps facilitating online payments through UPI by allegedly

favouring its own application, Google Pay, for app and in-app purchases. The third (dated June 22, 2021) relates to it using its dominant position allegedly for compulsory tying its “must have” app, the licensable android mobile OS and Google Play Store, with Android TV OS, Fire TV, etc., in the market for licensable android smart TV OS in India, and so on. The DG’s investigation report pertains to the first inquiry and its findings are obviously most important since they will influence the findings in the other two pending investigations.

Mind you, these investigations are based on complaints filed by public spirited individuals in India (mainly lawyers in Delhi) after similar inquiries against Google in the European Commission. Google’s main defence before the EC apparently is that since its innovative OS and Play Store and licensable android smart TV OS have been welcomed by consumers across the globe, these cannot be scrutinised under the competition law the main objective of which is consumer welfare, and for that very reason its market conducts are pro-competitive and not anti-competitive.

Be that as it may, the CCI as an institution, and certainly not its chairman, can be blamed for the self-harming media leak.

The lapse has been on the part of the DG’s office, which is headed by a serving IPS officer and is physically and legally a separate office — though under the administrative control of the CCI. It is responsible for conducting investigation into matters so directed by the CCI, an adjudicatory body, after finding prima facie case for intervention.

Google’s letter to the CCI chairman is like someone blaming the trial court for media leaks of a police charge sheet! Google seems to have made a self-goal by this apparently ill-advised move, which may backfire, since the present litigation is likely to be seen as an attempt to frustrate the inquiry rightly ordered by CCI, which no high-



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court in India may agree to stall due to some landmark Supreme Court decisions. On the other hand, this unauthorised media leak by some corrupt persons in the DG office and its impact on CCI’s reputation will hopefully lead to strict departmental action against them by the CCI and the central government under the CCS Conduct Rules; and perhaps also under the Official Secrets Act, since this episode may affect the friendly relations between India and US,

to some extent. A quick and stern action by the CCI to identify and punish such rogue insiders in the DG office will help it recover its credibility.

At the same time, there is a need to revisit the limits on such “ultra-investigative” journalism by mainstream media in ongoing and sensitive cases pending in CCI against Big Tech, as such premature reporting damages the image of India’s otherwise robust legal and judicial system. But hopefully this may also improve the regulatory oversight.

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