

Indian court blocks CCI from sharing confidential Google info

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An Indian court has extended an interim order prohibiting the Competition Commission of India from sharing Google's confidential information with a complainant that accused the US-based technology company of abusing its dominance.

The Karnataka High Court extended an order yesterday temporarily restraining the CCI from sharing Google's confidential information to the Alliance of Digital India Foundation (ADIF) until the next hearing in the case, which has tentatively been scheduled for 1 August.

In October, the ADIF filed a complaint with the CCI accusing Google of abusing its dominance prior to the company's new Play Store policy going into effect. The foundation said the new policy would force developers to only use Google's billing system for payments, which would subject them to the 30% commission Google charges.

In an order passed on 18 April, the CCI permitted the divulgence of Google's confidential information to the ADIF. Google launched proceedings before the Karnataka High Court, arguing that the CCI went against its own confidentiality regulations – which were **overhauled** just two weeks prior – by including the ADIF in the confidentiality ring.

The section Google cited in its request for relief states that the information shall not be part of the confidentiality ring and shall only have access to non-confidential records.

But that section goes on to say that “the Commission may include the Informant in the Confidentiality Ring in appropriate cases, if the inclusion of the Informant in the ring is considered necessary or expedient for effective inquiry.”

The ADIF has submitted to the Karnataka High Court that the regulations permit the CCI to include it in the confidentiality ring, a stance with which the competition watchdog agreed.

In a brief order issued on 10 May, the court said “it would be appropriate to ensure that the confidential information is not shared to the informant” until it can consider the case in greater depth. Yesterday, the court extended that interim injunction.

Changes to the CCI's confidentiality regime, which were published in India's official gazette on 8 April, were praised by local lawyers for ensuring that parties to an antitrust probe have access to relevant confidential documents while preventing unauthorised disclosure.



Kunal Mehra, a partner at L&L Partners in New Delhi, said the case could serve as a “litmus test” for the new regime, which allows for the sharing of confidential information with members of a confidentiality ring.

By default, an informant is not part of that ring, so the CCI must pass a specific order expressly including the informant, Mehra explained.

The Karnataka High Court will likely consider concerns relating to the risk of confidential data being leaked, and a ruling “would provide significant guidance on the effectiveness and implementation of the regime”, Mehra said.

If this matter ultimately gets to the Supreme Court, it would settle the issue for good, Mehra added.

Given the significant safeguards built into the regulations, the informant’s inclusion in the confidentiality ring is likely to pass legal muster, he predicted. But the application of the regulations to the present case will depend on the relevant facts of the dispute, including the court’s view on the necessity of the informant being included in the ring, he said.

Manas Kumar Chaudhuri, a partner at Khaitan & Co in New Delhi, said India’s high courts can only hear cases relating to alleged breaches of “due process and principles of natural justice issues”. No civil courts, including the high courts, can hear or adjudicate allegations pertaining to alleged breaches of any substantive provisions of the Competition Act, which are heard by the National Company Law Appellate Tribunal, he said.

“Therefore, the Karnataka High Court must satisfy itself that the petition before it is only relating to breaches of either due process or principles of natural justice,” Chaudhuri said.

If the CCI’s lawyers can meet that limited challenge and demonstrate that the dispute does not centre on due process or an issue of natural justice, Chaudhuri predicted that the petition will be dismissed.

The dispute comes as the CCI continues to investigate the ADIF’s complaint against Google. The country’s largest e-payment service, Paytm, [accused](#) Google in September 2020 of favouring its own payment services in its Play Store.

In September, a leaked copy of a 750-page report by the CCI’s investigative branch reportedly [accused](#) Google of abusing its dominance in the markets for operating systems and other key services. The report detailed the findings of a probe that [began](#) in 2019.

Google [slammed](#) the leak and urged the Delhi High Court to block any further confidentiality breaches from the CCI’s investigative unit. The court ultimately [accepted](#) a commitment from the CCI to accept Google’s confidentiality requests to speed up the proceedings, although the enforcer maintained that it was not responsible for the leak.

The findings of the leaked report claimed that Google leveraged its extremely popular Android operating system to force device manufacturers to pre-install the Google Play Store and Chrome internet browser, according to local outlets.

In 2018, the CCI [fined](#) Google €17.2 million for abusing its dominance in the markets for general online search and web search advertising services. That fine followed a six-year long probe, during which the authority also [sanctioned](#) Google €121,000 for withholding information.

That same year, the CCI also [threw out](#) a pair of abuse of dominance complaints against Google accusing the company of illegally blocking advertisers from using its AdWords software.

More recently, the authority [dismissed](#) an allegation accusing Google of abusing its dominance in the internet-related services and products market by integrating its video-conferencing application, Meet, into Gmail.

Counsel to Google

Rahul Rai in New Delhi (as an independent competition lawyer)



