



COMPETITION COMMISSION OF INDIA

Case No. 42 of 2022

In Re:

Winzo Games Private Limited

Informant

And

Google LLC

Opposite Party No. 1

Alphabet Inc.

Opposite Party No. 2

Google India Private Limited

Opposite Party No. 3

Google India Digital Services Private Limited

Opposite Party No. 4

CORAM:

Ms. Ravneet Kaur

Chairperson

Mr. Anil Agrawal

Member

Ms. Sweta Kakkad

Member

Mr. Deepak Anurag

Member

Present

For Winzo Games Private
Limited

: Mr. Abhisek Malhotra, Ms. Srishti Gupta, Ms. Atmaja Tripathi, Ms. Anukriti Trivedi and Ms. Nishtha Chaturvedi, Advocates

For Google (Opposite Parties)

: Mr. Sajan Poovaya, Sr. Advocate with Mr. Karan Singh Chandhiok, Mr. Avinash Amarnath, Mr. Rahul Rai, Ms. Shivanghi Sukumar, Ms. Raksha Agarwal, Mr. Palash Maheshwari, Ms. Tarun Donadi, Mr. Uday Bali,



and Ms. Aditi Gopalakrishnan and Ms. Arunima Chatterjee, Representatives of Google

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

1. The Information in this matter was filed by Winzo Games Private Limited (**Informant**) under Section 19(1)(a) of the Competition Act, 2002 (**Act**) against Google LLC, Alphabet Inc., Google India Private Limited and Google India Digital Services Private Limited (collectively, **Google**) alleging contravention of provisions of Section 4 of the Act.
2. The Informant is stated to be a digital gaming and technology company which operates an online digital gaming platform under its trademark and brand name 'WinZo'. It has been submitted that Google operates 'Google Play' wherein third-party app developers make available their apps to the users. The Informant avers that in order to host apps on Google Play, the app developers must agree with Google's one-sided Developer Distribution Agreement (DDA) and Developer Program Policies (DPP) which contain unreasonable and unjust conditions. The Informant has submitted that Play Store restricts hosting of gaming applications that offer Real Money Games (**RMGs**) in India. Due to Google's abovementioned unreasonable and restrictive policy all apps offering real money games of skill are only available for download from their website (a process called sideloading). Thus, the Informant's app can only be downloaded using its website. It has been submitted that when users access the website for downloading the Informant's app on Android devices, a disclaimer/warning is displayed. As per the Informant, the aforesaid warning is peculiar to the Google operated Android OS and lack any merit or reason and is completely illegal. The same is claimed to be not only misleading which tarnishes Informant's market reputation but also is an active misrepresentation resulting in loss of business.
3. In addition, it has also been alleged that when a user makes a payment to the Informant to play skill based games and attempts to use 'Google Pay' to make such payment, Google displays another baseless warning in the following words:



'This person might be flagged as risky. Check again or cancel this payment'.

4. Further, users are also warned about payments if the amount exceeds certain thresholds fixed by Google, without any justification, in the following words:

'This is an unusually high amount. Check again before sending money'.

5. As per the informant, such payment warnings are arbitrary as Google has not set any criteria for displaying such warnings. It has been further stated that National Payments Corporation of India (NPCI) has never required/directed payment service providers to display such warnings for payments to real money skill-based game merchants.
6. The Informant has further averred that on 07.09.2022, Google updated its policies under which it commenced a Pilot Program to test hosting of only two types of RMGs on its Play Store *i.e.*, Daily Fantasy Sports (DFS) and Rummy in India for a period of 1 year *i.e.*, from 28.09.2022 to 28.09.2023. As per the Informant, allowing users to seamlessly download DFS and Rummy Apps from Play Store while showing warnings (during sideloading) with respect to other skill-based gaming apps will eliminate the level playing field and create a false perception of legitimation of DFS and Rummy over all other games of skill. The Informant has alleged that the decision to limit the Program's scope to only DFS and Rummy apps and disallow all other RMGs, is devoid of any reason and is thus, discriminatory and arbitrary constituting abuse of its dominant position by Google.
7. Another allegation of the Informant pertains to the updated advertisement policy of Google. It has been submitted that Google has started enforcing the Pilot Program through Google Ads which is an online advertising platform owned and offered by Google allowing third parties/app developers to advertise on Google, YouTube and the larger Android OS Applications ecosystem. The Informant has submitted that from 21.11.2022, Google has restricted its advertisements policy (modified Ad policy) by only allowing DFS and Rummy app advertisers to host advertisements using Google



Ads. As per the Informant, given the unprecedented potential to increase business by accessing users through Google Ads, Google's modified Ad policy which restricts Informant's advertisements from being hosted as part of Google's Ad program, is abuse of its dominant position.

8. For the purpose of the present matter, the Informant has delineated two relevant markets *i.e.*, market for licensable Operating System for smart mobile devices in India, and market for application stores available on devices with licensable OS in India. Further, the Informant has alleged that Google is dominant in both of these markets.
9. Based on above, the Informant has alleged that Google has violated Sections 4(2)(a)(i), 4(2)(b)(i) and 4(2)(c) of the Act and thus, *inter alia* prayed the Commission to initiate an inquiry against Google. The Informant has also sought Interim Relief under Section 33 of the Act against Google.

Consideration by the Commission

10. The Commission considered the matter and decided to seek response of Google to the Information as well as the application filed by the Informant under Section 33 of the Act seeking interim relief. In addition, Google was directed to submit its response to certain queries of the Commission. The Informant was also allowed to file its rejoinder, if any, thereafter. These responses were duly filed by the parties. Subsequently, Google and the Informant made further submissions during the course of proceedings.
11. The Commission has also taken inputs from the Ministry of Electronics and Information Technology (MEITY) in relation to permissible RMG applications for listing on app stores in India. MEITY *vide* its letter dated 23.04.2024 provided its reply.
12. The Commission perused and examined the information available on record, in its meeting held on 24.07.2024 and in terms of Regulation 17 of the Competition Commission of India (General) Regulations, 2009, decided to hold a preliminary conference with the Informant as well as the Opposite Parties on 11.09.2024 at 11:00



AM. Accordingly, the Commission heard the learned counsel/ senior counsel appearing on behalf of the parties on 11.09.2024. As prayed, the parties were also allowed to file brief synopsis of their oral arguments, in 10 (ten) days, if so desired. The Commission also decided to pass an appropriate order in due course. The post hearing submissions have since been received and taken on record.

Analysis of the Commission

13. In the present matter, the Informant has made various allegations against Google *inter alia* in relation to its app store, payment and advertisement policies. The Informant has alleged that these policies of Google violate various provisions of Section 4 of the Act. The first step for analysing any alleged abusive conduct under Section 4 is to identify the relevant market(s) and assess dominance of the opposite party therein. This is followed by examining the alleged conduct for violation of any provision of Section 4 of the Act.
14. As already stated, the Informant has identified two relevant markets for the purpose of examination of the alleged conduct of Google, *i.e.*, market for licensable Operating System (OS) for smart mobile devices in India, and market for application stores available on devices with licensable OS in India. The Commission had the occasion to examine the relevant markets related to licensable OS for smart mobile devices and app stores along with Google's presence therein, in Case No. 39 of 2018 *i.e.*, Google Android Case (Order dated 20.10.2022 issued under Section 27 of the Act) as well as in Case Nos. 07 of 2020, 14 of 2021 and 35 of 2021 *i.e.*, Google Play Case (Order dated 25.10.2022 issued under Section 27 of the Act). In these cases, the Commission delineated market for licensable OS for smart mobile devices in India and market for app store for Android smart mobile OS in India as relevant markets. The Commission also found Google to be dominant in both these markets.
15. In the present matter, the Informant has also made allegations related to online search advertisement policies of Google and accordingly, one more relevant market needs to be defined in the present matter in relation to search advertising services of Google. The



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Commission has considered this market in Case Nos. 07 & 30 of 2012 (In *Matrimony.com Limited Vs. Google LLC & Others*) and *vide* its order dated 31.01.2018 delineated the market for online search advertising services in India as the concerned relevant market. The Commission also found Google to be dominant in the said market for various reasons mentioned therein.

16. The detailed reasoning for delineation of these markets and assessment of dominance of Google therein, is not being reproduced here for brevity. The Commission is of the *prima facie* view that basis of delineation of relevant market as well as determination of Google to be in a position of dominance in these markets, continues to be valid and no information has been brought on record which would warrant taking a different approach in the present matter. Accordingly, for the purpose of the present matter also, the Commission is of the *prima facie* view that the relevant markets are (a) Market for licensable OS for smart mobile devices in India; (b) Market for app store for Android smart mobile OS in India; and (c) Market for online search advertising services in India. Google is also found to be dominant in these markets.
17. Various allegations of the Informant against Google have been categorised and examined by the Commission in succeeding paragraphs:

A. Listing of Real Money Gaming (RMG) Apps on the Play Store

18. The Informant has alleged that Google, by way of its arbitrary one-sided Developer Distribution Agreement and Developer Program Policies (**Policies**) does not permit listing of third-party gaming apps that offered users the facility to place real money for stake in 'games of skill' on Google Play Store. As per the Informant, these games *i.e.*, RMGs have been declared to be legal by the Hon'ble Supreme Court and various High Courts of the country and hosting these games on app stores is a general market practice which is not followed by Google without any justification. The Informant has averred that this conduct of Google (a) constitutes an act of denial of market access under Section 4(2)(c) of the Act; and (b) amounts to unfair/discriminatory condition in sale of real money game service resulting in contravention of Section 4(2)(a)(i) of the Act.



19. Submissions of Google in this regard are summarised below:

- 19.1. The Indian Constitution empowers both central and state legislatures to regulate “betting and gambling” activities which has led to a fragmented regulatory framework across India. While certain States have subscribed to the (central) Public Gambling Act, 1867 (**Gambling Act**), several others have enacted their own legislation to regulate betting and gambling. The Gambling Act does not apply to “*Games of Skill*”, which the Hon’ble Supreme Court of India has defined as those games in which “*success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player*” differentiated from “*Games of Chance*”, in which “*the element of chance predominates over the element of skill.*” Therefore, games that require a preponderance of skill over chance are arguably not prohibited by the Gambling Act. That said, certain States - such as Telangana, Kerala, and Andhra Pradesh - ban all types of games. Google has further averred that there is no objective definition of a 'Games of Skill' in India and the determination of same is stated to be a question of fact and is dependent on the specific format, features, rules of the game, *i.e.*, it requires a case-by-case determination.
- 19.2. On 06.04.2023, the MEITY amended the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 under the Information Technology Act, 2000 (**IT Act**) (**Amended IT Rules**). These Amended IT Rules seeks to regulate all online games and provides specific requirements and compliance obligations for Online Gaming Intermediaries that offer online RMGs. Google has stated that if it offers online RMGs on the Play Store, it may be viewed as an Online Gaming Intermediary. Further, MEITY proposes to designate Self-Regulatory Bodies (SRBs) that will verify and certify specific online RMGs as permissible RMGs in India. Once the Amended IT Rules are implemented (*i.e.*, SRBs are designated), an Online Gaming Intermediary can only offer online RMGs that have been verified and certified as permissible by an SRB. However, MEITY is yet to designate any SRB.



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- 19.3. There are significant differences in the way different States in India regulate online gaming (including RMGs), and rules and regulations governing online gaming are still evolving across various States. Google has also averred that there is potential for conflict between Central regulations on online gaming *i.e.*, Amended IT Rules and State-level gambling legislations. Given this fragmented regulatory framework, allowing all RMG games to be distributed on Play Store would expose Google to legal risk under the gaming laws of some States and the Amended IT Rules. It may also pose regulatory risks for users and developers alike.
- 19.4. RMG apps carry several risks to users which have also been acknowledged by the Government of India, in its Press Release dated 20.04.2023¹ accompanying the Amended IT Rules, including “*lack of safeguards to secure users’ money and money laundering-related concerns in the absence of any strict KYC mechanism*”.
- 19.5. The legal and regulatory uncertainty in offering RMGs in India has influenced Google’s decision not to include India in the list of countries where RMGs are allowed. Accordingly, Google decided to launch a short-term pilot program from 28.09.2022 to 28.09.2023, to understand the RMG landscape in India and take a measured approach to collate learnings with respect to its RMG policies, while ensuring a safe experience for its users. Pilots allow for gathering of useful feedback and help better navigate the gaming landscape where the industry and regulations are still evolving.
20. The Informant in its rejoinder has *inter alia* averred that offering games of skill for stakes has been held to be a valid business activity by the Hon’ble Supreme Court of India, and a part of the fundamental right to carry on trade and business, which is protected under Article 19(1)(g) of the Constitution of India. The Informant asserts that their games are predominantly skill-based, a claim supported by both legal and technical expert reports. Thus, the OPs have no justified grounds to refute this assertion in the absence of an adverse finding by a judicial or enforcement agency.

¹ Available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1918383>



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21. The Commission has perused the submissions of the parties and notes that while the Games of Skill have been held as valid business activity by the Hon'ble Supreme Court of India, the distinction of the same with 'Game of Chance' appears to require a case to case examination. In fact, the Informant has stated in its submissions that it has filed a suit before the Hon'ble Delhi High Court (CS (OS) No. 346/2023) *seeking a declaration in its favour that the games which are hosted by the Informant are predominantly games of skill. Consequently, the declaration would entitle the Informant to seek availability of its platform and games hosted thereon, upon Google Play Store.*
22. MEITY has also proposed, through Amended IT Rules, to regulate online RMGs by way of an SRB framework. In this regard, it is noted from the Press Release dated 20.04.2023 that *the rules cast an obligation on intermediaries, including social media platforms and app stores, to make reasonable efforts to not host, publish or share any online game that causes user harm or which has not been verified as a permissible online game by an online gaming self-regulatory body (SRB) designated by the Central Government.* This regulatory framework, once established, is expected to address the ambiguities. Under these circumstances, the Commission does not find it appropriate to intervene in the matter on this particular issue, at this stage.

B. RMG Pilot

23. The Informant has averred that Google updated its DPP and DDA Policy (Updated Policy) under which it commenced a Pilot Program to test the placement of only two types of RMGs in Google's Play Store in India *i.e.*, Daily Fantasy Sports (DFS) and Rummy. The said program was stated to be active for an initial period from 28.09.2022 to 28.09.2023.
24. In relation to the RMG Pilot, the Informant has alleged that the preference given to DFS and Rummy is arbitrary and prejudicial to app developers who develop other types of RMGs as it renders them on an unequal footing in the market. The Informant also claims that on account of not being listed on Play Store owing to Google's discriminatory Pilot Program, Informant is incurring huge expenditure in terms of cost of acquisition of users



per install. The Informant has alleged that said conduct of Google is discriminatory, imposes an unfair condition, limits, and restricts provisioning of other RMG services, particularly those in the casual gaming sector and amounts to denial of market access for non-DFS and Rummy app developers. Accordingly, Google has been alleged to have violated Section 4(2)(a)(i), Section 4(2)(b)(i) and Section 4(2)(c) of the Act.

25. In relation to RMG Pilot, Google has submitted that the Amended IT Rules were introduced on 06.04.2023 *i.e.*, during the RMG Pilot. Considering the feedback received from its developer partners and the imminent operationalisation of SRBs, Google announced a grace period from September 2023 till 15.01.2024, as a stop-gap arrangement with the intention of enabling distribution of all SRB verified RMGs from the said date. Further, *vide* its response dated 02.02.2024, referring to certain news reports, Google intimated that the operationalisation of SRBs may be delayed. However, Google continued to collate its learnings from the RMG Pilot and gathered positive feedback from users and developers. Based on these learnings and considering Google's overall objective to create a safe and secure RMG ecosystem, Google announced its plans to update its Play policy to support more RMG apps and required time until 30.06.2024, to implement the policy update and thus, extended the grace period until then.
26. Google *vide* its response dated 21.06.2024 further submitted that its teams have been working on implementing the policy update to expand support on Play to new categories of RMG apps in markets without an existing licensing framework. However, expanding to a new category of apps on Play is a complex process with several challenges. It has been further averred that Google also considered closing the RMG Pilot and introducing the policy update only after Google receives greater clarity on the regulatory landscape in India. However, closing the RMG Pilot would require Google to offboard those apps which are currently distributed as part of the RMG Pilot, which would risk significant developer and user disruption. Therefore, Google extended the grace period for the RMG Pilot while continuing to develop a mechanism to open the Play Store to other RMGs.



27. It has also been submitted that Google has not discriminated between different DFS / Rummy apps on Play as part of the RMG Pilot. Winzo itself admits that their DFS and Rummy app is available on Play as part of the RMG Pilot. Winzo cannot seek to coerce Google into accommodating Winzo's commercial preferences, especially when Google is fairly and uniformly applying the objective criteria it formulated for the RMG Pilot.
28. On the other hand, the Informant has averred that the conduct of Google has resulted in appreciable adverse effect on competition in the RMG space and constitutes denial of market access. The Pilot Project has benefited DFS and Rummy apps in gaining more user base. Further, Google has failed to produce any study, survey or report to show that Rummy and DFS are the most widely used or popular RMG games.
29. The Commission has perused the submissions of the parties as well as other information on record. In relation to RMG Pilot, there are two issues for determination, the first being, whether the selection of DFS and Rummy for the Pilot has resulted in any anti-competitive disadvantage for other RMG apps. The Commission further notes that initially the RMG Pilot was intended to operate for one year *i.e.*, from 28.09.2022 to 28.09.2023. However, as stated above, the same was extended by Google for different reasons. Based on the reply dated 21.06.2024 submitted by Google, it is noted that the said Pilot has been extended indefinitely beyond 30.06.2024 as no date has been set for its termination. Therefore, the second issue for consideration is whether such long duration Pilot has resulted or is likely to result in any distortion in the competitive process in the RMG market.
30. In relation to first issue, Google has submitted that it has selected DFS and Rummy for the pilot primarily based on their popularity, with the aim of maximising learnings from the RMG Pilot. It has been further averred that the Hon'ble Supreme Court of India (as well as other courts) have recognised DFS and Rummy as predominantly games of skill. The higher degree of legal certainty attached to DFS and Rummy is stated to provide Google with additional comfort from a risk assessment perspective.
31. The Informant on the other hand has averred that Google has failed to provide a valid justification for selectively allowing only two categories of RMG apps while excluding



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the rest of the RMG market and its responses for the same have been inconsistent, unsubstantiated, based on assumptions and unverified market statistics. In this regard, the Informant has also relied on the submission dated 15.06.2024 filed by Google wherein it has been stated that “*Further,, it is not the characterisation of a game as a game of skill or game of chance, but the fragmented regulatory and legal landscape for RMG apps in India and risks that RMG apps carry that has informed Google’s RMG Policy and Google’s decision to limit its short-term Pilot Program to DFS and Rummy apps.*” The Informant has further averred that during the preliminary hearing, however, Google insisted that the premise for restricting RMG apps to DFS and Rummy to the Pilot Program was primarily due to both such categories of RMG’s having been declared as games of skill. The Informant has further relied upon the OPs written statement as filed before the Hon’ble Delhi High Court in CS(OS) No. 346/2023, wherein the OPs have submitted that the Pilot Program was not launched based on classification of apps as games of skill or games of chance and it does not make any distinction of such nature.

32. The Informant has also stated that Google has merely made a vague, unsubstantiated and arbitrary assertion that “*DFS and Rummy are by far the largest and most popular categories of RMGs*” but have failed to substantiate it with any documentary or statistical evidence whereas, the Information demonstrates that DFS and Rummy, combined, have less than 20% penetration / user base and outreach, compared to other categories of skill based games. Based on various averments, the Informant has alleged that by limiting the available apps to DFS and Rummy for the Pilot Program without any justification, Google has engaged in abuse of their dominant market position, thereby denying market access to the Informant.
33. In this regard, the Commission notes that Google Play Store is two-sided market in which Google has been able to attract a large number of Android users on one side due to presence of large number of apps and on the other hand a large number of app developers due to the potential to reach a large audience. Google’s Play Store is the app store with the largest quantity of apps and is pre-installed on 100% of Android devices. Play. The Commission has already examined the ‘must have’ nature of Play Store in



Google Android Case as well as *Google Play Case*. Thus, for app developers, being listed on the Google Play Store is practically a necessity to reach a large audience. Exclusion from the Play Store may result in significant disadvantage in accessing end users, thereby *prima facie* amounting to a denial of market access. This exclusionary effect not only impairs the ability of rival app developers to compete but may also force some developers to exit the market entirely.

34. Further, as a general principle, pilot programs offer a balanced way to introduce new practices in a controlled manner, however, their implementation in a market dominated by a player like Google demands heightened scrutiny. Given the Play Store's critical role in the Android ecosystem, any pilot program initiated by Google must be carefully assessed to ensure it does not result in anti-competitive outcomes.
35. Considering such role of Google Play Store, the selection of sub-categories of the RMG apps for the pilot program, may raise competition concerns if the same is based on a non-objective and arbitrary criterion. The Commission observes that direct access to end-users *via* the dominant Play Store provides a significant competitive edge to DFS and Rummy apps, potentially disadvantaging other real-money gaming (RMG) applications. This selective onboarding *prima facie* distorts the competitive landscape to the disadvantage of apps not covered in the Pilot. Further, Google's justification for selecting these app categories appears ambiguous and non-transparent.
36. As far as the second issue related to long duration of the Pilot is concerned, it is noted that the duration of pilot programs plays a critical role in determining their competitive impact. While temporary programs can introduce innovations or test new features, extending them indefinitely can exacerbate existing market distortions. The long duration of Google's pilot program, risks perpetuating the advantages conferred upon selected participants, such as DFS and Rummy apps. This temporal extension amplifies the anti-competitive effects by ensuring these apps continue to enjoy preferential access and visibility, which other competitors are denied. The competitive edge granted to select players (DFS and Rummy), if unchecked, can entrench their position in the market and create barriers for new entrants or smaller or other competitors in the RMG market.



37. In this regard, the Commission also notes from the submissions made by the Informant that the Informant's closest competitor, *i.e.*, Dream 11 which holds 90% of the DFS market, had gained additional user traction of about 1.7 crores within two months from the launch of the Pilot Program, whereas the Informant appears to have been deprived of similar opportunities owing to the OPs pilot program. Dream11 captured 150 million users over 16 years, but their growth accelerated significantly once they joined the Google Play Store, adding another 55 million users in just one year. Furthermore, within a month of being included in the Pilot Program, Dream11 achieved ranking #1 among top chart apps in India and #8 globally by the end of 2023. Thus, based on this data, it appears that the listing of DFS and Rummy apps on Play Store, pursuant to the RMG Pilot, has significantly impacted other RMG apps.
38. The Commission is of the view that various submissions made by both the Informant and Google, including Google's justification for its selection criteria and the impact of the pilot's duration, warrant a comprehensive and detailed investigation. It is further noted that a pilot program, should ideally be implemented in a controlled and phased manner *viz.* setting clear limitations on both the geographic scope of the program and the number of downloads permitted during the pilot phase. Such an approach ensures that any potential risks or regulatory concerns can be effectively monitored and addressed in a manageable setting. In the present case, the pilot program was rolled out on a pan-India basis without any apparent restrictions on the number of downloads by users. These aspects also need to be evaluated during investigation.
39. In view of the foregoing, the Commission is of the view that given the presence of network effects in an app store market, prolonged duration of such pan-India Pilot consisting of only selective RMG apps *prima facie* appears to deny market access to non-DFS and non-Rummy RMG applications. This denial significantly disadvantages other players in the RMG sector by limiting their ability to compete effectively. The Commission is of the *prima facie* view that such conduct is in violation of Section 4(2)(c) of the Act. Further, Google's conduct in structuring the RMG Pilot also *prima facie* appears to impose unfair conditions on non-DFS and non-Rummy RMG app



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developers. By granting preferential treatment to select app categories, Google effectively creates a two-tier market where some developers are accorded superior access and visibility while others are discriminated against and thus, left with a competitive disadvantage. Thus, the Commission is of the *prima facie* view that such conduct is also in violation of Section 4(2)(a)(i) of the Act. Such practices also *prima facie* appear to limit or restrict provision of other RMG apps as well as their technical and scientific development, in violation of Section 4(2)(b) of the Act.

C. Google Ads Policy Permitting Advertisements for Only Daily Fantasy Sports (DFS) and Rummy Gaming Applications

40. The Informant has averred that Google Ads is an online advertising platform owned and offered by Google, allowing third parties/ app developers to advertise on Google, YouTube, and the larger Android ecosystem. As per the Informant, Google's ecosystem (Google Ads + YouTube) offers highest reach across platforms with YouTube alone having access to 467 million users in India.
41. In this background, the Informant has alleged that earlier, Google Ads permitted advertisement of all types of games of skill including casual games such as the Informants' application. However, from 21.11.2022 *i.e.*, shortly after the introduction of the Pilot Project, Google has restricted its advertisements policy (**Modified Ad Policy**) by only allowing DFS and Rummy app advertisers to host advertisements using Google Ads.
42. It has also been averred by the Informant that Google's Ads Policy allowed app developers and service providers to bid on desired keywords, by competing with other competitors, and thus, allowing the winner to exclusively use such keywords on Google search engine ads. The Informant have bid and been continuously using their registered trademark- 'WinZO' on Google Search and ads. With the introduction of DFS and Rummy Apps on Play Store pursuant to the Pilot Project, the competing applications can run app campaigns using Informants' trademarks 'WinZO' *i.e.*, which does not restrict use by competing apps of Informants' trademark. However, the Informant is



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unable to pay to protect its own brand keywords on Google Ads, due to disapproval of its ads. As a result, all DFS and Rummy apps are displayed on Google Search Ads when users search for WinZO.

43. As per the Informant, such restriction not only deprives the Informant of the largest outreach while its competitors in the RMG business focusing on DFS and Rummy continue to encash and reap benefits from Google Ads. The Informant alleges that the restraint of advertisement on Google's platforms limit and restrict Informant's provision of services as well as market, in contravention of Section 4(2)(b)(i) of the Act and also results in denial of market access in violation of Section 4(2)(c) of the Act.
44. The submissions of Google in this regard have been summarised below:
 - 44.1. Google's Ads Policy is clear and is enforced uniformly. Google permits ads of all online games insofar they (1) do not involve the opportunity to win anything with real world value (*i.e.*, non-RMGs), and (2) comply with Google's policies while abiding by applicable laws. With respect to RMGs, Google supports gambling advertising in accordance with local gambling laws and industry standards, and therefore does not allow certain kinds of gambling-related advertising.
 - 44.2. In India, Google has permitted ads only for DFS and Rummy RMGs since 2019. Google has permitted ads for Rummy and DFS, for objective and non-discriminatory reasons. In particular, Google took into account the applicable case law in India, which had characterised DFS and Rummy as games of skill (rather than games of chance). Based on that case law, Google reasonably concluded that permitting ads for those two types of RMGs would present the least risk and exposure for Google. Google has no commercial interest in refusing ad revenue unnecessarily and its approach reflects both its decision to mitigate legal risk and its obligation to comply with the law.
 - 44.3. Given the significant confusion regarding the characterisation of games as those of skill or chance, exemplified by Winzo's own suit before the Hon'ble Delhi High Court requesting a declaration that its games are those of skill, it is neither Google's



intention nor place to decide whether - or which - games are games of skill or games of chance.

44.4. Contrary to Winzo's assertions, Google has never altered its Ads Policy to reduce it from offering ads for all RMGs to a policy which permits ads only for DFS and Rummy. In particular, Winzo is wrong to suggest that the Ads Policy changed after November 2022 (following the RMG Pilot). On the contrary - the relevant policy has remained the same. In February 2022, that policy was extended, due to changes in local laws to allow DFS and Rummy ads to also target users in the state of Karnataka.

44.5. In relation to keyword bidding, it has been averred that the Commission has already examined the issue of bidding on competitors' keywords/ trademark terms by way of a detailed inquiry resulting in a final order in the *Matrimony case*. As such, it is no longer *res integra*. As Google keywords policies have fundamentally not changed or been modified from those already assessed by the Commission, and there been no change in the relevant regulatory landscape, the Commission's investigation into the same matter is not warranted. Further, Section 26(2A) of the Act as amended by the Competition (Amendment) Act, 2023 provides that the Commission may not inquire into conduct where "*the same or substantially the same facts and issues*" have already been decided by the Commission in previous orders.

45. The Informant in its rejoinder has *inter alia* stated that,

45.1. 68.21% of the Informant's application installs derived from the Google Ads program, were on account of Informant's brand advertisements, *i.e.*, the Informant's bids on its own Trademark under the Google Ads program. On account of Google's restraint and ban on Informant from hosting any form of ads on Google and related platforms, Informant is suffering business loss as no app installs are being derived from Google ads.

45.2. The Informant has also made certain arguments related to trademark law. Specifically, it has been averred that the aspect of Trademark / Keyword bidding, puts rivals in a



strong tussle against one another to bid on each other's mark as a need to earn revenue from the consumers, as also bid on one's own Trademark to protect and prevent misuse by competitors. Google's Keyword bidding, forces competitors to invest high amounts of revenue in bids on competitor's keywords which amounts to passing off and unlawful trademark infringement.

46. The Commission has perused the information available on record and notes that with the technological advancements and rapid digitalization of the economy, online advertisements have become an indispensable tool for advertisers to extend their reach and connect with a broader audience. In the current digital ecosystem, where Google holds a dominant market share of approximately 95% in the search engine market, its search advertisement platform serves as a critical channel for apps aiming to maximize visibility and drive user acquisition. The inability to access Google's search advertising platform can undermine an app's ability to compete effectively, potentially diminishing its market visibility and hindering its ability to expand its user base.
47. The Informant in its averments has highlighted the importance of Google's search advertising platform. As per the Informant, Google's ecosystem, comprising Google Ads and YouTube, offers the highest cross-platform reach, with YouTube advertisements having access to 467 million users in India (as of February 2022). Further, data from the Informant indicates that over 68% of its app installs between January 2022 and September 2022 originated through Google Ads. This underscores the reliance of advertisers on Google's advertising ecosystem for business growth. The Commission is of the view that any unfair restrictions imposed by Google on advertisers are likely to have anti-competitive repercussions, adversely affecting their ability to compete in the marketplace.
48. In relation to hosting of RMG apps on the Play Store (discussed in Part A), Google has submitted that legal and regulatory uncertainty in offering RMGs (including DFS and Rummy) has influenced its decision not to allow the same in India. However, its Online Gambling and Games Policy allows advertisements of DFS and Rummy RMGs through Google search advertisement platform since 2019. Thus, there appears to be



inconsistency in the averments of Google. Such inconsistency necessitates a comprehensive investigation to determine as to whether these policies are being applied in a fair, transparent, and objective manner.

49. Given Google's pivotal role in the digital advertising ecosystem, any arbitrary criteria for selecting sub-categories of RMG apps allowed to advertise on its platform can raise significant competition concerns. The selective onboarding of certain app categories (*i.e.*, DFS and Rummy) appears to distort the competitive landscape to the disadvantage of other RMG apps excluded from advertising on the Google platform.
50. The Commission is of the *prima facie* view that the restrictions imposed by Google on advertising through its platform, limit or restrict the provision of RMG apps other than DFS and Rummy as well as their technical and scientific development, in violation of Section 4(2)(b) of the Act. Furthermore, by blocking access to an important advertising channel, Google appears to deny market visibility of such RMG apps, thereby *prima facie* resulting in denial of market access for such RMG apps in violation of Section 4(2)(c) of the Act. This *prima facie* also appears to be discriminatory conduct in violation of Section 4(2)(a)(i) of the Act.
51. The Informant has also alleged that while the Informant's ads are being rejected by Google on the ground that its apps do not offer DFS and Rummy, placement of advertisements by other online casual gaming platforms such as Zupee, MPL, *etc.* have been permitted. The Informant has also provided screenshots and video link of the ads of Zupee and MPL being run on Google's platform. In this regard, it has been submitted by Google that it enforces its Ads Policy uniformly without any discrimination and all ads are subject to review by Google for compliance with its policies. Google has also furnished relevant portions of Google's internal dashboard showing examples of non-DFS/Rummy RMG ads of MPL and Zupee being flagged for non-compliance and appropriate action was taken against such ads. The Commission observes that the alleged preferential treatment extended to Zupee and MPL by Google, as highlighted by the Informant, raises concerns of potential discriminatory practices or selective enforcement of Google's policies in violation of Section 4(2)(a)(i) of the Act. This warrants an investigation to ascertain the veracity of these claims and to determine



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whether Google's enforcement of its Ads Policy has been conducted in a consistent and non-discriminatory manner.

52. In addition, the Informant has also alleged that trademarks are being allowed to be used as keywords for Google's Ad auctions. The Commission has examined the said keyword bidding issue in *Google Search Bias Case* and the relevant extracts from the Order of the Commission are as follows:

“291.Prohibiting advertisers from bidding on queries that include trademarked terms might result in a perverse situation where Google cannot return ads for competitive or complementary products even when users are searching for them. Therefore by allowing bidding on trademarked terms, it increases the relevance of Google’s ads which benefits users also.

292. Google has pointed out that advertisers want their ads to be seen by the same consumers who are looking at their competitors’ ads and using their competitors’ products. This proximity helps consumers, both in reviewing the ads and locating the products. Advertising based on keyword bidding is another way that competitors can target their ads to users who have mentioned a rival, and may be interested in viewings its goods and services. This targeting strategy offers similar consumer benefits to traditional advertising.

293. The Commission finds it logical and notes that the DG’s finding of contravention based upon Google’s Keyword Bidding Policy allowing bidding upon third party trademarked terms as amounting to “imposition” of unfair condition, is stretched. A plain reading of Section 4(2)(a)(i) of the Act makes it clear that it requires imposition of an unfair or discriminatory “condition in purchase or sale of goods or service” to violate the Act. Thus, Google could violate Section 4(2)(a)(i) if it placed an unfair or discriminatory condition on the sale of (AdWords) keywords to the advertisers. The Investigation Report does not point out any unfair condition which has been imposed by Google upon the users or any condition it seeks to impose for blocking competitors of trademark owners from bidding on trademarked keywords.

294. The Commission is of the view that Google’s Keyword Bidding Policy enables a user to include a trademarked keyword in its query and, consequently, the user is not only presented with ads from the trademark owner but will also see a broader range of ads, including from the trademark owner’s competitors. This promotes competition and enhances user choice.”



53. Thus, keyword bidding issue raised by the Informant has already been adjudicated by the Commission and the same does not warrant any fresh consideration. Further, the Informant has also made certain arguments in this regard which relate to adjudication under trademark law. However, the Commission is not the appropriate authority to adjudicate on such claims by the Informant.

D. Google's Warnings on Sideloaded Real Money Gaming Apps

54. It has been further alleged that due to Google's above-mentioned policy related to hosting of RMG apps on the Play Store, all apps offering real money games of skill are only available for download from their website (sideloading). The Informant has alleged that on the one hand Google does not allow its app to be listed on Google Play Store and on the other, it displays malware warnings when a user attempts to download its app from the website *i.e.*, side-load.
55. The Informant has further averred that sideloading requires several additional steps to be followed by users which acts as an entry barrier for app developers as users that do not have technical knowledge would not like to run the risk of sideloading given the warnings of malware infection. Informant has averred that this conduct by Google is illegal and misleading which tarnishes Informant's market reputation resulting in loss of business. As per the Informant, warnings given by Google are (a) unfair and discriminatory and thus, violative of Section 4(2)(a)(i) of the Act; and (b) interfere and limit the provision of real money game services to the users, in contravention of Section 4(2)(b)(i) of the Act.
56. On the other hand, Google in its reply has *inter alia* averred that in March 2023, the Hon'ble NCLAT in *Google LLC & Anr. v. Competition Commission of India & Ors* (Competition Appeal, (AT) 01 of 2023), while adjudicating the issue of whether displaying a warning sign when a user sideloads an app amounts to anti-competitive practice, has held that it is not abusive to post a warning as long as sideloading is allowed and that in fact this is required under the Intermediary Rules. It further held that mere warnings neither amount to restrictions, nor are they disproportionate or illegal.



57. In this regard, the Commission notes that in its order dated 20.10.2022 in *Google Android Case*, it has extensively examined the issue of sideloading, while deliberating upon the conduct of Google in the Android ecosystem. Consequently, the Commission issued a directive requiring Google to *not restrict the ability of app developers, in any manner, to distribute their apps through side-loading*. The Hon'ble NCLAT *vide* its judgment dated 29.03.2023 while upholding the majority of the Commission's order has set aside the said direction of the Commission. This matter is currently sub-judice before the Hon'ble Supreme Court. Therefore, the Commission is not inclined to entertain the allegations of the Informant related to sideloading, at this stage.

Payment Warnings

58. Another issue highlighted by the Informant is that when a user wishes to make payment to the Informant to play skill-based games and attempts to use 'Google Pay' to make such payment, Google displays baseless warnings. As per the Informant, such Payment Warning imposes unfair condition in the Informant's offering of its service and wrongfully interferes/limits the Informant's provisioning of service to users through its application and the ability to conduct legitimate business. This conduct is alleged to be in violation of Section 4(2)(a)(i) of the Act.

59. In this regard, Google has *inter alia* averred that the Reserve Bank of India (RBI) and National Payments Corporation of India (NPCI) through various Master Directions and Circulars respectively have urged payment system participants to adopt fraud prevention measures that include adopting transaction monitoring and velocity checks. In the light of this, GPay issues warnings to caution and alert users prior to undertaking transactions that may put them at risk. Further, these warnings are stated to be not specific to Winzo or any merchant/consumer. Some of the parameters which trigger these warnings are transaction pattern, transaction velocity, settlement ratio, order text, user escalations, *etc.* Google has also presented/publicised these warnings and risk mitigation measures to NPCI, MEITY, and at various public events. Therefore, the regulators, as well as the users, are fully informed about the objectives behind these measures.



60. In this regard, the Informant has averred that while OPs contend that payment warnings are displayed pursuant to circulars and directions, such payment warnings are not displayed when payments are made using Google Pay for Rummy and DFS applications which are listed on Play Store. It has been further averred that such warnings are not displayed for WinZO's platform by other payment aggregators.
61. The Commission has perused the submissions of the parties and notes that the payment warnings are purportedly presented by Google as part of its compliance with regulatory guidelines issued by authorities such as RBI and NPCI. However, given the averments of the Informant that these payment warnings are not displayed in Rummy and DFS applications listed on the Play Store, the Commission deems it appropriate to ascertain whether these payment warnings have any connection to selection of these categories of RMG apps for Google's RMG Pilot. Further, it also needs to be investigated as to whether these warnings adversely affect the competitive landscape as elaborated *supra*. Therefore, the DG may examine the allegations of the Informant in this regard also, during its investigation.

Conclusion

62. On a holistic consideration of the facts and circumstances of the present case, the Commission is of the *prima facie* view that Google appears to be in violation of Sections 4(2)(a)(i), 4(2)(b), and 4(2)(c) of the Act, as detailed in this order, which warrants detailed investigation. Accordingly, the Commission directs the Director General ('DG') to cause an investigation to be made into the matter under the provisions of Section 26(1) of the Act limited to the issues identified in this order. The Commission also directs the DG to complete the investigation and submit a consolidated investigation report within a period of 60 days from the date of receipt of this order.
63. Before parting with the order, the Commission notes that Google has filed its submissions in two versions *viz.* confidential as well as non-confidential. It has also filed application seeking confidentiality over certain documents/ information filed by it under Section 57 of the Act read with Regulation 35 of the Competition Commission of



India (General) Regulations, 2009 or Regulation 36 of the Competition Commission of India (General) Regulations, 2024 (General Regulations 2024), as the case may be. The confidential version was kept separately during the pendency of the proceedings. It is made clear that nothing used in this order shall be deemed to be confidential or deemed to have been granted confidentiality, as the same have been used for the purposes of the Act, in terms of the provisions contained in Section 57 thereof.

64. It is also made clear that nothing stated in this order shall tantamount to a final expression of opinion on the merits of the case and the DG shall conduct the investigation without being swayed in any manner whatsoever by the observations made herein.
65. The Secretary is directed to send a copy of this order along with the Information and other material available on record to the office of DG forthwith, through speed post/e-mail. The Secretary is directed to serve a copy of this order to the counsel(s) of the parties also, through speed post/e-mail.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Deepak Anurag)
Member

New Delhi

Date: 28 / 11 / 2024