



COMPETITION COMMISSION OF INDIA

Case No. 07 of 2020

In Re:

XYZ

Informant

And

1. **Alphabet Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043
United States of America** **Opposite Party No. 1**
2. **Google LLC
c/o Custodian of Records
1600 Amphitheatre Parkway
Mountain View, CA 94043
United States of America** **Opposite Party No. 2**
3. **Google Ireland Limited
Google Building Gordon House
4 Barrow St, Dublin, D04 E5W5, Ireland** **Opposite Party No. 3**
4. **Google India Private Limited
No. 3, RMZ Infinity – Tower E,
Old Madras Road,
3rd, 4th, and 5th Floors, Bangalore, 560016** **Opposite Party No. 4**
5. **Google India Digital Services Private Limited
Unit 207, 2nd Floor
Signature Tower-II Tower A, Sector 15
Part II Silokhera, Gurgaon 122001,
Haryana, India.** **Opposite Party No. 5**



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 present Information has been filed, on 21.02.2020, under Section 19(1)(a) of the Competition Act, 2002 (the ‘Act’) by XYZ (the ‘Informant’) against Alphabet Inc. (‘OP-1’), Google LLC (‘OP-2’), Google Ireland Limited (‘Google Ireland/ OP-3’), Google India Private Limited (‘Google India/ OP-4’) and Google India Digital Services Private Limited (‘Google Digital Services/ OP-5’) alleging contravention of various provisions of Section 4 of the Act. The opposite parties are hereinafter collectively referred to as ‘Google/ Opposite Parties’.

Facts as stated in the Information

2. Google LLC (OP-2) is stated to be a multi-national conglomerate specialising in internet related products and services. Google's business model is stated to be based on interaction between, the online products and services it offers free of charge to users on one hand and, on the other, its online advertising services, from which it derives majority of its revenues. The Informant has further averred that other than Android and Google Search, Google’s core products include, a web browser (Google Chrome), an online video streaming service (YouTube), a web-based e-mail service (Gmail), an online mapping, navigation and geolocation service (Google Maps), an app store (Play Store), *etc.* These services are part of Google Mobile Services (GMS) *i.e.*, the bundle of Google apps and services that



Google licenses to smartphone manufacturers/Original Equipment Manufacturers (OEMs).

3. The Information further provides that in addition to the core products of Google, on 18.09.2017, Google launched a Unified Payment Interface (**UPI**) based payment app called Tez in India, which was rebranded as *Google Pay* on 28.08.2018 in order to unify Google's payment offerings globally under the 'Google Pay' brand. UPI is an initiative of National Payments Corporation of India (**NPCI**) which allows integration of multiple bank accounts into a single mobile app, merging several banking features (including Person to Person fund transfer and Person to Merchant payments) under one hood. It also allows for 'peer to peer' collect or pay requests that can be scheduled and paid as per requirement and convenience. The Information also states that with UPI, everyone with a bank account in India can create a Virtual Payment Address (VPA or UPI ID) and start transacting using a mobile phone. This VPA, for example abc@xyzbank, becomes a person's unique payment identity and removes the need to share bank details while transacting.

4. Alphabet Inc. (OP-1) is stated to be the holding company of OP-2. The Informant has averred that Alphabet's revenue as of September 2019 was USD 116 billion out of which almost 84% came from advertising, demonstrating Google's importance in leading the vision of Alphabet Group. Google Ireland (OP-3) is stated to have been set up in 2003 and is a subsidiary of Google LLC and is responsible for providing services to the company's users in the European Economic Area and Switzerland. Google India (OP-4) is stated to be a subsidiary of Google LLC and it assists and represents Google in its operations in India. Google Digital Services (OP-5) is stated to be a subsidiary of Google LLC incorporated in January 2017 and it is the nodal entity for Google Pay in India and as per *Google Pay Terms*, when a user agrees to the terms and conditions of Google Pay, they enter into an agreement with Google India Digital Services Private Limited.



5. The Informant has given a detailed background of the Android ecosystem *w.r.t.* smart mobile devices highlighting the importance of Play Store in the overall Android architecture. The Informant has alleged that Google, through its control over the Play Store and Android Operating System (OS), is favouring Google Pay over other competing apps, to the disadvantage of both *i.e.* apps facilitating payment through UPI, as well as users. As per the Informant, this amounts to abuse of its dominant position by Google in violation of various provisions of Section 4 of the Act.

6. For the purpose the present matter, the Informant has submitted that the following relevant markets should be considered:
 - a) market for licensable mobile OS for smart mobile devices;
 - b) market for app stores for Android OS; and
 - c) market for apps facilitating payment through UPI.

7. In relation to market for licensable mobile OS for smart mobile devices, the Informant has submitted that from a demand-side perspective, basic and feature phone OS cannot be installed on smart mobile devices because of their extremely reduced functionalities. Further, even from a supply-side perspective, the differences in functionalities mean that the development of a smart mobile OS requires significant time and resources, regardless of whether the OS developer in question has already developed a basic and feature phone OS. The Informant has also averred that there is no substitutability between mobile OS for smart mobile devices and desktop/computer OS. Further, from the perspective of the OEM, a non-licensable mobile OS made by a vertically integrated developer for its own products, is not a substitute for a licensable mobile OS for smart mobile devices. Therefore, non-licensable mobile OS are not part of the same market as that of licensable mobile OS for smart mobile devices. The Informant has also



placed reliance on decision of the European Commission¹ wherein the EC recognised that the markets for smart mobile OS and basic and feature phone OS, are separate markets. The Informant has also placed reliance on the order of the Commission dated 16.04.2019 passed under Section 26(1) of the Act in *Re: Umar Javeed & Othrs AND Google LLC & Othrs* bearing Case No. 39 of 2018 (Google Android Order) for this market.

8. In relation to market for app stores for Android OS, the Informant submits that app stores are digital distribution platforms that are dedicated to enabling smart mobile device users to download, install and manage a wide range of diverse apps from a single point in the interface of the smartphone. The Informant has *inter alia* averred that sideloading and web apps (offered through browser) are not a substitute for apps offered through app stores and app stores form a separate platform for smart mobile device users to access apps as well as for app providers to reach an audience with their content or services. Further, there is no substitutability between app stores of other licensable and non-licensable mobile OS for smart mobile devices and Android App Stores. The Informant has also placed reliance on EC Android Decision as well as Google Android Order of the Commission, for the same. Accordingly, the Informant has averred that another relevant market in the present case should be the market for app stores for the Android mobile OS.
9. In relation to market for apps facilitating payment through UPI, the Informant has submitted that users can conduct digital payment transactions from a variety of channels *viz.* internet banking, credit/debit cards, wallets, UPI enabled apps, *etc.* However, market for apps facilitating payments through UPI is separate from markets for all other modes of digital payment solutions like cards, wallets, internet banking, *etc.* For the said purpose, the Informant has brought forward distinct features offered by apps facilitating payments through UPI as compared

¹ European Commission (EC) decision in Case AT 40099 – Google Android (*EC Android Decision*)



to the other modes of digital payment solutions. The Informant has claimed that UPI based digital payment apps are more convenient, secured, economical, *etc.* over other digital payment solutions. Based on such distinct features, the Informant has averred that the market for apps facilitating payment through UPI is a separate relevant market as users do not regard apps facilitating payment through UPI as interchangeable or substitutable with other modes of digital payment.

10. In relation to relevant geographic market, the Informant has submitted that the relevant geographic market for the markets mentioned above is national in scope and the same is evident from Google's own internal structuring, which created a separate entity to run India operations. The Informant has also placed reliance on Google Android Order of the Commission for the same. The Informant also states that even if the worldwide markets for licensable OS for smart mobile devices and app stores for Android are considered as the relevant geographic markets, there would be an insignificant to no change in the assessment of dominance of Google and therefore, detailed analysis of market definition is not necessary.
11. The Informant has also averred that Google enjoys a dominant position in the relevant market(s) for licensable mobile OS for smart mobile devices in India, and the market for app stores for Android mobile OS in India. It has been submitted that Google enjoys a position of strength in both of these markets which enables it to operate independently of competitive forces and to affect its competitors/ consumers as well as these markets in its favour. Its position of strength is reinforced by high market share of Android OS (95% for December 2019) in the market for licensable mobile OS for smart mobile devices; tremendous resources with the holding company of Google *i.e.* Alphabet (OP-1); high barriers to entry in the form of network effects, high sunk costs and Google's access to a large installed user base; high level of vertical integration of Google's business operations as it integrates Google's Android with other must have proprietary apps, such as the Play Store and Google Play Services; and high level of



dependence of smart phone mobile users, OEMs and app store developers on Google's Android which also lack any countervailing power against Google. For the above reasons, Google has been stated to establish itself as a critical platform for all the stakeholders. Other players in market for licensable mobile OS for smart mobile devices have not been able to effectively enter, let alone constrain Google. Due to Google's dominance in the markets for the licensing of mobile OS and app stores for Android OS, Google has become the *de facto* gateway to Android smartphones.

12. The Informant has also averred that being the dominant player, Google has a special responsibility to ensure fairness not just in these markets but also in related markets including the market for apps facilitating payment through UPI. The Informant has alleged that Google is abusing its dominant position in the markets for licensable mobile OS for smart mobile devices and app stores for Android OS by:
 - a.) unfairly privileging Google Pay by prominent placement on the Play Store, Android OS and Android based smartphones by skewing the search results on the Play Store in favour of Google Pay; by rigging its featured app lists to include Google Pay in categories, such as "*Editors' Choice Apps*", "*User Choice App of 2018*" and "*#Top Free app*" demonstrating clear bias in favour of its own app; by manipulating the search advertisements algorithm on the Play Store in favour of Google Pay; and by pre-installing and prominently placing Google Pay on Android smartphones at the time of initial set-up resulting in a "*status-quo bias*" to the detriment of other apps facilitating payments through UPI as well as other methods of payment, such as mobile wallets, net banking, *etc.*
 - b.) mandating apps to use Play Store's payment system and Google Play In-App Billing for charging their users for purchase of apps on Play Store and In-App



- purchases² (which privileges Google Pay over other apps facilitating payment through UPI and mobile wallets), if they want to be listed on the Play Store; and
- c.) imposing unfair terms on users by requiring them to use Google Pay which is not in compliance with the data localisation directive issued by Reserve Bank of India and the guidelines issued by NPCI.
13. Further, the Informant *vide* letter dated 23.06.2020, brought to the notice of the Commission, a recent investigation launched by the European Commission (EC) in relation to abuse of dominant position by Apple Inc. The Informant averred that the conduct of Apple being investigated by the EC in Europe is being carried out by Google in India. The Informant pointed out similarities between the conducts of Apple in Europe and Google in India *i.e.* like Apple (as set out in the Press Release of EC), as a mandatory requirement for listing on the Play Store, Google requires the app developers to exclusively use Google Play Store's payment system and Google Play In-App Billing for charging users who purchase apps on the Play Store or buy goods/services from inside an app (*i.e.* IAP), and further like Apple, Google charges app developers a 30% commission for allowing them to use the Play Store's payment system and Google Play In-App Billing.
14. The Commission considered the Information in the ordinary meeting held on 06.05.2020 and decided to seek the response of Opposite Parties thereon. Accordingly, the Opposite Parties were directed to file their response to the Information. A copy of the Information was also shared with the Opposite Parties for the said purpose. The Opposite Parties filed their common response (confidential as well as non-confidential versions) on 01.07.2020 through e-mail.

² In-app purchasing refers to the buying of goods and services from inside an app on a mobile device, such as a smartphone or tablet. IAPs allow developers to provide their apps for free.



Submissions of Google

Procedural submissions

15. Besides responding to the allegations made in the Information, the Opposite Parties in their common response stated that the Hon'ble National Company Law Appellate Tribunal (NCLAT) in its recent order passed in the case of *Samir Agarwal v. Competition Commission of India, Competition Appeal (AT) No. 11 of 2019* has held that Information under the Competition Act, 2002 may only be filed by a person who has "*suffered invasion of his legal rights*" either, "*as a consumer or beneficiary of healthy competitive practices.*" The Opposite Parties further stated that this determination is important, per the Hon'ble NCLAT, to ensure that "*unscrupulous people*" do not "*rake issues*" before the Commission to target some enterprise "*with oblique motives.*" However, due to anonymity sought by the Informant on the basis of fear of retaliation, the Opposite Parties have not been able to make submissions on this important procedural safeguard. Accordingly, the Opposite Parties requested the Commission to dismiss the Informant's confidentiality claims including on its identity.

16. The Commission, in its ordinary meeting held on 15.07.2020 considered the response filed by Google and *vide* the said order, Informant was given an opportunity to file its submissions as to why its confidentiality status be maintained. The Informant, *vide* its response dated 31.07.2020, reiterated its claim of confidentiality and made submissions as to why the same needs to be maintained. The Informant *inter alia* submitted that it has *locus* to file the Information as there is evidence of having suffered an invasion of legal rights both as a consumer, and generally as a beneficiary of healthy competitive practices; the Competition Commission of India (General) Regulations, 2009 impose a positive obligation upon the Commission to maintain confidentiality over the identity of any Informant, who requests confidentiality; disclosing the identity of the Informant to Google would lead to a chilling effect in such cases



being brought to the Commission for fear that in each case the opposite party would be able to ascertain the identity of an Informant and take retaliatory actions against such an Informant; and if Google's argument is to be accepted, the Commission can never initiate an investigation based on information received through its Anonymous Module, or *suo moto*, based on evidence it sees in the public domain. The Informant has further averred that Section 19(1) of the Act simply states that, "*the Commission may inquire into any alleged contravention of the provisions ... either on its own motion or on - (a) receipt of any information, in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association...*" (emphasis added). The Informant meets the criteria of "any person" and, as discussed above, is separately a "consumer".

Substantive objections of the Opposite Parties

17. The Opposite Parties have contested the allegations in the Information and for the said purpose they *inter alia* relied on a survey conducted by Google. In relation to dominance of Google (*i.e.* Android OS), it has been stated that Android is not dominant in India and it faces significant competition from feature phones OSs as feature phones sold in India today boast the functions and performance that the Informant attributes to smartphones. Moreover, Android is claimed to be facing significant competition from licensable and non-licensable OSs. As per the OPs, if hypothetically the quality of Android OS is deteriorated, users and app developers could and would switch platforms (*e.g.*, to non-licensable OSs). The Opposite Parties have also contested the dominance of Play Store in the market for app stores for Android OS and had *inter alia* submitted that it is not a 'must have' app as over 40% of app downloads in India take place outside of Play; OEMs preinstall a rival app store on many popular devices in India; the consumers in Google survey confirmed that they have downloaded an Android app directly from a website or a source other than an app store (*e.g.* through sideloading and/or file sharing services).



18. In relation to market for apps facilitating payment through UPI, the Opposite Parties have *inter alia* stated that this “market” ignores competitive reality, as it excludes forms of payment that users consider to be substitutes (such as net banking, mobile wallets, and credit and debit cards). As per Google Survey, Indian consumers confirmed that UPI apps are good substitutes for net banking, mobile wallets, and credit & debit cards. Moreover, the Opposite Parties claim considerable supply side substitutability between various digital payment solutions.
19. In relation to various allegations in the Information, the Opposite Parties have *inter alia* submitted that
- i. Google does not favour the GPay app (Tez) in Play’s search rankings and these allegations are wholly misconceived. Google ranks search results in Play based on multiple criteria which do not favour the GPay app (Tez). Further, Google has every commercial incentive to ensure that its search rankings in Play provide users with high quality, relevant apps that are responsive to the user’s query.
 - ii. Google does not grant unmerited prominence to GPay in Play and both Google and non-Google services, including Google’s rivals, can and do appear in *Users’ Choice*, *Editors’ Choice*, and *Top Charts* lists. Regardless, these lists and awards do not foreclose competition and they are not essential for success of an app.
 - iii. Google does not manipulate ads on Play and it ranks ads on the basis of the same principles (bid amount, relevance, and quality), and Google provides advertisers with sufficient information to allow them to manage their campaigns. Google’s ad service allows users choice, does not foreclose, and is non-discriminatory.
 - iv. The GPay app (Tez) is not preinstalled on all Android devices and is not the default payment app. Google’s licenses for Android and Play do not



require OEMs to preinstall the GPay app (Tez) on their Android devices or to set the service as the default. Rather, Google gives OEMs the option to preinstall the GPay app (Tez) in specific, separate procurements. Many other developers make their payment apps available to OEMs for preinstallation as well.

- v. The GPay app (Tez) is not the exclusive payment method on Play. The Informant's own evidence demonstrates that Google does not require users or developers to use the GPay app (Tez) to make and receive payments on Play. Google does not disadvantage rival UPI apps on Play. On the contrary, Google integrated Google Payments Platform with the UPI framework, enabling the so-called "collect flow", because doing so enabled all UPI apps as a form of payment on Google Payments and complies with NPCI guidelines. The very purpose of the integration was to enable interoperability, and it is compliant with applicable NPCI guidelines.
- vi. The Informant's allegations on the use of Play's billing system are similarly misconceived. It ignores the inherent need for a billing system and payment infrastructure for any app stores, and the legitimate, pro-competitive reasons for using Google's own systems and applying a service fee. Play's billing system also ensures that Google provides users and developers with a secure, stable, and uniform experience across hundreds of countries, with dedicated customer support and high user confidence.
- vii. Google's 30% (and in certain circumstances, 15%) service fee is not arbitrary. It is market based, legitimate, and pro-competitive as the service fee allows Google to cover third party fees and support its significant and continued investments in Play, including the vast resources it develops for developers.
- viii. The Informant alleges that Google does not comply with data regulations and guidelines in India, and that it fails to gather effective user consent. However, these issues fall within the exclusive jurisdiction of Reserve



Bank of India and that, in any event, it complies with all applicable data regulations in India.

20. In view of the aforesaid submissions, Google submitted that it be allowed to continue competing on merits in India's flourishing digital payments space and that the Commission finds that no *prima facie* concern exists.
21. The Commission, in its meeting held on 11.08.2020, considered the Information filed in the present matter, response of the Opposite Parties thereto as well as other submissions on record and decided to pass an appropriate order in due course.

Analysis

22. At the outset, the Commission notes that besides filing objections to the allegations made by the Informant, the Opposite Parties, placing reliance on a recent decision of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Samir Agarwal v. Competition Commission of India* [Competition Appeal (AT) No.11 of 2019 decided on 29.05.2020] (hereinafter, '*Samir Agarwal case*'), stated that due to anonymity sought by the Informant, they have not been able to make submissions on the important procedural safeguard related to '*locus*' of the Informant to file the present Information. Accordingly, the Opposite Parties have requested the Commission to dismiss the Informant's confidentiality claims including on his identity. It has been stated that Google's ability to sufficiently defend its position will be compromised if it cannot have access to the background context and other facts relevant to the present issues, including whether or not the Informant has sufficient standing.
23. In relation to relevance of '*locus*' of an Informant for initiating proceedings before the Commission or in other words, the claim of the Opposite Parties that the Information under the Act may only be filed by a person who has suffered invasion of his legal rights either, as a consumer or beneficiary of healthy



competitive practices, the Commission is of the view that the plea does not appear to be in accord with the statutory scheme.

24. The Competition Act was enacted, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. Clearly, the Act has been conceived to follow an inquisitorial system wherein the Commission is expected to inquire cases involving competition issues *in rem*, rather than acting as a mere arbiter to ascertain facts and determine rights *in personam* arising out of rival claims between parties.
25. The role of the Commission as an overarching market regulator also finds its foundational footing in the amendments introduced in the Act, *vide* the Competition (Amendment) Act, 2007, whereby and whereunder the provisions of Section 19 (1) (a) were amended substituting the words “*receipt of a complaint*” with “*receipt of any information*”. This amendment clearly reflected the legislative intention of emphasizing the inquisitorial nature of the proceedings of the Commission. Also, under Section 35, the words ‘*complainant or defendant*’ were substituted by the words ‘*person or an enterprise*’ through the Competition (Amendment) Act, 2007 signifying the intent of the legislature to depart from an approach to cases guided by adversarial adjudication.
26. Thus, the statutory scheme on the *locus* to file an Information is abundantly clear and has been so noted by the predecessor of the Hon’ble NCLAT *i.e.* the Hon’ble Competition Appellate Tribunal (hereinafter, ‘COMPAT’) in the case of *Surendra Prasad v. Competition Commission of India and others* in Appeal No. 43 of 2014, decided on 15.09.2015. For felicity of reference, the relevant observations from the said order are excerpted below:



“22. It is significant to note that Parliament has neither prescribed any qualification for the person who wants to file an information under Section 19(1)(a) nor prescribed any condition which must be fulfilled before an information can be filed under that section. There is nothing in the plain language of Sections 18 and 19 read with Section 26(1) from which it can be inferred that the Commission has the power to reject the prayer for an investigation into the allegations involving violation of Sections 3 and 4 only on the ground that the informant does not have personal interest in the matter or he appears to be acting at the behest of someone else. As a matter of fact, the Commission has been vested with the power to suo moto take cognizance of any alleged contravention of Section 3(1) or Section 3(4) of the Act and hold an inquiry. This necessarily implies that the Commission is not required to wait for receipt of a reference from the Central or the State Government or a statutory authority or a formal information by someone for exercising power under Section 19(1) read with Section 26(1) of the Act. In a given case, the Commission may not act upon an information filed under Section 19(1)(a) but may suo moto take cognizance of the facts constituting violation of Section 3(1) or Section 3(4) of the Act and direct an investigation. The Commission may also take cognizance of the reports appearing in print or electronic media or even anonymous complaint/representation suggesting violation of Sections 3 and 4 of the Act and issue direction for investigation under Section 26(1). The only limitation on the exercise of that power is that the Commission should feel prima facie satisfied that there exist a prima facie case for ordering into the allegation of violation of Sections 3(1) or 4(1) of the Act.”

27. The aforesaid leads to an inevitable conclusion that the Informant need not necessarily be an aggrieved party to file a case before the Commission. Neither the Act specifies any such requirement explicitly, nor the same can be implicitly read into the provisions which clearly point towards the inquisitorial system envisaged by the Parliament. Further, it is because of the inquisitorial scheme of the Act, that the Commission in appropriate cases, defends its orders in higher



forums, regardless of the fact as to who brought such case before it, which is not a normal feature in adversarial proceedings.

28. Accordingly, the Commission rejects the contention of the Opposite Parties, based on the observations in *Samir Agarwal* case ignoring the larger statutory scheme and other ruling, as regards the *locus* of the Informant. Any interpretation contrary to the expressive legislative mandate and judicial pronouncements, as elucidated in the aforesaid paras, may not be appropriate.
29. Having dealt with the preliminary objection, the Commission now proceeds to deal with the allegations levelled by the Informant in respect of contraventions of the provisions of Section 4 of the Act.
30. For examining the allegations pertaining to Section 4 of the Act, delineation of the relevant market is essential to ascertain dominance and for analysing the alleged abusive conduct of the Opposite Parties.

Relevant Market and Dominance of Google

31. For the purposes of the present matter, the Informant has submitted that the following relevant markets should be considered:
 - a) market for licensable mobile OS for smart mobile devices;
 - b) market for app stores for Android OS; and
 - c) market for apps facilitating payment through UPI.
32. In this regard, it is observed that the Commission in its order dated 16.04.2019 passed under section 26(1) of the Act in Case No. 39 of 2018 had occasion to consider the first two markets as delineated by the Informant and formed a *prima facie* view that “*market for licensable smart mobile device operating systems in India*” and the “*market for app stores for android mobile operating systems*” are appropriate and necessary markets for assessment of impugned conduct in the said



case. The Commission also formed a *prima facie* determination that Google is dominant in both of these markets. Specifically, the Commission observed as follows:

“14. In this regard, the Commission observed that the operating system designed for mobile devices are different from operating system designed for desktop computers in terms of use. Mobile operating systems combine features of a personal computer operating system with other features useful for mobile or handheld use. Each mobile manufacturer designs the device as per the operating system it is going to use on it. Thus, the mobile operating system differs in terms of characteristics and use from the computer operating systems. From the Original Equipment Manufacturers (OEMs)’ perspective, only such operating systems are accessible to them which are licensed by the developers. Thus, the non-licensable operating systems such as iOS do not appear to be part of the same market since they are not available for license by third party OEMs. Thus, the primary relevant product market in this case appears to be the market for licensable smart mobile operating systems and 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 mobile device operating systems in India”. In this relevant market, Google prima facie appears to be dominant on the basis of the material brought on record by the Informants wherein inter alia they have stated that as per statista.com, in 2017, Android accounted for 80% of India’s mobile OS market.

15. Further, apart from the above delineated primary relevant market, it would be necessary to determine some associated relevant markets to examine the impugned conduct. In this regard, the Commission



notes that prima facie, the relevant market for app stores for android mobile operating systems, proposed by the Informants, also appears to be appropriate and necessary for the assessment of the impugned conduct. As the European Commission, in its Press Release, notes, Google is dominant in the worldwide market (excluding China) for app stores for the Android mobile operating system. Google's app store, the Play Store, accounts for more than 90% of apps downloaded on Android devices. Google's app store dominance is not constrained by Apple's App Store, which is only available on iOS devices. As such, Google's dominance in this relevant market also becomes evident."

33. In this backdrop, having considered the submissions of Google related to competitive constraints exerted by feature phone OS and non-licensable OS as well as by Android's open source nature, the Commission notes that feature phones offer limited functionalities and as such, their OS cannot be a substitute with a smartphone OS like Android. In relation to the Google's contention about competitive constraints from non-licensable OS, the Commission notes that the relevant market has been defined from the perspective of OEMs and all non-licensable OS are not available with such OEMs as a substitute of Android OS. Due to considerable size and network effects of the Android ecosystem, OEMs do not have an effective choice but to offer the same to the consumers. Therefore, such non-licensable OS does not appear to be constraining the behaviour of Google. In relation to the results of survey mentioned by the Opposite Party in its written response, the Commission notes that the survey conducted by Google cannot be relied upon at this stage without empirical validation.
34. Google has also contended that *Play* is not a '*must have*' app and it is not a dominant player in the relevant market as it faces significant competitive constraints from other Android app stores, sideloading, file sharing services and web apps. The Commission notes that all other app stores (e.g. Samsung's Galaxy store) apart from Google's Play Store which are available for installation on



Android OS are part of the same market *i.e.* market for app stores for android mobile operating systems. However, based on available data, it appears that Play Store is the dominant source of downloading apps on an Android smartphone. *Prima facie* it also appears that due to lack of technical knowledge on the part of users as well as the security risks involved in side-loading, most android users would not opt for sideloading/file sharing. Such forms also restrict the option to update the app as compared to automatic updation offered in an app store. Accordingly, the contention of the Opposite Parties in relation to substitutability of sideloading and/or file-sharing and the corresponding competitive constraints exercised by such options on the Google's Play Store needs to be empirically verified through detailed examination.

35. In view of the above, the Commission does not find any reasons for deviation from the above said *prima facie* delineation of relevant market(s) and the dominance of Google in these two markets, for the purpose of *prima facie* assessment of allegations in the present matter.
36. In relation to the market for apps facilitating payment through UPI, the Opposite Parties have *inter alia* contested that this “*market*” definition ignores competitive reality, as it excludes other forms of payment that users consider to be substitutes (such as net banking, mobile wallets, and credit and debit cards), as well as the considerable supply side substitutability as digital payment providers often offer more than one form of payment and some even combine multiple forms of payment within a single app, such as Paytm provides UPI, net banking, mobile wallet services, *etc.* The Commission has considered the submission of the Informant as well as Opposite Parties and notes that payment apps based on UPI do appear to be offering unique features as against other digital payment solutions. It is noted that UPI is an instant real-time payment system developed by NPCI for facilitating interbank transactions and work by instantly transferring funds between two bank account on a mobile platform. Thus, UPI is a system that powers multiple bank account in a single mobile application, merging several banking features,



seamless fund routing and provide for merchant payment under one hood. Further, both person to person (*i.e.* P2P) and person to merchant (*i.e.* P2M) transactions can be undertaken on a UPI platform. Further, UPI also permits real time push transactions, *i.e.* the customer initiating the transaction to pay the beneficiary; and pull transactions, *i.e.* the beneficiary initiates a request to make a payment. UPI also facilitate immediate fund transfer through mobile device round the clock 24x7 and 365 days a year with single click 2 factor authentication. Moreover, different bank accounts can be accessed using a single UPI application and payment can be made using Virtual Payment Address, wherein the customer is not required to share sensitive financial information.

37. The Commission also had the occasion to examine the said market in its order dated 18.08.2020 passed under Section 26(2) of the Act in *Re: Harshita Chawla AND WhatsApp Inc. and others bearing case No. 15 of 2020* and formed a view that ‘*market for UPI enabled Digital Payments Apps in India*’ is a separate relevant market. Specifically, the Commission noted:

“78. The UPI enabled Digital Payment Apps also work as third-party apps (not the banking entities) enabling instant transfer of funds (in the form of IMPS) between users having subscribed to the Apps on their smartphones and having access to internet. This is a new technology infrastructure that existing bank apps can integrate with, in order to facilitate easy transfer of funds and other monetary transactions between two people in a secure and convenient manner. Further, these UPI enabled Digital Payment Apps, e.g. PayTM, Google Pay, Phone Pe etc., allow several value-added features besides traditional transfer of funds, such as integrating payment for utilities, mobile bills, purchasing train tickets, air tickets, movie tickets and thus, provide services which are distinct and which may not be substituted with any other mode of payment such as debit cards, credit cards, net banking, etc. Thus, the Commission agrees with the Informant that the second relevant market for assessing the allegations of the Informant would be ‘market for UPI enabled Digital Payments Apps in India’.”



38. Further, the Informant has claimed that the total volume of UPI transactions in the second quarter of 2019 was 2.2 billion, a 263% increase from second quarter of the previous year. In terms of value, UPI clocked INR 4.4 trillion, which was a 336% increase from second quarter of the previous year. In this regard, the Commission has noted that as per *Payment System Indicators* published by the Reserve Bank of India in its Annual Report for the year 2019-20³, the growth rate of transactions being undertaken through UPI during the financial years 2017-18 to 2019-20 is substantially higher than growth rate of other digital payment options like IMPS, NEFT, credit & debit cards, *etc.* This kind of traction received by UPI from users is indicative of the fact that UPI offers unique advantages (both technical as well as in terms of user interface) over other digital payment methods. Therefore, the Commission notes that though the intended use of most of the digital payment methods might be the same, the features/ characteristics offered by UPI make it distinct from others which is sufficiently evidenced by the volume and/or value of transactions completed through UPI based apps.
39. In view of the above, the Commission agrees with the market definition given by the Informant and is of the *prima facie* view that market for apps facilitating payment through UPI appears to be a distinct relevant market for the assessment of allegations in the present matter.

Allegations under Section 4

40. The Informant has alleged multiple instances of abuse of dominant position by Google in the above stated relevant market(s). The merits of these allegations are examined and discussed below:

³ Available at: <https://www.rbi.org.in/Scripts/AnnualReportPublications.aspx?Id=1293> Last accessed on 09.11.2020



Exclusivity Regarding Mode of Payment for Purchase of Apps and In-App Purchases (IAPS)

41. The Informant has averred that Google's Payment Policy specifically provides that developers charging for apps and downloads from Google Play must use Google Play's payment system. The Payment Policy further provides that developers offering products within another category of app downloaded on Google Play must use Google Play In-app Billing as the method of payment. By making listing of an app on Play Store conditional on the app using Play Store's payment system and Google Play In-App Billing for charging their users, the Informant alleges that Google is imposing a "take it or leave it" condition on all app providers. If apps do not comply with Google's demand of using Play Store's payment system and Google Play's In-App billing, they will not be able to access more than 90% of the target users in India, which is not a feasible option for any app provider.

42. The Informant has further averred that this condition has been "imposed" can be further demonstrated by the fact that the Play Store charges a 30% commission from app providers for allowing them to use the Play Store's payment system and Google Play In-App Billing. If the app providers had an option, they could have preferred using alternative payment aggregators which charge a much lower commission and are established and trusted names in the online payment universe. The Informant alleges that by making listing on Play Store conditional on the apps using Play Store's payment system and Google Play In-App Billing, Google has imposed an unfair condition on both sides of the platform, *i.e.*, app providers as well as users. The condition imposed by Google is unfair to the app providers as it restricts their choice in terms of preferred payment partners and preferred modes of payment. The condition being imposed by Google is unfair to users as their choice regarding mode of payment is being restricted.



43. It has been further stated that the 30% commission is not being charged by Google for the purpose of listing these apps on Play Store, as the app providers separately pay a one-time fee of 25 USD for getting listed on the platform. Therefore, the Play Store is being adequately compensated by the app providers for acting as a distributor, without the need for paying any commission. Accordingly, the 30% additional commission is alleged to be one-sided, arbitrary and onerous.
44. The imposition of this condition is stated to adversely affect app providers by increasing their costs. Increased costs can either be borne by the app providers or passed on to users. Where the app provider decides to bear the increased costs, it will result in them diverting a substantial chunk of their revenue to subsidising the cost of distribution which will result in reducing the resources available with them for further innovation. On the other hand, if the app providers decide to pass on the costs to the users, the price of the app/ download/ IAP will increase. In both these situations, it is the user that ultimately suffers.
45. The Informant further alleges that Google through the Play Store is differentiating between Google Pay and other apps facilitating payment through UPI, such as, BHIM, Paytm, PhonePe, *etc.* by only allowing its own payment offering *i.e.*, Google Pay on its platform. As per the Information, at present, the accepted methods of payment on Play Store's payment system in India are: credit or debit cards; online banking; mobile phone billing; Google Play balance and Google Play gift cards; and Google Pay. Thus, Play Store's payment system does not allow any mobile wallet or other apps facilitating payment through UPI as an alternative to Google Pay which is alleged to restrict the choice for app providers as well as users.
46. It has also been averred by the Informant that UPI as a system allows interoperability between different apps which means that a person with a HDFC, Paytm or PhonePe UPI ID will also be able to pay through Google Pay for a transaction in the Play Store, but the transaction will be inconvenient as compared



to transacting with a Google Pay UPI ID. Therefore, Google is alleged to be imposing unfair condition on app providers & users as well as discriminating between providers of similarly placed apps. The Informant has further averred that due to the “*status quo bias*”, competitors of Google Pay will not be able to offset the significant competitive advantage that Google Pay will gain with respect to new users. The Informant further alleges that such conduct of Google results in denial of market access to competing mobile wallets and apps facilitating payment through UPI, tying (Google has tied Google Pay with the Play Store by making listing on the Play Store conditional on app providers using Play Store’s payment system and Google Play In-App Billing to charge the users for purchase of apps and IAPs) as well as leveraging of its position in the markets for the licensing of mobile OS and app stores for Android mobile to protect its position in the market for apps facilitating payment through UPI, in contravention of the provisions of Section 4(2) of the Act.

47. In relation to mandatory use of Play’s Billing System, Google has *inter alia* stated that payment and billing systems constitute an inherent and necessary part of any app store’s business model. There is no principle of law that would require Play to vertically disintermediate and use a third-party payment and billing system. Play’s billing system also ensures that Google provides users and developers with a secure, stable, and uniform experience across hundreds of countries, with dedicated customer support and high user confidence. Further, Google’s 30% (and in certain circumstances, 15%) service fee is stated to be not arbitrary. It is claimed to be market based, proportionate, legitimate, and pro-competitive and it enables developers to retain the vast majority (either 70% or 85%) of the amount that users spend on their apps. It enables Google to settle third party fees associated with the purchase (*e.g.*, carrier fees for direct carrier billing, credit card fees, *etc.*), and sustain its significant investments in Play.

48. In relation to Google Pay, Google in its response has *inter alia* submitted that users in India can choose from among several payment options when purchasing



apps on Play or making IAPs like credit or debit cards, net banking, direct carrier billing, codes/ vouchers, and UPI. Even when they choose UPI as the method of payment, they are not compelled to use GPay app but can use rival UPI apps. It is further stated that rival UPI apps are not technically disadvantaged on Play and even if they were disadvantaged there is nothing to suggest that Play is essential, or even important for non-Google UPI apps to compete for users in India. In relation to m-wallets, the Opposite Parties have stated that Reserve Bank of India has prohibited (except in very limited situations) the use of m-wallets for cross-border payments and Google's decision not to include m-wallet is thus driven by regulatory restrictions and is based on objective reasons and intelligible differentia.

49. As per the Opposite Parties, NPCI mandates interoperability among UPI apps so that a user can rely on one UPI ID wherever UPI is enabled as a form of payment. To achieve this, NPCI guidelines give merchants/developers two options *i.e.* integrate with the UPI framework via the “*collect flow*” or “*intent flow*”. NPCI guidelines do not require merchants/developers to integrate with each UPI app. Instead, they simply require that merchants/developers enable interoperability through either the collect flow or the intent flow. There is no bar on the merchant/developer enabling the intent flow for some apps, and the collect flow for others. Google integrated Google Payments Platform with the UPI framework, enabling the so-called “collect flow”, because doing so enabled all UPI apps as a form of payment on Google Payments.
50. Based on the above, the Commission notes that allegations of the Informant are primarily two fold *i.e.* (a) mandatory use of Google Play's payment system for purchasing the apps & IAPs in the Play Store and (b) excluding other mobile wallets/UPI apps as one of the effective payment options in the Google Play's payment system.



51. In relation to mandatory use of Play's payment system for paid apps & in-app purchases, the Commission is of *prima facie* view that mandatory use of application store's payment system for paid apps & in-app purchases restricts the choice available to the app developers to select a payment processing system of their choice especially considering when Google charges a commission of 30% (15% in certain cases) for all app purchases and IAPs. Further, considering that Play is the dominant source of downloading apps in the Android OS (90% of the downloads) and its condition requiring use of application store's payment system for paid apps & in-app purchases, it appears that Google controls the significant volume of payments processed in this market. The resultant market power being enjoyed by Google due to its grip over Android ecosystem apparently resulted in 'allegedly' high commission fee of 30%. As per the Informant, other payment processing solutions charge significantly lower fee for processing payments.
52. Further, it appears that such 'allegedly' high fee would increase the cost of Google's competitors and thus might affect their competitiveness *vis-à-vis* Google's own verticals (the fee in respect of which, in any case would be internalized). Such a policy of the application store may disadvantage its competitors in the downstream markets, such as music streaming, e-books/audiobooks *etc.* If the application developers, in response, raise their subscription fees to offset these costs or remove/reduce premium/paid subscription offers for users, it may affect user experience, cost and choice. Such conditions imposed by the app stores limit the ability of the app developers to offer payment processing solutions of their choice to the users for app purchases as well as IAPs. Moreover, it also needs to be seen whether Google would have access to data collected from the users of its downstream competitors which would enable it to improve its own services. However, such competitors may not have access to this data for improvisation/innovation of their own app. This would result in a competitive advantage to Google over its competitors. Therefore, the Commission is of *prima facie* view that imposition of such condition is unfair in terms of Section 4(2)(a)



of the Act. The various pleas of Google like offering a secured system, necessity of Play's billing system, *etc.* can be appropriately examined during investigation.

53. The Commission also notes that mandatory use of application store's payment system for paid apps & in-app purchases along with the associated issue of alleged 'high' service fee/commission have been a matter of concern in other parts of the world. As pointed out by the Informant, European Commission also had a concern with the mandatory use of app store's payment system for paid apps & in app purchases coupled with allegation of excessive pricing in the form of service fee/commission, in the context of Apple's app store. As per the press release, EC had concerns that Apple's restrictions may distort competition for music streaming services on Apple's devices. The IAP obligation appears to give Apple full control over the relationship with customers of its competitors subscribing in the app, thus dis-intermediating its competitors from important customer data while Apple may obtain valuable data about the activities and offers of its competitors.
54. In relation to the second allegation related to exclusivity given to Google Pay, it is noted from the Information provided by the Opposite Party that Google Pay has been integrated with intent flow methodology whereas other UPI apps can be used through collect flow methodology. In regard to difference between collect flow and intent flow, the Opposite Party has admitted that there are differences between these flows on Play (though claimed to be minor and not competitively significant). Google has stated that both flows involve the user transitioning from Play, to the UPI payment app, and back again. This transition is automated in the intent flow, whereas the same is required to be manually undertaken by users in the collect flow. Based on the above, *prima facie* it appears that user experience while using Google Pay would be different / better as compared to using other UPI based apps. This difference has the potential to shift users towards adopting Google Pay over other UPI based payment apps. Therefore, it becomes critical to examine whether such difference in the process, favoured Google Pay to the disadvantage of other competing apps. Further, given the apparent better user



experience for intent flow, it also needs to be examined whether Google allows other UPI based payment apps to be integrated using intent flow. Further, it is noted from one of the support pages of Google Play Store that Google Pay is the only UPI based app allowed to be used as a valid payment method⁴. In view of the above, the Commission is of the *prima facie* view that said conduct of Google amounts to imposition of unfair and discriminatory condition, denial of market access for competing apps of Google Pay and leveraging on the part of Google, in terms of different provisions of Section 4(2) of the Act.

Pre-installation and prominence of Google Pay on Android Smartphones

55. As per the Informant, Google encourages pre-installation and opting of Google Pay as the default payment option on new smart mobile devices using the Android OS at the time of initial set up. This will encourage the users to use Google Pay over other apps facilitating payment through UPI. Such preferential placement of Google Pay on Play Store will drive the users to exclusively use Google Pay instead of looking for alternatives due to a “status quo bias”. As per the Informant, given the dominance of Android and Play Store, the OEMs have no choice but to agree to the terms and conditions imposed by Google. As per the Informant, pre-installation and prominence of Google Pay amounts to the imposition of an unfair and discriminatory condition in contravention of Section 4(2)(a)(i), limits technical and scientific development in contravention of Section 4(2)(b), can result in the exclusion of competing apps from the market in contravention of Section 4(2)(c) and amounts to leveraging of Google’s position in the markets for the licensing of smart mobile OS and app stores for Android OS to protect its position in the market for facilitating payment through UPI, in contravention of Section 4(2)(e) of the Act.

⁴ As available at: <https://support.google.com/googleplay/answer/2651410?co=GENIE.CountryCode%3DIndia&hl=en> Last accessed on 09.11.2020



56. In this regard, Google has *inter alia* submitted that the GPay app (Tez) is not preinstalled on all Android devices and is not the default payment app. Google licenses Play to OEMs as part of a suite of apps under its Mobile Application Distribution Agreement (“**MADA**”). The MADA does not require OEMs to preinstall the GPay app (Tez) and the GPay app (Tez) is not part of the suite of apps that OEMs must preinstall with Play. However, Google gives its OEM partners the option to enter into additional agreements *i.e.* Revenue Sharing Agreements, concerning the preinstallation of the GPay app (Tez) on their devices. These agreements typically offer OEMs financial incentives to preinstall the GPay app (Tez). Many other developers make their payment apps available to OEMs for preinstallation as well. Google, on the basis of its survey, has further claimed that there is no evidence of *status quo* bias in India.
57. It is observed that pre-installation of GPay may create a sense of exclusivity and default as users may not opt for downloading competing apps. Based on the available data, it appears that Google already has a significant market presence in UPI based digital payment applications market and it may affect the evolving and transitory market in its favour. In such a stage of evolution, Google using its market position in applications relating to licensable mobile OS, search engine, app store, browser, *etc.* to enter into contractual arrangements with OEMs for pre-installation of GPay, may disturb the level playing field. Although, Google has contended that such arrangements are optional, its market position in different streams of smart mobile device ecosystem cannot be discounted in the relationship with OEMs. It is apparent that the market position of Google in several gateway products for web based services makes it, an indispensable partner in the smart mobile device ecosystem and such position also appears to place Google in a unique advantage compared to other UPI app developers. Thus, it is appropriate and imperative to understand the nature of such contractual arrangements and whether they harm the process of competition in the market for UPI based payment apps. Therefore, the Commission agrees with the contention of the Informant and is of the *prima facie* view that the alleged conduct on the



part of Google merit detailed investigation. The plea of the Opposite Parties that its revenue sharing agreements with OEMs are not anti-competitive may also be appropriately examined during investigation based on the actual contents of the agreements as well as how the revenue sharing arrangements affect the market.

Search manipulation and Bias by Google in favour of Google Pay

58. The Informant has alleged that Google skews its search results on the Play Store in favour of Google Pay even when Google Pay is not the most relevant (or even ranked) response to users' queries. For example, the Informant has provided screenshots to show that when a user searches for the word "pay" (a generic term) on the Play Store, the first result that appears is Google Pay and not PayZapp (which start with the word 'pay') or Paytm (another app that starts with the word 'pay') or PhonePe (which phonetically includes the word 'pay'). As per the Informant, this has resulted in Google Pay gaining undue advantage over other competing apps. As per the Informant, such search manipulation amounts to violation of various provisions of Section 4 of the Act. The Informant alleges that considering that Play Store is a "must have" app, the manipulation of the search result on the Play Store, results in imposition of unfair and discriminatory condition on both sides of the platform *i.e.* apps facilitating payment through UPI as well as users in terms of Section 4(2)(a) of the Act. The said conduct is unfair for apps facilitating payment through UPI prominent positioning drives traffic to Google's app, which would result in a significant reduction in downloads of other apps facilitating payment through UPI. Further, due to the presence of network effects in the market, reduced visibility of competing apps would lead to reduced downloads, usage, revenues and access to user data which would affect the ability of these apps to innovate in accordance with evolving needs of the users. The said conduct is unfair for users as by manipulating search results to give prominence to Google Pay, Google is misleading users to believe that it is the most relevant app facilitating payment through UPI.



59. The Informant further alleges that search manipulation in favour of Google Pay also reduces the ability and incentives of competing app developers from improving quality, innovating or otherwise competing viably in the market, thus limiting technical and scientific development in violation of Section 4(2)(b) of the Act. It also amounts to denial of market access for competing apps in violation of Section 4(2)(c) and Google leveraging its position in the markets for the licensing of mobile OS and app stores for Android mobile to protect its position in the market for apps facilitating payment through UPI, and contravenes Section 4(2)(e) of the Act. As per the Informant, Google Pay has a market share of 61.33% in the market for apps facilitating payment through UPI followed by PhonePe with a market share of 24.2%.
60. In this regard, Google has *inter alia* submitted that Play does not rank search results as the Informant proposes, because this would harm users and developers. Instead, Google ranks search results on Play using multiple signals to algorithmically identify relevant apps in response to user queries. Further, Google has commercial interest to ensure that Play users see relevant, high quality app results based on relevance that provides positive user experience. Google has further stated that it is under no obligation to be excluded from promoting its own apps through Play. Google has also provided few screenshots in support of its contentions.
61. In relation to this allegation, the Commission notes that search plays an important role in how users discover apps, and the positioning of search results is also critical as prominent placement would attract maximum user attention and clicks. Positioning and displaying its own payment app favourably in response to payment related search queries on Google Play Store may potentially lead to diversion of traffic away from competing payment apps to Google's own app. Further, if a search algorithm is found to have a systemic bias in favour of a product/app which in terms of competitive parameters such as technical features, brand recognition, quality/value to user *etc.* is inferior compared to competing



products/apps, may potentially be misleading for the users and thus be construed to be an unfair imposition on users.

62. However, the Commission observed that search result screenshots of the Informant and the Opposite Parties show different results suggesting that the search ranking on Play Store may be dynamic in nature. The Commission is of the view that a conclusion on preferential placement by Google, cannot rest on only one/two screenshots at a given point in time. The Informant has not placed any other information on record, corroborating the allegation, to suggest search manipulation by Google in favour of Google Pay. In such a scenario, neither any *prima facie* opinion can be formed on the basis of few solitary instances nor investigation be ordered on this count.

Prominent placement of Google Pay on the Play Store

63. The Informant has also alleged that Google has rigged its featured app lists in favour of Google Pay by including it in the nominations for “*User Choice App for 2018*”, ultimately declaring it the winner in this contest; “*Editors’ Choice Apps*”; and “*Top-Free Apps*”. The Informant has also alleged that since the launch of Google Pay, the “*Editors’ Choice*” apps in the finance category on the Play Store have been manipulated to include Google Pay. The Informant has also alleged that Google is also promoting its payment system on the Google Search as it comes as an option for recharges, bill payments, *etc.* Based on the above, the Informant has alleged that the prominent placement of Google Pay in the manner discussed above amounts to violation of Section 4 of the Act as it results in: (i) imposition of unfair condition on users and the broader payments ecosystem including other apps facilitating payments through UPI; (ii) imposition of discriminatory condition on mobile wallets and other apps facilitating payment through UPI; (iii) limitation of technical and scientific development; (iv) denial of market access; and (v) leveraging.



64. Google has branded these allegations as baseless and wrong and has *inter alia* submitted that Google and non-Google services, including Google's rivals, can and do feature in these lists and win these awards. Where the GPay app (Tez) appeared in these lists or won these awards in the past, it did so on merit. Both Google and non-Google apps have been voted as the *Users' Choice* in the past, including rivals to Google's services. Google has also submitted that the *Users' Choice Awards*, *Editors' Choice label*, and *Top Charts* do not meaningfully diminish Indian user demand for apps without these accolades or that do not appear in these charts.
65. In relation to these allegations, the Commission is of the view that manipulation of these features on/by the dominant platform, along with other self-preferencing means, may work as a potent instrument to divert traffic to its newly launched app and thus interfering with the process of 'competition on the merits'. If Google started featuring Google Pay in the list of top apps, user choice apps and top free apps, not on objective parameters but simply as a means of self-preferencing, then the same, in conjunction with other preferential policies, may amount to imposition of unfair condition on both user groups (apps and app users), imposition of discriminatory condition on apps, an act of leveraging its dominance in the application stores market to enter/protect the relevant market for UPI based payments market and may thus contravene the provisions of Section 4 of the Act as alleged by the informant.
66. However, having considered the allegations holistically, the Commission notes that except the bald assertions made by the Informant, there is nothing on record to evidence such manipulation as alleged by the Informant and the Commission is of the view that no investigation can be ordered on the basis of assertions made by the Informant which are neither corroborated or otherwise substantiated in any manner. The Commission has also taken on record the submissions of Google in this regard where it has claimed that it does not rig nominations, lists and awards and that these are based on merits and user preference.



Search advertisement manipulation on the Play Store

67. The Informant has averred that Google further privileges Google Pay by displaying it as the first ad when a user searches for another app facilitating payment through UPI. For example, when a user searches for “PhonePe” or “Paytm”, Google Pay is displayed (albeit as an ad) prominently with organic search results and deceptively labelled as results “Related to your Search” or “Related to this app”. Further, ads for Google Pay appear as part of organic browsing on other Google platforms, such as YouTube. For any other competing app to have such prominence on other Google properties, they would have to separately advertise on these other properties which would further enrich Google. As per the Informant, such search advertisement manipulation by Google violates Section 4 of the Act as it results in the imposition of an unfair and discriminatory condition on apps facilitating payment through UPI.
68. In this regard, Google has *inter alia* submitted that Google’s ad service functions on Play broadly as it does on Search. It ranks ads on the basis of the same principles (bid amount, relevance, and quality), and Google provides advertisers with sufficient information to allow them to manage their campaigns. Google’s ad service allows users choice, does not foreclose, and is non-discriminatory. Google’s services that advertise on Play compete for advertising slots with third parties and are treated as functionally separate third parties (with firewalls).
69. In relation to this allegation, the Commission observes that search advertisements are paid search results that allow any app to pay Google and appear on the most valued real estate of the app store. Advertisements offer an opportunity to feature on top by making payments to the platform. Self-preferencing in search advertisements by a dominant app store and an indispensable trading partner for apps, can violate the provisions of Section 4 of the Act if it is found to be providing undue advantage to a specific app relative to other competing apps. In the present



matter, Google has claimed that its ad service is non-discriminatory and that Google's services that advertise on Play compete for advertising slots with third parties and are treated as functionally separate third parties.

70. Having considered the allegations levelled by the Informant and the response of Google thereon, the Commission is of the view that nothing concrete has been placed by the Informant which may warrant an investigation. The mere allegations in the form of screenshots which are not supported/corroborated by any other material, cannot be the basis for launching an anti-trust inquiry. Moreover, the screenshots shared by the Opposite Parties show different results indicating highly dynamic nature of search advertisement algorithm. Accordingly, in the absence of any concrete information/evidence, the Commission is not inclined to order investigation against the Opposite Parties on this count.

Exclusivity Requirement Imposed by Google Resulted in Unfair Terms Being Imposed on Users

71. The Informant has averred that in order to use Google Pay as a service, the user is required to agree to the Google Pay Terms. The Informant has averred that Google already collects enormous amount of data on consumer behaviour, and device use data from smart mobile devices using Android OS for strengthening its position generally, and for monetization through ads. In addition, Google Pay Terms allows Google to collect, store, and use personal data and any communications made through Google Pay. Although, the Google Pay Terms mention that the above data is only being collected after taking consent from the user, in the present situation, the consent is not effective as the users do not have the option to make an alternative choice for apps facilitating payment through UPI. It has also been alleged that in compliance with data localisation requirements of Reserve Bank of India, Google Pay has not localised its data centres and therefore, this data can be sent overseas to other Google entities/ third parties. Based on above, the Informant has alleged that by imposing the



requirement on users to only use Google Pay for making UPI payments for IAPs as well as on the Play Store, Google is forcing them to use a service which has not localised the enormous amount of user information collected by it.

72. The Informant has further stated that according to NPCI guidelines, an app facilitating payment through UPI is not allowed to share data with a third-party under the NPCI guidelines. The said requirements also require specific permission from NPCI for sharing individual UPI transaction data with any other third party. However, it is alleged that according to Google Pay Terms, Google can share UPI transaction data with all its group companies. The imposition of the requirement to use Google Pay means that the users are being forced to use an app which is not compliant with the NPCI guidelines and is openly sharing payment related user data with its group companies and third-parties.
73. The Informant has averred that if the users had an option, they may have preferred using the other apps facilitating payment through UPI, such as, PhonePe, Paytm, etc. who are not sharing their data. However, by taking away this choice and by requiring the users to use an app which is not compliant with the RBI and NPCI guidelines, Google is imposing an unfair condition on the users.
74. Google in its response has *inter alia* submitted that the above-mentioned issues, falls within the exclusive preserve of the RBI and the NPCI. It has also been stated that the Informant's allegations regarding data localisation are the subject of legal proceedings before the Hon'ble High Court of Delhi and Madhya Pradesh and therefore, the Commission do not have jurisdiction to investigate these issues at this stage. Further, the Informant's allegations rest on the GPay app (Tez) being "*imposed*" on users. However, GPay app (Tez) is not "*imposed*" on either users or developers and the users are free to use, and do use, a variety of payment methods.



75. The Commission observed that Google citing RBI's counter affidavit in *Abhijit Mishra v. Reserve Bank of India, W.P. (C) 3693 of 2019* before Delhi High Court has stated that Google is a Third Party App Provider (TPAP) and is not a system provider *i.e.* authorized payment system operator under the provision of the Payment and Settlement Systems Act, 2007. It has been mentioned that the onus is on system providers, which in case of UPI is NPCI, to ensure that the entire data related to payment systems operated by them is stored in a system only in India. Further, as per the said affidavit, NPCI *vide* letter dated 31.01.2020 has informed RBI that Google is fully compliant with the requirements of relevant RBI circular dated 06.04.2018. In relation to data sharing requirements of NPCI, Google has submitted that GPay app (Tez) was launched in compliance with the relevant circular of NPCI, and that formed the basis of NPCI's approval for the app to be launched which *inter alia* include permission of NPCI to share UPI transaction data with Google's group companies subject to certain conditions. The Commission observes that compliance with the sectoral regulations/ guidelines by any regulated entity has to be examined by the concerned regulator.

Conclusion

76. Based on the above, the Commission is of the *prima facie* view that the Opposite Parties have contravened various provisions of Section 4 of the Act, as detailed above. These aspects warrant a detailed investigation.
77. 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.
78. Before parting, the Commission notes the submissions dated 31.07.2020 moved by the Informant wherein it is *inter alia* claimed that the role of the Informant in



the proceedings before the Commission is limited and therefore Google does not have any right to cross-examine the Informant or to challenge the *locus* of the Informant. In this regard, the Commission finds the claim of the Informant that Google cannot cross-examine the Informant, as thoroughly misconceived. The issue of cross-examination of the Informant will be decided by the DG at the appropriate stage and the Informant will have no immunity from cross-examination in the event it is considered appropriate by the DG. Needless to add, any refusal by the Informant to subject itself to cross-examination would forfeit the 'limited' rights of the Informant to participate in the proceedings before the DG and the Commission.

79. The Opposite Parties have also sought an opportunity to make oral submissions on its response in a hearing before the Commission. However, the Commission, based on the information available on the record, is *prima facie* convinced that a case is made out against Google for directing an investigation by the DG. The Opposite Parties have been given sufficient opportunity to present their case. They would be at liberty to make further submissions before the DG during the investigation wherein the same would be appropriately examined.
80. Lastly, it is noted that Google has filed its submissions dated 01.07.2020 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 including that of the identity of the Informant. Further, it is made clear that no confidentiality claim shall be available in so far as the information/ data that might have been used/referred to in this order for the purposes of the Act in terms of the provisions contained in Section 57 thereof.
81. 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.

82. 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 the DG forthwith.

**Sd/-
(Ashok Kumar Gupta)
Chairperson**

**Sd/-
(Sangeeta Verma)
Member**

**Sd/-
(Bhagwant Singh Bishnoi)
Member**

**New Delhi
Date: 09 / 11 /2020**