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The 2025 NCLAT Verdict on WhatsApp's Privacy Policy: Unraveling the Competition Conundrum

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ABSTRACT

This case comment presents a detailed yet context-aware analysis of the Competition Commission of India's (CCI) pivotal order dated 18 November 2024, in the matter involving Meta Platforms Inc., the parent entity of WhatsApp. In a significant departure from earlier practice, the CCI recognised that violations involving data privacy and coercive consent structures may amount to abuse of dominance under the Competition Act, 2002. The Commission imposed a penalty of ₹213.14 crore on Meta and directed a five-year suspension of WhatsApp's data-sharing practices for advertising purposes. This ruling signals a broader shift in the antitrust landscape in India, where privacy is being reimagined as a non-price parameter central to assessing competitive harm. The comment undertakes a doctrinal inquiry, analysing the factual background, interpretive strategies, and legal reasoning adopted by the CCI. It reflects on how this decision could reshape regulatory frameworks and judicial interpretations in digital markets going forward. A comparative perspective is also explored particularly developments in the European Union, where the Bundeskartellamt has taken a pioneering stance on aligning data protection with antitrust, and in the United States, where the Federal Trade Commission is cautiously evolving towards integrated digital oversight. The piece also considers the growing institutional tensions, particularly those resulting from overlapping jurisdictions between the CCI and India's Digital Personal Data Protection Act, 2023. These tensions raise complex questions around regulatory coordination. Furthermore, the interim stay granted by the National Company Law Appellate Tribunal (NCLAT) is critically examined, especially in light of its potential consequences for platform accountability and fair access in digital markets.

In essence, the Meta-WhatsApp case marks a doctrinal inflection point in Indian competition law, reflecting a gradual but meaningful realignment towards frameworks that are more attuned to the realities of data-driven economies and the evolving intersections between market power, privacy, and digital governance.

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I. INTRODUCTION

The CCI's November 2024 decision against WhatsApp's parent company, Meta Platforms Inc., marked a turning point in Indian digital regulation. For the first time, India's competition regulator imposed a fine not merely on the basis of pricing abuse or exclusive agreements, but on a privacy policy update that required users to submit to data-sharing terms in order to retain service access.[2] The order explicitly characterised the policy as an exploitative abuse of dominant position under Section 4 of the Competition Act, 2002.[3]

What sets this case apart is that it isn't about conventional parameters like pricing, output restriction, or foreclosure alone. Rather, it underscores how consent especially one obtained without meaningful alternatives can have competitive ramifications when exercised by a platform with significant market power. In other words, user autonomy over personal data was framed not only as a privacy right but also as a competitive right.

This approach finds parallels in European jurisprudence, particularly in Bundeskartellamt v. Facebook[4], where the German regulator took a similar stance, arguing that privacy abuses can distort market structure. The EU's Digital Markets Act (DMA) now codifies many such obligations for gatekeepers.[5] In contrast, U.S. regulators like the Federal Trade Commission (FTC) have been slower in making privacy-competition linkages but are increasingly attentive.[6]

II. BACKGROUND

On January 4, 2021, WhatsApp released an update to its privacy policy which required users to accept new terms or lose access. These new terms permitted extensive sharing of user metadata with Facebook and its group companies.[7] Unlike the 2016 update, which provided an opt-out, this version made acceptance mandatory.

This sparked widespread criticism. Legal scholars and privacy advocates argued that this kind

[2] WhatsApp LLC, *In re*, 2021 SCC OnLine CCI 19 (India).
[3] The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).
[4] Prohibition Decision: Facebook Inc., Case Summary, German Federal Cartel Office, 15.02.2019, B6- 22/16 (May. 12, 2025, 10:31 AM), https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/ Fallberichte/Missbrauchsaufsicht/2019/B6-2216.pdf?__blob=publicationFile&v=.
[5] European Parliament, Council of the European Union, *Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance),* EUROPEAN UNION (May. 13, 8:19 PM), https://eur-lex.europa.eu/eli/reg/2022/1925/oj/eng.
[6] Judge James E. Boasberg, *Federal Trade Commission V. Facebook Inc., No. 1:2020cv03590 - Document 90 (D.D.C. 2022)*, JUSTIA U.S LAW (May. 13, 8:32 PM), https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2020cv03590/224921/90/.
[7]WhatsApp, *WhatsApp Privacy Policy*, WHATSAPP.COM (May. 13, 8:46 PM), https://www.whatsapp.com/legal/privacy-policy.

of binary choice either agree or exit undermines the concept of informed consent and distorts digital market competition.[8] With an estimated 500 million users in India alone, WhatsApp effectively left users with no genuine alternatives, given its dominance in the Over-The-Top (OTT) messaging space.

In March 2021, the CCI initiated a suo motu investigation into the updated privacy policy.[9] It was not just the unilateral imposition of terms that alarmed the Commission, but also the downstream impact: Meta, by aggregating WhatsApp data, could enhance its power in online advertising another market in which it operates extensively.

Meta and WhatsApp challenged the investigation before the Delhi High Court, contending that the issue falls squarely within the domain of data protection laws, not competition law.[10] However, the High Court, and subsequently the Supreme Court, held that the CCI was competent to inquire into data-driven dominance if it distorted market access or consumer welfare.[11]

This gave a green signal to the CCI to proceed with its probe, laying the groundwork for the 2024 decision.

III. LEGAL ISSUES

The order raised three core legal questions under Section 4 of the Competition Act, 2002:

1. Exploitative Abuse: Did WhatsApp's updated privacy policy impose unfair conditions on users?
2. Denial of Market Access: Did the data-sharing policy restrict market access to competitors in adjacent markets like online display advertising?
3. Leveraging Dominance: Did Meta leverage WhatsApp's dominance in messaging to gain unfair advantage in advertising?

A. Exploitative Abuse: Section 4(2)(a)(i): "directly or indirectly, imposes unfair or discriminatory— (i) condition in purchase or sale of goods or service;"[12]

WhatsApp's insistence that users consent to extensive data sharing without a true opt-out was

[8] Naman Kumar, *The Privacy-Antitrust Paradox? Analysing the CCI's Penalty Order against Meta and WhatsApp*, INTERNET FREEDOM FOUNDATION (May. 13 8:51 PM), https://internetfreedom.in/the-privacy-antitrust-paradox-analysing-the-ccis-penalty-order-against-meta-and-whatsapp/#:~:text=The%202021%20policy%20update%20followed,Indian%20users%20were%20treated%20differently.

[9] WHATSAPP LLC, *supra* note 1.

[10] Whatsapp LLC v. CCI, 2021 SCC OnLine Del 2308 (India).

[11] Indian Kanoon, *Supreme Court - Daily Orders Meta Platforms Inc vs Competition Commission Of India on 14 October, 2022*, INDIAN KANOON (May. 13, 9:15 PM), https://indiankanoon.org/doc/94046254/.

[12] The Competition Act, *supra* note 2, at 1.

considered an unfair condition. The CCI argued that this amounted to a degradation in service quality, thereby reducing consumer welfare even in the absence of monetary exchange.[13]

This view echoes EU competition law, where the concept of "non-price competition" is well established. In Google Shopping[14], the European Commission found that manipulating search results in favour of one's own products harms quality dimensions, including relevance and visibility. Similarly, forced data collection impacts service quality from a user's perspective.

B. Denial of Market Access: Section 4(2)(c): "indulges in practice or practices resulting in denial of market access [in any manner];"[15]

The policy arguably deprived competing advertisers and ad-tech firms of access to data that Meta, through WhatsApp, could uniquely aggregate. The CCI found that this asymmetry created entry barriers, preventing newer firms from offering competitive targeting tools.[16]

The Epic Games v. Apple case in the U.S. has relevance here. While the court did not find Apple's App Store monopolistic per se, it held that Apple's refusal to allow alternate payment systems restricted developers' market access.[17] Similarly, Meta's data exclusivity strategy harmed competitive parity.

C. Leveraging Dominance: Section 4(2)(e): "uses its dominant position in one relevant market to enter into, or protect, other relevant market."[18]

This clause was invoked to show that Meta used WhatsApp's dominant position in messaging to enhance its influence in online display advertising—a distinct but interconnected market.

EU law offers precedent in Microsoft v. Commission[19], where tying Windows Media Player to the OS was found to be leveraging. The logic adopted by the CCI tracks that reasoning, albeit applied to user data as the lever.

IV. CCI'S FINDINGS

The CCI defined two relevant markets:

1. The market for OTT messaging applications through smartphones in India.
2. The market for online display advertising in India.

[13] WHATSAPP LLC, *supra* note 1, at 1.
[14] Google and Alphabet v. European Commission, ECLI:EU:T:2021:763 (European Union).
[15] The Competition Act, *supra* note 2, at 1.
[16] Soujanya Boxy, *Data Dominance Under Fire: WhatsApp Case and its Implications*, NUALS LAW JOURNAL (May. 13, 9:45 PM), https://nualslawjournal.com/2025/01/24/data-dominance-under-fire-whatsapp-case-and-its-implications/.
[17] Epic Games, Inc. v. Apple Inc., 4:20-cv-05640, (N.D. Cal.) (USA).
[18] The Competition Act, *supra* note 2, at 1.
[19] Microsoft Corp. v. Commission of the European Communities, ECLI:EU:T:2007:289 (European Union).

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WhatsApp was found to be dominant in the first, supported by user share, network effects, and lack of viable alternatives. The Commission observed that WhatsApp's policy stripped users of meaningful choice, thereby constituting an unfair condition.[20]

Importantly, the CCI held that the extraction and subsequent use of user data without proper consent allowed Meta to refine its ad-targeting algorithms disproportionately. This, in turn, made Meta's advertising services more attractive to clients, further entrenching its position.[21]

It thus concluded that all three components of abuse exploitation, denial of access, and leveraging were made out.

Remedies included a ₹213.14 crore penalty, a five-year ban on data-sharing for ad purposes, and a directive to implement opt-outs for non-essential data sharing.[22]

V. JURISDICTIONAL CHALLENGES AND APPEALS

Meta's primary defence was jurisdictional. It argued that privacy, data protection, and consent are not within the remit of competition law but are regulated by the Information Technology Act and now, the Digital Personal Data Protection Act, 2023.

However, the Delhi High Court and later, the Supreme Court, rejected this reasoning.[23] They cited that data practices could have structural effects on markets, and that competition authorities worldwide were increasingly examining such conduct under their own statutes.

The German Federal Court of Justice, for example, upheld the Bundeskartellamt's findings against Facebook, emphasising that even lawful data collection under GDPR could be anti-competitive if imposed by a dominant firm.[24] Similarly, the European Commission has begun referring to privacy degradation as a relevant factor in market assessments.

India's courts, following these principles, ruled that the CCI was entitled to investigate the anti-competitive effects of data policies even if parallel privacy concerns exist.

VI. NCLAT'S INTERIM RELIEF

On appeal, the National Company Law Appellate Tribunal (NCLAT) stayed the CCI's five-year ban on data-sharing for advertising purposes.[25] It reasoned that an outright ban could

[20] WHATSAPP LLC, *supra* note 1, at 1.
[21] *Id.*
[22] *Id.*
[23] Indian Kanoon, *supra* note 10, at 2.
[24] Bundeskartellamt, *Courtesy translation of Decision KVR 69/19 rendered by the Bundesgerichtshof (Federal Court of Justice) on 23/06/2020 provided by the Bundeskartellamt*, BUNDESKARTELLAMT (May. 13, 10:15 PM), https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Entscheidungen/BGH-KVR-69-19.pdf.
[25] National Company Law Appellate Tribunal, *NATIONAL COMPANY LAW APPELLATE TRIBUNAL,*

dismantle WhatsApp's ad-based monetisation model.

However, it upheld the directions mandating user opt-out options and greater transparency.

This outcome reflects a balanced approach similar to Broadcom Interim Measures in the EU, where the European Commission imposed temporary behavioural obligations pending final adjudication.[26] Such interim orders seek to preserve the status quo without pre-empting final findings.

Yet, the NCLAT's decision also reflects the practical difficulties of regulating digital markets where remedies can have unintended cascading effects on business models, innovation, and even user access.

VII. ANALYSIS

The CCI's WhatsApp decision symbolises a major evolution in Indian competition law. For years, India's enforcement had focused largely on price-based or cartel issues. Now, the regulator has embraced the idea that privacy erosion, coercive consent, and data leverage are not merely consumer protection issues but also competition concerns.

This aligns India with global trends. In Europe, the GDPR and competition law increasingly work in tandem. The DMA codifies ex-ante obligations for gatekeepers, including data portability and prohibition of self-preferencing.

In the U.S., while statutory inertia remains a barrier, enforcement agencies are more proactive. The FTC's suit against Amazon (2023) explicitly argued that tying Prime subscriptions with advertising and logistics services constitutes an abuse of gatekeeper power.[27]

From an academic standpoint, the CCI's order bridges the "privacy–antitrust divide" noted by scholars like Maurice Stucke and Ariel Ezrachi.[28] By treating personal data as a competitive asset, the CCI enriches the analytical toolkit available to regulators. In India, where personal data is often a byproduct of consent given under duress or asymmetry, such framing has even greater relevance.

PRINCIPAL BENCH, NEW DELHI I.A No. 280 of 2025 IN Competition App. (AT) No. 1 of 2025 IN THE MATTER OF: Whatsapp LLC Vs. Competition Commission of India & Ors., NATIONAL COMPANY LAW APPELLATE TRIBUNAL (May. 13, 10:21 PM), https://nclat.nic.in/display-board/view_order.

[26] European Commission, *CASE AT.40608 – Broadcom, ANTITRUST PROCEDURE Council Regulation (EC) 1/2003 Article 8 Regulation (EC) 1/2003 Date: 16/10/2019*, EUROPEAN COMMISSION (May. 13, 10:26 PM), https://ec.europa.eu/competition/antitrust/cases/dec_docs/40608/40608_2791_11.pdf.

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[28] Ariel Ezrachi, Maurice E. Stucke, *Virtual Competition: The Promise and Perils of the Algorithm-Driven Economy*, JSTOR (May. 13, 10:48 PM), https://www.jstor.org/stable/j.ctv24w63h3.

VIII. Conclusion

The CCI's WhatsApp order is not merely a one-off event. It could well become a blueprint for future digital regulation. As Indian regulators grapple with Big Tech's influence, cases like this show that the Competition Act can be flexibly applied to ensure fairness in non-price domains.

The challenge, however, lies in institutional coordination. India now has both a competition authority and a data protection authority. If they act in silos, firms may exploit regulatory arbitrage. Therefore, structured cooperation perhaps through statutory MoUs, shared technical units, or co-enforcement mechanisms is urgently needed.

In conclusion, this case marks the dawn of India's data-driven antitrust era. In doing so, it affirms that in the digital age, fairness is not just about price it's also about power, privacy, and choice.

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