



CRITICAL COMPETITION  
COMPETITION LAW NEWSLETTER  
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## ENFORCEMENT ORDERS

### I. THE SUPREME COURT REJECTS GOOGLE'S PLEA AGAINST THE ORDER OF THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT).

The Supreme Court by way of order dated 19 January 2023 dismissed the appeal filed by Google, challenging the order of the NCLAT. In October 2022, the Competition Commission of India (CCI) passed an order levying a penalty of INR 1,338 crores on Google for abusing its dominant position in relation to the android smartphones' ecosystem. The CCI directed Google to immediately alter the anti-competitive clauses in their agreements with OEMs in India. The CCI also directed Google to comply with the following directions within three months from the date of the order, i.e., by January 2023. (Directions of the CCI):

- i. "OEMs shall not be restrained from (a) choosing from amongst Google's proprietary applications to be preinstalled and should not be forced to pre-install a bouquet of applications, and (b) deciding the placement of pre-installed apps, on their smart devices.
- ii. Licensing of Play Store (including Google Play Services) to OEMs shall

not be linked with the requirement of preinstalling Google search services, Chrome browser, You Tube, Google Maps, Gmail or any other application of Google.

- iii. Google shall not deny access to its play service apps to disadvantage OEMs, app developers and its existing or potential competitors. This would ensure interoperability of apps between Android OS which complies with compatibility requirements of Google and Android Forks. By virtue of this remedy, the app developers would be able to port their apps easily onto Android forks.
- iv. Google shall not offer any monetary/other incentives to, or enter into any arrangement with, OEMs for ensuring exclusivity for its search services.
- v. Google shall not impose anti-fragmentation obligations on OEMs, as presently being done under AFA/ACC. For devices that do not have Google's proprietary applications pre-installed, OEMs should be permitted to manufacture/develop Android forks based



*smart devices for themselves.*

- vi. *Google shall not incentivize or otherwise obligate OEMs for not selling smart devices based on Android forks.*
- vii. *Google shall not restrict uninstalling of its pre-installed apps by the users.*
- viii. *Google shall allow the users, during the initial device setup, to choose their default search engine for all search entry points. Users should have the flexibility to easily set as well as easily change the default setting in their devices, in minimum steps possible.*
- ix. *Google shall allow the developers of app stores to distribute their app stores through Play Store.*
- x. *Google shall not restrict the ability of app developers, in any manner, to distribute their apps through sideloading.”*

Google challenged the CCI's order before the NCLAT. The NCLAT, noting the urgency, admitted the appeal subject to deposit of 10% of the penalty amount. However, the NCLAT did not grant a stay with respect to the Directions of the CCI and deferred the hearing to April 2023.

Subsequently, Google appealed the order of the NCLAT denying the interim stay before the Supreme Court of India contending that despite noting the urgency, the NCLAT did not form a *prima facie* opinion on the merits of the case and erred by not granting an interim stay on the order of the CCI. It was also contended by Google that there has been no finding by the CCI regarding an abuse of Google's dominance.

Considering that the appeal is pending before the NCLAT, the Supreme Court held that any expression of opinion on the merits would affect the pending proceedings. Furthermore, the Supreme Court noted that the findings which have been arrived at by the CCI cannot be held at the interlocutory stage to be either without jurisdiction or suffering from a manifest error which would have necessitated interference in appeal.

Accordingly, the apex court affirmed the order of the NCLAT in refusing to grant interim relief and directed it to dispose the appeal by 31 March 2023. The Supreme Court also granted a period of seven days from the date of the order to comply with the order of the CCI.



## **COMBINATION ORDERS**

### **II. THE CCI APPROVED THE INTERNAL RESTRUCTURING OF NINE COMPANIES**

The CCI under the green channel route approved the internal re-organization of certain entities within the same group pursuant to the scheme of amalgamation and arrangement entered between Hibiscus Investment and Finance Private Limited (**Hibiscus**), Rosario Investment Private Limited (**Rosario**), Yokoha Investment Private Limited (**Yokoha**), Peach Blossom Investment Private Limited (**Peach**), Kalyani Cleantech Private Limited (**KCleantech**), Kalyani Technoweld Private Limited (**KTechnoweld**), Kalyani Medicomp Private Limited (**KMedicomp**), Kalyani Strategic Management Services Limited (**KStrategic**) and KSMS Technologies

Solutions Private Limited (**KSMS**).

Hibiscus, Rosario, Yokoha, and Peach are engaged in holding investments. KCleantech is engaged in the business of sanitation products and services, water and wastewater treatment and manufacture of cold storage activities etc. KTechnoweld is actively engaged in the business of providing engineering services in relation to post forging activities and trading of goods. KMedicomp is engaged in 3D printing. Kstratergic is engaged in the consulting business and also undertakes brand building and maintenance activities. KSMS which is the resulting company which is proposed to be engaged in information technology and computer related services.



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