

Experts say CCI has a strong case against Google

By Surabhi Agarwal Last Updated: Nov 11, 2020, 11:53 AM IST

New Delhi: The Competition Commission of India's case against Google seems to be a 'strong one' and could lead to new regulations, internet and competition law experts said, adding that the US-based technology giant could change some of its policies if the allegations of abuse of market power are proved true. They said the issue could lead to legislation in areas such as how App stores operate, the commission that companies can charge, and whether they can push their own products.

It will also test the mettle of India's competition law since extant rules do not examine "data related matters", they also said The investigation holds "substantial merit", considering Google's assumed dominant position in the search engine market and advertising, which it leverages to enter other markets, including the one under scrutiny in this case – payment services, said Udai S Mehta, deputy executive director, Consumer Unity & Trust Society (CUTS).

"Google Pay is not interoperable; even consumers have to create a different UPI ID to use it. For the evolving start-up and internet ecosystem in India, this might be the progressive step from CCI that was much awaited," he said. CUTS International is a think tank which along with Matrimony.com pushed for an earlier CCI investigation into Google's search practices, resulting in a Rs 136 crore fine for the company in 2018. Matrimony CEO Murugavel Janakiraman told ET that Google is a dominant player that controls 90% of the internet ecosystem which includes operating systems and apps. "Everybody is at the mercy of Google, it's not good for the country, it's not good for the consumer.

There should be fair play and the company should not abuse its market share. There is also a need for the government to step in and regulate this space like NPCI has done for payments." The startup ecosystem in India, especially payment services providers have been on awarpath ever since Google announced plans to levy a 30% commission fee on in-app purchases. The entrepreneurs, led by Paytm's Vijay Shekhar Sharma, banded together and approached the government and regulators such as CCI to look into the matter.

"The possible outcomes will depend on the approach by CCI, thus also affecting the monopoly of Google. If CCI follows other jurisdictions, it could order Google to make GPay interoperable, remove the 30% commission fee, and remove preinstallation. However, it's also possible that CCI will decide to go the other way and simply levy a fine and ask them to desist from such practices in future," Mehta said. In its response, Google said on Monday that the commission had rejected several claims made by the anonymous complainant. "On the remaining concerns, first, we are confident that the CCI will find that GPay operates in an extremely competitive environment, and owes its success to its ability to offer consumers a simple and secure payments experience," it said in an email.

The firm said numerous distribution channels exist for apps on the Android platform and that Play is not the only option for the OS. The CCI investigation comes at a time when the US Justice Department has filed an antitrust case against Google, pegged as the biggest such case in a generation. It is being compared to the lawsuit against Microsoft in 1998 and the 1974 case against AT&T, which led to the breakup of the Bell System. Since CCI has taken cognizance of the matter just now, Google should be able to defend itself in the matter, said Pratibha Jain, partner at law firm Nishith Desai Associates.

“We are assuming that Google is aware of the previous cases against Microsoft for prebundling its internet browser in PCs and would have built necessary safeguards into its policies,” Jain said. The European Commission is also looking into complaints against Apple Inc for imposing a high commission on its App store, and the Indian investigation could have a bearing on matters being heard in the United States as well as Europe.

“Equalisation levy on internet firms, which was first imposed by India, is now being adopted by other countries. Increasingly, regulators around the world are looking at each other since these issues are global,” she said. The Director-General of the CCI will have to complete the investigation and submit a report within 60 days, as per the CCI order.

The CCI is best placed to look into such issues given their importance, said Arjun Sinha, partner at law firm AP & Partners.