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COMPETITION COMMISSION OF INDIA

Case No. 19 of 2020

In Re:

Kshitiz Arya

Flat No. 121, Block-I,

Nav Sansad Vihar, Sector -22,

Dwarka, New Delhi - 110077

Informant Party No. 1

Purushottam Anand

29A, 2nd Floor, M Block, Malviya

Nagar, New Delhi - 110017

Informant Party No. 2

And

Google LLC

1600 Amphitheatre Parkway,

Mountain View, CA 94043, USA.

Opposite Party No. 1

Google India Private Limited

No 3, RMZ Infinity - Tower E,

Old Madras Road, 4th & 5th Floors,

Bangalore - 560016.

Opposite Party No. 2

Xiaomi Technology India Pvt. Ltd.

Orchid (Block E), Ground Floor to 4th Floor,

Embassy Tech Village,

Marathahalli- Sarjapur Outer Ring Road,

Bengaluru, Karnatka 560103

Opposite Party No. 3



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4. TCL India Holdings Private Ltd.

SATS CORPORATION

#160-162, Sector 21-B,

Faridabad, Haryana, India

Opposite Party No. 4

CORAM

Ms. Ravneet Kaur

Chairperson

Mr. Anil Agrawal

Member

Ms. Sweta Kakkad

Member

Mr. Deepak Anurag

Member

Order under Section 48 A (3) of the Competition Act, 2002

1. The Information in the present case was filed by two individuals, namely Mr. Kshitiz Arya and Mr. Purushottam Anand (collectively referred to as the '**Informants**') under Section 19(1)(a) of the Competition Act, 2002 (the '**Act**') against Google LLC ('**OP-1**'), Google India Private Limited ('**Google India**' or '**OP-2**'), Xiaomi Technology India Private Limited ('**Xiaomi**' or '**OP-3**') and TCL India Holding Private Limited ('**TCL**' or '**OP-4**') for alleged contravention of various provisions of Section 3 and Section 4 of the Act. OP-1 and OP-2 are hereafter collectively referred to as '**Google**'.



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Facts as stated in the Information

2. The Informants, stated to be consumers of the android based smart-phones and smart television devices, have alleged that Google is guilty of anti-competitive practices which violate Section 4 read with Section 32 of the Act. It has also been alleged that Google has entered into anti-competitive agreements with OP-3 and OP-4 which are in violation of Section 3 read with Section 32 of the Act.
3. OP-1 is stated to be a multinational technology company specializing in internet-related services and products. It has been averred that majority of smart mobile and tablet manufacturers in India are using OP-1's Android Operating System. Further, OP-2 is stated to be an Indian subsidiary of OP-1. OP-3 and OP-4 are stated to be leading manufacturer/seller/distributor of smart TV devices in India. The Informants have included only two of the leading smart TV/mobile manufacturers in the matter and have requested to include other Original Equipment Manufacturers ('OEMs') as party(ies), during the course of investigation, if deemed fit.
4. In the present matter, the Informants, relying on various media reports, averred that Google enters into agreements known as the Television App Distribution Agreement ('TADA') and the Android Compatibility Commitments ('ACC') with Smart TV OEMs and alleged that by virtue of the restrictive covenants in the said agreements, the Opposite Parties are liable for contravention of various provisions of Section 3(4) and Section 4 of the Act.
5. The Informants have also made brief submissions on the smart TV ecosystem wherein, it has been averred that a smart TV is an upgrade to the traditional/ conventional television device in so far as it enables the consumers to stream video content available over the internet, view photos, browse internet, *etc.* Further, smart TVs require an Operating System ('OS') to provide the consumer with a user-interface for facilitating the use of smart TV



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functions. It has also been averred that the user cannot change the pre-installed OS on a smart TV device. The Informants have further submitted that one of the most popular operating systems used by smart TV OEMs in India is Android TV, an operating system developed by Google especially for television devices. As per the Informants, Google licenses the Android TV operating system to smart TV OEMs in similar fashion as it licenses Android for smart mobile phones to smart mobile device OEMs.

6. The Informants alleged that Google has successfully asserted its dominance in the market for licensable operating systems for smart TVs. Additionally, the Informants claimed that Google also holds a dominant position in the market for app stores for smart TV operating systems, as nearly all Android TVs come pre-installed with Google's proprietary Play Store.

7. The Informant alleged that Google had imposed several restrictions on smart TV and mobile device OEMs through agreements, leading to an abuse of its dominant position under Section 4 of the Act. These restrictions included bundling its app store (Play Store) with the Android TV operating system, ensuring that all Android TV-based smart TVs came pre-installed with the Play Store. Google's ACC, formerly known as Anti-Fragmentation Agreements ('AFA'), allegedly prevented OEMs from manufacturing, distributing, or selling devices running on a competing forked Android OS, thereby denying market access in violation of Section 4(2)(c) of the Act. Additionally, Google did not provide its Play Store on other licensable operating systems, restricting competition and further denying market access. OEMs that entered into ACC/AFA agreements with Google were also prohibited from developing their own forked Android-based operating systems, creating barriers to entry and limiting research and development in the market. The Informants further claimed that these agreements imposed supplementary obligations on OEMs unrelated to licensing the Android OS and restricted their freedom of action across their entire device portfolio, not just the devices where Android TV OS or Play Store is pre-installed.



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8. The Commission considered the Information, in its ordinary meeting held on 22.07.2020 and decided to seek response from Google in relation to the allegations made in the Information along with details of licensing agreements entered between Google and all smart TV OEMs having business presence in India. The Informants were also allowed to file their rejoinder, if any, to the response filed with an advance copy to Google. Such response from Google as well as rejoinder from the Informants were filed.

Directions to the Director General (DG)

9. Based on the material available on record, the Commission, *vide* its order dated 22.06.2021, formed a *prima facie* view that Google has contravened various provisions of Section 4 of the Act. This was due to its requirement for device manufacturers to sign the ACC as a prerequisite for pre-installing its proprietary apps, including the Play Store, thereby restricting OEMs from developing or distributing devices that use competing Android versions. Additionally, the ACC's obligations applied to an OEM's entire device portfolio, not just Android TV OS devices. The mandatory pre-installation of Google apps under TADA and the leveraging of Play Store dominance to promote other services like YouTube were also cited as anti-competitive practices, as outlined in the order. Accordingly, the Commission directed the DG to cause an investigation to be made under the provisions of Section 26(1) of the Act. The Commission directed the DG to examine the allegations of "refusal to deal" and "exclusive dealing" in terms of the provisions contained in section 3(4) read with Section 3(1) of the Act as well.

Investigation by the DG

10. During the course of Investigation, the DG has collated information from OPs as well as third parties. The replies and submissions so received have been considered by the DG while preparing his Investigation report.



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11. DG submitted the Confidential and Non-Confidential versions of the Investigation Report on 12.07.2023. A summary of the issues identified by the DG for investigation and his findings thereon are noted below:

Issue (i): What is the Relevant Product Market and Relevant Geographic Market in this case?

Findings: Based on the analysis of various factors mentioned in the Act, following relevant markets were delineated by the DG:

- a) Market for licensable smart TV device operating systems in India; and
- b) Market for App Stores for Android smart TV OS in India.

Issue (ii): Whether Google is dominant in such Relevant Market(s)?

Findings: Based on the analysis of the factors mentioned under section 19(7) of the Act, including market share, size and resources of Google, Google's control over Android, requirement of a Google account for full Android functionality, entry barriers, consumer dependence on Android OS, lack of countervailing buying power of OEMs, and Android network effects, the DG has shown that the Android Smart TV OS has a dominant position in the relevant market of licensable Smart TV device operating systems in India since 2014. Additionally, based on the market share of the Google Play Store, entry barriers, the importance of the Play Store, the lack of countervailing buying power of OEMs, and the preference of app developers for the Play Store, the DG has concluded that the Google Play Store holds a dominant position in the market for App Stores for Android Smart TV OS in India.

Issue (iii) Whether mandatory pre-installation of the entire Google TV Services (GTVS) /Google applications under TADA amounts to imposition of unfair condition on the smart TV device manufacturers and thereby contravenes the provisions of section 4 (2)(a)(i) & 4(2)(d) of the Act?



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Findings: DG based on analysis of various factors including the clauses of TADA, the limited ability of OEMs to negotiate their terms due to their lack of bargaining power, the necessity of the App Store compelling OEMs to sign TADA and ACC, the signing of TADA and ACC/AFA together, the tying of apps under Google's GTVS, and the reduced incentives for OEMs to innovate determined that the mandatory preinstallation of GTVS under TADA imposed unfair conditions on Smart TV manufacturers, thereby violating the provisions of Section 4(2)(a)(i) and 4(2)(d) of the Act.

Issue (iv) Whether by making mandatory pre-installation of Google's proprietary apps (particularly Play Store) conditional upon signing of ACC for all Android devices manufactured/distributed/marketed by device manufacturers, Google has reduced the ability and incentive of device manufacturers to develop and sell devices operating on alternative versions of Android i.e., Android forks, and thereby limited technical or scientific development relating to goods or services and also led to a denial of market access to the developers of Android forks, in contravention of Section 4(2)(b)(ii), 4(2)(c) and 4(2)(d) of the Act.?

Findings: The DG observed that the TADA and ACC/AFA agreements were signed in conjunction, indicating that device manufacturers could pre-install the Play Store on their Android devices only upon entering into the AFA/ACC agreements. Based on these findings, the DG concluded that by mandating the pre-installation of Google's proprietary applications, particularly the Play Store, as a condition for signing the ACC agreement for all Android devices manufactured, distributed, or marketed by device manufacturers, Google has restricted the ability and incentive of device manufacturers to develop and sell devices running on alternative versions of Android (i.e., Android forks). This conduct has consequently limited technical or scientific development and resulted in the denial of market access to developers of Android forks, thereby violating Sections 4(2)(b)(ii) and 4(2)(c) of the Act.



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The DG also observed that Google mandated OEMs not to pre-install incompatible Android platforms on devices marketed under the same brand. Furthermore, the clauses of the TADA require Google's approval for all devices, regardless of whether they preload GTVS or are based on the Android Open Source Project (AOSP). Additionally, the AFA/ACC agreements prohibited OEMs from distributing non-GTVS versions of Android and from working on Android forks. This effectively restricts the freedom of hardware manufacturers concerning their entire device portfolio, rather than being limited to the specific device category on which the Android TV OS is pre-installed. Thus, DG concluded that these conditions amount to concluding contracts contingent upon the acceptance of supplementary obligations by other parties, which, by their nature or commercial usage, are unrelated to the subject matter of such contracts and hence in violation of the provisions of Section 4(2)(d) of the Act.

Issue (v) Whether Google has abused its dominant position by tying up of YouTube app with Play Store and thereby violated the provisions of section 4(2)(e) of the Act?

Findings: Concerning tying of YouTube with Play Store by Google, the DG observed that the secondary relevant market in the present case is the online video hosting platform in India ('OVHP') for analysis of Section 4(2) (e) of the Act. Based on factors such as the number of YouTube accounts in India, the volume of available videos, YouTube's advertising revenue, the low download rates of competing applications, the prominent placement of YouTube on device screens, and the lack of an option for end users to uninstall the app, the DG concluded that Google has abused its dominant position by tying the YouTube app with the Play Store and thereby violated the provisions of Section 4(2)(e) of the Act.

Issue (vi) Whether agreements entered into by the OPs are in the nature of agreements as contemplated by Section 3(4) of the Act, i.e. 'refusal to deal' and 'exclusive supply'?

Findings: DG concluded that the allegation regarding Section 3(4) of the Act, specifically concerning refusal to deal and exclusive supply, remains unsubstantiated. It was observed that OEMs have no discretion in signing the TADA/ACC agreements and are entirely



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- dependent on Google's licensable Android OS for Smart TVs due to its functionality and widespread popularity.
12. The Commission considered the Investigation Report of the DG in its ordinary meeting held on 22.09.2023 and *vide* its order of even date directed to forward an electronic copy of the non-confidential version of the Investigation Report to Google and the two Informants and allowed them to file their respective suggestions/ objections, if any, to the said Report.
 13. Subsequently, Google, through its application dated 15.01.2024, submitted that certain documents referenced in the DG Report were not made available during their inspection of confidential records. Google provided details of these allegedly missing records and requested the Commission to direct the DG to share any additional case material and information, including electronic records, that were collected but not shared. Google argued that the absence of full case records hinders its ability to adequately defend itself before the Commission, prejudices its fundamental due process rights, and undermines the legitimacy of the investigative process. Consequently, Google requested the Commission to grant at least twelve weeks from the date of receiving complete DG case records—both confidential and non-confidential—to submit a comprehensive response to the DG Report
 14. The DG submitted its response to Google's application on 21.03.2024, along with certain additional documents. The Commission considered DG's response along with Google's applications in its ordinary meeting held on 24.04.2024 and decided to take the additional documents submitted by the DG, on record. The Commission further *vide* order of even date granted Google liberty to complete the process of inspection expeditiously, if so desired, and file its objections/ suggestions, if any, to the Investigation Report within 6 (six) weeks from receipt of this order, after sharing a copy thereof in advance with the Informant(s), under intimation to the Commission.



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Settlement Application

15. Thereafter, Google submitted the Settlement Application dated 21.05.2024 (**‘Settlement Application’**) under Section 48A of the Act read with the Competition Commission of India (Settlement) Regulations, 2024 (**‘Settlement Regulations’**). Google requested the Commission to allow the Settlement Application under Section 48A of the Act and in terms of Settlement Regulations place the proceedings initiated against Google in abeyance till a final decision on the Settlement Application or till such time as may be decided by the Commission.

16. Google in the Settlement Application offered the following settlement proposal:
 - 16.1 Google will make available a standalone license to the Google Play Store and Google Play Services (**‘GPS’**) for compatible Android smart TV devices sold in India called as ‘New India Agreement’. The New India Agreement will not include any placement or default requirements for the Play Store or any other Google service. Google will make the New India Agreement available to current Android TV OEMs as well as other interested OEMs.
 - 16.2 Eliminate the requirement in the TADA to have a valid ACC for devices shipped in India that do not preload Google apps. In this regard, Google will send a letter to all of its Android TV partners in India that it will legally waive the TADA’s requirement to have a valid ACC for devices shipped into India that do not include Google apps.
 - 16.3 Google will also send a letter to all of its Android TV partners in India that reminds them of the existing flexibility under their current agreements with Google to (i) use the open-source Android OS for smart TVs without taking any applications from Google or signing an ACC; and (ii) develop smart TVs using other competing OSs including Tizen, WebOS, and Roku OS.
 - 16.4 Google will adhere to all three settlement proposals (**‘Settlement Proposals’**) for a period of 5 years. Google is also prepared to submit regular compliance reports to the Commission confirming that it is honouring its obligations under these settlement proposals.



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17. The Commission in its ordinary meeting held on 05.06.2024 considered the Settlement Application submitted by Google under Section 48A of the Act and *vide* majority order of even date decided that the inquiry against Google in the captioned matter will remain in abeyance in terms of regulation 4(3) of the Settlement Regulations, till further orders. The Commission *vide* the said majority order also decided to invite objections and suggestions in terms of regulation 5 of the Settlement Regulations from the concerned parties as mentioned in the said order.
18. Subsequently, Google submitted a letter dated 14.06.2024 stating planned changes to its commercial offerings at a global level relating to Android TV. Thereafter on 26.06.2024, Google submitted an updated summary (public version) of the settlement proposal and proposed that the Commission may consider the updated summary of the settlement proposal for further Settlement proceedings in the matter. According to Google in pursuance to planned changes relating to Android TV on a global basis, Google will not certify new Android TV models starting 01.07.2025 which means that OEMs will not be able to certify new Android TV models after June 2025 as Google certified as the latter will no longer evaluate and approve such devices under the Android TADA but Google will continue to support such devices through ongoing arrangements till the end of 2029.
19. The Commission considered the submissions dated 14.06.2024 and 26.06.2024 of Google in the ordinary meeting held on 10.07.2024. The Commission observed that planned changes relating to Android TV are related to the subject matter of the case i.e., Android TV and TADA. Accordingly, the Commission *vide* order of 10.07.2024 decided to invite objections and suggestions in terms of regulation 5 of the Settlement Regulations on the updated summary of the settlement proposal. The summary of the settlement proposal comprises of *prima facie* opinion of the Commission, findings of the Director General in the investigation report along with details of the competition concerns, alleged contraventions, duly capturing settlement proposal offered by the Settlement Applicant and how they address the



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competition concerns. The Commission *vide* order of even date directed to forward the updated summary of the settlement proposal submitted by Google to the Informants, the DG, Xiaomi Technology India Pvt. Ltd. (OP-3), TCL India Holdings Pvt Ltd. (OP-4), and third parties who have furnished response to the DG in this matter during the investigation.

20. Accordingly, a summary of the settlement proposal was forwarded to 45 concerned parties (including Informants, the DG, Xiaomi Technology India Pvt Ltd. (OP3), TCL India Holdings Pvt Ltd. (OP-4), and third parties who have furnished response to the DG) seeking their comments, objections, or suggestions, if any. Responses from Informants, the DG, OP-3, OP-4, and 10 other third parties were received.


Summary of Responses to the Settlement Proposal

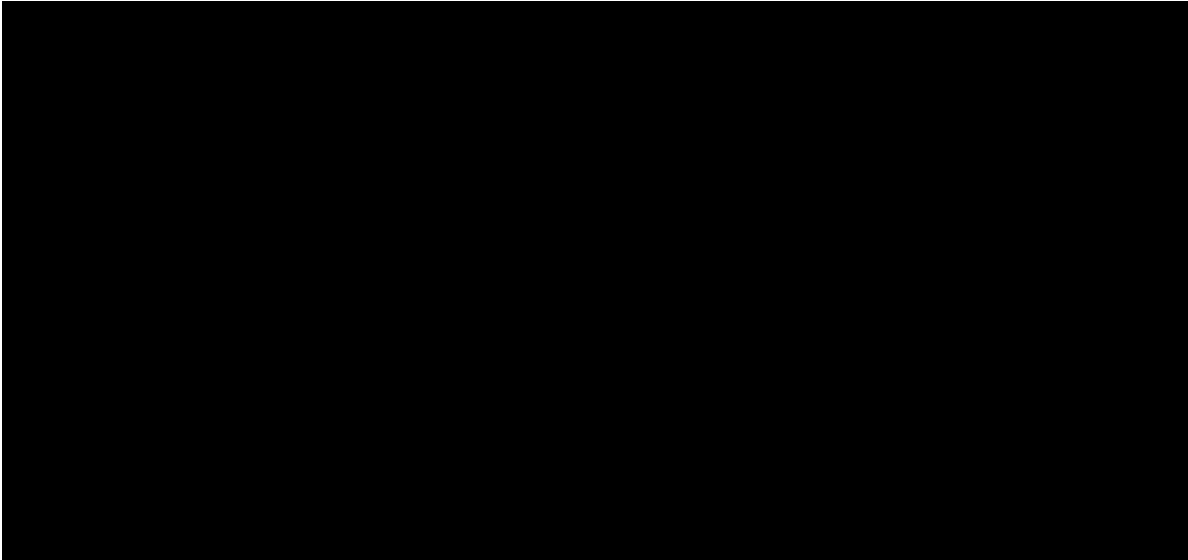
21. The DG, in response to the proposed New India Agreement, stated that the proposal appears relevant in addressing the concerns raised during the investigation. However, at present, the Play Store and Play Services are provided free of charge to OEMs that sign the TADA and ACC agreements. Since the proposed new agreement includes a fee, OEMs may be better positioned to provide comments on this aspect. The DG acknowledged that waiving TADA's requirement for a valid ACC would enable OEMs to distribute non-compatible devices alongside Android OS-based TVs without violating ACC. However, the investigation found that the mandatory inclusion of 'Play Store' and 'Play Services' forces OEMs into TADA and ACC agreements. While Google proposed alternatives like AOSP, Tizen, WebOS, and Roku without requiring its applications, it remains unclear whether OEMs can develop, sell, or distribute Android forks. Additionally, the investigation highlighted the importance of seamless app updates and bug fixes via Google Play, but Google has not confirmed if its code updates will be available to AOSP simultaneously. The DG also acknowledged that Google's proposal, allowing device manufacturers to release devices with only the Play Store preloaded and without other Google apps or placement/default requirements, appears relevant in addressing the concerns raised during the investigation.



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22. The Informants in their response to the settlement proposal, stated that there is a lack of clarity regarding the scope and extent of the waiver and any additional obligations Google may impose under the New India Agreement or the revised TADA template. They pointed out that the proposal does not address preinstallation requirements or the absence of an option to uninstall Google's proprietary apps. Furthermore, they argued that Google's commitment to modifying its conduct for only five years is insufficient, given that its anticompetitive practices have reinforced its market dominance for over a decade. A five-year commitment is inadequate to redress the significant legal harm suffered by stakeholders, including Indian startups, the local business ecosystem, and consumers. Additionally, they contended that Google is intentionally restricting TV OEMs using forked Android from licensing its essential apps, thereby limiting their ability to provide users with access to crucial applications for downloading and updating other apps.

23. Xiaomi Technology India Pvt. Ltd. (OP-3) expressed concerns that 



24. TCL India Holdings Pvt Ltd. (OP-4) and several other third parties, such as Realme Mobile Telecommunication (India) Pvt Ltd., Hisense India Pvt Ltd., Sony India Pvt Ltd., Microsoft



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Corporation (India) Pvt Ltd., Mozilla Corporation, Hungama Digital Media Entertainment Pvt Ltd., Haier Appliances India Pvt Ltd., Netflix Entertainment Services India LLP, Spotify India LLP, and Super Plastronics Pvt Ltd. (SPPL), stated in their response that they have no comments to offer on the settlement proposal.

25. The Commission considered the responses submitted by the concerned parties in the ordinary meeting held on 04.09.2024. Based on the responses submitted by the concerned parties, the Commission decided to seek clarifications from Google, in accordance with regulation 4(11) of the Settlement Regulations. On 09.09.2024, Google filed a voluntary submission responding to the comments of stakeholders on the updated summary of the settlement proposal, and subsequently, on 15.10.2024, Google submitted responses to the clarifications sought by the Commission in its order dated 04.09.2024. The Commission considered the aforesaid submissions of Google in the ordinary meeting held on 13.11.2024 and *vide* order of even date decided to seek further clarification from Google, in accordance with regulation 4(11) of the Settlement Regulations, directing it to respond within two weeks of receiving the order. On 04.12.2024 Google filed a response to additional clarification sought *vide* order dated 13.11.2024.

Summary of Google's Submissions

26. In response to the DG's concern regarding the uncertainty over whether TADA signatories would be permitted to manufacture and market Android forks under the proposed waiver, Google clarified that it has proposed to eliminate the requirement in the TADA to have a valid ACC for devices shipped in India that do not preload Google apps. In other words, the waiver enables OEMs to sell, develop, and distribute Android forks that do not carry Google's proprietary apps. Furthermore, the waiver is not limited to smart TVs. That is, as a result of the proposed waiver, a company would be free under its TADA to not only launch incompatible Android smart TVs but also other types of incompatible Android devices such as smart watches or mobile devices. In response to the DG's concern regarding the



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availability of its “codes” to AOSP at the same time as Android TV, Google stated that Android’s APIs are updated with every new Android release. [REDACTED]

[REDACTED]

27. On the Informants' objection to the Google Settlement Proposal, Google *inter alia* submitted the following:

(i) A central feature of Google’s Settlement Proposal is offering a standalone Play Store licence for Android-based OSs. So to the extent the informants are seeking the licensability of the Play Store, Google’s proposal plainly accomplishes it.

(ii) On Informants' objection that Google has not offered a remedy to address API restrictions to forked Android-based OSs, Google stated that [REDACTED]

[REDACTED]

(iii) Google’s proposed New India Agreement, which includes a standalone licence to the Play Store, will include no placement or [REDACTED] requirements.

(iv) The five-year settlement proposal is fair, considering all TADA signatories, and aligns with the operational timeline of TADAs in India. Google will stop certifying new Android TV devices after June 2025 but will support existing partners until the end of 2029. There is no legal basis under Indian competition law to mandate Google’s [REDACTED] or to extend Android TV’s lifespan beyond Google's planned support period.

(v) Finally, the Informants' objection that Google has not offered a remedy for users’ inability to uninstall preinstalled GTVS apps is misconceived. Google has proposed to offer the New India Agreement, which will allow OEMs to offer a smart TV with the Play Store and no other Google app. Given the lack of other Google apps on these devices, giving users the ability to uninstall Google apps on these devices would be superfluous.



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28. In response to OP-3's concerns about [REDACTED]

[REDACTED] Google submitted that discontinuing certification of new Android TV devices will have no effect on Google's commitment to offer the New India Agreement for five years. The TADA will continue to be in effect beyond 2025, and Google will continue to provide support to Android TV through 2029. OP-3 also raised concern that [REDACTED]

[REDACTED]

29.

[REDACTED]

30. Google has offered to license the Play Store and GPS to all interested counterparties, including competitors, subject only to the satisfaction of certain minimum conditions, i.e., these proprietary apps and proprietary APIs would be licensed for compatible Android devices.



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31. Google will make the New India Agreement available for 5 years from the acceptance of the settlement proposal by the Commission. OEMs may sign a New India Agreement at any time during this five-year period and [REDACTED]

32. Google also submitted that [REDACTED]

Analysis

33. The Commission has examined all the material available on record and now proceeds to analyse the Settlement proposal taking into consideration the nature, gravity, and impact of the contraventions as identified by the DG. The Commission's assessment of the settlement proposal in relation to these contraventions is as follows:

(A) DG Findings:

- (i) Preinstallation of the entire Google applications (GTVS) under TADA amounts to imposition of unfair conditions on the smart TV device manufacturers and thereby contravenes the provisions of section 4(2)(a)(i) & 4(2)(d) of the Act.
- (ii) Google has abused its dominant position by tying up YouTube app with the Play Store. In this way, Google protects its market of OVHP in India and hence, violates provisions of Section 4(2)(e) of the Act

Settlement Proposal: Google will make available a standalone licence to the Google Play Store and GPS for compatible Android smart TV devices sold in India.

34. The Commission notes from Google's proposal that the company will introduce a new agreement for smart TV devices distributed in India, referred to as the "New India



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Agreement.” This agreement will allow OEMs to license the Google Play Store and GPS for a certain fee, for their compatible Android-based smart TVs intended for the Indian market. Unlike previous agreements, it will not require OEMs to preload any additional Google services, such as YouTube. Additionally, the New India Agreement will not impose any placement or default settings for the Play Store or other Google services. Google will offer this agreement to both existing Android TV OEMs and other interested manufacturers, with applicable licensing fee. By signing the New India Agreement, OEMs will have the flexibility to offer an unlimited number of devices under both the New India Agreement and the existing TADA in India, based on their individual commercial preferences. Google also clarified that it offers Android TV globally through only one agreement, i.e., the TADA. Where Google offers its services on a global basis, its usual practice is to use similar license or distribution terms across jurisdictions, subject to local legal requirements (e.g., EMADA in Europe to comply with the European Commission’s directions in the Google Android case in Europe). Google further stated that the alleged contraventions under consideration in the present case are not currently being examined by any other competition authority.

35. Google will offer the New India Agreement to all OEMs, [REDACTED] including to: (1) current and former Android TV OEMs, (2) OEMs that use competitive smart TV OSs such as Tizen, and (3) OEMs that offer incompatible Android devices (forks). As a result, all OEMs will have the opportunity to enter into the New India Agreement and license GPS, regardless of their competitive status. Google will not impose any restrictions on access to the New India Agreement or GPS based on whether the counterparty is a competitor.
36. The Commission also notes from the Google submissions dated 14.06.2024 and 26.06.2024 that Google will not certify new Android TV models starting 01.07.2025 which means that original equipment manufacturers (OEMs) will not be able to certify new Android TV models after June 2025 as Google certified as the latter will no longer evaluate and approve



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such devices under the Android TV Application Distribution Agreement (TADA) but Google will continue to support such devices through ongoing arrangements till the end of 2029.

37. The proposal allows OEMs to preload the essential Play Store without being required to install any other Google applications on their devices. Competitors of Google's GTVS apps would have the option to preinstall their apps exclusively on these devices, including alternatives to YouTube. This means OEMs could distribute devices with Google Play while featuring a competing online video hosting platform instead of YouTube. Furthermore, offering both the TADA and the New India Agreement gives OEMs greater flexibility to either license only the Google Play Store or preinstall the full suite of GTVS apps. It enables OEMs to tailor their devices, cater to consumer preferences, and strategically select preinstalled apps. Consequently, the proposal addresses the concerns highlighted in the DG's report regarding the mandatory preinstallation of the entire Google application suite (GTVS) under TADA and the bundling of YouTube with the Play Store.
38. With regard to Google's plan to charge a license fee under the New India Agreement, the Commission is of the view that it cannot function as a price regulator. The Commission observes from Google's assertion that the imposition of a license fee is essential to compensate for revenue losses resulting from the exclusion of other income-generating Google applications under the New India Agreement. Additionally, the Commission also notes from Google's submissions that OEMs licensing the Play Store on a standalone basis are free to enter into promotional agreements with app developers to help offset the cost of the Play license. For instance, an OEM may choose to preinstall a competing application to a Google service in a prominent position on the Android TV interface. The OEM will have the flexibility to enter into exclusive or non-exclusive promotional agreements with the app developer. In return, the OEM will receive either an upfront promotional payment or a share of the revenue generated by the app. Such arrangements will provide OEMs with an



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opportunity to create additional revenue streams and will help offset the future costs associated with licensing the Google Play Store and related services on a standalone basis for Android TV devices.

39. Regarding Google's proposal to continue offering the TADA alongside the New India Agreement, the Commission notes from the DG Report that even some OEMs including Hisense, Skyworth, Xiaomi, and Havells, have expressed that preinstalling Google's full suite of applications is beneficial for their business and meets consumer demand. Hisense emphasized the popularity of Google Apps, while Skyworth noted that customers prefer preinstallation. [REDACTED]

[REDACTED] Similarly, Havells highlighted that smart TV users favor key Google services like Google Assistant, YouTube, and the Play Store. Moreover, offering the TADA alongside the proposed New India Agreement provides OEMs with increased flexibility and more choice to customise their smart TV devices by licensing the Google Play Store on its own or preinstall the full suite of GTVS apps.

(B) DG Findings:

- (i) Google has reduced the ability and incentive of device manufacturers to develop and sell devices operating on alternative versions of Android i.e. Android forks, and thereby limited technical or scientific development and also led to a denial of market access to the developers of Android forks, in contravention of Section 4(2)(b)(ii) & 4(2)(c) of the Act.
- (ii) The AFA/ACC mandated that OEMs may not distribute non GTVS version of android and cannot even work on Android forks. This amounts to a restriction on the freedom of hardware manufacturers with regard to whole of their device portfolio and not just the device category on which the Android TV OS is pre-installed. These conditions are akin to concluding contracts subject to acceptance by other parties of



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supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts and thus, violative of the provisions of Section 4(2)(d) of the Act.

Settlement Proposal:

- (i) Google will send a letter to all of its Android TV partners that sell smart TV devices in India that it will legally waive the TADA's requirement to have a valid ACC for devices shipped into India that do not include Google apps.
- (ii) Google will send a letter to all of its Android TV partners that sell smart TVs in India that reminds them of the existing flexibility under their current agreements with Google to (1) use the open-source Android OS for smart TVs without taking any applications from Google or signing an ACC; and (2) develop TVs using other competing OSs including Tizen, WebOS, and Roku OS.

40. The Commission from Google's proposal observes that Google would send binding letters to all of its Android TV partners that sell smart TV devices in India that would waive the TADA's requirement to have an ACC for devices in India. In addition, Google will amend the TADA template to reflect the foregoing and will make this template available to all new TADA partners, as well as to existing partners upon renewal of their then-current TADA.

41. The waiver permits TADA signatories to introduce devices in India that operate on non-compatible versions of Android, provided they do not incorporate Google applications. Additionally, the scope of this waiver extends beyond smart TVs. Consequently, under the TADA, companies may not only launch smart TVs running incompatible versions of Android but also other device categories such as smartwatches and mobile phones. Essentially, this waiver addresses the concern outlined in the DG Report, which noted that the TADA's compatibility requirement restricted the development of competing TV



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operating systems by prohibiting signatories from releasing devices with non-compatible Android versions. By eliminating the ACC requirement in the TADA, Google's settlement proposal breaks this link between Play and the ACC, which is the basis for the DG's concern.

42. In respect of timeline for the implementation of the Settlement Proposal, the Commission notes that Google has submitted a definitive timeline for the introduction and implementation of the New India Agreement and sending of a waiver letter in its submission dated 18.10.2024. The Commission considers the five-year duration of the Settlement Proposal to be reasonable, as it provides a time-bound framework that facilitates effective monitoring. Additionally, the proposal is safeguarded by legal provisions that allow for the revocation and monitoring of the settlement order, ensuring compliance and oversight.

Determination of the Settlement Amount

43. The Commission deems it pertinent to highlight the key provisions of the Settlement Regulation regarding the determination of the Settlement Amount, as outlined below:

Regulation 6 of the Settlement Regulation provides:

Manner of determining the Settlement Amount.

- (1) For the purpose of determining Settlement Amount, the Commission would compute base amount which could extend up to maximum amount of penalty that would otherwise have been leviable under section 27(b) of the Act.
- (2) For the purpose of determining base amount as referred to in sub-regulation (1), the Commission shall be guided by the Penalty Guidelines.
- (3) The Settlement Amount would be determined by applying a settlement discount of 15% to the base amount computed under sub-regulation (1) and (2)

44. In determining the Settlement Amount, the Commission has considered the amended Section 27(b) of the Act, Competition Commission of India (Determination of Turnover or Income) Regulations, 2024 ('**Turnover Regulations**'), and the methodology outlined in the



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Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024
(‘Penalty Guidelines’).

45. In terms of Penalty Guidelines issued by the Commission, the first step is determination of ‘relevant turnover’. Thereafter, the Commission would consider an amount up to thirty percent of the average relevant turnover of the enterprise for the purpose of determination of penalty to be imposed on an enterprise under Section 27(b) of the Act. This amount is then adjusted based on mitigating and aggravating factors specific to the case. The resulting figure is the base amount, as referred to in the Settlement Regulations. The final Settlement Amount is then determined by applying a 15% settlement discount to this base amount.
46. In its submission dated 30.01.2025, Google contended that it should not face penalties under the Settlement Regulations or, at most, only a minimal settlement amount should be imposed. The company emphasized that Android TV generates minimal revenue, which is why it plans to phase out the platform by July 2025. Google argued that Android TV has fostered competition in India, reducing prices for connected devices like smart TVs. Additionally, there are no adverse global findings against Google regarding Android TV, and the CTV market remains highly competitive. Google asserted that there is no evidence of harm to any stakeholders in India due to its Android TV licensing practices. Instead, the platform has contributed to pro-competitive benefits, including lower smart TV prices, the entry of other licensable operating systems, and significant growth in India's Colour TV market, benefiting smart TV OEMs and app developers.
47. Google argued that the penalty base for determining the settlement amount should be calculated based on its average relevant turnover, which refers to Google's revenue from Android TV in India. Since its launch in 2015, Android TV has generated minimal revenue in India. Google does not charge OEMs a licensing fee for Android TV or its proprietary apps, nor related support services, as these are provided under a royalty-free TADA.



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Additionally, Google offers the Android operating system under a royalty-free open-source license. Google contended that the "relevant turnover" should only include revenue from Android TV in India, specifically from video-on-demand (ATV TVOD) services and advertisements (ATV Ads). Revenue from YouTube on Android TV and the Play Store on Android TV should not be considered, as the Play Store is not critical for the commercial success of a smart TV and generates only minimal revenue. Moreover, Google licenses YouTube independently to its competitors, meaning YouTube can be licensed without the GTVS suite.

48. Google further argued that the findings of the DG of alleged violations are confined solely to Android TV, so any penalty base should only consider Google's revenue from Android TV. The "network effects" approach used in the Smartphones case should not be applied in this case as attributing network effects and penalizing it based on revenue from unrelated products would violate fundamental principles of penalty imposition, as outlined by the Hon'ble Supreme Court in the Excel Crop Case.
49. Google also pointed out that the recent amendment to Section 27(b) of the Act broadens the grounds for imposing penalties, potentially affecting companies with global operations. It further asserts that the recent amendment should not be applied retroactively, as this investigation was initiated before the amendment came into force. Subjecting a company to a penalty significantly higher than what would have been applicable at the time the investigation began would be a retrospective application of the amended provision, which Google argues would be unjust and violate established legal principles
50. The Commission disagrees with Google's submission that revenue from YouTube on Android TV and the Play Store on Android TV should be excluded from the relevant turnover. Google in its submission has stated that the revenue data for Play on ATV comprises service fees attributable to Play on Android TV and the revenue data for YouTube on Android TV



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comprises Google’s revenue from advertising on YouTube on Android-based smart TVs. The Commission, after due consideration, observes that the revenue generated from YouTube on Android TV and the Play Store on Android TV is directly linked to the relevant market and constitutes an integral component thereof. Additionally, the Commission acknowledges the conclusions outlined in the report of the DG, which, among other findings, establish that Google has engaged in an abuse of its dominant market position by enforcing a tying arrangement between the YouTube application and the Play Store on Android TV. Given the intrinsic connection between these revenue streams and the market dynamics in question, the Commission finds no merit in Google’s submission seeking their exclusion from the relevant turnover assessment.

51. Accordingly based on the submission made by Google, the relevant turnover of Google as determined above for the CYs 2020, 2021, and 2022 is tabulated hereunder:

Product	CY 20	CY21	CY22	Avg. Of 3 years
	INR(Cr)	INR(Cr)	INR(Cr)	INR(Cr)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Relevant Turnover	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]



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52. For the purpose of determining the Settlement Amount, the Commission decides that an amount of [REDACTED] of the average relevant turnover would be considered as the base amount, i.e. [REDACTED]
53. Coming to the assessment of mitigating and aggravating factors, Google has submitted that it has continuously aided the DG and the Commission in the present investigation and has a dedicated competition compliance programme in place to advise the business teams against any competition law violations in India and across the globe. In view of the same, the Commission decides to reduce the amount of penalty as determined in the previous para by [REDACTED] and the resultant base amount would be [REDACTED]. The Commission does not find any aggravating factor in the present matter.
54. The final Settlement Amount after applying a 15% settlement discount to this base amount is Rs. 20.24 crore.
55. In terms of Regulation 6 of the Settlement Regulations, Google vide majority order dated 12.02.2025 was directed to communicate its acceptance of the said settlement amount within 15 (fifteen) days of receipt of this order and pay the Settlement Amount within a period of 30 (thirty) days from the date of acceptance thereof. Google submitted its formal acceptance to the settlement amount on 17.03.2025 and also submitted the proof of depositing the settlement amount on 08.04.2025.
56. Considering the material on record, and the assessment of the Settlement Proposal after taking into consideration the nature, gravity, and impact of the contraventions, the Commission agrees to the proposal for settlement in terms of Section 48 A (3) of the Act and the Settlement Regulations.



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57. The Commission directs the applicant to implement the Settlement Proposal as per the timeline submitted in their submission dated 15.10.2024. Additionally, the applicant must submit the annual compliance reports to the Commission by April 15th of each year, covering the period up to March 31st of that year, for the next five years., confirming adherence to the obligations specified in the Settlement Proposal.
58. If the Settlement Applicant fails to comply with the order passed by the Commission or it comes to the notice of the Commission that the Settlement Applicant has not made full and true disclosure during the settlement proceedings or there has been a material change in the facts, the order passed under section 48 A (3) of the Act shall stand revoked and withdrawn.
59. Before parting, the Commission deems it appropriate to deal with the request of the Google and OP-3 seeking confidentiality over certain documents / data / information filed by them under Regulation 35 of the General Regulations, 2009 (as amended). Considering the grounds given by the OPs for the grant of confidential treatment, the Commission grants confidentiality to such documents / data / information in terms of Regulation 36 of the General Regulations 2024, subject to Section 57 of the Act, for a period of three years from the passing of this order. It is, however, made clear that nothing disclosed in the public version of this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used and disclosed for purposes of the Act in terms of the provisions contained in Section 57 thereof. Accordingly, the Commission directs that two versions of the present order may be issued i.e., a public version and a confidential version. The public version of the order shall be prepared keeping in mind the confidentiality requests and the provisions of Section 57 of the Act read with Regulation 36 of the General Regulations 2024. A confidential version of this order shall be shared with Google through members of the confidentiality ring. For convenience, it is directed that the confidential version of this order may be provided to such ring members/ individuals through one of the



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ring members, who may then share the same with the other ring members nominated by Google.

60. The Secretary is directed to forward a public version of the order to the Informant(s) and counsel of Google, accordingly.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi

Date: 21/04/2025



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COMPETITION COMMISSION OF INDIA

CASE No. 19 of 2020

DISSENT NOTE

PER

Mr. Anil Agrawal

Member

61. I have gone through the Majority order to be delivered by the Chairperson Ms. Ravneet Kaur, Member Ms. Sweta Kakkad, and Member Mr. Deepak Anurag. Para 56 of this order seeks to accept the Settlement Proposal of Google.
62. For the reasons given below, I am unable to persuade myself to concur with the findings of the Majority order.
63. The timelines of the case, in brief, are as follows –
- 63.1. The Commission considered the information in its ordinary meeting dated 22.07.2020 and decided to seek response from Google in relation to allegations made in the information.
- 63.2. The Commission vide its order dated 22.06.2021 passed under Section 26(1) of the Act stated that there existed prima facie case against OPs and accordingly directed the Director General (DG) to cause an investigation to be made into the matter and to submit a report.
- 63.3. The DG submitted its Investigation Report on 12.07.2023.
- 63.4. The Commission considered the matter in meeting dated 22.09.2023, directing forwarding of electronic copy of non-confidential version of Investigation Report to Google.
- 63.5. Google through its application dated 15.01.2024 submitted that certain documents reference in the DG report were not made available during inspection of confidential records; requesting the Commission to direct DG to share any additional case material and information including electronic



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records. Consequently, Google also sought extension of time for submission of comprehensive response to the DG report.

- 63.6. The Competition Commission of India (Settlement) Regulations, 2024, were notified on 06.03.2024.
- 63.7. The DG submitted its response to Google's application dated 15.01.2024 on 21.03.2024 along with certain additional documents.
- 63.8. Google filed a Settlement Application on 28.03.2024.
- 63.9. The Commission considered the DG's response along with Google's application in its ordinary meeting held on 24.04.2024, taking additional documents on record and granting Google liberty to complete the process of inspection expeditiously and file suggestions/ objections to the Investigation Report within ordered time frame. Further, upon consideration of the Settlement Application of Google, the Commission directed it to file revised version vide order dated 24.04.2024.
- 63.10. Google submitted revised Settlement Application dated 21.05.2024.
- 63.11. The revised Application was placed before Commission on 05.06.2024. The Commission vide Majority Order decided that inquiry against Google in the captioned matter will remain in abeyance till further orders. Commission also invited objections and suggestions from Informant, OPs and third parties on the public version of the Settlement Application. My Dissent Note of even date stated that the Settlement Application does not *prima facie* address the competition concerns identified by the DG and directed filing of revised Settlement Application by Google and directed for inquiry against Google to continue.
- 63.12. Google subsequently submitted a letter dated 14.06.2024 stating certain planned changes to its commercial offerings at global level relating to Android TV.
- 63.13. Google submitted an Updated Summary (public version) of the Settlement Proposal (Updated Summary) on 26.06.2024.
- 63.14. The Commission considered these submissions in ordinary meeting held on 10.07.2024 and vide Majority Order decided to invite objections and suggestions on the Updated Summary dated 26.06.2024. My Dissent Note of



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even date observed that in the Updated Summary Google has explicitly mentioned that it will continue to offer TADA, hence, no revised directions needed to be issued.

- 63.15. The Commission considered the responses submitted by various parties and vide Majority order dated 04.09.2024 sought certain clarifications from Google. My Dissent Note of even date highlighted that Google's Settlement Proposal is completely silent on a finding of DG regarding requirement of OEMs under TADA to place Google's designated button on physical remote-control and mobile remote-control application and directed Google to file a revised Settlement Application since the Settlement Application failed to *prima facie* address all competition concerns identified by the DG.
- 63.16. Google, filed Voluntary Submission on 09.09.2024, titled 'Voluntary Submission Responding to Market Test Comments on Google's Settlement Proposal'.
- 63.17. Google submitted response (Response I) to the clarifications sought in order dated 04.09.2024 on 15.10.2024.
- 63.18. The Commission considered the Response I and Voluntary Submission and sought further clarifications vide Majority Order dated 13.11.2024. My Dissent Note of even date sought different clarification.
- 63.19. Response (Response II) dated 04.12.2024 were filed by Google regarding the clarifications sought vide order dated 13.11.2024.

64. The Settlement Proposal by Google, stated in its revised Settlement Application dated 21.05.2024 is as follows –

"27. To address these concerns, Google will create a new agreement for smart TV devices distributed in India (for the purpose of this Settlement Application, we refer to this agreement as the "New India Agreement"). Under the New India Agreement, OEMs will be able to licence the Google Play Store and GPS for their compatible Android-based smart TVs supplied into India with no requirement to preload any other Google service, including YouTube. The New India Agreement will not include any placement or default requirements for the Play Store or any other Google service. Google will make the New India Agreement available to current Android TV OEMs as



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*well as other interested OEMs. Google will charge a fee for this New India Agreement licence. **The New India Agreement will not impact Google’s ability to continue to offer the TADA...***” (Emphasis supplied)

.....

*“55. Google strongly believes that no remedy is needed. Google is able to contest, with clear evidence, all the findings of the DG and demonstrate that its conduct at all times complied with the Competition Act. However, in the spirit of reaching a prompt resolution of the inquiry and with a view to avoid protracted litigation, Google is prepared to offer **three specific commitments**, described in detail below, that Google believes will fully resolve the DG’s stated concerns. (Emphasis supplied.)*

- a. First, Google will make available a standalone licence to the Google Play Store and GPS for compatible Android smart TV devices sold in India.*
- b. Second, Google will send a letter to all of its Android TV partners that sell smart TV devices in India that will legally waive the TADA’s requirement to have a valid ACC for devices shipped into India that do not include Google apps.*
- c. Finally, Google will send a letter to all of its Android TV partners that sell smart TVs in India that reminds them of the existing flexibility under their current agreements with Google to (i) use the open-source Android OS for smart TVs without taking any applications from Google or signing an ACC; and (ii) develop smart TVs using other competing OSs including Tizen, WebOS, and Roku OS.*

56. Google will adhere to all three commitments for a period of 5 years. Google is also prepared to submit regular compliance reports to the Hon’ble Commission confirming that it is honouring its obligations under these commitments.”

65. In my Dissent Note dated 05.06.2024, I have made following observations-

“19. Having considered the findings of contravention recorded by the DG and the terms of settlement proposed by Google, I am of the considered view that the settlement terms offered by Google are prima facie not sufficient to address the competition concerns identified by the DG.



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20. *Firstly Google has proposed to offer a New India Agreement for OEMs distributing devices in India under which there will be a fee attached for licensing of Google Applications. The proposed New India Agreement does not eliminate existing arrangements under TADA which have been prima facie found to be anti-competitive by the Commission and also found to be contravening the provisions of the Act by the DG.*

21. *The primary concern identified by the DG pertains to Google's restrictive practices under TADA, which mandates pre-installation of Google Applications as a bundle with specific placement requirements. It is clear from the settlement proposal that google proposes to continue to offer TADA along with the New India Agreement.*

22. *Thus, under the proposed new arrangement, OEMs have the option to either pay for the New india Agreement license or continue with the free bundled applications under TADA. This dual structure places OEMs in a position where opting for the New India Agreement incurs additional costs, while the bundled applications under TADA remain free but come with restrictive conditions. This arrangement is likely to skew market dynamics in favor of the existing arrangements based on practices found to be anti-competitive under TADA.*

...24. *Secondly, Google has proposed to send a letter to all of its Android TV partners that sell smart TV devices in India that will legally waive the TADA's requirement to have a valid ACC for devices shipped into India that do not include Google apps.*

25. *The waiver of the ACC requirement for TADA partners is a minor adjustment that does not address competition concerns of the ACC itself.*

...27. *Further a mere proposal to send out waiver letters to its Android TV partners, implying TADA signatories, for waiver of ACC does not provide sufficient assurance of meaningful and informed choice to the partners for transitioning to the new arrangement. As noted above there needs to be a migration of all existing OEMs to new arrangement with a clear roadmap within clearly defined timelines.*



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28. *Thirdly, Google proposes to remind the OEMs of the existing flexibility under their current agreements with Google to (1) use the open-source Android OS for smarty TVs without taking any applications from Google or signing an ACC; and (2) develop TVs using other competing OSs ...*

29. *This settlement term offered by Google proposes only to remind the OEMs of existing flexibility. Simply reminding OEMs of their existing flexibility under AOSP does not indicate any substantive offer.*

30. *Fourthly, the report of DG specifically holds that Google has abused its dominant position in the market by tying YouTube app with the Play Store, thereby violating the provisions of Section 4(2)(e) of the Act.*

31. *The settlement application fails to address this specific issue of tying the YouTube App with the Play Store under TADA. Thus, in view of observations at paras 20 to 23, TADA needs to be amended to address the issue.*

32. *In view of the foregoing, I am of the considered view that the Settlement Application filed by Google does not prima facie address the competition concerns identified by the DG. ...”*

66. In the Updated Summary dated 26.06.2024, Google has categorically stated:

“57. ...The New India Agreement will not impact Google’s ability to continue to offer the TADA.”

67. In my Dissent Note dated 04.09.2024, I have made following observations:

“9. ...However, it is important to note that the Informant has, apart from other issues, highlighted a finding of DG regarding requirement of OEMs under TADA to place Google’s designated button on the physical remote control as well as on the mobile



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remote-control application. This requirement has no relationship with the Android OS provided by Google.

10. The Settlement Proposal under consideration is completely silent on this issue.

11. Hence, I would reiterate my view that the Settlement Application filed by Google does not prima facie address all the competition concerns identified by the DG.”

68. Now I set out to examine further submissions of Google with respect to relevant competition concerns in the following paragraphs.

Continued operation of TADA without modifications along with New India Agreement

69. Google in its Voluntary Submissions dated 09.09.2024 states as follows:

“7. As summarized by Member Agrawal, “Google has proposed to offer a New India Agreement for OEMs distributing devices in India under which there will be a fee attached for licensing Google Applications. The proposed New India Agreement does not eliminate existing arrangements under TADA which have been prima facie found to be anti-competitive by the Commission and also found to be contravening the provisions of the Act by the DG.” ...Member Agrawal accurately states that “under the proposed new arrangement, OEMs have the option to either pay for the New India Agreement license or continue with the free bundled applications under TADA.” ...Member Agrawal’s expressed concern with this proposal is that presenting OEMs with one free option (GTVS apps as suite) and one fee-based option (standalone Play license) would likely “skew market dynamics in favor of the existing arrangements based on practices found to be anti-competitive under TADA.” ...Member Agrawal is therefore of the view that Google must modify the TADA or cease offering it, to create a situation where there would be “only one agreement for the licensing of Google Applications”. ...” (Emphasis supplied).

8. ...these concerns which appear to stem from a misunderstanding of the DG’s findings in its report (DG Report). The DG Report is not concerned with the existence of the



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TADA. *Rather, the DG Report’s concern relates to OEMs’ options for obtaining the Google Play Store—what it calls a “must have” app—which currently OEMs can only obtain alongside other GTVS apps ... DG’s submission does not object to the continued existence of the TADA alongside the New India Agreement confirms that Google’s interpretation is correct. (Emphasis supplied).*

9. *...concern is not that the TADA in and of itself presents a violation of the Competition Act; rather, the DG’s concern was that the only means of licensing the Google Play Store necessitates installing additional Google apps. It is to address this concern, as it is required to, under the Settlement Regulations, that Google is proposing another option to licence the Google Play Store separately. Under the New India Agreement, OEMs will be able to licence the Google Play Store and GPS for their compatible Android based smart TVs supplied into India with no requirement to preload any other Google service, including YouTube. (Emphasis supplied)*

10. *Google proposes to continue offering the TADA alongside the New India Agreement to resolve the DG’s concern with the single means of licencing Google Play ... But the DG Report does not preclude OEMs that want the existing TADA from continuing with it so long as OEMs have the option in parallel to only licence the Play Store. (Emphasis supplied)*

...13. *Member Agrawal ...questioned Google’s plan to charge a license fee for the New India Agreement ...” (Emphasis supplied)*

70. Google has stated that “DG Report is not concerned with existence of TADA...” and that “...concern is not that the TADA in and of itself presents a violation of the Competition Act...” It is important to note that these averments are contrary to the clear findings in the DG Report, which state the following:

“9.11 It is clear from the aforesaid terms and conditions of TADA signed during a particular period with OEMs, it contains almost similar restrictive terms and conditions. From the aforesaid provisions of TADA, it is clear that the terms of the agreement require the OEMs to inter alia mandatorily pre install the entire suit of Google Apps under GTVS and place them on the Home Screen, as per the prescribed



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Application order requirements. This also highlights that OEMs have no say in finalizing the important terms and conditions of TADA and they are totally dependent upon Google for availing various Smart TV functionalities which can be provided only after signing TADA. Even, the OEMs are mandated that in case they want to preinstall any third-party apps, these should appear after Google apps. The OEMs are also required to install Google's button on their physical as well as mobile app remote. (Emphasis supplied)

...

9.65 In view of above, investigation is of the view that it is unfair for OEMs, who would be willing to install only 'must have' app(s) to install the entire suite of GTVS apps that are bundled by Google, under its tying arrangement.

9.66 Thus, on the basis of the aforesaid factors, it can be concluded that pre installation of entire GTVS suite under TADA amounts to imposition of unfair condition on the smart TV device manufacturers, which is a violation of the provisions of Section 4(2)(a)(i) and Section 4(2)(d) of the Act." (Emphasis supplied)

71. Further, Google states that "DG Report does not preclude OEMs that want the existing TADA from continuing with it so long as OEMs have the option in parallel to only licence the Play Store". Nowhere in the DG Report the issue of OEMs having an option in parallel to TADA has been discussed. In view of the clear findings of DG Report against TADA, this statement represents a totally misleading interpretation.

72. Google further states that "DG's submission does not object to the continued existence of the TADA alongside the New India Agreement". It must be noted that DG did not have the privilege of access to the complete Settlement Proposal, DG had access only to the Public Summary of the Proposal. Further, DG has clearly stated that "...presently the Play Store and Play Services are free... the proposed new agreement shall be executed with certain fee. Therefore, OEMs may be in a better position to comment on the fee issue". Hence, there is nothing in DG submissions on Settlement Proposal from which such an inference may be drawn. In any case, DG's submissions are only an input to the enquiry by the Commission.



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73. Thus, Google has argued that continued operation of TADA would be in conformity with the DG Report as (a) the DG Report is not concerned with existence of TADA, (b) concern is not that TADA itself presents a violation of the Competition Act, (c) DG Report does not preclude OEMs that want the existing TADA from continuing with it, (d) DG's submission does not object to the continued existence of the TADA. As detailed in preceding paragraphs, each of these arguments is devoid of any substance and is manifestly unsustainable.

74. Further, my query vide Dissent Note dated 13.11.2024, and response of Google vide Response II dated 04.12.2024, are as follows:

“Query: Please clarify if Google is offering any products through more than one agreement simultaneously on differential licence terms in any other global jurisdiction?”

*... 3. Google confirms that it offers Android TV **globally through only one agreement**, i.e., the TADA. **(Emphasis supplied)***

4. Where Google offers its services on a global basis, its usual practice is to use similar license or distribution terms across jurisdictions, subject to local legal requirements (e.g., EMADA in Europe to comply with the European Commission's directions in the Google Android case in Europe).”

75. Thus, Google has clarified that it offers Android TV globally through only one agreement, i.e., the TADA and does not have multiple agreements. However, for the proposed new arrangement unique to India, Google has proposed a new scheme where OEMs have the option to either pay for the New India Agreement licence or continue with the free bundled applications under TADA.

76. I am unable to persuade myself to agree to the Majority view expressed in paras 37 and 39 that offering of both TADA and New India Agreement gives greater flexibility to OEMs. Under the proposed arrangement, TADA would continue to operate without any modifications offering free bundled applications, and in parallel to TADA, as an option, New India Agreement will operate where OEMs have to pay for the licence. This dual structure places OEMs in a position where opting for the New India Agreement incurs



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additional costs, while the bundled applications under TADA remain free but come with restrictive conditions. Further, the Settlement Proposal does not eliminate existing arrangements under TADA which have been *prima facie* found to be contravening the provisions of the Act. This arrangement is not likely to correct existing market arrangements which are based on TADA.

77. Para 38 of the Majority order notes that Google may charge a fee for licensing apps. The issue in the present context is not about charging a fee but creating a situation where an app can be licensed under two different license agreements in **parallel**- one without fee, with restrictive conditions, and the other, with fee, without restrictive conditions. The Settlement Proposal does not address the restrictive conditions under the free regime of licensing of apps, which continues to operate in parallel.

78. It is also necessary to examine Google's statement that "*...Member Agrawal ...questioned Google's plan to charge a license fee for the New India Agreement ...*". This is a clear misrepresentation of my Dissent Note dated 05.06.2024. I have observed as follows: "*I am of the view that there must be only one agreement for the licensing of Google Applications in the relevant market which sufficiently addresses the identified anti-competitive issues. Thus, the clauses of TADA identified as being against the provisions of the Competition Act, 2002 (the Act) must be modified for complete compliance with the Act, or TADA may be wholly replaced with another agreement fully complying with the provisions of the Act.*" This cannot, by any reasonable interpretation, imply what Google has suggested. A singular licensing regime must be there with or without fees which addresses all competition issues.

Tying of YouTube app with the Play Store under TADA

79. As noted in the Dissent Note dated 05.06.2024, Google's revised Settlement application failed to address the concerns of the DG in complete manner by failing to provide any specific remedy against issue of abuse of dominance by Google through tying the YouTube App with the Play Store under TADA.

80. Google in its Voluntary Submission dated 09.09.2024 stated that –



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19. Google's proposal to offer the New India Agreement fully addresses Member Agrawal's tying concern. ...Google's New India Agreement would make available a standalone licence to the Play Store and GPS that would be available without other GTVS apps, including YouTube. That is, the New India Agreement severs the so-called "tie" between YouTube and the Play Store, just as it does between other GTVS apps and the Play Store.

20. A device manufacturer that enters into the New India Agreement would have the freedom to release a device with the preloaded Play Store and with no other Google apps, including YouTube. Moreover, device manufacturers would also be able to release devices with competitor apps of YouTube preloaded. So, a device manufacturer would be able to release a device with the preloaded Play Store and one or more competitor apps of YouTube, but without YouTube or any other Google Services.

21. ...Thus under the New India Agreement, an OEM would have the freedom to licence (1) the Play Store alone, [REDACTED]

81. DG has raised concerns against tying of YouTube with Play Store specifically under TADA and its placement requirements:

"...Analysis of abuse under Section 4(2) (e).

9.155 The leveraging the dominance of Play Store to enter into or protect relevant market for 'online video hosting platform in India', is established by the fact that Play Store and YouTube are two separate apps operating in two distinct markets and there is no requirement to pre-install these two apps together. Similarly, as discussed above, the other apps preloaded under GTVS, are also having distinct features and functionalities and **there is no technical reason for pre-installing the entire suite apps under TADA.**

9.156 ... The abuse of dominant position also gets further emphasized from the fact that OEMs and third parties have little incentive to preload their apps side by side with



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*YouTube due to the app placement order prescribed **under TADA**. Thus, pre installation of YouTube forecloses competition for third party competing apps to be placed in the best positions. ...*

Foreclosing competition

*9.159 ... Google's tie-in strategy **through TADA** has prevented competitor app makers' efforts to compete with YouTube, as OEMs are mandated to preload YouTube on their devices in order to obtain Google Play. ...*

*9.160 Further, Google's placement requirements which mandates that its apps are pre-installed and given prominent placement as per **application order requirements specified in TADA**, reduces an OEM's ability to include a competitors' app prominently in place of Google's App.*

*9.161 Also, **Google's tying and bundling strategy leads to exclusivity which reduces the ability of OEMs to pre-install competitor's apps** thereby harming competition in the market. By entering into TADA & ACC agreements with OEMs as distribution channels for YouTube, Google has further strengthened its dominant position. Thus, competitors are foreclosed by Google's agreements with OEMs to compete on merits for the distribution of their apps in order to achieve scale.*

9.162 It is noted during investigation that Google has not provided details of you tube revenue data segmented by android TV based devices in India. It has provided date of revenue based on billing location of the advertiser. This data does not give correct picture of revenue generated by it from YouTube installed on android smart TVs. ...

*... 9.168 It is pertinent to note that **due to the pre-installation of You Tube, it enjoys competitive edge over the other OVHP apps. Like other pre-installed apps, You Tube app cannot be uninstalled by end users from their smart TVs with licensable android OS. This gives Google advantage over its competitors for YouTube.** ... The conditions imposed under TADA, which mandates OEMs to have entire GTVS including YouTube and placement of its Apps, as per the discretion of Google, makes it crystal clear that*



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Google by tying in You Tube with Play Store has used its dominant position of Play Store in app store market for android smart TV OS in India for protecting its position in the other relevant market of OVHP in India. ...”

(Emphasis supplied)

82. As per the settlement proposal, non-bundling of YouTube with Play Store is applicable only to the New India Agreement and there is no commitment to unbundling of YouTube from Play Store under TADA, which was the main concern of DG. With Google’s continued offering of TADA, these concerns remain unaddressed.

Requirement to place Google’s designated button on physical and remote-control

83. As recorded in my Dissent Note dated 04.09.2024, Google’s Settlement Proposal is completely silent on the issue of requirement of OEMs under TADA to place Google’s designated button on physical remote-control as well as on the mobile remote-control application.

84. Google in its Voluntary Submission dated 09.09.2024 stated that –

*“58. ...Google-designated buttons on Android TV’s remotes were not identified as a contravention in the DG Report, ... Moreover, under the New India Agreement, OEMs will not preload the entire suite of GTVS apps. Google’s **proposed New India Agreement**, which includes a standalone licence to the Play Store, **will include no placement** [REDACTED] **requirements**. As such, the New India Agreement clearly addresses the concern raised ...”*

(Emphasis supplied)

85. However, the DG report expressly identifies installation of Google’s button on physical and mobile app remotes as a concern:

“9.9 It can be seen from the aforesaid clauses of TADA that the following main obligations were imposed on the OEMs with regard to apps:



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...

Google button on Physical TV remote

9.64 It can be seen from the terms and conditions of TADA that it prescribes that the OEMs are required to comply with requirement of placing Google's designated button on the physical remote control as well as on the mobile remote-control application. It may be noted that the requirement of placing Google's designated button has no relationship with the Android OS provided by Google. The OEMs are forced to accept this condition only because they have no option except to sign TADA/ACC for availing must have apps of Google." (Emphasis supplied)

86. Thus it is clear that Google's proposal is only to remove the requirement of placement of Google's designated button under the New India Agreement, and continue with them under TADA.

Conclusion

87. In conclusion, as a Settlement Proposal, Google has proposed to offer a New India Agreement for OEMs distributing devices in India. Google will continue to offer TADA in addition to this New India Agreement.

88. The primary concerns identified by the DG pertain to Google's restrictive practices under TADA.

89. Under the proposed new arrangement, unique to India, OEMs have the option to either pay for the New India Agreement licence or continue with the free bundled applications under TADA.

90. The Settlement Proposal does not eliminate existing arrangements under TADA which have been *prima facie* found to be contravening the provisions of the Act.

91. This dual structure places OEMs in a position where opting for the New India Agreement incurs additional costs, while the bundled applications under TADA remain free but come with restrictive conditions. This arrangement is not likely to correct



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existing market arrangements under TADA, which are based on practices found to be anti-competitive.

92. I am of the view that there must be only one agreement, with or without fee, for the licensing of Google Applications in the relevant market which sufficiently addresses the identified anti-competitive issues. Thus, the clauses of TADA identified as being against the provisions of the Act must be modified for complete compliance with the Act, or TADA may be wholly replaced with another agreement fully complying with the provisions of the Act. All existing OEMs signatories to TADA need to be migrated to the new arrangement with a clear roadmap within clearly defined timelines.

93. As the Settlement Proposal does not address these issues, it fails to inspire confidence and merits unequivocal rejection.

94. Two versions of this order may be prepared, i.e. confidential version and public version. The public version of the order may be prepared keeping in mind the confidentiality requests and provisions of Section 57 of the Act read with Regulation 36 of General Regulations, 2024. Public version of the order be uploaded on the Commission's website. Confidential version of the order shall be shared with members of the confidentiality ring.

95. Secretary shall ensure dissemination of orders accordingly.

Sd/-

(Anil Agrawal)

Member

New Delhi

Date:21/04/2025