

Meta fined €23.8 million in India over Whatsapp data sharing policy

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19 November 2024



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Meta's appeal against the Competition Commission of India's landmark abuse of dominance fine will likely hone in on the agency's forward-looking analysis and the legitimacy of its behavioural remedies.

The authority **fined** Meta 2.13 billion rupees (€23.8 million) yesterday after finding that an update to WhatsApp's privacy policy in 2021 constituted an abuse of dominance by forcing users to consent to the sharing of their data, without offering any choice to opt out. The agency imposed several behavioural remedies, including an order restricting Meta from using data collected on WhatsApp across the company's wider ecosystem of applications.

In reaching its conclusions, the CCI held that an action can be deemed an abuse of dominance even when the anticompetitive effects have yet to materialise.

"The potential impact and the likelihood of effects on the state of competition are sufficient. Otherwise, competition authorities and courts would be compelled to wait for clear anticompetitive outcomes to surface before intervening, which could render their actions too delayed and ineffective," the agency wrote.

That stance is not only supported by an interpretation of India's Competition Act, but also the European Court of Justice's landmark [TeliaSonera](#) judgment, which said it is sufficient to demonstrate that there is an anticompetitive effect that may potentially exclude "as efficient" competitors to find a practice abusive, the CCI said.

To address the forward-looking harm, the CCI ordered WhatsApp not to share data with other Meta companies for advertising purposes for five years, irrespective of user consent.

WhatsApp will be allowed to share data for non-advertising purposes only if it provides users with a prominent in-app notification allowing them to opt-out, as well as the option to review and modify their choice with respect to sharing through a prominent tab in the app's settings, the agency said. It did not however impose this as a condition for users accessing the popular messaging services in India.

The watchdog found that Meta is dominant in the market for over-the-top messaging apps through smartphones in India, while it is also active in the national market for online display advertising.

“Due to network effects and lack of technological compatibility with other messaging apps, users face high switching costs and are effectively prevented from switching to alternative providers,” the CCI found. Those network effects magnified the unfairness of the 2021 policy update, the agency added.

The policy harmed consumer welfare by broadening the existing data-sharing terms on the app and reducing the level of privacy that users expect, which is “an important non-price parameter of competition in digital markets”, the agency said.

“This conduct consolidates Meta’s market power by allowing it to access more user data, creating a competitive disadvantage for other players in the market for display advertisement, who cannot match this level of data integration,” the agency added, noting that the anticompetitive effects are “particularly harmful in the digital ecosystem where data is a key competitive asset.”

The authority’s in-depth investigation into the 2021 privacy policy update [began](#) in March 2021. In the interim, the National Company Law Appellate Tribunal [held](#) that WhatsApp’s 2016 privacy policy was not an abuse of dominance, although users were allowed to opt out of the earlier iteration.

The “take-it-or-leave-it” nature of the 2021 policy underpinned decisions by the [Delhi High Court](#) and [Supreme Court](#) approving the probe.

Much to resolve on appeal

A spokesperson for Meta said the company disagrees with the decision and plans to appeal, insisting that the 2021 policy did not change user privacy and was offered as a choice for users at the time. Meta also ensured that no users would lose their accounts or functionality within WhatsApp because of the update, the spokesperson added.

“The update was about introducing optional business features on WhatsApp, and provided further transparency about how we collect and use data,” they said.

Dinoo Muthappa, a partner at AZB & Partners in New Delhi, said it is notable that the CCI found that an effects analysis is not required in unilateral conduct cases and future anticompetitive impacts are sufficient to support an infringement finding.

That was heavily debated in an appeal against the CCI’s [Android](#) decision, she noted. The NCLAT held in March 2023 that the enforcer should conduct an effects-based analysis in all abuse cases under the Competition Act, although the authority has [challenged](#) that finding before the Supreme Court.

A key issue on appeal will be whether the behavioural remedies are borne out by the evidence, Muthappa said, noting that the NCLAT has previously set aside remedies that were not supported by the CCI’s analysis. In the *Android* case, the tribunal overturned four out of the 10 behavioural fixes.

The CCI’s restrictions on data-sharing for advertising irrespective of user consent is arguably a higher legal standard than the one set out by India’s Digital Personal Data Protection Act (DPDPA), Muthappa said.

Another question on appeal will be whether the agency’s conclusion is justified in a competition law infringement, she added.

“The standout element of the CCI’s decision is its tightrope walk whilst determining that it can review competition issues arising out of data protection and privacy laws,” said New Delhi-based Axiom5 Law Chambers partner Samir Gandhi.

The remedy prohibiting the use of WhatsApp data for advertising on other Meta services highlights that conflict, as the DPDPA makes user consent the touchstone for permitting data sharing.

The CCI also overrides the DPDPA by requiring that all data sharing be subject to user consent, since that statute allows data sharing for legitimate use in public interest, such as protecting safety and security, he said.

The CCI’s order is significant to the extent that it sheds light on how the agency will approach non-price factors such as data and privacy, Bengaluru-based Economic Laws Practice partner Ravisekhar Nair said.

But he said there will likely be some “regulatory tussle” on whether certain conduct falls under the Competition Act of the DPDPA, which has yet to be implemented pending the finalisation of rules and regulations.

The decision raises questions about the CCI’s approach, particularly regarding jurisdictional conflicts and new theories of harm, and the appeals process will likely involve active debates and developments, he said.

It is also not immediately clear how the CCI's remedies, which focus on preventing and ultimately regulating intra-company sharing of data, will help address competition concerns related to rivals not having access to rich data sets, Nair said.

Kanika Chaudhary Nayar, a New Delhi-based partner at DSK Legal, said it is possible that the NCLAT will view this appeal differently to the one about the 2016 policy given consumers are unable to opt out.

The CCI found that the non-availability of choice – and Meta's denial of data to other companies – could be driving out smaller rivals in the data-driven market, which may also present an additional hurdle for Meta on appeal, she said.

The agency's remedies do not appear to be overreaching and are "a step in the right direction to create room for meritorious competition", Nayar added.

Sonam Mathur, a partner at Talwar Thakore & Associates in New Delhi, said behavioural remedies have historically been difficult to implement, so time will tell whether this decision sufficiently addresses the issues identified by the CCI.

Meta may face an uphill battle on appeal, particularly given the evolving jurisprudence on anticompetitive effects arising out of data and privacy concerns, she added.

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