



COMPETITION COMMISSION OF INDIA

Case No. 39 of 2020

In Re:

**Baglekar Akash Kumar
Room No. 47, E-1 Hostel
Osmania University Campus, Tarnaka
Hyderabad, Telangana – 500007**

Informant

And

**Google LLC
C/o Custodian of Records
1600 Amphitheatre Parkway
Mountain View, CA 94043
United States of America**

Opposite Party No. 1

**Google India Digital Services Private Limited
Unit 207, 2nd Floor Signature Tower-II Tower A
Sector 15 Part II Silokhera, Gurgaon, Haryana
India 122001**

Opposite Party No. 2

CORAM:

**Mr. Ashok Kumar Gupta
Chairperson**

**Ms. Sangeeta Verma
Member**

**Mr. Bhagwant Singh Bishnoi
Member**



Order under Section 26(2) of the Competition Act, 2002

1. The Information in the present matter has been filed on 22.09.2020, under Section 19(1)(a) of the Competition Act, 2002 ('Act') by Mr. Baglekar Akash Kumar ('Informant') against Google LLC ('OP-1') and Google India Digital Services Private Limited ('Google Digital Services'/ 'OP-2') alleging contravention of the provisions of Section 4(2)(e) of the Act. The Opposite Parties are hereinafter collectively referred to as '**Google/ OPs**'.
2. The Informant is stated to be a student of University College of Law, Osmania University, Hyderabad. Google LLC (OP-1) is a multinational conglomerate specialising in internet related services and products. Google's business model is based on the 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. Further, Google Digital Services (OP-2) is a subsidiary of Google LLC incorporated in January 2017.
3. The Informant has stated that Gmail is an App from Google, where the users get all their emails, direct messages, *etc.*, and that Gmail enjoys a 'dominant position' in the emailing and direct messaging market. It has further been claimed that the Gmail is in-built in almost every smartphone, laptop and computer system. The Informant has further stated that Meet is a video-conferencing App from Google, where all kinds of virtual conferences and meetings happen. The Informant has submitted that due to the onset of COVID-19 pandemic, almost all the works are happening virtually, *i.e.* through video-conferencing and there are various enterprises in the market offering video conferencing facility to the people.



4. The Informant has alleged that Google, which is a dominant player in the internet-related services and products, has integrated the Meet App into the Gmail App which amounts to abuse of dominant position by Google, viz. use of its dominant position in one relevant market to enter into other relevant market as per Section 4(2)(e) of the Act.
5. Based on the above averments and allegations, the Informant has filed the instant Information alleging contravention of the provisions of Section 4 of the Act by Google.
6. The Commission considered the Information in the ordinary meeting held on 15.10.2020 and decided to seek response of OPs thereon *vide* an order of even date. Accordingly, OPs were directed to file their response to the Information. A copy of the Information was also shared with OPs for the said purpose. The OPs filed their common reply on 13.11.2020. The Informant was also allowed, thereafter, to file its rejoinder, with an advance copy to OPs. Such reply and rejoinder thereto have since been received.
7. Before advertng to the issues arising out of the present Information, it would be appropriate to note, in brief, the submissions of Google. It was submitted by Google that the claim of the Informant that Google is dominant worldwide in relevant markets for “internet related services and products” is without any evidence and foundational basis, as there is no relevant market for internet-related services and products and even if such market exists, Google would not be dominant in such a market. Further, Gmail is not dominant in ‘emailing and direct messaging’ in India as it faces strong competition from a variety of messaging services, many of which have a comparable or superior position to Gmail. Adding functionality to the Gmail app is a product improvement that benefits Gmail users and prohibiting such product improvements only harms consumers. Other rivals (such as Facebook and Microsoft) offer similar



functionality and introduction of a Meet tab on Gmail accounts is no more than Google meeting the competition for the purposes of the Act. Lastly, it was pointed out that even if Google were dominant in “email and direct messaging”, introducing a Meet tab is not anti-competitive as Gmail users (a) are not compelled or coerced to use Meet, (b) can easily switch off the Meet tab, and (c) can use rival video-conferencing services and thus there is no foreclosure of rivals.

8. The Commission in its ordinary meeting held on 29.12.2020 considered the Information and other material available on record and decided to pass an appropriate order in due course.
9. At the outset, the Commission notes that besides filing objections to the allegations made by the Informant, OPs have also submitted that the Information is unsubstantiated and based only on conjectures, hypothesis and apprehension. Further, Google while relying upon the judgements in *Dr. L.H. Hiranandani Hospital v. CCI*, Appeal No. 19 of 2014 and *Samir Agarwal v. Competition Commission of India*, Competition Appeal (AT) No. 11 of 2019, submitted that the Hon’ble National Company Law Appellate Tribunal recently cautioned against pursuing unsubstantiated claims by complainants with “oblique motives”, and has underscored the burden that an Informant must discharge in order to demonstrate the existence of a *prima facie* case warranting investigation by the DG.
10. In relation to the above stated contentions of the Opposite Parties relating to *locus* of the Informant to file the present Information, the Commission notes that recently the Hon’ble Supreme Court of India *vide* its judgement dated 15.12.2020 passed in *Samir Agrawal v. Competition Commission of India and Others*, has settled the issue related to *locus* of the Informant under the Act by holding that “....when the CCI performs inquisitorial, as opposed to



adjudicatory functions, the doors of approaching the CCI and the appellate authority, i.e., the NCLAT, must be kept wide open in public interest, so as to subserve the high public purpose of the Act...". Thus, the contention of Google challenging the *locus* of the Informant, is without any merit and is rejected. It needs no emphasis that proceedings before the Commission are inquisitorial and *in rem* in nature and any member of the public can bring any anti-competitive behaviour to the notice of the Commission by filing an Information as per the provisions of the Act and the regulations framed thereunder. No doubt, after bringing such conduct to the notice of the Commission, the statutory mechanism would work as provided under the Act and during the subsequent inquiry/ investigation process, if any, by very nature of the things, the role of the Informant would be confined to such assistance, as may be required by the Commission or the Office of the Director General, as the case may be.

11. Having dealt with the preliminary objection, the Commission will now deal with the merits of the case. The Informant has averred that integration of Google Meet (a video conferencing facility offered by Google) into the Gmail (an emailing facility offered by Google) by OPs contravenes the provisions of Section 4(2)(e) of the Act. For the said purpose, delineation of the relevant market is essential to ascertain dominance and for analysing the alleged abusive conduct of the OPs.
12. The Informant has claimed that OPs are dominant in the internet-related services and products. OPs have contested such delineation of the relevant market. The Informant has also stated that Google is dominant in the emailing and direct messaging market. Google has not contested this delineation of relevant market (*i.e. emailing and direct messaging market*) and has only argued against its alleged dominance therein.



13. Having considered the rival submissions on the issue, the Commission is of the view that both the relevant markets are inappropriate for assessment of allegations in the present matter. The allegations in the present matter emanate from Google's Gmail services which is a free email service offered by Google and which is accessed over internet. The Commission had the occasion to consider the internet based consumer communication services in previous cases, e.g. Case No. 15 of 2020 titled in *Re: Harshita Chawla And WhatsApp Inc. & Ors. ('WhatsApp Case')*. The Commission in its order dated 18.08.2020 noted that:

"..Consumer communications services can be sub-segmented based on different parameters e.g. on the basis of functionality, some apps enable real-time communication in various forms, such as voice and multimedia messaging, video chat, group chat, voice call, sharing of location, etc., while others provide services such as communication with a wider set of people in an impersonal setting such as sharing status and posts. Further, while some consumer communications apps are proprietary in nature, i.e. available on only one operating system such as FaceTime and iMessage service available on Apple's iPhones, while others operate as over-the-top ('OTT') apps offered for download on multiple operating systems, e.g. WhatsApp and Facebook are available on a variety of mobile operating systems, including iOS, Android, Windows Phone etc. Furthermore, the segmentation can also be based on whether a set of consumer communications apps are available for all types of devices, or only for particular type(s) of device e.g. while Facebook is available on smartphones as well as PCs, WhatsApp essentially is a smartphone app. Having said that the Commission is cognizant of the peculiar features which these consumer communication apps possess, where for some functions they may appear substitutable while not so for



others, making it all the more challenging to compartmentalize them into water-tight categories. Thus, it is important to identify the primary or most dominant feature(s) of an app to categorise it into a particular relevant market.”

14. In the present matter, the Informant has clubbed both emailing services (e.g. Gmail, Yahoo Mail, etc.) as well as direct messaging services (e.g. WhatsApp, Telegram, etc.) in one relevant market. However, both of these communication services exhibit different features and are thus, used for different purposes such as (a) Email services do not exhibit any network effects, i.e. a user of Gmail can send emails to a user of any other email service provider, viz. Yahoo, Outlook, etc. This is not the case with direct messaging services like WhatsApp as user of WhatsApp can send messages to only a user of WhatsApp, (b) Email services are primarily used for formal communications whereas direct messaging services are used for informal messaging or personal chat, (c) WhatsApp like services have in-built features to record audio/video messages whereas email services do not have such in-built features, (d) WhatsApp like services are primarily Over-The-Top (OTT) messaging Apps which are generally accessed through a smartphone device and are linked to a mobile number, which have features of communicating personally, both one-to-one and group. On the other hand, email services are not linked to a particular device or number, etc. In view of the foregoing, the Commission is of the view that primary relevant product market should be the ‘market for providing email services’.
15. Further, apart from the above delineated primary relevant market, it would also be necessary to determine the relevant market in respect whereof the allegations of leveraging have been made by the Informant. Google, in its submissions, has compared the video conferencing (VC) services offered by Google Meet App with the VC offered by WhatsApp, Truecaller, Facebook messenger, Instagram,



Telegram, etc. The Commission notes that such comparison by Google is erroneous due to the difference in scale and functionalities such as sharing of screen etc. Number of participants allowed in VC by such apps being very limited, the utility of these apps for video conferencing purposes, is also limited. A more appropriate comparison of Google Meet would be Zoom, Skype, Cisco Webex, Microsoft Teams, etc. Therefore, the appropriate secondary relevant product market in terms of the functionalities would be the '*market for providing specialised video conferencing services*'.

16. Further, 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. Accordingly, the relevant markets for the purpose of assessment of present case would be '*the market for providing email services in India*' and '*the market for providing specialised video conferencing services in India*'.
17. Google has claimed that Gmail is not dominant in emailing and direct messaging in India, and that Gmail faces strong competition from a variety of messaging services, many of which have a comparable or superior position to Gmail. The Informant has not placed any substantive material on record in support of his contention that Google is a dominant player in the relevant market. Without going into the rival contentions on the issue of dominance, for the reasons recorded in the succeeding paras, the Commission is of the opinion that regardless of whether Gmail is a dominant app or not in the relevant market of providing email services in India, the conduct of Google does not appear to violate the provisions of Section 4(2)(e) of the Act.
18. In relation to the allegations of leveraging, the Commission notes that the users of Gmail are not forced to necessarily use Google Meet, and there does not appear to be any adverse consequences on the users of Gmail for not using Google Meet, such as withdrawal of Gmail or any of its functionalities or other



services that are so far being provided by Google. A Gmail user at his/ her 'free will' can use any of the competing VC apps.

19. It is also noted that anyone with a Google Account (not necessarily a Gmail User) can create an online meeting using Google Meet. Further, for creating a Google account, the user need not be a user of Gmail. He/she can use email ID created on any other platform for creating a Google account. Thus, Google Meet is available as an independent app outside the Gmail ecosystem also. Consumers are free to choose from an array of video-conferencing Apps such as Zoom, Skype, Cisco Webex, We Conference, Microsoft Teams, and Google Meet would be competing with the like of such Apps for providing services.
20. The Commission has also assessed the integration of Meet tab within Gmail from the perspective of imposition of supplementary obligations as provided under Section 4(2)(d) of the Act. In the instant matter, as pointed out earlier, users have the choice to use either of the Apps with all their functionalities without necessarily having to use the other. Even though Meet tab has been incorporated in the Gmail app, Gmail does not coerce users to use Meet exclusively as submitted by Google and the consumers are also at freewill to use either Meet or any other VC app for video conferencing.
21. In view of the above, the Commission is of the view that no case is made out against OPs for contravention of the provisions of Section 4 of the Act and the Information is ordered to be closed forthwith in terms of the provisions contained in Section 26(2) of the Act.



22. The Secretary is directed to communicate the order to the Parties, accordingly.

Sd/-

(Ashok Kumar Gupta)
Chairperson

Sd/-

(Sangeeta Verma)
Member

Sd/-

(Bhagwant Singh Bishnoi)
Member

New Delhi

Date: 29 / 01 /2021