

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

I.A No. 280 of 2025

IN

Competition App. (AT) No. 1 of 2025

IN THE MATTER OF:

Whatsapp LLC

....Appellant

Vs.

Competition Commission of India & Ors.

...Respondents

For Appellant:

Mr. Mukul Rohtagi and Mr. Arun Kathpalia Sr. Advocates with Mr. Yaman Verma, Mr. Shashank Mishra, Ms. Raveena Lalit, Ms. Aisha Khan, Mr. Shivek Endlaw, Mr. Parv Kaushik, Ms. Anandita Tayal, Ms. Bani Brar, Ms. Diksha Gupta, Ms. Devanshi Singh, Mr. Udit Dedhiya, Mr. Aditya Dhupar and Ms. Tahira Kathpalia, Advocates

For Respondents:

**Mr. Samar Bansal, Mr. Manu Chaturvedi, Mr. Vedant Kapur, Mr. Kaustubh Chaturvedi, Advocates for CCI.
Mr. Abir Roy, Mr. Vivek Pandey, Mr. Aman Shankar, Ms. Biyanka Bhatia, Mr. Sasthibrata Panda and Ms. Shreya Kapoor, Advocates for R3.**

Competition App. (AT) No. 2 of 2025

IN THE MATTER OF:

Meta Platforms, INC

....Appellant

Vs.

Competition Commission of India & Ors.

...Respondents

For Appellant:

Mr. Kapil Sibal, Ld. Sr. Advocate with Mr. Tejas Karia, Mr. Naval Chopra, Ms. Supritha Prodaturi, Ms. Akshi Rastogi, Ms. Parinita Kare, Mr. Aatmik Jain, Ms. Ritika Bansal and Ms. Aparajita Jamwal, Advocates.

For Respondents:

Mr. Samar Bansal, Mr. Manu Chaturvedi, Mr. Vedant Kapur, Mr. Kaustubh Chaturvedi, Advocates for R1/ CCI.

Mr. Abir Roy, Mr. Vivek Pandey, Mr. Aman Shankar, Ms. Biyanka Bhatia, Advocates for R3.

ORDER
(23rd January, 2025)

Ashok Bhushan, J.

IA No.280 of 2025 has been filed in Competition Appeal (AT) No.01 of 2025 filed by WhatsApp LLC praying to stay the effect and operation of the impugned order dated 18.11.2024 passed by the Competition Commission of India (CCI) and to pass any other order that it deems fit and proper in the facts and circumstances of the case.

2. We have heard Learned Counsel for the Appellant and Counsel appearing for the CCI on 16.01.2025 on which date both the Appeals were admitted and parties were heard on the interim relief.

3. Before we enter into respective submissions of the parties on the application for interim relief, a brief background of the facts giving rise to these Appeals are to be noted.

3.1. WhatsApp LLC published its Terms of Service and Privacy Policy in 2012. In April, 2016, WhatsApp announced its end-to-end encryption system for all types of WhatsApp messages and calls. On 20.02.2018, WhatsApp updated its Terms of Service and Privacy Policy of 2016 which was challenged in Delhi High Court by Writ Petition- **“Karmanya Singh Sareen vs. Union of India”**. WhatsApp announced 2021 Terms of Service and Privacy Policy (2021

update) applicable to users of India and several other countries. On 19.01.2021, CCI took *suo moto* cognizance of 2021 update and registered *Suo Moto* Case No.01 of 2021. CCI passed an order on 19.01.2021 under Section 19(1) seeking information from WhatsApp LLC and Meta Platforms. WhatsApp challenged the proceeding initiated by CCI by means of Writ Petition in Delhi High Court **“WhatsApp LLC vs. CCI”** which Writ Petition came to be dismissed by a learned Single Judge, LPA was also dismissed on 25.08.2022 and SLP against the order dated 25.08.2022 also came to be dismissed by the Hon’ble Supreme Court on 14.10.2022 filed by Meta Platforms. The Director General initiated investigation against WhatsApp 2021 update and submitted a report. WhatsApp sent a letter to the Ministry of Electronics and Information Technology on 22.05.2021 undertaking that it will not limit the functionality of how WhatsApp works for users who have not yet accepted the 2021 update and will continue to display the update to users who have not accepted the 2021 update from time to time and will maintain the same until data protection law comes into effect.

3.2. Two cases were also subsequently clubbed with the *suo moto* case being Case Nos.05 of 2021 and 30 of 2021. On 11.08.2023, Digital Personal Data Protection Act 2023 received presidential assent and was published in the Official Gazette of India (the Act has not yet been enforced). After hearing the parties and other interveners, the CCI passed an order on 18.11.2024 (impugned in the present Appeals) holding breach of Section 4(2) of the Competition Act, 2002. The Commission in exercise of powers under Section 27(a) of the Act issued various directions in consequence of contravention of

the provisions of Section 4 of the Act. The Commission also imposed monetary penalty of Rs.213.14 Crores on the Meta directed to deposit the penalty within 60 days. The Commission further directed for making necessary changes within period of three months. WhatsApp and Meta aggrieved by the said order have come up in these Appeals.

4. We have heard Shri Kapil Sibal, Shri Mukul Rohtagi and Shri Arun Kathpalia, Learned Senior Counsel for the Appellants, Shri Samar Bansal, Learned Counsel has appeared for CCI and Shri Abir Roy, Learned Counsel for Respondent No.3.

5. The submissions advanced by Learned Senior Counsel appearing in both the Appeals being almost similar, we refer to submissions as submissions on behalf of the Appellant.

6. Counsel for the Appellant in support of the Appeal contends that the Commission failed to identify actual anti-competitive effects and instead relied on potential and likely effects whereas law is well settled that actual anti-competitive effects is a prerequisite for a Section 4 violation. It is submitted that the Commission took *suo moto* cognizance of 2021 update of WhatsApp which 2021 update was challenged before the Hon'ble Supreme Court in SLP filed by Karmanya Singh Sareen against the judgment of the Delhi High Court dated 23.09.2016 dismissing Writ Petition where 2016 privacy policy was challenged. It is submitted that in the said S.L.P, an IA was filed being IA No.6140 of 2021 where prayer was made to stay the 2021 privacy policy dated 04.01.2021 with certain other reliefs including WhatsApp shall not transfer or

share any User data or information of Indian WhatsApp Users with Facebook, any other Facebook company. It is submitted that the said application was heard by the Hon'ble Supreme Court and by order dated 01.02.2023 the prayer for staying 2021 privacy policy was refused. The Hon'ble Supreme Court also noticed the contention of the Attorney General of India and other Senior Advocates that Digital Personal Data Protection Bill 2022 is on anvil. It is submitted that when the Hon'ble Supreme Court has not granted interim order, CCI ought not to have founded its order on the violation of privacy policy 2021 and imposed penalty and directions. It is submitted that the Act has already been approved by the Hon'ble President and Gazetted namely Digital Personal Data Protection Act 2023 on 11.08.2023 and the Commission was to await the enforcement of the Act for finding any violation by WhatsApp LLC. The remedies on privacy and data protection are without jurisdiction and expertise of CCI. The Commission is not appropriate authority to impose privacy and data protection requirements. It was noticed by the Hon'ble Supreme Court in its order dated 01.02.2023 the undertaking of the WhatsApp that even if those users who have not opted for 2021 privacy policy, they shall be continued to use the WhatsApp services. WhatsApp has not discontinued the users who have not opted for 2021 privacy policy and they are still getting the service of WhatsApp. It is submitted that there is a strong *prima facie* case in favour of WhatsApp. The consent was taken to share the user data with Meta in 2016. About 9 years have passed and further after 2021 policy update more than four years have passed. The Commission has failed to identify actual anti-competitive effects and based its order on

potential and likelihood effects which is not in accordance with law. The Commission findings and remedies on privacy and data protection are beyond jurisdiction and competence. Remedy imposed by the Commission do not address any demonstrable harm to users' competitors any market. The WhatsApp is continued with its business model and provide free services to WhatsApp users. Advertisement is one of the major source of revenue. Five years ban which was imposed by the impugned order shall have prejudicial effect in business model of the Appellants and shall collapse the business model under which free services are providing by WhatsApp to its users. 2021 update is not inherently coercive as is observed by the Commission. The window was allowed to all users to opt out and those who have not even opted for 2021 update are being continued with the benefit of service by WhatsApp. There were no reasons for issue directions as contained in paragraph 247.2 of the order of the Commission. Irreparable harm shall be caused to the WhatsApp and its users on five years ban as was imposed by the impugned order in paragraph 247.1.

7. Counsel appearing for the CCI refuting the submissions of the Counsel for the Appellant submits that WhatsApp has challenged the *suo moto* proceedings initiated by CCI against WhatsApp by filing a Writ Petition which was dismissed by Ld. Single Judge of the High Court on 22.04.2021. LPA filed by WhatsApp was also dismissed by Division Bench of Delhi High Court on 25.08.2022. Against the Division Bench Judgment of the Delhi High Court, a Special Leave Petition to Appeal No.17121 of 2022 and other SLPs were filed which came to be dismissed by the Hon'ble Supreme Court on 14.10.2022.

The Hon'ble Supreme Court accepted the submissions of the Commission that proceedings initiated by the Commission is for violation of the provisions of the Competition Act which were within jurisdiction of the Commission. It is submitted that when the Hon'ble Supreme Court dismissed SLP filed by WhatsApp LLC and Meta Platforms, the privacy policy 2021 was already there and the S.L.P filed by Karmanya Singh Sareen was also pending and the Hon'ble Supreme Court did not prohibit the Commission to proceed with the proceedings. It is submitted that the Commission has jurisdiction to take proceeding under the Competition Act 2002 and impose penalty and other measures which is well within jurisdiction of the Commission. Violation of Section 4 having been found to be proved, the Commission was well within its jurisdiction to pass appropriate order and impose penalty. WhatsApp is a dominant and it has abused its dominance which has been found proved after considering all relevant evidence. It is submitted that the Commission has every jurisdiction to proceed with the *suo moto* investigation and pass final order. It is further submitted that the Appeals itself may be heard finally and decided. It is submitted that no case has been made out to pass any interim order. It is submitted that the Commission also request for hearing of the Appeals at an early date.

8. We have considered the submissions of the Counsel for the parties and perused the record.

9. We need to first notice the directions and order issued by the Commission in the impugned order. In exercise of jurisdiction under Section

27(a) of the Competition Act, 2002, the Commission issued following directions in paragraph 247.1 to 247.3:-

“247.1 WhatsApp will not share user data collected on its platform with other Meta Companies or Meta Company Products for advertising purposes, for a period of 5 (five) years from the date of receipt of this order. After expiry of the said period, the directions at para 247.2 (except para 247.2.1) will apply mutatis mutandis in respect of such sharing of data for advertising purposes.

247.2 With respect to sharing of WhatsApp user data for purposes other than advertising:

247.2.1 WhatsApp's policy should include a detailed explanation of the user data shared with other Meta Companies or Meta Company Products. This explanation should specify the purpose of data sharing, linking each type of data to its corresponding purpose.

247.2.2 Sharing of user data collected on WhatsApp with other Meta Companies or Meta Company Products for purposes other than for providing WhatsApp services shall not be made a condition for users to access WhatsApp Service in India.

247.2.3 In respect of sharing of WhatsApp user data for purposes other than for providing WhatsApp Services, all users in India (including users who have accepted 2021 update) will be provided with:

a) the choice to manage such data sharing by way of an opt-out option prominently through an in-app notification; and

b) the option to review and modify their choice with respect to such sharing of data through a prominent tab in settings of WhatsApp application.

247.2.4. All future policy updates shall also comply with these requirements.

247.3 The OPs are directed to make necessary changes to comply with above directions within a

period of 3 (three) months from the date of receipt of this order and submit a compliance report to the Commission in this regard.”

10. The directions in paragraph 247.1 are directions with regard to share of initial data “for advertising purposes” and directions in paragraph 247.2 are with respect to sharing of WhatsApp user data “for purposes other than advertising”. Five years’ ban have been imposed only with respect to share of user data for advertising purposes. The Commission has also imposed monetary penalty of Rs. 213.14 Crore in paragraph 263 of the impugned order, which is as follows:-

“263. Consequently the Commission imposes a penalty of Rs. 213.14 crore only (Rs. Two Hundred Thirteen Crores and Fourteen Lakhs only), upon Meta for violating Section 4 of the Act. Meta is directed to deposit the penalty amount within 60 days of the receipt of this order.”

11. We need to notice first the order of the Hon’ble Supreme Court dated 14.10.2022 which was passed in the SLP filed by WhatsApp LLC and Meta Platforms challenging the order of the Division Bench of the Delhi High Court by which its LPA was dismissed. Writ Petition was instituted by WhatsApp challenging the initiation of *suo moto* proceeding by CCI. The Hon’ble Supreme Court dismissed the SLP. It is useful to reproduce the entire order dated 14.10.2022 which is as follows:-

“We have heard Shri Kapil Sibal, learned Senior Advocate, appearing on behalf of the petitioner in SLP

(C) No. 17332/2022 and Shri Mukul Rohatgi, learned Senior Advocate with Shri Tejas Karia, learned Advocate, appearing for the petitioner in SLP (C) No. 17121/2022 and Shri N. Venkataraman, learned ASG appearing on behalf of the Competition Commission of India [CCI] and having gone through the impugned judgment and order passed by the High Court, no interference of this Court is called for.

The CCI is an independent authority to consider any violation of the provisions of the Competition Act, 2002 (for short "the ACT"). When having prima facie opined that it is a case of violation of the provisions of the Act and thereafter when the proceedings are initiated by the CCI, it cannot be said that the same are wholly without jurisdiction.

Under the circumstances and even considering the observations made by this Court in the case of Competition Commission of India vs. Steel Authority of India Limited and Another, (2010) 10 SCC 744 (para 10), the proceedings before the CCI are required to be disposed of at the earliest. as under:

"10. The Act and the Regulations framed thereunder clearly indicate the legislative intent of dealing with the matters related to contravention of the Act, expeditiously and even in a time-bound programme. Keeping in view the nature of the controversies arising under the provisions of the Act and larger public interest, the matters should be dealt with and taken to the logical end of pronouncement of final orders without any undue delay. In the event of delay, the

very purpose and object of the Act is likely to be frustrated and the possibility of great damage to the open market and resultantly, country's economy cannot be ruled out."

In view of the above, the CCI should not be restrained from proceeding further with the enquiry/investigation for the alleged violation of any of the provisions of the Act.

The Special Leave Petitions stand dismissed.

However, it is observed that all the contentions which may be available to the petitioners are kept open to be considered by the CCI in accordance with law and on its own merits and any observations made while initiating the proceedings recorded in para 43 and any observations made by the High Court be considered and treated as tentative/prima facie while initiating the proceedings under the Act and the proceedings shall be decided and disposed of in accordance with law and on its own merits.

Pending applications stand disposed of."

12. The above order clearly supports the submissions of the CCI that *suo moto* proceeding initiated by the CCI was not to be interfered with. However, the Hon'ble Supreme Court has observed that the proceedings shall be decided and disposed of in accordance with law and on its own merits. The initiation of proceeding was thus, not interfered but the ultimate order passed by the Commission has to be tested on its own merits.

13. Now we may notice the order passed by the Hon'ble Supreme Court dated 01.02.2023 which is relied by Counsel for the Appellant where according to the Appellant, 2021 update privacy policy was not stayed by the Hon'ble Supreme Court. The copy of the order dated 01.02.2023 has been brought on the record in the Appeal as Annexure 13. It is to be noted that the said order was passed in Special Leave to Appeal 804 of 2017 which was filed by Karmanya Singh Sareen dismissing Writ Petition challenging the 2016 privacy policy. In the said SLP, an IA was filed being IA No.6140 of 2021 where privacy policy 2021 was sought to be stayed with certain further directions. It is useful to notice the following part of the order of the Hon'ble Supreme Court dated 01.02.2023 dealing with the IA No.6140 of 2021:

"At this juncture, Mr. Shyam Divan, learned senior counsel would then pray for an interim order being passed in I.A. No. 6140 of 2021 in SLP (C) No. 804 of 2017. He took us through the I.A. and prayed that the reliefs which are sought for as directions may be granted. They read as follows:

"(i) stay the operation of the new Privacy Policy and Terms of Service dated 04.01.2021 of WhatsApp, and direct that the date of coming into force of the new Privacy Policy and Terms of Service (i.e. 08.02.2021) shall be deemed to have been extended, pending adjudication of the present Special Leave Petition;

(ii) Direct that, without prejudice to the rights and contentions of the Petitioners, WhatsApp shall not

apply lower privacy standards for Indian Users, and WhatsApp shall apply the same Privacy Policy and Terms of Use for Indian Users as is being applied for Users in the European Region;

(iii) Direct the give to WhatsApp undertaking to this Hon'ble Indian users:- following Court, with respect to its

'Till such time that a data protection legislation comes into force in India,

(i) WhatsApp shall not transfer or share any User data or information of Indian WhatsApp Users with Facebook, any other Facebook company or any third party for any purpose;

(ii) whatsApp shall not bring into force its new Privacy Policy dated 04.01.2021 for Indian Users.

'Upon such data protection legislation coming into effect, WhatsApp shall be at liberty to approach this Court for modification and/or variation of this undertaking'.

(iv) Direct Ministry the of Electronics and Information Technology, Government of India to issue necessary orders to WhatsApp to not to implement its new Privacy Policy and new Terms of Use for Indian Users from 08.02.2021, and to take necessary steps

to ensure compliance with such orders, till further orders are passed by this Hon'ble Court."

Mr. Kapil Sibal, learned senior counsel appearing for the respondent-WhatsApp would point out letter dated 22nd May, 2021 addressed to the Ministry of Electronics and Information Technology (Meity), Government of India. Therein our attention is drawn to the following portion:

"We take seriously the feedback we have received from your agency and want to confirm that WhatsApp will not limit the functionality of how WhatsApp works in the coming weeks as previously planned. We will continue to display our update, from time to time, to people who have not yet accepted. In addition, we will display the update whenever a user chooses relevant optional features like when a user communicates with a business receiving support from Facebook. We hope this approach reinforces the choice that people have in how they use WhatsApp, which was our intent from the beginning with this update. We will maintain this approach at least until the forthcoming Personal Data Protection (PDP) bill comes into effect."

Learned senior counsel for the petitioners, no doubt, would pray for an interim order to the effect that even those persons who may have agreed to the terms of privacy policy declared by WhatsApp either in terms of the Privacy Policy of the year 2016 or even of the Privacy Policy of 2021 should have the right to

opt out, which means, according to them that while they should be permitted to use WhatsApp, their agreement to allow the use of data should not stand in the way of their wriggling out of their obligation, under which WhatsApp would have the right to share the data.

We would think that we may not be justified at this stage in granting the relief as sought by the petitioners in I.A. No. 6140 of 2021. The matters may require consideration of the issues which arise in these petitions.

As things stand, however, apart from noticing and recording the stand of WhatsApp that they have given an undertaking which is contained in the paragraph of the letter which we have extracted above, we would issue appropriate directions in causing wide publicity to the said stand of WhatsApp for the benefit of those consumers who may not have agreed to the terms of the Privacy Policy of the year 2021.

Accordingly, the application (I.A. No. 6140 of 2021) is disposed of as follows:

We record the stand taken in the letter dated 22nd May, 2021 and we also record the submissions of learned senior counsel for WhatsApp that they will abide by the terms of the letter which we have extracted above till the next date of hearing.

We further direct that WhatsApp will cause wide publicity to this aspect for the benefit of the

consumers of WhatsApp by giving advertisement on a full page in five national newspapers on two occasions. The advertisement will necessarily incorporate the stand which has been taken in the letter dated 22nd May, 2021.”

14. The above order clearly indicate that the Hon'ble Supreme Court did not find it feasible to grant interim order staying 2021 privacy policy. We are however, conscious of the fact that refusing to stay privacy policy in the year 2023 by the Hon'ble Supreme Court in SLP filed by Karmanya Singh Sareen at best can indicate that the privacy policy was not stayed by the Hon'ble Supreme Court. However, the Hon'ble Supreme Court had no occasion to consider the *suo moto* proceedings and breach of provisions of Competition Act 2002, and at best it can be noticed that the privacy policy was not stayed by the Hon'ble Supreme Court in spite of the prayers made before it.

15. Counsel for the Appellants also referred to the Digital Personal Data Protection Act 2023 Gazetted on 11.08.2023 which has not yet been enforced. Counsel for the Appellants submits that the provisions are likely to be enforced within six months as the above statement was made by the Hon'ble Minister.

16. The CCI having after considering the report of the DG and replies submitted by the Appellants and other materials on record found breach of Section 4 of the Competition Act, 2002 and had issued directions and penalty.

17. The question to be considered as on date is as to what extent Appellants are entitled for any interim order as prayed in the IA. We have noticed above

that directions which have been issued in paragraph 247.1 and 247.2 are with respect to “for advertising purposes” and “for purpose other than advertising”. Insofar as sharing of user data for advertising purposes, the said is going on from 2016 when 2016 privacy policy was enforced. The ban of five years which was imposed in paragraph 247.1 may lead to the collapse of business model which has been followed by WhatsApp LLC. It is also relevant to notice that WhatsApp is providing WhatsApp services to its user free of cost. We have also noticed that the Hon’ble Supreme Court has not granted interim order staying 2021 privacy policy and Digital Personal Data Protection Act 2023 has also been passed and is likely to be enforced which may cover all issues pertaining to data protection and data sharing. We are of the *prima facie* view that the ban of five years imposed in paragraph 247.1 need to be stayed. We, however, are of the view that the directions issued by the CCI under paragraph 247.2 and 247.3 need not be stayed and they need to be complied with. The only limited interim order which we are inclined to grant is to stay the direction in paragraph 247.1 by which five years’ ban has been imposed. The direction in paragraph 247.1 are stayed.

18. Now coming to the penalty, the Commission in paragraph 263 has imposed penalty of Rs.213.14 Crores only. It is submitted by Counsel for the Appellant that 25% penalty has already been deposited. We are of the view that subject to deposit of 50% of penalty (after taking into consideration 25% already deposited), the direction in paragraph 263 need to be stayed. We direct the Appellant to deposit 50% of penalty as indicated above within two weeks from today.

19. Both the parties are granted leave to pray for modification of this order in event Digital Personal Data Protection Act 2023 is enforced or any other statutory provisions are enforced regulating to data protection and sharing of the data.

20. IA No.280 of 2025 is disposed of accordingly.

Looking to the nature of the issues raised in the Appeals, both the Appeals need to be decided at an early date. We grant liberty to the parties to complete necessary pleadings within six weeks from today.

List both the Appeals on 17.03.2025 at 2.00 P.M for hearing.

**[Justice Ashok Bhushan]
Chairperson**

**[Arun Baroka]
Member (Technical)**

New Delhi
Anjali