



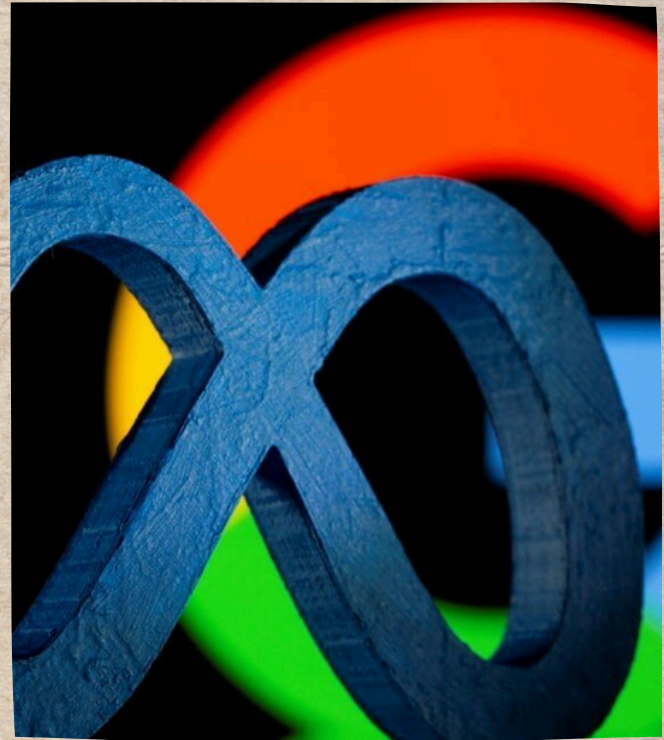
# CCCP L CASE LENS

*AUTHORS: RAGHUVANSH & SRISHTY*

## COMPULSORY DATA-SHARING POLICY OF WHATSAPP UNDER SCRUTINY BY CCI

### INTRODUCTION:

The dispute began when WhatsApp's 2021 update to its privacy and data-sharing policy ('Update') presented users with an ultimatum: accept expanded data-sharing with Meta or lose access to WhatsApp. For an app so entrenched in India's social and professional communication networks, this immediately posed questions under Section 4 of the Competition Act. The CCI took suo motu cognisance after reports and a complaint indicated that the messaging service application was leveraging its dominance to obtain consent that users cannot meaningfully decline.



### ALLEGATIONS BY CCI:

This update withdrew the 2016 opt-out option, expanded the categories of data shared with Meta, and obscured the scope of data processing. Since access to WhatsApp was contingent on acceptance of the terms, the policy presented a 'take-it-or-leave-it' decision. Strong network effects, group coordination, and chat-history lock-in meant users had no real alternative. The CCI also warned that Meta's access to WhatsApp's behavioural data could give it a considerable advantage in online advertising markets.



## **META'S STANCE:**

Meta's position was that the update merely clarified existing practice. Meta's claim included:

- Valid consent for data sharing purposes existed since 2016, and
- Any questions about privacy fell under the Digital Personal Data Protection Act ('DPDPA'), not competition law.

## **“THE DATA POP-UP PROBLEM”: WHEN A NOTICE BECOMES A COMPETITION ISSUE**

This update withdrew the 2016 opt-out option, expanded the categories of data shared with Meta, and obscured the scope of data processing. Since access to WhatsApp was contingent on acceptance of the terms, the policy presented a 'take-it-or-leave-it' decision. Strong network effects, group coordination, and chat-history lock-in meant users had no real alternative. The CCI also warned that Meta's access to WhatsApp's behavioural data could give it a considerable advantage in online advertising markets.

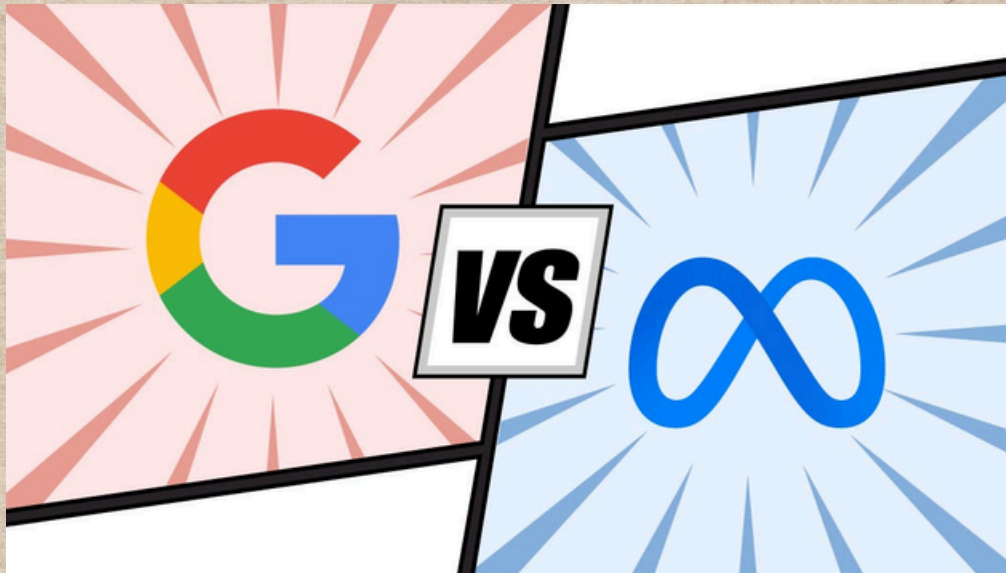
## **EXPECTED OUTCOMES: KEY FINDINGS OF THE NCLAT**

NCLAT confirmed the CCI's essential conclusions. The forum considered WhatsApp in a dominant position in the OTT messaging Market owing to the high number of users, aiding in a wide network of the application. Thus, due to a wide network and high switching costs for users, the 2021 update created a coercive environment. Most importantly, it approved 'possible harm' as the correct standard for digital markets because distortions often occur well before any actual harm can be measured.

The Tribunal also explained that competition and data-protection regimes run parallel: the DPDPA protects rights over data, while the CCI examines whether dominance is used to force them. It was further emphasised by the Tribunal that there shall be a balanced and proportional application of both of them. The five-year ban imposed by the CCI on WhatsApp–Meta advertising-related data was set aside as disproportionate in light of the opt-out option provided to users, but behavioural safeguards in the form of opt-outs, consent linked to purpose, and clear disclosures were upheld. The ₹213.14-crore penalty remained.



## OPEN QUESTIONS FOLLOWING THE DISPUTE



**A question that arose through this judgment was whether the upcoming DPDPA and its rules would change CCI's position w.r.t advertising data?**

The CCI sought clarification from NCLAT regarding the applicability of the user consent conditions on non-advertisement data. The NCLAT provided a response and reiterated that the core principle of the directions was 'removal of exploitation by restoring user choice' and clarified that any non-essential collection or cross-use of data for purposes of both advertising and non-advertising can occur only with the concerned users' express and revocable consent.

The conditions imposed by CCI provide for "Opt-out" options to users from sharing their data for advertisement purposes, appropriate intimation to users regarding utilisation of said data by other Meta companies, and compliance with these conditions in all future policy updates. All these conditions align with the intent to protect consumers' data.