

## The Competition Commission of India penalises Meta for indulging in anti-competitive practices

### Introduction

On November 18, 2024, the Competition Commission of India (“CCI”) imposed a penalty of Indian Rupees 2.13 billion (approximately US\$ 25.3 million) on Meta for abusing its dominant position in violation of the provisions of the Competition Act, 2002, through WhatsApp’s updated privacy policy and terms of use.

Beyond the monetary penalty, the CCI directed WhatsApp to stop sharing its user data with other Meta companies or products for advertising purposes for five years from the date of the order. Additionally, the CCI issued specific directives regarding the sharing of user data for purposes other than advertising, including:

- Enhanced Privacy Policy Transparency:** WhatsApp must provide a detailed explanation in its privacy policy regarding how user data is shared with other Meta companies.
- Voluntary Data Sharing:** WhatsApp cannot make data sharing among Meta companies for purposes unrelated to providing WhatsApp services a mandatory condition for users to access WhatsApp services in India.
- User Opt-Out Mechanism:** WhatsApp must allow users in India to opt-out of such data sharing through an in-app notification. Users should also be able to review and modify their preferences regarding data sharing.

These measures aim to safeguard user privacy, enhance transparency, and ensure fair competition, addressing concerns over data misuse and anti-competitive practices.

### Competition Act, 2002

Section 4 of the Act prohibits entities from abusing their dominant position in the relevant market. Dominant position here refers to a “*position of strength, enjoyed by an enterprise, in the relevant market in India, which enables it to-*



**Dipak Rao**  
Senior Partner  
E: [dipak@singhania.in](mailto:dipak@singhania.in)



**Nishita Arora**  
Associate  
E: [nishita@singhania.in](mailto:nishita@singhania.in)

- (a) *operate independently of competitive forces prevailing in the relevant market; or*
- (b) *affects its competitors or consumers or the relevant market in its favour”*

Relevant market has been defined under the Act to mean the market which may be determined by the CCI with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

In terms of the Act, an enterprise holding a dominant position in a relevant market and indulging in either of the following anti-competitive acts would constitute an abuse of its dominant position:

- (a) directly or indirectly imposes an unfair/discriminatory, condition or price, on the purchase/sale of goods or services, or
- (b) limits or restricts, the production of goods, provision of services, or market access, or any technical or scientific development relating to goods or services to the prejudice of consumers, or
- (c) engages in any practice that denies its competitors fair access to the market, or
- (d) makes conclusion of contracts conditional upon acceptance of supplementary obligations by other parties, which are unrelated to the subject matter of the contract
- (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

### **The Privacy Policies**

The issue arose when WhatsApp, a subsidiary of Meta, introduced a new privacy policy in 2021 (“**2021 Policy**”), allowing it to autonomously share users’ personal data with other Meta companies without obtaining explicit user consent. Under the 2021 Policy, WhatsApp, as part of the Meta group, shares all user information it collects with other Meta companies, ostensibly “*to help operate, provide, improve, understand, customize, support, and market*” their services and products, including those offered by other Meta entities. Additionally, the 2021 Policy permits WhatsApp to share such information with third-party service providers.

In contrast, WhatsApp’s 2016, 2019, and 2020 privacy policies required the platform to obtain explicit user consent before sharing data with third parties. However, the 2021 Policy eliminated this consent requirement. Users wishing to continue using WhatsApp were compelled to accept the updated terms and conditions, effectively forcing them to agree to share their personal data with Meta companies.

### **CCI’s Observations and Rationale**

The CCI identified two relevant markets during its investigation:

- (a) the market for Over-The-Top (OTT) messaging applications on smartphones in India, and
- (b) the market for online display advertising in India.

The CCI found that the Meta group, through WhatsApp, holds a dominant position in the OTT messaging market in India and maintains a leading position in the online display advertising market.

The investigation revealed several anti-competitive practices by WhatsApp, constituting an abuse of its dominant position. Notably, WhatsApp mandates user consent for sharing personal data with other Meta companies as a precondition for accessing its services. Given the absence of viable alternatives in the OTT messaging market, this requirement exploits WhatsApp's market dominance.

Moreover, by sharing user data with other Meta entities, WhatsApp creates significant entry barriers for new competitors in both the OTT messaging and online display advertising markets in India, in violation of the anti-competitive provisions under the Competition Act.

Additionally, this data-sharing practice allows Meta to leverage the user base of WhatsApp to consolidate its position in the online display advertising market. By using its dominance in one market (OTT messaging), WhatsApp reinforces Meta's competitive edge in another (advertising), a strategy explicitly prohibited under the Act.

## **Conclusion**

The CCI's order arises from its *suo moto* action based on media reports alleging anti-competitive practices in WhatsApp's 2021 privacy policy. Unlike the 2016, 2019, and 2020 policies, which gave users the option to decide whether to share their WhatsApp data with other Meta companies, the 2021 Policy mandates such sharing without user consent.

This order marks a significant step toward protecting the personal data of technology users, particularly in an era when unauthorized data sharing and misuse are pervasive. However, it remains to be seen whether Meta accepts the CCI's directives or challenges the order on appeal.

© 2024 All rights reserved. This article is for information purposes only. No part of the article may be reproduced or copied in any form or by any means [graphic, electronic or mechanical, including photocopying, recording, taping or information retrieval systems] or reproduced on any disc, tape, perforated media or other information storage device, etc., without the explicit written permission of Singhania & Partners LLP, Solicitors & Advocates ("The Firm").

**Disclaimer:** Though every effort has been made to avoid errors or omissions in this article, errors might creep in. Any mistake, error or discrepancy noted by the readers may be brought to the notice of the firm along with evidence of it being incorrect. All such errors shall be corrected at the earliest. It is notified that neither the firm nor any person related with the firm in any manner shall be responsible for any damage or loss of action to anyone, of any kind, in any manner, therefrom