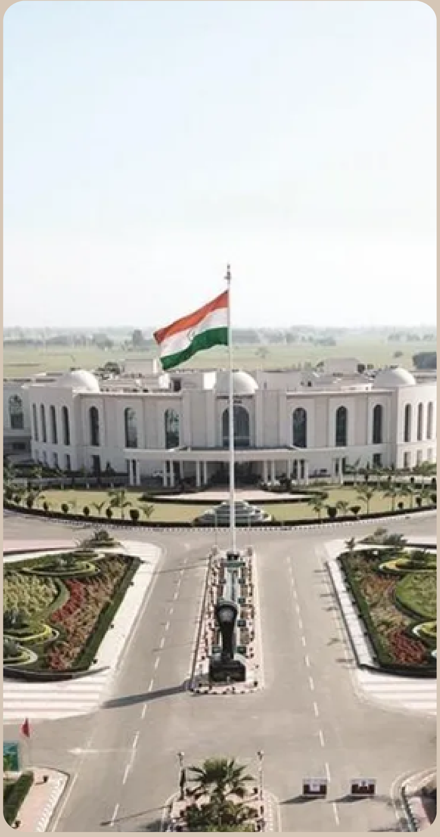
VIGILANCE

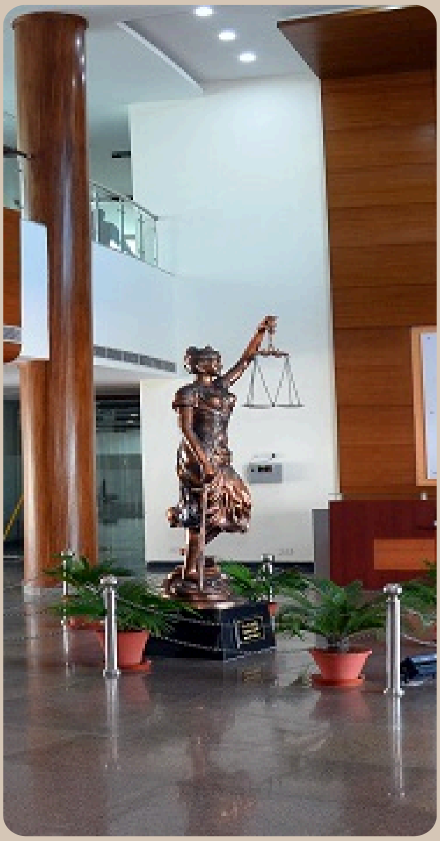
November 2024
Volume 1, Issue 2

Vigilance embodies the core principle of the Centre for Competition and Consumer Protection Law (CCCPL). We strive to ensure fair competition, protect consumer rights, and promote a level playing field for all.

ABOUT RGNUL



The Rajiv Gandhi National University of Law (RGNUL), Punjab, was established by the State Legislature of Punjab by passing the Rajiv Gandhi National University of Law, Punjab Act, 2006 (Punjab Act No. 12 of 2006). The Act incorporated a University of Law of national stature in Punjab, to fulfill the need for a Centre of Excellence in legal education in the modern era of globalization and liberalization. In 2015, RGNUL became the first and the only NLU to have been accredited by the National Assessment and Accreditation Council (NAAC) with an 'A' grade. In 2018, RGNUL was amongst the four NLUs to have been granted an autonomous status by the University Grants Commission and has been ranked among the top law schools in India in the National Institutional Ranking Framework (NIRF), by the Union Ministry of Human Resource Development, Government of India.



ABOUT CCCPL

The Centre for Competition and Consumer Protection Law is a research centre dedicated to advancing understanding and promoting awareness of competition and consumer protection laws. This initiative is driven by a passionate group committed to ensuring a fair and competitive marketplace. Through their research and advocacy efforts, the center aims to contribute to the development of sound legal frameworks that protect consumers and foster healthy competition. By engaging in academic research, policy analysis, and outreach activities, the center will play a vital role in shaping the legal landscape and safeguarding the interests of both consumers and businesses.

PREFACE

The Centre for Competition and Consumer Protection Laws (CCCPL) has been established with the vision of fostering advanced research and studies in the dynamic fields of Competition and Consumer Protection Laws. With the ever-increasing growth and complexities of the economy, competition and consumer protection laws have emerged as pivotal areas in ensuring market efficiency, healthy competition, fair trade practices, and most importantly consumer welfare. The centre seeks to address critical legal and regulatory challenges across various domains such as antitrust laws, market regulation, consumer rights, and e-commerce, among others.

A primary objective of CCCPL is to institutionalize interdisciplinary research and learning in competition and consumer laws while providing a robust platform for students aspiring to excel in these areas. To achieve its goals and vision, the centre aims to actively collaborate with industry experts, regulatory bodies, academicians, and practitioners to offer practical insight on the subject matter and bridge the gap between theoretical knowledge and its application in the real world.

Recognizing that aspiring professionals in these fields must stay informed of the latest developments, CCCPL is committed to the dissemination of information and knowledge. As part of this endeavour, the centre has introduced a monthly newsletter, Vigilance to keep readers updated on the latest news, amendments, policy changes, and case laws in the fields of Competition and Consumer Protection Laws. In addition to providing updates, the centre delves into legal concepts mentioned in the news pieces, presenting them in a simplified manner to ensure that readers not only stay informed but also develop a clear understanding of the subject matter.

We, the faculty coordinators of CCCPL congratulate the entire team of members led by Ms. Sanya Kanwar for their tireless efforts in compiling and designing the **Volume 1 Issue 2** of Vigilance.

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CCI IMPOSES ₹213.14 CRORE PENALTY ON META FOR ABUSE OF DOMINANT POSITION

The Competition Commission of India (“CCI”) imposed a penalty of ₹213.14 crore on Meta Platforms Inc. (“Meta”) for abusing its dominant position by implementing WhatsApp’s 2021 Privacy Policy Update. The order also included cease-and-desist directions and behavioral remedies for Meta and WhatsApp.

BACKGROUND

The case concerns WhatsApp’s 2021 Privacy Policy Update, which required users to accept expanded data-sharing terms as a condition to continue using the platform. The updated policy eliminated the option for users to opt out of sharing their data with Meta companies, unlike the previous 2016 policy, which provided this choice. WhatsApp’s notification to users made data sharing mandatory from February 8, 2021, creating a “take-it-or-leave-it” situation.

The CCI identified two relevant markets for the purpose of analysis: the market for OTT messaging apps through smartphones in India and the market for online display advertising in India. Meta, operating through WhatsApp, was found to be dominant in the messaging app market and held a leading position in the online display advertising market.

CCI’S DECISION

The CCI concluded that the mandatory acceptance of the 2021 privacy policy by WhatsApp constituted the imposition of unfair conditions, violating Section 4(2)(a)(i) of the Competition Act, 2002. Furthermore, the CCI held that sharing WhatsApp users’ data between Meta companies created an entry barrier for competitors and denied market access, thereby contravening Section 4(2)(c). It also determined that Meta leveraged its dominance in the messaging app market to protect its position in the online display advertising market, violating Section 4(2)(e). To address these anti-competitive practices, the CCI directed Meta and WhatsApp to refrain from sharing user data with Meta companies for advertising purposes for five years. The Commission further mandated that all future updates must provide users with an opt-out option for data sharing and a detailed explanation of the data being shared and its purposes. Importantly, it emphasised that user autonomy must be respected, ensuring that data sharing for non-WhatsApp services cannot be made a condition for accessing WhatsApp.

DOMINANT POSITION- EXPLAINED

Abuse of Dominant position occurs when a company with significant market power uses that power unfairly to harm competition or exploit consumers. Under Section 4 of the Competition Act, 2002, dominance itself is not illegal; the issue arises when the dominant company engages in practices that harm market fairness or consumer interests. The goal of Section 4 is to prevent companies from exploiting their dominance in ways that reduce consumer choice, hinder innovation, or distort the market. Section 4(2) of the Act outlines several forms of abuse, including imposing unfair contract terms, limiting the production of goods or services to hurt consumers, or using predatory pricing to drive competitors out of the market. Another example is leveraging dominance in one market to gain unfair advantages in others, such as tying products or denying competitors access to the market.

CHANDIGARH DCDRC HOLDS THAT FORCING AN INSURED PERSON TO ACCEPT A CLAIM LESS THAN THE INSURED VALUE AMOUNTS TO UNFAIR TRADE PRACTICE.

A policyholder insured their vehicle for Rs. 22,00,000. Following a severe accident, they immediately filed an insurance claim with all required documentation. The complainant alleged that the insurance company's surveyor coerced them into accepting Rs. 16,50,000 as a final settlement, constituting an unfair trade practice, and subsequently rejected their legitimate claim. The insurance company denied any deficiency in service or unfair trade practice, claiming neither the company nor its surveyor had obtained the affidavit by coercing the complainant to accept a reduced claim amount.

BACKGROUND

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COURT's DECISION

The bench ruled against an Insurance Company's practice of coercing a complainant to accept Rs. 16,50,000 as final settlement instead of the full insured value of Rs. 22,00,000. The company had obtained an affidavit from the complainant, including a condition preventing any further claims. The bench deemed this an unfair trade practice that violated the complainant's fundamental and legal rights. The court criticized the company's tendency to avoid obligations by dismissing claims on unfounded grounds and causing unnecessary delays. Emphasizing the fiduciary duty of insurance companies to honor commitments and act in good faith, especially when the insured shows no negligence, the bench ordered the company to pay the full insured value of Rs. 22 lakhs with 9% annual interest.

Additionally, the court awarded Rs. 1 lakh as compensation for mental agony and harassment, plus Rs. 33,000 for litigation expenses.

UNFAIR TRADE PRACTICES EXPLAINED

Under the Consumer Protection Act, of 2019, an unfair trade practice refers to deceptive, fraudulent, or unethical methods employed by businesses to gain advantage or cause consumer injury. Section 2(47) of the Act provides a comprehensive definition, encompassing various deceptive practices that businesses might employ while promoting the sale, use, or supply of goods and services. Unfair trade practices (UTPs) include false representation of a good or service, targeting vulnerable populations, misleading guarantees, deceptive pricing, false advertising, offering fictitious gifts or prizes, and selling hazardous or defective goods without proper warnings. The Act specifically addresses issues like manufacturing spurious goods, non-issuance of bills or cash memos, refusal to withdraw defective goods or services, and unauthorized disclosure of consumer's personal information. For instance, representing second-hand or reconditioned goods as new, making false claims about product effectiveness without adequate testing, or creating artificial scarcity through hoarding are explicitly prohibited. Alternative names for unfair trade practices are “deceptive trade practices” or “unfair business practices.”

The Consumer Protection Act provides various remedies against UTPs, including the right to file complaints before consumer forums, claim compensation for losses, and seek removal of defects or replacement of goods. Consumers can file complaints before the District Commission (for claims up to ₹1 crore), State Commission (for claims between ₹1 crore and ₹10 crores), or National Commission (for claims exceeding ₹10 crores).

Sources - The Tribune

UBER FACES FTC PROBE OVER SUBSCRIPTION PRACTICES

The US Federal Trade Commission ("FTC") has launched an investigation into Uber's subscription services, under the Uber One scheme, due to concerns regarding potential violations of consumer protection laws. It is specifically focused on negative option marketing where companies automatically enroll consumers in paid subscriptions, and FTC's "click to cancel" rule which aims at making cancellations of subscriptions easier.

UBER'S RESPONSE

Uber has responded to the probe by stating that its cancellation procedure follows "both the letter and the spirit of the law" in its subscriptions. It laid emphasis on the transparency of its services and the value it provides to its users. It further emphasized that subscribers can easily cancel their subscriptions and they would "take 20 seconds or less" through the app. However, the investigation highlights concern about the complexity of Uber's cancellation process. Consumers have reported difficulty in cancelling subscriptions claiming it is intentionally made hard to navigate.

REGULATORY SCRUTINY

The FTC recently introduced a "click to cancel" rule in an effort to simplify subscription management and protect consumers from deceptive tactics such as "dark patterns," which make cancellation of services intentionally difficult. The rule requires businesses to allow cancellations from their services with minimal effort, as easy as it is to sign up. If uber is found to have violated these principles, ut could face significant penalties. These principles are there to protect consumers as and curb unfair trade practices.

CONCLUSION

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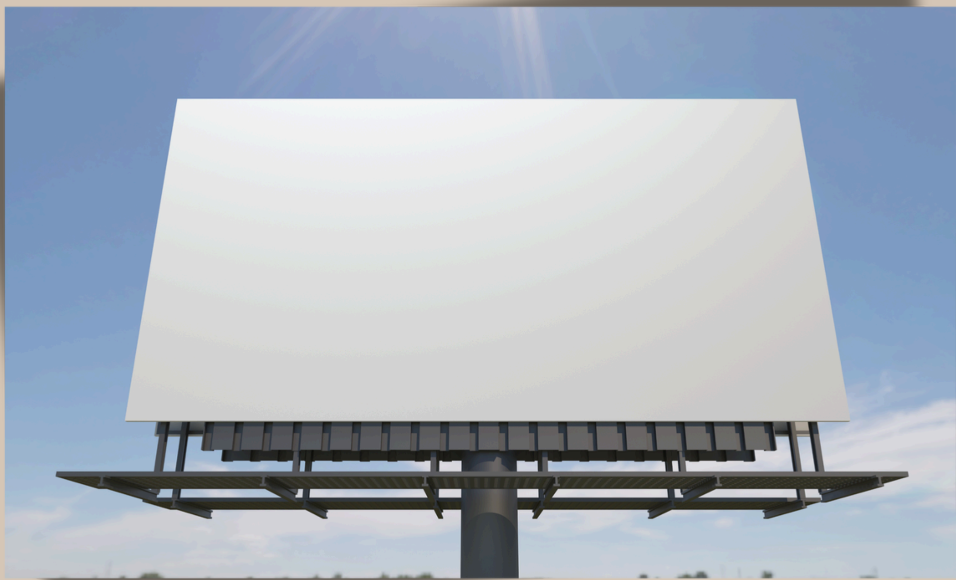
NEGATIVE OPTION MARKETING - EXPLAINED

Negative option marketing, as outlined in Section 4 of the Restore Online Shoppers' Confidence Act (“ROSCA”), 2010, refers to marketing practices where a business assumes a consumer’s consent to continue a subscription unless they actively cancel or opt out. This tactic is often used in situations like free trials, where a consumer must take action to avoid being charged once the trial ends. ROSCA addresses the need for fairness and transparency in such subscription models by requiring businesses to follow specific guidelines. First, businesses must provide clear, upfront disclosure of all material terms before obtaining any payment information, including the costs and cancellation process. Second, explicit, informed consent must be obtained from the consumer through an affirmative action, such as checking a box or clicking a confirmation button, to avoid charging them without their consent. ROSCA mandates that businesses offer an easy and straightforward way for consumers to cancel their subscriptions, eliminating deceptive practices where cancellation is difficult or hidden. This regulation aims to protect consumers from deceptive, aggressive sales tactics and ensures that they have control over their subscriptions, preventing unfair billing practices and deceptive marketing strategies.

Sources - BBC, Economic Times

CENTRAL CONSUMER PROTECTION AUTHORITY ISSUES GUIDELINES FOR COACHING SECTOR ADVERTISEMENTS



The Central Consumer Protection Authority has issued a comprehensive set of guidelines which is to address misleading advertisements within India's coaching sector. These guidelines, based on the Consumer Protection Act, 2019, have been a huge step in making sure that there would be transparency and that there would be no exploitation in regards to students and their families. Below are the important provisions and insights about these guidelines:

Key Provisions of the Guidelines:

1. Verification of Claims:

- Claims of success rates or top rankings must be supported by credible evidence.
- Any assertion made in advertisements must be verified by an independent third party.
- False guarantees, such as "100% success rates," are banned unless adequately supported.

2. Transparency in Disclosures:

- Advertisements must clearly outline critical details, including:
- Tuition fees and refund policies; Scholarship criteria and conditions.
- The precise nature of the programs offered; Use of ambiguous terms like "guaranteed scholarships" without explicit conditions is strictly prohibited.

3. Ethical Use of Testimonials:

- Only genuine student endorsements are permitted.
- Testimonials should reflect the experience of individuals without exaggeration.

4. Disclaimer on Results:

- Ads must carry a disclaimer stating that some results cannot be guaranteed to everyone.
- This is to prevent creating unrealistic expectations among potential students.

5. Emotional Manipulation Prohibition:

● Fear-based marketing techniques, such as threatening sure failure without the institute's services, are prohibited; Advertising shall not emotionally exploit students or parents.

6. Monitoring and Sanctions:

● Non-compliance will be dealt with through fines, suspension of advertisements, or other legal measures.

● Repeat offenders will be dealt with more severely and will ensure accountability in the sector.

Why These Rules Matter:

1. Protecting Vulnerable Groups:

● The main beneficiaries are students and parents, who often invest significant emotional and financial resources.

● These measures are designed to protect them from predatory practices by coaching institutions.

2. Promotion of Ethical Practices:

● The guidelines promote a shift toward fair advertising, reducing instances of false promises and exaggerated claims.

● They strive to establish an open environment that promotes the interests of consumers above and beyond the interests of commercial enterprise.

3. Powerful Regulatory Authority:

● With the powers available under the Consumer Protection Act, 2019, CCPA is in a more powerful position to regulate and penalize offenders.

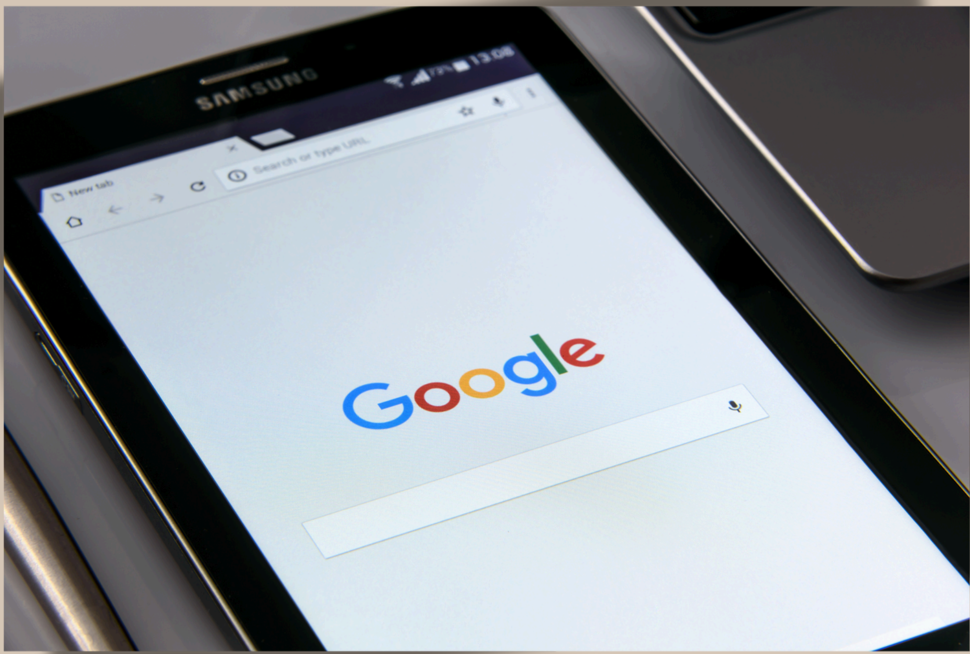
● This includes suo motu action or on complaint from consumers.

MISLEADING ADS - EXPLAINED

Misleading advertisements are false claims, exaggeration, or concealment of material facts, usually to influence consumer decisions unfairly. In coaching sector, such advertisements often include claims of guaranteed success, exaggerated success rates, misrepresentation of refund and scholarship policies, and the exploitation of student aspirations and parental investments. The legal framework under the Consumer Protection Act, 2019, addresses this issue through Section 2(28), which defines misleading advertisements and prohibits misrepresentation of commodities or services, unsubstantiated testimonials, and omission of material information. The Act empowers CCPAto investigate such cases, impose penalties, and deny the issuance or renewal of advertisements found to be misleading.

Sources - PIB

GOOGLE FACES ANTITRUST SCRUTINY: DOJ DEMANDS CHROME DIVESTITURE OVER AD MARKET DOMINANCE



Recently in a hearing in an American District Court, the court held that Google is a monopolistic entity. To reduce the dominance of Google Chrome the American Department of Justice suggested selling the Google-owned web browser Chrome. Chrome is the most widely used web browser by a very large margin. Chrome is based on Google's open-source software Chromium which is even used by other famous browsers such as Microsoft Edge.

BACKGROUND

Google's Chrome is the most widely used browser. It has a share of more than 65% over all the platforms. At the same time, Chrome comes pre-installed in Android which holds the largest share amongst smartphones' Operating Systems which is more than 70%. Google already has a monopoly in the major sectors such as search engines. With the 65% share in web browsers, Google has been accused of abusing its dominant position through its advertisement services.

INSIDE THE COURTROOM

The case was filed in the year 2020 against Google by the Department of Justice for unlawfully maintaining its monopoly in the search engine market of search engines through exclusive contracts. The Department of Justice has stated, "Google is once, twice, three times a monopolist". While having a monopoly in the browsers is not a major issue in this case the major issue is the way Google has integrated publisher ad servers, ad exchanges, and advertiser ad networks with Chrome and the search engine. The suggestion was made by the Department of Justice to give other advertisers a more level playing field. Google was given time till the 20th of December to give a comment on the remedies suggested.

CHALLENGES AHEAD

Monopoly in any market is detrimental to consumers as it kills the competition which allows only a few parties to control the price. In this case, Google is using leverage from other markets i.e. the browser market to create a monopoly in a different market that is the advertisement market. Even if the court gives a judgement to break Chrome from Google it will be challenged by the tech giants in the American Apex Court. Google argued that "the government putting its thumb on the scale in these ways would harm consumers, developers and American technological leadership at precisely the moment it is most needed." One of the options in this scenario that the court can have is to go with the behavioural remedies to limit the anti-competitive practices of Google, such as banning Chrome from being the default browser in the Androids or allowing Google to license its search results and ad tools to competitors.

MONOPOLY EXPLAINED

The Competition Act of 2002 in India defines a "dominant position" as a situation where an enterprise possesses substantial market power, allowing it to operate independently of competitive pressures and significantly influence market outcomes. Key factors considered in determining dominance include market share, barriers to entry, economic power, consumer dependence, and market structure. The Act, particularly Section 4, prohibits the abuse of this dominance through practices like imposing unfair conditions, limiting production, denying market access, and leveraging dominance in one market to control another. Section 19 of the Act deals with combinations (mergers and acquisitions), requiring notification to the Competition Commission of India (CCI) for review of their potential impact on competition. The landmark Cement Manufacturers' Association v. Union of India (1990) case established that while dominance itself is not illegal, dominant firms have a responsibility to not abuse their position to the detriment of competition and consumers

Sources - The Verge, The Drum

VIGILANCE

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