RELEVANT MARKET AND RELEVANT TURNOVER IN THE GOOGLE PLAY BILLING CASE

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ABSTRACT

This article examines the order of the Competition Commission of India (CCI) in the Google Play Billing System (GPBS) case and its treatment by the National Company Law Appellate Tribunal (NCLAT), in light of regulatory experience in the European Union and South Korea. Both the CCI and the NCLAT found that Google abused its dominant position in the market for app stores for Android OS in India by mandating GPBS for paid apps and in-app purchases. The article argues, however, that the CCI's relevant market analysis was incomplete. It failed to differentiate between the developer-facing and consumer-facing sides of the app store ecosystem and overlooked the distinct but connected market for facilitating in-app payments. Drawing on the European Commission's approach in the Apple App Store and Google Android proceedings, and on South Korea's amendment to its Telecommunications Business Act, the article contends that a more rigorous delineation of markets would have supported a fuller assessment of abuse under Sections 4(2)(c) and 4(2)(e) of the Competition Act, 2002, and a more proportionate penalty calculated on relevant turnover. It concludes with safeguards for future digital market cases.

Keywords: Competition Law; Abuse of Dominance; Relevant Market; App Stores; Google Play Billing System; In-App Payments; Relevant Turnover.

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I. INTRODUCTION

The digital economy has fundamentally altered the way markets operate, with app stores emerging as indispensable intermediaries between developers and consumers. These platforms act as critical gateways, enabling users to access digital applications and services while providing developers with the necessary infrastructure to distribute their products. However, the unique position enjoyed by app stores has also raised concerns of anti-competitive conduct, particularly where platform operators mandate the use of their proprietary payment systems. Such practices not only entrench the dominance of incumbents but also foreclose access to independent service providers, thereby limiting choice for both developers and consumers.

The controversy surrounding Google's Play Billing System (GPBS) in India exemplifies these concerns. The Competition Commission of India (CCI) and subsequently the National Company Law Appellate Tribunal (NCLAT) found that Google had abused its dominant position by imposing discriminatory conditions on app developers and restricting the use of third-party payment mechanisms. Yet, questions remain about the adequacy of the relevant market delineation adopted by the CCI, the recognition of consumer-facing dimensions of the app store ecosystem, and the proportionality of the penalties imposed. These gaps raise important questions about the robustness of competition law analysis in rapidly evolving digital markets.

Comparable regulatory experiences across jurisdictions provide valuable guidance. The European Commission's investigation into Apple's App Store practices in the music streaming sector underscored the importance of distinguishing between the developer-facing and consumer-facing sides of app store markets, and highlighted the risks of tying app distribution with proprietary payment systems. Similarly, South Korea's pioneering "Anti-Google Law" established a legislative framework prohibiting app store operators from coercing developers into using their own billing systems, thereby institutionalizing safeguards against exclusionary practices. These developments emphasize the need for competition authorities, including the CCI, to adopt a nuanced approach that accounts for the multi-sided nature of app store markets and the potential for abuse to spill over into connected markets.

This article critically examines the CCI's order in the Google Play Billing System case, its treatment by the NCLAT, and the insights that may be drawn from global regulatory practice. It argues that the CCI's analysis of the relevant market was incomplete, particularly in failing

to differentiate between the developer-facing and consumer-facing sides of the ecosystem and in overlooking the distinct market for in-app payments. By engaging with comparative jurisprudence and legislative responses, this article seeks to demonstrate how a more rigorous delineation of markets and recognition of connected market effects could have enabled a more robust assessment of abuse and a more appropriate penalty framework.

The remainder of the article is structured as follows. Part II sets out the background to the CCI's order, and Part III examines its delineation of the relevant market and its assessment of dominance. Part IV discusses the findings on abuse, the penalty imposed by the CCI and modified by the NCLAT, and the shift to global turnover. Part V draws on the European Commission's investigation into Apple's App Store practices and on South Korea's "Anti-Google Law". Part VI argues where the CCI and the NCLAT went wrong. Part VII considers the place of ex ante regulation, and Part VIII concludes with safeguards for future cases.

II. BACKGROUND TO THE CCI'S ORDER

A. Background of the Case

The proceedings in the *Google Play Billing System (GPBS)* case originated from a set of informations filed before the Competition Commission of India (CCI) under Section 19(1)(a) of the Competition Act, 2002.[1] Case No. 07 of 2020 was filed on 21.02.2020 by an independent informant against Alphabet Inc., Google LLC, Google Ireland Limited, Google India Private Limited, and Google India Digital Services Private Limited (collectively, "Google"). The allegations centered on Google's abuse of dominant position under Section 4 of the Act.[2] Case No. 14 of 2021 was subsequently filed by Match Group, Inc., a leading developer of dating and companionship applications, which operates globally through brands such as Tinder, Hinge, OkCupid, and Ablo. Match Group alleged that Google's conduct adversely impacted its Indian subsidiary, MTCH India Services Pvt. Ltd., and the wider dating-app ecosystem. Case No. 35 of 2021 was filed by the Alliance of Digital India Foundation (ADIF), an industry body representing the interests of Indian start-ups and app developers. ADIF highlighted the adverse impact of Google's conduct on the innovation climate for start-ups in India.

Recognizing the substantial similarity in allegations across these three cases, the CCI, by order

[1]The Competition Act 2002 (No 12 of 2003) s 19(1)(a).
[2]Competition Act 2002 (n 1) s 4.

dated 02.11.2021, directed their clubbing under the proviso to Section 26(1), and ordered the Director General (DG) to conduct a consolidated investigation.

B. Allegations

The Informants alleged that Google had abused its dominant position in the market for licensable mobile operating systems (OS) for smart devices in India and in the market for app stores for Android OS in India,[3] by imposing anti-competitive restrictions on app developers. The key allegation was that Google mandated the use of GPBS as the exclusive mode of payment for app purchases and in-app purchases through the Google Play Store. The informants further alleged that this practice privileged Google Pay over competing Unified Payments Interface (UPI) and mobile wallet applications by way of pre-installation and preferential placement, and that it created a status quo bias among consumers by limiting choice and discouraging adoption of rival payment solutions. They also alleged that Google unfairly exempted its own applications, such as YouTube, from the mandatory use of GPBS.[4]

C. Findings of the Director General

After an extensive investigation, the DG delineated three relevant markets: the market for licensable mobile OS for smart mobile devices in India, the market for app stores for Android OS in India, and the market for apps facilitating payments through UPI.[5] Within these markets, the DG concluded that Google's conduct violated multiple provisions of Section 4 of the Act.

First, Google imposed unfair and discriminatory conditions.[6] By mandating GPBS for app developers while exempting its own applications, Google imposed conditions violative of Section 4(2)(a)(i).[7] Second, Google limited technical development.[8] The exclusivity of GPBS dis-incentivized developers from innovating their own in-app payment solutions and stifled third-party payment processors, in contravention of Section 4(2)(b)(ii).[9] Third, Google denied market access.[10] Payment aggregators and gateways were effectively foreclosed from the

[3] *XYZ v Google and others*, Case No 7 of 2020 (CCI 2021) <https://www.cci.gov.in/images/antitrustorder/en/order1666696935.pdf> accessed 27 August 2025 [11].
[4] *XYZ v Google and others* (n 3) [17].
[5] *XYZ v Google and others* (n 3) [24].
[6] *XYZ v Google and others* (n 3) [26].
[7] Competition Act 2002 (n 1) s 4(2)(a)(i).
[8] *XYZ v Google and others* (n 3) [28].
[9] Competition Act 2002 (n 1) s 4(2)(b)(ii).
[10] *XYZ v Google and others* (n 3) [29].

market for in-app payment processing, constituting a violation of Section 4(2)(c).[11] Fourth, Google leveraged its dominance.[12] It used its dominance in licensable mobile OS and app stores to protect its position in the Android in-app payment processing market, thereby infringing Section 4(2)(e).[13]

The DG also observed that Google's payment policy created a discriminatory framework: while Google Pay benefitted from seamless "intent flow" integration, rival UPI apps were relegated to the more cumbersome "collect flow" method. This practice further entrenched consumer preference for Google Pay and undermined competition.[14]

III. DELINEATION OF THE RELEVANT MARKET AND ASSESSMENT OF DOMINANCE BY THE CCI

While the DG delineated three relevant markets, the most appropriate market for analysis in the context of GPBS is the market for app stores for Android OS in India. This is because the imposition of discriminatory conditions arises specifically when Google mandates the use of GPBS for app developers and consumers making in-app purchases through the Play Store. At the same time, it cannot be overlooked that Google's dominance in the app store market is intrinsically linked to its dominance in the market for licensable mobile operating systems for smartphones in India. However, since the present article is focused on examining the anti-competitive effects of mandating GPBS, the analysis of Google's dominance in the licensable OS market is of limited relevance. The central concern remains Google's conduct within the app store ecosystem, where its dominant position directly enables the imposition of such restrictive and discriminatory conditions.

A. The CCI's Delineation of the Market for App Stores for Android OS in India

The determination of the relevant market formed the foundation of the CCI's analysis in the *GPBS* case. While Google contested both the delineation and its dominance in the market, the Commission, after evaluating the DG's findings, Google's objections, and other evidence, upheld the DG's delineation. The CCI's reasoning followed a structured approach by testing the substitutability of different potential alternatives to the Google Play Store, from both the

[11]Competition Act 2002 (n 1) s 4(2)(c).
[12]*XYZ v Google and others* (n 3) [31].
[13]Competition Act 2002 (n 1) s 4(2)(e).
[14]*XYZ v Google and others* (n 3) [30].

demand and supply sides.

First, the CCI considered whether app stores for non-licensable OS could be substituted for app stores for Android OS. It observed that apps are developed for specific operating systems, given the differences in programming languages, APIs, and technical frameworks. As a result, app stores for non-licensable OS such as Apple's iOS or Blackberry OS are not compatible with Android OS. Users with Android devices cannot access these non-Android app stores, and app developers cannot distribute Android-specific apps through them. From the supply side, companies such as Apple or Microsoft, whose app stores are tied to their proprietary operating systems, are unlikely to divert resources to develop app stores for Android. Therefore, the Commission concurred with the DG that app stores for non-licensable OS are not substitutable with app stores for Android OS.[15]

Second, the CCI examined sideloading as an alternative to app stores. Google argued that app developers and users have alternative distribution channels, such as sideloading apps directly onto devices. The Commission, however, rejected this argument. It found that sideloading is cumbersome, involves additional steps for users, and lacks critical features such as automatic updates, which are essential for user experience and security. Smaller developers, in particular, lack the resources to maintain their own download platforms or create update mechanisms outside the Play Store. As such, the CCI concluded that sideloading is not a viable substitute for downloading apps through an app store.[16]

Third, the Commission examined whether web apps accessed through mobile browsers could serve as substitutes for native apps downloadable via app stores. It concluded that web apps are inherently less user-friendly, lack integration with OS and hardware functionalities, and cannot match the offline usability, discoverability, or performance of native apps. If web apps were genuine substitutes, large app developers such as Uber, Zomato, or Amazon would have shifted entirely to that model, which has not been the case. Hence, the CCI determined that web apps are not substitutable for apps available through app stores.[17]

Fourth, the CCI considered pre-installed apps as against apps from app stores. Another possible channel for app distribution is pre-installation of apps by OEMs on devices. The CCI held that

[15] *XYZ v Google and others* (n 3) [128].
[16] *XYZ v Google and others* (n 3) [137].
[17] *XYZ v Google and others* (n 3) [143].

this route is commercially unviable for most app developers, particularly smaller ones, given the limited device storage, the costs involved in negotiating with multiple OEMs, and the competition among millions of apps to secure pre-installation. Only a handful of popular apps may benefit from pre-installation, making it not a meaningful substitute for app store access.[18]

Lastly, the CCI analysed whether alternative Android app stores, such as the Samsung Galaxy Store, Xiaomi App Store, Huawei App Store, or Amazon App Store, could constrain the Google Play Store's market power. It noted that these app stores are primarily OEM-specific and installed alongside the Google Play Store on devices. While they are substitutable in a limited manner, their reach is restricted to users of a specific OEM's devices, and they lack the scale and ubiquity of the Google Play Store. Thus, the competition within Android app stores is narrow, and the relevant market must include all such stores together.[19]

On the basis of this detailed analysis, the CCI concurred with the DG that the appropriate relevant product market is "the market for app stores for Android OS in India." This delineation is particularly significant in the GPBS case. The mandatory imposition of the Google Play Billing System and the discriminatory treatment of rival UPI apps are practices that can only be appreciated when examined within this market. While Google derived its dominance in the app store market from its strength in the licensable OS market, the conduct at issue, mandating GPBS, directly affects app developers and consumers within the ecosystem of Android app stores.

B. Assessment of Google's Dominance

After delineating the relevant market, the Commission turned to assess Google's dominance. It observed that market share, while not the sole determinant, is a primary indicator of dominance. Two approaches were adopted: a device-based share, measuring the share of Android devices with pre-installed app stores, and an app-based share, measuring the relative number of applications available on competing app stores.[20]

On both parameters, the Commission found that the Google Play Store far outstripped its competitors. For developers, listing on the Play Store provides access to virtually the entire

[18] *XYZ v Google and others* (n 3) [149].
[19] *XYZ v Google and others* (n 3) [151].
[20] *XYZ v Google and others* (n 3) [163].

Android user base, unlike competing app stores which remain limited to OEM-specific ecosystems. Data showed that as of 2020, the Google Play Store hosted the largest catalogue of apps, with third-party app stores such as Amazon Appstore and App Bazaar trailing significantly. This disparity underscored Google's entrenched power.[21]

The Commission further identified high entry barriers in this market. The development and maintenance of a viable app store requires substantial investment, continuous updates, and the ability to attract both developers and users. Moreover, the app store is a two-sided market: developers are attracted by a large user base, and users prefer stores with abundant apps. This results in strong network effects, reinforcing Google's lead and making entry by rivals commercially unviable.[22]

In addition, Google's control over Google Play Services APIs acts as a technical entry barrier. Many Android apps rely on these APIs for core functionalities, but Google restricts access to devices without Play Services, such as Amazon's Fire OS. This effectively locks developers into the Play Store ecosystem.[23]

Contractual restrictions also strengthen Google's position. Through the Mobile Application Distribution Agreement (MADA), OEMs are required to pre-install Google applications, including the Play Store, with mandated prominence on device screens. Such pre-installation creates a status quo bias among users, who rarely switch to alternatives. Importantly, pre-installed Google apps are often undeletable, further entrenching user dependence.[24]

Alternative distribution channels were also examined but dismissed as effective substitutes. Side-loading of apps was found to be a cumbersome, risky, and unattractive process for users, given security threats and lack of automatic updates. Similarly, pre-installation of third-party apps by OEMs was not considered a commercially viable alternative for most developers. These factors collectively limited discoverability and reach of rival app stores.[25]

The Commission concluded that Google's Play Store is a "must-have" app for both users and developers, given its unparalleled reach, app catalogue, and integration with Android devices.

[21] *XYZ v Google and others* (n 3) [174].
[22] *XYZ v Google and others* (n 3) [182].
[23] *XYZ v Google and others* (n 3) [184].
[24] *XYZ v Google and others* (n 3) [186].
[25] *XYZ v Google and others* (n 3) [192].

Google thus enjoys an unassailable dominant position in the market for app stores for Android OS in India, reinforced by network effects, technical restrictions, contractual obligations, and consumer preferences.[26]

C. Google's Other Arguments

Google advanced three further arguments against the delineation of the market. First, it claimed that the Play Store and the App Store serve the same purpose, namely connecting developers with users, and hence should be treated as part of the same relevant market. The CCI held that app stores are OS-specific (Google Play for Android, App Store for iOS) and cannot be used interchangeably because of source code and API differences. OEMs cannot switch between app stores once they choose an OS. For instance, an Android OEM cannot install Apple's App Store. App developers must multi-home (offer apps on both ecosystems) but cannot reach Android users via the App Store or iOS users via the Play Store. Hence, there is no substitutability from the developer's perspective.[27]

End users, likewise, cannot cross-use app stores across ecosystems. An Android user cannot download apps from Apple's App Store. Thus, from the consumer side as well, there is no substitutability. Any competition between Android and iOS occurs at the device-purchase stage (choice between an iPhone and an Android handset), not at the app store level. Moreover, device choice is primarily influenced by price and hardware specifications, not by which app store is preloaded. Therefore, Apple's App Store does not constrain Google's behavior in the Android app store market.[28]

Second, Google argued that, based on characteristics, prices, and intended use, both app stores qualify as interchangeable products under Section 2(t) of the Act, which defines the relevant product market.[29] The CCI held that commercial reality must be considered alongside statutory interpretation. In practice, no demand-side constituent (OEMs, developers, or users) sees the two stores as substitutes. Even under a literal interpretation, Google's claim fails because the intended use and technical compatibility differ across ecosystems.[30]

[26] *XYZ v Google and others* (n 3) [193].
[27] *XYZ v Google and others* (n 3) [197].
[28] *XYZ v Google and others* (n 3) [200].
[29] *XYZ v Google and others* (n 3) [202].
[30] *XYZ v Google and others* (n 3) [203].

Third, Google contended that competition from Apple's App Store constrains it in any event. The CCI observed that Google itself places its apps (YouTube, Maps, Chrome, Search) on Apple's App Store, showing that it views the platforms as distinct gateways to reach two separate user bases. On Android, Google secures 100% user access through mandatory pre-installation (via MADA agreements), while on iOS it must rely on App Store distribution. This highlights that Google cannot treat the App Store as a competitive constraint in the Android ecosystem.[31]

IV. ABUSE OF DOMINANT POSITION BY GOOGLE AND THE PENALTY IMPOSED

A. Abuse of Dominant Position by Google

The Commission observes that in order to distribute an app through the Google Play Store, developers are required to agree to a set of contractual documents, namely: (i) the Developer Distribution Agreement (DDA), (ii) the Developer Program Policies (DPP), particularly the provisions relating to payments under "Monetization and Ads," and (iii) the Google Payments Terms of Service–Seller (IN) (GPTS). Collectively, these documents establish the terms and conditions governing the relationship between Google and app developers who wish to distribute paid apps or enable in-app purchases (IAPs) on the Play Store.[32]

A central allegation in the present matter concerns the mandatory use of GPBS for both paid app distribution and in-app purchases. GPBS is Google's proprietary billing mechanism through which developers must create an account with Google to receive payments from users. Google collects payments, deducts its "service fee" or commission, and remits the balance to developers. The Google Play Payments Policy, integrated into the DDA and DPP, expressly requires developers to use GPBS for all paid apps and IAP transactions, without exception or scope for negotiation. Alternative payment processors are prohibited, even where both the developer and user would prefer to transact outside GPBS.[33]

The policy defines IAPs broadly, including: (i) virtual game products (such as coins, gems, or special items), (ii) enhanced app functionalities (such as ad-free versions or premium features),

[31] *XYZ v Google and others* (n 3) [203].
[32] *XYZ v Google and others* (n 3) [244].
[33] *XYZ v Google and others* (n 3) [247].

(iii) subscription-based services (including music, video, or digital publications), and (iv) cloud-based software products (such as storage and productivity tools). Further, Google enforces compliance through a stringent app review process that requires developers to disclose any IAP functionality.[34]

Crucially, developers are also subject to "anti-steering provisions." These clauses prevent developers from informing users of alternative payment options outside the app, including linking to external websites or even using language that encourages purchases through non-Google channels. The Commission notes that such restrictions unfairly limit the ability of developers to communicate with their users, impede the offering of innovative solutions, and foreclose opportunities for users to benefit from discounts or cashbacks that third-party processors or banks might otherwise provide.

The investigation further revealed that non-compliance with GPBS results in outright exclusion from the Play Store. Given the indispensability of the Play Store for accessing Android users, developers effectively have no choice but to accept these unilateral terms. As a result, Google leverages its financial strength and gatekeeper position to impose conditions that reduce developers' freedom to choose business partners, stifle innovation, and foreclose competition in the payment processing market.[35]

The Commission observed that Google has mandated the exclusive use of GPBS for processing payments related to paid applications and in-app purchases. Non-compliance with this requirement effectively prevents developers from listing their applications on the Play Store, thereby depriving them of access to the vast base of Android users. Conditioning access to the Play Store on the compulsory use of GPBS was held to be unilateral, arbitrary, and lacking any justifiable business rationale. As a result, developers are deprived of the freedom to engage alternative payment processors available in the market. The investigation further revealed that Google applies this requirement selectively: while third-party developers must necessarily route transactions through GPBS and pay a service fee, Google exempts its own applications, such as YouTube, from the same obligations. Such conduct, according to the Commission, imposes unfair and discriminatory conditions on app developers, in contravention of Section

[34] *XYZ v Google and others* (n 3) [250].
[35] *XYZ v Google and others* (n 3) [255].

4(2)(a)(i) of the Act, and amounts to discriminatory pricing under Section 4(2)(a)(ii).[36]

B. Penalty Calculation by the CCI

After considering the overall circumstances of the case along with the mitigating factors presented by Google, the Commission concluded that the imposition of a penalty amounting to 7% of the relevant turnover would be appropriate to meet the ends of justice. For this purpose, the relevant turnover was calculated on the basis of Google's average turnover for the financial years 2018–19, 2019–20, and 2020–21, as submitted by the company and set out in Table 1 below. On this basis, the penalty was determined to be ₹936.44 crore (Rupees Nine Hundred Thirty-Six crore and Forty-Four lakhs). Google was directed to deposit this amount within sixty days from the date of receipt of the order.[37]

Table 1: Relevant turnover and penalty determined by the CCI (₹ in crore)

Turnover for FY 2018–19	**Turnover for FY 2019–20**	**Turnover for FY 2020–21**	**Average turnover for three preceding financial years**	**Penalty @ 7% of average turnover**
10,365.32	13,025.10	16,742.52	13,377.65	936.44

C. The NCLAT's Decision on the CCI's Order

By its order of 28 March 2025, the NCLAT partly upheld the CCI's findings. It affirmed that Google had imposed unfair and discriminatory conditions on developers by making the use of GPBS mandatory, thereby confirming the contravention of Section 4(2)(a)(i). It did not, however, accept the rest of the CCI's analysis. The Tribunal held that the service fee charged by Google was not unfair or discriminatory, and that YouTube's exemption from that fee was

[36] *XYZ v Google and others* (n 3) [312].
[37] *XYZ v Google and others* (n 3) [416].

not discriminatory. It also set aside three of the five violations found by the CCI.[38]

Of particular relevance to this article is the Tribunal's treatment of Sections 4(2)(b) and 4(2)(c). The NCLAT overturned the findings on denial of market access and restriction of innovation, observing that Google's billing system accounted for less than 1% of all UPI transactions and that the evidence of foreclosure or technological hindrance was insufficient. This reasoning presupposes that the market for UPI payments, the third market delineated by the DG, is the appropriate yardstick for measuring foreclosure. As Part VI argues, that premise is open to question, because the conduct is better assessed in a separate, connected market for facilitating in-app payments. The Tribunal also set aside the *ex-ante* directions issued by the CCI, including those premised on Google's designation as a gatekeeper. The NCLAT reduced the penalty by confining it to relevant turnover, as discussed below.

In paragraph 416 of the impugned order, the Commission had calculated the penalty by taking into account the turnover of Google's entire business operations in India, as reflected in Table 1 above. However, the Supreme Court's decision in *Excel Crop Care Ltd. v. CCI* is instructive in this regard, where the Court clarified the interpretation of "relevant turnover" for the purposes of penalty under Section 27(b) of the Competition Act. The Court had observed that in the absence of a statutory mandate to consider either the company's total turnover or its product-specific turnover, the principle of proportionality would be better served by limiting the penalty to the "relevant turnover." This approach prevents inequitable outcomes, particularly in cases where a multi-product enterprise is penalised on the basis of its entire turnover, even though the anti-competitive conduct pertains only to one segment of its business.[39]

Applying this rationale, it was argued that the Commission ought to have confined itself to the turnover generated from the specific revenue streams linked to the abusive conduct, rather than the company's overall turnover. In the present case, the relevant revenues were reflected in Tables 1 to 4 of the NCLAT's order, which comprised the advertising business revenues directly connected to the violation under Section 4(2)(a)(i) and Section 4(2)(e). Although the Commission had not found contravention under Sections 4(2)(a)(ii), 4(2)(b) and 4(2)(c), the established violation of Sections 4(2)(a)(i) and 4(2)(e) was sufficient to justify the imposition

[38] *Alphabet Inc v Competition Commission of India*, Competition Appeal (AT) No 04 of 2023 (NCLAT, 28 March 2025)
[39] *Excel Crop Care Ltd v CCI* (2017) 8 SCC 47.

of a penalty.[40]

Accordingly, the penalty imposed by the Commission in paragraphs 416 and 417 of the order required modification. By considering the revenues disclosed in Tables 1 to 4 (as furnished by Google in its letter dated 6 October 2022) and averaging the relevant turnover for the financial years 2018–19, 2019–20, and 2020–21, the appropriate penalty was determined to be 7% of the said turnover. This calculation resulted in a penalty of INR 2,16,69,12,773 (approximately USD 29.8 million). Thus, the penalty imposed by the Commission in paragraphs 460–470 was modified and substituted to reflect the principles of "relevant turnover" in line with the guidance laid down by the Supreme Court in *Excel Crop Care*.[41]

By a clarification dated 1 May 2025, the NCLAT reinstated two directions requiring Google to disclose its data policies and to refrain from using billing data to gain a competitive advantage. The outcome satisfied none of the parties. On 8 August 2025, the Supreme Court admitted appeals filed by Google, the CCI and ADIF against the NCLAT's decision. Google argues, among other things, that the reinstatement of the two directions amounts to an impermissible review. The CCI challenges the striking down of key remedies and the recalculation of the penalty, and advocates a broader interpretation of market foreclosure. ADIF seeks restoration of the CCI's original remedies. The matters were listed for hearing before a bench of Justices P.S. Narasimha and A.S. Chandurkar in November 2025. To this date, the appeal remains pending.[42]

D. The NCLAT's Decision on the CCI's Order

The Tribunal's reliance on Excel Crop Care must now be read against a change in the statute. The Competition (Amendment) Act 2023 added an Explanation to Section 27(b) under which turnover means the global turnover derived from all products and services of an enterprise. This partly overrides the reading of turnover adopted in Excel Crop Care, and the CCI notified its monetary penalty guidelines on 6 March 2024 to give effect to the new framework.[43] The

[40] *Alphabet Inc & Ors v Competition Commission of India & Anr*, Competition Appeal (AT) No 04 of 2023 <https://efiling.nclat.gov.in/nclat/order_view.php?path=L05DTEFUX0RvY3VtZW50cy9DSVNfRG9jdW1lbnRzL2Nhc2Vkb2Mvb3JkZXJzL0RFTEhJLzIwMjUtMDMtMjgvY291cnRzLzEvZGFpbHkvMTc0NDgwNzE1OTk1Mzk0MjI1NzY3ZmZhNGY3MmQ1YzEucGRm> accessed 30 August 2025 [103].
[41] *Alphabet Inc v CCI* (n 40) [106].
[42] *Alphabet Inc v Competition Commission of India*, Civil Appeal No 39031 of 2025 (SC) <https://api.sci.gov.in/supremecourt/2025/39031/39031_2025_7_51_63105_Order_08-Aug-2025.pdf> accessed 12 August 2026.
[43] Competition (Amendment) Act 2023, cl 20 (Explanation to s 27(b)); Competition Commission of India

conduct in the GPBS case, the turnover years examined and the CCI's order of October 2022 all predate these changes, which is why the Tribunal applied the Excel Crop Care approach.

The new framework does not, however, make relevant turnover irrelevant. On one reading of the Guidelines, relevant turnover serves as the base value from which the penalty is built, while the statutory ceiling of ten per cent is measured against global turnover.[44] If that reading is correct, the delineation of the relevant market remains the starting point of every penalty computation. That strengthens the central submission of this article: an error in market delineation carries through into the penalty.

The Indian proceedings against Apple now test this framework. The CCI's investigation reportedly found that Apple had acted abusively by forcing developers to use its proprietary payment system. Apple has challenged the global turnover provisions in the Delhi High Court and says they could expose it to fines of up to USD 38 billion. It argues that the provisions contradict Excel Crop Care. The High Court has asked the CCI not to pass a final order while the challenge is pending.[45] The outcome will decide whether the proportionality principle relied on in the GPBS appeal survives the amendment.

Delineation cuts both ways. Where a dominant firm leverages its position into a connected market, as Part VI argues Google did, the revenues of that connected market may properly form part of the penalty base. Commentators have also observed that the relevant turnover approach is difficult to apply where dominance in one market is used to affect competition in others. The submission here is therefore not for a smaller penalty as such, but for a penalty anchored in a correctly delineated market, covering the developer-facing side, the consumer-facing side and the connected market for in-app payments.

V. INSIGHTS FROM THE EUROPEAN COMMISSION'S APPLE APP STORE INVESTIGATION AND SOUTH KOREA'S "ANTI-GOOGLE LAW"

A. The European Commission's Apple iOS Order

In its decision concerning Apple's App Store practices in the music streaming sector, the

(Determination of Monetary Penalty) Guidelines 2024 (notified 6 March 2024).

[44] Monetary Penalty Guidelines 2024 (n 43) [guideline 3(1)].

[45] Prashant Jha, 'Delhi High Court asks CCI not to pass final orders in probe against Apple' (*Bar & Bench*, 15 May 2026) <https://www.barandbench.com/news/delhi-high-court-asks-cci-not-to-pass-final-orders-in-probe-against-apple> accessed 13 August 2026.

European Commission undertook a detailed exercise in delineating the relevant market and assessing the nature of Apple's conduct. The Commission recognized that the App Store operated as a two-sided platform, serving both developers and consumers, but stressed that the competitive dynamics on each side of the platform were distinct. On the developer-facing side, the Commission defined the relevant market as the provision to developers of platforms for the distribution of music streaming applications to iOS users. Apple was found to hold a dominant position in this market, given its complete control over distribution on iOS devices and the inability of developers to reach users of iPhones and iPads without going through the App Store. On the consumer-facing side, the Commission observed that while consumers interact with the App Store, this dimension was only relevant to the extent that it could discipline Apple's market power vis-à-vis developers. The consumer side could not, however, substitute the dependency of developers on Apple's platform, thereby establishing the developer market as the primary locus of analysis.

The Commission also assessed Apple's requirement that developers use its proprietary In-App Purchase (IAP) system and the so-called "anti-steering provisions," which prevented developers from informing users about alternative and often cheaper subscription options outside the app environment. These obligations were found to amount to the tying of two separate products: the distribution of apps through the App Store, in which Apple was dominant, and the payment processing services provided through IAP, which constituted a separate market. Developers had no effective choice but to use Apple's IAP, as Apple prohibited the use of rival payment systems for in-app transactions. The Commission concluded that this practice was capable of foreclosing competition by excluding alternative payment service providers and reducing consumer choice.

In reaching this conclusion, the Commission emphasized that the foreclosure effects extended beyond direct competitors in payment services. The anti-steering provisions and mandatory IAP also had exclusionary and exploitative consequences for consumers, as they inflated prices by forcing developers to pass on Apple's commission fees to end-users. Consumers were not only deprived of cheaper alternatives but also harmed in non-monetary terms, such as being denied the ability to make informed choices about subscription options. Apple's conduct, in the Commission's assessment, leveraged its dominance in the primary market for app distribution to distort competition in a connected secondary market for in-app payment services, thereby constituting an abuse under Article 102 TFEU.

The Commission further noted that Apple's conduct had implications beyond the immediate market for in-app payment processing. By tying its IAP to the distribution of music streaming applications, Apple was able to extend its dominance into a connected market and restrict the competitive opportunities of alternative service providers. This leveraging effect not only foreclosed rival payment processors but also reinforced Apple's position in its own downstream music streaming service, Apple Music, which directly competed with independent providers such as Spotify. Through the mandatory use of IAP and the prohibition on steering consumers towards external subscription channels, Apple created barriers that limited the ability of competitors to grow and innovate, while simultaneously exploiting the consumer base to favor its vertically integrated service offerings. The Commission therefore treated the anti-steering provisions as abusive not only for their immediate exclusionary effects but also for their role in distorting competition across adjacent markets. This reasoning underscored the principle that the abuse of dominance under Article 102 TFEU is not confined to the primary market in which dominance is held but extends to practices that materially impair competition in connected markets.[46]

B. South Korea's "Anti-Google Law"

In South Korea, the enactment of the so-called "Anti-Google Law", an amendment to the Telecommunications Business Act, marked a global first in regulating app marketplaces by prohibiting operators like Apple and Google from coercing app developers into using their proprietary in-app payment systems. The law explicitly forbade app stores from imposing specific payment mechanisms, unreasonably delaying app reviews, or penalizing developers for using alternative billing arrangements. It further empowered regulatory authorities such as the Ministry of Science and ICT and the Korea Communications Commission to investigate app marketplace operations and protect content providers and consumers.[47] Taking effect in September 2021, the law also introduced potential penalties, up to a percentage of revenue, for non-compliance, underscoring its punitive as well as corrective intentions. In response, Google introduced alternative billing APIs for users in South Korea, offering developers the option to implement payment systems alongside Google Play's billing mechanism.[48] Transactions

[46]European Commission, 'Case AT.40437 – Apple – App Store Practices' (Decision, 4 March 2024) <https://ec.europa.eu/competition/antitrust/cases1/202419/AT_40437_10026012_3547_4.pdf> accessed 28 August 2025.
[47]Dongwoo Kim, 'The Implications of South Korea's "Anti-Google Law"' (The Peninsula, 16 September 2021) <https://keia.org/the-peninsula/the-implications-of-south-koreas-anti-google-law/> accessed 28 August 2025.
[48]Play Console Help, 'Changes to Google Play's billing requirements for developers serving users in South Korea'

through alternative billing carried a slight service fee reduction, though Google warned these systems might not support all its native consumer safeguards, such as family controls or subscription management features.[49]

VI. WHERE THE NCLAT AND THE CCI WENT WRONG: PROPER DELINEATION OF THE MARKET AND RECONSIDERATION OF THE PENALTY

A. The Correct Delineation of the Relevant Market

The market for app stores in India as delineated by the CCI in its order and upheld by the NCLAT highlights the interaction between app developers and the Google Play Store vis-à-vis the services offered by the Google Play Store to app developers. With respect to the imposition of discriminatory conditions on developers as explained above, we agree with the analysis of the CCI and the NCLAT. However, while dealing with this aspect the CCI also remarked that mandating GPBS for in-app purchases by consumers is in violation of Section 4(2)(a) of the Competition Act. The CCI failed to delineate the proper market for analysis of this aspect and subsequently imposed a penalty on Google.

Though the NCLAT reduced the penalty, it still computed it on the basis of the Google Play Store's revenue in the relevant market for app stores in India, and it rejected the finding on denial of market access by comparing in-app purchases with the volume of UPI transactions. We submit that both determinations are flawed. The Supreme Court is now seized of appeals by Google, the CCI and ADIF, in which the CCI itself contests the NCLAT's approach to foreclosure and to the penalty calculation.[50] The argument advanced in this article, that the consumer-facing side of the app store market and the connected market for facilitating in-app payments must be delineated separately, bears directly on both questions. The appeals therefore offer the Supreme Court an occasion to settle the proper approach to market delineation in multi-sided app store markets.

In the Apple-iOS case the factual matrix before the European Commission (EC) was broadly similar. Apple mandated the use of its IAP for developers and consumers for in-app purchases. The EC, though dealing with the narrow market for music streaming services on the Apple

(Google Help) <https://support.google.com/googleplay/android-developer/answer/11222040> accessed 28 August 2025.

[49] ibid.

[50] *Alphabet Inc* (n 42).

store, addressed a case similar to the present one, because for assessing abuse of dominance in this market, the EC evaluated Apple's dominance in the market for app stores on iOS devices and the consequent discriminatory conditions imposed on the app developers in this market that amounted to abuse of dominance by Apple. In this context, the EC observed that the consumer side of the market for app stores is different when compared with the market of which app developers form a part vis-à-vis the app store. It was observed:

> *"The consumer-facing side of the App Store is only relevant to the extent it poses potential constraints on the market power of Apple vis-à-vis developers of music streaming apps. In theory, the consumer side of the platform could discipline Apple's market power over the provider of music streaming services in the market for the provision to developers of platforms for the distribution of music streaming apps to iOS users."*

From an economic point of view, for the definition of the relevant market, demand-side substitution constitutes the most immediate and effective disciplinary force on the suppliers of a given product. The distinctness of products or services for the purposes of defining the relevant market has to be assessed by reference to customer demand. The fact that there are on the market independent companies offering a product or service constitutes "serious evidence" of the existence of a separate market for that product or service.

The relevant market on the consumer side in this case should be defined as the market for facilitating payments for in-app purchases in India. The service providers and consumers in this market are distinct from those in the broader market for UPI payments in India. This distinction arises because apps facilitating payments in this market are substitutable with other payment methods only in the context of the broader market for UPI transactions, which was analysed by the CCI.

Further, there are independent companies and service providers available for facilitating in-app payments and payments for purchasing paid apps. This makes the market essentially different from the third market delineated by the CCI, where the market for UPI payments was considered. The conditions governing UPI payments are significantly different from scenarios involving in-app purchases or the installation of paid apps, where payments can also be made through net banking or cards.

Additionally, developers enjoy discretion in choosing the payment mechanism in this market, whereas no such broad discretion exists or is exercised by suppliers in the UPI transaction market. Although the developer-facing side of the market would be different, the analysis remains relevant to the consumer side, as demand-side substitution may be influenced by the developer's discretion.

Supply-side substitution must also be kept in mind while delineating the relevant market. In this case, as highlighted, developers do have discretion to avail of different payment service providers to facilitate the payments. Further, this smaller market is a secondary market that is connected with the primary market for app stores in India, as the competitive constraints on payment service providers are contingent on the primary market for the app stores that provide the platform to consumers to download paid apps and also permit the app developers to reach the consumers in the first place. The entities providing such service (Apple and Google) have the capability to determine the competitive constraints in this secondary market by imposing conditions in the primary market. Therefore, though connected, this market as delineated is a separate market that can be affected by the dominant players in the primary market and can be relevant for abuse under Section 4(2)(e) of the Competition Act and Article 102 of the TFEU.

B. Connected Market Analysis

Additionally, in the Google Android case, the EC laid down the test for assessing whether the tying of a product or service constitutes abuse of dominance. It was observed that for abuse of dominance:

> "*The tying and tied products are two separate products. The undertaking concerned is dominant in the market for the tying product. The dominant undertaking does not give its customers or end users a choice to obtain the tying product without the tied product; and the tying is capable of restricting competition*."[51]

The tying test set out by the Commission in Google Android has since been confirmed at the highest level in the EU. The General Court upheld the Commission's decision in 2022,

[51]European Commission, 'Case AT.40099 – Google Android' (Decision, 18 July 2018) <https://ec.europa.eu/competition/antitrust/cases/dec_docs/40099/40099_9993_3.pdf> accessed 28 August 2025 [741].

although it reduced the fine. On 2 July 2026, the Court of Justice dismissed Google's appeal in its entirety. It thereby confirmed the penalty as revised by the General Court.[52] The case concerned the tying of the Google Search app and the Chrome browser to the licensing of the Play Store, which the General Court upheld as an abuse of dominance.

The Court's reasoning also helps the argument made here. The Court of Justice held that Article 102 TFEU does not impose a systematic obligation to prove that the practice could exclude an as-efficient competitor. In markets shaped by network effects and high entry barriers, there are situations in which that analysis is neither possible nor meaningful. By analogy, the NCLAT's reliance on the share of in-app purchases in UPI transactions, a quantitative threshold measured in the wrong market, is difficult to reconcile with an effects analysis suited to a platform that controls access to the developer's customers.

In the present scenario, the mandated use of GPBS for in-app purchases amounts in effect to the tying of a service in the market for facilitating in-app payments as delineated above. Google is dominant in the market for app stores in India, and the tied product is a separate service in a different market that indirectly restricts the options for consumers to avail multiple options for in-app payments. Due to this restriction, not only are the other players in the market impacted, but due to access to user data Google is capable of generating indirect network benefits for its apps, as highlighted in the EC order in the Apple-iOS case. This clearly implies that there was denial of market access to other service providers who facilitated the payments for in-app purchases and paid app purchases in the relevant market as delineated above.

The NCLAT's assessment that there was no denial of market access under Section 4(2)(c) is incorrect, as it proceeds on the presumption that the other relevant market was the market for facilitating payments through UPI in India. As the Supreme Court has pointed out in *Competition Commission of India v. Fast Way Transmission Pvt. Ltd. and Ors.*,[53] the words "in any manner" are words of wide import and must be given their natural meaning. If the relevant market is understood as defined above, it can be clearly observed that Google foreclosed the market for other payment facilitators by entering into agreements mandating GPBS. The NCLAT's assessment led to the conclusion that in-app purchases constitute less

[52] Case C-738/22 P Google LLC and Alphabet Inc v European Commission (CJEU, 2 July 2026) [272]-[273], [278]; Case T-604/18 Google and Alphabet v Commission ECLI:EU:T:2022:541 (14 September 2022); Commission Decision AT.40099 Google Android (18 July 2018) [741].
[53] *Competition Commission of India v Fast Way Transmission Pvt Ltd and Ors* (2018) 4 SCC 316.

than 1% of online UPI transactions. However, when the market is narrowed down in keeping with the particular characteristics of the relevant market, it can be clearly seen that Google has exploited its dominance in the market for app stores to foreclose market access in the market for facilitating in-app purchases and paid apps by imposing restrictions on other payment facilitators.

VII. EX ANTE REGULATION AND THE CONTINUING IMPORTANCE OF MARKET DELINEATION

The difficulties examined above arise because Indian competition law reaches digital platforms only after the conduct has occurred. The Committee on Digital Competition Law addressed this in its March 2024 report, which proposed a draft Digital Competition Bill imposing ex ante obligations on systemically significant digital enterprises, akin to the obligations of gatekeepers under the EU's Digital Markets Act.

That route has since slowed. The Bill has reportedly been paused so that the *ex-ante* rules can be reassessed against a deeper, India-specific market study. A 2026 review of India's framework describes a policy of strengthening ex post enforcement by the CCI while delaying a comprehensive ex ante regime.[54] The GPBS litigation reflects the same caution. The NCLAT overturned several *ex-ante* directions imposed by the CCI, including obligations based on Google's designation as a gatekeeper.

The contrast with South Korea is instructive. The "Anti-Google Law" prohibits coercing developers into using proprietary billing systems, so no authority need first delineate a relevant market or establish dominance. Section 4 of the Competition Act works the other way. Until India adopts a comparable rule, every case of this kind will turn on how the relevant market is drawn, on which side of the platform the harm falls, and on whether a connected market for payments is recognised. The absence of an *ex-ante* regime therefore raises the cost of the errors identified in Part VI and strengthens the case for the more rigorous approach this article proposes.

[54] Rudresh Singh, Varunavi Bangia and Rishitosh K Akshaya, 'India: calibration over codification' (*Global Competition Review*, 21 May 2026) <https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2026/article/india-calibration-over-codification-indias-digital-competition-framework-comes-of-age> accessed 16 August 2026; Committee on Digital Competition Law, Report (12 March 2024).

VIII. CONCLUSION AND SAFEGUARDS FOR FUTURE CASES

The CCI and the NCLAT should adopt a pragmatic and detailed approach to market delineation, as can be seen from the EC's approach in the Apple-iOS order. The different sides of the same market should be analysed with requisite attention to ensure proper delineation of the relevant market. The GPBS case clearly highlights that the delineation of the relevant market must be done meticulously by the CCI. The relevant turnover that is to be imposed as a penalty is contingent on the determination of this relevant market, which is to be done by the CCI. In this case, the CCI did not appreciate the difference between the developer side of the market for app stores and the consumer side of the same market, wherein the imposition of GPBS had different implications. The consequence of this oversight was that the denial of market access under Section 4(2)(c) was not addressed by the CCI because the volume of UPI payments in in-app purchases was less than 1%. However, the market for facilitating in-app payments should be considered a separate market, as highlighted in this article, and the conduct of Google did deny market access to payment facilitators in that space who had the opportunity of contracting with developers, while making sure that consumers also have multiple payment options to choose from.

Additionally, the penalty calculation by the NCLAT and the CCI can be questioned on this ground because the total revenue of Google from the Play Store was considered, while the abuse of dominant position by Google took place in the developer-facing and consumer-facing market of the app store. The total revenue of the Play Store should not have been considered because that would include advertisement revenue along with other sources that are not relevant, as the turnover in the market where the abuse has taken place should be considered meticulously to avoid overpayment of penalty.

The 2023 amendment and the 2024 Guidelines do not diminish this point. Whether the CCI computes the penalty from relevant turnover or caps it by reference to global turnover, the result depends on the market the CCI has delineated, and the Apple proceedings will show how far the proportionality principle survives the amendment.

It is recommended that the CCI and the NCLAT make sure that relevant market analysis is done in light of international jurisprudence, to ensure that the competition regime not only aligns with international best practices but is also adaptable to the emerging markets of the twenty-first century.