

Meta's challenges to the CCI decision on privacy:

NCLAT retains penalty, eases data sharing restrictions

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Introduction

By its final judgment issued on 4 November 2025 (Judgment), the National Company Law Appellate Tribunal (NCLAT) has partially set aside the Competition Commission of India's (CCI) order dated 18 November 2024 (CCI Order) against Meta Platforms, Inc. (Meta) and WhatsApp LLC (WhatsApp). The NCLAT affirmed the CCI's findings on Meta's dominance in the market for over-the-top (OTT) messaging apps through smartphones in India (Market 1). Pertinently, whilst upholding the monetary penalty imposed by the CCI (INR 213.14 crore / USD ~24.07 million), the NCLAT set aside a key direction on data-sharing between WhatsApp and Meta-entities.

Facts

The CCI found that Meta abused its dominant position in Market 1 via WhatsApp's 2021 privacy policy update (Update), which mandated its users to acquiesce to data-sharing between WhatsApp and Meta as a precondition to using WhatsApp, thereby restricting user choice and enabling Meta to leverage its dominance across markets. Holding the Update as abuse of dominant position, the CCI imposed the penalty on Meta and required modifications to the Update, including an embargo on user data sharing for advertising purposes between WhatsApp and Meta for a period of five (5) years. For a detailed analysis of the CCI Order, refer to our ERGO [here](#).

Meta and WhatsApp approached the NCLAT, appealing the CCI Order, which temporarily stayed the data-sharing restrictions imposed by the CCI. Refer to our ERGO [here](#).

We outline the NCLAT's key findings below.

NCLAT's Key Findings

1. CCI's Jurisdiction Upheld in Data Privacy Matters

The NCLAT affirmed that competition law and data protection frameworks are complementary in nature, allowing the CCI to analyse data coercion from an antitrust perspective without infringing the independent data protection law.

2. Policy Led to a "take-it-or-leave-it" Imposition

The NCLAT concurred with the CCI's observation that the Update, with vague terms, offered no genuine user choice and precluded informed consent. Meta argued that the CCI failed to prove actual harm emanating from the Update. Rejecting Meta's argument, the NCLAT observed that the occurrence of actual harm is not mandatory; potential anti-competitive effects suffice in digital markets, supported by qualitative evidence and submissions by competitors.

Recognising the role of network effects, switching costs and Meta's dominance (through WhatsApp) in Market 1, the NCLAT observed that such user consent was invalid and violated Section 4(2)(a)(i) of the Competition Act, 2002 (Act).

3. Privacy as a Non-Price Competitive Parameter

The NCLAT endorsed the CCI's view that privacy is a key non-price factor in zero-priced digital products such as OTT applications where users "pay" with their data. It upheld that excessive data aggregation and privacy degradation constitute unfair and abusive conduct under Section 4(2)(a)(i) of the Act.

4. Delineation of Relevant Markets

The NCLAT upheld the CCI's delineation of Market 1 and Market 2 (market for online display advertising in India). For Market 1, Meta and WhatsApp proposed a broader "market for user attention" including social media, gaming, and content platforms, but the NCLAT rejected it as unfocused and untargeted, holding that divergent services with distinct end-uses are non-substitutable. For Market 2, Meta and WhatsApp suggested a "market for advertising services" including online or offline channels, or undifferentiated online ads (search or display), but the NCLAT dismissed this as overly expansive, noting differentiating factors such as: (i) targeted advertisements; (ii) analytics; (iii) interactivity; and (iv) cost-effectiveness.

5. Meta's Abuse of Dominance Upheld

As set out above, the NCLAT affirmed the CCI's finding that WhatsApp (and Meta through it) held a dominant position in Market 1 considering factors like: (i) high shares of monthly and daily active users; (ii) strong network effects; (iii) barriers to entry for new competitors; and (iv) high switching costs for users. Accordingly, WhatsApp's Update was deemed to be an abuse of dominant position under Section 4(2)(a)(i) of the Act due to the imposition of unfair conditions on its users.

In Market 2, rejecting the CCI's observations on Meta's dominance, the NCLAT observed that Meta had a leading position through its volume of ad impressions and revenue, despite presence of competitors such as Google LLC. Given the absence of Meta's dominance in Market 2, the allegation of leveraging (under Section 4(2)(e) of the Act) was dismissed by the NCLAT. However, relying on: (i) the inextricable linkages between WhatsApp and Meta (on account of their group structure, the control exercised by Meta over WhatsApp); (ii) the nuances and peculiarities surrounding the digital market ecosystem; and (iii) unbridled access to WhatsApp customer data by Meta allowing it to be a preferred partner for advertisers, the NCLAT observed that such conduct resulted in denial of market access to competitors of Meta. Accordingly, such conduct was held to be violative of Section 4(2)(c) of the Act.

In light of the above findings, the NCLAT held both WhatsApp (in its nature as the wholly owned subsidiary, i.e., akin to an agent for Meta) and Meta (in its role as the controlling entity) had abused their dominant position under Sections 4(2)(a)(i) and 4(2)(c) of the Act.

Remedies

The NCLAT observed that the five (5) year embargo on WhatsApp from sharing user data with Meta-entities for advertising purposes was inherently excessive considering the other behavioural safeguards, particularly a clear opt-out policy being offered to users of WhatsApp.

With respect to the other remedies imposed by the CCI, the NCLAT observed that these seemed proportionate given that these resulted in: (i) informed user choice; (ii) ensured fair conduct; (iii) informed user consent for any non-essential data collection or cross-use (for advertising); and (iv) increased optionality and transparency, among others.

Comments

The NCLAT's judgment offers a nuanced outcome for both the CCI and Meta/WhatsApp. On the one hand, the NCLAT broadly endorsed the CCI's core finding that coercive data-related conduct can amount to an abuse of dominant position. On the other hand, it curtailed some of the CCI's more far-reaching and operationally impractical remedies, signalling that enforcement must remain proportionate and grounded in market realities. Importantly, the Judgment confirms that the CCI may legitimately scrutinise data practices where these are plausibly linked to competitive effects, consumer choice, or market structure—

without transforming the CCI into a general data-protection authority. The Judgment therefore points towards a future model of coordinated, complementary engagement between the CCI and the newly established Data Protection Board, although whether this regulatory “comity” can be maintained in practice, without jurisdictional frictions, remains an open question.

- *Anisha Chand (Partner) and Pranjal Prateek (Partner)*



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